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Legitimation of Consumer Dispute Resolution Agency in Solving Consumer Disputes Based on Act Number 8 Year 1999 about Consumer Protection

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Abstract
Based on article 1 subsection (1) of Act Number 8 Year 1999, government forms Consumer Disputes Resolution Agency (CDRA) in region level II (regency/city) to solve consumer disputes outside court. Forming of CDRA is expected may give protection to the consumer in solving the dispute efficiently, quickly, cheaply and professionally. But there is a bias in management of CDRA in Act Number 8 Year 1999 and causing conflict among norms inside the act, causing legitimation of CDRA becomes weak. Moreover, the problem of the study is appearing or looking for legitimation of institution and authority of CDRA in solving the consumer dispute based on Act Number 8 Year 1999 about Consumer Protection.The method used in this study is normative study focused on law institution. The approach used in this study is act approach and conceptual approach. Based on the study that the legitimation of CDRA in solving the dispute consumer outside court has weak basis, because Article 4 subsection (1) Act Number 8 Year 1999 says law basis of CDRA forming has bias /unclear, deal with government authority who has the authority to form CDRA, and kind of Act in CDRA forming. Moreover, no implementing regulation from Article 49 subsection (1) Act Number 8 Year 1999, causing law emptiness about mechanism of CDRA forming in region. Then, CDRA authority in Article 52 Act Number 8 Year 1999 valued over the main authority given Article 49 subsection (1) Act Number 8 year 1999, who only gives authority to CDRA to solve consumer dispute. As a result the legitimation of CDRA as a board of dispute solving for consumer outside court becomes illegitimated.
Keywords: Legitimation, Authority, Consumer, Protection, Disputes, Consumer Disputes Resolution Agency (CDRA)

INTRODUCTION

In Article 1 number (2) Act Number 8 year 1999 about Consumer Protection, consumer means " every single person who consumes things and or service provided in society, whether for self-interest, family, other people or other creatures and not traded". The term consumer is originated from the word *consumer* or*consument*.[1] Literally, it means every single person who uses things.[2]. The goal of the using is later deciding which consumer he/she belongs to. As same as English-Indonesia dictionary gives definition to *consumer as "*user or consument".

Then in Act Number 8 year 1999 used term entrepreneur and not producer. Based on Article 1 number 3 Act Number 8 Year 1999, entrepreneur is "every single person or business corporation, whether it is law institution or non-law institution that built and located or having activities in law area of the country of the Republic of Indonesia, whether it is individual or group through deal in operating business activity in various fields of economy". Based on the explanation of Article 1 number (3) Act Number 8 Year 1999, who entrepreneur is "entrepreneur who is in this definition is enterprise, corporation, BUMN, cooperation, importer, trader, distributor, etc.

Formulation of Article 1 number 3 Act Number 8 Year 1999 deals with entrepreneur has large definition, and not only factories producers who must result things and or services devote to Act but also partners, includes agents, distributors and links who implement distribution function and things or services bargaining to large society as users of the things and services.[3]

Practically, relationship between consumer and entrepreneur is not always good and harmonist even can cause consumer dispute. Consumer dispute is dispute deals with violation of consumer's rights. It includes all law aspects, whether it is civil, criminal or public institutions.

Consumer dispute does not need to happen if enterpreneur implements the duty as parameter meant in Act Number 8 Year 1999 about Consumer Protection.The six parameters are : deal with label, national standard

[1] Az. Nasution. *Law of Consumer Protection, an Introduction* (*Hukum Perlindungan Konsumen Suatu Pengantar)*. (Jakarta : Daya Widya. 1999). p 3
[2]*Ibid.*
[3]Gunawan Wijaya dan Ahmad Yani , *Hukum tentang Perlindungan Konsumen.*(Jakarta : PT Gramedia Pustaka Utama.2000). p. 5

of Indonesia, way of selling, advertisement or promotion, standard clause, also warrant and manual book using Indonesian language..

Dealing with appearing of consumer dispute, Article 45 subsection 1 Act Number 8 Year 1999 states ”every consumer who has loss can claim enterpreneur trough institutions that have job to solve dispute between consumer and enterpreneur or through court in public courts environment.”

The institutions that have job to solve dispute between consumer and enterpreneur, are 1) National Consumer Protection Agency (*Badan Perlindungan Konsumen Nasional*/BPKN), formed based on Article 4 Act Number 8 Year 1999, and one of the functions is: receiving complaint about consumer protection from society, non-government organization for consumer or enterpreneur. 2) Non-government Organization for Consumer Protection (*Lembaga Perlindungan Konsumen Swadaya Masyarakat* (LPKSM)) managed in Article 44 Act Number 8 Year 1999, one of the functions is helping consumer in struggling his/her rights, includes receiving consumer’s complaint or accusation , and 3) Consumer Disputes Resolution Agency (CDRA) formed based on Article 49 subsection (1) Act Number 8 Year 1999, is: ”government forms CDRA in region level II (regency/city) to solve consumer dispute outside court”.

Specifically for CDRA management in solving consumer dispute in Act Number 8 Year 1999 appears law problem that causes law bias in CDRA formation. Based on Article 49 subsection (1) Act Number 8 Year 1999, government forms CDRA in region level II (regency/city) to solve consumer dispute outside court. Decision of Article 49 subsection (1) causes bias of norm which is: which government given authority of attribute by Act Number 8 Year 1999 to form CDRA, whether it is central government or regional government? Moreover, mechanism of CDRA management is not managed by Act Number 8 Year 1999, causing law bias.

Then dealing with legitimation of CDRA authority, managed in Article 49 subsection (1) Act Number 8 Year 1999, mentioned: “government form CDRA in region level II (regency/city) to solve consumer dispute outside court”. But in Article 52 Act Number 8 Year 1999, deciding the jobs and the authorities of CDRA are:

a. implementing for the handling and the solving of consumer dispute through mediation or arbitration or conciliation;
b. giving consultation of consumer protection;
c. making supervision to inclusion of standard clause;
d. reporting to public investigating officer if there is violation of violation in this Act;
e. receiving complaint whether it is written or non-written, from consumer about violation of consumer protection;
f. doing a study and check of dispute of consumer protection;
g. calling entrepreneur who suspected has done violation of consumer protection;
h. calling and presenting witness, expert witness and/or every person reputed knows about the violation of the Act;
i. asking for help to investigating officer to present entrepreneur, witness, expert witness, or every single person as meant on g and h, who does not be ready to fulfill the calling from corporation of solving of consumer dispute;
j. getting, studying and/or evaluating letters, documents, and or other evidences for the investigation and/or inspection.
k. deciding and determining whether it is loss or not in consumer side;
l. Telling the decision to entrepreneur who has done violation toward consumer protection.
m. Giving administrative punishment to the entrepreneur who breaks certainty of the Act.

Duties and authorities of CDRA determined by Article 52 Number 8 Year 1999 above, appearing disharmonization with article 49 subsection (1) Act Number 8 year 1999, determining CDRA only authorizes solving consumer dispute.

Based on law problem deals with CDRA legitimation above, this study will analyze how institutional legitimation and authority of CDRA solving consumer dispute based on Act Number 8 Year 1999 about Consumer Protection?

RESEARCH METHOD

This study is normative study, which is study of law principles, law norm of law rules and law system .[1]This study used some approaches, such as: Act approach, and conceptual approach.[2]

In this study, the researcher uses law theory as analyzing knife including: theory of legitimation law, theory of laws and regulations and theory of authority law.

a. Theory of Legitimation Law

Theory of legitimation or law validation is a theory of teaching how and what requirements to make a law rule to

[1]Sudikno Mertokusumo. *Penemuan Hukum*, (Yogyakarta : Liberty,2009). p. 29
[2]Peter Mahmud Marzuki, *Penelitian Hukum*. (Jakarta : Kencana Prenada Media Group. 2008) p. 93

be legitimate and valid are, so it can be implemented to society.
A law rule has legitimate and valid, if it fulfills the requirements below:

a. The law rule should be formulated into various formal rules, such as in the forms of articles of Constitution, Act and other regulation forms.
b. Formal Rule should be made legally, for instance made by regulation former.
c. Legally, the law rule cannot be cancelled.
d. There are no other juridical flaws toward the formal rules. For example, it is not be incompatible with higher regulation.
e. The law rule should be implemented by law institutions and implementer.
f. The law rule should be accepted and obeyed by the society.
g. The law rule should be appropriate with the soul of the nation.[1]

According to J.W. Harris, a law rule is valid or not measured by fulfilled or not the elements below:

a. Does the law rule have conformity with higher certain rules? So, the rule is not in "ultra veres".
b. Is the law and regulation a consistent part (sub system) with the available management field?
c. Does the law rule have conformity with social reality in society (sociological aspect), so it is effective in the society?
d. Does the law rule have internal tendency to be consistently respected (subsystem) with the available management?
e. Is the law and regulation a part of normative transcendental reality (ontological aspect)?[2]

Furthermore about conformity requirements with basic norm and requirements which are accepted by the society in order to make a law rule being a valid law rule, so Hans Kelsen arguments that a law rule has been valid since regulated correctly, although in the beginning of the making of the law rule may be not well accepted by the society. Yet, according to Hans Kelsen, if the law rule continuously cannot be accepted by the society, so the law rule will be lose the validity until becoming invalid law rule.[3]

It is not in accordance with Prof Meuwisen's opinion that is one of the validity requirements of a law rule, it means causing a law rule to be effective, if fulfilling requirements below:

a. Social or factual validity. It means the law rule in the reality accepted and done by the society generally, including accepting witness if there is someone not does it.
b. Juridical validity. It means the law rule made through correct procedure and not in contradiction with the higher rule.
c. Moral validity. It means, to be valid, so the law rule cannot be in contradiction with moral values, for instance the law rule cannot violate human rights or be in contradiction with natural law rules.[4]

b. Theory of Laws and Regulations

In Indonesia, nomenclature (term) "legislation" defined as everything deals with Act, details of Act.[5] Everything deals with Act including many things, included the system, the making process, the interpretation, the testing, the maintenance etc. Furthermore the nomenclature "legislation" has many definitions, not only laws and regulations.

Society life is managed by some norms. Law norm arranged in a high rise structure as a pyramid, which is 'a central pillar' of national law system. It is stated by Padmo Wahjono that:

"Law order in the society and the country reflected or oriented by a law level, whether it is form or content, which one higher position is in the level to decide the direction and supported by lower position in the level. It is 'the central pillar' of a national law system in this modern era".6

To know the general theory about legislation pyramid, Hans Kelsen explains stufenbau theory (*stufenbau des rechts theorie)* in his book translated into English entitled *General Theory of Law and State* by Anders Wedberg. According to Hans Kelsen that:

> *"The creation of one norm – the lower one – is determined by another – the higher – the creation of which is determined by a still higher norm, and that this regresses is terminated by a highest, the basic norm which, being the supreme reason of validity of the whole legal order, constitutes in unity"*[7]

Basic norm/Grundnorm is the highest norm in the norm system no more formed by a higher norm, but

[1]Munir Fuady. *Teori-Teori Besar (Grand Theory) dalam Hukum*. (Jakarta : Kencana Prenada Media Group.2013) pp. 109-110
[2]J.W. Haris. *Law and Legal Science*. (Oxford : Clarendon Press.1979) p. 107.
[3]Hans Kelsen in J.W. Haris. *Law and Legal Science*. (Oxford : Clarendon Press.1979) p. 123.
[4]B.Arief Sidharta, *Meuwissen tentang Pengembanan Hukum, Ilmu Hukum, Teori Hukum, dan Filsafat Hukum*. (Translation) (Bandung : Refika Aditama, 2009). p. 46
[5]W.J.S. Poerwadarminta, *Kamus Umum Bahasa Indonesia,* rearranged by Pusat Pembinaan Dan Pengembangan Bahasa Departemen Pendidikan dan Kebudayaan, (Jakarta : PN Balai Pustaka, 1982), p. 990.
[6]Padmo Wahjono, *Sistem Hukum Nasional Dalam Negara Hukum Pancasila,*Scientific Speech in the 33rd Dies Natalis Ceremony of Indonesia University, 2nd printed, (Jakarta : CV. Rajawali. 1992) p.. 2 – 3
[7]Anders Wedberg, Translator, *General Theory of Law And State*, (New York : Russell & Russell, 1961) p. 16

Basic Norm/Grundnorm which is holder for the norms under it so a Basic Norm/Grundnorm called pre-supposed.[1]

Theory of law norm level from Hans Kelsen is inspired by his student named Adolf Merkl who states that a law norm always has two faces (*das Doppelte Rechsantlitz.* According to Adolf Merkl, an upper law norm has a source and base onto norm above it, but lower norm also has a base and be a source for law norm under it as a result the law norm has relative valid time *(rechtskraht)* because *the* valid time of the upper law norm taken or removed, so that lower law norms taken or removed.[2]

The theory developed by Hans Nawiasky, Hans Kelsen's student, states that law norm in the country always has levels, they are:

1. Country fundamental norm (Staats fundamentalnorm);
2. Country base rules/ Country main rules (*staatsgrundgesetz);*
3. Act *(formell gesetz);* and
4. Implementing Regulation and autonomous (verordnung & autonome satzung).[3]

According to Nawiasky, the content of *Staatsfundamentalnorm* is a norm as a base for forming a constitution or basic act of a country *(Staatsverfassung),* included changer norm. Law Essence of *Staatsfundamentalnorm* is a requirement for the validity of a constitution or basic act. It comes before appearing of a constitution. Under country fundamental norm (*Staatsfundamentalnorm)* is country main rule (*Staatsgrundgesetz),* usually poured into the body of basic act or written constitution. Under *staatsgrundgesetz is* concrete norm, it is *formellegesetz (*formal act), while the norm under *formellegesetz* is *verordnung & autonome satzung* (implementing regulation or autonomous rule).[4]

According to Bagir Manan, good laws and regulations at least have three bases, they are:

a. Juridical base *(juridishe gelding),* defined as first, the must of the availability of authority from laws and regulations maker. Every laws and regulations should be made by authorized institution or official. If it is not, laws and regulations are cancelled in the name of law *(van rechtswegenietig).* They are reputed never exist and all the results legally cancelled. For example, act in formal definition (*wet in formelezin)* made by president with DPR agreement. Every act that is not collective product between President and DPR cancelled in the name of law. Moreover, Ministry decrees, and so on should show the maker's authority. Second, the must of the availability of conformity of form or kind of laws and regulations in the higher level or the same level. Disconformity of form can be a reason to cancel the laws and regulations. For example, if the 1945 Constitution or last Act states something managed by act, so only in the form of act managed the thing. If managed in other form such as Presidential decisions, so the Presidential Decisions can be cancelled *(vernietigbaar). Third,* the must to follow certain way. If the way is not followed, laws and regulations may be cancelled in the name of law or does not/ not yet have binding law power. Fourth, The must to not be in contradiction with higher level laws and regulations. An act cannot contain rule in contradiction with constitution. And so on until the lowest level laws and regulations.
b. Sociological Base *(sociologische gelding)* is reflecting live reality in society. In one industrial society, the law (read: laws and regulations) should be appropriate with the reality in the industrial society. The reality can be needs or claims or problems faced such as labor problem, labor-employer relationship, etc.
c. Philosophical Base states every society always has law idea or thinking(*rechtsidee)* that is what the society expects from law (read: laws and regulations), such as to ensure justice, order, prosperity and so on. The *Rechtsidee* grows from their value system about right and wrong, their views about individual and society relationship, about things, about woman position, about invisible world etc. All of these are philosophical, which means dealing with view about something's gist or truth. Law is expected to reflect the value system whether as facility protecting values or as a facility creating in the society behaviors. These values let in the society, so that every forming of law or laws and regulations should be able to catch them every time forming law or laws and regulations. But, there is a time that the value system had systematically been summed up in one summary whether as philosophy theories or formal philosophy doctrines such as the five basic principles of the Republic of Indonesia. Furthermore, every forming of law or laws and regulations should carefully pay

[1]Maria Farida Indrati Soeprapto, *Dasar-dasarPeraturan Perundang-undangan dan pembentukannya.* (Yogyakarta : Kanisius. 1998),p. 25
[2]*Ibid.*
[3]A. Hamid S. Attamimi, *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara: Suatu Studi Analisis Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I – IV,* Disertation (Jakarta : Graduate Faculty of Indonesia University, 1990), p. 287
[4]*Ibid.* Pp. 287-288

attention to *rechtsidee* included in the five basic principles of the Republic of Indonesia (Pancasila).[1]

c. Theory of Authority Law

Philipus M. Hadjon, in his writing about authority states that "the term authority as same as the term *vernietigbaar* in the terms of Netherland's law. Both terms have a few differences in their law character, the term "*bevoegdheid"* usedwhether in public law concept or in private law concept, while the term authority always used in public law concept.[2]

Furthermore H. D. Stout , as stated by Ridwan H.R, states that:

"*Bevoedheid is een begrip uit bestuurlijke organisatierecht, watkan worden omschreven als het geheel van regels dat betrekking heeft op de verkrijging en uitoefening van bestuurscrechttelijke bevoegheden door publiekrechtelijke rechtssubjecten inhetnbestuursrechtelijke rechtsverkeer*"[3]

As a public law concept, authority (*bevoegdheid*) described as law power ((*rechsmacht*), where is the concept above, deals with the forming *besluit* (government decision) that should be based on an authority.[4]

In other words, government decision by authorized organ should be based on the authority that managed clearly, where the authority is decided in law rule before. As F.P.C.L. Tonnaer opinion states:

"Overheidsbevoegdheid wordt in dit verband opgevat als het vermogen om positiefrecht vast te stellen n aldus rechtsbetrekking tussen burgers onderling en tussen overheid en te scheppen" (Government authority deals with it reputed as an ability to do positive law, and with that, can be detailed in law relationship between government and citizen)[5]

Various definitions of authority as mentioned above, eventhough formulated in different languages, but containing definition that is authority gives basic law to act and take certain decision based on given authority on him/her based on valid laws and regulations.

It can also be stated that the authority should clearly managed and decided in valid laws and regulations. It means gaining and using or regional authority in managing of layout of sea in archipelago area only can be done if the region based on laws and regulationshas authority to do it, as stated by Philipus M. Hadjon, it is:

".. At least base of authority should be found in act if the ruler wants to put duties onto citizens. Furthermore there is a democratic legitimation inside it. Through Act, parliament as the former of the act that represent his voters also determines what duties deserved by the citizens. As a result, attribute and delegation of authority should be based on formal act, at least if the decision put the duties onto the society."[6]

There are three main ways to get government authority in administrative law library, they are attribute, delegation and mandate.[7]

Attribute, delegation, and mandate are explained below:

a. **Attribute**

Attributie; *toekenning* van en *bestuursbevoegheiddoor* een wetgever aan een bestuursorgaan[8]

Attribute is stated as a normal way to get government authority. It also stated attribute is an authority to make decision (besluit). Another Formulation states attribute is forming of certain authority and its giving into certain organ. Former of authority is authorized organ based on laws and regulations. The forming of the authority and main authority distribution determined in Basic act. The forming of government authority based on authority decided by laws and regulations.[9]

b. Delegation

Delegatie; overdracht van een bevoegheid van het ene bestuursorgaan aan een ander, (delegation is giving the government authority from a government organ to another government organ).[10] Delegation defined as giving the authority (to make "*besluit"*) by government official to other party and the authority becomes other party's responsibility.[11]

c. Mandate

Mandat *een bestuursorgaan laat zinj bevoegheid names hem uitoefeen door een ander*, (Mandate

[1]Bagir Manan, *Dasar-dasar Perundang-undangan Indonesia, (*Jakarta :Ind-Hill. Co, 1992) ,pp. 13 - 18.
[2] PhilipusM. Hadjon, (I)*Pengkajian Ilmu Hukum*, Makalah Pelatihan Metode Penelitian Hukum Normatif, (Surabaya : Universitas Airlangga, 1997). p. 1
[3]Ridwan HR, *Hukum Administrasi Negara*, (Jakarta : Raja Grafindo Persada, 2002), p.101
[4]Philipus M Hadjon , *Loc. Cit,*
[5]Ridwan HR *Loc Cit*
[6] PhilipusM. Hadjon,(II)*Pengantar Hukum Administrasi IndonesiaIntroduction to Indonesian Administrative Law*, (Yogyakarta :Gadjah Mada University Press,2002). p. 130
[7]PhilipusM. Hadjon, (I) *Op Cit* p. 2
[8]Ridwan HR, *Loc Cit* , pp. 104-105
[9]Philipus M Hadjon (I) *Loc Cit*
[10]Ridwan HR. *Loc Cit.*
[11]Philipus M Hadjon (I), *Loc Cit*

happens when government organ is permitting the authority done by other organ on behalf the government organ). Mandate is a giving of the authority to subordinate. The giving is for giving the authority to subordinate in making decision on behalf the government official who gives the mandate. The decision is decision of the government official. Furthermore, burden and responsibility still held by the mandate giver. There are no laws and regulationsfor mandate.[1]

DISCUSSION

1. Legitimation of CDRA Establishment

Etymologycally, legitimationcomes fromLatin "lex" that means law. Based on Indonesian Dictionary *(Kamus Besar Bahasa Indonesia)*, legitimation is the information that hold true or correct that the information maker is the real people that is meant, and the valid statement (according to Constitution or appropriate with Constitution).[2]

The legitimation concept is related to the attitude of society toward the authority. It means that the legitimation is the acceptance and the claim of society toward the moral right of leader to govern, make and conduct legal decision.

According to Ramlan Surbakti, based on the principles of recognition and public support for the government's legitimacy grouped into five types, namely: 1. The traditional legitimacy; provide public recognition and support to the government leaders, because leaders are descendants of the leader of "blue-blooded" that is believed to lead the community. 2. The legitimacy of ideology; the community provides support to the government leaders, because leaders are regarded as the interpreter and executor of ideology. Ideology is intended not only doctrinaire like communism, but also pragmatic as liberalism and the ideology of Pancasila. 3. Legitimacy personal qualities; provide public recognition and support to the government because the leader has the personal qualities and personal appearance in the form of a charismatic and brilliant achievements in a particular field. 4. The procedural legitimacy; provide public recognition and support to the government because the leader has the authority according to the procedure set forth in laws and undangan.5. Instrumental legitimacy; provide public recognition and support to the government because the leaders promise or guarantee the material welfare (instrumental) to the public[3]

The legal basis for the establishment of CDRA contained in Act 49 Paragraph (1) of Law No. 8 of 1999 which specifies that the government form a CDRA at the local level II for consumer dispute resolution outside the court. Act 49 paragraph (1) of Law No. 8 of 1999 states that CDRA form the government at the local level and not be established at the level I (province) for the Resolution of consumer disputes out of court. It is constituted so that consumers are not many complaints to CDRA, if located in the provincial capital. Therefore, the government will establish CDRA in regencies in Indonesia to resolve consumer disputes in addition to the judiciary.

In connectionwiththe establishmentof institutionallegitimacyCDRA, then there must berulesthat govern them.Arule of lawhas alegitimateandvalid, if it meetsthe followingrequirements:

a. The rule of law must be formulated into various forms of formal rules, such as in the form of acts of the constitution, laws and various other forms of regulation
b. The rule of law must be formulated into various forms of formal rules, such as in the form of acts of the constitution, laws and various other forms of regulation.
c. By law, these laws may not be canceled.
d. The formal rules against no other legitimate defects. For example, does not conflict with higher regulations.
e. The rule of law has to be implemented by agencies and legal practitioners.
f. The rule of law must be accepted and respected by the community.
g. The rule of law must be in accordance with the spirit of the nation.[4]

Legitimacy or validity of CDRA as the executor of dispute resolution outside the court, has been clearly and unambiguously defined in Act 49 paragraph (1) of Law No. 8 of 1999, the government formed a Consumer Dispute Resolution Board (CDRA) in However, Act 49 paragraph (1) and other provisions of Law No. 8 year 1999 does not clearly identify who is entrusted to form CDRA government, whether central or local government?

Based on the theory of authority, that the source of authority can be seen in the constitution of each country that gives legitimacy to public bodies to be able to perform its function.[5] Embodiments of the functions of government as noted above, it appears on government action *(besturrshandelingen)* which in many ways is a

[1] *Ibid*
[2] Dalam www.kbbi.web.id
[3] Ramlan Surbakti. *Memahami Ilmu Politik*. (Jakarta : PT Grasindo, 1992:97)
[4] Munir Fuady. *Loc Cit*
[5] Philipus M. Hadjon,(I)*Op. Cit*:2)

form of action taken by the organs and government institutions. In carrying out its functions (especially with regard to government authority), the Government gained power or authority it comes from the power granted by law. Similarly, the establishment of an authority CDRA attribution to the government, because Act 49 paragraph (1) of Law No. 8 of 1999 clearly mandates the establishment of CDRA to the government.

Attribution said to be the normal way to obtain governmental authority. It is also said that the attribution is also the authority to make decisions *(Besluit)*. Others say that the formulation of attribution is the formation of certain powers and the gift to a specific organ, which can form organ competent authority based on legislation. Establishment of authority and distribution of its main powers is regulatedin The Constitution.The establishment of government authority is based on the authority established by legislation.

H.D. Konijnenbelt Willem van Wijk, states that: *"Wetmatigheid van bestuur: de uitvoerende mach bezit uitsluitend bevoegdheden welke haar uitdrukkelijk die door de Grondwet of door een andere zijn toegekend wet"*. (Administration according to law: the government gets the power granted to him by the law or the Constitution)[1]

The scope includes the legality of acts of government authority, procedure and substance. Privileges and substances are the basis for the formal legality. Non-fulfillment of the three components of the legality of disabling the juridical an act of government. Defects concerning juridical authority, procedure and substance. Every act of government hinted should be based on legitimate authority. The authority was obtained through three sources, namely: attribution, delegation and mandate. The authority attribution usually outlined by the division of state power by the Constitution or established by law, the delegation of authority and mandate is the authority that comes from devolution.

In connection with the absence of an authentic interpretation of the word "government" in Law No. 8 of 1999, then for sure who the intended government received a mandate to form CDRA, it is necessary to do this type of interpretation, namely, systematic interpretation. Systematic interpretation is the interpretation according to a system that is in the law. It is done by linking a provision of the legislation with the provisions of other legislation.

If it is the associated word "government" in Act 49 paragraph (1) of Law No. 8 of 1999 with the word "government" in other laws, it can be interpreted in a systematic manner, the notion of government is the central government, and not the local government. Therefore, that is a mandate of Act 49 paragraph (1) of Law No. 8 of 1999untuk formed CDRA is the central government.

Moreover, Act 49 paragraph (1) of BFL also did not specify the legal basis for the establishment of CDRA at the city / county. In practice so far, the formation of CDRA done by a Decree of the President (Presidential). Even though the birth of the Presidential Decree, it is not commanded by UU No. 8 of 1999.

CDRA first inaugurated in 2001, by Presidential Decree Number 90 Year 2001 on the Establishment of Consumer Dispute Resolution Board in Medan, Palembang, Central Jakarta, West Jakarta, Bandung, Semarang, Yogyakarta, Surabaya, Malang and Makassar. In the year 2015 there was only one Presidential Decree on the establishment of CDRA, namely Presidential Decree No. 1 of 2015 established yet CDRA in Indragiriarea Hilir, Lebak, Rejang Lebong, Asahan District Jaya Wijaya, District Fifty Cities, and Kapuas. Until now, there are 166 cities and regencies that have CDRA than 514 the number of district / city in Indonesia (data March 2015).

In Act No. 10 of 2004, even the current namely Law No. 12 Year 2011 on the Establishment of legislation, there is no longer a Presidential Decree (Presidential) as one of legislation, namely as contained in Law Number 12 Year 2011 on the Establishment of legislation:

1) The Constitution of the Republic of Indonesia Year 1945;
2) Decree of MPR;
3) Law / Central Rule;
4) Government;
5) Regulation of the President;
6) Provincial Regulation;
7) Regulation of the Regency / City.

Presidential Decree initially contains only material determination, so it is not generally applicable. But in its development, this turned out to Presidential Decree may also contain regulatory material, so that it applies a general and continuous.

In connection with the legal basis for the establishment of CDRA in regencies / cities that in practice until 2015 still uses the Presidential Decree (Presidential), should no longer use the Decree of the President in the formation of CDRA, but by using the Presidential Regulation as stipulated in Law No. 12 Year 2011 on the Establishment of legislation.

Law Number 12 Year 2011secara expressly states that there is no longer a Presidential Decree that the material contains settings. If it has material of setting, then it should be arranged in the form of Presidential

[1]Sutarman. *Kerjasana Antar Daerah Dalam Pelayanan Perizinan Dan Penegakan Hukum Penangkapan Ikan Di Wilayah Laut*, Disertasi (Surabaya: Program Pascasarjana Universitas Airlangga, 2007:112)

Decree (Decree). Material payload is limited. If used, the Presidential Decree charged regulation can regulate matters that are not ordered by the MPR in the executive branch, law, or PP. But after the Law No. 12 Year 2011lahir, substance regulated by Presidential Decree only material that was ordered execution by law or government regulation.

Although Act 100 of Law No. 12 of 2011 specify: "all the Presidential Decree, the Minister, the Governor's Decree, Decree Regent / Mayor, or Decision other officials as referred to in Act 97 that is set up, which already existed before this Act applies, must be interpreted as a rule, to the contrary in this Act", but this provision cannot be used as a justification to keep using the Presidential Decree in the form of CDRA in areas of the cities / counties, especially the release of Presidential Decree after the Law No. 12 Year 2011 on Establishment of legislation.

Relating to the legitimacy or validity of CDRA as the executor of dispute resolution outside the court, which is based on Act 49 paragraph (1) of Law No. 8 of 1999, which raises concerns about no more rules regulate the legal basis and mechanism of formation of CDRA in the area. According to Adolf Merkl, a legal norm it up he sourced and based on the norms on it, but down he also became the basis and source of the rule of law underneath.[1]

Hans Kelsen also argued in theory of stufenbau *(stufenbau des rechts Theorie)* that: "The creation of one norm - the lower one - is determined by another - the higher - the creation of the which is determined by a still higher norm, and that this regresses is terminated by a highest, the basic norm which, being the supreme reason of validity of the whole legal order, constitutes in unity"[2]"(norm lower determined by the norms of higher, and so on and that is regresses terminated by one of the most high , the basic norms, the appeal to the whole truth of the rule of law)"

Based on the theory of law and the opinion of legal experts on the above, that the legitimacy of the establishment of CDRA as observed in Act 49 paragraph (1) of Law No. 8 of 1999, there must be implementing regulations, either government regulation or the Presidential Decree.

Law No. 8 of 1999 does not stipulate a government regulation or the Presidential Decree which follow the provisions of Act 49 paragraph (1) of Law No. 8 of 1999. The lack of clarity in the formation of CDRA implementing regulation is clearly incompatible with Act 5 of Law No. 12 Year 2011 on the Establishment Regulations legislation, one of which requires clarity of a formulation of the regulations. Any legislation must meet the technical requirements of the preparation of legislation, systematic and choice of words or terminology, as well as the legal language is clear and easy to understand, so do not give rise to a variety of interpretations in the implementation.

Then in Act 6 of Law No. 12 Year 2011 on the Establishment of Legislation, also determine the substance of the legislation containing the principles as follows:

a. aegis;
b. humanity;
c. nationality;
d. kinship;
e. archipelago;
f. culturally diverse;
g. justice;
h. equality in law and governance;
i. order and legal certainty; or
j. balance, harmony, and harmony.

Ambiguity implementing regulations in the formation of CDRA, also does not fit some of the principles of the substance of the legislation, namely: the principle of order and legal certainty is that every substance of the legislation should be cause order within the community through the guarantee of legal certainty.

2. Duties and Authority CDRA

The term comes from the word *bevoegdheid* authority which is defined as the power, the authority or power.[3]In addition, the authority is also interpreted as the power to run something (right to exercise powers to implement and enforce the law)[4]

In relation to the CDRA authority, Act 49 paragraph (1) and Act 52 of Law No. 8 of 1999jo. Act 2 The Minister of Industry Decree No. 350 / MPP / Kep / 12/2001, determines that the CDRA main function is as a

[1]Maria Farida Indrati Soeprapto, *Loc Cit*
[2]Anders Wedberg,*Translator, General Theory of Law And State*, (New York : Russell & Russell, 1961:16)
[3]N.E. Algra et.al. *Kamus Istilah Hukum Fockema Adrea Belanda-Indonesia*. (Bandung : Bina Cipta. 1983:74)
[4]Henry Campbell Black, *Black's Law Dictionary*, 6 th Edition, (St Paul Menesotam: West Publishing, 1990:133)

legal instrument of dispute resolution outside the court.[1]

H. D Stout, sebagaimanadikonstantir by Ridwan H.R, states that:

"Bevoedheid is een begrip uit bestuurlijke organisatierecht, miss out on worden omschreven als het geheel van regels dat betrekking heeft op de verkrijging en uitoefening van bestuurscrechttelijke bevoegheden door publiekrechtelijke rechtssubjecten inhetnbestuursrechtelijke rechtsverkeer" (Power is a notion that comes from the law of government organization, which can be explained as a whole seal the document rules relating to the acquisition and use of government authority by the subject of public law in a public law relationship)[2]

As the concept of public law, the authority *(bevoegdheid)* described as the rule of law *(rechsmacht)*, where the concept of the above, is also associated in the formation Besluit (government decision) should be based on an authority.[3]

The duties and authority of CDRA in order to function as a body addressing and resolving consumer disputes out of court under Act 52UU No. 8 1999 are as follows:

a. carry out the handling and Resolution of consumer disputes, by means of conciliation, mediation and arbitration;
b. provide advice consumers protection
c. supervise the inclusion of standard clauses;
d. The investigators report to the public in case of violation of the provisions of Law No. 8 of 1999 on Consumer Protection;
e. receive complaints both written and unwritten, of consumers about breaches of consumer protection;
f. conduct research and examination of consumer protection disputes;
g. calling businessmen alleged to have committed a violation of consumer protection;
h. summon and bring witnesses, expert witnesses or anyone who is considered knowing violation of Law No. 8 of 1999 on Consumer Protection;
i. enlist the help of investigators to bring businesses, witnesses, expert witnesses or any person referred to in points G and H are not willing to meet the call CDRA
j. receive, examine and / or assess letter, documents or other evidence to the investigation and / or examination;
k. decide and establish the presence or absence of a loss on the part of consumers;
l. inform the decision to businesses that violated consumer protection; and
m. impose administrative sanctions on businesses that violate the provisions of Law No. 8 of 1999 on Consumer Protection.

Based on the duties and authority of CDRA as set forth in the above, it turns out CDRA besides authorized to settle consumer disputes, CDRA is also authorized as a consultative body of consumer protection, the agency socialization of Law No. 8 of 1999, the regulatory body a standard clause, agency researchers, and as a donator sanctions.

Duties and powers CDRA set forth in Act 52 of Law No. 8 of 1999 on top, do not focus in resolving consumer disputes and rated exceed the authority given to Act 49 paragraph (1) of Law No. 8 of 1999 which only authorizes CDRA to resolve consumer disputes in outside the court. The lack of power is not related to the main function CDRA to resolve consumer disputes out of court, will affect the legitimacy of the CDRA institutionally.

In connection with the extent of the duties and authority of CDRA set forth in Act 52 of Law No. 8 of 1999, which is considered to be beyond the authority of the principal granted Act 49 paragraph (1) of Law No. 8 of 1999, it is based on the theory of authority that the government's decision by the organ authorized to be based the authority which clearly has been set, where such authority has been established in laws that already exist. As the opinion of F.P.C.L. Tonnaer, states that*: "Overheidsbevoegdheid wordt in dit verband opgevat als het vermogen om positiefrecht vast te stellen n Aldus rechtsbetrekking tussen burgers onderling en tussen overheid en te scheppen"* (Authority in this regard is considered as the ability to implement positive law, and so , can be detailed legal relationship between government and citizens)[4]

Other words, the authority should be clearly and set out in legislation and regulations that apply. Philip M. Hadjon said that: "... a minimum basis of authority to be found in a law, if the authorities want to put obligations on the citizens. Thus where there is a democratic legitimacy. Through legislation, the parliament as the legislators who represent constituencies in determining the obligations of what is appropriate for citizens.

[1]Yusuf Shofie, *Penyelesaian Sengketa Konsumen Menurut Undang-undang Perindungan Konsumen Teori dan Praktek Penegakan Hukum,*(*Bandung : Citra Aditya Bakti, 2003:*20-21)
[2]Ridwan HR, *Loc Cit*
[3]Philipus M Hadjon, (I) *Loc Cit.*
[4]Ridwan HR *Loc Cit*

From here, attribution and delegation of authority must be based on a formal law, at least if the decision was to put obligations on the public."[1]

CONCLUSION

a. Legitimacy of CDRA in settling consumer disputes out of court to be weak, because Act 49 paragraph (1) of Law No. 8 of 1999 be the legal basis for the establishment of CDRA containing haziness, which is associated with a government authority authorized form of CDRA, and the type of legislation in formation CDRA. Besides the absence of implementing regulations of Act 49 paragraph (1) of Law No. 8 of 1999, giving rise to a legal vacuum regarding the formation mechanism of CDRA in the area.
b. CDRA authority in Act 52 of Law No. 8 of 1999 considered to be beyond the authority granted subject Act 49 paragraph (1) of Law No. 8 of 1999, which is to resolve consumer disputes out of court. Consequently, legitimacy as an institution CDRA consumer dispute resolution outside the court becomes blurred andout of focus.

RECOMMENDATION

a. Necessary to improve the Act 49 paragraph (1) of Law No. 8 of 1999 so that there is clarity of the authorities and the type of legislation in the form of CDRA. Furthermore, it should be made president of government regulations or regulations as the implementing regulations in the formation of CDRA.
b. Act 52of Law No. 8 of 1999 to be amended so is not contrary to Act 49 paragraph (1) of Law No. 8 of 1999, so that the CDRA focused only resolve consumer disputes and legal certainty relating reached CDRA authority in Law No. 8 of 1999.

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[1]PhilipusM. Hadjon, (II) *Loc Cit*