

The Authority of the Consumer Dispute Settlement Agency in Supervising the Inclusion of Standard Clauses

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Abstract

The Consumer Dispute Settlement Agency is essential in regulating standard clauses in consumer contracts and adjudicating conflicts between consumers and businesses. This paper analyses BPSK's jurisdiction, efficacy, and obstacles in overseeing standard clauses, which are frequently formulated unilaterally by commercial entities and may prejudice consumers. This study employs a normative legal research methodology alongside Socio-Legal Research to examine the legislative framework regulating BPSK and the practical difficulties encountered in overseeing unfair standard clauses. Research reveals that BPSK encounters substantial challenges, such as inadequate resources, minimal consumer knowledge, ineffective enforcement mechanisms, and the intricacies of digital transactions. The agency is devoid of the authority to enforce direct sanctions, depending instead on mediation, conciliation, and arbitration. Consequently, numerous enterprises persist in incorporating inequitable clauses in contracts without encountering significant repercussions, thereby diminishing the overall efficacy of consumer protection initiatives. Moreover, the proliferation of e-commerce and digital transactions introduces new issues, as typical provisions in online agreements frequently exhibit complexity and lack transparency, thereby complicating customer scrutiny.

1. INTRODUCTION

Consumers have rights that must be protected in every transaction with business actors. One form of consumer protection is the supervision of the inclusion of standard clauses in agreements or contracts drafted by business actors (Becher, 2008; Budnitz, 1994). Standard clauses often contain provisions that are unilaterally favorable to business actors and disadvantage consumers, such as limitations on business liability, unilateral provisions on transaction cancellation, and exclusions of consumers' rights to legal recourse.

Law No. 8 of 1999 on Consumer Protection (UUPK) mandates that business actors ensure fairness and transparency in the inclusion of standard clauses (Larasati, 2023; Suryadinata et al., 2024). However, in practice, numerous violations persist due to weak oversight and limited public awareness of consumer rights. Consequently, the existence of the Consumer Dispute Settlement Agency (BPSK) plays a crucial role in overseeing and resolving disputes related to the inclusion of unfair standard clauses. Furthermore, the use of standard clauses in consumer agreements aims to establish uniformity in transactions. Nevertheless, in many cases, these clauses are unilaterally drafted by business actors without any negotiation with consumers. As a result, consumers often face disadvantages due to their weaker bargaining position in determining contractual terms. Common examples of standard clauses include exemptions from business liability, restrictions on consumers' rights to file lawsuits, and provisions that do not allow consumers to raise objections.

In this context, BPSK holds a critical role in ensuring fairness in contracts between business actors and consumers. One of its key authorities is supervising the inclusion of standard clauses to prevent violations of consumer rights by business actors. This oversight aims to ensure that contractual clauses comply with legal provisions and do not harm consumers. BPSK, established under UUPK, is responsible for handling disputes arising between consumers and business actors (Samad, 2022; Yuwono & Santiago, 2024a). Its primary functions include resolving consumer disputes through non-litigation mechanisms, monitoring the implementation of UUPK, and providing recommendations and sanctions against business actors who violate regulations concerning standard clauses.

In exercising its oversight functions, BPSK may receive complaints from consumers who feel disadvantaged, conduct investigations into contracts used by business actors, and impose administrative sanctions on violators. However, the effectiveness of this supervision remains a challenge due to resource limitations, low consumer awareness, and the increasing complexity of transactions driven by digitalization. Although UUPK provides a legal foundation for supervising standard clauses, several challenges persist in its implementation. These challenges include a lack of consumer education on their rights, insufficient coordination among relevant institutions, and difficulties in adapting to the evolving nature of digital transactions (Fista et al., 2023; Rizkia et al., 2024; Yusuf, 2025). The rise of e-commerce, for instance, has led to the increasing use of digital standard clauses, which are often non-transparent and difficult for consumers to comprehend.

This study aims to analyze BPSK's authority in supervising the inclusion of standard clauses, identify challenges in the implementation of this supervision, and provide recommendations to enhance consumer protection effectiveness. By gaining a deeper understanding of BPSK's role and authority, this research is expected to contribute to strengthening regulations and improving the fairness of standard clause oversight for consumers. The research problem formulation encompasses two main aspects: the effectiveness of BPSK Kota Mataram's supervision of standard clauses and the factors influencing the agency's performance. The analysis of supervisory effectiveness will provide insights into the extent of BPSK's role in enforcing regulations on standard clauses, while identifying influencing factors will help formulate strategic measures to enhance BPSK's oversight function in the future.

The inclusion of unfair standard clauses can be detrimental to consumers and undermine the principle of equality in transactions. Therefore, the supervision of standard clauses is a crucial aspect of consumer protection. As the competent authority, BPSK holds significant responsibility in ensuring that standard clauses are not misused by business actors. However, enhancing the effectiveness of this oversight requires synergy among various stakeholders, increased consumer awareness, and adaptation to digital transaction developments. This study aims to provide a deeper understanding of how to strengthen BPSK's role in protecting consumer rights.

2. RESEARCH METHOD

This study aims to assess the effectiveness of BPSK's authority in supervising the inclusion of standard clauses by employing a normative legal research approach combined with Socio-Legal Research. The normative legal analysis method is a legal research approach that constructs a normative system. In this study, the normative system refers to the analysis of principles related to the institutional authority of BPSK, which is closely linked to the legal norms established by statutory regulations.

To obtain legal facts regarding the validity of statutory provisions concerning BPSK's authority in supervising the inclusion of standard clauses, this study employs the Socio-

Legal Research method. This approach facilitates an understanding of the relationship between law and society, as law fundamentally originates from and operates within society (Ali, 2021; Syahrums, 2022).

This study adopts a Statute Approach, which involves examining all relevant statutory regulations related to the legal issues under investigation. The primary legal instruments analyzed include Law No. 8 of 1999 on Consumer Protection (UUPK), BPSK Procedural Law, specifically Ministerial Decree No. 350/MPP/Kep/2001 on the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency, and other relevant legal provisions. The study utilizes both primary and secondary legal materials. Primary legal materials consist of binding legal norms, such as statutory regulations, which form the basis for legal analysis. Secondary legal materials include legal literature that supports the interpretation and understanding of primary legal materials. The primary data in this study is obtained through interviews, with key informants including the Chairperson and Vice Chairperson of BPSK, as well as business actors, to gather relevant information. Meanwhile, secondary data consists of pre-existing legal materials that are not constrained by time or place. These include primary legal sources (binding statutory regulations) and secondary legal sources, such as books and academic literature discussing BPSK's authority. The secondary legal materials serve as supplementary references that assist in analyzing and interpreting the primary legal sources.

3. RESULTS AND DISCUSSION

3.1. Consumer Dispute Resolution Agency (Badan Penyelesaian Sengketa Konsumen - BPSK)

The Consumer Dispute Settlement Agency was created by Law No. 8 of 1999 on Consumer Protection (UUPK) to safeguard consumer rights and adjudicate conflicts between consumers and businesses. The principal purpose is to oversee and govern corporate operations, including with the incorporation of standard terms in consumer contracts. Standard clauses are pre-formulated contractual terms unilaterally established by business entities, affording consumers minimal to no possibility for discussion (Harjono & Panjaitan, 2021). These clauses frequently include inequitable provisions that unduly benefit commercial entities, such as capping business liability, permitting unilateral contract terminations, or constraining consumers' rights to legal redress. In light of the risk of consumer exploitation, BPSK functions as a regulatory authority to guarantee that contractual provisions adhere to the principles of equity and legality, thereby preventing businesses from misusing their power.

BPSK possesses the authority to receive grievances, investigate any infractions, and supervise the application of consumer protection legislation pertaining to standard provisions. Upon receiving a complaint from a consumer about an inequitable contractual

provision, BPSK does an evaluation to ascertain if the clause contravenes consumer protection legislation. Upon identifying a violation, BPSK have the authority to advise the business to amend or eliminate the illegal language to guarantee adherence to consumer protection legislation. Its jurisdiction is predominantly supervisory and conciliatory, indicating that BPSK has the capacity to impose direct punishments but can arbitrate conflicts, offer legal opinions, and encourage resolutions between the parties. BPSK utilises three principal strategies for conflict resolution (Mahfudzi et al., 2024):

- 1) Mediation — A voluntary method wherein BPSK facilitates direct dialogue between the consumer and the business entity, steering them towards a mutually acceptable conclusion.
- 2) Conciliation - A process in which BPSK serves as an impartial intermediary, facilitating both parties in achieving an equitable resolution without enforcing a binding determination.
- 3) Arbitration - A procedure wherein BPSK evaluates the case and renders a binding conclusion grounded in the legal framework and evidence submitted. In contrast to mediation and conciliation, arbitration culminates in a definitive and enforceable ruling that both parties are obligated to follow.

BPSK is essential for maintaining equity in consumer contracts, however its jurisdiction is confined to dispute settlement and oversight. It lacks the authority to impose sanctions, penalise enterprises, or ensure compliance through legal means. If a business entity declines to adhere to BPSK's suggestions, the consumer may have to escalate the issue to a formal judicial authority, such as the court system or an appropriate governmental regulatory agency, for additional legal action (Azijah et al., 2023; Hakim et al., 2024).

3.2. Obstacles in the Implementation of BPSK.

Notwithstanding its significance in consumer protection, BPSK encounters numerous obstacles in executing its responsibilities efficiently. A primary limitation is the absence of direct enforcement authority, allowing enterprises to disregard BPSK's suggestions without encountering immediate legal repercussions. Moreover, public awareness of BPSK's function is minimal, resulting in the underutilisation of its services, as numerous consumers are oblivious to their rights or the avenues for obtaining redress. Moreover, resource limitations, including insufficient manpower, finance, and infrastructure, may impede BPSK's capacity to thoroughly oversee consumer agreements and investigate violations efficiently (Kurniawan, 2012).

A notable difficulty emerges from the swift expansion of digital transactions and e-commerce platforms, where contractual obligations are frequently articulated in intricate and opaque formats. Numerous internet enterprises incorporate typical provisions in digital contracts, frequently integrated into lengthy and intricate terms of service agreements that consumers rarely read in their entirety. Consequently, inequitable

contractual provisions may remain undetected, complicating BPSK's ability to oversee and control the incorporation of detrimental conditions in digital consumer contracts. Confronting these difficulties necessitates improved consumer education, more collaboration with legal authorities, and more robust regulatory frameworks to strengthen the enforcement of consumer protection legislation.

BPSK is an essential entity in protecting consumer rights, especially in overseeing the use of standard clauses in commercial agreements. Its function in mediating, conciliating, and arbitrating disputes offers consumers accessible legal remedies without the necessity of expensive and protracted judicial processes. To augment its efficacy, BPSK necessitates more legal authority, heightened public awareness, and improved resources to more effectively supervise company activities and safeguard consumers from inequitable contractual terms. Moreover, adjusting to the changing dynamics of digital transactions is crucial for maintaining effective consumer protection in a progressively digital economy.

3.3. Factors Influencing the Performance of BPSK in Overseeing Standard Clauses

The effectiveness of the Consumer Dispute Settlement Agency (Badan Penyelesaian Sengketa Konsumen – BPSK) in overseeing standard clauses in consumer contracts is influenced by multiple factors. These challenges impact the agency's ability to enforce consumer protection laws effectively, ensure fair contractual terms, and resolve disputes efficiently (Yuwono & Saptomo, 2024a). The key factors affecting BPSK's performance include:

1) Limited Resources and Institutional Capacity

One of the most significant challenges faced by BPSK is the lack of adequate human resources and financial support. The agency often operates with a limited number of personnel, which restricts its ability to conduct investigations, review contracts, handle consumer complaints, and monitor business compliance effectively. Additionally, budget constraints limit BPSK's ability to conduct outreach programs, improve legal enforcement mechanisms, and expand its operational capacity. Without sufficient resources, BPSK cannot perform its supervisory and dispute resolution functions optimally, leading to delays in case handling, inefficiencies in monitoring business practices, and inadequate enforcement of consumer protection regulations.

2) Low Consumer Awareness and Engagement

A crucial factor that affects BPSK's effectiveness is the general lack of awareness among consumers regarding their rights under Law No. 8 of 1999 on Consumer Protection (UUPK). Many consumers are unaware of the existence of BPSK, the role it plays, or the procedures for filing complaints against unfair standard clauses. As a result, only a small number of consumers report violations, which makes it

difficult for BPSK to detect widespread abuses and enforce corrective measures. Furthermore, some consumers may lack the legal knowledge required to identify unfair contractual terms, especially in complex agreements, preventing them from seeking legal recourse. Increasing public awareness through education campaigns, workshops, and accessible complaint mechanisms is essential to improving consumer engagement and strengthening BPSK's role in contract oversight (Pratiwi, n.d.).

3) Limited Authority and Weak Enforcement Mechanisms

BPSK's authority is primarily focused on mediation, conciliation, and arbitration, which means that it does not have the power to impose direct sanctions on business actors who include unfair standard clauses in consumer agreements. Instead, BPSK must coordinate with executive institutions, such as government regulatory bodies and law enforcement agencies, to take further action against violators. However, this coordination is often ineffective due to bureaucratic inefficiencies, lack of responsiveness from other institutions, and weak inter-agency collaboration. The inability to impose legally binding penalties on non-compliant businesses reduces the deterrent effect of BPSK's rulings, making it easier for businesses to ignore its recommendations without facing serious consequences. Strengthening BPSK's legal authority and enhancing coordination with enforcement agencies would improve its ability to regulate business practices more effectively.

4) The Rise of Digital Transactions and E-Commerce Challenges

The rapid expansion of digital commerce has introduced new complexities in contractual agreements, making it increasingly difficult for BPSK to monitor and regulate the use of unfair standard clauses in online transactions. Unlike traditional contracts, digital agreements are often presented as lengthy, pre-formulated "terms and conditions" that consumers must accept in order to complete a transaction. These agreements are frequently written in complex legal language, making it difficult for consumers to understand the terms they are agreeing to. Additionally, many digital businesses operate across multiple jurisdictions, complicating the enforcement of consumer protection laws at the national level. Furthermore, the automated nature of online contracts limits consumers' ability to negotiate terms, making them more vulnerable to unfair clauses such as waivers of liability, restrictions on refunds, or limitations on legal recourse. Given these challenges, BPSK must develop new regulatory strategies, such as collaborating with digital platforms, leveraging technology for contract monitoring, and working with international consumer protection agencies, to address unfair practices in the digital marketplace.

5) Bureaucratic and Legal Barriers in Case Resolution

BPSK operates within the framework of legal and bureaucratic processes that can sometimes slow down its ability to resolve consumer disputes efficiently. For

example, the requirement for formal complaint procedures, documentation, and legal reviews can create delays, discouraging consumers from seeking redress. Additionally, business actors may exploit legal loopholes to evade accountability or challenge BPSK's rulings, further complicating dispute resolution. To improve efficiency, BPSK needs more streamlined case-handling procedures, better digital complaint systems, and stronger mechanisms for enforcing its decisions.

6) Lack of Integration with Other Consumer Protection Agencies

Consumer protection involves multiple stakeholders, including government institutions, legal bodies, industry regulators, and non-governmental organizations (NGOs). However, BPSK's role is not always well-integrated with other consumer protection initiatives, leading to fragmented enforcement and oversight. Strengthening collaboration between BPSK and related agencies, such as the Ministry of Trade, consumer advocacy groups, and the judiciary, would enhance the effectiveness of consumer rights protection by ensuring better information sharing, coordinated enforcement efforts, and unified legal strategies.

The effectiveness of BPSK in overseeing standard clauses and protecting consumer rights is significantly influenced by resource limitations, low consumer awareness, weak enforcement authority, the complexities of digital transactions, and bureaucratic inefficiencies. Addressing these challenges requires a multi-faceted approach, including increased funding, enhanced legal authority, stronger inter-agency coordination, and the adoption of digital tools for contract monitoring. Additionally, public education campaigns and more accessible complaint mechanisms can help empower consumers to actively report unfair business practices. As the marketplace continues to evolve, BPSK must adapt its regulatory strategies to ensure that consumer protection remains robust and effective in both traditional and digital commerce environments.

3.4. Implications of BPSK's Limitations on Consumer Protection

The Consumer Dispute Settlement Agency (Badan Penyelesaian Sengketa Konsumen – BPSK) is essential for safeguarding consumer rights and promoting equitable corporate practices in Indonesia (Yuwono & Santiago, 2024b). Nonetheless, its efficacy is considerably diminished by its inability to enforce direct punishment on enterprises that contravene consumer protection statutes. BPSK depends on providing suggestions and enabling dispute resolution via mediation, conciliation, and arbitration, as it lacks the authority to impose sanctions. This constraint leads to inadequate compliance among commercial entities, since numerous parties persist in incorporating inequitable standard terms unjust consumer contracts, aware that they will not encounter significant repercussions. These clauses frequently constrain consumer rights, diminish business

accountability, and permit unilateral alterations by enterprises, resulting in an inequitable relationship between consumers and business entities. Moreover, BPSK's constrained enforcement authority diminishes the overall efficacy of consumer protection measures, as its function is predominantly reactive rather than proactive (Harahap & Sulaiman, 2023; Maulidiana et al., 2024).

Due to widespread consumer ignorance on their rights and insufficient comprehension of legal contract terms, the volume of registered complaints remains minimal, permitting numerous violations to stay unresolved. Despite recorded examples, corporations may opt to disregard BPSK's advice or exploit legal loopholes to persist in utilising inequitable contract provisions, so further undermining the institution's reputation (Yuwono & Saptomo, 2024b). Over time, this scenario may result in a deterioration of public confidence in consumer dispute resolution systems, as consumers can perceive that their complaints are insufficiently addressed and that unjust company activities continue without repercussions. To bolster consumer protection, it is imperative to augment BPSK's regulatory structure, confer enforcement authority upon it, and promote collaboration with executive institutions to guarantee compliance with equitable contract norms by firms. In the absence of these enhancements, BPSK's effectiveness in consumer protection would remain constrained, and customers will persist in encountering difficulties in defending their rights.

CONCLUSION

The Consumer Dispute Settlement Agency (BPSK) is essential in overseeing the incorporation of standard clauses in consumer contracts and adjudicating conflicts between consumers and businesses. Nonetheless, despite its statutory obligation under Law No. 8 of 1999 on Consumer Protection (UUPK), BPSK encounters considerable obstacles that impede its efficacy. The agency's inability to enforce direct fines undermines compliance among business entities, allowing them to incorporate unjust standard conditions in contracts without apprehension of legal repercussions. Moreover, constrained resources, insufficient consumer knowledge, inadequate enforcement mechanisms, and the increasing intricacy of digital transactions further diminish BPSK's capacity to perform its functions successfully.

The efficacy of BPSK in consumer protection is constrained without enhanced regulatory authority and better coordination with enforcement agencies. Public confidence in consumer dispute resolution processes may diminish if infractions continue without robust punishment. To augment the efficacy of BPSK, policy reforms are requisite, encompassing augmented finance, fortified legal authority, improved inter-agency

cooperation, and the implementation of digital oversight instruments. Moreover, prioritising consumer education campaigns is essential to enable individuals to identify and report unjust company practices. As digital commerce progresses, BPSK must modify its regulatory approaches to guarantee strong consumer protection in both conventional and digital marketplaces. Enhancing BPSK's function is crucial for promoting equity, transparency, and accountability in commercial transactions, hence protecting consumer rights in Indonesia.

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