

**LEGAL CERTAINTY OF REAL EXECUTION OF THE
DECISION OF THE CONSUMER DISPUTE SETTLEMENT
AGENCY NUMBER 09/PTS/BPSK-TANGSEL/VI/2015 IS
CONNECTED WITH ARTICLE 54 PARAGRAPH (3) OF
LAW NUMBER 8 OF 1999 CONCERNING CONSUMER
PROTECTION**

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ABSTRACT

This Law Number 8 of 1999 concerning Consumer Protection (UUPK) gives Indonesian people hope for protection on losses suffered from goods and service transaction. Particularly Article 54 paragraph (3) stated that the decision of BPSK assembly shall be final and binding, so there is no appeal and cassation in the consumer dispute resolution agency. However, to the BPSK's decision, the Law authorizes the District Court domiciled in the area of BPSK to execute the decision of BPSK (execution). Until now, the decision of BPSK Number 09/PTS/BPSK-Tangsel/VI/2015 dated July 2, 2015 has not been executed due to the resistance against the execution judgment Number 27/PEN.EKS/2015/PN.TNG. dated 7 September 2015, by the business actor. Research method used in this writing is a empirical juridical approach that examines regulatory legislations, and judgment analysis by searching legal norms in the regulatory legislations and literature, as well as interview with consumer as the party associated with the Legal Certainty of Real Execution of Consumer Dispute Resolution Agency Decision Number 09/Pts/BPSK-Tangsel/VI/2015 Associated with Article 54 Paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection. Then, this research is a descriptive study that tries to describe the collected data, and analyze the data using legal system theory as a grand theory, legal certainty theory as a middle theory, and legal protection theory as an applied theory. The real execution of Consumer Dispute Resolution Agency decision Number: 09/PTS/BPSK-Tangsel/VI/2015 awarded on July 02,

2015 has not been executed because too many proceedings filed by the business actor against the District Court of Tangerang including a lawsuit against the judgment of the real execution. Efforts should be performed in order to create legal certainty of real execution of Consumer Dispute Resolution Agency decision involve improving the Book II of Supreme Court on Technical Guidance on Administration and Specific Civil Court as guidance for District Court to execute the decision awarded by a quasi-judicial body, and it is necessary to revise the Law on Consumer Protection specifically in relation to the legal certainty, Article 54, paragraph (3) of Law on Consumer Protection that reads “The decision of Assembly shall be final and binding”, and adding the provision that the decision of BPSK shall contain the heading “For the sake of Justice under the One Almighty God”, and others.

Keywords: Real Execution, legal certainty, and consumer protection.

INTRODUCTION

The term or understanding of consumer law with consumer protection law is a term that is often equated. But there are also those who distinguish it, saying that both regarding substance and regarding the broad emphasis of scope are different from each other. ¹ According to Article 1 point 2 of Law Number 8 of 1999 concerning Consumer Protection, what is meant by consumer is everyone who uses goods and / or services available in the community, both for the benefit of themselves, family, others and other living beings and not to be traded.

The Consumer Protection Law is still the ideal and struggle of the consumer movement, so we need to continue to socialize consumer protection issues to the wider community, especially to scholars, students, scholars and scholars and activists in general. ² The purpose of organizing, developing and protecting consumers is to increase the dignity and awareness of consumers and indirectly encourage business actors in carrying out their business activities carried out responsibly.³

The handling and settlement of consumer disputes according to Law Number 8 of 1999 concerning Consumer Protection is through the Consumer Dispute Settlement Agency as Article 1 point 11 which means that BPSK is an institution that can be used by consumers in enforcing their rights. This BPSK carries the mandate of the Consumer Protection Law, so that with optimal performance, it will be a determining factor for BPSK in carrying out its duties and authorities.⁴

Basically, dispute resolution in Court is carried out by applying the principle of simple, fast, and light costs. This is in accordance with Article 2 paragraph (4) and Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power. Article 2 paragraph (4) states that "The trial shall be conducted simply,

¹N.H.T Siahaan, *Hukum Konsumen dan Perlindungan Konsumen*, (Jakarta: Panta Rei, 2005), hlm. 30.

²Nasution, *Konsumen dan Hukum: Tinjauan sosial, ekonomi dan hukum pada perlindungan konsumen Indonesia* (Jakarta: Sinar Harapan Library, 1995), hlm. 65.

³Erman Rajagukguk et al, *Hukum Perlindungan Konsumen*, (Bandung: Mandar Maju, 2000), hlm. 7.

⁴Husni Syawali & Neni Sri Imaniyati, *Hukum Perlindungan Konsumen*, (Bandung: Mandar Maju, 2000), hlm. 12.

expeditiously, and at low cost." And Article 4 paragraph (2) states, that "The Court assists justice seekers and seeks to overcome all obstacles and obstacles to achieve a simple, speedy, and low-cost trial."⁵

But in practice, the settlement of cases in Court requires energy, costs, and a long time of up to months or even years. Especially if the parties take all legal remedies available by law, namely appeals, cassation, and judicial review. However, after the parties take these legal remedies, it is not certain that the party who wins the case immediately gets their rights. New rights can be obtained after execution or after execution of a court decision. In a sense, executions are carried out in order to have meaning for justice. And it is conceivable that if the execution is difficult to carry out, then justice is disrupted. Therefore, in the judge's decision, there are irahs that are the head of the judgment which reads "For Justice Based on the One and Only God"⁶

Meanwhile, in relation to the execution of the BPSK decision, the author has not found regulations regarding the implementation of the decision (execution) both in the UUPK and Ministry of Industry Regulation Number 06/M-Dag/Per/2/2017 concerning BPSK. Thus, upon the BPSK decision, the BPSK South Tangerang City followed up by submitting an execution request letter to the Tangerang District Court, then on the basis of the execution request letter from BPSK, the Tangerang District Court issued a determination as determined. And on the decision of the BPSK, the consumer also submitted a request for determination (fiat execution) to the Tangerang District Court. After the case went to the Tangerang District Court, various legal remedies were filed by both the consumer and the Entrepreneur so that the case that should only be requested for an order of execution by the Tangerang District Court but instead became tougher, longer, and never finished.

From the description of the case above, there is no legal certainty in consumer protection, especially in the execution of the BPSK decision. The BPSK ruling, which is said to be final and binding, is still unenforceable due to objections from business actors to pay fines and compensation from consumers. And until now related to the BPSK decision is still litigating in the Tangerang District Court, because business actors filed a challenge to the execution order on the BPSK decision Number 09 / PTS / BPSK-Tangsel / VI / 2015 dated July 2, 2015. As stipulated number 27/PEN. EKS/2015/PN. TNG. Jo. BPSK Decision Number 09/PTS/BPSK-Tangsel/VI/2015 dated September 7, 2015.

Meanwhile, Article 54 paragraph (3) explains that the decision of the Tribunal is final and binding, the word "final" means that the decision cannot be appealed and/or cassated, while the word "binding" means coercive and as something that must be carried out by the party obliged to do so. But in fact, because the UUPK in article 23 explains, if business actors refuse and/or do not respond and/or do not fulfill compensation claims for consumer claims, consumers are given the right to sue business actors and resolve disputes arising through BPSK by filing a lawsuit to the judicial body at the consumer's place of residence. The existence of these two articles raises uncertainty about the implementation of BPSK decision

⁵Herri Swantoro, *Dilema Eksekusi Ketika Eksekusi Perdata ada di Simpang Jalan Pembelajaran dari Pengadilan Negeri*, (Jakarta: Rayyana Komunikasindo, 2018), hlm. 1.

⁶Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, (Yogyakarta: Liberty, 1999), Pp. 183.

Number 09 / PTS / BPSK-Tangsel / VI / 2015. On July 2, 2015, until now the rights of consumers have not been felt.

METHODOLOGY

The research method used is an empirical juridical approach. Sumber data can be distinguished primary data or basic data and secondary data. Primary data can be obtained directly from the first data source, which is related to the Decision of the Consumer Dispute Settlement Agency Number 09 / P⁸TS / BPSK-Tangsel / VI / 2015, as well as related regulations, while secondary data includes written documents, such as books, laws and regulations, and literature and research results in the form of reports.⁹

DISCUSSION

Legal Certainty of Real Execution of Consumer Dispute Settlement Agency Decision Number 09/PTS/BPSK-Tangsel/VI/2015

Flow of Consumer Dispute Resolution Results Number 09/PTS/BPSK-Tangsel/VI/2015

BPSK Decision Number 09/PTS/BPSK-Tangsel/VI/2015

Tangerang District Court Decree Number 27/PEN. EKS/2015/PN. TNG jo. Number 09//PTS/BPSK-Tangsel/VI/2015

Application for *Aanmaning* and execution of Determination Number 27/PEN. EKS/2015/PN. TNG Jo. No. 09/Pts/BPSK-Tangsel/VI/2015

Response to Relaa Call Tegoran (*Aanmaning*)

Tangerang District Court Decision Number 492/Pdt.Sus.BPSK/2015/PN.Tng.

Supreme Court Decision Number 78 PK/Pdt.Sus.BPSK/2017

Tangerang District Court Decree No. 27/Pen.Eks/2015/PN. Tng Jo. No. 09/Pts/BPSK-Tangsel/VI/2015 Jo. No. 492/Pdt.Sus-BPSK/2015/PN. TNG Jo. No. 78 PK/Pdt.Sus.BPSK/2017.

Lawsuit Against Case Number 898/Pdt.Plw/2018/PN. Tng

Juridical Analysis of Legal Certainty of Real Execution of BPSK Decisions

Briefly, it has been explained the flow of dispute resolution between consumers and business actors from the beginning of the dispute to the handling of disputes at BPSK which ultimately involves litigation in this case the Court of first instance to the Court of final instance, as well as other legal efforts that have been carried out by consumers and business actors who both want to maintain their rights legally.

As stated by Mr. Alex Ticogiroth as Consumer in the decision of BPSK Case Number 09 / PTS / BPSK-Tangsel / VI / 2015, dated July 2, 2015, that he has been harmed by the Business Actor in this case PT PLN Area Ciputat, because the Business Actor always tries not to implement the contents of the BPSK decision which has also been confirmed by the decision of the Tangerang District Court

⁷Dadang Supardi, “*Kepastian Hukum Terhadap Upaya Keberatan Yang Dilakukan Bank Atas Putusan Badan Penyelesaian Sengketa Konsumen Dalam Gugatan Konsumen*”, (Jurnal Ilmu Hukum, Universitas Pasundan, 2017).

⁸Soerjono Soekanto, *Pengukuran Penelitian Hukum*, (Jakarta: UI Pers, 2010), hlm.11-12.

⁹ *Ibid.*, hlm. 11-12.

Number 492 / Pdt. Sus.BPSK / 2015 / PN. TNG, October 29, 2015. That for the actions of these business actors, consumers are greatly harmed both materially and immaterially. Even the execution request until now has not been able to be implemented because of a lawsuit of resistance from the business actors against the execution order.¹⁰

That the consumer party said that he had filed an Unlawful Action lawsuit against PT PLN Area Ciptat as a business actor in the Tangerang District Court as a result of his negligence that had harmed the consumer. However, the lawsuit was not accepted (NO) because at the time of filing the lawsuit, PMH was still in the process of trial and objections filed by business actors at the Tangerang District Court. And in fact, after there was a ruling on the objection application, the case is still not over until now. The consumer also said that even though he is tired of all the legal efforts he has fought without a good response from business actors, the consumer will still wait patiently for the verdict of the current lawsuit. And, the consumer said that if the case of this lawsuit has been completed, the consumer will file ¹¹another Lawsuit Against the Law to the business actor.¹²

Based on the information above, in Article 54 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection it is stated unequivocally that *"The decision of the tribunal shall be final and binding"*. In the sense that the BPSK decision cannot be appealed or cassated. But in fact, the decision of BPSK Number 09 / PTS / BPSK-Tangsel / VI / 2015 since it was decided on July 2, 2015 until now has not been able to be implemented (execution) due to objections, judicial review, and other legal actions submitted by business actors at the Tangerang District Court to hinder execution.

We need to review again, efforts to object to the BPSK decision are allowed and even clearly regulated in Article 23 of Law Number 8 of 1999 concerning Consumer Protection, which reads: *"Business actors who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the Consumer Dispute Resolution Agency or apply to the judicial body at the place of residence of the consumer. "*

So based on the provisions of the Article, business actors also have the legal right to file an objection lawsuit to the Tangerang District Court with Case Number 492 / Pdt.Sus.BPSK / 2015 / PN. TNG. Although in the decision the business actor lost (the lawsuit was rejected), because the reason for filing the objection was not in accordance with the reasons outlined as the applicable legal provisions, namely Perma Number 1 of 2006, but the business actor filed extraordinary legal remedies, namely judicial review, resistance to the execution order, and so on, so that real execution could not be carried out which made consumer rights more adrift.

With the existence of Article 54 paragraph (3) and Article 23 of the Consumer Protection Law in this dispute, and coupled with the sound of Article 57 of the Consumer Protection Law, which reads: *"The decision of the tribunal as referred*

¹⁰ Wawancara dengan Bapak Alex Ticogiroth selaku Konsumen dalam putusan BPSK Kota Tangerang Selatan Nomor 09/PTS/BPSK-Tangsel/VI/2015, tanggal 02 Juli 2015, Senin tanggal 14 Oktober 2019, di Sekretariat Pusat Bantuan Hukum PERADI Tangerang.

¹¹*Ibid.*

¹²*Ibid.*

to in Article 54 paragraph (1) is requested to determine its execution to the District Court where the aggrieved consumer is.” further creates legal uncertainty.

The absence of legal certainty can be caused by the existence of *system error* (inequality) in a legal stemsystem. As explained by Lawrence M. Friedman who divides the legal system into three parts, namely: legal structure, *legal substance*, and *legal culture*.¹³ In substance, the law clearly shows disharmony between Article 54 paragraph (3), Article 23, and Article 54 paragraph (1) of the Consumer Protection Law. It is called disharmonious because the sound of the Articles contradicts each other. On the one hand, Article 54 paragraph (3) implies its concern for consumers by declaring the decision of the tribunal to be final and binding. With the hope that every BPSK decision can be implemented immediately as an effort to protect consumers. So that against the decision of BPSK there is no legal remedy for appeal or cassation.

However, the sound of Article 54 paragraph (3) seems "slurred" and "blunt" with the sound of Article 23 of the Law, which states: "Business actors who refuse and/or do not *respond and/or do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through a consumer dispute resolution body or submit to a judicial body at the consumer's place of residence.* "

Likewise, Article 57 of the Consumer Protection Law which requires the winning party in a consumer dispute decision to request an execution order to the District Court where the consumer lives, makes the situation more favorable for business actors who seem to be "playing with existing legal facilities". Thus, when business actors file a lawsuit objecting to the BPSK decision to the Tangerang District Court, the litigants must follow the civil procedural legal procedures in the Court. As for what is an important note in procedural law in the Court, basically the judge may not reject the case or be referred to as the principle of *Ius Curia Novit/Curia Novit Jus*. As Yahya Harahap points out in his book *Civil Procedure Law on Suits, Trials, Forfeitures, Evidence and Court Decisions* (p. 821), *Ius Curia Novit/Curia Novit Jus* means that the judge is presumed to know all the laws so that the Court may not refuse to examine and try cases. This principle is also regulated in Article 10 of Law Number 48 of 2009 concerning Judicial Power, which reads:¹⁴ "1) *The court is prohibited from refusing to examine, adjudicate, and decide a case submitted under the pretext that the law does not exist or is unclear, but is obliged to examine and try it. 2) The provisions referred to in paragraph (1) do not close efforts to settle civil cases peacefully.*"

As with the problems in the object of this study, after the BPSK decision, business actors file an objection lawsuit at the Tangerang District Court, then apply for Judicial Review, in the process of which a real execution request has been carried out by consumers. However, until it runs for approximately 4 years in the Tangerang District Court, the BPSK decision has not been implemented even though there has been an execution order from the Tangerang District Court. Even though the value of consumer losses that must be executed by the

¹³ Lawrence M. Friedman, *Sistem Hukum; Perspektif Ilmu Sosial (The Legal Sistem; A Social Science Perspective)*, (Bandung: Nusa Media, 2009), hlm. 33.

¹⁴ <https://www.hukumonline.com/klinik/detail/ulasan/lt58dca7c78ab7d/arti-asas-ius-curia-novit-i/>, diakses tanggal 06 November 2019 pukul 21.33.

Tangerang District Court is not comparable and far compared to the size of the business actor company (PT PLN), namely as the decision of the BPSK Assembly Number 09 / PTS / BPSK-Tangsel / VI / 2015, dated July 2, 2015 above.

Based on the description of the facts above, the most unique thing is that there is a lawsuit against the Tangerang District Court Execution Decree Number 27 / PEN. EKS/2015/PN. TNG, dated September 7, 2015 submitted by Business Actors. The author does not understand what legal basis is the strongest motive for business actors to file the lawsuit. While we know that in civil procedural law, legal remedies do not provide for a lawsuit against the order of execution of the Court made by the losing party.

As stipulated in HIR and Rbg, legal remedies are divided into 2 (two), namely ordinary and extraordinary legal remedies. Legal remedies can be legal remedies used for rulings that have not been legally enforceable. These efforts include:¹⁵

Resistance/*verzet*,

Banding, and

Cassation

While extraordinary legal remedies include:

Civil review (*civil request*)

Third party resistance (*denderverzet*) to executory seizure.

From the above, the legal remedy against the execution order submitted by the losing party is not regulated in the laws and regulations of the civil procedure law. However, in practice, many communities as losers put forward efforts to challenge the execution order, including business actors in a quo case.

This is what needs to be criticized and analyzed together, if what is used as the basis for business actors (PT PLN) to file a lawsuit against the execution order of the Tangerang District Court Number 27 / PEN. EKS/2015/PN. TNG, dated September 7, 2015 is Article 57 of the Consumer Protection Law, so clearly and clearly in a State of Law that should guarantee human rights, Indonesia does not have firmness in formulating its rules for the sake of upholding legal certainty.

Obstacles and Efforts to Create Legal Certainty for Real Execution of Consumer Dispute Resolution Agency Decisions

According to Aristotle, the law has a sacred and sublime duty is justice by giving to each person what he is entitled to and requires separate rules for each case. To do this, according to this theory the law must make what is called "*Algemeene Regels*" (general rules/regulations). These general rules or regulations are needed by the community for legal certainty. Legal certainty is needed to ensure peace and order in society because legal certainty (general rules/regulations) has the following characteristics: 1). There is coercion from outside (sanctions) from the ruler who is tasked with maintaining and fostering community order with the role of its tools 2). The nature of the Act applies to anyone.

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be carried out in a good way. Legal certainty requires legal regulation efforts in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.¹⁶

¹⁵*Ibid.*

¹⁶ Asikin Zainal, *Pengantar Tata Hukum Indonesia*. (Jakarta: Rajawali Press, 2012), hlm. 44.

Both expert opinions shed light on the fact that the law is definite and must be obeyed, aiming for public order at large. In addition, legal certainty will ensure justice if the law provides protection to the community. And according to the author, the law cannot be said to be certain if the law has not been able to provide protection to the community.

Obstacles in the Implementation of Real Execution of BPSK Decisions

The Consumer Dispute Settlement Agency (BPSK) is a quasi-judicial institution, which is an institution that does not have the state power to carry out forced executions like the courts, namely bailiffs. The general obstacle in the implementation of real execution of quasi-institutional decisions, in this case the execution of BPSK decisions, is because:¹⁷¹⁸

the absence of the irahs "For Justice Based on the One and Only Godhead" as an executory title;

the absence of rules related to the mechanism of execution of quasi-judicial decisions; and

In the absence of a term or condition the application for execution can be submitted to the court.

According to Sudikno Mertokusumo, what gives power to a decision as an executory (title) so that it can be executed or executed is the existence of irahs "For Justice Based on the One and Only God" at the head of the judgment. Furthermore, Hikmahanto Juwana stated, in the context of judicial power, irah-irah is intended so that judges as the only party authorized to decide cases are able to uphold justice and legal certainty. He also enforced to account for his judgment which is inherent executory in nature not only to the parties, but also to God. So that this accountability is manifested in the form of irah-irah "For Justice Based on the One and Only Godhead." Thus, the existence of the irahs "For Justice Based on the One and Only God" in every decision is not just a mere formality of form, but contains a deep purpose, namely to reflect justice based on divine values.¹⁹

This confirms that the executory title in the Indonesian judiciary is not only interpreted as punitive or *condemnatoir* as explained above, but also the existence of irah-irah "For Justice Based on the One and Only God."

The author agrees with M. Tanziel Aziezi, et al, in his book entitled "Policy Paper on Strengthening the Civil Dispute Execution System in Indonesia", that regarding the mechanism of execution of quasi-judicial decisions, as mentioned earlier that quasi-judicial decisions can be requested for execution to the district court. However, there is no provision as to what kind of execution mechanism can be carried out against the decisions of these institutions. In fact, as previously explained, there are 3 (three) variants of execution, namely payment of a sum of money, carrying out an action, and real, which have different mechanisms for each variant. For this reason, there needs to be strict rules regarding the mechanism for execution of decisions of quasi-judicial institutions by the courts

¹⁷ M.Tanziel Aziezi, dkk, *Kertas Kebijakan Penguatan Sistem Eksekusi Sengketa Perdata Di Indonesia*, (Jakarta: Lembaga Kajian dan Advokasi Independensi Peradilan, 2019), hlm. 123.

¹⁸ *Ibid.*, hlm. 123

¹⁹ Hikmahanto Juwana, "Penegakan Hukum Kontrak," (Pusat Analisis dan Evaluasi Hukum Badan Pembinaan Hukum Nasional, Dalam Rapat Pokja, 24 Oktober 2018).

that are adjusted to the execution mechanism regulated in the civil procedural law.²⁰

Regarding the decision of BPSK, Law Number 8 of 1999, Article 47 jo. Article 49 paragraph (1) stipulates that dispute resolution by BPSK is held to reach an agreement on the form and amount of compensation and / or on certain actions to guarantee that there will not be a recurrence or will not recur losses suffered by consumers. In addition, Article 52 letter k of the Law also stipulates that BPSK is authorized to decide and determine the presence or absence of losses on the part of consumers. In practice, apart from the rules in the Law which states that the nature of BPSK decisions is to decide and determine, the BPSK decisions are formulated in the form of penalties or orders to business actors to do an act. Thus, the judgment is²¹ *condemnatoir* and can be appealed for execution to the court. Based on this, the execution of the BPSK decision ordering business actors to commit an act will be executed based on the execution mechanism of committing an act, while the execution of the BPSK decision ordering business actors to pay compensation suffered by consumers is carried out with the execution mechanism of payment of a sum of money.

Meanwhile, in the absence of a period or condition for which an application for execution can be submitted to the court, as previously explained in Chapter III that one of the principles in the execution of civil judgments is that executions are carried out on judgments that are not carried out voluntarily. In the event that a quasi-judicial judgment is not objected to the court, then the execution is a quasi-judicial decision. Conversely, if a quasi-judicial judgment is objected to the court, then what is executed is the court's decision against the objection to the quasi-judicial decision.²²

These three obstacles, according to the author, result in the insecurity of protection for consumers to get their rights as they should. Although the BPSK decision favors the consumer, the BPSK decision is raw because it cannot be implemented (execution). This is not in line with the theory of legal protection initiated by Satjipto Raharjo which states that legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community in order to enjoy all the rights provided by law. The law can be used to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Laws are needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.²³

Efforts to create legal certainty for real execution of BPSK Decisions

In an effort to create certainty of real execution of BPSK decisions, the author cites the results of previous research as recommended by M. Tanziel Aziezi, et al, in his book entitled "Policy Paper on Strengthening the Civil Dispute Execution System in Indonesia", that the execution of BPSK decisions is very dependent and must adjust to the ammar imposed by BPSK. Therefore, it is necessary to refine Book II of the Supreme Court for General and Religious Courts and/or Execution

²⁰M. Tanziel Azizi, et al, *op.cit.*, hlm. 125.

²¹*Putusan BPSK Nomor 09/PTS/BPSK-Tangsel/VI/2015, tanggal 2 Juli 2015.*

²² M. Tanziel Azizi, dkk, *op.cit.*, hlm. 127.

²³Satjipto Raharjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), hlm 55.

Guidelines for District Courts or Religious Courts, by making the following provisions:²⁴

For a decision ordering a business actor to commit an act, the execution is carried out with the mechanism of execution to commit an act;

For rulings ordering business actors to pay compensation suffered by consumers, execution is carried out with the mechanism of executing payment of a sum of money.

Furthermore, in Law Number 8 of 1999 concerning Consumer Protection, it is necessary to add a provision that the BPSK Decision must contain the irahs "For Justice Based on the One and Only God" in the head of the decision. In addition, it is also necessary to add a provision that the court can execute the decisions of these institutions even if there are no irahs "For Justice Based on the One and Only God" in the head of the judgment (applicable if the provisions on irahs are not added to Law No. 5 of 1999, Law No. 14 of 2008 and Law No. 8 of Year).²⁵²⁶

In the Legal Journal, entitled Legal Certainty Against Objections Efforts Made by Banks to the Decision of the Consumer Dispute Resolution Agency in Consumer Lawsuits, it is stated that²⁷revisions to Consumer Protection can be one of the efforts to realize the creation of legal certainty for the existence of objection efforts. Some of the main things as a matter of thought related to the revision of the Undang-Undang Consumer Protection, especially related to objections include:

The regulation of objection efforts in the revision of the Law for Consumer Protection must be based on the principle of "Proper Dispute Resolution" and take into account the principles of simple, fast and low cost. With a clear principle, it will avoid inconsistencies and conflicts between the formulation of articles that will be regulated in the revision of the Undang-Undang Consumer Protection.

The concept of annulment of an arbitral award adopted by the Undang-Undang Industrial Relations Dispute Resolution 1 is a dispute resolution model that can be considered to be adopted in the revision of the Undang-Undang Consumer Protection later, namely the application for annulment is directly submitted to the Supreme Court, not through the District Court first. Thus, the consumer dispute resolution process is expected to be faster. Of course, this must first receive comprehensive study and consideration from various aspects, including the effect on the possibility of a buildup of cases in the Supreme Court.

In the revision of the Undang-Undang Consumer Protection, it should no longer use the term "Objection", but use the term as well as the Undang-Undang Settlement of Industrial Relations Disputes namely "p cancellation". By using the term "annulment", it will be in line with the terminology used by Arbitration and Alternative Dispute Resolution.

²⁴M. Tanzil Aziezi, *op.cit.*, hlm. 171.

²⁵*Ibid.*, hlm. 160.

²⁶*Ibid.*, hlm. 160.

²⁷ Dadang Supardi, *Kepastian Hukum Terhadap Upaya Keberatan Yang Dilakukan Bank Atas Putusan Badan Penyelesaian Sengketa Konsumen Dalam Gugatan Konsumen*, (Jurnal Ilmu Hukum Universitas Pasundan, 2017).

Then the most important thing is that in the revision of the Consumer Protection U ndang Consumer Protection must contain regulations related to the procedural law of consumer dispute resolution comprehensively. In this regard, the Government should involve and consult with the Supreme Court of the Republic of Indonesia in the formulation of procedural law arrangements and all aspects related to the role of the court in the process of enforcing consumer protection law.

The requirements or reasons as a basis for filing objections to BPSK decisions must be regulated and determined in a limited manner, must not be opened too freely, because opening wide without restrictions will create conditions that any decision from BPSK will always be easily objected.

Some things that have been well regulated by Perma No. 1 year 2006, then to be adopted in the revision of the U ndang-U ndang Consumer Protection, among others:

The BPSK award that can be objected to is only the BPSK arbitration award

I must have "Objection" (or if later what will be chosen in the revision of the U and Consumer Protection is the term "Cancellation") must be clearly defined. For example: "a. The party applying for execution is the consumer, not BPSK"; The panel of judges handling consumer disputes must have sufficient knowledge in the field of consumer protection;

There are *arrangements* regarding coordination among stakeholders related to the enforcement of consumer protection laws;

Consumer Protection Law related to consumer dispute resolution materials must pay attention to its alignment with related legislation. The most crucial is in relation to consumer disputes in the banking sector, because after the establishment of the Financial Services Authority, the implementation of consumer protection in the banking sector has also become one of the duties of the Financial Services Authority.

Based on some of the efforts mentioned above, if realized, legal certainty of real execution of BPSK decisions will also be created, which of course the consumer community will immediately get their rights because consumers really feel legal protection.

DISCUSSION

Based on the results of the above research, the author reiterates that legal uncertainty related to the real execution of the decision of BPSK South Tangerang City Number 09 / PTS / BPSK-Tangsel / VI / 2015, dated July 2, 2015 is due to the substance of the disruption of the Indonesian legal system due to overlapping rules or articles in the BPSK Law that are unable to accommodate the interests and rights of consumers. In addition, in principle, the real execution of the BPSK Decision will be difficult because of Article 10 of Law Number 48 of 2009 concerning Judicial Power which adheres to the principle of *Ius Curia Novit / Curia Novit Jus* , which means that the judge is considered to know all the laws so that the Court may not refuse to examine and try cases.

According to the author, Article 10 of Law Number 48 of 2009 concerning Judicial Power is the basis for the cause of uncertainty in law enforcement in Indonesia. Because in the civil procedural law, the Judge may not reject cases where there is no legal basis for the business actor to file the resistance lawsuit. As for the legal consequences of the existence of this Article, it is likely that after

the decision of the lawsuit case Number 898 / Pdt.Plw / 2018 / PN.Tng, there will be more appeals, cassation, and judicial review, and so on even though the court decisions have permanent legal force.

In addition, the execution referred to in this study is to carry out the contents of the BPSK decision Number 09 / PTS / BPSK-Tangsel / VI / 2015 mentioned above, if viewed from the aspect of its implementation according to Subekti, the execution is a form of determination of²⁸ *special jurisdiction* execution, which is one form of real execution that punishes the losing party for doing something. But this kind of execution is difficult because it is difficult to force someone to do something. Therefore, it is natural if business actors do not heed the execution decree of the Tangerang District Court Number 27 / PEN. EKS/2015/PN. TNG, dated September 7, 2015, because it does not require forced execution like real executions in general (emptying, confiscation, etc.).

In addition, the weak Consumer Protection Law that does not regulate the implementation of BPSK decisions (execution) specifically (specifically) makes consumers unable to obtain their rights as decided by the BPSK Assembly. Thus, Article 54 paragraph (3) which states that the decision of the tribunal which is final and binding does not have a meaning that has a fair value because Article 54 paragraph (3) does not have legal certainty. Thus, the result of the research obtained is that with the efforts to object, re-approve and challenge the determination of execution of the decision of the Consumer Dispute Settlement Agency by Business Actors, the legal certainty of the BPSK decision is no longer effective and legal certainty becomes constrained because the decision of the Consumer Dispute Settlement Agency is no longer final and binding due to legal efforts made by Business Actors.

Then, what is experienced by consumers today is not in line with the line of thought of legal protection theory initiated by Philipus M. Hadjon which states that legal protection is a collection of regulations or rules that will be able to protect one thing from another. With regard to consumers, it means that the law provides protection for customer rights from something that results in the non-fulfillment of these rights. Therefore, existing and applicable laws and regulations, especially Article 54 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection, in fact do not provide legal certainty as long as the above constraints still surround it. Thus, the function and purpose of the existence of the Law does not work to provide legal protection to consumers.²⁹

CONCLUSION

Legal Certainty Real execution of the decision of the Consumer Dispute Settlement Agency Number 09 / PTS / BPSK-Tangsel / VI / 2015 which was decided on July 2, 2015 until now has not been able to implement the decision (execution) due to objections and reviews submitted by business actors through the Tangerang District Court. And until now business actors still file challenges against the execution order of the Tangerang District Court, so that if it is connected with Article 54 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection, then the Article has not accommodated legal certainty.

²⁸R. Subekti, *Hukum Acara Perdata*, (Jakarta: BPHN, 1977), hlm.129.

²⁹Philipus M. Hadjon, *Perlindungan Bagi Rakyat diIndonesia*, (Surabaya: Bina Ilmu, 1987), hlm.

The weak Consumer Protection Law that does not regulate the implementation of BPSK decisions (execution) specifically (specifically) makes consumers unable to immediately obtain their rights as decided by the BPSK Assembly. Thus, Article 54 paragraph (3) which states that the decision of the tribunal which is final and binding does not have a meaning that is of judicial value because Article 54 paragraph (3) does not have legal certainty.

Efforts that must be made to create legal certainty for real execution of Consumer Dispute Resolution Agency decisions are to perfect Book II of the Supreme Court Administrative Technical and Technical Guidelines for Special Civil Courts as Execution Guidelines in District Courts against decisions from quasi-judicial institutions, with make strict rules regarding the mechanism of execution of quasi-judicial decisions by the Court in accordance with the execution mechanism stipulated in the civil procedure law with the following conditions: "

a. For a decision ordering a business actor to commit an act, the execution is carried out with the mechanism of execution to commit an act; b. For a judgment ordering a business actor to pay compensation suffered by consumers, execution is carried out with the mechanism of executing payment of a sum of money. In addition, it is necessary to revise the consumer protection law, especially related to legal certainty in Article 54 paragraph (3) of the Consumer Protection Law which reads "The decision of the Tribunal shall be final and binding", namely by adding the provision that the BPSK Decision must contain the irahs "For Justice Based on the One and Only God" in the head of the decision, thus there are firm and clear rules to support the implementation execution of BPSK decisions by the Court, so that consumers are protected with certainty and business actors comply with BPSK decisions with or without coercion from the relevant government apparatus specially appointed for it.

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