

DISPUTE RESOLUTION OF BUSINESS ACTORS WHO HAVE EXPERIENCED BANKRUPTCY BASED ON CONSUMER PROTECTION LAW**Ellen Santoso, Gunardi Lie**

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Email : _Ellen.205210064@stu.untar.ac.id, Gunardi@fh.untar.ac.id***Abstract***

Industrial growth in Indonesia creates challenges for consumers when companies go bankrupt, which often hampers the process of returning consumer rights. Legal protection regulated in the Consumer Protection Law is important for creating a healthy economy and empowering consumers. However, legal uncertainty in resolving disputes between bankrupt business actors and consumers is still a concern. Therefore, this journal aims to provide an in-depth understanding of a fair solution for both parties. The type of research method in this writing is qualitative with document type. Qualitative research is a type of research whose results are not based on statistics or other calculations. The instrument of qualitative research is the researcher himself. The results of this research are that the resolution of consumer disputes when a company goes bankrupt is based on the Consumer Protection Law, strengthening legal protection for consumers. Steps include consumer empowerment and efficient dispute resolution, both outside the courts and through court processes, with the government playing an active role in guidance and supervision. Even though the company goes bankrupt, consumers still have the right to obtain compensation according to the law, with options such as small claims claims, legal standing for consumer protection agencies, and class actions. This all aims to ensure effective consumer protection and fair law enforcement against business actors who violate their obligations.

Keywords: Consumers, Bankruptcy, Disputes

INTRODUCTION

Industrial development in Indonesia becomes a problem for consumers when the company no longer complies with the rules (Waagstein, 2011). Today, many companies are in bankruptcy. When a company goes bankrupt, it is managed by a receivership in accordance with bankruptcy law, and its owners temporarily have no rights to its property. This causes confusion among consumers, as many of them do not understand

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the issue of insolvency, which is often not explained by the company or its agents at the beginning of the transaction (Kasabov, 2015). Payment to consumers affected by bankruptcy is made by the receivership who takes care of the bankrupt assets, after going through a verification process. This process is considered inefficient by bankrupt consumers because they often do not understand the procedure for returning their rights or even do not realize that the company has gone bankrupt (Cincinelli & Piatti, 2021).

To protect and empower consumers, awareness, knowledge, skills, and independence are needed for consumers to protect themselves and encourage responsible business behavior. In addition, state intervention through the legal protection system for consumers is also necessary. Based on these considerations, legal instruments are needed that create a balance between consumer protection and business actors, so as to create a healthy economy. Law Number 8 of 1999 concerning Consumer Protection is one of the laws that aims to create this legal framework (Asyhadie, 2011).

Law Number 8 of 1999 concerning Consumer Protection affirms that national development aims to create a just and prosperous society materially and spiritually, in the context of economic democracy rooted in Pancasila and the 1945 Constitution. In this case, national economic growth must support the development of the business world in order to produce various goods and services with technology that improves people's welfare without harming consumers. To achieve this goal, a solid legal basis is needed for the government and society to protect and empower consumers through consumer coaching and education (Suhargon & Anggeraini, 2021).

Consumer protection law cannot stand alone, but must be integrated in an economic system involving business actors. Changes in the complexity of the economic system affect the legal structure in the relationship between producers and consumers. This change began with a paradigm shift in the relationship from "caveat emptor" (cautious consumers) to "caveat venditor" (producers responsible for protecting consumers). Consumer protection has put consumers in a weaker position in their interactions with businesses, especially because of standard agreements that often benefit from business actors.

The Consumer Protection Law basically aims to create equality between consumers and business actors. However, the concept of consumer protection as a necessity must continue to be socialized to build fair and equal relationships between consumers and business actors, as well as to balance profit-oriented business activities with consumer interests. To address the complexity of litigation, the Consumer Protection Act offers alternatives to out-of-court dispute resolution, such as through conciliation, mediation, and arbitration.

A company's financial failure can lead to legal uncertainty related to dispute resolution between bankrupt businesses and affected consumers (Hwang & Edwards, 2015). In this context, the Consumer Protection Law becomes the relevant legal framework for resolving disputes between the two parties.

When a company faces bankruptcy, consumers are often the most affected. They may have claims against the company, such as warranty claims, refunds, or after-sales

service. However, the legal process in resolving these disputes can be complicated and confusing for both parties.

Research on dispute resolution between bankrupt businesses and consumers in accordance with the Consumer Protection Law is important to understand the legal framework governing the relationship between the two. In this context, legal analysis is necessary to explore various aspects of dispute resolution, including relevant legal procedures, the rights and obligations of both parties, and ethical considerations in resolving disputes.

Through a deep understanding of the legal mechanisms related to dispute resolution of bankrupt business actors and consumers, it is hoped that a fair and sustainable solution can be found for all parties involved. As such, the journal aims to present important contributions in the understanding of dispute resolution in this area, as well as provide practical guidance for legal practitioners, academics, and other stakeholders

RESEARCH METHODS

The type of research method in this writing is qualitative with the type of document (Sugiyono, 2017). Qualitative research is a type of research whose results are not based on statistics or other calculations. The qualitative research instrument is the researcher himself. One of the data sources used is literature study, which is using literature sources to obtain research data without doing fieldwork. Researchers use qualitative descriptive methods with literature review sources by reviewing previous studies.

RESULTS AND DISCUSSION

Consumer dispute resolution process in the event of business actors who experience bankruptcy based on consumer protection laws

The Law on Consumer Protection underscores the true meaning of "consumer protection" as any measure that ensures legal certainty to protect consumers. This legal clarity includes enhancing the dignity of consumers by providing access to information about goods and services, as well as promoting honest and responsible business conduct. This includes all efforts based on law to empower consumers to choose the goods and services they need and protect their rights if harmed by businesses (Vladeck, 2015).

Consumer empowerment is done by increasing their awareness, skills, and independence in protecting themselves, so that they can improve their dignity and avoid negative impacts from the use of goods and services (Delgadillo, 2013). In addition, it is also important to provide convenience in resolving consumer disputes arising from losses in their wealth, safety, and health due to the use of consumer products. It is important to remember that prior to the Consumer Protection Act, consumers generally had a weak position in terms of economy, education, and bargaining. Therefore, laws are needed that protect the interests of consumers that have been neglected.

Law Number 8 of 1999 divides consumer dispute resolution into two parts, namely out-of-court settlement and settlement through court proceedings. Out-of-court settlements can be carried out by peaceful means by the parties or through authorized institutions such as the Consumer Dispute Settlement Agency (BPSK), using conciliation, mediation, or arbitration mechanisms. Meanwhile, the settlement of consumer disputes through court proceedings is also regulated.

The need for the Consumer Protection Law is to regulate the relationship between consumers and business actors. Because consumers generally have a weaker position compared to business actors, the protection of consumer rights is very important.

In an effort to improve consumer protection, the government has an important role in aspects of public law. The role can be realized through several steps:

- 1) Political will to protect consumer interests.
- 2) A bureaucracy that consciously and voluntarily creates conditions that support honest business in creating healthy competition.
- 3) Implementation of laws and regulations that include the protection of consumer interests, such as the Health Law, the Goods Law, the Hygiene Law for Business, the Law on Supervision of Goods Circulation, the Regulation on Compulsory Drug List, and the Regulation on Licensing.

These regulations are expected not only to be followed, but also monitored, fostered, and given strict and definite sanctions in case of violations related to the requirements and operations of the producing company. The main contribution in terms of public law to consumer protection is the ability to grant, supervise, foster, and revoke licenses in accordance with their authority, based on the following provisions:

- 1) Violating the provisions of the Act.
- 2) Harm to the public interest or consumers.

The authority of guidance by the government is regulated in Article 29 of the Consumer Protection Law. The article explains that the government is responsible for guidance in the implementation of consumer protection, which guarantees the rights of consumers and business actors and the implementation of their obligations. This responsibility is carried out by the relevant Minister and/or technical minister, with the aim of:

- 1) Creating a healthy business climate and relationship between business actors and consumers.
- 2) Developing non-governmental consumer protection agencies.
- 3) Improve the quality of resources and research and development activities in the field of consumer protection.
- 4) In addition to coaching, government duties also include supervision of the implementation of consumer protection and the application of laws and regulations.

This responsibility is also carried by the community and the Non-Community Consumer Protection Agency, under the provisions in Article 30 of the Consumer Protection Law (Howells & Weatherill, 2017). The government carries out this supervision through relevant ministers and/or technical ministers. Meanwhile,

supervision by the public and Non-Community Consumer Protection Institutions is carried out on goods and / or services circulating in the market, the results of which can be disseminated to the wider community and reported to ministers and technical ministers (Wijaya, 2017).

As an implementation of this provision, the government then issued Government Regulation Number 58 of 2001 concerning Development and Supervision of Consumer Protection Implementation. In addition, the government also established several organizations to help deal with several consumer problems, such as the National Consumer Protection Agency (BPKN) and the Consumer Dispute Settlement Agency (BPSK). In supervising the behavior of business actors in running their businesses, the government is assisted by the community and the Non-Community Consumer Protection Agency (LPKSM).

LPKSM and BPKN have an important role in facilitating consumers to get justice. Both work simultaneously to protect consumers from different directions. LPKSM acts as a strong bottom force and has become widespread in society. In addition, LPKSM is also able to represent and fight for consumer aspirations representatively. Prior to the Consumer Protection Law, this role was carried out by the Indonesian Consumer Foundation (YLKI). Meanwhile, BPKN acts as an upper power that has special authority in managing consumer protection.

In a situation where a company goes bankrupt, it is important to note that a decision of bankruptcy or not by a commercial court does not relieve the company of liability towards consumers. Companies must still fulfill their obligations to consumers, not ignore or put them as the last priority. Treatment of consumers should be a top priority, considering that consumer rights have been regulated by Law No. 8 of 1999 concerning Consumer Protection. Article 16 of the Act mandates that companies must not break promises to consumers (Fuady, 2014).

The process of responsibility between producers and consumers towards producers falling bankrupt in realizing consumer protection

In terms of business actors' responsibility to consumers, the company must pay compensation in accordance with a written agreement that has been agreed by both parties. Legal consequences if companies or business actors fail to pay claims from consumers can be in the form of administrative sanctions and/or criminal sanctions. These measures are taken to ensure consumer protection is properly realized (NAINGGOLAN & SH, 2023).

In the case of bankruptcy of an airline business entity, the carrier's responsibility for consumer losses for tickets that have been purchased is regulated in Law Number 1 of 2009 concerning Aviation and Ministerial Regulation Number 77 of 2011 concerning the Responsibility of Air Transport Carriers. According to the regulation, the airline or carrier will be responsible for reimbursing all ticket fees paid by the consumer or prospective passenger (Sjahdeini, 2016).

If such liability is not fulfilled by the airline, the consumer has the right to pursue legal remedies to obtain such liability. Such legal remedies can be made through consumer dispute resolution bodies or by filing a lawsuit with the judicial body at the consumer's place of residence. The lawsuit can be in the form of a small claim, which provides legal access for consumers with small claims, or through legal standing for LPSK, as well as through class actions :

- 1) A small lawsuit is a type of lawsuit that can be filed by a consumer, even if the value of the claim is very small economically. Article 46 paragraph (1) letter (a) of the Consumer Protection Law (UUPK) stipulates that aggrieved consumers or heirs can file a lawsuit for violations of business actors. Settlement of consumer disputes with a very small value is recommended to be done through a small claim court, which is a flash court with a single judge, simple procedures, without the need to use lawyers, and very affordable case costs. Small claim courts have developed in both Common Law and Civil Law countries, both in developed countries and developing countries in various parts of the world.
- 2) Legal Standing for LPKSM (Non-Community Consumer Protection Agency): UUPK also recognizes certain institutions that have legal standing to carry out legal proceedings. Non-governmental consumer protection agencies are non-governmental organizations registered and recognized by the government, which are engaged in dealing with consumer protection.

Class Action: A class action is a lawsuit filed by one or more people as a class representative through litigation (Lahav, 2012). According to Gregory quoted by Erman Rajagukguk, class action is a legal effort made by some people who feel aggrieved by a product, to claim damages. Although there is no written provision in the law regarding class actions, the practice of class actions has been accepted by the courts for examination.

CONCLUSION

The process of resolving consumer disputes in the case of business actors who experience bankruptcy is based on the Consumer Protection Law which emphasizes the need for comprehensive legal protection for consumers. These measures aim to enhance the dignity of consumers through access to clear information about products and services, as well as ensuring honest and responsible business conduct. Consumer empowerment is done by increasing their awareness and skills in protecting themselves, while providing convenience in resolving disputes that arise.

Law Number 8 of 1999 stipulates two methods of resolving consumer disputes, namely outside the court and through court proceedings. Meanwhile, consumer protection also requires an active role from the government in aspects of public law. These measures include guidance by the government to create a healthy business climate and supervision of the implementation of consumer protection laws.

In the event of the insolvency of a company, it is important to note that the company remains liable to consumers, in accordance with the provisions of the

Consumer Protection Act. Consumers have the right to recover if the company fails to fulfill its obligations. Legal proceedings that can be taken by consumers include small claims, legal standing for consumer protection agencies, and class actions.

Ultimately, this entire process illustrates the efforts made to ensure effective protection for consumers, strengthen their rights, and provide fair enforcement against businesses that violate their obligations.

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