

# Implementation of the Authority of Consumer Dispute Resolution Agency in Presenting Business Actors With the Assistance of Police Investigators

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## Abstract

**Introduction:** The Consumer Dispute Resolution Agency has the authority to request the assistance of investigators in presenting business actors as stipulated in the Consumer Protection Law.

**Purposes of the Research:** Analyzing why business actors are not present in the dispute resolution process, then settlement efforts through the Consumer Dispute Resolution Agency cannot be continued.

**Methods of the Research:** This study uses a juridical-empirical method with data collection techniques through interviews, documentation, and literature studies.

**Findings of the Research:** The results of the study show that the Yogyakarta Consumer Dispute Resolution Agency basically has the legal authority to present business actors forcibly with the help of investigators if the business actors are not present voluntarily. However, in practice, this authority has never been used, and is even considered unenforceable. The main obstacle in the implementation of this authority lies in the legal factors themselves, especially the unclear legal norms regarding the scope of the role of investigators in the context of consumer disputes. In addition, although the authority of the Consumer Dispute Resolution Agency has been normatively regulated in law, the investigator does not have any technical guidelines or implementing rules that are the basis for following up on requests from the Consumer Dispute Resolution Agency.

**Keywords:** Consumer Protection; Investigators; Authority.

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## INTRODUCTION

Consumer protection is one of the important aspects as an effort to maintain a balance between business actors and consumers of products or services. In Indonesia, the bargaining position of consumers against business actors is still relatively weak.<sup>1</sup> This is because many business actors tend to behave unfairly and harm consumers because basically business actors are looking for the maximum profit with the smallest capital spent.<sup>2</sup> So, in order to empower consumers, it is necessary for the government to intervene with the establishment of a consumer protection system.<sup>3</sup> Instead of protecting the needs of consumers as a party that has a low bargaining position, the government has a regulation Law Number 8 Year

<sup>1</sup> Isnu Harjo Prayitno, Puji Iman Jarkasih, and H Muhamad Rezky Pahlawan Mp, "Eksistensi Badan Penyelesaian Sengketa Konsumen (BPSK) Kota Tangerang Selatan Dalam Melakukan Perlindungan Terhadap Hak-Hak Konsumen Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Pamulang Law Review* 4, no. 1 (2021): 43, <https://doi.org/10.32493/palrev.v4i1.12790>.

<sup>2</sup> Irfansyah Irfansyah, "Peran Strategis Badan Penyelesaian Sengketa Konsumen (Bpsk) Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen," *Ensiklopedia Sosial Review* 3, no. 1 (2021): 58-62, <https://doi.org/10.33559/esr.v3i1.687>.

<sup>3</sup> Riris Nisantika and Ni Luh Putu Egi Santika Maharani, "Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen (BPSK)," *Jurnal Locus Delicti* 2, no. 1 (2021): 49-59, <https://doi.org/10.23887/jld.v2i1.458>.

1999 on Consumer Protection (hereinafter referred to as the Consumer Protection Law) which contains regulations to protect consumers.

Article 49 of the Consumer Protection Law mandates the establishment of an institution that can be used by consumers to enforce their rights, namely the Consumer Dispute Settlement Body (hereinafter referred to as BPSK). As stated in Article 1 point 11 of the Consumer Protection Law, BPSK is a body that handles and resolves disputes between business actors and consumers. BPSK is established as a non-litigation forum or outside of the court in order to resolve consumer disputes.<sup>4</sup> The Consumer Protection Law has given BPSK an equal position with judicial institutions in terms of dispute resolution, so that BPSK has competence that should be recognized.<sup>5</sup>

BPSK has duties and authorities as written in Article 52 of the Consumer Protection Law. The duties and authorities include: a) carry out handling and settlement of consumer disputes by way of mediation or arbitration or conciliation; b) provide consumer protection consultation; c) supervise the inclusion of standard clauses; d) reporting to the public investigator in the event of a violation of the provisions of this law; e) receive complaints, both written and unwritten, from consumers about violations of consumer protection; f) conduct research and examination of consumer protection disputes; g) summon business actors suspected of having committed violations of consumer protection; h) summon and present witnesses, expert witnesses, and/or any person deemed to have knowledge of violations of the law; i) request the assistance of investigators to present business actors, witnesses, expert witnesses, or any person as referred to in letter g and letter h, who are not willing to fulfill the summons of the consumer dispute resolution body; j) obtain, examine, and/or assess letters, documents, or other evidence for the purpose of investigation and/or examination; k) decide and determine whether or not there is a loss on the part of the consumer; l) notify the decision to business actors who commit violations of consumer protection; m) impose administrative sanctions on business actors who violate the provisions of the Consumer Protection Act.

In Article 52 of the Consumer Protection Law, BPSK is tasked and authorized to summon business actors suspected of violating consumer protection. The summoning of the business actor is carried out to notify the existence of a lawsuit filed against the business actor after the lawsuit is declared complete, no later than 3 working days. The summons contains the day, date, time, and place of the hearing. However, in the process, it is not uncommon for business actors to be absent without justifiable reasons for the summons after a proper summons by BPSK. According to Article 15 paragraph (5) of the Regulation of the Minister of Trade of the Republic of Indonesia Number 17/M-DAG/PER/2007 on the Duties and Authority of the Consumer Dispute Settlement Body and Procedures for the Implementation of Consumer Disputes (hereinafter referred to as Permendag No. 17/2007), if the business actor is absent, the Head of the BPSK Secretariat shall submit the absence to the Chairman of BPSK and upon receipt of the report, the Chairman of BPSK may choose to take action: a) report the defendant to the investigator to be processed in accordance with the laws and regulations if the lawsuit contains criminal elements; b) request the assistance of investigators to present the respondent; c) propose to the authorized agency to impose

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<sup>4</sup> Febry Chrisdanty, "Penyelesaian Sengketa Konsumen Melalui Pengadilan Dan Non Litigasi Oleh Badan Penyelesaian Sengketa Konsumen (BPSK)," *Jurnal Magister Hukum Perspektif* 11, no. 2 (2020): 52-62, <https://doi.org/10.37303/magister.v11i2.9>.

<sup>5</sup> Hana Muhammad, "Efektivitas Badan Penyelesaian Sengketa Konsumen (BPSK) Sebagai Bagian Kekuasaan Kehakiman Dalam Melindungi Kepentingan Konsumen Di Indonesia" (2022), <http://repository.nusaputra.ac.id/id/eprint/345>.

administrative sanctions; or d) coordinate with relevant agencies or business associations to help bring the respondent to fulfill the summons.

In the explanation above, in line with Article 52 letter i of the Consumer Protection Law, BPSK can submit a request to the investigator to summon or bring the business actor if the business actor does not come when the summons has been properly made by BPSK in an effort to resolve disputes with consumers. The same thing is also written about BPSK's authority in Article 4 letter i of the Regulation of the Minister of Trade of the Republic of Indonesia Number 17/M-DAG/PER/2007 on the Duties and Authority of the Consumer Dispute Settlement Body and Procedures for Implementing Consumer Disputes (hereinafter referred to as Permendag Number 17/2007) and Article 9 paragraph (2) letter i of the Regulation of the Minister of Trade of the Republic of Indonesia Number 72/2020 on the Consumer Dispute Settlement Body (hereinafter referred to as Permendag Number 72/2020).

Investigators are officials of the Indonesian National Police (Polri) or certain Civil Servant Investigators (PPNS) who are authorized by law to conduct investigations. The investigators referred to in this case are Investigators of the Republic of Indonesia Police (hereinafter referred to as Polri Investigators) and Civil Servant Investigators (hereinafter referred to as PPNS) in the field of Consumer Protection. Article 7 of the Criminal Law Code (KUHP) explains the authority of investigators, among others, to carry out a series of coercive measures in the form of detention, arrest, confiscation, search, search for letters, and confiscation of letters. However, the investigator that will be discussed in this study is related to the Police Investigator.

Business actors who are not willing to attend the dispute resolution process at BPSK, one of which occurred at BPSK Yogyakarta. BPSK Yogyakarta is one of 10 BPSKs in Indonesia since its establishment in accordance with Presidential Decree No. 90 of 2001 concerning the Establishment of Consumer Dispute Resolution Bodies in the City Governments of Medan, Palembang, Central Jakarta, West Jakarta, Bandung, Semarang, Surabaya, Yogyakarta, Malang, and Makassar (hereinafter referred to as Presidential Decree Number 90 of 2001). Since the establishment of this institution, BPSK Yogyakarta is expected to be effective in dispute resolution efforts and can carry out its duties and authority properly and handle disputes by means of conciliation, mediation, and arbitration.

**Tabel 1.1 Types of Dispute Settlement at BPSK Yogyakarta**

| Type of Dispute | Amount |
|-----------------|--------|
| Consultation    | 10     |
| Mediation       | 17     |
| Consultation    | 0      |
| Arbitration     | 1      |

**Tabel 1.2 Dispute Settlement Label at BPSK Yogyakarta**

| Label      | Amount |
|------------|--------|
| Finish     | 13     |
| Unfinished | 5      |

**Tabel 1.3 Constraints in the Settlement of Consumer Disputes at BPSK Yogyakarta**

| Constraints                | Amount |
|----------------------------|--------|
| Business actor not present | 3      |
| Others                     | 2      |

Source: BPSK Yogyakarta

Based on the 2024 data above, it shows that out of 18 cases of mediation and arbitration in conflict resolution at BPSK Yogyakarta, only 13 cases were successfully resolved. Meanwhile, as many as 5 cases ended without any settlement, with 3 of them due to the factor that the business implementer did not come to the dispute settlement summons. Although normatively, BPSK has the duty and authority to request the assistance of investigators to present absent business actors, according to the data above, it can be seen that several dispute settlements could not be continued due to the obstacles of business actors.

BPSK should ideally be a place that can be relied upon by the community, especially for consumers who seek justice for losses suffered as a result of the actions of business actors, but this has not been seen sharply and does not have the power to resolve consumer disputes. Consumers should be guaranteed access to quick, cheap, and simple dispute resolution as mandated in the law. However, the existence of the above problems creates legal uncertainty in the enforcement of consumer protection law. Furthermore, it will certainly have an impact on the effectiveness of consumer protection law enforcement because the absence of business actors without real consequences has shown the weak coercive power of BPSK institutions. Consumers experiencing losses by business actors will be even more disadvantaged if non-litigation dispute resolution through BPSK cannot be carried out because business actors are reluctant to attend voluntarily. In such cases, consumers will be directed to litigation dispute resolution or through the courts, where the process will certainly be convoluted, expensive, and time-consuming for consumers. However, in various studies related to the authority of BPSK, it is still rare to discuss the implementation of the involvement of investigators from either police or PPNS investigators in assisting BPSK in presenting business actors. Most of the literature discusses the authority of BPSK in general in dispute resolution, but there are still not many that examine the authority of BPSK in the aspect of enforcing the presence of business actors.

Some of these studies include Chrisdanty (2020), which focuses on the role of BPSK in resolving consumer disputes in a non-litigation manner. The results of this study state that consumer dispute resolution can be done through the court as a litigation effort and BPSK as a non-litigation effort. However, there is a consideration that consumers prefer BPSK as an effort to resolve consumer disputes because it is considered more efficient and free of charge. This study also found that BPSK institution is needed, but there is a lack of socialization from the government about BPSK. Other literature has studied the authority of BPSK specifically, namely in Darmawan (2020), which discusses the effectiveness of BPSK supervision on the inclusion of standardized clauses in DKI Jakarta Province. This research mentions that in 2018, BPSK of DKI Jakarta province only started its duty to supervise the inclusion of standard clauses. This shows that BPSK of DKI Jakarta Province has not been



able to actively participate in the supervision of the inclusion of standard clauses in accordance with its duties and authorities because the consumer protection law has not established technical rules related to the supervision of standard clauses. In addition, the results show that the effectiveness of BPSK DKI Jakarta Province in conducting supervision still has many obstacles.

Also in Prayitno et al. (2021), the study focuses on the existence of BPSK of South Tangerang City in protecting consumer rights in accordance with the applicable laws and regulations, namely the Consumer Protection Law. The results of this study show the lack of existence of BPSK and BPSK's authority, especially BPSK of South Tangerang City, thus making BPSK of South Tangerang City ineffective in carrying out its duties. BPSK of Tangerang City also experienced obstacles in carrying out its duties such as human resource factors of BPSK members of South Tangerang City, where technically and functionally BPSK members of South Tangerang City were not well socialized, which resulted in different views in making decisions.

In the study Mahfudzi (2024) has also examined the role of BPSK as an alternative institution in consumer dispute resolution and its legal certainty. The result of this study is that although BPSK has final and binding legal force, in practice there is legal uncertainty. This is because BPSK decisions can often be appealed to the district court and ultimately do not receive executorial force. This will certainly cause legal uncertainty for consumers and lead to weak consumer protection. Some of these literatures show that there are not many that specifically analyze the authority of BPSK in presenting business actors with the help of investigators. In fact, business actors are important in the process of resolving disputes with consumers.

## METHODS OF THE RESEARCH

The study conducted by researchers uses juridical-empirical research. As for this research, it uses a study of applicable law and the reality in society with the intention of collecting research data and then analyzing it to identify problems that occur which ultimately find a solution to the problem.<sup>6</sup> The data sources that researchers use include primary and secondary data sources. Primary data sources used are interviews with the BPSK Assembly and Police Investigators in Yogyakarta City. The secondary data sources used include primary legal materials such as the Consumer Protection Law, Regulation of the Minister of Trade Number 17 of 2007, and Regulation of the Minister of Trade Number 72 of 2020. Secondary legal materials include books, previous research results. Tertiary legal materials include dictionaries and websites. Data collection techniques in this research include interviews, documentation, and literature study. An interview is a conversation conducted by two people, namely the interviewer who asks questions and the interviewee who answers these questions with the intention of constructing a topic.<sup>7</sup> Interviews were conducted with BPSK Yogyakarta Council from consumer elements and police investigators in the field of consumer protection. Then, documentation is a data collection tool carried out on documents that can be in written form, images, and works.<sup>8</sup> The documents are then analyzed and interpreted for their contents.<sup>9</sup> The documents required include documents

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<sup>6</sup> Kornelius Benuef and Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 20–33, <https://doi.org/10.14710/gk.2020.7504>.

<sup>7</sup> Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: Remaja Rosdakarya, 2017).

<sup>8</sup> Sugiyono, *Metode Penelitian Kuantitatif Kualitatif Dan R&D*, 2nd ed. (Bandung: Alfabeta, 2023).

<sup>9</sup> Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia, 2015).

from BPSK Yogyakarta. The author manages and analyzes the data using qualitative analysis. There are stages in analyzing data including the data collecting phase, data reduction, data presentation, and conclusion drawing. First, data collection through observation, in-depth interviews, and documentation. Second, data reduction in which the data obtained is then summarized and selected the core things. Third, data presentation can be in the form of brief descriptions, charts, relationships or so on. Fourth, drawing conclusions that may answer the formulation of the problem that has been formulated at the beginning.<sup>10</sup>

## RESULTS AND DISCUSSION

### A. Implementation of BPSK Authority in Presenting Business Actors with the Assistance of Police Investigators at BPSK Yogyakarta

Consumer protection is all laws and regulations as well as decisions made by judges which will regulate in terms of consumer interests. It can be said that consumer protection is all forms of efforts intended to ensure legal certainty to protect consumers. The purpose of this consumer protection is to provide awareness of consumers and business actors in order to carry out business activities with a full sense of responsibility because legal protection for consumers in Indonesia is present because of the existence of an unbalanced position between consumers and business actors.<sup>11</sup> The imbalance between business actors and consumers can lead to various problems for consumers if they do not receive attention from the government as a policy maker. Therefore, to overcome the problems, the government established the Consumer Protection Law. The law contains the rights and obligations of each party to balance the position of both business actors and consumers. Consumer rights are regulated in Article 4 of the Consumer Protection Law, while their obligations are regulated in Article 5 of the Consumer Protection Law. As for business actors, the rights of business actors are contained in Article 6 and the obligations of business actors are written in Article 7 of the Consumer Protection Law.

Consumer rights as contained in Article 4 of the Consumer Protection Law include: a) the right to obtain comfort, security, and safety in consuming goods and/or services; b) the right to choose goods and/or services and to obtain goods and/or services in accordance with the exchange rate and the conditions and guarantees promised; c) the right to obtain correct, clear, and honest information regarding the conditions and guarantees of goods and/or services; d) the right to have their opinions and complaints about the goods and / or services used heard; e) the right to receive advocacy, protection, and efforts to resolve consumer protection disputes properly; f) the right to receive guidance and consumer education; hak untuk diperlakukan atau dilayani secara benar dan jujur serta tidak diskriminatif; g) the right to compensation, compensation and/or replacement if the goods and/or services received are not in accordance with the agreement or not as they should be; h) rights stipulated in the provisions of other laws and regulations.

Consumer obligations stipulated in Article 5 of the Consumer Protection Law include: a) read or follow the information instructions and procedures for the use or utilization of goods and/or services, for security and safety; b) act in good faith in conducting transactions to purchase goods and/or services; c) pay according to the agreed exchange

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<sup>10</sup> Dwi Atmoko and Adhalia Septia Saputri, *Hukum Perlindungan Konsumen* (Malang: Literasi Nusantara Abadi, 2022).

<sup>11</sup> Atmoko, Dwi, and Adhalia Septia Saputri. *Hukum Perlindungan Konsumen*. Malang: Literasi Nusantara Abadi, 2022.

rate; d) follow efforts to properly resolve consumer protection disputes. The rights of business actors listed in Article 6 of the Consumer Protection Law are: a) the right to receive payment in accordance with the agreement regarding the conditions and exchange value of goods and/or services traded; b) the right to obtain legal protection from the actions of consumers who act in bad faith; c) the right to conduct appropriate self-defense in the legal settlement of consumer disputes; d) the right to rehabilitation of good name if it is legally proven that consumer losses are not caused by the goods and / or services traded; e) rights stipulated in the provisions of other laws and regulations.

Article 7 of the Consumer Protection Law regulates the obligations of business actors, namely: a) to act in good faith in conducting their business activities; b) guarantee goods and/or services and provide explanations for use, repair and maintenance; c) treat or serve consumers correctly and honestly and non-discriminatory; d) guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards for goods and/or services; e) provide opportunities for consumers to test, and/or try certain goods and/or services and provide guarantees and/or warranties for goods made and/or traded; f) provide compensation, compensation and/or reimbursement for losses due to the use, consumption and utilization of goods and/or services traded; g) provide compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement.

Seeing the above for each of the parties above, if there are differences of interest, violations of these regulations, and other things will certainly lead to consumer disputes. Consumer disputes are disputes related to violations of consumer rights, both in the scope of civil, criminal, and state administration.<sup>12</sup> In the event of a consumer dispute because the consumer suffers a loss, the consumer is entitled to compensation from the business actor and has the right to an appropriate dispute resolution effort.

The Consumer Protection Law has accommodated efforts to resolve consumer disputes and consumers experience losses, consumers can sue through BPSK or can also submit to the judicial body where the consumer is domiciled if the business actor refuses or does not answer and does not want to compensate for losses. This is also written in Article 45 of the Consumer Protection Law which says that: 1) any consumer who is harmed may sue the business actor through an institution tasked with resolving consumer disputes or through a judicial body within the general judicial environment; 2) settlement of consumer disputes may be pursued through the court or out of court based on the voluntary choice of the parties; 3) dispute settlement through out of court as referred to in paragraph (2) does not eliminate criminal liability as stipulated in the law; 4) if an out-of-court dispute resolution effort has been chosen, a lawsuit through the court can only be pursued if the effort is declared unsuccessful by one of the parties or by the parties to the dispute. Based on the explanation above, according to the Consumer Protection Law, efforts to resolve consumer disputes consist of 2 options, namely: a) non-litigation, namely with an institution that has the task of resolving consumer disputes, in this case, BPSK; b) by litigation, namely with a judicial institution within the scope of the general court.

BPSK itself was established based on the mandate of the Consumer Protection Law, as stipulated in Article 49 paragraph (1), which states that BPSK was established in Level II

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<sup>12</sup> Kurniawan, *Hukum Perlindungan Konsumen: Problematika Kedudukan Dan Kekuatan Putusan Badan Penyelesaian Sengketa Konsumen (BPSK)* (Malang: Univessitas Brawijaya Press, 2011).

Regions by the government to resolve consumer disputes out of court. BPSK has duties and authorities. The exercise of authority refers to the implementation or execution of the legal rights and responsibilities of an institution based on legislation. According to Philipus M. Hadjon, authority is the ability of applicable laws and regulations to produce legal consequences.<sup>13</sup> Attribution, delegation, and mandate are the 3 powers of legislation. The definition according to H.D. van Wiljk:<sup>14</sup> a) attribution, where the legislator grants authority to a part of the government; b) delegation, which means that government authority is delegated from one part of government to another; c) mandate, which is where a part of government gives permission to another part of government to exercise its authority on its behalf.

BPSK has the authority of attribution from legislation, as stated in Article 52 of the Consumer Protection Law. Its duties and authorities include: a) carry out handling and settlement of consumer disputes by way of mediation or arbitration or conciliation; b) provide consumer protection consultation; c) supervise the inclusion of standard clauses; d) reporting to the public investigator in the event of a violation of the provisions of this law; e) receive complaints, both written and unwritten, from consumers about violations of consumer protection; f) conduct research and examination of consumer protection disputes; g) summon business actors suspected of violating consumer protection; h) summon and present witnesses, expert witnesses, and/or any person deemed to have knowledge of the violation of the law; i) request the assistance of investigators to present business actors, witnesses, expert witnesses, or any person as referred to in letter g and letter h, who are not willing to fulfill the summons of the consumer dispute resolution body; j) obtain, examine, and/or assess letters, documents, or other evidence for investigation and/or examination; k) decide and determine whether or not there is a loss on the part of the consumer; l) notify the decision to business actors who violate consumer protection; m) impose administrative sanctions on business actors who violate the provisions of this law.

In Article 52 of the Consumer Protection Law, business actors suspected of violating consumer protection will be summoned by BPSK based on its authority. The summoning of the business actor is carried out to notify the existence of a lawsuit filed against the business actor after the lawsuit is thoroughly stated, at the latest within 3 working days. The summons contains the day, date, time, and place of the hearing. However, in the process, it is not uncommon for business actors to be absent without justifiable reasons for the summons after a proper summons by BPSK. According to Article 15 paragraph (5) of MOT No. 17/2007, if the business actor is absent, the Head of BPSK Secretariat shall submit the absence to the BPSK Chairperson and the BPSK Chairperson may choose to take action: a) report the defendant to the investigator to be processed in accordance with laws and regulations if the lawsuit contains criminal elements; b) requesting the assistance of investigators to present the defendant; c) propose to the authorized agency to impose administrative sanctions; or d) coordinate with relevant agencies or business associations to help bring the defendant to fulfill the summons.

In the explanation above, in line with Article 52 letter i of the Consumer Protection Law, BPSK can apply for assistance from investigators in summoning or presenting the business actor if the business actor is not present when the summons has been properly made by

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<sup>13</sup> Yurizal Yurizal, *Reformasi Kewenangan Polri Dan PPNS Dalam Penyidikan Tindak Pidana Lingkungan Hidup* (Malang: Media Nusa Creative, 2015).

<sup>14</sup> *Ibid.*



BPSK in an effort to resolve disputes with consumers. The same thing is written about BPSK's authority in Article 4 letter i of MOT 17/2007 and Article 9 paragraph (2) letter i of MOT 72/2020.

Parties who can become investigators or have rights as investigators are mentioned in Article 6 jo. Article 10 of KUHAP: a) Police investigators, have been given responsibilities related to investigations by KUHAP. The requirements are 1) full police officers with a minimum rank of Second Lieutenant of Police, or if there is no police officer with the rank of noncommissioned officer, 2) auxiliary investigators with a minimum requirement of the rank of Second Sergeant of Police or PPNS within the State Police with a minimum rank of Junior Registrar; b) PPNS, regulated in Article 6 paragraph (1) letter b, which is about civil servants who have the function and authority as investigators. *Penyidik yang dimaksud dalam hal tersebut yaitu Penyidik Polri dan PPNS.*

According to Article 7 of the Criminal Procedure Code, the authority of investigators is the authority to carry out a series of coercive measures which include arrest, detention, search, seizure, seizure of letters, and search for letters. However, the investigator that will be discussed in this study is the Police Investigator and his authority in terms of consumer protection. In the case of business actors who are not willing to attend the dispute resolution process at BPSK, one of them occurred at BPSK Yogyakarta. BPSK Yogyakarta is one of 10 BPSKs in Indonesia since its establishment in accordance with Presidential Decree Number 90 of 2001 concerning the Establishment of Consumer Dispute Settlement Bodies in the City Governments of Medan, Palembang, Central Jakarta, West Jakarta, Bandung, Semarang, Surabaya, Yogyakarta, Malang, and Makassar (hereinafter referred to as Presidential Decree Number 90 of 2001). Since the establishment of this institution, BPSK Yogyakarta is expected to be effective in dispute resolution efforts and can carry out its duties and authority properly and handle disputes by means of conciliation, mediation, and arbitration.

**Tabel 3.1 Types of Dispute Settlement at BPSK Yogyakarta**

| Type of Dispute | Amount |
|-----------------|--------|
| Consultation    | 10     |
| Mediation       | 17     |
| Consultation    | 0      |
| Arbitration     | 1      |

**Tabel 3.2 Dispute Settlement Label at BPSK Yogyakarta**

| Label      | Amount |
|------------|--------|
| Finish     | 13     |
| Unfinished | 5      |

**Tabel 3.3 Constraints in the Settlement of Consumer Disputes at BPSK Yogyakarta**

| Constraints                | Amount |
|----------------------------|--------|
| Business actor not present | 3      |

Source: BPSK Yogyakarta

Based on the 2024 data above, it shows that out of 18 cases of dispute resolution through mediation and arbitration at BPSK Yogyakarta, only 13 cases were successfully resolved. Meanwhile, as many as 5 cases ended without any settlement, with 3 of them due to the factor that the business actors did not attend the dispute settlement summons. The principles of consumer protection are set out in Article 2 of the Consumer Protection Law, namely: a) the principle of expediency, meaning that the form of efforts made, namely for the implementation of consumer protection, must consider the benefits of each party, both consumers and business actors; b) the principle of justice, meaning that consumers and business actors each get rights and carry out obligations; c) the principle of balance, meaning that between consumers and business actors get protection for each; d) the principle of consumer security and safety, meaning that; e) the principle of legal certainty, meaning that the state must guarantee the legal certainty of consumers and business actors in the form of organizing consumer protection.

Looking at the authority of BPSK in Article 52 of the Consumer Protection Law and its derivative rules, namely the regulation of the Ministry of Trade above, BPSK actually has the authority normatively as ordered by the law, namely related to presenting business actors with the help of investigators if business actors are reluctant to attend the dispute resolution process at BPSK. However, looking at the facts, BPSK has never even been able to use this authority in practice. It was also mentioned by Mr. Tri Purnomo Sidhi, S.H., M.H., who can be called Mr. Tri who is an investigator specifically Head of Subnit 5 Satreskrim of Yogyakarta Police in an interview on Tuesday, May 20, 2025 that: "So far, from the past until now, there has never been a request for assistance from BPSK related to its authority, either the authority to investigate in general or the authority to present business actors with the help of investigators." This shows that there are indeed obstacles in efforts to resolve consumer disputes, namely related to the presence of the business actor, but there has never been an effort to exercise BPSK's authority to summon the business actor with the help of investigators. In fact, it was mentioned by Mr. Dwi Priyono, S.H. or familiarly called Mr. DP as the Yogyakarta BPSK Council in an interview that this authority could not be exercised. Mr. DP as the consumer side BPSK Council in an interview on May 14, 2025: "When business actors are not willing to attend the dispute resolution process after making proper summons, BPSK cannot make other efforts such as forced efforts. This is because it returns to the spirit of the BPSK institution which is alternative in terms of dispute resolution, in contrast to the litigation route where a party is involved in dispute resolution through a police report."

The alternative nature of BPSK means that it is an option for each party, where if one party does not accept that the settlement of disputes between business actors and consumers must be carried out at BPSK, then BPSK returns to each party in dispute if they want to carry out another settlement process, namely by litigation. In fact, based on data from 2024 at BPSK Yogyakarta, there were 3 out of 5 cases that were not completed due to business actors who were absent from the trial summons. If the obstacle of the presence of business actors becomes the main factor in the dispute resolution process and the alternative nature of BPSK, of course this will cause many problems, especially for consumers and the BPSK institution itself.

Although BPSK is supposed to be a source of security for the community, especially consumers who seek justice for losses suffered due to the actions of business actors, this is not yet clear and does not have the power to resolve consumer problems. Consumers should be guaranteed access to quick, cheap, and simple dispute resolution as mandated in the law. However, the existence of the above problems creates legal uncertainty in the enforcement of consumer protection law. Legal certainty according to Gustav Radbruch, there are 3 basic ideas of law or called the 3 objectives of law, namely justice, benefit, and legal certainty. Fuller also mentioned that there are 8 principles that must be fulfilled by the law and if not, then the law fails to be called a law. These principles are: a) a legal system consists of laws and regulations, not based on momentary and certain decisions; b) regulations are announced to the public; c) does not apply retroactively; d) the formulation is understood by the public; e) there are no conflicting rules; f) may not require more action than can be taken; g) it does not change frequently; h) there is conformity between the regulation and the implementation.

If we look at the implementation of BPSK's authority in presenting business actors with the help of investigators that has never been implemented, of course this is not in line with the legal certainty that should be obtained, especially in this case, consumers who have suffered losses. The authority of BPSK in presenting business actors with the help of investigators listed in the Consumer Protection Law actually becomes a problem regarding the legal certainty of the regulation itself because although there are normative rules, in reality the implementation of these rules is not ideal as it should be. In addition, considering from the axiological side, the purpose of law is about maintaining order in society, justice, and legal certainty, so that the law is not beneficial for the law itself, but rather beneficial for society.<sup>15</sup> Furthermore, it will certainly have an impact on the effectiveness of consumer protection law enforcement. Consumers who have been harmed by business actors will be further harmed if non-litigation dispute resolution through BPSK cannot be done because business actors are reluctant to attend voluntarily. Dispute resolution that cannot be done non-litigatively will be directed to litigation dispute resolution or through the courts, which will certainly be convoluted, expensive, and time-consuming for consumers. Although according to Mr. DP mentioned that: "Actually, the channel through the court is relatively fast and different from before in 2010 to 2015 which still took quite a long time, plus now there is a simple lawsuit." However, Mr. DP further said that even though it is said that it is simple, the reality is also not simple. A simple lawsuit must still make a lawsuit, in terms of time it is certainly longer, and in terms of costs it is also not free which may not be comparable to the losses experienced by consumers, in contrast to BPSK whose complaints only use a complaint form and BPSK is free of charge at all. In addition, when going through litigation, the judge is a career judge which allows for subjectivity that may not necessarily have the spirit of consumer protection where consumers are in a low position, so it is possible that if you rely on a career judge then the judge will rely on formal law which consumers will experience many weaknesses.

#### **B. Constraints of BPSK Yogyakarta in Exercising the Authority to Present Business Actors with the Assistance of Police Investigators**

The lack of ideality of BPSK Yogyakarta in exercising its authority to present business actors with the help of investigators makes it important to discuss this matter, including

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<sup>15</sup> I Dewa Gede Atmadja and I Nyoman Putu Budiarta, *Teori-Teori Hukum* (Malang: Setara Press, 2018).

discussion of the obstacles that make BPSK Yogyakarta not use or even cannot exercise its authority even though it has been normatively contained in the Consumer Protection Law. Legal effectiveness is fundamental to determining whether or not the regulation has been implemented in the community. According to Soekanto, there are 5 main factors of legal effectiveness, namely:<sup>16</sup> a) legal factors are the first factor that affects the effectiveness of the law. Where in its application, the law itself may not be applied in accordance with the principles that apply in the law. In addition, the absence of implementing regulations to implement related laws and regulations and unclear meaning in laws and regulations can also be a factor in law enforcement. These problems will certainly lead to multiple interpretations or unclear interpretations of laws and regulations; b) law enforcement factor is the second factor, where law enforcers are parties who issue and implement laws and regulations; c) facilities and infrastructure factors, where in law enforcement, of course, must be supported by adequate advice and infrastructure, so that law enforcement can run smoothly and properly. Therefore, the facilities and infrastructure factor is a part that the government should not forget in order to support law enforcement; d) community factors can affect the effectiveness of the law. Society here in the sense of the environment where the law is applied. People who have awareness of the applicable law and apply the law will certainly encourage law enforcement; e) cultural factors become the fifth factor that can affect legal effectiveness. Cultural factors are often interpreted as values that grow in society.

According to an interview on May 12, 2025 by Mr. DP as the Yogyakarta BPSK Assembly, the obstacles related to the implementation of the authority to request the assistance of investigators are: "BPSK is an institution that does not have coercive power to present business actors, but when BPSK has the authority to request the assistance of investigators, it also cannot be done because of the weakness of the law and the absence of adequate technical rules that allow Police investigators to move to assist BPSK. I also had a conversation with Inspector General of Police (Ret.) Napoleon Bonaparte, Msi, who said that it is impossible for the Police to assist BPSK with the existing regulations, unless the Minister cooperates with the Chief of Police." Police investigators are guided by KUHAP in carrying out their duties and authorities, while BPSK relies on the Consumer Protection Law. The Consumer Protection Law mentions BPSK's authority to request assistance to investigators if the business actor is not present, but there is a legal hole where the Police investigators cannot carry out if there is a request for assistance to present the business actor because between BPSK and the Police there is no detailed implementation procedure covering the procedure for requesting assistance.

According to Article 7 paragraph (1) of KUHAP, investigators due to their obligations have the authority: a) receive a report or complaint from a person about the existence of a criminal offense; b) to take the first action at the scene; c) to stop a suspect from checking the suspect's identification; d) to make arrest, detention, search, and seizure; e) conducting examination and seizure of letters; f) taking fingerprints and photographing a person; g) summon people to be heard and examined as suspects or witnesses; h) terminate the investigation; i) take other actions according to responsible law.

Mr. Tri said in an interview on May 20, 2025 that: "Actually, in principle, we are investigators. Regarding the request for assistance from BPSK Yogyakarta friends, we will

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<sup>16</sup> Abdurrosyid Mahfuzd, "Perlindungan Konsumen Terhadap Peredaran Produk Oli Motor Palsu Di Kota Semarang" (Semarang, Universitas Negeri Semarang, 2024).



definitely help as long as it does not violate our provisions as investigators here, namely we are here in accordance with the Criminal Procedure Code.” This shows that investigators who are guided by the Criminal Procedure Code are limited to the criminal scope and do not cover civil matters, so it was further said by Mr. Tri that this is indeed a weakness of the Consumer Protection Law, where the law presents a new institution, namely BPSK, but not in detail related to exercising its authority, procedures and overlapping with other regulations. Related to regulations, Mr. DP also argued that: “The Consumer Protection Law, especially the BPSK section, was made without any coordination between the Ministry of Trade, which oversees BPSK, and the National Police as the investigator involved in the law.” The proposal to change the law has been submitted several times both formally and informally by Mr. DP representing BPSK Yogyakarta and other consumer organizations. At that time, Mr. DP made inputs related to articles that should be improved in 2008. However, in reality, the draft law discussed since 2008 was never completed in the House of Representatives (DPR).

Mr. Tri as an investigator said that: “Our cooperation with other institutions on average is in the law. There are laws and regulations, it must be explained who the investigator is. For example, when we ask for a post mortem at the hospital, there are already rules related to the fixed procedure.” However, if cooperation at the legislation stage is still difficult to do, Mr. Tri further explained the lowest form of cooperation such as a Memorandum of Understanding (MoU) in this case, the Ministry of Trade which oversees BPSK with the Police which regulates investigators. For example, the Ministry of Forestry-Police press the MoU to protect forests and optimize forest functions for the welfare of the community. The MoU is very important and strategic in order to carry out activities in the field. In principle, according to Mr. Tri, the National Police as the state and BPSK as the state, represent the state for the benefit of the community who safeguard the rights of the community in this case related to consumer protection. Therefore, as long as the regulations are made, be it an MoU or legislation, the most important thing is that the regulations are mutually agreed upon.

Seeing this, legal effectiveness is very influential on the law itself. In this case, the absence of implementing regulations to implement related laws and regulations and unclear meaning in laws and regulations can also be a factor in law enforcement. These problems will certainly lead to multiple interpretations or unclear interpretations of laws and regulations. So even though there is already a law that regulates BPSK's authority to request the assistance of investigators to present business actors, the regulation creates uncertainty about BPSK's authority. The law enforcement factor is the party that applies the existing laws and regulations. In this case, investigators are primarily guided by the Criminal Procedure Code in exercising their authority and other rules that have been mutually agreed upon, so that if there is a request for assistance by BPSK, it cannot be carried out by Police investigators due to the unavailability of regulations agreed upon by BPSK and Police Investigators.

Infrastructure factors, law enforcement, of course, must be supported by adequate advice and infrastructure, so that law enforcement can run smoothly and properly. The next factor is the community, in this case specifically consumers. Consumers have sufficient understanding of their rights and have remedies if these rights are violated by business actors. Without community participation, even if there is a good law, it is difficult to apply it optimally. In this case, consumers have an awareness of their rights, so they make

complaints to the BPSK, but in the process it is the business actors who do not have awareness and good faith in settlement efforts. Cultural factors, which are related to the values and norms that develop in society. This will affect the community's view of the law.

Factors such as law enforcement, infrastructure, society and culture are adequate but the most important factor is missing, then the law cannot be said to be effective. Legal effectiveness refers to the fact that individuals actually act in accordance with the legal rules that should be followed, and that these rules are actually implemented and followed. This is because the purpose of law is to create a state of peace by ensuring certainty and justice in society.<sup>17</sup>

## CONCLUSION

BPSK, in this case BPSK Yogyakarta, actually has the authority normatively mandated by the law, which is related to presenting business actors with the help of investigators if business actors are reluctant to attend the dispute resolution process at BPSK. However, looking at the facts, BPSK has never even been able to use this authority in practice. This shows that the implementation of the existing laws and regulations is not ideal. The main obstacle faced by BPSK Yogyakarta in the implementation of the authority to request the assistance of investigators in presenting business actors is still limited to the legal factor itself, where the law still shows unclear interpretations, such as the scope of investigators in criminal or civil matters. In addition, the authority written in the Consumer Protection Law cannot be carried out by investigators because investigators do not have specific guidelines regarding the implementation of this authority. In this case, the Government as a policy maker is expected in an effort to provide legal certainty to consumers to make adequate legislation and cooperate in terms of regulations with the institutions involved in it, so that in the future there are no overlaps and legal holes that will harm consumers. In addition, BPSK in this context, especially BPSK Yogyakarta, should actively initiate the development and change of laws and regulations. If not, BPSK and the National Police can initiate a Memorandum of Understanding between the Ministry of Trade and the National Police Chief regarding cooperation between BPSK and the National Police, in this case investigators, so that existing regulations can be implemented and protect consumer interests.

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<sup>17</sup> Galih Orlando, "Efektivitas Hukum Dan Fungsi Hukum Di Indonesia," *Tarbiyah bil Qalam : Jurnal Pendidikan Agama dan Sains* 6, no. 1 (2022), <https://doi.org/10.58822/tbq.v6i1.77>.

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