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Application of the Proportionality Principle in Consumer Dispute Resolution through the Consumer Dispute Settlement Body (BPSK)

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Abstract: The Principle of Proportionality in Consumer Dispute Resolution through the Consumer Dispute Settlement Body (BPSK) must be considered to ensure that neither party is disadvantaged. Based on problem identification, the purpose of this research is to analyze the application of the proportionality principle in resolving consumer disputes by BPSK through a conflict resolution model that is fair, honest, and capable. The research method used is applied research, a type of research whose results can be directly applied to solve the current problem, using a normative applied approach. The data used consists of secondary data collected through literature study techniques and analyzed qualitatively. The research results show that the application of the principle of proportionality implies the existence of balance and refers to the exchange of rights and obligations in all legal relationships, which does not always achieve the same mathematical balance. Therefore, differences in outcomes are considered fair and acceptable if the exchange of rights and obligations is proportional. The suggestion in this study is the need for specific regulations regarding consumer dispute resolution through the Consumer Dispute Settlement Body (BPSK) via a one-stop service.

Keyword: Principle of Proportionality, Consumer Dispute Resolution, Consumer Dispute Resolution Agency.

INTRODUCTION

The principle of proportionality is a principle that requires both parties to adhere to the agreement based on the principle of proportionality (Pane, 2022). The word "proportion" comes from the Latin "proportio," meaning "comparison" or "balance." Meanwhile, "proportional" means "in accordance with proportion," which implies being commensurate, balanced, or equal. To identify the features and meaning of the terms "balance" and "proportionality," several relevant dictionaries were examined and researched. These resources help clarify that "balance" refers to an even distribution of weight or value, while "proportionality" relates to maintaining a fair ratio or relationship between elements in any

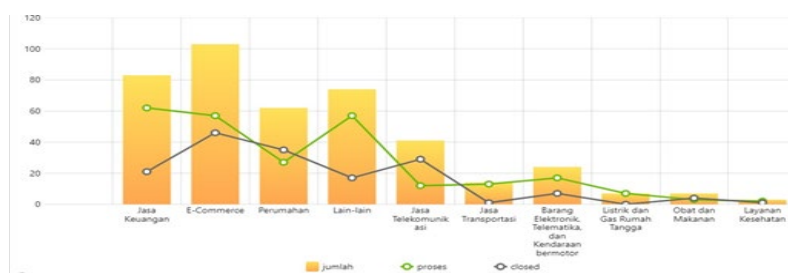
agreement or situation (Mifta, 2024). Proportionality refers to a state that aligns with proportion, balance, or equivalence. On the other hand, "balance" occurs when all forces and tendencies affecting an object or system are offset or counteracted by forces or tendencies of equal strength but in the opposite direction (Dewi et al., 2024).

A consumer is an individual who uses goods or services for personal consumption, also referred to as the final consumer. In their consumer purchasing decisions, individuals employ a process of integration when faced with choosing between two or more alternative behaviors (Renaningtyas et al., 2022). Businesses striving for sustained growth encounter various challenges and threats as a result of the rapid expansion of the business landscape (V. K. Muzammil et al., 2024). According to Consumer Protection Law No. 9 of 1999, a consumer is defined as any individual who uses goods and/or services within the community. This usage is not for the purpose of resale, but rather for the benefit of themselves, their family, others, or other living beings.

The problem formulation contains article questions that must be explained in the discussion and answered in the conclusion.

Consumer behavior can be divided into two categories: rational and irrational behavior. Rational behavior involves buyers making purchasing decisions based on factors such as urgent needs, basic necessities, and the product's overall utility. On the other hand, irrational behavior refers to buyers who prioritize discounts or advertisements over their actual needs or the usefulness of the product (Herawati & Fasa, 2022). One factor that leads to conflicts with businesses is the consumer's interest in establishing relationships based on "consumptive decisions," such as lifestyle choices and the desire to fulfill personal wants.

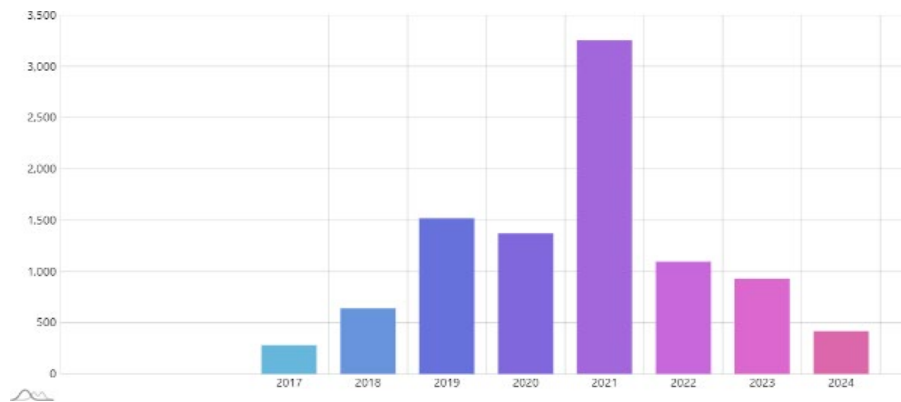
Punishment, or policy, forms the foundation of the system. The term "policy" is derived from the English word "politics" and the Dutch word "politiek". Policy generally refers to the fundamental principles that govern the government, including law enforcement agencies, in managing, regulating, or addressing public affairs, societal issues, and the establishment and implementation of regulations. The primary aim of this policy is to offer guidance (Herawati & Fasa, 2022). In numerous industries, service quality is a pivotal element of successful business operations. It has been observed that a considerable number of businesses encounter failure due to their inability to effectively cater to their customers. From the customers' perspective, service quality plays a significant role in their decision-making process when considering future purchases, as it profoundly impacts their perception of the products or services being offered (K. Muzammil et al., 2024). A policy is a strategic plan or set of instructions devised by individuals or organizations to effectively address problems or accomplish specific objectives. These policies are typically formulated through a comprehensive process of rigorous analysis and careful deliberation. The primary objective of a policy is to provide assistance and guidance in making decisions and shaping behaviors in specific circumstances, regardless of whether it pertains to the government, an organization, or other institutions. Depending on the context and requirements, policies can be formalized in written form or informally established.



Source : bpkn.go.id

Figure 1. BPKN Consumer Complaint Status as of August 21, 2024

Based on data from Figure 1, the consumer complaint status reported to the National Consumer Protection Agency (BPKN) as of August 21, 2024, reveals a significant prevalence of consumer disputes in Indonesia. According to BPKN's data, the total number of consumer complaints recorded is 418. These complaints encompass various categories, with E-Commerce receiving the highest number of complaints at 103, and Healthcare Services having the lowest, with only 3 complaints.



Source: bpkn.go.id

Figure 2. Complaint Graph 2017 - 2024

Based on the data presented in Figure 2, the Complaint Graph for the period of 2017-2024 illustrates that a total of 9,509 consumer complaints have been received from 2020 until August 21, 2024. Since the enactment of Law No. 8 of 1999 on Consumer Protection (UUPK) on April 20, 1999, policymakers have emphasized that the UUPK does not serve as either the starting point or the endpoint of the laws governing consumer protection (Kristiyanti, 2022). With the goal of ensuring legal certainty and safeguarding common interests, the state remains committed to providing legal protection and ensuring that the entire community feels secure. Legal protection is extended to all segments of society. Consumers become part of society (Fauzi & Koto, 2022a). Consumer protection is founded on the fundamental principles of benefits, fairness, balance, security, and consumer safety.

According to Article 19 of Law No. 8 of 1999 on Consumer Protection, consumers are required to lodge a compensation claim with the business entity within seven (7) days from the date of transaction if they suffer losses as a result of damage, pollution, or the utilization of goods and/or services produced or traded by said entity. The concept of protection generally entails safeguarding valuable items or commodities from detrimental factors. Additionally, it involves offering assistance to individuals who are more susceptible. Each Indonesian citizen is entitled to legal protection as per the provisions of the 1945 Constitution of the Republic of Indonesia. As a result, every law must consistently provide legal protection to all individuals and reflect the public's pursuit of justice and the development of legal standards (Fauzi & Koto, 2022b). BPKN suggests that if an agreement is reached between the business and the consumer, the complaint is considered resolved. If no agreement is reached, BPKN recommends that the dispute be forwarded to the Consumer Dispute Settlement Body (BPSK) or the court. A consumer is a person who uses goods or services for personal consumption, also known as the final consumer.

Proportionality fundamentally means alignment with proportion, which implies something commensurate and balanced. Meanwhile, "balance" refers to a state where everything is in equilibrium (balanced, proportionate, or equivalent). In physics, "balance" refers to a condition where existing forces or tendencies neutralize or counteract each other with equal magnitude but in opposite directions (Sholeh et al., 2024). Consumer dispute resolution outside the court

is designed to reach an agreement regarding the nature and extent of compensation, as well as the specific measures to prevent the recurrence or repetition of consumer losses (as outlined in Article 47 of Law No. 8 of 1999 on Consumer Protection). Consequently, non-judicial methods for resolving civil disputes have gained prominence. The Consumer Dispute Settlement Board (BPSK) is envisioned to serve as the primary platform for resolving conflicts between consumers and businesses, employing informed mediation techniques. The objective is to employ alternative dispute resolution frameworks that yield equitable, just, and efficient results.

Consumer protection in Indonesia often faces challenges. By applying the principle of proportionality, dispute resolution is hoped to be balanced according to the proportion of obligations between businesses and consumers. This way, the rights received by each disputing party are perceived as fair, honest, and capable. One effort to resolve consumer disputes involves mediation, a form of social solution for addressing social conflicts within the community. The fact that court-based conflict resolution is time-consuming and costly highlights the need for a mediation-focused approach. This approach emphasizes the substance of the issues, adopting a holistic perspective to resolve conflicts comprehensively. This research is vital for scientific study because the consumer dispute resolution institutions established by the government, such as BPSK, implement the principle of proportionality as a strategy for resolving consumer disputes. This approach addresses existing disputes and aims to educate consumer behavior to be more rational regarding the needs for goods and services. The strategy used by BPSK is expected to be a suitable step towards enhancing consumer intelligence in business transactions, thereby reducing the number of environmental disputes. The research addresses the issues related to the application of the principle of proportionality in consumer dispute resolution by BPSK. The objective of this study is to examine the application of the proportionality principle in resolving consumer disputes by BPSK, with a specific emphasis on an equitable, transparent, and effective conflict resolution model.

METHOD

The research method used is applied research, a type of research whose results can be directly applied to solve current problems. The data sources for this normative research include secondary data obtained from bibliographic materials. The method used is applied research, which produces results that can be directly applied to solve current problems. The data sources for this normative research include secondary data obtained from bibliographic materials, covering primary legal materials, secondary legal materials, and tertiary legal materials (Suyanto, 2023). The research is being conducted at the Consumer Dispute Settlement Body (BPSK) of Central Lampung to understand consumer dispute resolution through non-litigation channels clearly. BPSK Central Lampung is being used as a sample and asked to participate as a partner in this study. The aim is to systematically describe the facts and characteristics of the object, as well as accurately study the frequency of the issues. Primary data sources include interviews and observations. The analysis being used is qualitative, involving descriptive analysis of the data, reflecting what is stated by the research subjects both in writing and verbally, as well as their actual behavior.

The steps in the applied research method for this study can be outlined as follows:

1. **Problem Identification:** Identify the root causes of issues in the consumer dispute resolution process through BPSK.
2. **Information and Literature Collection:** Conduct a comprehensive literature review related to BPSK's functions and authority and gather relevant information related to the identified research problems. This process helps the researcher understand the context, theories, principles of proportionality, and previous findings related to the study.

3. Data Collection and Analysis: Collect and analyze data and apply the research findings to consumer dispute resolution through BPSK.
4. Reporting and Dissemination: Prepare a research report covering all study aspects, from background to results and conclusions. This report can then be disseminated to relevant stakeholders, such as the academic community, practitioners, BPSK, or policymakers.

RESULTS AND DISCUSSION

Consumer

A consumer is an individual who uses goods or services for personal consumption, also known as the end consumer. According to Law No. 9 of 1999 on Consumer Protection, a consumer is defined as any individual who uses goods and services available in society, whether for their benefit, their family, others, or other living beings and not for trading purposes. Law No. 8 of 1999 on Consumer Protection was signed on April 20, 1999, and became effective one year after its promulgation. One of the mandates of Law No. 8 of 1999 on Consumer Protection (UUPK) is the establishment of consumer dispute resolution bodies outside the court system by the government in every district or city. The law, enacted on April 20, 1999, and effective one year after its promulgation, requires the government to form consumer dispute resolution bodies outside the court system in each district or city. The Consumer Dispute Settlement Body (BPSK) was established to carry out the mandate of Article 53 of the Consumer Protection Law (UUPK). The research problem formulation involves the norms and guidelines outlined in Law No. 8 of 1999 on Consumer Protection regarding BPSK. The problem-solving approach is based on the "law in action," which entails BPSK's actions in resolving consumer disputes using strategies grounded in field practices and under legal principles established by the law. In practice, the decree issued by the Minister of Industry and Trade of the Republic of Indonesia has yet to be fully implemented for various reasons, one of which is the different interpretations of the decree. To ensure that all BPSK members have a consistent understanding, the BPSK of Lampung Province has compiled guidelines from the Directorate of Consumer Empowerment, the Directorate General of Consumer Protection and Trade Order, and other sources. These guidelines encompass consumer dispute resolution requirements, procedures, and technical aspects.

Principle of Proportionality

The term "proportion" comes from the word "proportion," which means "comparison" or "balancing," and "proportional," which means "following proportion," comparable, balanced, or equitable. To understand the meanings of the terms "balance" and "proportionality," various dictionaries have been reviewed and researched (Bagenda & Carbonilla, 2022). The principle of proportionality is used in contract drafting to consider the binding force of a contract concerning the nature and scope of the rights and obligations contained within it through interpretation and interrelated and autonomous factors. This relationship forms part of exchanging rights and obligations between parties and must be conducted proportionally (Subekti et al., 2020). The Consumer Protection Law was intentionally created for several reasons. One is that the existing legal provisions protecting consumer interests in Indonesia need to be revised. Therefore, this law is necessary to balance the interests of consumers and businesses to support healthy economic growth (Rizkia & Rahmawati, 2021). The principle of proportionality states that actions or policies must be commensurate with the objectives they aim to achieve. In law and administration, this principle requires that every action or decision be proportionate to the benefits gained and the effects produced, ensuring that the actions taken are neither excessive nor inadequate in relation to their goals.

Consumer Disputes

According to Article 19 of Law No. 8 of 1999 on Consumer Protection, consumers must return to the business within 7 (seven) days after the transaction date if they feel harmed due to damage, pollution, or consumption of goods and services produced or traded by the company. The existence of a consumer dispute resolution mechanism is a favorable policy for empowering the consumer system. The Consumer Dispute Settlement Body (BPSK) was established to protect consumers and businesses through a consumer protection system that combines legal certainty and transparency. BPSK aims to ensure equal justice, especially for consumers who feel aggrieved by businesses (Chumaida & SH, 2021). Under the Consumer Protection Law (UUPK), the Consumer Dispute Settlement Body (BPSK) is created by the government to handle and resolve disputes between businesses and consumers. However, it is separate from the judicial system. The primary purpose of BPSK is to address disputes between consumers and businesses. Therefore, consumers can choose to resolve their disputes at BPSK (Irawan et al., 2021). The ongoing global competition underscores the importance of legal protection for consumers. Given the competitive market and the vast array of products and services, consumers often find themselves vulnerable, making legal protection essential. The state should offer legal safeguards to consumers.

Consumer Dispute Resolution Agency (BPSK)

Minister of Trade Regulation No. 72 of 2020 establishes the Consumer Dispute Settlement Body (BPSK). According to Article 4(1), the BPSK is formed based on a Governor's Decree within the provincial jurisdiction (Putri & Masnun, 2021). This organization aims to facilitate the resolution of disputes between consumers and businesses. The establishment of this body aligns with Article 4, Paragraph 2 of Law No. 48 of 2009 concerning Judicial Authority. Its main objective is to offer consumers accessible and cost-effective mechanisms to address their concerns (Sitepu & Muhamad, 2021). The organization created to handle and resolve consumer and business disputes is the Consumer Dispute Settlement Body (BPSK). The Consumer Dispute Settlement Body (BPSK) is an organization created to handle and resolve consumer and business disputes. The BPSK serves as a mediator and arbitrator in resolving issues stemming from consumer relationships, including disagreements about goods or services that fail to meet standards or agreements. The BPSK is tasked with safeguarding consumer rights and ensuring businesses adhere to consumer protection regulations.

Application of the Principle of Proportionality in Resolving Consumer Disputes Through the Consumer Dispute Resolution Agency (BPSK)

The novelty in this research lies in applying the principle of proportionality, which encompasses the concept of balance. Proportionality refers to the exchange of rights and obligations in all legal relationships, which does not consistently achieve the same mathematical balance. Therefore, outcome differences are considered fair and acceptable if the exchange of rights and obligations is proportional. Using the principle of proportionality in decision-making reflects applying the principle of justice. In the context of consumer dispute resolution by BPSK, the final decisions executed provide justice for the parties involved through a non-litigation pathway.

Together with the team, a clear understanding of consumer dispute resolution through non-litigation channels, specifically with the Consumer Dispute Settlement Body (BPSK) Lampung Tengah as a sample, was sought, and the team requested their willingness to be a partner in this research. The team conducted a literature review and subsequently determined the type of research as applied research, which produces results that can be directly applied to solve current problems. The aim is to systematically describe the facts, characteristics of the object, and the frequency of the studied phenomena. The data type used includes a literature study sourced

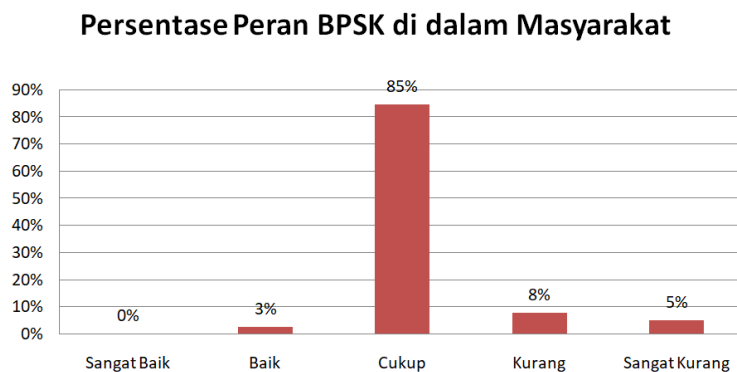
from primary, secondary, and tertiary legal materials, while primary data is sourced from interviews and observations. The analysis used is qualitative, a research method that produces descriptive data.



Source: Data processed by the author based on questionnaire results on the performance of Central Lampung BPSK

Figure 3. Understanding of BPSK Members Regarding the Authorities and Duties of BPSK Central Lampung Regency

Based on Figure 3 regarding the Understanding of BPSK Members on the Authority and Duties of BPSK, the results show that 100% of BPSK members understand the authority and duties of BPSK. In this regard, the resolution of consumer disputes through BPSK is essentially left to the parties' discretion, whether it is resolved through conciliation, mediation, or arbitration. The procedures for resolving consumer disputes through the Consumer Dispute Settlement Body (BPSK) are regulated by the Decree of the Minister of Industry and Trade (Menperin) No. 350/MPP/Kep/12/2001. This decree was established on December 10, 2001. As stated in Law No. 8 of 1999 concerning Consumer Protection (UUPK), the government established the Consumer Dispute Settlement Body (BPSK). It is responsible for handling and resolving disputes between consumers and businesses. This organization is created to assist consumers and businesses in dispute resolution. Once consumers and businesses reach an agreement on the method of dispute resolution, the BPSK council is required to resolve the consumer dispute, and the disputing parties must adhere to the resolution. This study provides an overview of how understanding BPSK members regarding their authority and duties can be the key to resolving disputes, especially when the disputing parties are in an unequal position.



Source: Data processed by the author based on the results of random quiseners and respondents, regional consumers Central Lampung

Figure 4. The Role of BPSK in Society

Several consumer cases resolved by BPSK Lampung ended with mediation, as shown in the table below:

No.	Registration Number And Date Of Complaint Receipt	Name And Address Of The Consumer	Name And Address Of The Business Actor	Amount Of Loss	Case Summary
1	01/BPSK/LPG/07/2023 July 17 th 2023	Initial	PT.PLN Tanjung Karang	37.000.000	A PLN consumer received an inflated bill due to a high meter reading, and the case was resolved through mediation with P2TL
2	02/LPK/BPSK;LPG/IX/2023 September 13 th 2023	Initial	Kimia Farma Pharmacy	10.000.000	A BPJS PRB patient did not receive the routine medication they were supposed to (mediation and resolved).

Source: Data processed by the author based on the results of random quiseners and respondents, regional consumers Central Lampung

Table 1. Consumer cases resolved by BPSK Lampung ended with mediation

Based on Figure 1.7, which shows the Role of BPSK in Society, 3% of respondents rated it as good, 85% as reasonably good, 8% as poor, and 5% as very poor. In this context, the researcher posed several questions to the public, such as their relationship with BPSK, their knowledge of BPSK's performance, and their understanding of consumer rights and obligations.

Everyone has engaged in the role of a consumer, fulfilling their needs by purchasing goods and services. However, only a select few transition into the position of business owners. Consequently, consumers must be equipped to confront a myriad of challenges that may arise, including business fraud and deception. To this end, they require legal safeguards and assurances from the state (Susanti, 2021). The BPSK possesses the jurisdiction to scrutinize the accuracy of reports and statements presented by disputing parties. This evaluation plays a pivotal role in determining the subsequent course of action, whether it be pursuing amicable resolutions or resorting to alternative methods (Putra et al., 2022). In addition to possessing the jurisdiction to settle disputes between consumers and businesses, the legislation also confers executive authority to enforce the prohibition of unilaterally formulated standard clauses created by businesses and incorporated into their documents or agreements (Handayani, 2020). Law No. 8 of 1999 on Consumer Protection (UUPK) aims to create a healthy economy by providing balanced protection for the interests of consumers and businesses, considering the lack of legal protection available for consumers in Indonesia. Similarly, due to the differing interests between businesses and consumers, businesses tend to use closed resolution methods in cases of product complaints. The initial process of dispute resolution is through litigation in court. Subsequently, this method has evolved into an out-of-court dispute resolution process. Typically, litigation results in adversarial agreements that cannot effectively achieve mutual interests (Sihombing, 2023). The critical role of the Consumer Dispute Settlement Body

(BPSK) in Lampung Tengah, as in other regions in Indonesia, is to protect consumer rights and resolve disputes between consumers and businesses. However, the public often remains unaware of BPSK's crucial role.

CONCLUSION

To ensure a fair and balanced consumer dispute resolution process, the Consumer Dispute Settlement Body (BPSK) applies the principle of proportionality. Because of this principle, decisions must consider the proportion between rights and obligations and how the decision will impact all parties involved. BPSK is expected to provide fair resolutions in line with social justice principles through proportionality, which involves careful case assessment, compliance with legal regulations, and efforts to avoid unbalanced decisions. This fundamental method improves decision quality and increases the trust of businesses and consumers in the dispute resolution system. However, various types of disputes, differences in the interpretation of proportionality, and the need to enhance BPSK's capacity to assess each case thoroughly are some challenges faced in applying the principle of proportionality. BPSK must provide adequate training and resources to its members to address these issues and continually improve its standards and procedures. Applying the principle of proportionality in BPSK is a crucial step towards fairer and more effective consumer dispute resolution. By consistently applying this principle, BPSK can make better decisions, provide better consumer protection, and uphold the integrity of the dispute resolution system..

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