

## Innitiation Consumers Court Through Consumer Dispute Resolution Agency Reconstruction

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### Abstract

Based on article 49 paragraph 1 of law number 8 year 1999, the government forms the regional Consumer Dispute Resolution Agency in the level II (districts) to resolve disputes of consumers outside the court. However, related to the legitimacy, the authority and legal, the Consumer Dispute Resolution Agency event turns out to incur the juridical problem. There is an eliciting discourse about formatting the special court for consumers, through the Consumer Dispute Resolution Agency in the common judiciary field. Based on the juridical issue and the notion of the formation of the special court for consumers through the Consumer Dispute Resolution Agency become a special court for consumers, hence this research will analyze the urgency the formation of the special court for consumers and whether there is essential juridical chance for formatting the special court consumers in Indonesia. Methods used in this research is research normative focused to secondary data or material law. As for the approach that was used in this research is the approach the act and approach conceptual. Based on some research, the urgency the formation of court Indonesian consumer is supported by: 1) complexity dispute in the field of goods and services, 2) weakness juridical Consumer Dispute Resolution Agency in dispute resolution consumers, 3) the absence of a term resolve disputes in state court, and 4) the lack of knowledge district court judge against the substance dispute consumers and 5) the completion of a lawsuit simple in shortcuts number 2 year 2015 cannot be performed. While the juridical chances or opportunities to reconstruct Consumer Dispute Resolution Agency to be a special court for consumers are: 1) the formation of dispute resolution the event quickly in decree no. 2 years 2015 about the RPJMN 2015-2019, 2) the regulating of special court in act no. 48 year 2009 on Judicial Power, 3) Judicial Mediation in PERMA No. 1 year 2008 on Mediation Procedure in court. Theoretically, it is possible to reconstruct a body of law if it raises the issue of the law or considered ineffective or outdated. Therefore, the Consumer Dispute Resolution Agency to be special court for consumers, not merely setting Consumer Dispute Resolution Agency weakness in Law No. 8 year 1999, but more than that to anticipate the needs of modern society on the settlement of consumer disputes quickly, simply and inexpensively to come.

**Keywords:** Consumer Dispute Resolution Agency, Consumer Court

### INTRODUCTION

Referring to Article 49 paragraph (1) of Law No. 8 year 1999, the government established the Consumer Dispute Resolution Agency in the second level (district /city) to resolve consumer disputes out of court. Then, in Article 52 of Law No. 8 year 1999 defines the duties and authority of Consumer Dispute Settlement Board, namely:

- a. carries out the handling and settlement of consumer disputes by way of mediation or arbitration or conciliation;
- b. advises consumer protection;
- c. oversees the inclusion of standard clauses;
- d. investigates report to the public in case of violation of the provisions of this Act;
- e. receives complaints both written and unwritten, of consumers about breaches of consumer protection;
- f. conducts research and examination of consumer protection disputes;
- g. calls businessmen alleged to have committed a violation of consumer protection;
- h. calls and brings the witnesses, expert witnesses and / or any person who is considered knowing violation of that Act;
- i. asks for help investigators to bring businesses, witnesses, expert witnesses, or any person referred to in letters g and h, which is not willing to meet the call of consumer dispute resolution body;
- j. receives, examines and / or assesses the letters, documents, or other evidence to the investigation and / or examination;
- k. decides and establishes the presence or absence of harm to consumers;
- l. notifies the decision to businesses that violated consumer protection;
- m. imposes administrative sanctions on businesses that violate the provisions of this Act.

Related to the legitimacy of the establishment of Consumer Dispute Resolution agency set forth in Article 49 paragraph (1) of Law No. 8 year 1999, was not supported by implementing regulations, resulting

inobscurity initiative and the formation mechanism of Consumer Dispute Resolution Agency, whether the authority of the central government or the initiative of the municipality or district. This is clearly not in accordance with the theory of legitimacy and the theory of law.

Then with regard to the extent of the duties and authority of the Consumer Dispute Resolution Agency in Article 52 of Law No.8 of 1999, resulting in lacking of the Consumer Dispute Resolution Agency in carrying out its duties substantially in resolving consumer disputes by mediation, arbitration and conciliation. It is also inconsistent with the theory of authority which requires Consumer Dispute Resolution Agency to focus in resolving consumer disputes, and not given the authority that is not related to its function as an institution consumer dispute resolution outside the court.

In addition, the conflicts of law (conflict of norm) also occurs between Article 54 paragraph (3) of Law No. 8 year 1999 with Article 56 paragraph (2) of Law No. 8 year 1999 to put forward objections against the decision of Consumer Dispute Resolution Agency, resulted in legal uncertainty against the decision Consumer Dispute Resolution Agency and creates injustice for consumers. The businesses may betoying with the consumer by filing an objection to the court and even up to the Supreme Court. The intervention of the district court and the Supreme Court against the decision of Consumer Dispute Resolution Agency also assessed in accordance with the theory of dispute resolution which calls for a strict separation between non-litigation dispute resolution and litigation.

Some issues related to the juridical legitimacy, authority, and proceedings of the Consumer Dispute Resolution Agency, gave rise to the establishment of a special court for consumer dispute resolution through reconstruction the Consumer Agency become part of a special court for consumers in the general courts. The reconstruction intended to investigate in this research is updating the system and form of settlement of consumer disputes of non-litigation (Consumer Dispute Resolution Agency) into litigation (Consumer Special Court).

Based on juridical issues and the idea of establishing a special court consumer dispute resolution through consumer agency reconstruction into a special court for consumers, this study will analyze the urgency of the establishment of special courts for consumer and whether there is the juridical chance of establishment of a special court for consumers in Indonesia.

## RESEARCH METHOD

This study is normative, which is the study of the principles of law, the legal norms of the rule of law and the legal system.<sup>1</sup> This study uses several approaches, such as: approach to legislation and conceptual approaches.<sup>2</sup>

In this study, researchers used the theory of law as an analytic tool include development of legal theory and legal theory dispute resolution.

### 1. Development Legal Theory

In relation with the legal issues in this study, the research suggests the relevant Development Legal Theory proposed by Mochtar Kusumaatmadja.

Mochtar Kusuma atmadja has introduced a legal theory according to which the building is built on the theory of the culture of Northrop, the wisdom orientation theory (policy oriented) from Mc. Dougal and Laswell and pragmatic legal theory of Roscoe Pound.

Mochtar said the law is an overall principles and rules that govern human life in society, also includes institutions and processes which embody the enactment of rules in reality.<sup>3</sup>

In the theory, Mochtar Kusuma Atmadja presenting legal concepts that are closely related to the business of legal reform in Indonesia, namely that the law as a mean of community renewal or renewal of community facilities.

The birth of the legal theory of this development a little more or less inspired by the theory of law as a tool of social engineering written by Roscoe Pound. It's just a theory of law as a mean of renewal of society is the development of the theory of Roscoe Pound in Indonesia range and in a wider scope, including:

1. The legislation is more prominent in the process of legal reform in Indonesia, although jurisprudence also play a role, as opposed to the situation in America where this theory was born, because in the United States is aimed primarily at the role of renewal rather than the Supreme Court decision as the highest court;
2. Attitudes that show sensitivity to the reality of society rejected the mechanistic application of the conception of law as a tool of social engineering; and
3. When in terms of law including the international law, Indonesia is already running principle of law as an instrument of renewal long before conception is defined formally as the corner stone

<sup>1</sup>Sudikno Mertokusumo. *Penemuan Hukum*, (Yogyakarta : Liberty, 2009:29)

<sup>2</sup>Peter Mahmud Marzuki, *Penelitian Hukum*. (Jakarta : Kencana Prenada Media Group. 2008:93)

<sup>3</sup>Mochtar Kusumaatmadja. *Konsep-Konsep Hukum dalam Pembangunan*. (Bandung : PT Alumni. 2006:94)

policy of the law.

Basic thoughts that exist in the function of law in national development represented "... as a mean of renewal of society" or "... as the mean of development" are as follows:

1. the law is a mean of renewal of society based on the assumption that the irregularity or order in the development or renewal effort is something that is desired or deemed (absolute) needs; and
2. Another assumption contained in the concept of law as a mean of development is that the law in the sense of rules or laws can indeed serve as a tool (regulator) or a mean of channeling the direction of development in the sense of human activities in the direction desired by the construction or renewal.

Taking the two functions mentioned above into account, it is expected for them to be made by the law for the changing process, including the process of rapid change that is normally expected by the people who are building, if the changing was to be done neatly and orderly, in addition to its traditional function which is to ensure certainty and order.

In general, Mochtar Kusuma atmadja also conveyed some key issues in the discussion of legal issues and community namely:

1. The meaning and function of law in the society.

To answer these problems, it is need to review the question of what the purpose of the law is. In the final analysis, the ultimate goal of the law can be reduced to one thing, namely the order. In addition to order, it is the achievement of justice of different content and size, according to the society and era. Meanwhile, to achieve order in society, the necessary to have the certainty. Without the rule of law and public order which are reflected by it, humans could not develop the talents and abilities God has given him optimally in a society where they live.

2. The law as a social norm.

This does not mean that the interaction between human beings in a society governed only by law. Human life in society other than the man him self morally guided, governed also by religion, the rules of propriety, decency, customs and social norms;

3. Law and Power.

Considering that the law requires forceful measures for the restructuring of its provisions, it can be said that the law requires for its enforcement powers. Without power, the law is no more would constitute a social rule that contains more suggestions. Instead, the law is different from other social rules, which also recognize other forms of coercion, in the event that the power to force it self is set, either on the way or space or execution by the law. The essence of power in some form remains the same, namely the ability to impose its will on the other hand;

4. Legal and socio-cultural values.

It cannot be separated from values (values) prevailing in a society, even the law it is a reflection of the values that prevail in society. A good law is the law of life (the living law) in the community; and

5. Law as an instrument of renewal of society.

By looking at the meaning and function of the law conservatively it can be said that the law is a tool for maintaining order in society. However, in the condition of the people who are building, the function of the law is not enough just to maintain order in society alone, but the law also should be able to assist the process of change in society.<sup>1</sup>

## 2. Theory of Settlement

In English vocabulary there are two terms, namely "conflict" and "Dispute" which both contain an understanding of their differences in the interests between the two parties or more, but they are distinguishable.

The word "conflict" has been absorbed into the Bahasa Indonesia into "konflik", while the word "dispute" can be translated with the word "sengketa" in Bahasa Indonesia. A conflict, which is a situation in which two or more parties are faced with differences in interests, it will not develop into a dispute if the party who feels aggrieved only harbored feelings of dissatisfaction or concern.

A conflict changed or evolved into a dispute if the parties who feel aggrieved have expressed dissatisfaction or concern either directly to the party who is regarded as the cause of the loss or to any other party.

A conflict would turn into a dispute if not resolved. Conflict can be interpreted "contradiction" between the parties to resolve a problem which, if not resolved properly can disrupt the relationship between them.

Throughout the parties involved are able to resolve the problem properly, then the dispute will

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<sup>1</sup>Satjipto Rahardjo. *Ilmu Hukum*. (Bandung : Alumni, 1986:89)

not happen. But if the opposite occurs, the parties cannot reach an agreement on a solution to solve it, then dispute incurred. Dispute resolution can be done in several ways.

Philosophically, dispute resolution is an attempt to restore the relationship of the parties to the dispute in its original state, so that the parties can re-establishing relations between the social and legal relationship with one another.

One perspective function of law insociety should be developed as a mean of dispute resolution of conflict or dispute (conflict or dispute settlement), including consumers resolve disputes as part of the socio-communal conflict. The other law perfective is the law as a mean of social control. Then the perspective of the legal functional so viewing the law as a mean of social engineering. Furthermore, the function of the laws also viewing the law as a mean of social integration. While the last function of the law viewing the law as social empowerment. This last function of the law humanist participatory.

The terms of dispute resolution theory are derived from the English translation, the dispute settlement of theory, in Dutch, namely Theorie vande beslechting vangeschillen, was in German so-called Theorie der streithbeilegung.

The use of the term dispute or conflict until now there is still no unity of opinion from experts such as Richard L. Abel use the term dispute, while Jeffrey Z. Rubin used the term conflict. Hence the notion of dispute being addressed above need to be affirmed that; dispute is: "Conflicts, disputes or fighting which took place between parties one by the other and/or between the one with the various parties associated with something of value in cash or objects.

Settlement is the process, act, how to resolve. Resolving interpreted as to finish, making ends (dispute or quarrel), or arrange something so that it becomes good.

Dispute resolution is an attempt to end the conflict or conflicts that occurred in the community. To set how to end disputes that arise in the community needed legislation that could regulate the settlement of disputes.

One of the functions of law in society that it should be developed as a means of resolving conflicts or disputes, including resolving consumers disputes as part of a social conflict. The other perspective of legal functions of law is as a mean of social control.

Then the perspective of the legal function also viewing the law is as a mean of social engineering. Further perspective of the legal function also viewing the law as a mean of integrating social. While looking at the last perspective of legal function is as a mean of social empowerment. This last function of the law humanist participatory.

Laws in position as a damper conflict was also expressed by Vilhelm Aubert that the "law as a way of resolving conflict" or as stated by Autin Turk that "the law as a weapon in social conflict by proposing the concept of: law as a conflict management" or also as expressed by Soerjono Soekanto that the function of the law is as "a mean of expediting the process of social interaction (law as a facilitation of human interaction). With smooth social interactions, the conflicts are expected to be solved with the best.

Law as a mean of resolving conflicts or disputes, Steven Vago argued as follows:

*"By Settling dispute through an authoritative allocation of legal rights and obligations, the law provides an alternative to other methods of dispute resolution. Increasingly, people in all walks of life let the courts settle matters that were once resolved by informal and non legal mechanism, such as negotiation, mediation, or forcible self-help measures. It should be noted, however, that law only deals with disagreement that have been translated into legal disputes. A legal resolution of conflict does not necessarily result in a reduction of tension or antagonism between the aggrieved parties. For example, in a case of employment discrimination on the basis of race, the court may focus on one incident in what is a complex and often not very clear cut series of problems. It results in a resolution of specific legal dispute, but not in the amelioration of the broader issues that have produced that conflict"*

Based on the description above, it is clear that the law can be used to dampen or resolve a conflict or social dispute and provide solutions in a conflict or dispute settlement communal development that occur in the community.

In principle, there are two ways the settlement of a dispute that could be also served to protect people from the acts of tort (against the law) committed both by the governments and fellow citizens against other citizens, namely:

1. Litigation dispute resolution, which means the settlement of disputes through the judicial authorities;
2. Alternative dispute resolution, which means the settlement of disputes outside the judicial authorities, commonly known as ADR.

In order to meet the demands of the business world developed the alternative model of dispute

resolution, named the dispute resolution outside the court, generally called ADR. The ADR institution is well known and popular in the United States of America.

ADR is a term that first appeared in the United States. This concept is a response to dissatisfaction that emerged in the community in the United States of America against their judicial systems.

The background of the utilization of ADR in the United States of America as a representation of the industrial countries and the advanced economies that embrace non-confrontational cultural roots which are generally owned by the developing countries is slightly different. The background of performing ADR in developed countries is due to the lack of faith in the justice system, while for the countries that embrace cultural roots, the non-confrontational is preserving the culture of non-adversarial towards more stable society (social stability), as well as access to justice (promoting the faster process, cheaper and familiar to the community).

Based on the above to regulate and supervise economic growth and industrialization, then the United States of America, and followed by Indonesia, also established various specialized agencies that are independent authorities that both function as the mean of administrative and regulatory law agencies at the same time. The special agencies, in carrying out its duties and authorities, can take discretion action and even take *pro justitia* action in order to make the process of adjudication and reinforcement law in order to establish justice and ensure legal certainty.

J. David Reitzel in "*Contemporary Business Law, Principle and Cases*" argues that:

*"Early in this century, it was recognized that three-branch government provided by federal and state constitution (legislative, executive, and judicial) could not address issues of such magnitude by traditional of enacting laws that only enforceable in the Court"*<sup>1</sup>

The model settlement of various issues was very complex with regard to the issues of consumer protection, competition, corporate, taxation and other fields related to the delivery of modern government which is pursuing the economic and industrial growth that can no longer rely on its role and is resolved through the courts in general courts and other administration agencies. Therefore, there should be some delegation of some legislative authority to the branches of the executive house or administrative agencies on the special agencies that are independent with the authority included to make the rules themselves (self-regulation) in carrying out the duties and authority to do a kind of judicial process (trial like hearing), and to be able to resolve disputes more efficiently, effectively and professionally.

## RESULTS AND DISCUSSION

### a) Urgency of Special Court for Consumers

Every establishment of a special court, besides formed through special legislation and belongs to one of the judicial environment, it must also have sufficient considerations, so that the existence of a special court can really address the issues of law enforcement and justice that the community expected.

At least there are five (5) reasons for the necessity of forming consumers a special court in Indonesia, namely:

#### 1. The Complexity Of Disputes Goods And Services

Every year the consumer problems are increasing to be more complex and quaint, along with the various types of goods and services. In 2014, The National Consumer Protection Agency released that banking service is the most highlighted related to the field of consumer protection because there are many cases of complaints that go to various consumer protection authorities both nationally and globally. The number of complaints by commodity most of the largest banks by the number of 130 cases (71.4 percent).

The issue of credit cards ranks first, next is the number of loans with a total of 33 complaints, in third place, the complaints regard to the Automated Teller Machine (ATM) that as many as 19 complaints. Given the proliferation of property industry, the dispute also rife in the housing sector. Violations of the rights of consumers in the housing sector often occur in the process of buying and selling. Upon signing of the Sale and Purchase Agreement, arrears in installments, any other costs that are not included in the agreement, and the increase in electricity and water tariffs without notice.

Then, since the Financial Services Authority which officially operated since the end of May 2014 received about 14 thousand reports. From that amount, a total of 1900 complaints or complaints relating to the banking sector, the capital market to non-bank financial industry.

By the increasing of the range of goods and services offered to consumers, then the dispute will arise which also need a mediator or conciliator or arbitrary with extensive knowledge and

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<sup>1</sup>J. David Reitzel. *Contemporary Business Law: Principle and Cases.* (USA: Mmc Graw Hill, . 1980:930)

capabilities that are reliable incompleting the dispute among consumers and businesses. Qualified mediator or conciliator or arbitrary is of course difficult to obtain in Consumer Dispute Resolution Agency and even though is also hard to be obtained at the District Court. Therefore, it should be a breakthrough for consumer dispute resolution which increasingly complex and complicated for it can still be completed or solved quickly, with judges who are reliable, and the decision which can be executed.

## 2. Weakness Consumer Dispute Resolution Agency to resolve consumer disputes

It is like a hope that is impossible to be real, the fact that Consumer Dispute Resolution Agency now lost more prestige. The people generally prefer PKSM sort YLKI to the Consumer Dispute Resolution Agency. Some obstacles as mentioned by Dr. Susanti Adi Nugroho (former Supreme Court Justice), namely: First, the institutional constraints. Second, funding constraints. Third, human resource constraints Consumer Dispute Resolution Agency. Fourth, regulatory constraints. Fifth, constraints guidance and supervision, and lack of coordination between the responsible authorities. Sixth, the lack of socialization and low awareness of consumer law. Seventh, the lack of response and understanding of the judiciary against the consumer protection policies. Lastly, the eighth, the lack of public response to the Consumer Protection Law institutions and Consumer Dispute Resolution Agency. The constraints that seem to be a contributing factor that Consumer Dispute Resolution Agency cannot run as expected.<sup>1</sup>

Rules related to Consumer Dispute Resolution Agency in Law No. 8 year 1999 on Consumer Protection and its regulations establishment are very limited (empty), it is less clear, and even some substance contradictory, then among the constraints is multidimensional mentioned Dr. Susanti, according to the author, the fundamental weaknesses that make Consumer Dispute Resolution Agency helplessness are:

### 1) Position of Consumer Dispute Resolution Agency

The position of Consumer Dispute Resolution Agency at the level of the City or County which is the executive agency that is very adhere to the bureaucratic culture, thus affecting the behavior of members Consumer Agency Dispute Resolution Agency. Even though the Consumer Dispute Resolution Agency authorized by Law No. 8 of 1999 to receive complaints and resolve consumer disputes through mediation, conciliation or arbitration, but Consumer Dispute Resolution Agency is not a court but rather as a quasi-court, the agency which exercise the functions of the court. The downside of this institutional angle, resulting in the decision of Consumer Dispute Resolution Agency approval must be sought first from the District Court before being implemented.

### 2) Limited Consumer Access

Then in fact, the central government as an institution forming the Consumer Dispute Resolution Agency is less serious in building the Consumer Dispute Resolution Agency so that it can play a role in protecting the consumers.

From 514 the number of districts or cities all over in Indonesia, there are only 166 Consumer Dispute Resolution Agency throughout Indonesia (data from March 2015). This proves that the government is less dedicated to establish a Consumer Dispute Resolution Agency. The fact is more than 16 years since the enactment of Law No. 8 year 1999, there are only 514 districts or cities that have the Consumer Dispute Resolution Agency. In addition, it shows that there is very limited access to consumer in the society to resolve consumer disputes. One alternative that the consumers have is going to the nearest Consumer Dispute Resolution Agency to pit their problem since, based on Presidential Decree No. 90 year 2001, consumers in this case can complain or apply for a complaint to Consumer Dispute Resolution Agency nearby, as long as the location where the consumer attend is not yet formed a Consumer Dispute Resolution Agency.

In addition to the limited Consumer Dispute Resolution Agency in cities or regencies in Indonesia, Consumer Dispute Resolution Agency is also less popular. Number of Consumer Protection Governmental Organization (LPKSM) is 240 scattered in the district or city and in the year 2003 to 2010 there were 1814 cases coming to LPKSM. The number of cases coming to the Consumer Dispute Resolution Agency in 1348 as compared to the problems that go through LPPKS as much as 1814. This shows that public confidence in the LPKSM are bigger than Consumer Dispute Resolution Agency.<sup>2</sup>

<sup>1</sup>Susanti Adi Nugroho, *Proses penyelesaian sengketa konsumen, Ditinjau dari Hukum Acara serta Kendala Implementasinya*. (Jakarta : Prenada Media Group, 210-236)

<sup>2</sup>Al. Wisnubroto. *Alternatif Penyelesaian Sengketa Konsumen Butuh Progresivitas*, dalam *Hukum Online.Com*, Monday, 13 Oktober 2008

### 3) **Poor Quality of the Judges**

Under Law No. 8 of 1999, there are five roles imposed on Consumer Dispute Resolution Agency, namely the role as the provider of dispute resolution (as mediators, conciliators, arbitrators), the role of the consultant community or the public defender, the role of administrative regulator (as supervisor and giving sanctions), and the role of the ombudsman, and the role of adjudicator or breaker.

With so many roles and demands the decent skills, it certainly would be difficult to find members of the panel of ideal judges of Consumer Dispute Resolution Agency at the level of cities/districts in Indonesia.

In addition to requiring sufficient skill, the judges of Consumer Dispute Resolution Agency also potentially cause a conflict of interest. For example, the role of a neutral mediator who takes the role, with the regulator, or the role of mediator with a adjudicator.

### 4) **The Power of Decision**

In Article 56 paragraph (2) of Law No. 8 year 1999, the parties appear to be able to still be stating 'objections' to the Consumer Dispute Resolution Agency decision to the District Court no later than 14 days after notification of the decision Consumer Dispute Resolution Agency. In other words, the power of decision consumer agency judicial dispute resolution, still depends on the supremacy of the court which really is final. Whereas the practice of filing an objection against the decision Consumer Dispute Resolution Agency in the State Court applies the general civil procedure law thereby adding to the long process of resolving consumer disputes. Moreover, Article 56 paragraph (2) of Law No. 8 year 1999 is clearly contrary to the nature of Consumer Dispute Resolution Agency decision which is final and binding, as stipulated in Article 54 paragraph(3) of Law No. 8 year 1999.

Even permissibility appealed only on the arbitration decision Consumer Dispute Resolution Agency, but objection itself violates the principle. The arbitration and the court's two different things. In the context of consumer dispute resolution, Consumer Dispute Resolution Agency decision should not be taken to court.

### 5) **The Verdict (Execution)**

Given the position Consumer Dispute Resolution Agency outside the court as an institution, and not part of the institution of judicial power, the decision of the Consumer Dispute Resolution Agency does not have the force of execution (non-executorial).

Pursuant to Article 57 of Law No. 8 year 1999, the decision Consumer Dispute Resolution Agency must be filed the petition to the district court at the place of consumer harmed.

In practice, it is still difficult to ask the determination of execution for various reasons. First, the decision Consumer Dispute Resolution Agency does not contain parts that states for Justice Based on God. Including dispute resolution arbitration decision consumer agency which do not have a head decision "Justice sake Under the Almighty God". Second, there has been no clue about the procedure for requesting the execution of the verdict Consumer Dispute Resolution Agency.<sup>1</sup>

Based on the constraints of Consumer Dispute Resolution Agency explained above, it is necessary to make some breakthrough for the people who will resolve consumer disputes, in particular is fast, resolve by the reliable judge and most importantly the decision can be conducted (executed). Moreover, in anticipation of consumer disputes of a number of goods and services coming from abroad when the ASEAN Economic Community hits in 2015, it is absolutely necessary that the institution consumer dispute resolution which not only promote the completion of the fast, simple and low cost, as well as the Small Claims Court or Small Claims Tribunal, but also supported by reliable judges and decisions can be implemented.

### 3. **Slow Dispute Resolution Civil Courts**

In HIR/RB it turns out there is no provision which expressly limits the time of inspection/resolution of a case, so that the settlement there is no certainty when the parties accept the verdict on their case.

The weakness could lead to a civil case settlement that can be protracted even if there is an influence of the litigants. Without time limit the inspection including the settlement until the delivery of the verdict to the justice seekers directly affect the achievement of quick, simple and low cost justice.

Although there have been restrictions in the Supreme Court Regulation No. 2 year 2015 on Simple Action Settlement Procedures, which limits lawsuit settlement simple later than 25 days from the first hearing (Article 5, paragraph 3 PERMA 22015), but the decision on the settlement of a lawsuit

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<sup>1</sup>Ibid

that simple could still be filed objections later than 7 days after the judgment is pronounced or notified, and the verdict against the objections made at the latest 7 days after the date of establishment of the panel of judges (Article 27 PERMA 22015).

#### **4. Lack of Understanding District Court Judge in the Consumer Dispute Settlement**

One of the reasons why the business through the court settlement did not like is the quality of judges. Often judges who handle or resolve the matter in the business are less mastering the substance of the legal dispute concerned or are less professional judges.<sup>1</sup>

Specialization of judges in the District Court in Indonesia at this time is limited related to mastering the aspects of consumer protection technically. In fact, not the least objection court ruling requested cassation decision and court rulings that were unfavorable to the consumers.

In addition, the district court judges sometimes have different perceptions in understanding and application of Law No. 8 year 1999 and implementing regulations to a consumer dispute.

Reliability judges is increasingly demanded, with more diverse types and forms of goods and services offered. In addition, with the proliferation of trading and transactions online or electronic (e-commerce) which involves one of the parties is in the jurisdiction of the courts of different countries, even being abroad. So that this consumer disputes can be transnational.

#### **5. Weakness Action Settlement Simple in PERMA No.2 Year 2015**

In 2015 the Supreme Court (MA) has issued a legal production the form of a circular letter that the Supreme Court of the Republic of Indonesia Regulation No. 2 year 2015 on Procedures Simple Action Settlement (PERMA). Unfortunately, this PERMA also found weaknesses. The intentions want to finish the dispute more quickly, the justice actions may actually cause many new problems, not only for the general public but also legal practitioners in particular, namely:

- a. In this PERMA not describe what is meant by the claim or law suit is simple. It is only deliver a maximum limit of 200 million claims.
- b. In PERMA, it is unclear whether the settlement process through a mechanism set forth in this PERMA is a must? or an alternative? Whether the parties could choose to remain a law suit filed by the usual procedure? It may be that the parties still choose a regular process for fear cannot make legal effort advanced (such as an appeal or judicial review).
- c. In PERMA, is not clearly regulated what if the defendant does not accept the lawsuit modest, given the narrow time to prepare answers and evidence. In this case, the claimant will be better off because the setup process is longer so the assumption position is ready with material of the claim. The issue of this period, if it is disproportionately could injure the principles of justice, especially to the defendant.
- d. In PERMA it is not set, what law actions that can be done by the Party when in the Preliminary Examination it was decided that the lawsuit filed by the qualified parties is not simple
- e. In PERMA is only applicable to the parties to the legal domicile of the same court. Yet in practice, for example in banking is often the legal domicile of customers who become debtors, in contrast to the legal domicile of banks as creditors.
- f. The other problem is the judges who adjudicate. In PERMA, which settle a law suite is a single judge, where as in Article 11 (1) of Law Number 48 Year 2009 regarding Judicial Power has outlined, that: "The court examines, hears and decides the case by the arrangement of the panel of at least three (3) judges, unless the law otherwise provides.

#### **b) Opportunities Judicial Consumer Dispute Resolution Agency Reconstruction into the Special Tribunal for Consumers**

##### **1. Establishment of Dispute Resolution Fast Procedure in Presidential Decree No. 2 year 2015 on RPJMN 2015-2019**

With consideration to implement the provisions of Article 19 Paragraph (1) of Law Number 25 Year 2004 on National Development Planning System, President Joko Widodo (Jokowi) on January 8, 2015, has issued Presidential Decree No. 2 year 2015 on the Medium Term Development Plan (National RPJMN) 2015-2019.

Mentioned in this regulation, the National Development Plan includes the vision, mission and programs of the President of the General Election of 2014.

Article 2 Paragraph (2) The President No. 2 year 2015 states that "Medium Term Development Plan of the National loading the national development strategy, public policy, program the Ministry / Agency and cross-ministry / agency, regional and cross regional programs, as well as macro-economic framework, which covers the economy as a whole bears are including

<sup>1</sup>Ridwan Khairandi (et.al) *Pengantar Hukum Dagang Indonesia*. (Jogyakarta : kerja sama Pusat Studi Hukum FH UII dengan Gama Media, 1999:274)



the direction of fiscal policy in the form of a work plan and regulatory framework indicative funding framework."

National Medium Term Development Plan which is intended to function as:

- a. Guidelines for Ministries or Agencies in formulating strategic plans;
  - b. Material preparation and adjustment of the Regional Development Plan;
  - c. Government guidelines in preparing the Government Work Plan (RKP); and
  - d. Base lines in the monitoring and evaluation of the National Development Plan.
- e. In addition, according to this regulation, the National Development Plan as well as a reference for the public to participate in the implementation of national development.

One of the National Medium Term Development Plan 2015-2019 year of increased enforcement of the law with justice. The target to be achieved in the year 2015-2019, are:

- a. Increasing the quality of law enforcement in the handling of various criminal acts, create a system of criminal and civil laws that are efficient, effective, transparent, and accountable to the justice seekers and vulnerable groups, supported by law enforcement officers are professional and integrity; and
- b. Realization of the respect, protection and fulfillment of the right to justice for citizens.

One policy direction and strategies adopted, namely: implement the Civil Law System Reform Fast, Easy, is an effort to improve the competitiveness of the national economy. In order to create such competitiveness, development of national law should be directed to support the creation of sustainable economic growth; regulate issues relating to the economy, especially business and industry; as well as create investment certainty, particularly law enforcement and protection. Therefore, we need a systematic strategy towards the revision of legislation in the field of civil law in general and specifically related to contract law, IPR protection, **the establishment of dispute settlement fast events (small claims court)**, and increased utilization of mediation institution.

Based on the direction of policy and strategy for improved enforcement of the law with justice above, the issue of establishment of a special court of consumers in line with the establishment of dispute settlement fast events (small claims court), because of the special court consumers procedural law in adopting a small claims court which is characterized by rapid, simple, and low cost.

## **2. The setting of the Special Court in Law Number 48 Year 2009 regarding Judicial Power**

Article 1 point 8 of Law No.48 Year 2009 regarding Judicial Power, Special Court is the court that has the authority to examine, hear and decide any particular case, which can only be established in one of the neighborhoods of the judiciary which is arranged by the Supreme Court in the Act.

The special court also recognized in the Act governing the judiciary in Indonesia, name lyin:

1. For a case examined by qualified judges (professional) and have experience in a particular field
2. In order that a case be examined by a judge who has a good integrity, and free from corruption, collusion and nepotism (KKN)
3. For the inspection process or the settlement of a case more quickly and provide legal certainty for the litigants.

Based on a number of provisions contained in the Act governing the Judicial Power and the judiciary at the top, then the background may be the establishment of a special court that is to specialization (differentiation /specialization) of bodies that had been existing courts.

In addition, the background of the establishment of specialized courts, namely:

1. For a case examined by qualified judges (professional) and have experience in a particular field
2. In order that a case be examined by a judge who has a good integrity, and free from corruption, collusion and nepotism (KKN)
3. For the inspection process or the settlement of a case more quickly and provide legal certainty for the litigants.

Pursuant to Article 27 of Law Number 48 Year 2009 regarding Judicial Power also provides that: The special court can only be established in one of the courts under the Supreme Court. he provisions concerning the establishment of special courts stipulated in the Act.

The 9 nine) special court hat exists today, everything was formed and incorporated under the Act, namely:

1. The Juvenile Court, established by Act No. 3 year 1997 on Juvenile Justice, which was later repealed by Act No. 11 year 2012 on Child Criminal Justice System.
2. Commercial Court, was first established by Government Regulation No. 1 year 1998 on Bankruptcy and Suspension of Payment (PKPU), then designated by Law No. 4 year 1998, and later repealed by Act No. 37 year 2004 on Bankruptcy and Suspension of Payment (PKPU).
3. The Court of Human Rights (HAM), was first established by Law number 39 year 1999 on

Human Rights and then specifically regulated by Law No. 26 year 2000 on Human Rights Court.

4. Tax Court, established by Act No. 14 year 2002 concerning the Tax Court
5. Corruption Court, established by Act year 30 of 2002 on the Corruption Eradication Commission, which further regulated in Law Number 46 year 2009 on the Corruption Court
6. Industrial Relations Court, established by Act No. 2 year 2004 concerning Industrial Relations Dispute Settlement
7. Fisheries Tribunal, established by Law No. 31 year 2004 on Fisheries

Besides established through the Act, special courts should be set upon one of the existing judiciary, namely:

- a. General Jurisdiction
- b. Religious Court
- c. Military justice
- d. Administrative Courts

From these seven (7) special court that exists, there are six (6) special court of General Jurisdiction environment, namely the Juvenile Court, the Commercial Court, the Court of Human Rights, Corruption Court, the Industrial Relations Court and the Court of Fisheries. While the special court located inside the State Administration court is the taxation court.

### **3. Judicial Mediation in PERMA No.1 year 2008 on Mediation Procedure in Court**

Actually mediating institutions are not part of the institute litigation, where at first mediating institution located outside the court. But now, mediation agency had crossed into the territory of the court. Developed countries generally include the US, Japan, Australia, Singapore has a mediation institution, both in and outside the court, with various terms including a Court Integrated Mediation, Court annexed Mediation, Court Dispute Resolution, Court Connected ADR, Court Based ADR and others.<sup>1</sup>

Judicial mediation in Indonesia known since PERMA No. 2 year 2003. The decline in public confidence in the law enforcement agencies do not make people become chaotic because they can and do get used to regulate itself, including dispute resolution. Although there are some actions "vigilante" it self, but many more could be resolved by the community, especially in the case of private. This proves that the culture of deliberation is still embraced by the people, but because the sensitivity of the dispute is resolved taboo for outsiders and apathetic nature arising out of the legal apparatus.

Actually existing peace efforts in HIR / RBg which also governs the peace institute. The provisions in Article 130 HIR / Article 154 RBg, and other articles in the law of civil procedure applicable in Indonesia in particular the provisions of Article 132 HIR / Article 156 RBg obliges judges advance work for peace between the parties before the case investigation is conducted by a judge. In the development, the Supreme Court Supreme Court Circular No. 1 of 2002 on the Empowerment of the Court of First Implementing Peace Institute (Ex Article 130 HIR / 154 RBg). The letter then reimbursed by the Supreme Court Regulation No. 2 of 2003 on Mediation Procedure in court. The regulations have yet another change with the publication of Supreme Court Regulation No. 1 of 2008 on Mediation Procedure in court.

In the Supreme Court Regulation No. 1 of 2008 on the weigh in writing "that mediation is a dispute resolution process that is faster and cheaper, and can provide greater access to the parties to find a satisfactory solution and a sense of fairness."

Actually, mediation is a problem-solving negotiation process, in which an impartial outside party (as impartial) in cooperation with the parties to find common ground. The mediator has no authority to rule on the dispute, but only to help the parties to resolve the issues that are authorized to him.<sup>2</sup>

#### **c) Judicial Reconstruction Experience in Other Countries**

Given the limitations and ineffectiveness of Consumer Dispute Resolution Agency in resolving consumer disputes, and also the complexity of disputes as to the future, as well as the slow finish civil disputes in court, then the discourse settlement of consumer disputes in litigation through the courts specific customer designed settle quickly, simple and inexpensive. One way to create a special court for consumers, the Consumer Dispute Resolution Agency reconstruct the presence action law become special courts for consumers in the civil justice system under the Supreme Court. While consumer non dispute a settlement of litigation can be done by YLKI and Consumer Protection Governmental

<sup>1</sup>Fatahillah A. Syukur, *Mediasi Yudisial Di Indonesia*, (Bandung : Penerbit Mandar Maju ,2012:viii)

<sup>2</sup>Khotibul Umam, *Penyelesaian Sengketa di Luar Pengadilan*, (Yogyakarta : Pustaka Yustisia, 2010:10)

Organization (LPKSM), and others organizations.

Especially with the MEA in 2016, ASEAN will become a single market and a single unit of production basis, so there will be free flow of goods, services, investment, capital and skilled labor among nations of ASEAN. This is an opportunity and a challenge that should be addressed by the Indonesian carefully and integrated, including the setting up of rules and institutions that resolve consumer disputes, which could happen in Indonesia disputes between consumers and businesses in other countries.

Reconstruction of consumer dispute resolution institutions is a must when various regulations and consumer dispute resolution institutions such as the General Court and Consumer Dispute Resolution Agency no sense of fairness because it no longer compatible with the principles of justice that efficient modern, fast, inexpensive and professional.

Renewal justice system is not only in the field of administration of justice and the quality of human resources involved in the judiciary, but included also the judiciary itself in a professional, independent, and decisions that have the power of final and binding.

In the UK, a judicial reconstruction committee chaired by Lord Hailsha with evidence filed a judicial system by integrating management systems into the justice system, among others:

1. One court entry system or a unified court system or one court system, which is a system that integrates Country Court by the High Court;
2. Full pre-trial disclosure, which is when a lawsuit must be directly accompanied with evidence
3. Time table programmed, that the schedule must be determined from the beginning;
4. Extra hour's sitting per day, namely the addition of the trial every day
5. In arbitration court system, namely the incorporation arbitrates with the court.

In Korea has been using a tiered system of dispute resolution as set out in Article 53 of The Commercial Arbitration Rule of the Korean Commercial Arbitration Board. Under these provisions, dispute settlement is conducted with connectivity between mediation, conciliation and arbitration, with the following stages:

First, it sought settlement through the mediation process, in which a panel of arbitrators appointed to act as a mediator. If the agreed settlement, then the solution is agreed by the parties made a compromise, and compromise can effectively be award (arbitration award) is final and binding if the parties request.

Second; If mediation fails, the settlement was increased to conciliation. If the dispute with how mediation could not be completed, then the mutual agreement, the parties originally a mediator, will act as a conciliator who seek a solution acceptable by the parties to the dispute. Had reached agreement on a solution made by consolidator, then its role turned into arbitrator, so that the resulting solution increased to award, which is final and binding for the parties and has the power executorial as befits the arbitration decision.

Third; If conciliation fails, the settlement was increased to arbitration. If conciliation does not produce a solution, then the conciliation process is stopped, but in conjunction with the settlement of disputes proceed with the arbitration examination and direct conciliator acting as arbitrator. Dispute settlement resulted in the arbitral award is final and binding to the parties.<sup>1</sup>

Dispute resolution through mediation connectivity system - conciliation and arbitration although through three stages, but does not take a long time, because at each stage can achieve a final and binding decision. If no agreement is reached at mediation or conciliation stage, still does not take a long time, because the intermediary already knows exactly the case since the beginning, so that a decision can be imposed more quickly.

In the United States, in the 20th century as an industrial country that is very influential in the world, marked the emergence of large-scale corporations, the birth of the trade unions are very influential, including the emergence of various problems in the social, economic, labor, environment and other fields very complex, so want the birth agencies and independent administrative agency is able to organize the issue effectively and efficiently.<sup>2</sup>

The complexity and intricacy of the problems that tend to increase it escalated so that the settlement of the issue through the courts which tend rambling, proving complicated, costly and time(time consuming) feltare no longer effective. Therefore, the United States Congress to make laws

<sup>1</sup>M. Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa*. (Bandung : Citra Aditya Bakti, 1997).

<sup>2</sup>AZ Nasotion, dalam Puguh Waluyo, *Penyelesaian Sengketa Konsumen Melalui Pengadilan Khusus Dalam Rangka Perlindungan Konsumen*, Disertasi, Program Pasca Sarjana Universitas Airlangga, Surabaya, 2000:9)

that delegate some authority namely the independent body or "administrative agencies"<sup>1</sup>.

Mediation agency is actually not part of the litigation mechanism therefore initially mediation institutions were outside the court. But now, mediation agency had crossed into the territory of the court. Developed countries in general, among others; America, Japan, Australia, and Singapore have well mediating institutions that are outside otherside the court.<sup>2</sup>

## CONCLUSION

- a. Urgency formation consumer court in Indonesia, is backed by: 1) the complexity of the dispute in goods and services, 2) the weakness of juridical Consumer Dispute Resolution Agency in consumer dispute resolution, 3) The absence of a time limit to resolve the dispute in the District Court, and 4) Weak district court judges' knowledge of the substance of consumer disputes and 5) Weaknesses Action Settlement Simple in PERMA No. 2 year 2015.
- b. Opportunities juridical dispute Consumer Resolution Reconstruction Agency into a special court for consumers, are: 1) Establishment of Settlement Fast Procedure in Presidential Decree No. 2 of 2015 on RPJMN 2015-2019, 2) Setting the Special Court in Law Number 48 Year 2009 regarding Judicial Power, 3) Judicial mediation in PERMA No. 1 year 2008 on mediation Procedure in court. In theories, it is possible to reconstruct an institution raises the issue of law if the law or considered ineffective or outdated. Therefore, reconstruction of Consumer Dispute Resolution Agency into a special court for consumers, not merely weakness arrangements Consumer Dispute Resolution Agency in Law No. 8 year 1999, but rely more than that to anticipate the needs of modern society on the settlement of consumer disputes quickly, simple and fees light to come

## SUGGESTION

- a. Settlement of consumer disputes in litigation through the courts consumer specifically the present and will come in very urgent given the weakness of consumer dispute resolution, whether conducted by consumer agency dispute resolution as well as by the district court.
- b. Based on the urgency of the establishment of special courts of consumers, and their chances of juridical establishment of special courts of consumers, it is necessary the establishment of special courts through Consumer Dispute Resolution Agency reconstruction into consumer court. The first step is to change the Law No. 8 year 1999 on Consumer Protection, with eraser provisions relating Consumer Dispute Resolution Agency, the transitional provisions of the Consumer Dispute Resolution Agency Court of Consumer and provisions in presenting consumer dispute resolution in litigation that is through the courts consumer formation performed by an Act. After the change of Act No. 8 year 1999, followed by the formation of the Consumer Tribunal Act which contains among other things about the position, authority, terms of judges, the time of inspection, verification, decision and remedies.

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<sup>1</sup>Daveid J.Reitzal, Loc. Cit

<sup>2</sup>Yusuf Shofei dan Somi Awan, *Sosok Peradilan Konsumen*, (Jakarta : Piramedia, 2004:15).