

**CONSUMERS AND GOODWILL:****Study of Decision Number 297/Pdt. Sus/BPSK/2021**Denriskamelinda<sup>1</sup>, Kelik Wardiono<sup>2</sup><sup>1</sup> Muhammadiyah University of Surakarta ([denriskamelinda@gmail.com](mailto:denriskamelinda@gmail.com))<sup>2</sup> Muhammadiyah University of Surakarta ([kelik.wardiono@ums.ac.id](mailto:kelik.wardiono@ums.ac.id))**ABSTRACT**

The Civil Code includes the notion of objective and subjective, contextual and substantial good faith. Article 1338 paragraph (1), which is often known as the *Facta Sunt Servanda* concept, defines good faith as having an objective meaning or based on the agreement of the parties. The research method used is a legal research method with a doctrinal approach, which is normative in nature. Secondary data in the form of a copy of Court Decision Number 297/Pdt. Sus/BPSK/2021 PN.Plg regarding disputes between business actors over the previous BPSK decision through arbitration settlement due to objections to paying compensation to consumers. In this study used qualitative analysis and deductive reasoning. Legal consideration by the judge in Decision Number 297/Pdt.Sus-BPSK/2021/PN Plg is in accordance with Law No.30/1999, Law No.8 of 1999, PERMA 01/2006, BPSK Decision No.57/BPSK/PTS /XII/2021 to reject all applications because none of the a quo fulfills the material requirements for the objection referred to in Article 6 paragraph 3 and 4 PERMA 01/2006 while against that between the objection applicant and the respondent in making an agreement already fulfills the elements of article 1338 in full objective and heeding the norms of decency and decency, then the applicant is willing to fulfill and pay compensation to the respondent because the applicant is deemed to have defaulted in carrying out the agreement.

**Keywords:** BPSK, Good Faith, Consumer Protection

**INTRODUCTION**

Treaties are given top priority in all aspects of communal life, but especially in commercial transactions. This agreement fulfills one of the conditions for creating a legal relationship, the same as outlined in Article 1320 of the Civil Code. When making an agreement, the parties must pay attention to the principles in the agreement as well as the provisions of Article 1320 of the Civil Code. An agreement must be implemented in good faith, as stated in Article 1338 paragraph 3 of the Civil Code.

In this article, what is meant by "propriety and justice" is the implementation of the agreement between the parties. According to Ridwan Khairandy that: "The parties must negotiate in good faith from the beginning of the contract creation process until the completion of contract implementation" (Argani, 2016).

A sale and purchase agreement is valid, therefore all parties must act in good faith and provide each other with accurate information about the goods offered and purchased by the customer. This aims to prevent misconceptions between the parties regarding the products being bought and sold. As a result, it is emphasized that the notion of good faith is very important in the formation of agreements. (Wijaya and Danajaya., 2015).

"Theoretically, there are two parts to the principle of good faith: 1) Subjective good faith, where the parties demonstrate trust before implementing the agreement. Subjective good faith usually exists during negotiations, when both parties are willing to reveal their true identities and provide supporting documentation for thorough review by the other party. 2) Good faith is objective, especially when the implementation of the agreement must be in accordance with propriety or justice (Innaka et al., 2018).

The Civil Code includes the meaning of objective and subjective, contextual and substantial good faith. Article 1338 paragraph (1), which is often known as the concept of *Facta Sunt Servanda*, defines

good faith as having an objective meaning or based on the agreement of the parties. The parties who bind themselves to an agreement are legally bound by the terms of the agreement. However, Article 1339 of the Civil Code defines good faith as giving reasonable consideration to propriety, justice and custom (Winarno et al., 2021).

The sale and purchase agreement is carried out to achieve the goals expected by each party. The sale and purchase agreement can be made in writing or verbally (Kusumawati, 2019). The sale and purchase agreement determines the responsibilities and rights of the seller and buyer. Articles 1457 and 1540 of the Civil Code regulate sales and purchase agreements (hereinafter referred to as the Civil Code). Buying and selling is defined as follows in Article 1457 of the Civil Code:

*"A contract that obligates one party to deliver goods in exchange for another party's commitment to pay a certain amount of money."*

According to the definition of Article 1457 of the Civil Code above, sale and purchase is an agreement between the buyer and seller where the buyer agrees to transfer legal ownership rights to an item to the seller in exchange for a monetary reward.

Default occurs regarding the agreement to carry out commitments in the sales and purchase contract between the company and the consumer. As a result, consumers receive legal protection in the form of Law no. 8 of 1999 concerning Consumer Protection in sales and purchase agreements made between business actors and consumers, namely Article 7 letter a which reads as follows: commercial activities." However, there are still many incidents where business actors cannot fulfill their responsibilities in accordance with the provisions of agreements made with consumers, so that the state provides a forum for legal action for consumers to obtain justice through resolving consumer disputes through litigation (court) and non-litigation arrangements (in outside court).

In this case, consumers can ask BPSK for assistance to resolve disputes arising from transactions involving business actors and consumers. BPSK is a government institution that has broad responsibilities and authority, including conducting investigations and resolving consumer complaints through conciliation, mediation and arbitration; providing consumer protection consultations; supervision of the inclusion of standard clauses in contracts; providing information to general investigators; receiving and processing written and verbal complaints; summoning business actors suspected of violating the law; and conveying information to the public.

Article 45 paragraph 1 Consumer Protection Law no. 08 of 1999 states, "Every affected consumer can sue business actors through institutions tasked with resolving disputes between consumers and business actors and/or through courts in the ordinary judicial environment." The Consumer Dispute Resolution Agency, abbreviated as BPSK, is a government agency tasked with mediating consumer disputes outside of court. Therefore, BPSK is a government institution with unique judicial authority in the field of consumer safety (Hardianto et al., 2015)

In this case, there is a consumer dispute case that occurred in Palembang which was issued by the Palembang District Court Number 297/Pdt.Sus-BPSK/2021/PN Plg regarding a consumer dispute where the business actor objected to the BPSK's final decision through arbitration which essentially brought down the business actor for compensation to consumers for carrying out their obligations until in the end the business actor did not have good intentions in carrying out his obligations regarding the BPSK decision and submitted an objection to the BPSK decision to the Palembang District Court to obtain justice (Winarno et al., 2021). Based on the description above, the author is interested in knowing about consumer protection regarding the good faith of sales and purchase agreements (Achmad., 2018).

Based on the data found above, there are cases of consumer disputes that occurred in Palembang which were issued by the Palembang District Court Number 297/Pdt.Sus-BPSK/2021/PN Plg regarding consumer disputes, so the problem formulation in this research is How is the legal consideration by the judge regarding Consumer Protection regarding good faith in sales and purchase agreements (Decision Number 297/pdt. sus/BPSK/2021).

## RESEARCH METHODS

The research method used is a legal research method with a doctrinal approach, which is normative in nature (Dimiyati., 2016). Secondary data is a copy of Court Decision Number 297/Pdt. Sus/BPSK/2021 PN.Plg regarding disputes between business actors regarding previous BPSK decisions through arbitration settlements because they objected to paying compensation to consumers. In this research, qualitative analysis and deductive reasoning were used.

## RESULTS AND DISCUSSION

### Consideration of Objective Good Faith

Article 1338 paragraph (3) of the Civil Code reads:  
*that the contract must be executed in good faith*

According to Sutan Remy Sjahdeini, in general, good faith is described as follows: "Good faith is the intention of one party in an agreement not to harm the promised partner or to harm the public interest. As in Decision Number 297/Pdt. Sus/BPSK/2021, the judge considers that due to the actions of the Objecting Petitioner (Business Actor), the Respondent filed a lawsuit at BPSK Palembang and during the trial process, both parties were present and submitted evidence, even the Objecting Petitioner in his response expressed his willingness to provide 1 unit of house type 70 Block B- 3 Sako Gardena 2 Housing in Palembang for Rp. 750,000,000- (seven hundred and fifty million rupiah) and has also paid the obligation for the delay in handing over the apartment to the respondent in the amount of Rp. 4,200,000,- (four million two hundred thousand rupiah) (Pratama ., 2021).

When compared, The judge's decision regarding civil lawsuit Number 297/Pdt.Sus-BPSK/2021/PN.Plg which is clearly explained is in accordance with the concept of objective good faith in that this case is carried out in such a way as in the agreement so as not to harm either party because the applicant accepts and has no objection to providing compensation to the respondent so that in this case the applicant is acting in good faith towards the respondent. Compensation consists of his (the applicant's) willingness to provide 1 unit of house type 70 Block B-3 Sako Gardena 2 Housing in Palembang for Rp. 750,000,000- (seven hundred and fifty million rupiah) and has also paid the obligation for the delay in handing over the apartment to the respondent amounting to IDR 4,200,000 (four million two hundred thousand rupiah). in decision Number 297/Pdt.Sus-BPSK/2021/PN.Plg the applicant did not object to providing compensation to the respondent so that the respondent no longer suffered losses (Innaka and Sularto., 2018).

So in the author's opinion in decision Number 297/Pdt.Sus-BPSK/2021/PN.Plg, the panel of judges considered in good faith objectively in accordance with the norms of article 1338 paragraph 3 and the doctrine of the opinion of Sutan Remy Syahdeini because in its objective element the civil suit decision Number 297/Pdt .Sus-BPSK/2021/PN.Plg that the panel in considering that the applicant's good faith in this case did not object to compensating the respondent in the BPSK decision.

### Consideration of Subjective Good Faith

#### Article 1339 Civil Code:

An agreement is not only binding for things that are expressly stated in it, but also for everything that, according to the nature of the agreement, is required by propriety, custom or law.

Doctrine according to the Fockema Andreae Law Dictionary, is "the intention, the spirit that animates the participants in a legal action or involved in a legal relationship. In his legal considerations, the judge, although in Agreement Number 03 dated 11 March 2015 article 22, there is a choice of law for both parties to resolve the dispute, but in fact, after the Petitioner (Objection Respondent/Consumer) sued at BPSK, the Respondent (Business Actor/Objection Applicant) was always present, submitted evidence and did not object to the trial process and even proposed an option to compensate for the losses suffered by the Objection Respondent and compensate fine for late handover of apartment construction (see Exhibits P.1,2,3 and 4 Jo T.2). Therefore, due to the fact that there were no objections to the trial process at BPSK,

the Petitioner was deemed by the Tribunal to have agreed/agreed, submitted and complied to resolved this dispute at BPSK with the Decision dated 30 November 2021, therefore the BPSK decision is final and binding on both parties, the applicant and the respondent objecting (Dewi., 2020).

Based on the statement above, the author compares that the judge's legal considerations regarding subjective good faith are appropriate with Article 1339 which reads "An agreement is not only binding for things that are expressly stated in it, but also for everything that, according to the nature of the agreement, is required by propriety, custom or law" in this regulation it is clearly stated that The essence is that firmness is expressed but also for everything that, according to the nature of the agreement, is required by propriety, custom or law" as well as the doctrine that "the intention, spirit that animates the participants in a legal action or are involved in a legal relationship" has shown Between the applicant and the respondent, the BPSK decision must implement the agreement that has been decided, namely the Petitioner's objection to the BPSK decision regarding compensation and fines that must be paid by the applicant for the delay in handing over the apartment which the Respondent has purchased in full, is deemed unfounded because the decision is appropriate and correct. as a logical consequence of an agreement that was not implemented by the applicant. It turns out that BPSK's decision does not cancel the agreement because it is not within its authority and it is also not ultra petita from what the Petitioner requested in this case, the Respondent objected. Therefore, the applicant still has to comply with the BPSK decision to provide compensation to the respondent, in which case the judge also considered not canceling the BPSK decision because he considered that the applicant had to comply with the BPSK decision because the applicant had no objection to paying compensation to the respondent (Sudarma. , 2017).

So based on the analysis above, the author states that in the Decision Number 297 / Pdt.Sus-BPSK / 2021 / PN. The subjective element in the decision is that the respondent in the BPSK trial does not raise an objection to the applicant's request and will implement the BPSK decision, meaning that honesty in admitting the error in his mind is done consciously, then the respondent in the BPSK decision is willing and obedient to the BPSK decision which states that the respondent must pay compensation. against the applicant in the form of 1 house unit type 70 Block B-3 Sako Gardena 2 Housing in Palembang for Rp. 750,000,000- (seven hundred and fifty million rupiah) and to pay the obligation for the delay in handing over the apartment to the respondent in the amount of Rp. 4,200,000,- (four million two hundred thousand rupiah) (Pratama and Fauzi., 2021).

## CONCLUSION

The legal considerations by the judge in Decision Number 297/Pdt.Sus-BPSK/2021/PN Plg are in accordance with Law No.30/1999, Law No.8 of 1999, PERMA 01/2006, BPSK Decision No.57/BPSK/PTS /XII/2021 to reject all applications because none of the a quo satisfies the objection material requirements referred to in article 6 paragraphs 3 and 4 of PERMA 01/2006, while the objection applicant and the respondent in making the agreement have fulfilled the elements of article 1338 in full. objectively and heeding the norms of decency and propriety, then the applicant was willing to fulfill and pay compensation to the respondent because the applicant was deemed to have defaulted in implementing the agreement so that in the decision number 297/Pdt.Sus-BPSK/2021/PN.Plg the applicant had acted in good faith with respondent to provide compensation. This research shows that consumer goodwill has a significant positive influence on product purchasing decisions.

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