

THE IMPACT OF THE LIQUIDATION OF THE QUASI-JUDICIAL INSTITUTION OF THE CONSUMER DISPUTE RESOLUTION BODY ON CONSUMERS' ACCESS TO JUSTICE AND ITS REORGANISATION EFFORTS FROM THE PERSPECTIVE OF *SIYASAH SYAR'IIYAH*

Nur Jananni; Noer Yasin; Musataklima
Sharia Faculty, UIN Maulana Malik Ibrahim Malang, Indonesia
Email: nurjannani@syariah.uin-malang.ac.id

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Abstract

The Consumer Dispute Settlement Body (BPSK) is authorised to settle consumer disputes located at the district and/or city level. However, following the enactment of Law No. 23/2014 on Local Government (Local Government Law), BPSK was dissolved and transferred to the provincial level. This study aims to determine the causes of BPSK dissolution, its impact on access to justice for consumers and its reorganisation efforts so that it contributes to consumer protection. The research is empirical legal research with a sociological juridical approach. The primary and secondary data were analysed prescriptively. The research results show that the

transformation of management and authority to form BPSK from district and/or city governments to provinces by the Regional Government Law resulted in the existence of BPSK in districts and/or cities having to be liquidated. This has implications for limited consumer access to obtain justice. The recommendation from this research is that the government needs to reorganise the legal position of BPSK by returning BPSK's position to districts and/or cities. This can be achieved through legal politics based on siyasah syar'iyah. This article can be a basic reference for the development of consumer dispute resolution institutions based on consumer protection.

Badan Penyelesaian Sengketa Konsumen (BPSK) adalah lembaga yang berwenang menyelesaikan sengketa konsumen yang berada di tingkat kabupaten dan/atau kota. Namun setelah disahkannya Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah (UU Pemerintahan Daerah), BPSK dibubarkan dan dipindahkan ke tingkat provinsi. Penelitian ini bertujuan untuk mengetahui penyebab pembubaran BPSK, dampaknya terhadap akses keadilan bagi konsumen dan upaya reorganisasinya sehingga berkontribusi terhadap perlindungan konsumen. Penelitian ini merupakan penelitian hukum empiris dengan pendekatan yuridis sosiologis. Data yang digunakan adalah data primer dan sekunder yang dianalisis secara preskriptif. Hasil penelitian menunjukkan bahwa peralihan kepengurusan dan kewenangan pembentukan BPSK dari pemerintah kabupaten dan/atau kota kepada provinsi berdasarkan Undang-Undang Pemerintahan Daerah mengakibatkan keberadaan BPSK di kabupaten dan/atau kota harus dilikuidasi. Hal ini berimplikasi pada terbatasnya akses konsumen untuk memperoleh keadilan. Rekomendasi dari penelitian ini adalah pemerintah perlu menata kembali kedudukan hukum BPSK dengan mengembalikan kedudukan BPSK kepada kabupaten dan/atau kota. Hal ini dapat dicapai melalui politik hukum berdasarkan siyasah syar'iyah. Artikel ini dapat

menjadi acuan dasar bagi pengembangan lembaga penyelesaian sengketa konsumen yang berbasis perlindungan konsumen.

Keywords: liquidation, consumer dispute resolution body, siyasah syar'iyah.

Introduction

This study departed from the results of an investigation into the existing conditions of The Consumer Dispute Settlement Body (in Indonesia Badan Penyelesaian Sengketa Konsumen or BPSK) following the enactment of the Local Government Law (Law No. 23 of 2014) (hereinafter referred to as the Local Government Law), amended by the Job Creation Law. BPSK is a legal institution designed to resolve consumer disputes effectively and efficiently because, in the content of Law No. 8 of 1999 on Consumer Protection (hereinafter referred to as UUPK), BPSK was established as an efficient, fast, affordable, and professional alternative. Normatively, BPSK was designed to be established by the government, and domiciled in regencies/cities as stated in Article 49 paragraph (1) of UUPK with the aim that consumers can easily and quickly access it to resolve their disputes. Over time, the management and authority to establish BPSK was transferred from the authority of the district/city to the authority of the Provincial government based on the Local Government Law, as stated in its appendix that the implementation of consumer protection, including the establishment of BPSK, in all district/city areas is under the authority of the Provincial Government.

As a logical consequence of the above transfer of consumer protection authority, the financing of BPSK is borne by the provincial government. To realise consumer protection, East Java Province established 5 (five) Consumer Protection Technical Implementation Units (UPT). The number of BPSKs in Indonesia based on data from the Directorate of Consumer Protection Empowerment in 2018 was 171 BPSKs. The number of BPSKs in East Java before the deadline for the transition (2017) of management from regencies/municipalities to provinces was 12 (twelve), comprising Surabaya City, Malang City, Kediri City, Nganjuk Regency, Probolinggo Regency,

Probolinggo City, Ngawi Regency, Mojokerto Regency, Bojonegoro Regency, Jember Regency, Bangkalan Regency, Banyuwangi Regency, Pasuruan City, and Sidoarjo Regency.

The twelve (12) BPSKs above are currently 5 (five) BPSKs in accordance with the number of Consumer Protection UPTs, namely Surabaya, Malang, Jember, Kediri, and Bojonegoro. The working area of BPSK is the same as the working area of the Consumer Protection UPT, namely Surabaya (with the working area covering Surabaya City, Sidoarjo Regency, Gresik Regency, Bangkalan Regency, Sampang Regency, Pamekasan Regency, and Sumenep Regency) and Malang City (Malang Regency, Malang City, Batu City, Pasuruan Regency, Pasuruan City, Blitar Regency, Blitar City, Tulungagung Regency). Based on the above, the liquidation of 7 (seven) BPSK took place outside the domicile of the Consumer Protection UPT, such as BPSK in Nganjuk Regency, Probolinggo Regency, Probolinggo City, Ngawi Regency, Mojokerto Regency, Bangkalan Regency, Banyuwangi Regency, Pasuruan City, and BPSK in Sidoarjo Regency. There is no clear argumentation related to the liquidation of BPSK above; it is only revealed based on field data that BPSK no longer exists, and its abolishment is based on a Presidential Decree (Keppres) which is hierarchically higher in government than the Provincial Government, and hierarchically higher in legal norms than the Governor's Decree, which became the basis for the establishment of the new BPSKs; therefore, the principle of *lex superior derogate legi inferiori* should apply.¹ Consumer complaint cases in East Java are shown in the Table below:

Table 1. Recap of consumer complaint cases in East Java in 2023

No	Complaint Case	Quantity
1	Apartment	125 cases
2	Housing	105 cases
3	Online loans	70 cases
4	Online shopping	30 cases

¹Endang Larasati, Neti Karnati, and Sukro Muhab, "Dualism of Authority to Review Regional Regulations for Regional Taxes and Levies in Indonesia," *International Journal of Social Science Research and Review* 5, no. 3 (2022): 260–70.

5	Goods and services	35 cases
6	Leasing	21 case
7	Banking	17 cases
8	Telecommunications	12 cases
9	Electricity	7 cases
10	Stromnet	10 cases
11	PDAM	9 cases
12	Hajj and Umrah services	5 cases

Source: The Costumer Protection Foundation in Indonesia Yayasan Lembaga Perlindungan Konsumen 2023

The liquidation of BPSK carried out by the local government above made BPSK shrink in number, and this is a disobedience to the order of Article 49 paragraph (1) of UUPK, which mandates the establishment of BPSK to be formed in the Regency and/or City. This defiance of the law, if seen from the perspective of Ronald Dworkin, is not in the context that the law is considered and felt to be contrary to conscience (conscientious disobedience) but because the actor does not care about legal orders (lawlessness).² The disobedience to the above legal order has led to the liquidation of BPSK, impacting consumers as the elements of the external legal culture of BPSK.³ Consumers can no longer easily and cheaply access BPSK to resolve their disputes out of court. This, in turn, leads consumers to access court institutions in seeking justice because court institutions exist in every district and/or city even though in business disputes, courts are philosophically not suitable for use, as in line with the thought of

²Ronald Dworkin, "On Not Prosecuting Civil Disobedience," *The New York Review of Books*, 1968, 1–18, <http://www.nybooks.com/articles/archives/1968/jun/06/on-not-prosecuting-civil-disobedience/>. Ronald Dworkin, *Taking Right Seriously* (London: Gerald-Duckwort, 1977). Fajar Laksono Soeroso, "Pembangangan' Terhadap Putusan Mahkamah Konstitusi (Kajian Putusan Nomor 153/G/2011/PTUN-JKT)," *Jurnal Yudisial* 6, no. 3 (2013): 227–49, <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/100>.

³Josefa Dolores Ruiz-Resa, "Legal Culture on Justice and Truth: The Tribunals of Inquiry about Bloody Sunday," *Age of Human Rights Journal* 15, no. 15 (2020): 73–104, <https://doi.org/10.17561/TAHRJ.V15.5777>. Dian Latifiani, "Human Attitude and Technology: Analyzing a Legal Culture on Electronic Court System in Indonesia (Case of Religious Court)," *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 157–84, <https://doi.org/10.15294/jils.v6i1.44450>.

Daniel S. Lev implying that in business relations that are not familiar, business actors often avoid resolving disputes through the courts with considerations of efficiency, expediency, and trust.⁴

The ease with which consumers can access the courts, in turn, creates a legal culture of litigation in business disputes. The implication is that business dispute resolution becomes very bureaucratic and tortuous, cases in the courts become increasingly piled up, and the culture of deliberation, which is the culture of the nation, is increasingly sidelined as an out-of-court dispute resolution mechanism. Several studies support this research: First, Harpani Matnuh⁵ reconstructed BPSK into a consumer court. Second, Nuzul Rahmayani⁶ specifically offered a new construction of BPSK's authority in resolving consumer disputes based on the value of justice. Third, A. Joko Purwoko⁷ highlighted legal reasoning in the settlement of consumer disputes at BPSK and examined the optimisation of BSK through consumer empowerment. ⁸ Fourth, Fransiska's⁹ research is related to the effectiveness of BPSK in resolving consumer disputes. Fifth, Syamsudin¹⁰ focused on the court's failure to provide protection to consumers by cancelling BPSK decisions.

⁴Adi Sulistiyono, *Mengembangkan Paradigma Non Litigasi Di Indonesia* (Surakarta: UNS Press, 2006).

⁵ H. Matnuh, "Rectifying Consumer Protection Law and Establishing of a Consumer Court in Indonesia," *Journal of Consumer Policy* 44, no. 3 (2021): 483–95, hlm. 103. Lihat pula Harpani Matnuh, "Innitation Consumers Court Through Consumer Dispute Resolution Agency Reconstruction" 3240, no. 8 (2016): 63.

⁶ Nuzul Rahmayani, Eman Suparman, and Jawade Hafidz, "Construction of the Authority of the Consumer Dispute Settlement Agency in Indonesia" 2, no. 5 (2019): 27.

⁷ A. Joko Purwoko, "The Significance Of Legal Reasoning In Consumer Dispute Settlement Through the Consumer Dispute Settlement Agency (BPSK) in Indonesia," *International Journal of Business, Economics and Law* 13, no. 4 (2020): 15–21., p. 20-21

⁸ A. Joko Purwoko, R. Benny Riyanto, and Bambang Eko Turisno, "Optimizing of the Consumer Dispute Settlement Agency As a Non-Court Agency To Resolve the Consumer Dispute," *International Journal of Civil Engineering and Technology (Ijciet)* 11, no. 2 (2020): 203–10, <https://doi.org/10.34218/ijciet.11.2.2020.020.>, p. 210

⁹ Fransiska Novita Eleanora, "Effectiveness Of Consumer Dispute Resolution Agency (BPSK) in Completing Consumer Dispute in Indonesia," *South East Asia Journal of Contemporary Business, Economics and Law* 21, no. 5 (2020): 2019–2021., p. 89

¹⁰ M. Syamsudin, "The Failure of the Court to Protect Consumers: A Review of Consumer Dispute Resolution in Indonesia," *Journal of Consumer Policy* 44, no. 1 (2021): 117–30, <https://doi.org/10.1007/s10603-020-09470-0.>, p. 128

Based on the results of the above studies, at a macro level, they have the same legal issues as those that will be discussed in this study, where BPSK has experienced chaos until now. However, the previous researchers did not mention the position of BPSK institutions after the Omnibus Law on Job Creation or the Local Government Law and did not make *siyasaah syar'iyah* as a measure in redesigning BPSK institutionally so that it contributes more to the handling of consumer disputes in the regions. This research, therefore, investigates why the liquidation of the above 7 (seven) BPSKs occurred and what the implications are for the protection of the constitutional rights of consumers as citizens in a country based on law and the constitution as the highest source of law. Conducting a thorough diagnosis is crucial as the initial step in shaping the legal framework for the redesign of BPSK to ensure its optimal performance of duties and functions. This underscores the importance of this research, which is introduced on the first page.

Research Methods

The research uses combined empirical and normative methods¹¹ supported by sociological, conceptual, and statutory approaches, aiming at diagnosing the causes of the liquidation of several BPSKs in East Java and its implications for consumer protection. The results of this diagnosis are the basis for formulating the legal politics of the redesign of BPSK so that it continues to contribute optimally to consumer protection. In addition to the above approaches, generally, in legal research, a statutory approach is also a must, considering that this research cannot be separated from several legal norms relating to BPSK as the research object. In this research, primary data was obtained from interviews with the Head of the East Java Consumer Protection Unit in Malang, while secondary data was ready to use when it was garnered, consisting of library materials such as laws and regulations, research results,

¹¹Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: PT. Citra Aditya Bakti, 2004).Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (2016): 201–7, <https://doi.org/10.1016/j.sbspro.2016.05.006>. Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 50–55.

reports on agency activities related to the substance of the research. Secondary data used in this research are legal materials consisting of primary, secondary and tertiary legal materials relevant to this research.

While primary data was collected using interview techniques, the secondary one was obtained using the following: (a) Document and Literature Techniques, where document studies are carried out in the places mentioned above, (b) *Online Data Searching / Internet Searching*, where the needed data collection involved internet searching, browsing, or downloading. The data of this research was then analysed prescriptively, involving a combination of descriptive and predictive analyses. Descriptive analysis describes the current situation of BPSK, while predictive analysis provides predictions based on the current situation to describe how BPSK should be in the future. Based on this, the prescriptive analysis answers the question of what should be done related to BPSK after seeing the currently existing conditions, which serves to provide direction, solutions and suggestions related to BPSK in the future, namely in the form of the urgency of BPSK reorganisation.

Discussion

Reasons for the Dissolution of BPSK following the Enactment of Law Number 23 of 2013 on Regional Government

Accelerating the realisation of community welfare through improved services, empowerment, efficiency, and effectiveness is the philosophical basis of the Local Government Law, which is based on the values of justice, democratic principles, and equity in accordance with the characteristics of each region in the system of the Unitary State of the Republic of Indonesia. This is in accordance with the objectives of the state stated in the preamble of the 1945 Constitution, which mentions “to form an Indonesian State Government that protects the entire nation and all Indonesian people and to advance the general welfare, educate the nation’s life, and participate in implementing world order based on independence”.

BPSK is a quasi-court institution that carries out part of the judicial function. The term quasi court refers to institutions that have the authority to

hear and decide a case but are not courts.¹² BPSK was established as a forum to protect the rights of consumers as citizens of Indonesia because BPSK is a body tasked with handling and resolving consumer disputes outside of court. Normatively, BPSK is formed by the government, and domiciled in the district/city. The number of BPSK, according to data from the Directorate of Consumer Empowerment as of July 2018, is 171 (one hundred seventy-one) throughout Indonesia, while the number of regencies and cities in Indonesia is 514 (five hundred fourteen), consisting of 416 (four hundred sixteen) regencies and 98 (ninety-eight) cities. In comparison, only 33 (thirty-three) per cent of regencies and cities have BPSK. Of the 171 (one hundred seventy-one) BPSK, factually, only 112 (one hundred twelve) (65%) are operational. However, based on the latest report (2021), the percentage of BPSKs that were active in 2021 was 56.75%. The percentage was obtained from the number of BPSKs that submitted reports, including 42 BPSKs divided by the number of BPSKs that were budgeted to operate in 2021, namely 74 BPSKs.

The progressivity of BPSK formation before the Local Government Law occurred between 2011-2016. The number of BPSK units in 2016 was 171, indicating an increase of 163% from 2011, which amounted to only 65 units. The rapid growth of BPSK in the regions illustrates the increasing concern of District and/or Municipal Governments in the implementation of consumer protection in their working areas. Out of 34 provinces, 31 provinces have BPSK, where Maluku, West Sulawesi and West Papua provinces are the only provinces that do not have BPSK established in their regions. The progressive development of BPSK above experienced stagnation after the enactment of the Local Government Law. Even in 2016, there was no new BPSK establishment due to the problem of transferring the authority to organise BPSK from the previous District/City Government to the Provincial Government, which

¹²Muh. Risnain, "Eksistensi Lembaga Quasi Judisial Dalam Sistem Kekuasaan Kehakiman Di Indonesia : Kajian Terhadap Komisi Pengawas Persaingan Usaha," *Jurnal Hukum Dan Peradilan* 3, no. 1 (2014): 49–58. Solon Solomon, "Quasi-Judicial Bodies and the Establishment of Standards and Principles for Assessing Mental Harm Sustained by Civilians Exposed to Hostilities," *Journal of International Dispute Settlement* 12, no. 1 (2021): 104–24, <https://doi.org/10.1093/jnlids/idaa026>. Jose E. Alvarez, *International Organizations as Law-Makers* (United Kingdom: Oxford University Press, 2005).

actually decreased due to the centralisation of services by the Provincial Government. This centralisation of services has occurred in East Java with the establishment of the UPT Consumer Protection, where BPSK is facilitated in it.

Of one hundred seventy-one (171) BPSKs that have been established, in 2015, only 94 units or 54.97% were operational. The other 45.03% were not yet operational even though they had received approval for establishment. In terms of financing, only 56 units out of 94 BPSKs in operation or 59.57% had received financing commitments from the Provincial Government (Decree of the Director General of Consumer Protection and Trade Order No. 319/2017 on the Strategic Plan of the Directorate General of Consumer Protection and Trade Order 2015-2019). In 2020, the data on the percentage of active BPSK was 49.20%. The percentage was obtained from the number of BPSKs that submitted reports of only 31 BPSKs divided by the number of BPSKs that were budgeted to operate in 2020 of 63 BPSKs (Performance Report of the Directorate General of Consumer Protection and Trade Order in 2020). Based on this, there was a massive shrinkage of BPSK institutions.

An example of centralisation of BPSK services occurred in East Java, as the liquidation of BPSK occurred in East Java Province. The number of BPSKs in East Java before the transition deadline (2017) was 13 (thirteen), and currently, there are 5 (five) BPSKs left according to the location of the UPT for Consumer Protection, namely in Surabaya, Malang, Jember, Kediri, and Bojonegoro (Taryono, 2021) (Eka, 2021). This is because the UPT in charge of facilitating BPSK in resolving consumer disputes is under the consumer and business empowerment section (Article 48 of East Java Governor Regulation Number 60 of 2018). Based on this, the working area of BPSK in East Java follows the working area of the Consumer Protection unit as follows (Article 40 jo Article 47 paragraph (3) East Java Governor Regulation Number 60 of 2018):

Table 2. Grouping of Consumer Protection Implementation in East Java Province

No.	Consumer Protection Unit	Working Area
1	Surabaya	<ol style="list-style-type: none"> 1. Surabaya City 2. Sidoarjo Regency 3. Gresik Regency 4. Bangkalan Regency 5. Sampang Regency 6. Pamekasan Regency 7. Sumenep district
2	Malang	<ol style="list-style-type: none"> 1. Malang Regency 2. Malang City 3. Stone Town 4. Pasuruan Regency 5. Pasuruan City 6. Blitar Regency 7. Blitar City 8. Tulungagung Regency.
3	Kediri	<ol style="list-style-type: none"> 1. Madiun Regency 2. Madiun City 3. Magetan District 4. Pacitan District 5. Ponorogo District 6. Nganjuk Regency 7. Trenggalek Regency 8. Kediri District 9. Kediri City
4	Bojonegoro	<ol style="list-style-type: none"> 1. Bojonegoro Regency 2. Lamongan Regency 3. Tuban Regency 4. Jombang Regency 5. Mojokerto district

		6. Mojokerto City
		7. Ngawi Regency
5	Jember	1. Jember Regency
		2. Lumajang district
		3. Banyuwangi Regency
		4. Situbondo Regency
		5. Bondowoso Regency
		6. Probolinggo District
		7. Probolinggo City.

Source: East Java Governor Regulation Number 60 of 2018 concerning Nomenclature, Organisational Structure, Description of Duties and Functions and Work Procedures of the Technical Implementation Unit of the Industry and Trade Office of East Java Province.

The concentration of BPSK services in several regions above is due to the transfer of the management and authority to establish BPSK from the authority of the regency/city¹³ to the authority of the Provincial government on the basis of Law No. 23 of 2014 on Regional Government (hereinafter referred to as Local Government Law); its Annex states that the implementation of consumer protection in all regency/city regions is the business of the Provincial Government. Based on this, there is disharmony between Article 49 paragraph (1) of UUPK and the Annex of the Local Government Law in terms of the authority to establish BPSK in the regions.

Table 3. Division of Government Affairs in the Trade Sector in the Local Government Law

No.	Sub Affairs	Central Government	Provincial Government	District/City Government
1	2	3	4	5
5	Standardis	a. Implementation,	Implementation	Implementati

¹³ A Dwi Rachmanto Johannes Gunawan, Bernadette M. Waluyo, "Alih Kelola Badan Penyelesaian Sengketa Konsumen (BPSK) Dari Kabupaten/Kota Ke Provinsi Berdasarkan UU NO 23 Tahun 2014 Tentang Pemerintahan Daerah," vol. 1, 2019.

<p>ation and Consumer Protection</p>	<p>control and evaluation of consumer protection, standardisation, and quality of goods, as well as supervision of goods and/or services throughout the territory of the Republic of Indonesia.</p> <p>b. Control and evaluation of legal metrology in all regions of the Republic of Indonesia.</p> <p>c. Implementation of legal metrology in the context of special handling</p>	<p>of consumer protection, quality testing of goods, and supervision of goods and/or services in circulation in all districts/cities.</p>	<p>on of legal metrology in the form of calibration, re-calibration, and supervision.</p>
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Source: Annex to the Local Government Law Part DD on the Division of
Government Affairs in the Trade Sector.

According to Bernadette M. Waluyo, the Local Government Law above brings changes to several aspects:¹⁴

¹⁴Bernadette M. Waluyo, "Posisi Dan Kontribusi Badan Penyelesaian Sengketa Konsumen (BPSK) Pasca Undang-Undang No. 23 Tahun 2014 Tentang Pemerintah Daerah," in *Bunga Rampai Hukum Keperdaan*, ed. Yanly Gandawidjaja (Bandung: Nuansa Aulia, 2019).

1. The existence of BPSK, which was originally located in the regency or city, is now located in the province.
2. The party that initiates and proposes the establishment of BPSK, which was originally the initiation and proposal of the Regent/Mayor, became the initiation of the Governor.
3. The party that finances BPSK operations, which was originally the Regency/City Government, became the Provincial Government.

The conflict of norms between Article 49 paragraph (1) and the Local Government Law has an impact on the legal uncertainty of the position of BPSK. As a result, there is a grouping of consumer protection services conducted by BPSK, so BPSK is not easily accessible to most of the consumers in the regions, as happened in East Java through the facilitation of the Consumer Protection UPT. The grouping of BPSK services above is efficient in the budgetary aspect because BPSK is not located in every regency and/or city but only in some regions that oversee several other regions. However, because it is not evenly distributed, the implementation of its duties is not effective in protecting all Indonesian consumers, and it is not fair because only consumers who are in reachable proximity can easily access it, while consumers far from the BPSK service centre may not have access to it. This is certainly contrary to the philosophical basis of the Local Government Law itself, which is to accelerate the realisation of community welfare through improved services, empowerment, efficiency, and effectiveness.

The concentration of BPSK services is also because trade affairs, which include consumer protection affairs, are optional government affairs, not mandatory government affairs. Article 12, paragraph (3) of the Local Government Law above, states that trade (including the implementation of consumer protection), is an Elective Government Affair, not an Obligatory Government Affair, regardless of whether they are directly related to basic services. Mandatory Government Affairs, according to Article 1 point 14 of the Local Government Law, must be organised by all Regions. There are 2 (two) typologies of mandatory government affairs: (1) Mandatory Government Affairs related to Basic Services include: a. education; b. health; c. public works and spatial planning; d. public housing and residential areas; e. peace, public

order, and community protection; and f. social. (2) Mandatory Government affairs that are not related to Basic Services include: a. labour; b. women's empowerment and child protection; c. food; d. land, e. environment, f. population administration and civil registration, g. community and village empowerment, h. population control and family planning, i. transportation, j. communication and informatics, k. cooperatives, small and medium enterprises, l. investment, m. youth and sports, n. statistics, o. signage, p. culture, q. library, and r. archives.

Elective Government Affairs must be carried out by the regions in accordance with the potential of the regions (Article 1 dictum 15 of the Local Government Law). These include a. marine and fisheries; b. tourism; c. agriculture; d. forestry; e. energy and mineral resources; f. trade; g. industry; and h. transmigration. The impact of trade affairs (including the implementation of consumer protection) being designated as one of the Preferred Government Affairs is the occurrence of disparities in the realisation of consumer protection itself, including increasingly sharp differences in the honorarium of BPSK members among regions due to differences in budgeting and inactive BPSKs because they do not receive a budget. Moreover, there have been differences in the establishment of consumer protection units (including BPSK). East Java, for example, as described above, established 5 (five) Technical Implementation Units (UPT) for Consumer Protection, namely the Consumer Protection Unit of Surabaya, Malang, Kediri, Bojonegoro and Jember.

As a result of trade affairs being part of optional government affairs, its implementation is based on the potential of each region. Therefore, if a region does not have the potential for trade, then the implementation of consumer protection is automatically not a priority, and budget affirmation is also not carried out. This is not only due to the wide range of provincial jurisdictions but also due to the provincial government's weak commitment to consumer protection.

Implications of the Dissolution of the BPSK on Consumer Access to Justice

Justice is a constitutional right as well as a human right for everyone, including consumers. Article 28 D of the 1945 Constitution of the Republic of Indonesia¹⁵ states that everyone is entitled to recognition, guarantees, protection, and legal certainty and equal treatment before the law. As justice is a fundamental right, access to justice is also a fundamental right; it is the core and central concept in the broader field of justice. At the same time, access to justice is also a right that enables those who feel their rights have been violated to enforce their rights and seek redress. International standards recognise access to justice as a fundamental human right and a means to protect other universally recognised human rights. Byrnes et al. describe access to justice, also sometimes referred to as the right to 'access justice', as "a cross-cutting right that must be understood and interpreted in line with other principles such as equal recognition before the law" and which "enables and enhances other rights because it guarantees judicial and administrative protection of those rights".¹⁶

The United Nations Development Programme (UNDP)¹⁷ defines access to justice as "a person's ability to seek and obtain remedies through formal and informal justice institutions, and in accordance with human rights standards" and notes that access to justice "goes beyond improving a person's access to the courts, or ensuring legal representation but must be defined in terms of ensuring that legal and judicial outcomes are fair and equitable. Access to justice is central to the 2030 Agenda, as sustainable peace and development cannot be achieved without justice. Under SDG 16 (Peace, Justice, and Strong Institutions), countries commit to providing access to justice for all, which is recognised as a

¹⁵ Musa Taklima, Adi Sulistyono, and M. Syamsudin, *Consumer Protection As an Instrument for Fulfilling Human Rights in the Economic Sector and Its Constitutionalizing Efforts in the 1945 Constitution*, *Jurisdictie*, vol. 14, 2023, <https://doi.org/10.18860/j.v14i1.20844>.

¹⁶ Alan S Gutterman, "Access to Justice for Older Persons What Is Access to Justice?," 2022, <https://ssrn.com/abstract=4050575>.

¹⁷ Charles P Sabatino, "Access to Justice: The People's Principle," *Journal of the American Society on Aging* 43, no. 4 (2019): 6–10.

key indicator of a peaceful and inclusive society.¹⁸ *Ratio legis*¹⁹ of the position of BPSK in regencies and/or cities is to: (a) bring the aggrieved party closer and file a lawsuit against the business actor through an out-of-court institution (BPSK), (b) resolve consumer disputes based on deliberation to obtain a *win-win solution*, and (c) organise dispute resolution in a simple and inexpensive manner through mediation or consultation or arbitration.²⁰

The ratio legis above requires the accessibility of BPSK by consumers. BPSK is an institution that is oriented to resolve consumer disputes out of court effectively, quickly, and simply,²¹ considering that one of BPSK's duties is to resolve such disputes by way of mediation, conciliation and or arbitration. As a form of creating BPSK that is accessible in carrying out its duties and authority to resolve consumer disputes, Article 49 paragraph (1) of UUPK²² mandates that the Government establish BPSK in Level II Regions for out-of-court settlement of consumer disputes. The philosophical basis is to ensure that consumers, as the weaker party, can easily access it. The position of BPSK in Level II Regions was later annulled by the Local Government Law, which mandated that the implementation of consumer protection be the authority of the Provincial Government as stated in Appendix DD of the Local Government Law.

Based on the above, the impact of BPSK liquidation is the limited access to justice from BPSK itself, both commutative justices arising from non-litigation dispute resolution (mediation and conciliation) and distributive justice arising from litigation dispute resolution (arbitration). This limited access

¹⁸ United Nations Development Programme, *Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice* (Bangkok: UNDP Regional Centre in Bangkok, 2005).

¹⁹ Abd Hadi and Suhartono, "Ratio Legis of Combining Illegal Acts with Default in Small Claim Court Cases," *Al'Adalah* 20, no. 1 (2023): 211–34, <https://doi.org/10.24042/adalah.v20i1.12681>.

²⁰ Bernadette M. Waluyo, "Posisi Dan Kontribusi Badan Penyelesaian Sengketa Konsumen (BPSK) Pasca Undang-Undang No. 23 Tahun 2014 Tentang Pemerintah Daerah."

²¹ B.R. Rijkschroeff, *Sosiologi, Hukum Dan Sosilogi Hukum* (Bandung: Mandar Maju, 2001).

²² Holijah and M. Rizal, "Islamic Compensation Concept: The Consumer Dispute Settlement Pattern in Indonesia," *Samarah* 6, no. 1 (2022): 98–114, <https://doi.org/10.22373/SJHK.V6I1.8951>.

is exacerbated by the fact that BPSK has not yet implemented *online dispute resolution* (ODR), so it has not been able to provide protection for *e-commerce* consumers and *commerce* itself simultaneously.

Access to justice for consumers is one of four consumer interests that must be protected, namely: (1) physical interests relating to the security and safety of the consumer's body in consuming products, (2) social and environmental interests relating to consumers' desires to obtain optimal results from the use of their economic resources in obtaining products, (3) economic interests relating to consumer purchasing power which must be the centre of attention of business actors in producing goods, and (4) the interest of legal protection as access to justice. Consumers have the right to be protected from the harmful treatment of business actors.²³ In addition, access to justice is one of the core pillars of repressive consumer protection in terms of dispute resolution. Theoretically, access to justice²⁴ refers to procedural and substantive access to justice. One of the most important aspects of access to justice is the ability to reach the location where justice is served. Physical constraints such as distance can have a severe impact on people with disabilities and the poor. For low-income people, using transportation to the location where justice is being done can be very expensive. Even when transportation is affordable, the long journey to the physical location often means losing valuable time at work or at home.²⁵ One dimension of justice, alongside truth and time, is also cost.²⁶

On the aspect of litigation costs, litigating at BPSK is free of charge. However, BPSK is not evenly distributed in districts and/or cities as mandated by the UUPK Law. In accessing BPSK institutions, consumers not only lose

²³M. Ali Mansyur, *Penegakan Hukum Tentang Tanggung Gugat Produsen Dalam Menwujudkan Perlindungan Konsumen* (Yogyakarta: Genta Publishing, 2007).

²⁴Francesco Francioni, ed., *Access to Justice as a Human Right* (New York: Oxford University Press, 2007), <https://www.ptonline.com/articles/how-to-get-better-mfi-results>.

²⁵Alain Marciano and Giovanni Battista Ramello, eds., *Encyclopedia of Law and Economics, Encyclopedia of Law and Economics* (New York: Springer US, 2019), https://doi.org/10.1007/978-1-4614-7753-2_370.

²⁶A. A . S. Zuckerman, "Justice in Crisis: Comparative Dimensions of Civil Procedure," in *Civil Justice in Crisis, Comparative Perspectives of Civil Procedure*, ed. A. A . S. Zuckerman (United Kingdom: Oxford University Press, 1999).

valuable time at work or at home due to travel to the location, but they also lose funds at the same time. The ability to pay for both travel and litigation is one of the factors that determine the filing of cases to court, in addition to legal knowledge and legal culture.²⁷ Easy access to justice is part of the consumer right²⁸ to effective redress as introduced by *Consumers International* (CI), which is defined as the right to seek redress against unfair trade practices or unscrupulous exploitation of consumers. It also includes the right to a fair resolution of genuine consumer complaints. Consumers should file complaints for their genuine grievances. Many times, their grievances may be of little value, but their impact on society may be significant.

Facilitating the ease of accessing justice for consumers as justice seekers is of equal value to facilitating the affairs of others. This is the command of Islam as reflected in the verse saying that *Allah wants ease for you and does not want hardship*. This is also reflected in the hadith of the Prophet Muhammad PBUH:

"Whoever removes the distress from the distress of the believer's world, Allah will remove the distress from the distress of the Day of Resurrection. Whoever makes it easy for a person in difficulty (debt), Allah will make it easy for him in this world and the Hereafter. Whoever covers the disgrace of a Muslim, Allah will cover his disgrace in this world and in the Hereafter. Whoever helps his brother, Allah will help him as he helps his brother. Whoever travels in pursuit of knowledge, Allah will make easy for him the way to Paradise. No group of people gather in one of Allah's houses (mosques) to recite the Book of Allah and learn from one another, but there will descend upon them tranquillity, mercy will cover them, angels will surround them, and Allah will mention their names to the angels who are with Him. Whoever is slow in his deeds will not be overtaken by his noble lineage." (HR Muslim with this pronunciation).

²⁷ Satjipto Rahardjo, *Hukum Progresif Sebuah: Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009).

²⁸ Charles Makanyeza, Tendai Douglas Svtwa, and Olumide Jaiyeoba, "The Effect of Consumer Rights Awareness on Attitude and Purchase Intention in the Hotel Industry: Moderating Role of Demographic Characteristics," *Cogent Business and Management* 8, no. 1 (2021), <https://doi.org/10.1080/23311975.2021.1898301>.

Based on the above, consumers as human beings created by God also have less opportunity to uphold the truth through BPSK. This is an obligation that must be carried out as Muslims, as implied in the words of Allah: *O you who believe, be your upholders (of the truth) because of Allah (and) witnesses (who act) fairly. Do not let your hatred of a people encourage you to be unjust. Be just, for that is closer to piety. Fear Allah. Verily, Allah is thorough in what you do (QS: Al-Maidah 8).*

Reorganisation of BPSK's Legal Position from the Perspective of *Siyasah Syar'iyah*

The law must certainly²⁹ move towards *ius constituendum* or *lege ferenda* (aspired law) so that it can carry out its function as *social control* and *social engineering*. The instrument that can be used to bring law to a goal to be achieved is legal politics (*recht polietiek/legal policy*). In terms of language, legal politics is a translation of the Dutch language, *rechtpolitiek*. Politics means *belied* or policy. Policy, according to jurists, is defined as a series of actions proposed by a person, group, or government in a certain environment by showing the obstacles and opportunities for the implementation of the proposed policy to achieve the objectives.³⁰

Padmo Wahjono argues that legal politics is a basic policy that determines the direction, form, and content of the law to be formed. On another occasion, he also emphasised that legal politics is the policy of state administrators regarding what criteria for punishing something. The policy can be related to law formation, law application, and law enforcement.³¹ Teuku Mohammad Radhie defines legal politics as a statement of the will of the state authorities

²⁹ Sri Lestari, "The Legal Certainty for Resolving Consumer and Business Actor Disputes from the Perspective of Social Engineering Justice from Roscoe Pound," *Jurnal IUS Kajian Hukum Dan Keadilan* 11, no. 3 (2023): 557–68, <https://doi.org/10.29303/ius.v11i3.1309>.

³⁰ Abdul Manan, *Politik Hukum: Studi Perbandingan Dalam Praktik Ketatanganan Islam Dan Sistem Hukum Barat* (Jakarta: Prenada Media Group, 2016).

³¹ Padmo Wahjono, *Indonesia Negara Berdasarkan Atas Hukum, Cet.* (Jakarta: Ghalia Indonesia, 1986).

regarding the law in force in its territory (the current law or what is called *ius constitutum* or *lege lata*), and regarding the direction of legal development that is built (the law that is aspired to apply or what is called *ius constituendum* or *lege ferenda*). Political law thus has two interrelated and sustainable aspects, namely *ius constitutum* and *ius constituendum*.³² Mahfud MD calls legal politics a legal policy or official policy footing on the law that will be enforced, either by making new laws or by replacing old laws to achieve state goals. The politics of law is a choice about the laws that will be enacted as well as about the choices of laws that will be revoked or not enacted, all of which are intended to achieve state goals as stated in the preamble of the 1945 Constitution.³³

Legal politics of reorganisation is, therefore, defined as the policy of regulating the ideal legal position of BPSK after centralising services in several potential areas so that it can contribute to consumer protection. Based on this, the reorganisation of the position of BPSK is to restore its position in regencies and/or cities. This is motivated by several considerations, namely: (a) The condition of the Indonesian archipelago will be difficult to reach by BPSK if it is only located in the provincial capital, while the needs of the community do not only cover that area, (b) The ability of the provincial government to budget the operational costs of BPSK is very limited, especially if it has to reach areas that are far from the position of BPSK. This is more often the case in the eastern region of Indonesia, (c) The community that wants to file a complaint or lawsuit for the losses they have experienced to BPSK will experience difficulties if their residence is far from the BPSK seat.

The above can be done by means of *siyasah dusturiyah*³⁴ (political legislation) through the establishment of new regulations governing the position

³²Imam Syaukani dan A. Ahsin Thohari, *Dasar-Dasar Politik Hukum*, Cetakan ke (Jakarta: Raja Grafindo Persada, 2012).

³³Moh Mahfud MD, *Politik Hukum Di Indonesia*, Cet. VIII (Jakarta: PT Rajagrafindo Persada, 2019).

³⁴ Prayudi Rahmatullah and Basthomi Tri Kurnianing Wang, "Abuse of Private Vehicle Strobe Lights and Sirens: Law Enforcement from the Islamic Perspective," *Krytyka Prawa* 16, no. 1 (2024): 149–61, <https://doi.org/10.7206/kp.2080-1084.663>. Habib Ismail, Dani Amran Hakim, and Muhammad Lutfi Hakim, "The Protection of Indonesian Migrant Workers under

of BPSK referred to in the amendment agenda of Law No. 8/1999 on Consumer Protection. However, because consumer protection is a concurrent matter, Law No. 23/2014 on Regional Government must also be updated and regulate the implementation of consumer protection at all levels of government, as shown in the following table.

Table 4. Division of Consumer Protection Affairs at All Levels of Government in Future Amendments to Local Government Laws

No	Sub Affairs	Central Government	Provincial Government	District/City Government
1	2	3	4	5
5	Standardisation and Consumer Protection	d. Implementation, control and evaluation of consumer protection, standardisation, and quality of goods, as well as supervision of goods and/or services throughout the territory of the Republic of Indonesia. e. Control, and evaluation of legal	Implementation of consumer protection, quality testing of goods, and supervision of goods and/or services in circulation in all districts/cities.	Implementation of consumer protection Implementation of legal metrology in the form of calibration, re-calibration and supervision.

Fiqh Siyasah Dusturiyah,” *Lentera Hukum* 8, no. 1 (2021): 151–74, <https://doi.org/10.19184/ejrh.v8i1.18725>.

- metrology in all regions of the Republic of Indonesia.
- f. Implementation of legal metrology in the context of special handling

Source: Author's Analysis

The importance of addressing the current state of consumer protection cannot be overstated. Presently, its administration falls under the purview of provincial governments, leading to consumer disempowerment. This issue stems from a significant disconnect between consumer protection agencies and the consumers they are meant to serve. Additionally, consumer protection is categorised under trade affairs, which are considered optional rather than mandatory governmental affairs, exacerbating the problem. To ensure that consumer protection is prioritised across all levels of government, it is crucial to reclassify it from being a part of trade affairs to a mandatory government responsibility. The primary goal of making consumer protection a compulsory aspect of government duties is to fulfil its core objective: empowering consumers. Empowered consumers are pivotal as they drive the efficacy of consumer protection measures themselves. In Indonesia, the principles underpinning consumer protection benefit, safety, security, justice, legal certainty, and balance are rooted in the broader philosophy of national development. This philosophy aims for holistic development that aligns with the foundational values of the Republic of Indonesia, encapsulated in Pancasila.

Human development is the process of improving all aspects of human life.³⁵ The United Nations Development Programme (UNDP) argues that human development refers to the process of “expanding choices for people”. This expansion includes choices that enable people to live longer and healthier

³⁵Mohammad Bhakti Setiawan and Abdul Hakim, “Indeks Pembangunan Manusia Manusia,” *Jurnal Economia*, 9(1), 18-26 9(1) (2008): 18–26, Uny.ac.id.

lives, be better educated and have a better standard of living. In this regard, the United Nations (UN) has set targets to be implemented by the nations of the world. The three targets are economic and welfare improvement, social development, and environmental improvement.³⁶ Consumer protection is thus also aimed at realising economic improvement and consumer welfare, which is one of the targets of human development because consumer protection is closely related to economic improvement and consumer welfare itself. In addition, consumers have economic interests related to consumer purchasing power, which must be the centre of attention for business actors when producing goods.³⁷

Consumer welfare is concerned with efficient transactions and cost savings and with social aspects relating to market security and consumer health. Consumer protection is concerned with the interaction of consumers with firms to ensure a balance of power by providing consumers with the information necessary to make rational choices. It aims to achieve consumer welfare by improving the consumer's position in market transactions.³⁸ The existence of BPSK that is easily accessible is a means for consumers to defend their economic interests or property, which in Islam is one of the objectives of *maqashid sharia* (*hifz al-mal*)³⁹ and the objective of consumer protection in Islam (*himayat al-*

³⁶Azril Azahari, "Pembangunan Sumber Daya Manusia Dan Indeks Pembangunan Manusia Sektor Pertanian," *Jurnal Ekonomi Dan Bisnis Indonesia* 15, no. 1 (2000): 56–69.

³⁷M. Ali Mansyur, *Penegakan Hukum Tentang Tanggung Gugat Produsen Dalam Mewujudkan Perlindungan Konsumen*.

³⁸K J Cseres, "Controversies of the Consumer Welfare Standard," *The Competition Law Review* 3, no. 2 (2007): 121–73. Peter J. Jost and Theresa Süßer, "Company-Customer Interaction in Mass Customization," *International Journal of Production Economics* 220, no. May (2020): 107454, <https://doi.org/10.1016/j.ijpe.2019.07.027>.

³⁹Jasser Audah, *Maqashid Al-Shariah A Beginners Guide* (London Washington: the INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT, 2014). JASSER AUDA, *Maqashid Al-Shariah as Philosophy of Islamic Law A Systems Approach* (London Washington: the international institute of islamic thought, 2019), <https://doi.org/10.2307/j.ctvkc67tg.8>. Kusnan, Muhammad Damar Hulan Bin Osman, and Khalilurrahman, "Maqashid Al Shariah in Economic Development: Theoretical Review of Muhammad Umer Chapra's Thoughts," *Millab: Journal of Religious Studies* 21, no. 2 (2022): 583–612, <https://doi.org/10.20885/millah.vol21.iss2.art10>.

mustablik).⁴⁰ The security of property in Islam is very closely guarded, so that anyone who dies defending his property is considered a martyr, as said in the Prophet Muhammad's hadith, "whoever is killed defending his property is a martyr. Whoever is killed defending his family, his life, or his religion is a martyr." In addition, in the Qur'an, it is also clear that it is forbidden to acquire property unlawfully, as stated in Surah An-Nisa verse 29 "O you who believe, do not eat your neighbor's property by unlawful means, except in the form of trade on a consensual basis between you."

Based on the information provided, the BPSK can be recognised as a crucial mechanism for supporting consumer empowerment, serving as an ideal platform for defending their economic rights. From an Islamic perspective, community empowerment aims to foster welfare, particularly in the economic realm.⁴¹ Actions that detract from this welfare are not aligned with Islamic principles,⁴² which advocate for prosperity as a precursor to broader benefits. Therefore, the policy of designating consumer protection as a mandatory government responsibility ensures its enforcement across all government levels. This comprehensive approach leads to the establishment of BPSK at all tiers of government, promoting widespread consumer welfare that ultimately generates significant benefits.

Policies like the aforementioned align with *siyasah syar'iyah dusturiyah*, which, *first*, are designed to benefit the broader public. This reflects the essence of *siyasah*, which operates within the societal framework, with policymakers holding the authority to guide public interests. The focus on consumer interests underscores a universal reality: every individual is a consumer, inherently reliant on others as transaction partners to meet their own needs. This interdependence highlights the communal and universal nature of consumer rights within societal

⁴⁰ Hamdiah Ayob, "Consumer Protection in Islam: An Overview," *Malaysian Journal of Consumer and Family Economics*, 2018, 1–10. Muhammad Akbar Khan, "The Institution of Hisba (Ombudsman) and Consumer Protection," *Hamdard Islamicus* July-Sept (2012).

⁴¹ Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami* (Damaskus: Dar al-Fikr, 1986), 102

⁴² Ibn al-Qayyim al-Jawziyah, *Alam al-Muwaq'iqin* (Beirut: Dar al-Kutub al-Ilmiyah, 1993), Juz. 3, 11

governance. The most frequent transaction carried out by mankind in fulfilling their daily needs is buying and selling. In such transactions, if not the seller, then one party becomes the buyer, and this happens continuously until an indefinite time limit. In these transactions, the party who becomes the final buyer is called the consumer, who when *vis a vis* with the seller who acts as a business actor, is not in a balanced bargaining position so that his rights are often and vulnerable to being violated. Based on the first point, in the parameters of policies that are in accordance with *siyasah syar'iyah*, the above has been fulfilled because the interests of consumers are public interests; human's *ipso facto* are consumers, and consumers *ifso facto* are humans. So, the interests of consumers are the interests of humanity.

Second, the policy adopted and supported by the public represents one of several alternatives, selected based on its potential benefits and capacity to prevent harm. As discussed earlier, the strategy of designating consumer protection as a compulsory governmental affair ensures that all government levels are empowered to enforce it. This approach also guarantees that the tools available to enforcement agencies are distributed widely and are readily accessible to consumers. The ultimate goal of this policy is to strengthen consumers, who are often the more vulnerable parties in commercial transactions.

The aforementioned policy fundamentally serves the interests of consumers by ensuring the realisation of consumer protection aimed at empowering them. This is achieved because all governmental units are mandated to enforce it, bringing consumers closer to protection mechanisms. The goal of consumer empowerment encompasses several facets: consumers are not only aware of their basic rights and duties but also understand how to safeguard themselves and effectively exercise these rights and duties to make optimal choices, including opting for domestic products. Moreover, they actively advocate for their rights, fulfil their responsibilities with a preference for domestic goods, and exhibit a strong sense of nationalism in market interactions and in championing consumer interests.

BPSK, which is equitable and easily accessible, is a forum for empowered consumers to defend their rights effectively and efficiently. After all, BPSK, as a legal structure, is a repressive consumer protection institution tasked with

resolving consumer disputes effectively, efficiently, and professionally. The difficulty of this institution being accessed by empowered consumers with the above characteristics, then what emerges is mischief because consumers have difficulty defending their rights effectively and efficiently.

Third, siyasah is taken in the realm of *ijtihadi*, namely public matters where the Qur'an and Sunnah do not accommodate *qath'i* evidence. As an area of *ijtihad*, *qiyas* and *maslahah* are approaches that are often used. Therefore, the main basis of *siyasah shar'iyah* is the belief that Islamic law was revealed for the benefit of mankind, both in this world and in the hereafter, by upholding law and justice even though the mechanism is not recorded in the Qur'an and/or *hadith*.⁴³

Maslahah can also be said as *maqâshid al-syarî'ah*. Al-Juwainî is the first scholar to offer the concept of *maqâshid al-syarî'ah*, sometimes called *maslahah 'ammah* (general benefit). In comparison, al-Ghazâlî views *maqâshid al-syarî'ah* as *al-mâsalih al-mursalah* with three levels: primary/necessities (*darûriyyah*), secondary/needs (*hajjiyyah*) and tertiary/luxuries (*tahsiniyyah*). The opinions of other scholars, such as al-*Thûfi* and al-*Qarâfi*, although different in redaction, the intent and purpose are the same. Therefore, Auda also claims that between *maqâshid al-syarî'ah* and *maslahah* are the same.⁴⁴ The classical *maqâshid al-syarî'ah* classification is only focused on the individual rather than the family, society, or humanity in general. The main subject in the perspective of classical *maqâshid al-syarî'ah* is the individual (life, dignity, and individual property), not society (society, national dignity, or national wealth and economy).⁴⁵ Then Auda agrees more with the opinion of scholars who divide *maqâshid al-syarî'ah*

⁴³A.Djazuli, *Fiqh Siyasah*, Edisi Revi (Jakarta: Prenada Media Group, 2003). Neng Nur Annisa Fisher Zulkarnain, Tata Septayuda Purnama, Ahmad Syaeful Rahman, "The Contribution of Zainal Abidin Ahmad in the Discourse on Fiqh Siyasah in Indonesia," *Manchester Journal of Transnational Islamic Law & Practice* 19, no. 2 (2023).

⁴⁴A.Djazuli, *Fiqh Siyasah*. Rizki Damayanti, "The Relevance of Fiqh Siyasah Dauliyah and Religion as Indonesian Soft Power in International Relations," *De Jure: Jurnal Hukum Dan Syaria* 15, no. 2 (2023): 343–65, <https://doi.org/10.18860/j-fsh.v15i2.23371>.

⁴⁵Jasser Audah, *Maqashid Al-Shariah A Beginners Guide*. AUDA, *Maqasid Al-Shariah as Philosophy of Islamic Law A Systems Approach*.

into three main parts, namely *general* (*'ammah*), *specific* (*khâssah*) and *partial* (*juz'iyah*). General *maqâshid al-syarî'ah* represents general objectives (principles) that exist in all aspects of sharia or most of them, such as the principles of tolerance, convenience, justice, and freedom. Therefore, the primary *maqâshid al-syarî'ah* which includes the obligation to protect religion, soul, mind, lineage, property, and honour, is included in this general *maqâshid al-syarî'ah*.

The special *maqâshid al-syarî'ah* covers some of the objectives of sharia that exist in one chapter/part of several chapters of sharia, such as the existence of sanctions/punishments in the chapter of *jînâyah* (criminal) aimed at making a deterrent. Partial *maqâshid al-syarî'ah*, on the other hand, is sometimes a law or *asrâr* (secret) that is intended by the sharia directly against a partial law, such as the purpose of *rukhsah* (relief) not fasting for those who are unable to eliminate difficulties.⁴⁶ Of the three categories of *maqâshid al-syarî'ah* above, scholars have made an order of precedence (hierarchy) starting from primary *maqâshid al-syarî'ah* as the first and main order, then secondary and finally tertiary. Likewise, in the primary *maqâshid al-syarî'ah*, there is a hierarchical order that has been made by al-Gazâlî, and the next scholars followed in the following order: *hifzd* (guarding); religion, soul, mind, offspring, and property are in the last order.⁴⁷

Based on the above, it is hard to argue that all the highest objectives of Islamic law strongly guarantee the protection and promotion of the protection of consumer rights.⁴⁸ Thus, it can be said that safeguarding all these supreme objectives of Islamic law is the primary concern of Islamic law on consumer protection. Based on the above, the policy offered as mentioned above can be said to facilitate the realisation of the primary objectives of Islamic law when

⁴⁶AUDA, *Maqasid Al-Shariah as Philosophy of Islamic Law A Systems Approach*.

⁴⁷AUDA. Syafril Wicaksono et al., "MAQASHID SHARIA PROGRESSIVE: Anatomical and Transformational of Halal Institutions in UIN KHAS Jember," *El-Mashlahah* 13, no. 2 (2023): 107–32, <https://doi.org/10.23971/el-mashlahah.v13i2.7370>.

⁴⁸ Parviz Bagheri and Kamal Halili Hassan, "The Application of the Khiyar Al-'Aib (Option of Defect) Principle in on-Line Contracts and Consumer Rights," *European Journal of Law and Economics* 33, no. 3 (2012): 565–75, <https://doi.org/10.1007/s10657-012-9332-5>.

viewed from the scope of the policy, namely humans as consumers, so that it is included in the legal objectives/general (*'âmmah*) *maqâshid al-syarî'ah*. Then, in the aspect of the field, it is included in specific (*khâssah*) *maqâshid al-syarî'ah* in the scope of *muamalah*.

Conclusion

The Consumer Dispute Resolution Agency (BPSK) was liquidated because the management and authority of its establishment were transferred from the district/city to the authority of the provincial government. This was done because consumer protection affairs in the Local Government Law are not mandatory government affairs. The liquidation of the Consumer Dispute Resolution Agency (BPSK) has resulted in consumer access to seek justice through BPSK itself, and this limited access is exacerbated by the lack of implementation of online dispute resolution (ODR) in BPSK. For this reason, it is urgent to formulate new legal politics related to the reorganisation of BPSK's position on the basis of *siyasah* sharia, namely by removing the consumer protection affairs of trade affairs and making it a mandatory government affair at all levels of government (central, provincial, district and/or city). This change will lead to fair distribution of BPSK formation in all districts and/or cities in Indonesia, making it easier for consumers to access justice from it.

References

- A. A . S. Zuckerman. "Justice in Crisis: Comparative Dimensions of Civil Procedure." In *Civil Justice in Crisis, Comparative Perspectives of Civil Procedure*, edited by A. A . S. Zuckerman. United Kingdom: Oxford University Press, 1999.
- A.Djazuli. *Fiqh Siyasah*. Revi Edition. Jakarta: Prenada Media Group, 2003.
- Abdulkadir Muhammad. *Law and Legal Research*. Bandung: Citra Aditya Bakti, 2004.
- Alkostar, Artidjo. "Paradigmatic Phenomena of the Court World in Indonesia

- (Critical Review of Consumer Dispute Decisions)." *Ius Quia Iustum Law Journal* 11, no. 26 (2004): 1-14. <https://doi.org/10.20885/iustum.vol11.iss26.art1>.
- Auda, Jasser. *Maqasid Al-Shariah as Philosophy of Islamic Law A Systems Approach*. London Washington: the international institute of islamic thought, 2019. <https://doi.org/10.2307/j.ctvkc67tg.8>.
- Ayob, Hamdiah. "Consumer Protection in Islam: An Overview." *Malaysian Journal of Consumer and Family Economics*, 2018, 1-10.
- Azahari, Azril. "Human Resource Development and the Agricultural Sector Human Development Index." *Indonesian Journal of Economics and Business* 15, no. 1 (2000): 56-69.
- B.R. Rijkshoeff. *Sociology, Law and the Sociology of Law*. Translation. Bandung: Mandar Maju, 2001.
- Bernadette M. Waluyo. "The Position and Contribution of the Consumer Dispute Resolution Agency (BPSK) After Law No. 23 Year 2014 on Local Government." In *Bunga Rampai Hukum Keperdaan*, edited by Yanly Gandawidjaja. Bandung: Nuansa Aulia, 2019.
- Cseres, K J. "Controversies of the Consumer Welfare Standard." *The Competition Law Review* 3, no. 2 (2007): 121-73.
- Dworkin, Ronald. "On Not Prosecuting Civil Disobedience." *The New York Review of Books*, 1968, 1-18. <http://www.nybooks.com/articles/archives/1968/jun/06/on-not-prosecuting-civil-disobedience/>.
- Francesco Francioni, ed. *Access to Justice as a Human Right*. New York: Oxford University Press, 2007. <https://www.ptonline.com/articles/how-to-get-better-mfi-results>.
- Gutterman, Alan S. "Access to Justice for Older Persons What Is Access to Justice?" 2022. <https://ssrn.com/abstract=4050575>.

- Imam Syaukani and A. Ahsin Thohari. *Basics of Legal Politics*. Print to. Jakarta: Raja Grafindo Persada, 2012.
- Jasser Audah. *Maqashid Al-Shariah A Beginners Guide*. London Washington: THE INRATIONAL INSTITUTE OF ISLAMIC THOUGHT, 2014.
- Johannes Gunawan, Bernadette M. Waluyo, A Dwi Rachmanto. "Transfer of Management of Consumer Dispute Resolution Agency (BPSK) from Regency/City to Province Based on Law No. 23 Year 2014 on Regional Government." Vol. 1, 2019.
- Kurniawan, Kurniawan. "Problems and Constraints in the Settlement of Consumer Disputes through the Consumer Dispute Resolution Body (Bpsk)." *Journal of Legal Dynamics* 12, no. 1 (2012): 160–72. <https://doi.org/10.20884/1.jdh.2012.12.1.113>.
- Larasati, Endang, Neti Karnati, and Sukro Muhab. "Dualism of Authority to Review Regional Regulations for Regional Taxes and Levies in Indonesia." *International Journal of Social Science Research and Review* 5, no. 3 (2022): 260-70.
- Latifiani, Dian. "Human Attitude and Technology: Analyzing a Legal Culture on Electronic Court System in Indonesia (Case of Religious Court)." *Journal of Indonesian Legal Studies* 6, no. 1 (2021): 157–84. <https://doi.org/10.15294/jils.v6i1.44450>.
- M. Ali Mansyur. *Law Enforcement on Producer Liability in Realizing Consumer Protection*. Yogyakarta: Genta Publishing, 2007.
- Manan, Abdul. *The Politics of Law: A Comparative Study in the Practice of Islamic and Western Legal Systems*. Jakarta: Prenada Media Group, 2016.
- Marciano, Alain, and Giovanni Battista Ramello, eds. *Encyclopedia of Law and Economics*. *Encyclopedia of Law and Economics*. New York: Springer US, 2019. https://doi.org/10.1007/978-1-4614-7753-2_370.
- MD, Moh Mahfud. *The Politics of Law in Indonesia*. Cet. VIII. Jakarta: PT Rajagrafindo Persada, 2019.

- Rahardjo, Satjipto. *Law Enforcement A Sociological Review*. Yogyakarta: Genta Publishing, 2009.
- Ruiz-Resa, Josefa Dolores. "Legal Culture on Justice and Truth: The Tribunals of Inquiry about Bloody Sunday." *Age of Human Rights Journal* 15, no. 15 (2020): 73–104. <https://doi.org/10.17561/TAHRJ.V15.5777>.
- Sabatino, Charles P. "Access to Justice: The People's Principle." *Journal of the American Society on Aging* 43, no. 4 (2019): 6-10.
- Setiawan, Mohammad Bhakti, and Abdul Hakim. "The Human Development Index." *Journal of Economia*, 9(1), 18-26 9(1) (2008): 18-26. Uny.ac.id.
- Soeroso, Fajar Laksono. "'Rebellion' To The Decision Of The Mahkamah Konstitusi (Review of Decision Number 153/G/2011/PTUN-JKT)." *Judicial Journal* 6, no. 3 (2013): 227-49. <https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/100>.
- Sulistiyono, Adi. *Developing the Non-Litigation Paradigm in Indonesia*. Surakarta: UNS Press, 2006.
- Susanti Adi Nugroho. *The Process of Settlement of Consumer Disputes Viewed from the Law of Procedure and its Implementation Constraints*. Jakarta: Prenada Media Group, 2008.
- Syamsuddin, M. *Proficient in Researching Legal Issues*. Jakarta: Prenada Media Group, 2021.
- United Nations Development Programme. *Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*. Bangk: UNDP Regional Center in Bangkok, 2005.
- Wahjono, Padmo. *Indonesia as a State Based on Law, Cet.* Jakarta: Ghalia Indonesia, 1986.