



Consumer Actions Toward Unfulfilled Peace Agreement by Business Actor (A Case Study of Insurance Disputes in the BPSK of Banjarmasin City)

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Abstract

Mediation dominates the dispute resolution process in BPSK Banjarmasin, including insurance disputes between consumers (TMC) and insurance business actors, resulting in a Peace Agreement. However, in reality, the business actors do not implement the Peace Agreement. The aim of this research is to identify the actions and factors causing consumer actions regarding the non-implementation of the Peace Agreement by the business actors in the dispute. This study adopts an empirical legal research method and utilizes a case study approach. The collected data is then processed and analyzed descriptively and qualitatively. The result of the research indicate that the action taken by the consumer is to negotiate with the business actors by contacting them through WhatsApp and Telegram. Several actions that should have been taken by the consumer but were not: 1) The consumer did not register the Peace Agreement resulting from the mediation by filing a lawsuit in court; 2) The consumer did not resolve the dispute through arbitration; 3) The consumer did not file a breach of contract lawsuit regarding the Peace Agreement resulting from the mediation that the business actors did not fulfill. There are three factors causing consumer actions, namely: 1) Knowledge; 2) Economic; 3) Cultural.

Keywords: Consumer Actions, Peace Agreement, Business Actor.

Abstrak

Mediasi mendominasi proses penyelesaian sengketa di BPSK Banjarmasin, termasuk sengketa asuransi antara konsumen (TMC) dengan pelaku usaha asuransi yang menghasilkan Kesepakatan Perdamaian. Namun, pada kenyataannya, pelaku usaha tidak melaksanakan Perjanjian Perdamaian tersebut. Tujuan dari penelitian ini adalah untuk mengetahui tindakan dan faktor penyebab tidak dilaksanakannya Perjanjian Perdamaian oleh pelaku usaha dalam sengketa tersebut. Penelitian ini menggunakan metode penelitian hukum empiris dengan pendekatan studi kasus. Data yang terkumpul kemudian diolah dan dianalisis secara deskriptif dan kualitatif. Hasil penelitian menunjukkan bahwa tindakan yang dilakukan oleh konsumen adalah bernegosiasi dengan pelaku usaha dengan

menghubungi pelaku usaha melalui WhatsApp dan Telegram. Beberapa tindakan yang seharusnya dilakukan oleh konsumen namun tidak dilakukan: 1) Konsumen tidak mendaftarkan Perjanjian Perdamaian hasil mediasi dengan mengajukan gugatan ke pengadilan; 2) Konsumen tidak menyelesaikan sengketa melalui arbitrase; 3) Konsumen tidak mengajukan gugatan wanprestasi atas Perjanjian Perdamaian hasil mediasi yang tidak dipenuhi oleh pelaku usaha. Ada tiga faktor penyebab tindakan konsumen, yaitu: 1) Pengetahuan; 2) Ekonomi; 3) Budaya.

Kata kunci: Tindakan Konsumen, Perjanjian Perdamaian, Pelaku Usaha.

1. INTRODUCTION

Indonesia is a country of law. Consumers have the right to be protected in relation to their inherent rights as consumers.¹ A good and fair business or enterprise, according to the teachings of the Qur'an, is one that neither oppresses others nor allows itself to be oppressed.² In Islamic law, consumer protection holds a significant position.³ Consumer protection in Indonesia is regulated by Law Number 8 of 1999 concerning Consumer Protection (hereafter referred to as UUPK). The purpose of this law is to balance the rights and obligations between consumers and business actors, in order to provide fair protection to parties with different interests. These differences in interests can potentially lead to disputes between consumers and business actors.⁴

Along with the advancement of technology and industries, issues related to consumer protection have also increased. The high percentage of consumer disputes demands an effective dispute resolution system and procedures with legal certainty to achieve justice. Contrary to the desired outcome, based on the World Justice Project Rule of Law Index survey, which assesses compliance with the rule of law in 2021, Indonesia ranked 68th out of 139 countries with a score of 0.52. This ranking represents a decline compared to the previous year when Indonesia was ranked 59th with a score of 0.53 in 2020. One of the aspects assessed is civil justice, where Indonesia received a score of 0.45 and was placed at 105th position in this aspect.⁵

The majority of consumers in Indonesia are afraid and reluctant to go to court, even if they have suffered losses due to producers/business entities. This difference is highly

¹ Zahry Vandawati Chumaida dan Bambang Sugeng Ariadi, *Hak Konsumen Melalui Badan Penyelesaian Sengketa Konsumen Guna Meningkatkan Indeks Kepuasan Konsumen* (Surabaya: Jakad Media Publishing, 2021), hlm. 55.

² Sri Maulida, M. Fahmi al-Amruzi, dan Ahmadi Hasan, "Urgensi Prinsip dalam Pengembangan Hukum di Bidang Mu'amalah, Ekonomi, dan Keuangan Syariah," *Al-Azhar Islamic Law Review* 2, no. 2 (2020): hlm. 84.

³ Sri Wahyuningsih, "Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen Menurut Hukum Positif (Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen) Dan Hukum Islam," 14 Agustus 2018, hlm. 42, <https://dspace.uui.ac.id/handle/123456789/10305>.

⁴ Misnar Syam dkk., "Consumer Protection Enforcement Law Characteristics on Civil Law Aspects in Indonesia," *Linguistics and Culture Review* 5, no. S2 (13 Desember 2021): hlm. 1471, <https://doi.org/10.21744/lingcure.v5nS2.1976>.

⁵ Ahmad Habib Al Fikry dan Nurul Fibrianti, "Online Alternative Dispute Resolution for Consumer Dispute Settlement in the Digital World," *Indonesian Journal of Law and Policy Studies* 3, no. 1 (21 Juni 2022): hlm. 47, <https://doi.org/10.31000/ijlp.v3i1.6254>.

significant when compared to consumers in other countries, such as the United States, the United Kingdom, and others, who are more aware of their consumer rights. Countries like those are accustomed to questioning the products they consume and, if necessary, seeking legal resolutions.⁶

Regarding the resolution of consumer disputes outside of the court, Article 49, paragraph (1) of the Consumer Protection Law (UUPK) mandates the establishment of the Consumer Dispute Settlement Body (BPSK) to conduct consumer dispute resolutions outside of the court.⁷ Based on the Decree of the Minister of Trade of the Republic of Indonesia Number 674 of 2018 concerning the Dismissal and Appointment of Members of the Consumer Dispute Settlement Body in Banjarmasin City, South Kalimantan Province, the Provincial Government, through the Department of Trade, has given attention to the urgency of Consumer Protection by establishing the Consumer Dispute Settlement Body (BPSK) in Banjarmasin City.⁸

According to Rizqi Zulmirza, S.H., a member of the Secretariat of the Consumer Dispute Settlement Body (BPSK) in Banjarmasin City, it has been consistently carrying out several authorities. The first is providing consultation assistance to the public regarding consumer disputes. Usually, consumers come to BPSK and express their complaints, and if a dispute exists, they are directed to proceed with filing a consumer dispute resolution request at BPSK in Banjarmasin City.⁹

Secondly, the Consumer Dispute Settlement Body (BPSK) in Banjarmasin City assists in resolving consumer disputes through three alternative methods that can be pursued in consumer dispute resolution: mediation, conciliation, and arbitration.¹⁰ He also conveyed that mediation is the most commonly chosen alternative for resolving disputes by parties at the Consumer Dispute Settlement Body (BPSK) in Banjarmasin City.¹¹ One of the various disputes resolved through mediation at the Consumer Dispute Settlement Body (BPSK) in Banjarmasin City is dispute number 15/PN-BPSK.BJM/IX/2020 that occurred between a consumer and an insurance service provider in September 2020. In the process, the dispute resolution was conducted by the conflicting parties at BPSK Kota Banjarmasin, accompanied by a panel of three members consisting of representatives from the government, consumer, and business, acting as mediators. The BPSK panel plays a role in providing advice, input, recommendations, guidance, and other efforts to resolve the dispute. However, it is important to note that all decisions regarding the resolution of the dispute remain with the disputing parties, including the form, amount of compensation, and other relevant matters.

⁶ Wiwik Sri Widiarty, "The Legal Analysis of Consumer Protection Against The Circulation of Expired Food Products in Indonesia," *Int. J. Manag. Bus. Res.* 8, no. 3 (2018): hlm. 131.

⁷ "UU No. 8 Tahun 1999 tentang Perlindungan Konsumen," diakses 13 Agustus 2022, <https://peraturan.bpk.go.id/Home/Details/45288/uu-no-8-tahun-1999>.

⁸ "BPSK Kota Banjarmasin | Dinas Perdagangan Provinsi Kalimantan Selatan," diakses 2 Agustus 2022, <http://disdag.kalselprov.go.id/bpsk-kota-banjarmasin>.

⁹ Rizqi Zulmirza, Wawancara Pribadi, Anggota Sekretariat Badan Penyelesaian Sengketa Konsumen (BPSK) Kota Banjarmasin, 30 Januari 2023.

¹⁰ Rizqi Zulmirza.

¹¹ Rizqi Zulmirza.

In the insurance dispute case, the parties conducted two hearings, and during the proceedings, they successfully reached an agreement to settle the matter. The terms of the settlement are as follows:

1. The insurance company will expedite the urgent claim process for the two insurance policies owned by the consumer at their head office to ensure a prompt settlement of the insurance claims.
2. The insurance claims for the two policies will be paid to the consumer as soon as possible through a bank transfer to the consumer's account.

The minutes of the dispute resolution hearing recorded that the insurance company was scheduled to make the payment for the two insurance policies to the consumer in October 2020, within one month after the agreement was made. As the insurance company couldn't provide an exact estimation of the time it would take to settle the consumer's insurance claims, a Settlement Agreement was made, and no formal court decision was issued for this mediation outcome.

According to the applicable provisions, the main goal of conducting mediation is essentially to resolve a dispute without going through the court process. The parties' willingness to act in good faith and work together to settle their differences or disputes is a fundamental requirement for the success of mediation, which results in a written settlement known as a Settlement Agreement. However, in reality, even in the process of reaching a settlement, there is still a possibility of differences of opinion or the emergence of other disputes. The Settlement Agreement also has the potential not to be enforced as it may not carry the same level of enforceability as a court judgment.¹²

In the case of the insurance dispute, after the dispute resolution process through mediation, the parties reached an agreement for a settlement, which was then formalized into a Settlement Agreement and signed by the parties. According to Mr. Syahrani's statement, the consumer complained to the Consumer Dispute Settlement Body (BPSK) in Banjarmasin that the business entity did not fulfill its obligations as previously agreed upon and accepted by the parties in front of the BPSK panel.¹³ Based on Mr. Rizqi Zulmirza's statement, after the consumer reported this issue to BPSK, the business entity promised once again to settle the claim in November 2020. However, up until now (January 2023), the business entity has still not paid the insurance claim as promised.¹⁴

Based on the aforementioned information, it is evident that even though the parties reached a Settlement Agreement, there is still a possibility that one of the parties neglected to fulfill their obligations as per the agreed-upon terms. In this case, it is necessary to investigate how the consumer responds to such non-compliance and what factors contribute to the consumer's actions..

2. LITERATURE REVIEW

¹² Dedy Mulyana, "Peningkatan Status Hukum Kesepakatan Perdamaian Oleh Mediator di Luar Pengadilan Menjadi Akta Perdamaian," *ADHAPER: Jurnal Hukum Acara Perdata* 8, no. 1 (19 Februari 2022): hlm. 22, <https://doi.org/10.36913/jhaper.v8i1.168>.

¹³ Syahrani, Wawancara Pribadi, Anggota Badan Penyelesaian Sengketa Konsumen (BPSK) Kota Banjarmasin, 19 Desember 2022.

¹⁴ Rizqi Zulmirza, Wawancara Pribadi.

2.1 Consumer Dispute

Consumer dispute refers to a disagreement related to the violation of consumer rights. According to the Consumer Protection Law (UUPK), a consumer dispute is a conflict that arises between a consumer and a business due to the business's refusal or failure to respond to the consumer's demand for compensation, as stated in Article 19 of the UUPK. This article explains that businesses have an obligation to provide compensation if consumers suffer from pollution, losses, or damages resulting from the consumption of goods or services distributed or sold by the business actor.¹⁵ Referring to Article 45 of the UUPK, it is stated that consumers who have suffered losses have the right to file a lawsuit against the business through two alternatives, either through the courts or outside the courts, such as through institutions with the authority to settle consumer disputes.¹⁶

2.2 Dispute Resolution

Based on the explanation of Article 6 of Law Number 30 of 1999, in case of differences of opinion or disputes within the scope of civil matters, the resolution can be carried out by the parties involved through alternative dispute resolution methods, setting aside litigation. This approach is based on the presence of good faith and can be achieved through various alternative dispute resolution methods.¹⁷ Some of these alternative dispute resolution methods are as follows:¹⁸

a. Consultation

Consultation as an alternative dispute resolution can take the form of hiring a consultant or someone considered to have an understanding of a particular issue to seek their opinion as an effort to resolve a problem. The role of the consultant is limited to providing their opinion as a consideration for the disputing parties to be used as a reference in the dispute resolution process.¹⁹

b. Negotiation

Negotiation is one of the forms of efforts that can be taken in non-litigation dispute resolution where the parties involved in the dispute or their representatives engage in bargaining or discussions until reaching a mutual agreement. Negotiation is conducted without the intervention of a third party. Subsequently, the outcome of the negotiation is documented in writing.²⁰

¹⁵ A. Joko Purwoko, R. Benny Riyanto, dan Bambang Eko Turisno, "Optimizing Of The Consumer Dispute Settlement Agency As A Non-Court Agency To Resolve The Consumer Dispute," *International Journal of Civil Engineering and Technology* 11, no. 2 (2020): hlm. 204.

¹⁶ Maryanto, *Prosedur Penyelesaian Sengketa Konsumen Di Bpsk (Badan Penyelesaian Sengketa Konsumen)* (Jawa Tengah: Unissula Press, 2019), hlm. 14.

¹⁷ Muhammad Afiful Jauhani, Supianto Supianto, dan Tioma R. Hariandja, "Kepastian Hukum Penyelesaian Sengketa Medis Melalui Mediasi Di Luar Pengadilan," *WELFARE STATE Jurnal Hukum* 1, no. 1 (25 April 2022): hlm. 48, <https://doi.org/10.56013/welfarestate.v1i1.1470>.

¹⁸ Amran Suadi, *Penyelesaian Sengketa Ekonomi Syariah Teori dan Praktik* (Jakarta: Kencana, 2017), hlm. 81.

¹⁹ Abdul Manan, *Hukum Ekonomi Syariah: Dalam Perspektif Kewenangan Peradilan Agama* (Jakarta: Prenadamedia Group, 2012), hlm. 442.

²⁰ Amran Suadi, *Arbitrase dan Alternatif Penyelesaian Sengketa Dalam Perkara Sengketa Ekonomi Syariah* (Jakarta: Kencana, 2022), hlm. 71.

Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution regulates how to ensure that the Peace Agreement resulting from negotiations has legally binding force, it must be registered with the District Court within a period of 30 days from the date of signing, and it must be implemented within a period of 30 days from its registration.²¹

c. conciliation

The purpose of holding a conciliation meeting is to enable the disputing parties to resolve their disputes by seeking the best and acceptable solution for all parties involved, which means solving the problem by jointly finding a middle ground.²²

Characteristics of conciliation:²³

- 1) It is a cooperative non-litigation dispute resolution process.
- 2) The conciliator is a neutral third party in the dispute resolution.
- 3) The conciliator has the authority to assist in finding a solution to the dispute.
- 4) The conciliator actively provides suggestions and drafts the terms of the agreement for the disputing parties.
- 5) The conciliator does not have the authority to make a decision.
- 6) The goal is to reach an acceptable solution or agreement for all parties to resolve their dispute.

d. Mediation

Mediation is a negotiation or bargaining activity between two disputing parties where the process is facilitated by a third party as a mediator. The mediator's role is to assist the process and remain neutral, with the final decision-making power resting solely with the disputing parties. There are two main characteristics of dispute resolution through mediation:²⁴

- 1) The mediator only has the authority to control the negotiation process.
- 2) The mediator does not have the authority to act as a decision-maker.

The legal product resulting from the mediation process is in the form of an agreement among the parties in the form of a written agreement. The contents of the agreement must be executable, not detrimental to any party, and in compliance with applicable laws.²⁵ According to Article 27 of the Mediation Supreme Court Regulation (PERMA), if the mediation conducted by the parties is successful in reaching an agreement,

²¹ Manan, *Hukum Ekonomi Syariah: Dalam Perspektif Kewenangan Peradilan Agama*, hlm. 443.

²² Suadi, *Penyelesaian Sengketa Ekonomi Syariah Teori dan Praktik*, hlm. 77.

²³ Manan, *Hukum Ekonomi Syariah: Dalam Perspektif Kewenangan Peradilan Agama*, hlm. 447.

²⁴ Manan, hlm. 450.

²⁵ Jauhani, Supianto, dan Hariandja, "Kepastian Hukum Penyelesaian Sengketa Medis Melalui Mediasi Di Luar Pengadilan," hlm. 49.

it is mandatory to formulate the results in written form.²⁶ Subsequently, if a written peace agreement resulting from mediation has been registered with the district court, based on that agreement, an "Akta Perdamaian" (Peace Agreement Deed) with executive power will be drawn up. Referring to Article 36 paragraph (1) of the Mediation Supreme Court Regulation, it states:

"The parties, with or without the assistance of a certified Mediator, who successfully settle disputes outside of court through a Peace Agreement, may submit the Peace Agreement to the competent Court by filing a lawsuit to obtain the Peace Agreement Deed."²⁷

The action that can be taken is that the parties can decide whether they want to follow up on the peace agreement and have it become an "Akta Perdamaian" (Peace Agreement Deed) or not. If they choose not to, then the implementation of the agreement is voluntary based on good faith and mutual agreement. However, if the parties choose to elevate the status of the agreement to an Akta Perdamaian, and if there is a party that does not act in good faith to implement the agreed terms, then one of the parties can file an execution request to the court because the Akta Perdamaian has executive power.²⁸ If the agreement is not elevated to an Akta Perdamaian, then it holds a legal status similar to an ordinary peace agreement. If any party violates the agreement that has been reached, as a consequence, the other party may file a lawsuit for "wanprestasi" (default) to the court as a legal remedy.²⁹

e. Expert Opinion

In Article 52 of Law No. 30 of 1999, it is stated that the parties bound by an agreement have the right to request a binding opinion or view from an arbitration institution related to a specific legal relationship. This provision is, in fact, the implementation of one of the tasks of the arbitration institution as stated in Article 1 Paragraph 8 of Law No. 30 of 1999, which mentions that an arbitration institution can provide a binding opinion regarding a legal relationship that has not yet resulted in a dispute.³⁰

f. Arbitration

According to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration is a method to resolve civil disputes outside the general court system, based on an arbitration agreement, which is a written agreement between the parties involved in the conflict or dispute. In arbitration, there is the term "arbitrator," which refers to a referee or umpire trusted and appointed by the parties with an interest

²⁶ Frans Hendra Winarta, *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional: Edisi Kedua* (Jakarta: Sinar Grafika, 2022), hlm. 18.

²⁷ Mahkamah Agung RI, "Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan," diakses 26 Maret 2023, <https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-1-tahun-2016/detail>.

²⁸ Mulyana, "Peningkatan Status Hukum Kesepakatan Perdamaian Oleh Mediator di Luar Pengadilan Menjadi Akta Perdamaian," hlm. 32.

²⁹ Mulyana, hlm. 32.

³⁰ Manan, *Hukum Ekonomi Syariah: Dalam Perspektif Kewenangan Peradilan Agama*, hlm. 459-460.

in a particular agreement, whose task is to make decisions based on legal rules regarding a dispute.³¹

The advantages of arbitration are as follows:³²

- 1) The parties have the capability to choose their own arbitrator to ensure the quality of the decision.
- 2) The decision-making process in arbitration tends to be faster.
- 3) It is confidential, ensuring the privacy of the parties involved and maintaining good relationships among them in the future.
- 4) Prioritizes peace and amicable resolutions.
- 5) The process is simpler, less complicated, faster, and more cost-effective.
- 6) The arbitration decision is final and binding for all parties involved.
- 7) Enforcement of the arbitration award can be sought in court.

3. RESEARCH METHODOLOGY

This research is an empirical legal study, which is a method of legal research that involves the use of empirical data obtained from observations of actual human behavior and verbal behavior from interviews. The research applies a case approach. The location of the research is in Banjarmasin City, focusing on an insurance dispute case resolved at the Consumer Dispute Settlement Body (BPSK) in Banjarmasin in 2020, with case number 15/PN-BPSK.BJM/IX/2020. Primary data in this research consists of information about the actions taken by consumers and the factors influencing their actions towards the non-compliance of the settlement agreement by the business entity. Secondary data includes supporting documents such as case files, minutes of the dispute resolution hearing, and the Settlement Agreement for case number 15/PN-BPSK.BJM/IX/2020. The data sources for this research include informants, which are consumers, BPSK member Syahrani, M.H., and BPSK secretariat member Rizqi Zulmirza, S.H., as well as document sources. Data collection techniques involve interviews and documentary studies. Data analysis is conducted using qualitative descriptive methods.

4. RESULTS

The consumer is not aware that the settlement agreement resulting from mediation can be registered with the court. As a result, the informant did not file a lawsuit to obtain an Execution Deed, which would have enforceable power. The consumer has never filed a lawsuit in court and has no intention of doing so against the business entity. The reasons for not filing a lawsuit are, firstly, the consumer believes the process will be complicated, and they are concerned about incurring significant costs without certainty whether their lawsuit will be accepted or rejected, and whether they will get their money back or lose even more. As for arbitration, the consumer has no knowledge or

³¹ Neni Sri Imaniyati dan Panji Adam Agus Putra, *Hukum Bisnis Dilengkapi dengan Kajian Hukum Bisnis Syariah* (Bandung: PT. Refika Aditama, 2017), hlm. 362.

³² Vero Arivani Caniago, "Arbitrase Sebagai Alternatif Solusi Penyelesaian Sengketa Bisnis di Luar Pengadilan," *Jurnal Ilmiah Wahana Pendidikan* 8, no. 20 (24 Oktober 2022): hlm. 312, <https://doi.org/10.5281/zenodo.7242951>.

understanding of it, nor of the existence of the Indonesian National Arbitration Board (BANI), which is why they did not pursue dispute resolution through arbitration.

The consumer also explained that after completing the mediation at BPSK, they continued to communicate with BPSK regarding the progress of implementing the mediation settlement with the business entity. The consumer made several attempts to contact the business entity through WhatsApp and Telegram to inquire about the realization of the insurance claims for the two policies submitted by the consumer. However, the business entity only asked the consumer to be patient and could not provide a specific timeline for the implementation of the agreed-upon settlement. This communication eventually ended with the business entity blocking the consumer's communication access, leaving the consumer unable to reach them.

The consumer stated that they are not very knowledgeable about consumer protection laws and related matters. They also expressed a slight disappointment with BPSK because they had high expectations for follow-up actions from BPSK against the irresponsible business entity. The consumer believed that by filing a complaint when there was no certainty from the business entity, BPSK would take further action and question the business entity about it. However, the consumer eventually chose to accept the situation and be resigned to it, thinking that if it is meant to be, things will eventually come back to them. The consumer mentioned feeling exhausted from filing complaints as there was no certainty or resolution attained.

Mr. Syahrani and Mr. Rizki Zulmirza, who are part of the Consumer Dispute Settlement Body (BPSK) in Banjarmasin City, stated that after the hearing process between the consumer, TMC, and the insurance business entity was completed, TMC informed BPSK that the business entity did not fulfill what was agreed upon. Mr. Syahrani further explained that the Settlement Agreement only holds the same weight as a regular agreement, and BPSK does not have the authority to force the business entity to implement the Settlement Agreement because BPSK's jurisdiction is limited to assisting in dispute resolution until an agreement is reached. In the mediation process, there are no specific rules, unlike in arbitration. Additionally, he also mentioned that the consumer (TMC) has the option to pursue arbitration or file a lawsuit in court because the business entity did not fulfill its obligations.

5. DISCUSSION

5.1 Consumer Actions Toward Unfulfilled Peace Agreement by Business Actor

From the data obtained through interviews with the consumer, it was found that the action taken by the consumer was to negotiate with the business entity in a family-oriented manner. The consumer attempted to communicate with the business entity through WhatsApp and Telegram, which eventually resulted in the consumer's and their child's phone numbers being blocked. However, the consumer has not visited the business entity in person to inquire about the progress of their long-standing insurance claim. In the end, the consumer chose to remain silent, accepting the situation and resigning themselves to it.

The consumer's action is in accordance with consumer protection laws, where negotiation is one of the measures that can be pursued for non-litigious dispute

resolution.³³ The main requirement for dispute resolution through negotiation is the principle of good faith from all parties involved. In this case, the business entity did not demonstrate good faith towards the consumer, resulting in the consumer's efforts being unsuccessful. The business entity failed to fulfill its obligations as stipulated in Article 7 of the Consumer Protection Law (UUPK), which includes acting in good faith and providing compensation or compensation if the consumer incurs losses.³⁴ The principle of good faith significantly influences the dispute resolution process faced by the parties. If there is no good faith from either or both parties, the dispute resolution process becomes hindered. Negotiation should involve two-way communication; otherwise, it may result in the inability to reach an agreement, leading to no written documentation and no binding agreement between the parties. Consequently, principles such as the contractual principle, the binding principle, and the principle of freedom to contract would not be fulfilled. As for the confidentiality principle, it has been observed since the negotiation process was carried out solely between the consumer and the business actor.

The action that the consumer should have taken but did not do is as follows:

- a. The consumer did not register the Settlement Agreement resulting from mediation by filing a lawsuit in court to make it an Execution Deed.

The consumer should have registered their Settlement Agreement since all types of peace agreements can be pursued to become an Execution Deed.³⁵ This is regulated in Article 36 Paragraph (1) of PERMA No. 1 of 2016 concerning Mediation Procedures in Court, which states that the registration of the Settlement Agreement resulting from mediation can be done by filing a lawsuit in the competent court against the opposing party involved in the mediation agreement.³⁶ The registration must be done no later than 30 (thirty) days after the Settlement Agreement is put in writing and signed by all parties involved.³⁷ However, the consumer did not take such action due to lack of knowledge, which resulted in the inability to enforce the Settlement Agreement forcibly, even though the business entity failed to comply with it.

- b. The consumer did not resolve the dispute through arbitration by using BANI (National Arbitration Board of Indonesia) or BASYARNAS (National Mediation and Arbitration Centre).

The consumer should have taken advantage of arbitration to the fullest because arbitration is an Alternative Dispute Resolution (ADR) method that has many advantages, including:

- 1) Parties have the capability to choose their own arbitrators to ensure the quality of the decision.
- 2) The decision-making process in arbitration tends to be faster.

³³ Suadi, *Arbitrase dan Alternatif Penyelesaian Sengketa Dalam Perkara Sengketa Ekonomi Syariah*, hlm. 17.

³⁴ "UU No. 8 Tahun 1999 tentang Perlindungan Konsumen."

³⁵ Mulyana, "Peningkatan Status Hukum Kesepakatan Perdamaian Oleh Mediator di Luar Pengadilan Menjadi Akta Perdamaian," hlm. 30.

³⁶ Winarta, *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional*, hlm. 18.

³⁷ Manan, *Hukum Ekonomi Syariah: Dalam Perspektif Kewenangan Peradilan Agama*, hlm. 443.

- 3) Arbitration proceedings are confidential, which ensures the confidentiality of the parties involved, maintaining good relationships among them in the future.
- 4) Arbitration prioritizes peace and amicable resolutions.
- 5) The process is simpler, less complicated, faster, and more cost-effective.
- 6) The arbitration decision is final and binding for all parties involved.
- 7) The enforcement of arbitration decisions can be sought in court.³⁸

These advantages can address the issues faced by consumers who prefer to avoid going to court due to lengthy administrative and procedural processes. The arbitration process is also cost-effective, ensuring that it does not burden consumers when taking the arbitration route. The implementation of the arbitration decision is based on good faith from all parties, and if any party violates the decision, enforcement can be sought in court.

- c. The consumer did not file a lawsuit for breach of contract in court regarding the Settlement Agreement resulting from the mediation that the business entity did not comply with.

The consumer has never filed and has no intention of filing a lawsuit in court to claim what should rightfully be theirs. This is because, firstly, the consumer finds the court process to be complicated, and they do not want to deal with the court as they are not familiar with the procedures for filing a lawsuit, which would also consume a considerable amount of time. Secondly, the consumer is concerned about the expenses involved in resolving the dispute in court, especially if they have to hire a lawyer, which would undoubtedly incur significant costs.

The Settlement Agreement resulting from the mediation at BPSK holds a legal status similar to a regular peace agreement. If any party violates the agreement, the other party can file a lawsuit for breach of contract in court as a legal recourse. In this case, the consumer, TMC, should have filed a claim for breach of contract against the business entity. However, due to the reasons explained earlier, the consumer chose to accept the situation and passively endure the circumstances they are facing until now.

5.2 Factors causing the consumer's actions towards the Settlement Agreement not being implemented by the business actor.

The actions or steps taken by consumers in responding to the business entity's behavior, which does not fulfill the obligations as stated in the agreement they made, are crucial for the consumers to obtain their rightful rights from the business entity. From the consumer's actions mentioned by the researcher earlier, there are three factors of the consumer's actions, as follows:

- a. Knowledge Factor

In fact, the consumer has awareness regarding consumer protection, as evidenced by their efforts to resolve the dispute through BPSK and reach a settlement through mediation. Furthermore, after realizing that the business entity did not implement the agreement, despite it being the result of negotiations between the parties, the consumer

³⁸ Caniago, "Arbitrase Sebagai Alternatif Solusi Penyelesaian Sengketa Bisnis di Luar Pengadilan," hlm. 312.

still attempted to communicate with the business entity through negotiation, but without success. The consumer did not take any other action because they were unaware that there were other actions that could be taken.

The government, businesses, and consumers are crucial elements in the implementation of consumer protection for the sake of justice in consumer protection law.³⁹ Consumer rights, according to UUPK, include receiving guidance and consumer education.⁴⁰ However, based on the consumer's statement during the interview conducted by the researcher, the consumer stated that they have never received any education about consumer protection.

Based on the statement, it proves that the low level of consumer education regarding consumer protection is the cause of consumer's unawareness about consumer protection law provisions.⁴¹ The consumer's lack of knowledge results in a low level of legal awareness regarding their rights as consumers. This becomes a significant factor that greatly influences the actions taken by consumers. Berdasarkan pernyataan tersebut membuktikan bahwa rendahnya tingkat pelaksanaan⁴²

b. Economic Factor

The economic factor significantly influences an individual's actions, including the consumer in this case. The consumer's decision not to file a lawsuit in court is motivated by the concern over the substantial costs involved to have their insurance claim paid. The complexity, lengthiness, and high expenses associated with dispute resolution in court lead the consumer to opt-out of litigation to resolve their dispute.⁴³

In essence, the choice of using alternative dispute resolution outside the court system is due to the factors of shorter processes and more affordable costs. A law is considered most effective when it can be pursued with reasonable expenses and swift procedures. However, it would be regrettable if an agreement to opt for mediation as a means to resolve a dispute is used as an excuse for non-compliance, as it cannot be enforced by compulsory execution due to the lack of enforceability.⁴⁴

c. Cultural Factor

The indifferent behavior of consumers has an impact on the formation of a culture of violating consumer rights, where society perceives violations of consumer rights by

³⁹ Nurul Fibrianti, "Penyelenggaraan Perlindungan Konsumen: Sinergi Negara, Pelaku Usaha Dan Konsumen," *Borobudur Law Review* 2, no. 2 (20 Desember 2020): hlm. 90, <https://doi.org/10.31603/burrev.3971>.

⁴⁰ "UU No. 8 Tahun 1999 tentang Perlindungan Konsumen."

⁴¹ Fajri Matahati Muhammadin, Rizky Wirastomo, dan Tata Wijayanta, "Hambatan Aksesibilitas Masyarakat Terhadap Hak Keadilan Perdata" 18 (2011): hlm. 179.

⁴² Amelia Rahmaniah, "Pentingnya Kesadaran Hukum Konsumen Akan Hak-Haknya," *Fakultas Syariah UIN Antasari Banjarmasin* (blog), 5 Mei 2023, <https://fs.uin-antasari.ac.id/pentingnya-kesadaran-hukum-konsumen-akan-hak-haknya/>.

⁴³ Widiarty, "The Legal Analysis of Consumer Protection Against The Circulation of Expired Food Products in Indonesia," hlm. 131.

⁴⁴ Mia Hadiati dan Mariske Myeke Tampi, "Menakar Justice for Peace dalam Penyelesaian Sengketa Konsumen Melalui Mediasi (Studi Keputusan BPSK No. Reg. 004/REG/BPSK-DKI/I/2016)," *Jurnal Hukum Lus Qua Iustum* 25, no. 1 (2018): hlm. 98.

businesses as something common.⁴⁵ The cultural norm of patience and a tendency to accept circumstances as they are still prevails to this day.⁴⁶ Furthermore, the avoidance of conflict, even when their rights as consumers are violated by producers or businesses actor, is deeply ingrained.⁴⁷ These factors influence the actions taken by consumers. Despite the efforts of the consumer's son to accompany them to the business's office, the consumer chooses to accept the situation and believes that if it is meant to be, they will receive what is rightfully theirs.

The consumer is reluctant to resolve their dispute in court. They choose to remain silent and not pursue the wrongdoings and mistakes of the business, even though it has caused them losses. They perceive it merely as a bad experience from an economic activity. The consumer decides not to go to court to file a lawsuit and allows the dispute to end on its own without any resolution. They believe that what has happened is a form of life's trial from God.⁴⁸

6. CONCLUSION

There was one action taken by the consumer towards the Settlement Agreement that the business did not fulfill, which was negotiating with the business in a family-oriented manner by contacting them through WhatsApp and Telegram. The actions that the consumer should have taken but did not are not registering the Settlement Agreement by filing a lawsuit in court to become an authentic instrument of peace. The consumer did not resolve the dispute through arbitration via BANI/BASYARNAS. Additionally, the consumer did not file a breach of contract claim regarding the Settlement Agreement resulting from mediation that the business did not fulfill. Meanwhile, there are three factors causing the consumer's actions towards the unfulfilled Settlement Agreement by the business. Firstly, the knowledge factor, which is the lack of consumer awareness leading to low legal consciousness. Secondly, the economic factor, as the consumer objected to the expenses incurred for dispute resolution. Thirdly, the cultural factor, which involves a culture of patience and resignation within the society when facing adverse circumstances.

REFERENCES

- “BPSK Kota Banjarmasin | Dinas Perdagangan Provinsi Kalimantan Selatan.” Diakses 2 Agustus 2022. <http://disdag.kalselprov.go.id/bpsk-kota-banjarmasin>.
- Caniago, Vero Arivani. “Arbitrase Sebagai Alternatif Solusi Penyelesaian Sengketa Bisnis di Luar Pengadilan.” *Jurnal Ilmiah Wahana Pendidikan* 8, no. 20 (24 Oktober 2022): 304–13. <https://doi.org/10.5281/zenodo.7242951>.
- Chumaida, Zahry Vandawati, dan Bambang Sugeng Ariadi. *Hak Konsumen Melalui Badan Penyelesaian Sengketa Konsumen Guna Meningkatkan Indeks Kepuasan Konsumen*. Surabaya: Jakad Media Publishing, 2021.

⁴⁵ Rahmaniah, “Pentingnya Kesadaran Hukum Konsumen Akan Hak-Haknya.”

⁴⁶ Maria, “Sengketa Konsumen, ke Mana Mesti Mengadu?,” diakses 26 Maret 2023, <http://disdag.ntbprov.go.id/index.php/25-pk/248-sengketa-konsumen-ke-mana-mesti-mengadu>.

⁴⁷ Widiarty, “The Legal Analysis of Consumer Protection Against The Circulation of Expired Food Products in Indonesia,” hlm. 131.

⁴⁸ Maria, “Sengketa Konsumen, ke Mana Mesti Mengadu?”

- Fibrianti, Nurul. "Penyelenggaraan Perlindungan Konsumen: Sinergi Negara, Pelaku Usaha Dan Konsumen." *Borobudur Law Review* 2, no. 2 (20 Desember 2020): 90–101. <https://doi.org/10.31603/burrev.3971>.
- Fikry, Ahmad Habib Al, dan Nurul Fibrianti. "Online Alternative Dispute Resolution for Consumer Dispute Settlement in the Digital World." *Indonesian Journal of Law and Policy Studies* 3, no. 1 (21 Juni 2022): 46–60. <https://doi.org/10.31000/ijlp.v3i1.6254>.
- Hadiati, Mia, dan Mariske Myeke Tampi. "Menakar Justice for Peace dalam Penyelesaian Sengketa Konsumen Melalui Mediasi (Studi Keputusan BPSK No. Reg. 004/REG/BPSK-DKI/I/2016)." *Jurnal Hukum Ius Qua Iustum* 25, no. 1 (2018): 92–114.
- Imaniyati, Neni Sri, dan Panji Adam Agus Putra. *Hukum Bisnis Dilengkapi dengan Kajian Hukum Bisnis Syariah*. Bandung: PT. Refika Aditama, 2017.
- Jauhani, Muhammad Afiful, Supianto Supianto, dan Tioma R. Hariandja. "Kepastian Hukum Penyelesaian Sengketa Medis Melalui Mediasi Di Luar Pengadilan." *WELFARE STATE Jurnal Hukum* 1, no. 1 (25 April 2022): 29–58. <https://doi.org/10.56013/welfarestate.v1i1.1470>.
- Mahkamah Agung RI. "Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 Tentang Prosedur Mediasi di Pengadilan." Diakses 26 Maret 2023. <https://jdih.mahkamahagung.go.id/legal-product/perma-nomor-1-tahun-2016/detail>.
- Manan, Abdul. *Hukum Ekonomi Syariah: Dalam Perspektif Kewenangan Peradilan Agama*. Jakarta: Prenadamedia Group, 2012.
- Maria. "Sengketa Konsumen, ke Mana Mesti Mengadu?" Diakses 26 Maret 2023. <http://disdag.ntbprov.go.id/index.php/25-pk/248-sengketa-konsumen-ke-mana-mesti-mengadu>.
- Maryanto. *Prosedur Penyelesaian Sengketa Konsumen Di Bpsk (Badan Penyelesaian Sengketa Konsumen)*. Jawa Tengah: Unissula Press, 2019.
- Maulida, Sri, M. Fahmi al-Amruzi, dan Ahmadi Hasan. "Urgensi Prinsip dalam Pengembangan Hukum di Bidang Mu'amalah, Ekonomi, dan Keuangan Syariah." *Al-Azhar Islamic Law Review* 2, no. 2 (2020).
- Muhammadin, Fajri Matahati, Rizky Wirastomo, dan Tata Wijayanta. "Hambatan Aksesibilitas Masyarakat Terhadap Hak Keadilan Perdata" 18 (2011): 164–86.
- Mulyana, Dedy. "Peningkatan Status Hukum Kesepakatan Perdamaian Oleh Mediator di Luar Pengadilan Menjadi Akta Perdamaian." *ADHAPER: Jurnal Hukum Acara Perdata* 8, no. 1 (19 Februari 2022): 19–38. <https://doi.org/10.36913/jhaper.v8i1.168>.
- Purwoko, A. Joko, R. Benny Riyanto, dan Bambang Eko Turisno. "Optimizing Of The Consumer Dispute Settlement Agency As A Non-Court Agency To Resolve The Consumer Dispute." *International Journal of Civil Engineering and Technology* 11, no. 2 (2020).
- Rahmaniah, Amelia. "Pentingnya Kesadaran Hukum Konsumen Akan Hak-Haknya." *Fakultas Syariah UIN Antasari Banjarmasin* (blog), 5 Mei 2023. <https://fs.uin-antasari.ac.id/pentingnya-kesadaran-hukum-konsumen-akan-hak-haknya/>.
- Suadi, Amran. *Arbitrase dan Alternatif Penyelesaian Sengketa Dalam Perkara Sengketa Ekonomi Syariah*. Jakarta: Kencana, 2022.
- . *Penyelesaian Sengketa Ekonomi Syariah Teori dan Praktik*. Jakarta: Kencana, 2017.
- Syam, Misnar, Ismansyah Ismansyah, Busyra Azheri, dan Muhammad Hasbi. "Consumer Protection Enforcement Law Characteristics on Civil Law Aspects in Indonesia."

- Linguistics and Culture Review* 5, no. S2 (13 Desember 2021): 1471–81.
<https://doi.org/10.21744/lingcure.v5nS2.1976>.
- “UU No. 8 Tahun 1999 tentang Perlindungan Konsumen.” Diakses 13 Agustus 2022.
<https://peraturan.bpk.go.id/Home/Details/45288/uu-no-8-tahun-1999>.
- Wahyuningsih, Sri. “Penyelesaian Sengketa Konsumen Melalui Badan Penyelesaian Sengketa Konsumen Menurut Hukum Positif (Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen) Dan Hukum Islam,” 14 Agustus 2018.
<https://dspace.uui.ac.id/handle/123456789/10305>.
- Widiarty, Wiwik Sri. “The Legal Analysis of Consumer Protection Against The Circulation of Expired Food Products in Indonesia.” *Int. J. Manag. Bus. Res.* 8, no. 3 (2018): 129–41.
- Winarta, Frans Hendra. *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional: Edisi Kedua*. Jakarta: Sinar Grafika, 2022.