

**Type: Research Article**

# The Authority of the Consumer Dispute Resolution Body (*BPSK*) over Default Disputes in Electronic Commerce

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## ABSTRACT

Technological developments have encouraged an increase in electronic transactions, including electronic commerce that offers convenience, but also poses a risk of disputes, such as default. Where defaults occur in the form of business actors sending goods that are not suitable, or even consumers not receiving goods that have been purchased in the marketplace. Establishing a consumer protection agency is one of the government's efforts to protect business actors and consumers who are conducting electronic commerce activities. The institution authorized to handle consumer disputes is BPSK. BPSK is an authorized body that handles and resolves consumer disputes. However, the GCPL Law does not explain the procedures and technicalities of the implementation of BPSK's authority, giving rise to multiple interpretations for BPSK and law enforcement officials who assist BPSK. Therefore, this research will discuss the authority of BPSK related to the settlement of default disputes in electronic commerce and the mechanism carried out by BPSK related to the settlement of default disputes in electronic commerce. This research aims to analyze the authority of BPSK in handling default disputes in electronic commerce and to understand the settlement mechanism. The research method used is normative, using primary legal materials such as the Consumer Protection Law and regulations related to electronic commerce, and secondary legal materials such as law books and legal journals. The technique of collecting legal materials involves literature study with qualitative juridical descriptive legal material analysis. The results of the study show that BPSK has the authority to resolve default disputes in electronic commerce dispute resolution through mediation, arbitration, and conciliation. BPSK offers a settlement mechanism that is faster, cheaper, and simpler than the courts.

## KEYWORDS

BPSK;  
Default;  
Electronic  
Commerce;  
Consumer  
Protection;  
Consumer  
Disputes



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## INTRODUCTION

The use of electronic media in technological developments increasingly provides convenience for everyone, one of which is the creation of electronic transactions. Electronic transactions are changes in transactions from cash to digital-based non-cash. Electronic transactions also aim to increase the efficiency of economic and financial transactions.<sup>1</sup> This type of electronic transaction certainly has an impact and influence on the Indonesian economy. One type of transaction that has an impact on the Indonesian economy is electronic commerce. Electronic commerce, according to online law, is the activity of buying and selling goods and services electronically via the internet, which is carried out by business actors and consumers.<sup>2</sup> The impacts that electronic commerce has on the Indonesian economy are:<sup>3</sup> Increase economic growth, increase state revenue, and increase market access for small and medium enterprises.

The legal basis for the implementation of electronic transactions is regulated in Law No. 11 of 2008 jo. Law No. 19 of 2016 jo. Law No. 1 of 2024 concerning Electronic Transaction Information.<sup>4</sup> In addition, there are also government regulations governing the implementation of electronic transaction systems, namely Government Regulation No. 71 of 2019 (hereinafter referred to as PP PSTE). Electronic commerce certainly requires a means of conducting online buying and selling transaction activities, in this case, the availability of a marketplace platform. In Indonesia, many marketplaces have been provided as a place for business actors to develop their business, such as Shopee, Tokopedia, and the like.

The main key to the smooth running of electronic trading activities is the open attitude of the seller towards the buyer regarding product information, product conditions, and explaining the potential damage to the products being traded. This is to minimize the occurrence of fraud in electronic trading activities. These frauds can concern the existence of business actors, goods purchased, the price of goods, and payment by consumers, or in other examples, one of the parties has defaulted.

The wanprestasi can be interpreted as the attitude of a person who does not fulfill an obligation that has been agreed upon in an agreement he made with another party.<sup>5</sup> So that the party who commits a default must of course be responsible for his actions, the default referred to in electronic commerce is the discrepancy between the goods received by consumers and the goods purchased by consumers in the marketplace, default can also be in the form of business actors sending goods that are not suitable for consumers or even consumers not receiving goods that have been purchased in the marketplace. The example of a default case that occurred in electronic commerce, namely, consumers purchased a TCL 43-inch TV with type 43A8 on July 7 at the TCL official store at Lazada with an order number

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- <sup>1</sup> I Gusti Ayu Sita Rani Devi & I Made Devi Priyanti, "Perlindungan Hukum Bagi Pelaku Usaha Terkait Wanprestasi Oleh Konsumen Dalam Transaksi Elektronik Berbasis Online" (2021) 9:6 J Kertha Semaya.
- <sup>2</sup> Made Wahyu Arthaluhur, "Perbedaan Perdagangan Elektronik Dengan Transaksi Elektronik", (2018), online: *Huk Online*.
- <sup>3</sup> Kemenkeugoid, "Dampak E-Commerce Bagi Perekonomian Indonesia", (2024).
- <sup>4</sup> Satria Wibawa Putra, "Kedudukan Para Pihak Dalam Aktivitas Fintech Peer ToPeer Lending di Indonesia" (2024) 7:1 J Anal Huk.
- <sup>5</sup> Vita Febiyanti, Mury Darmoko & Karim Karim, "Tinjauan Hukum Terhadap Konsumen Yang Melakukan Pembelian Kredit Secara In-House" (2020) 9:1 J Judic.



429194208535373. On July 23, the order was delivered by a Ninja Xpress courier with receipt number NLIDAT0000530828. When opened, it contained a used TV with the Toshiba brand. The consumer party, Hendrick, carried out the return process at that time; there was no good faith from the business actor to be responsible in this case.<sup>6</sup>

Lazada also has terms and conditions related to product sales, which in this case state that sellers must provide clear and correct explanations, prices, and other information about each product offered for sale to platform consumers. Of course, every seller must comply with the provisions that have been imposed on Lazada as the organizer/platform, in this case, in the form of a binding agreement. This case is an example of a case of default in electronic commerce, in which the business actor has performed an achievement, but only part of the achievement is carried out; it can be seen that consumers receive goods that are not what they ordered. The legal consequences of sellers who make defaults must be held responsible for their actions. To realize prosperity in society, a country needs a clear rule of law.<sup>7</sup> So Law Number 8 of 1999 concerning Consumer Protection was formed, hereinafter referred to as UUPK. In the consumer protection law, there are several basic concepts of consumer protection, namely:<sup>8</sup> Product safety, Business conduct, Advertising procedures, and Establishment of a consumer protection agency.

Furthermore, to ensure the implementation of the basic concept of consumer protection that has been explained previously. The Government of the Republic of Indonesia established a special institution, namely, the consumer protection agency. Establishing a consumer protection agency is one of the government's efforts to protect business actors and consumers who are conducting electronic commerce activities. These efforts are in the form of institutions formed to protect consumers. According to Renatha Christa Auli, there are consumer protection institutions, including:<sup>9</sup> National Consumer Protection Agency (BPKN), Non-Governmental Consumer Protection Organization (LPKSM), Consumer Dispute Resolution Agency (BPSK).

Of the 3 (three) consumer protection institutions, which in this case are authorized to handle consumer disputes, namely BPSK. BPSK is a body that has full authority in handling and resolving consumer disputes, therefore, the government requires the establishment of BPSK in each region to facilitate the community in resolving consumer disputes. This is certainly stated in Article 49, paragraph (1) of GCPL, which states that BPSK is a body that must be formed in every city/regency.<sup>10</sup>

Although BPSK has the authority to resolve consumer disputes in electronic commerce, UUPK only explains the types of BPSK's authority and has not been able to accommodate the procedural and technical aspects of its implementation; such weaknesses can certainly lead to multiple interpretations of BPSK and other legal

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<sup>6</sup> Media Konsumen, "Beli Tv Tcl 43 Inch Di Tcl Official Store Lazada Diantar Kurir Ninja Xpress Isinya Tv Bekas",.

<sup>7</sup> Bagus Gede Ari Rama, "Alternatif Penyelesaian Sengketa Jasa Keuangan Melalui LAPS-SJK: Perspektif Kepastian Hukum" (2022) 1:1 J Undiknas.

<sup>8</sup> Sinta Dewi Rosadi & Zahra Tahira, "Consumer Protection In Digital Economy Era : Law In Indonesia" (2018) 7:1 J Yust.

<sup>9</sup> Renatha Christha Auli, "3 Lembaga Perlindungan Konsumen", (2022), online: *Huk Online*.

<sup>10</sup> Kemenkeugoid, "Kewenangan BPSK Memeriksa Keberatan Lelang Eksekusi Pasal 6 Undang-Undang Hak Tanggungan",.



apparatus that assist BPSK in implementing its authority. Deficiencies in the GCPL have the potential to confuse BPSK and the auxiliary legal apparatus, considering that the GCPL has not been able to provide detailed guidelines regarding the procedures for the implementation of BPSK's authority. This is certainly an urgency in this research, so it is important. To analyze and recommend further solutions related to the authority of BPSK in resolving default disputes in electronic commerce.

## **METHOD**

The research method in this study uses a normative approach with a doctrinal legal research method that relies on the analysis of laws and regulations, court decisions, and legal doctrines relevant to the authority of the Consumer Dispute Resolution Body (BPSK) in handling default disputes in electronic commerce. Primary legal data used includes Law No. 8/1999 on Consumer Protection, related laws and regulations, as well as relevant decisions of the Supreme Court and Constitutional Court. Secondary legal data is obtained from legal literature, academic journals, and comparative analysis of dispute resolution systems in other jurisdictions that have more advanced consumer protection mechanisms. The approaches used are the statutory approach and the conceptual approach to obtain a comprehensive understanding of the limitations of BPSK's authority and its implementation challenges in resolving default disputes in digital transactions.

The technique of collecting legal materials was conducted through a literature study that included an analysis of legal sources that had been categorized previously. The data obtained was analyzed using the descriptive-qualitative legal analysis method, in which this research not only describes the applicable norms but also evaluates the effectiveness and normative implications of BPSK's authority in the context of electronic commerce. In its analysis, this research uses legal interpretation methods, including grammatical, systematic, and teleological interpretation, to examine the limitations of existing regulations and formulate recommendations for the formation of legal norms that are more adaptive to digital dynamics. The results of this research are expected to provide academic and practical contributions in the development of consumer protection law, particularly in the aspect of dispute resolution in the increasingly complex digital era.

## **RESULT & DISCUSSION**

### **I. The Authority of BPSK in Resolving Default Disputes in Electronic Commerce**

Electronic commerce, or e-commerce, has become part of everyday life. However, along with the rapid growth in this sector, various conflicts arise, one of which is a default dispute. Default in the context of electronic commerce occurs when business actors fail to fulfill obligations or promises that have been agreed upon by



consumers.<sup>11</sup> To reduce the occurrence of consumer disputes, the government has the authority to form regulations regarding consumer protection in the form of Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as UUPK.

Article 1, Point 2 of the GCPL states that a consumer is any person who uses goods and utilizes services available in the community for the benefit of themselves or others. From this definition, several important elements can be outlined:<sup>12</sup> 1. Consumers are every person, both individuals and business entities; 2. Consumers are end users of goods and/or services; 3. The goods and services are used for the benefit of themselves, their families, and others; 4. The goods or services are not resold.

In general, default is a factor that causes disputes involving consumers, so an institution that has the authority to resolve these matters is needed. Theoretically, authority is the ability of groups, individuals, or institutions that are given the right to take legal actions, given by laws and regulations that involve legal legitimacy for the actions taken. This also applies to the government system in Indonesia, where each existing legal institution has the authority to carry out its functions based on the authority that has been regulated in the laws and regulations to carry out legal relationships and actions. Of course, with a clear division of authority, it can minimize disputes, one of which is consumer disputes that occur in buying and selling transactions in electronic commerce. The structured division of authority aims to create legal certainty to prevent conflicts that occur.<sup>13</sup>

According to Miriam Budiardjo in her book Susanti Adi Nugroho, authority is an institution that has the authority in terms of authorizing certain individuals to take actions that have legal force. Miriam Budiardjo also emphasized that authority is an important aspect of governance and state administration. Authority provides legitimacy for government actions and becomes the basis for officials or institutions to make decisions and implement public policies.<sup>14</sup>

One of the institutions established by the government and mandated with the authority to resolve consumer disputes is BPSK. The agency is an institution established by the government to handle disputes between consumers and business actors by the government outside the courts. Nabila Ayu Puspita stated that the legal action relationship referred to by Miriam Budiardjo with institutions in dispute resolution relates to the authority of BPSK, which can provide solutions in dispute resolution that are faster and more efficient than the litigation process in court. As for the settlement of disputes can be pursued through conciliation, mediation, and

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<sup>11</sup> Dewi Ratrika Rinupa Sejati, "Penyelesaian Sengketa Wanprestasi Secara Alternatif Melewati Badan Arbitrase Nasional Indonesia (BANI)" (2023) 1:3 Indones J Law Justice 12.

<sup>12</sup> Rinitami Njatrijani, "POSISI UNDANG-UNDANG PERLINDUNGAN KONSUMEN NOMOR 8 TAHUN 1999 DALAM UPAYA PERLINDUNGAN TERHADAP KONSUMEN" Diponegoro Priv Law Rev Vol 1, No 1.

<sup>13</sup> Hafizh Noval Triady, Retno Kus Setyowati & Mutiarany, "Penyelesaian Sengketa Konsumen Dengan Perusahaan Daerah Air Minum Kota Bekasi Berdasarkan Undang-Undang Perlindungan Konsumen" (2023) 5:1 Krisna Law J Mhs Fak Huk Univ Krisnadwipayana 41–52.

<sup>14</sup> Susanti Adi Nugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara serta Kendala Implementasinya* (Jakarta: Kencana, 2021).





arbitration, so that there is a legal result, namely an agreement or peace from the parties to the dispute.<sup>15</sup>

Settlement of consumer disputes by BPSK has limitations that need to be considered, such as not all types of disputes can be resolved through BPSK. Especially when it comes to large losses or serious violations that require further legal intervention, in addition, the success of mediation and conciliation is highly dependent on the willingness of both parties to negotiate and reach an agreement. Overall, BPSK provides an effective dispute resolution mechanism in handling cases of default in electronic commerce. With BPSK, consumers have an alternative channel to assert their rights without having to go through lengthy and expensive litigation. This, in turn, can increase consumer confidence in the e-commerce system and encourage sustainable growth of the digital economy.<sup>16</sup> The establishment of BPSK is based on Law Number 8 Year 1999 on consumer protection, which emphasizes the importance of consumer protection in conducting a transaction.

In this section, BPSK's main task is to handle and resolve consumer disputes. In this regard, BPSK has three dispute resolution methods that can be applied, namely conciliation, mediation, and arbitration. Through conciliation, BPSK facilitates dialogue between the two parties to reach a mutually beneficial solution; in this case, the conciliator is passive. BPSK mediation acts as a neutral third party to help consumers and business actors reach an agreement; the mediator in this case is active. In arbitration, BPSK acts as an arbitrator who has the authority to make binding decisions.

Dispute resolution by conciliation, mediation, and arbitration is carried out at the choice and agreement of the parties concerned and is not a tiered dispute resolution process:

- a. Provide consumer protection consultation,
- b. Supervising the inclusion of standard clauses
- c. Reporting to the public investigator in the event of a violation of the provisions of Law No. 8 of 1999 concerning consumer protection.<sup>17</sup>
- d. Receive complaints, both written and unwritten, from consumers about violations of consumer protection.<sup>18</sup>
- e. Conduct research and examination of consumer protection disputes.<sup>19</sup>
- f. Summoning business actors suspected of having committed violations of consumer protection.<sup>20</sup>

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<sup>15</sup> Nabilah Ayu Puspita, *Kewenangan BPSK dalam Penyelesaian Sengketa Wanprestasi Atas Perjanjian Jual Beli Perumahan Medan Resort City (Studi Putusan Nomor 49/Pdt.SUS-BPSK/2022/PN MDN)* Skripsi, Fakultas Hukum, Universitas Jember, (2023) [unpublished].

<sup>16</sup> Intan Nur Rahmawayi & Rukiyah Lubis, *Win-Win Solution* (MedpressDigital, 2014).

<sup>17</sup> M Syamsudin, "The Failure of the Court to Protect Consumers: A Review of Consumer Dispute Resolution in Indonesia" (2021) 44:1 J Consum Policy 117–130.

<sup>18</sup> Haerani Haerani, "Kewenangan Badan Penyelesaian Sengketa Konsumen (BPSK) Mataram Sebagai Lembaga Penyelesaian Sengketa Di Luar Pengadilan" (2018) 1:1 Unizar Law Rev.

<sup>19</sup> Arif Rahman, "Penyelesaian Sengketa Konsumen melalui Badan Penyelesaian Sengketa Konsumen (BPSK) Kota Serang" (2018) 2:1 Ajudikasi J Ilmu Huk 21.

<sup>20</sup> *Ibid.*



- g. Summon and present witnesses, expert witnesses, and or any person deemed to be aware of violations of Law No. 8 of 1999 concerning Consumer Protection.<sup>21</sup>
- h. Requesting the assistance of investigators to present business actors, witnesses, expert witnesses, or any person as referred to in points (g) and (h) who is not willing to fulfill BPSK's summons.
- i. Obtaining, examining, and/or assessing letters, documents, or other evidence for investigation and/or examination.
- j. Deciding and determining whether or not there is any loss on the part of the consumer.
- k. Notify the decision to business actors who commit violations of consumer protection.
- l. Impose administrative sanctions on business actors who commit violations of consumer protection. Impose administrative sanctions on business actors who violate the provisions of Law No. 8 of 1999 concerning consumer protection.
- m. The intended administrative sanction is in the form of a determination of compensation of a maximum of Rp 200,000,000 (two hundred million rupiah) by the provisions in the consumer protection law.

Article 60 of the Consumer Protection Law in applying administrative sanctions there are several provisions, namely as follows:

- a. The decision must be issued within 21 (twenty) working days of the application being received
- b. The Chairman of BPSK shall notify the decision in writing to the consumer and the business actor within 7 (seven) working days after the decision is read out
- c. The business actor shall be obliged to implement the decision within 7 (seven) working days after receiving the BPSK decision
- d. Sanctions can only be imposed for violations of certain articles in the Consumer Protection Law, namely Article 19 paragraphs (2) and (3), Article 20, Article 25, and Article 26.

BPSK has the authority to impose administrative sanctions, however BPSK does not act as an executor institution for the sanctions it has determined, BPSK can be likened to deciding a judge, related to the execution will be delegated to the District Court as stipulated in Article 57 of GCPL, namely the determination of the execution of the decision of the panel will be requested to the District Court in the place of the aggrieved consumer.<sup>22</sup>

The existence of BPSK provides an alternative settlement that is faster, cheaper, and more efficient than the litigation process in court, to increase public

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<sup>21</sup> Henri Christian Pattinaja, *Pengaturan Hukum Financial Technology di Indoneisa (Regulation Of Financial Technology In Indonesia)* (2021).

<sup>22</sup> N Sri Nurhayati, "Kepastian Hukum Eksekusi Riil Terhadap Putusan Badan Penyelesaian Sengketa Konsumen Nomor 09/PTS/BPSK-Tangsel/VI/2015 Dihubungkan Dengan Pasal 54 Ayat (3) Undang- Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen" (2020) 7:1 J Surya Kencana Dua Din Masal Huk dan Keadilan.



confidence in the consumer protection system in Indonesia.<sup>23</sup> The effectiveness of conciliation, mediation, and arbitration at BPSK depends largely on the willingness of both parties to participate and reach an agreement. If one party disagrees with the mediation process or outcome, the settlement may be stalled, and the case may have to go to court for a binding decision.<sup>24</sup>

Some more complex cases, especially those involving serious issues such as theft of personal data or even fraud in electronic transactions settlement through BPSK, may not be adequate. These cases often require additional legal intervention from other authorities. Such as data protection authorities, to ensure that perpetrators are prosecuted by criminal law or other relevant regulations. This suggests that while BPSK can handle many types of consumer disputes, there are limitations in handling cases involving serious violations of law.<sup>25</sup> Although BPSK has the authority to impose administrative sanctions as described in Article 52 of GCPL, the execution of the sanctions imposed by BPSK requires the role of other law enforcement officials.<sup>26</sup>

BPSK still has the authority to resolve default disputes in electronic commerce based on the mandate given by UUPK in article 52 related to the duties and authority of BPSK to handle and resolve consumer disputes, besides that also in 65 paragraph (5) of Law No. 7 of 2014 states that the settlement of trade transaction disputes can be resolved through the court or other dispute resolution mechanisms. Surely, BPSK in this case can be an authorized institution to resolve consumer disputes. However, in addition, relevant laws and regulations are needed to clarify the procedures for the implementation and procedures of BPSK's authority. This is important to provide legal certainty for consumers and business actors in resolving e-commerce disputes, as well as to optimize the function of BPSK as an effective and efficient consumer dispute resolution institution.

## **II. Mechanisms Conducted by BPSK in the Settlement of Default Disputes in Electronic Commerce**

A dispute is a condition where there is one party that feels aggrieved by the other party, and that party expresses their dissatisfaction to the other party. In contract law, a dispute is a dispute between the parties because there is a violation of the agreement in a contract. In this case, the causes of the dispute, according to Nur Azizah Ulvia, are:<sup>27</sup>

- a. Differences in views or opinions
- b. Different goals or interestsValue difference
- c. Poor communication

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<sup>23</sup> Eva Nurhamidah et al, "Arbitrase dan Alternatif Penyelesaian Sengketa dalam Penyelesaian Sengketa Ekonomi Syariah" (2024) 1:2 J Leg Sustain.

<sup>24</sup> Rida Ista Sitepu & Hana Muhamad, "Efektivitas Badan Penyelesaian Sengketa Konsumen (Bpsk) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia" (2022) 3:2 J Rechten Ris Huk dan Hak Asasi Mns 7-14.

<sup>25</sup> Yustina Dhian Novita & Budi Santoso, "Urgensi Pembaharuan Regulasi Perlindungan Konsumen di Era Bisnis Digital" (2021) 3:1 J Pembang Huk Indones.

<sup>26</sup> Misnar Syam et al, "SENGKETA LEASING DALAM KONTEKS PENYELESAIAN SENGKETA KONSUMEN" (2023) 7:1 UNES J Swara Justisia.

<sup>27</sup> Detik Jateng, "Pengertian Sengketa Beserta Penyebab Dan Cara Penyelesaiannya",.





d. Unfair policies or regulations.

The emergence of these conflicts certainly requires effective resolution so as not to harm the parties involved. The commonly used dispute resolutions are litigation and non-litigation dispute resolution. Litigation dispute resolution is dispute resolution through court channels; this process is formal, binding, and takes a long time compared to non-litigation methods. Non-litigation is a dispute resolution outside the court; in this case, there are several methods, namely:<sup>28</sup>

- a. Negotiation, the most informal and simple form of dispute resolution. Dispute resolution can be done without a third party
- b. Mediation, a dispute resolution involving a neutral third party called a mediator
- c. Conciliation, a dispute resolution involving a neutral third party, in which case the conciliator is more active in providing advice and solutions to the parties in dispute
- d. Arbitration is a dispute resolution based on an arbitration agreement containing the agreement of the parties to the dispute.
- e. The litigation process will be carried out placing the parties against each other; besides that, litigation dispute resolution is the final *means (ultimum remedium)* after other alternative dispute resolution has not produced results. The theory of dispute resolution, according to Laura Nader and Harry Todd, states that dispute resolution in society can be resolved in several ways, namely:<sup>29</sup>

1) Lumping it

The aggrieved party may choose to leave the problem alone. This occurs due to various possibilities, such as a lack of information on how to file a complaint with the court, or even a lack of access to justice, or a deliberate decision not to proceed to court because it is assumed that the disadvantages outweigh the expected benefits.

2) Avoidance

The aggrieved party will choose to reduce or end the relationship with the party that caused the harm.

3) Coercion

One party imposes a settlement on the other, which is unilateral. This coercion or threat will generally reduce the likelihood of an amicable settlement.

4) Negotiation

The parties to the dispute can resolve the problem without the intervention of a third party. Parties will try to convince each other, so they make their own rules and do not break them by assuming the rules exist.

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<sup>28</sup> Tri jata Ayu Pramesti, "Litigasi Dan Alternatif Penyelesaian Sengketa Di Luar Pengadilan", (2020), online: *Huk Online*.

<sup>29</sup> Yusuf Shofie, *Penyelesaian Sengketa Konsumen Menurut Undang-Undang Perlindungan Konsumen (UUPK), Teori Dan Praktek Penegakan Hukum* (Citra Aditya Bakti, 2022).



5) Mediation

A neutral third party who assists the disputing parties in reaching an agreement. This third party is appointed by one of the parties to the dispute or by an authorized party.

6) Arbitration

Both parties to the dispute agree to appoint an arbitrator and agree from the outset that the parties involved accept the decision of the arbitrator.

7) Adjudication

An authorized third party intervenes in the resolution of the matter, regardless of the wishes of the parties to the dispute. The third party is also entitled to make decisions and enforce those decisions. In this case, it means that the third party seeks the implementation of the decision.

Several dispute resolution methods, according to Laura Nader and Harry F. Todd, were adopted by BPSK to resolve consumer disputes. The methods of dispute resolution by BPSK are:<sup>30</sup>

a. Mediation

One of the dispute resolutions in which the tribunal plays an active role as a mediator who helps the parties reach an agreement. This is by the concept of mediation, which involves a neutral third party to facilitate communication and negotiation between the disputing parties.

b. Conciliation

The BPSK dispute resolution method, in which the panel will act passively and fully submit the dispute resolution process to the consumer and the business actor concerned.

c. Arbitration

Arbitration is the voluntary submission of a dispute to a neutral third party, namely an arbitrator. A decision of the arbitrator will be final and binding on the parties.

The technicalities and procedures in dispute resolution, which are the authority of BPSK, have not been included in the GCPL. However, several references that can be used as references have mentioned the outline of the consumer dispute resolution mechanism by BPSK in detail. According to Kurniawan, the dispute resolution mechanism at BPSK is carried out through several stages:<sup>31</sup>

a. Submission of Application

The submission of an application is the first and crucial step in the process of resolving default disputes in electronic commerce through BPSK. This stage marks the formal process of handling the case by the authorized institution. Consumers who feel aggrieved due to a default in the transaction process in electronic commerce certainly have the right to submit an application for dispute

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<sup>30</sup> Janus Sidabalok, "MENCAIRI SISTEM PENYELESAIAN SENGKETA KONSUMEN YANG IDEAL DALAM RANGKA MENINGKATKAN PERLINDUNGAN TERHADAP KONSUMEN" (2021) Fiat Iustitia J Huk.

<sup>31</sup> Muskibah, "Analisis Mengenai Cara Penyelesaian Sengketa Konsumen" (2020) 2:4 J Inov Ilmu Huk.



resolution to BPSK. Default in this context can take the form of various forms of agreement violations by business actors, such as late delivery of goods, delivery of goods that are not by the promised specifications, or even no delivery at all after payment has been made.<sup>32</sup>

BPSK provides flexibility to consumers in terms of the method of submission; consumers can choose to submit a written or oral application, depending on their preference and ability. Written submissions can be made by filling in the form provided by BPSK or by making an application letter containing the necessary information. Meanwhile, oral submissions can be made by coming directly to the BPSK office and submitting the application to the authorized officer, who will then record the application. In applying, there is some important information that must be contained:<sup>33</sup>

- 1) Consumer Identity: This includes the full name, address, telephone number, and other contact information of the consumer applying. Other contact information of the consumer making the request. This information is important to ensure that BPSK can communicate with the consumer during the dispute resolution process.
- 2) Identity of the business actor: Consumers must include complete information about the business actor deemed to be in default, including the company or individual's name, address, and relevant contact information. In the context of e-commerce, this may include the name of the online store, website address, or marketplace platform where the transaction took place.
- 3) Description of events: this section is the core of the petition where the consumer must describe in detail the chronology of events that led to the dispute. This includes information such as the date of the transaction, the type of goods or services purchased the price paid and specific details about the default that occurred. The consumer is expected to present the facts objectively and comprehensively.
- 4) Settlement Demands: Consumers should clearly state what they expect as a result of the dispute resolution process. This could be a request for a refund, delivery of conforming goods, compensation for losses suffered, or any other form of settlement that the consumer deems fair.

In addition to the above information, consumers are also advised to attach relevant supporting evidence. This can be proof of payment screenshots of conversations with the business actor, photos of goods received (if not by the order), or other documents that can strengthen their case. It is important to note that applying BPSK is free of charge. This is in line with BPSK's principle to provide easy and affordable access for consumers in seeking justice. However, consumers need to ensure that their application is filed within a reasonable period after the dispute has occurred. Some jurisdictions may have certain time limitations for case filing.<sup>34</sup>

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<sup>32</sup> Halida Zia & Khaidir Saleh, "Eksistensi Badan Penyelesaian Sengketa Konsumen Dalam Menyelesaikan Sengketa Konsumen di Indonesia" (2022) 3:1 Datin Law J.

<sup>33</sup> Irsan Rahman et al, "Hukum Perlindungan Konsumen di Era E-Commerce: Menavigasi Tantangan Perlindungan Konsumen dalam Lingkungan Perdagangan Digital" (2023) 2:08 J Huk dan HAM Wara Sains.

<sup>34</sup> Nugroho, *supra* note 14.



After the application is received by the BPSK secretariat, the officer will check the completeness of the information and documents submitted. If considered complete, the application will be registered and given a case number. If any information or documents are lacking, the consumer will be asked to complete them within a certain period. The submission of a complete and accurate application is very important because it will be the basis for BPSK in processing the case and making a decision. Therefore, consumers are encouraged to be careful in preparing their application, ensuring that all relevant information is included and supported by adequate evidence. Thus, the application stage is not just an administrative formality, but a strategic step that can affect the entire dispute resolution process. A well-crafted application can expedite the case handling process and increase the chances of achieving a fair and satisfactory settlement for the consumer.

b. Completeness Check of Application

Checking the completeness of the application is a critical stage in the process of resolving consumer disputes at BPSK. This stage is conducted as soon as the application is received by the BPSK secretariat and aims to ensure that all information and documents required to process the case have been provided by the consumer. When the application is received, the BPSK secretariat staff on duty will conduct a thorough examination of the completeness of the application administration. This examination covers several important aspects:<sup>35</sup>

- 1) Applicant Identity: The officer will verify whether information about the consumer's identity has been provided completely and clearly. This includes full name, address, telephone number, and email address (if applicable).
- 2) Identity of the reported party: Information about the reported business will be checked for completeness. In the context of e-commerce, this may include the name of the online store, website address, or marketplace platform.
- 3) Description of events: the officer will provide whether the consumer has provided a sufficiently detailed explanation of the chronology of events leading to the dispute. This includes the date of the transaction, the type of goods or services purchased, the price paid and specific details about the default that occurred.
- 4) Settlement demands: It will be checked whether the consumer has clearly stated what is expected as a result of the dispute resolution process.
- 5) Supporting evidence: the officer will ensure that the consumer has attached relevant evidence to support his/her claim such as proof of payment screenshots of conversations or photos of goods received.
- 6) Forms and signatures: if there are specific forms to be filled out, the officer will check whether the forms have been filled out correctly and signed by the claimant.

If, after the examination, the BPSK secretariat states that the application is complete, then the application will be registered immediately. This registration process involves recording the request into the BPSK administrative system and assigning a unique registration number. This registration number is very important because it will become the identity of the case during the dispute

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<sup>35</sup> Shofie, *supra* note 29.



resolution process. This number will also make it easier for consumers and BPSK to track the progress of the case. However, if during the examination it is found that the application is incomplete, the BPSK secretariat will contact the applicant and ask him to complete the deficiencies. BPSK usually gives 3 (three) working days for the applicant to complete the deficiencies in his application. This period is given to ensure that the dispute resolution process can run smoothly and efficiently without being delayed for too long due to administrative problems. Consumers need to understand that this period should be utilized properly. Consumers are expected to respond promptly and complete the requested deficiencies. If consumers experience difficulties in completing the requested information or documents, they are advised to immediately contact BPSK and request guidance or an extension of time if necessary. This stage of checking the completeness of the request has several important objectives:<sup>36</sup>

- 1) Ensuring case clarity: By ensuring all information is complete, BPSK can clearly understand the core issues and demands of consumers.
- 2) Process efficiency: The completion of documents from the start will speed up the case handling process, avoiding unnecessary delays at later stages.
- 3) Procedural fairness: ensuring that both parties, consumers and businesses, have sufficient information to prepare themselves for the dispute resolution process.
- 4) Quality of case handling: complete information allows BPSK to handle cases better and make more informed decisions.
- 5) Avoiding case rejection: A complete application reduces the risk of cases being rejected for administrative reasons.

After the application is declared complete and registered, BPSK will proceed to the next stage in the dispute resolution process, which is the summoning of the parties. Therefore, this stage of checking the completeness of the application becomes an important foundation that determines the smoothness of the entire dispute resolution process. Consumers need to understand the importance of this stage and endeavor to provide as complete and accurate information as possible from the beginning of the application submission. This will make the dispute resolution process faster and more effective, increasing the chances of a fair and satisfactory resolution for all parties involved.

c. Summoning the parties

BPSK will summon the consumer and business actor in writing, along with a copy of the application for consumer dispute settlement, no later than 3 (three) working days after the application is declared complete. The summons shall state the day, date, time, and place of the hearing and the obligation of the business actor to provide an answer to the consumer's request.

d. Selection of dispute resolution method

The choice of dispute resolution method is a crucial stage in the process of handling cases at BPSK. This stage is usually conducted at the first hearing, where the BPSK panel must present and explain to the disputing parties the choice of

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<sup>36</sup> Tanaya Tanaya, "Penerapan Online Dispute Resolution pada Badan Penyelesaian Sengketa Konsumen dalam Menyelesaikan Sengketa Perdagangan Elektronik" (2023) 4:2 J Al Azhar Indones Seri Ilmu Sos.



settlement methods available. BPSK offers three forms of dispute resolution, namely through conciliation, mediation, and arbitration. After the BPSK panel explained the three methods, the disputing parties were obliged to choose one of the methods deemed most appropriate. Each method has its advantages and disadvantages, and the right choice can affect the effectiveness and efficiency of dispute resolution. After the parties reach an agreement on the method to be used, the BPSK chairperson will take the following steps:<sup>37</sup>

- 1) If the parties choose conciliation or mediation, the BPSK chairperson immediately appoints a panel that will handle the dispute. This panel usually consists of three members representing the government, consumers, and business actors.
- 2) If the parties choose arbitration, the chairperson of BPSK will form an arbitration panel and appoint arbitrators from BPSK who come from the elements of business actors and consumers. The arbitrators chosen by the parties elect a third arbitrator as chairperson who comes from BPSK members representing the government elements. Article 17, paragraph (1) of Law No. 30 of 1999 states that, with the appointment of an arbitrator or several arbitrators by the parties in writing and the acceptance of the appointment by an arbitrator or several arbitrators in writing, there is a civil agreement between the appointing and accepting parties. In examining and deciding disputes, arbitrators or arbitral tribunals always base themselves on the law, namely the law that has been chosen by the parties to the dispute (choice of law), however, it does not rule out the possibility that the arbitrators, if desired by the parties, can decide based on justice and propriety (*ex equo et bono*). The Explanation of Law No. 30 Year 1999 states that if the arbitrators are given the freedom to make decisions based on justice and propriety, then the laws and regulations can be set aside. However, in certain cases, the law of compulsion (*dwigende regels*) must be applied and cannot be deviated from by the arbitrator. If the arbitrator is not authorized to make a decision based on justice and propriety, then the arbitrator can only make a decision based on the rules of material law as done by the judge.

In this method of settlement, BPSK seeks to accommodate various types of consumer disputes, including those related to e-commerce transactions, which may have different complexities and characteristics. This flexibility is expected to increase the success rate of dispute resolution and the parties' satisfaction with the process and results achieved.

e. Dispute resolution process

The dispute resolution process at BPSK is the core stage in the effort to resolve disputes between consumers and business actors. After the parties choose the desired settlement method, the process will take place according to the characteristics of each method. The following is a more detailed explanation of the three forms of dispute resolution offered by BPSK.

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<sup>37</sup> Amar Hebibi, Arres Bartil & Lahcene Ziet, "Comparison of two new methods for implementa BPSK modulator using FPGA" (2020) 19:2 Indones J Electr Eng Comput Sci; Abdul Samad, "Consumer Dispute Resolution By BPSK In Protecting Consumer Rights" (2022) 1:2 Int Asia Law Money Laund.





- 1) Conciliation is a dispute resolution method in which the BPSK panel acts passively as a conciliator. In this process, the main role of the conciliator is to facilitate communication between the parties to the dispute, without actively providing advice or opinions on the substance of the dispute. The main characteristics of conciliation include:
  - a) **Passive Role of Conciliator:** The BPSK panel, as conciliators, do not give opinions or advice on the content of the dispute. They only help create an atmosphere conducive to negotiation.
  - b) **Autonomy of the Parties:** Consumers and businesses have full control over the settlement process and outcome. They actively discuss and negotiate to reach an agreement.
  - c) **Flexibility:** Conciliation processes are generally more informal and flexible than other methods.
  - d) **Focus on Common Interests:** The parties are encouraged to identify their common interests and seek mutually beneficial solutions.
  - e) **Agreed Outcome:** If an agreement is reached, the outcome will be set out in a written agreement signed by both parties.

The conciliation process usually starts with a joint meeting where the conciliator explains the ground rules and procedures. Subsequently, the parties are allowed to express their views. The conciliator may hold separate meetings with each party if necessary. The process continues until an agreement is reached or the parties decide to discontinue the conciliation process.

- 2) **Mediation**, In the mediation process, the BPSK panel takes a more active role as mediator. The mediator not only facilitates communication but can also provide advice, guidance, and suggestions to help the parties reach an agreement. The main characteristics of mediation include:<sup>38</sup>
  - a) **Active Role of Mediator:** The BPSK Panel as a mediator can actively provide suggestions and settlement proposals, but does not have the authority to make decisions.
  - b) **Confidentiality:** The mediation process is confidential, which allows the parties to speak openly.
  - c) **Procedural Flexibility:** Mediation allows the procedure to be adjusted according to the parties' needs and convenience.
  - d) **Agreed Outcome:** If successful, mediation will result in an agreement that is set out in the form of a written agreement.

The mediation process usually begins with the mediator explaining the process and ground rules. The parties are then allowed to present their version of the dispute. The mediator will help identify the key issues and facilitate discussions to find solutions. The mediator may hold joint or separate sessions with the parties. The process continues until an agreement is reached or the parties decide to discontinue the mediation.

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<sup>38</sup> Suherman & Shinta Dwi Enggraini, "Efektivitas Penyelesaian Sengketa Oleh Badan Penyelesaian Sengketa Konsumen (BPSK) Jakarta Melalui Proses Konsultasi" (2022) 26:1 Reformasi Huk.



3) Arbitration is the most formal dispute resolution method in BPSK. In this process, the BPSK panel acts as arbitrators who have the authority to make binding decisions. The main characteristics of arbitration include:<sup>39</sup>

- a) Decision-Making Authority: The arbitrator has the authority to hear the case, assess the evidence, and make a binding decision.
- b) Formal Process: Arbitration has more formal procedures than conciliation and mediation, although it remains more flexible than courts.
- c) Evidence: Parties are allowed to present their evidence and arguments.
- d) Arbitrator Expertise: Arbitrators are selected based on their expertise in the field relevant to the dispute.
- e) Final and Binding Award: The arbitral decision is final and binding, unless there are specific grounds for annulment through the courts.

The arbitration process begins with the presentation of the case by each party. The arbitrator will then hear testimony, examine evidence, and may ask questions for clarification. Once all the information is gathered, the arbitrator will make a decision based on the facts and applicable law. This decision will be provided in writing to the parties. Each of these dispute resolution methods has its advantages and challenges. Conciliation and mediation offer greater flexibility and control for the parties, while arbitration provides certainty through a binding decision. Choosing the right method is critical to ensure the effectiveness of the dispute resolution and the parties' satisfaction with the outcome.

The Arbitration and APS Law in this case does not explain conciliation and mediation in detail, but both are mentioned as methods in APS, as in Article 1, point 10. The dispute resolution methods mentioned are also used in BPSK. Then, in mediation and conciliation, BPSK and APS have similarities, namely: both require a third party, the decision is final and binding, and the results of mediation and conciliation decisions will be made in writing. However, the difference is that in conciliation, BPSK acts passively (only assisting the parties), while in BPSK mediation, the third party is active (can provide advice, counsel, or guidance).

BPSK arbitration is in line with the Arbitration of APS Law. Arbitration and APS Law in article 4, paragraph (1), the arbitrators are authorized to decide the rights and obligations of the parties. Of course, in BPSK arbitration, the chairman of the panel or the panel of arbitrators is fully authorized to determine the rights and obligations of the parties. In Article 29, paragraph 1, the parties are given the same opportunity to express their respective opinions. In addition, in BPSK, the panel of arbitrators will allow the parties to present their arguments. Article 34, paragraph 2 states that arbitration can be conducted through a chosen institution, of course, in this case, BPSK can be a consumer dispute resolution institution. Article 60 of the APS Law is final and binding. Arbitration in BPSK also has a final and binding decision.

f. BPSK Decision

The issuance of a BPSK decision is a crucial stage in the dispute resolution process between consumers and business actors. This decision determines how

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<sup>39</sup> Nurhayati, *supra* note 22.



the dispute will be resolved and has legal implications for both parties. BPSK has the authority to issue a decision, which in this case must be implemented by the parties.

However, if one of the parties is not satisfied with the decision, an objection can still be filed to the District Court within 14 (fourteen) days after the decision is notified. It is important to note that although BPSK has the authority to issue decisions, this institution still prioritizes peaceful dispute resolution through consensus between the parties. Therefore, in every stage of the dispute resolution process, BPSK will continue to encourage the parties to reach a mutually beneficial agreement. With a clear decision mechanism and strict time limits, BPSK is expected to become an effective institution in resolving consumer disputes, including in the context of growing electronic commerce. This will ultimately increase consumer confidence in the consumer protection system in Indonesia and encourage a healthy and responsible business climate.

#### 1) Execution of Judgment<sup>40</sup>

The implementation of BPSK decisions aims to ensure compliance of the parties and provide legal certainty. After BPSK issues a decision, business actors are given seven working days from receiving notification of the decision to carry out their obligations. This period is set by considering the balance between the interests of consumers to immediately obtain their rights and providing sufficient time for business actors to prepare for the implementation of the decision.

The mechanism for resolving default disputes in electronic commerce, according to Kurniawan, certainly illustrates that the interests of consumers are highly prioritized as the injured party. Not only Kurniawan, but Siti Nur Aeni also explained the mechanism for resolving consumer disputes, namely:

##### a) Conduct complaint registration

The registration of the complaint contains 2 (two) possibilities: the complaint is accepted or the complaint is rejected. In this case, the chairman of BPSK will reject the application if it is not by the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001. In article 16, if it does not include these elements, then the claim will be accepted by BPSK.

##### b) Selection of dispute resolution method

After BPSK receives a complaint case, BPSK is represented by the secretariat to summon the business actor to attend the trial. If the plaintiff (consumer) and defendant (business actor) agree to choose the same method, then a letter of determination of the parties will be made, and the trial will be conducted directly using the chosen method. However, if the choice of the parties is different, the trial will end there.

##### c) Trial implementation

After the parties choose the method of dispute resolution at BPSK, it will proceed to the trial stage with the chosen method.

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<sup>40</sup> Rifki Putra Perdana, Fuad & Said Munawar, "Implementasi Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen di Yogyakarta" (2021) 3:2 Widya Pranata Huk J Kaji dan Penelit Huk .



d) Objection submission

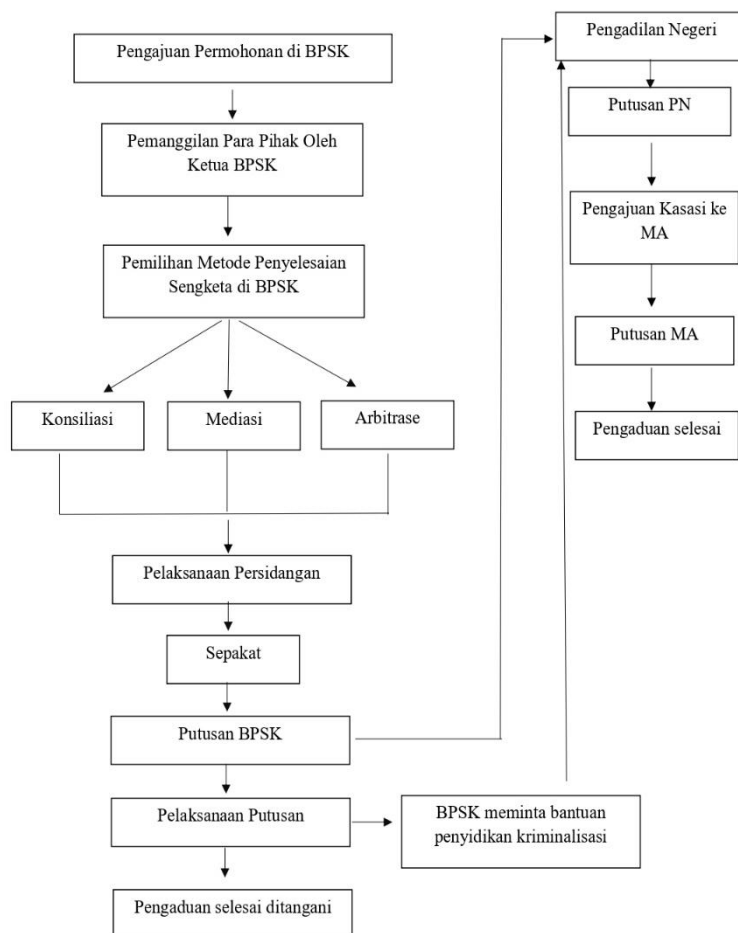
Parties who are dissatisfied with the BPSK decision may file an objection to the District Court at the legal domicile of the consumer. The period for filing an objection shall be no later than 14 (fourteen) days from the date the BPSK decision is notified.

2) Submission of the Cassation Level

An application for cassation in a civil case shall be submitted in writing or orally through the Registrar of the Court of First Instance that has decided the case, within 14 (fourteen) days after the verdict or court decision is intended to be notified to the applicant. If the 14 (fourteen) day period has passed without a cassation request being filed by the litigant, the litigant is deemed to have accepted the decision. In filing a cassation application, the applicant must submit a cassation memory containing the reasons, within 14 (fourteen) days after the application in question is received or recorded in the register book.

The court clerk who decides a case in the first instance shall acknowledge receipt of the cassation memorandum and deliver a copy of the cassation memorandum to the opposing party in the case within 30 (thirty) days at the latest. The opposing party is entitled to file an answer to the cassation memorandum with the clerk, within 14 (fourteen) days from the date of receipt of the copy of the cassation memorandum. After receiving the cassation memorandum and the reply to the cassation memorandum, the clerk of the Court that decided the case at first instance shall send the request for cassation, the cassation memorandum, the reply to the cassation memorandum, along with the case file to the Supreme Court within 30 (thirty) days at the latest. The Registrar of the Supreme Court shall record the request for cassation in a register book by giving it a sequential number according to the date of receipt, make a brief note of the contents, and report everything to the Supreme Court.

Based on the explanation above, it can be seen that in resolving consumer disputes, BPSK has various forms of authority and the flow of settlement, which can be described as follows:



**Figure 1.** Dispute settlement mechanism at BPSK

The case settlement process by BPSK is an alternative dispute resolution outside the court. The process begins when a consumer submits a complaint to BPSK regarding a dispute with a business actor. This complaint is submitted in writing or orally to the BPSK secretariat. After receiving the complaint, BPSK will examine the completeness of the complaint document. This is done to ensure that the case is eligible to be handled by BPSK and is within its scope of authority. If the complaint is declared complete, BPSK will bring together the disputing parties. At this stage, the parties are asked to choose one of the three settlement methods offered by BPSK, namely Conciliation, Mediation, or Arbitration. After the settlement method is chosen, BPSK will start the dispute settlement process.

According to the applicable regulations, BPSK has a maximum of 21 (twenty) working days to settle the dispute from the time the lawsuit is received. After the settlement process is completed, BPSK will issue a decision. However, if one of the parties objects to the decision, it is still possible to file an objection to the District Court within 14 (fourteen) working days after the BPSK decision is received. And if there is still no objection from one of the parties, it can file an appeal to the Supreme Court, and after the Supreme



Court's decision is issued, it is an irrevocable decision, and the dispute is considered over.

### CONCLUSION

Based on the discussion of the problem formulation, the conclusions that can be drawn are: The authority of BPSK in resolving default disputes is regulated in Article 52 of GCPL. The authority of BPSK is divided into two, namely preventive, supervising the inclusion of standard clauses, and repressive, including resolving consumer disputes through mediation, conciliation, or arbitration; providing consultation; reporting violations to investigators; and imposing administrative sanctions on business actors. However, BPSK's authority still faces limitations, especially in the implementation of its decisions, which must go through the district court for execution. The dispute resolution mechanism by BPSK begins with the submission of a complaint, either written or oral, to the BPSK secretariat. After the documents are examined and declared complete, BPSK will bring together the disputing parties to choose a dispute resolution method (mediation, conciliation, or arbitration). BPSK has a maximum of 21 working days to resolve the dispute and issue a decision. BPSK's decision is final and binding, however, unsatisfied parties may file an objection to the District Court within 14 working days.

### DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

### FUNDING INFORMATION

None.

### ACKNOWLEDGMENT

None.

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