

Incomplete Regulations of Mediator Competence Standards As A Requirement For Members of Consumer Dispute Resolution Agencies

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ABSTRACT

This thesis examines the incompleteness of the mediator competency standards set in the Minister of Trade Regulation No. 72 of 2020 as a requirement for members of the Consumer Dispute Resolution Agency (BPSK). The regulation does not explicitly stipulate mandatory training or certification of mediators for BPSK members, thus opening up the possibility of mediation being carried out by parties without a legal background or mediation skills. This has an impact on the low quality of dispute resolution, injustice for the parties, and decreased public trust in BPSK as a dispute resolution institution. This study uses a normative juridical method with a statutory, conceptual, and comparative approach. Based on the analysis, the absence of mediator competency regulations causes legal uncertainty (Gustav Radbruch's Theory of Legal Certainty) and violations of the principle of distributive justice (Aristotle). As a solution, this thesis recommends the reconstruction of Minister of Trade Regulation No. 72 of 2020 by adopting the German legal system model, namely requiring mediator certification and the imposition of administrative sanctions for violations. This proposal is in line with the civil law system and Philipus M. Hadjon's theory of authority, which emphasizes the importance of proportionality and professionalism in the implementation of public authority.

Keywords: Mediator, Consumer Dispute Resolution Agency, Consumer Protection.

1. INTRODUCTION

The increasingly dynamic developments of the times have driven increased activity in the buying and selling of goods and/or services within society. Changes in consumer consumption patterns, shifting from conventional to digital markets, have also contributed to the increase in transactions (Menne et al., 2023). Based on the legal relationship of a sales transaction, there are two main legal subjects, namely the business actor as the party offering the product or service, and the consumer as the party receiving or purchasing the product or service.

The presence of the Consumer Protection Law is a concrete step by the state in realizing consumer protection as part of the implementation of the function of the legal state which is responsible for the welfare of its people (Rahmadanti, 2023). UUPK was born as a response to the new paradigm in producer-consumer relations in the era of globalization, where the concept of caveat emptor (buyer's caution) has shifted to caveat venditor (seller's caution) (Taklima et al., 2023). In fact, conflicts or disputes often arise between consumers and business actors, which can

be caused by broken promises, inconsistencies in the interpretation of the contents of the agreement, or because one party does not carry out their rights and responsibilities properly.

Based on this, in response to the urgency, Indonesia established the Consumer Dispute Resolution Agency (hereinafter referred to as BPSK). The establishment of this agency is an alternative dispute resolution process that can be taken without going through the courts, as mandated by Article 52 of the Consumer Protection Law. This agency is tasked with resolving disputes between businesses and consumers using three alternative methods: arbitration, mediation, and conciliation. The establishment of the BPSK is an implementation of the concept of access to justice, which aims to provide access to justice for the public without having to go through a lengthy and costly court process (Kurniawan, 2023).

Of the three dispute resolution methods available at the BPSK, mediation is the most widely used due to its peaceful nature and emphasis on consensus. Data from the Ministry of Trade shows that 62% of cases submitted to the BPSK throughout Indonesia are resolved through mediation, 27% through arbitration, and the remainder through conciliation or withdrawal by the plaintiff (Indonesia, 2010). Referring to this, BPSK members basically have an important role as mediators in consumer disputes..

The mediation process requires specialized skills and abilities from a mediator. Mediation is an intervention in dispute resolution by an objective, acceptable, and impartial third party who facilitates the disputing parties' ability to reach a mutual agreement, even though they lack the authority to make a decision (Moore, 2014). In this context, there are two regulations governing mediators, where the first regulation stipulates that an ideal mediator must have a deep understanding of mediation techniques, effective communication skills, knowledge of the psychological aspects of negotiation, an understanding of related legal issues, and high personal integrity, while in the second regulation BPSK members are not required to have competency standards through mediator certification.

In Article 1 numbers (1) and (2) of Permendag 72/2020 concerning BPSK, the criteria for BPSK membership only require general aspects such as being an Indonesian citizen, being in good health, being of good behavior, never having been convicted of a crime, having knowledge and experience in the field of Consumer Protection, and being at least 30 years old. There are no special requirements that require a BPSK member or prospective BPSK member to take part in Mediator training and certification to support knowledge and skills in conducting mediation.

In 2023, a consumer dispute occurred in Lubuklinggau City involving BCA Finance and a consumer named Hendri Kusuma Fatria Jaya. The dispute stemmed from the consumer's



dissatisfaction with the financing services provided by BCA Finance. The consumer then filed a lawsuit with the Lubuklinggau City BPSK. In its decision, the BPSK ruled in favor of the consumer and ordered BCA Finance to fulfill certain obligations to the consumer. However, BCA Finance objected to the decision. They believed that the BPSK had exceeded its authority in handling this case, especially because the dispute related to financing which had complex contractual aspects and should have been more appropriately resolved through the courts, not the BPSK. Based on this, BCA Finance filed an objection to the Lubuklinggau District Court.

The issue of the competence of BPSK members in Indonesia requires further study through a comparative legal approach with other countries that adopt similar legal systems. This study compares Germany with Germany because both countries adopt a civil law system and have clear regulations regarding mediator competency standards through the *Zertifizierte-Mediatoren-Ausbildungsverordnung* (hereinafter referred to as *ZMediatAusbV*), or Ordinance on the Training and Continuing Education of Certified Mediators. This regulation explicitly stipulates that a person can only call themselves a certified mediator if they have attended special training and completed a supervised mediation session. This provision is considered capable of ensuring professionalism and accountability in the dispute resolution process..

2. RESEARCH METHODS

In this legal research, the author uses a normative legal research type. The selection of this method is based on the research objective to analyze the ambiguity of norms contained in the regulations governing the competency standards of BPSK members, providing a general overview of the urgency of setting mediator competency standards for BPSK members, but does not touch on the technical aspects needed to ensure an efficient execution process. The normative legal approach uses a Statutory Approach, a conceptual approach, and a comparative approach. The collection of legal materials is carried out by applying a literature study method relevant to the laws and regulations governing the object of study. This literature study aims to search for and collect related laws and regulations, then read, analyze, and organize these materials in a systematic framework. The legal material analysis techniques used by the author include a systematic interpretation approach and a grammatical interpretation approach.

3. RESULTS AND DISCUSSION

Incompleteness of the Regulation of Mediator Competency Standards as a Requirement for Members of Consumer Dispute Resolution Bodies

The digital era has fundamentally transformed consumer consumption patterns, shifting the trade landscape from conventional systems to complex digital platforms. This transformation has significantly increased the volume of trade transactions, which directly impacts the frequency of consumer disputes. The nature of digital transactions, which utilize standard form contracts, creates a sharper gap in bargaining power between consumers and businesses, increasing the potential for disputes (Akın Ateş, 2022).

In the context of commercial transaction legal relations, there are two primary legal subjects involved: the business actor as the provider of the product or service, and the consumer as the beneficiary of the product or service. The legal relationship between these two parties is based on contractual principles as stipulated in Article 1320 of the Civil Code, which requires an agreement between the parties, legal capacity, a clear object, and a cause that does not conflict with the law. However, the implementation of the principle of freedom of contract in practice often experiences distortions due to the disparity in economic power between the business actor and the consumer (Fleming, 2025).

This imbalance becomes even more complex in digital transactions, which are dominated by standard agreements. Consumers have virtually no room for negotiation, and are forced to accept terms and conditions unilaterally set by business actors. This situation creates a high potential for conflict when expectations are not met or agreements are breached. In response to this imbalance, the government introduced the Consumer Protection Law (UUPK) as a legal instrument that provides comprehensive consumer protection (Rosadi & Tahira, 2018).

The fundamental problem currently being faced is the incomplete regulation of competency standards required for BPSK members to carry out their mediation function. Existing regulations are still general in nature and do not specifically address the technical competency standards required to effectively carry out the role of mediator. This situation has the potential to reduce the quality of dispute resolution and impact the level of satisfaction of the parties with the mediation process and outcomes.

This incompleteness of the regulations becomes even more problematic when combined with the complexity of modern consumer disputes, which often involve technology, e-commerce, and global market dynamics. Mediators who lack adequate competence will struggle to understand the substance of the dispute and facilitate effective communication between the parties. Comprehensive mediator competency standards should encompass not only substantive legal knowledge but also communication skills, negotiation techniques, an understanding of conflict



psychology, and the ability to manage the emotional dynamics that arise during the mediation process (Harahap, 2016).

The mediation process requires specialized skills and abilities from a mediator. Mediation is an intervention in dispute resolution by an objective, acceptable, and impartial third party who facilitates the disputing parties' ability to reach a mutual agreement, even though they lack the authority to make a decision (Moore, 2014). In this context, there are two regulations governing mediators, where the first regulation stipulates that an ideal mediator must have a deep understanding of mediation techniques, effective communication skills, knowledge of the psychological aspects of negotiation, an understanding of related legal issues, and high personal integrity, while in the second regulation BPSK members are not required to have competency standards through mediator certification.

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Another case that reflects the complexity and weaknesses of Indonesia's consumer dispute resolution system occurred in the Golf Island reclamation project on Pulau D, developed by PT Kapuk Naga Indah, a subsidiary of the Agung Sedayu Group. In this case, nine consumers filed a lawsuit against the developer for breach of contract, claiming that the promised residential units were not delivered within the stipulated timeframe. The consumers, who had deposited significant sums of money, suffered financial losses estimated at approximately Rp36.7 billion.

This issue was submitted to the BPSK, but did not receive a fair and proportional solution, the consumers actually faced a dead end because the BPSK decided to close the case. This decision caused deep disappointment among consumers, who then considered other legal remedies outside the BPSK, including filing a Suspension of Debt Payment Obligations (hereinafter referred to as PKPU) against the developer as an effort to reconstruct legal responsibilities that were not resolved through the BPSK mechanism. This case concretely demonstrates that in practice, the BPSK has



not been fully capable of being an effective, fair, and credible dispute resolution forum for consumers, especially in cases that are complex and of high economic value.

As is known, BPSK members are not required to have a legal background or professional mediation training. Handling high-value, contractual cases like this requires meticulous mediation skills, in-depth knowledge of contract law, and measurable analytical and negotiation skills. Unpreparedness or incompetence on the part of BPSK members in carrying out these functions is highly likely to result in ineffective decisions or even disregard for the legal interests of the parties. Therefore, the PT Kapuk Naga Indah case further emphasizes the urgency of establishing competency standards and formal certification for BPSK members, particularly those who serve as mediators. Certification is not only crucial as an instrument for enhancing individual capacity, but also as a guarantee of the institution's professionalism and credibility. Without this regulation, the BPSK risks losing its quasi-judicial function capable of resolving consumer disputes fairly and win-win for the parties.

Factors Causing Incompleteness in the Regulation of Mediator Competency Standards as a Requirement for Members of Consumer Dispute Resolution Bodies

Non-litigation dispute resolution through the Consumer Protection and Assurance Agency (BPSK) is expected to provide faster, cheaper, and simpler access to justice for consumers. In carrying out its functions, BPSK has the authority to resolve consumer disputes through three mechanisms: mediation, conciliation, and arbitration. Among the three, mediation is the most commonly applied method because it is participatory and prioritizes consensus. However, the effectiveness of mediation in practice is greatly influenced by the competence of the mediator. Based on this, the problem that is the focus of this research is the incomplete regulation of mediator competency standards as part of the BPSK membership requirements. This lack of clarity in the regulation has implications for the low quality of dispute resolution, which ultimately has the potential to harm the parties, especially consumers as the party that should be more protected.

In Article 12 numbers (1) and (2) of Permendag 72/2020 concerning BPSK, the BPSK membership criteria only require general aspects such as being an Indonesian citizen, being in good health, being of good behavior, never having been convicted of a crime, having knowledge and experience in the field of Consumer Protection, and being at least 30 years old. There are 'no special requirements' that require a BPSK member or prospective BPSK member to take Mediator training and certification to support knowledge and skills in conducting mediation.

Referring to the provisions of Article 12 paragraph (1) and paragraph (2) of Permendag 72/2020 concerning BPSK, there are no provisions requiring prospective members to have training



or certification as mediators. The general requirements listed only cover administrative criteria, such as citizenship, physical health, good conduct, never having been convicted of a crime, and having knowledge and experience in the field of consumer protection. Specific requirements are determined based on the origin of the membership elements, whether from government, business actors, or consumers.

The phrase "having knowledge and experience in the field of consumer protection" included in the general requirements is very general and does not specifically address technical skills in dispute resolution, particularly through mediation. This provision does not guarantee that BPSK members possess sufficient competence to carry out the mediation function, even though this function is a crucial part of the BPSK's authority and directly influences the dispute resolution process between the parties.

The absence of provisions regarding mediator training or certification in Minister of Trade Regulation 72/2020 concerning the BPSK (Regional Mediators' Competency Audit Agency) creates potential irregularities in the competency standards for implementing the mediation function within the BPSK. In practice, BPSK members come from diverse backgrounds and fields of expertise, not all of whom possess a technical understanding of mediation mechanisms. This situation impacts the quality of dispute resolution, particularly in terms of the ability to facilitate negotiations impartially, identify the parties' interests, and develop fair and enforceable agreements.

The lack of formal requirements for mediation competency can also lead to disparities in quality across regions. The lack of national standards for mediator training or certification for BPSK members means that membership selection in each region relies heavily on the subjective judgment of the selection committee, without a standard reference for mediation skills. The mediation process in BPSK tends to rely on the personal experience and initiative of each member, rather than a uniform professional qualification framework.

This situation can lead to a decline in public trust in the BPSK, particularly if the mediation process does not produce an effective resolution or is deemed unfair by the parties. The lack of clarity regarding competency standards has the potential to lead to BPSK members' ignorance of the basic principles of mediation, such as confidentiality, voluntariness, and neutrality, which are the main foundations for successful mediation.

Based on the above description, it can be concluded that Minister of Trade Regulation 72/2020 concerning the BPSK does not fully and adequately regulate the mediator competency standards that BPSK members should possess. This lack of regulation is one of the main factors



causing the incomplete regulation regarding mediator standards within the BPSK environment. To ensure the quality of consumer dispute resolution in a consistent and professional manner, it is necessary to improve the regulation by establishing mandatory mediation training or certification for every BPSK member who functions as a mediator.

Impacts of Incomplete Regulations on Mediator Competency Standards as a Requirement for Members of Consumer Dispute Resolution Bodies

Incomplete regulations regarding mediator competency standards in Minister of Trade Regulation 72/2020 concerning BPSK has a direct impact on the sustainability and effectiveness of the BPSK institution in carrying out its functions. These impacts can be detailed as follows:

a) Non-uniform quality of mediation

The absence of regulations governing mediator training and certification has resulted in an uneven understanding of the basic principles of mediation among BPSK members. Each BPSK member comes from a different background, resulting in highly variable skills in conducting the mediation process. Consequently, the quality of the dispute resolution process is inconsistent across regions and across cases.

b) Implementation of Unprofessional Mediation

Without training or certification, the mediation process runs the risk of not following standard procedures, such as active involvement of both parties, confidentiality of information, and neutrality of the mediator. Unprofessional mediation can lead to dissatisfaction and even further conflict between consumers and businesses.

c) Failure to fulfill the principles of consumer protection

The BPSK was established to guarantee consumer rights through expeditious, affordable, and fair dispute resolution. If the mediation function is carried out by a party lacking technical skills, the institution's primary objective will not be optimally achieved. The mediator's inability to facilitate dialogue and reach a binding agreement can be detrimental to consumers, the weaker party.

d) The emergence of legal uncertainty

A mediation process conducted without competency standards can result in agreements that are legally invalid or contrary to statutory norms. This uncertainty can give rise to new disputes or prolong conflicts that could have been resolved through effective mediation.

e) Declining Public Trust in the BPSK Institution

The public, as service users, has the right to receive quality service. When mediation fails to resolve a problem or the process is non-transparent and unfair, public perception of the

BPSK will decline. This can lead to a decrease in the number of cases filed through the BPSK, as people prefer to resolve disputes through other channels, including the courts.

f) Risk of abuse of authority

BPSK members who lack a thorough understanding of mediation techniques and ethics may engage in actions that violate the principle of neutrality, such as taking sides with one party or encouraging a settlement without a voluntary agreement. Unpreparedness to fulfill the role of mediator can lead to actions that exceed their authority.

g) Differences in Interpretation of the Role and Function of a Mediator

Without clear regulations regarding competency standards, individual BPSK members may have differing views on how mediation should be conducted. This leads to inconsistencies in mediation implementation and risks legally and substantively unsustainable mediation outcomes.

h) The Delay in Harmonizing Consumer Protection Efforts in Indonesia

The uneven quality of mediators across regions hampers the government's efforts to create a fair and equitable consumer protection system. The BPSK's role as an alternative dispute resolution institution, expected to reach the wider community, is becoming less effective due to the lack of adequate human resource competency.

i) Slow Resolution of Consumer Disputes

BPSK members who are not trained in mediation techniques tend to be less efficient at facilitating dialogue and formulating agreements. As a result, what should be a quick resolution process becomes protracted, which goes against the spirit of efficiency in consumer dispute resolution.

j) Lack of Accountability in the Mediation Process

Without competency standards, it becomes difficult for the public and internal supervisors to assess the performance of BPSK members in carrying out their mediation function. Accountability becomes unclear because there are no clear parameters for measuring the success or failure of a member's mediation.

Reconstruction of the Minister of Trade Regulation No. 72 of 2020 regarding the Incompleteness of the Regulation of Mediator Competency Standards as a Requirement for Members of the Consumer Dispute Resolution Agency

As a quasi-judicial institution in Indonesia, the Consumer and Business Compliance Supervisory Agency (BPSK) plays a crucial role in resolving disputes between consumers and businesses. One of BPSK's primary functions is mediation, a form of alternative dispute resolution

that is expected to provide fairness and efficiency for the parties. However, to date, regulations governing BPSK membership requirements, as outlined in Minister of Trade Regulation 72/2020 concerning BPSK, do not explicitly mandate technical competency standards for members performing mediation functions, particularly through mediator certification.

The absence of regulations regarding these competencies has the potential to create disparities in the quality of mediation between regions, weaken the legitimacy of decisions, and reduce public trust in the BPSK as a dispute resolution forum. Therefore, regulatory reform is necessary to ensure that the requirements for BPSK members performing mediation functions reflect measurable and legally recognized professional competencies.

The proposed reconstruction of norms regarding standard mediator competency requirements for BPSK members is an ideal and relevant step for implementation in the Indonesian legal system. The regulatory model, modeled after Germany's ZMediatAusbV, which strictly regulates mediator training, supervision, and certification, serves as an example that can be adapted to improve the quality of consumer dispute resolution institutions in Indonesia.

This reconstruction is not only relevant because it draws on advanced legal practices in other countries, but also aligns with the characteristics of Indonesia's civil law system, where written rules are the primary source of law. In this context, the existence of clear and measurable regulations regarding mediator competency requirements is essential to ensure legal certainty and consistent implementation of mediation across all regions.

In addition, this reconstruction supports the spirit of judicial reform and strengthening alternative dispute resolution (ADR) as has been shown in Perma 1/2016 concerning Mediation Procedures in Court, which requires certified mediators. Therefore, harmonization between the general judicial system and the consumer dispute resolution system is crucial to maintain and enhance public trust in the BPSK, a quasi-judicial institution.

This reconstruction also addresses the need for objective and professional national standards, thereby addressing quality disparities between regions, minimizing the potential for maladministration, and promoting accountability and legitimacy in the mediation process. Amid the increasing complexity of consumer disputes and public demands for quality public services, implementing competency requirements for mediators is a necessity, not an option.

Thus, the regulation regarding mandatory training and certification for mediators within the BPSK environment as reconstructed in the proposed new article, is an ideal and sustainable legal formulation to strengthen consumer protection and uphold justice and legal certainty in dispute resolution practices in Indonesia.



The theory of authority proposed by Philipus M. Hadjon divides authority into three main forms: attribution, delegation, and mandate. Attribution authority refers to authority directly granted by legislation to a specific government organ or institution. Based on this, the authority of the BPSK to resolve consumer disputes, including through mediation, is a form of attribution authority, as it is granted directly by the Consumer Protection Law and outlined in the Consumer Protection Law. Minister of Trade Regulation 72/2020 concerning BPSK.

However, the current regulation of this authority is not supported by adequate technical competency requirements, particularly in terms of training and certification as a mediator. This creates a mismatch between the implementation of this authority and the quality of the human resources implementing it, which ultimately could undermine the legitimacy of the BPSK's function. According to Philipus M. Hadjon, authority is not only a matter of the "right" to act according to law, but also the responsibility to carry out those actions competently, professionally, and without deviating from the objectives of the law.

The absence of regulations regarding technical competency standards results in disproportionate exercise of authority, as it can be exercised by individuals who lack the capacity to perform mediation functions properly and fairly. This creates the potential for abuse of authority (*détournement de pouvoir*), the inappropriate use of public authority, which violates the principles of legality and accountability.

One of the main principles of the theory of authority is that authority must be exercised by a legitimate and authorized legal entity, both normatively and factually. In this context, normatively legitimate means based on statutory regulations, while factually legitimate means based on relevant capacity and expertise. Without mediator certification and training, BPSK members only fulfill the normative aspect, while neglecting the equally important factual dimension in exercising their authority. As a result, the quality of mediation decisions is uncertain, and this can harm the rights of the disputing parties, particularly consumers, who are often in a weaker position.

Based on the explanation above, It can be concluded that the current regulations, namely Article 1 numbers (1) and (2) of Permendag 72/2020 concerning BPSK, are not in line with the principle of authority according to Philipus M. Hadjon. The absence of regulations regarding technical competency standards causes the implementation of authority to be disproportionate, because it can be carried out by individuals who do not have the capacity to carry out mediation functions properly and fairly.



The reconstruction offered by the author, namely by adding norms in Minister of Trade Regulation 72/2020 concerning BPSK which requires mediator certification for BPSK members, is a solution that theoretically brings the implementation of authority closer to the principles adopted by Philipus M. Hadjon's theory of authority. Through this reconstruction, the authority of mediation is not only implemented based on formal legitimacy from regulations, but is also equipped with technical competence and professionalism that can be substantively accounted for.

Regulations regarding competency standards are also part of the general principles of good governance (AUPB), namely the principles of accuracy, legal certainty, and proportionality. State administrators, including those in semi-judicial structures such as the BPSK, are required to exercise their authority not only procedurally but also with good substantive quality. Therefore, this reconstruction not only addresses normative deficiencies in Minister of Trade Regulation 72/2020 concerning BPSK, but also a form of harmonization between institutional functions, legal norms, and implementing capacity in the Indonesian legal system.

4. CONCLUSION

The incompleteness of the regulation of mediator competency standards as a requirement for members of the consumer dispute resolution body is due to Article 1 numbers (1) and (2) of Permendag 72/2020 concerning BPSK. There is no regulation requiring BPSK mediators to have mediator training or certification. As a result, the mediation function is carried out without any guarantee of expertise, which impacts the quality of dispute resolution and is detrimental to consumers, business actors, and weakens the role of the state in overseeing the quality of BPSK services. Based on Gustav Radbruch's Theory of Legal Certainty, the absence of such regulations creates legal uncertainty, while according to Aristotle's Theory of Justice, this violates the principle of distributive justice because it does not guarantee fair and equal treatment for the disputing parties.

Reconstruction of Minister of Trade Regulation No. 72 of 2020 regarding the incompleteness of the regulation of mediator competency standards as a requirement for members of the consumer dispute resolution body is necessary because Permendag 72/2020 concerning BPSK does not regulate mandatory training or certification of mediators for BPSK members. Based on a comparison with the German legal system, the ideal regulation is to require mediator certification, and if it is not met, BPSK members may not carry out mediation functions and may be subject to administrative sanctions. This reconstruction is ideal for implementation in Indonesia because it is in line with the civil law system that prioritizes written legal certainty and



professionalism in the implementation of public authority. Based on Philipus M. Hadjon's theory of authority, this has not been met because the absence of regulations regarding technical competency standards causes the implementation of authority to be disproportionate, so this reconstruction is important to ensure the implementation of accountable and quality mediation.

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