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The Role of Alternative Business Dispute Resolution from a Legal and Consumer Protection Perspective

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Abstract

Settlement of business disputes between consumers and business actors is becoming an increasingly important issue amidst the increasing complexity of transactions in the digital era and economic globalization. This study aims to examine the role of the Consumer Dispute Resolution Agency (BPSK) in supporting alternative business dispute resolution as a measure to protect consumer rights in Indonesia and to analyze the effectiveness of these alternative mechanisms in providing protection for consumers. This study uses a normative legal method. The research findings show that BPSK plays a strategic role in providing a more efficient dispute resolution mechanism for Indonesian consumers through a friendly, fast, and affordable mediation, conciliation, and arbitration approach. With this approach, BPSK contributes to the protection of consumer rights and encourages business actors to run their businesses fairly and responsibly. In addition, alternative business dispute resolution has proven effective in providing flexible and efficient solutions, meeting consumer justice demands in a more cost-effective and time-efficient manner. Despite facing various challenges, the ADR mechanism offers significant benefits for both consumers and business actors in resolving business disputes.

Keywords: Business Disputes, Arbitration, Mediation, and Conciliation

1. INTRODUCTION

Business disputes between consumers and business actors are becoming an increasingly important issue in the digital era and economic globalization, along with the increasing complexity of transactions involving both parties. The resolution of these business disputes has a significant impact on consumer rights which must be protected in order to prevent injustice and abuse of dominant positions by business actors.(Riefa & Saintier, 2020; Diab et al., 2023; Tira, 2023). In the Indonesian legal system, Law Number 8 of 1999 concerning Consumer Protection is the main basis for protecting consumers, including regulations regarding dispute resolution mechanisms. One important mechanism in consumer protection efforts is alternative business dispute resolution, where arbitration, mediation and conciliation can be utilized as alternative means that are more effective and efficient than litigation.(Matnuh, 2021; Jiménez et al., 2022; Situmorang, 2022; Panov et al., 2024).

In Law Number 8 of 1999 concerning Consumer Protection, consumers have basic rights such as the right to comfort, security, and safety in consuming goods or services; the right to correct, clear, and honest information regarding the condition of goods/services; and the right to compensation and damages in the event of a loss.(Kiswanto & Harahap, 2024).Protection of consumer rights requires fast and precise legal certainty, because litigation channels are often less effective for consumers who have limited time, costs and energy.(Riefa & Saintier, 2020; Herrine, 2022). As an alternative, non-litigation dispute resolution methods are more consumer-friendly, especially in maintaining good relations between consumers and business actors through fast and efficient solutions. The formation of BPSK was based on the tendency of people who do not want to resolve disputes in court because of the consumer's social position or financially unbalanced with business actors. With the formation of this BPSK institution, it is hoped that consumers can easily fight for their rights, and can also encourage business actors to be able to carry out their business activities with a sense of responsibility. (Susanti Adi Nugroho, 2011) The consumer dispute resolution procedure through BPSK consists of three stages. First, the application stage which includes the requirements for complaint resolution of disputes without a lawyer; second, the trial stage which can be carried out by means of conciliation, mediation and arbitration; and third, the decision stage which must be completed no later than 21 working days from the date the lawsuit is received which is followed by the execution of the decision.(Kurniawan and Abdul Wahab, 2008)

For example, one of the legal cases regarding losses experienced by Deden Gumilar due to his transactions made through the Tokopedia online application which has received a Decision from the Consumer Dispute Resolution Agency (BPSK) of Indramayu Regency Number: 07/ARBITRASE/BPSK.IM/VIII/2024 dated August 12, 2024 and the Decision of the Indramayu District Court Number 50/Pdt.Sus-BPSK/2024/PN Idm dated October 24, 2024. The background to this case is that on June 6, 2024, Deden Gumilar purchased goods in the form of a cellphone with the brand/type Samsung Galaxy A05s 6/128 GB in silver for Rp2,067,500.00 (two million sixty-seven thousand five hundred rupiah) at the Samsung Official Store on the Tokopedia online application, with receipt number TKP01-Q6156H9U. However, up to the maximum estimated delivery date of June 13, 2024, Deden Gumilar did not receive the goods he purchased. Deden Gumilar has repeatedly asked for an explanation from Tokopedia, but there

has been no clear explanation from Tokopedia until the decision of the Indramayu Regency Consumer Dispute Resolution Agency on August 12, 2024, the verdict of which was to grant Deden Gumilar's lawsuit with default and to sentence Tokopedia to hand over/replace the goods in the form of a cellphone or return Rp2,067,500 to Deden Gumilar according to the transaction made. Regarding the decision, Tokopedia filed an objection to the Indramayu District Court on the grounds that Tokopedia never received summons 1 and 2 from the Indramayu BPSK, only received the 3rd summons via email on the date the arbitration decision would be read out, namely August 12, 2024. Tokopedia also argued that it had provided an explanation regarding the investigation process for shipping constraints and submission of insurance claims for shipping constraints via the Tokopedia Care help page until finally the refund to Deden Gumilar was made on August 16, 2024. The decision of the Indramayu District Court was to cancel the Decision of the Consumer Dispute Resolution Agency (BPSK) of Indramayu Regency Number: 07/ARBITRASE/BPSK.IM/VIII/2024 dated August 12, 2024 and Declare and legally determine that all of the Respondent's losses have been recovered by the Applicant.

Alternative dispute resolution (ADR) mechanisms such as arbitration, mediation, and conciliation have proven their role in supporting consumer rights protection in Indonesia.ADR provides a faster, more flexible and more efficient method compared to litigation in court.(Goyal & Goyal, 2023; Saputra, 2024; Widjaja, 2024). However, the implementation of ADR still faces a number of obstacles, such as consumers' lack of understanding of their rights and dispute resolution procedures, as well as limited resources in institutions such as the Consumer Dispute Resolution Agency (BPSK). In addition, the resistant attitude of business actors who are reluctant to participate in the mediation or arbitration process is also an obstacle, especially if they are less aware of the long-term benefits of peaceful resolution.

2. RESEARCH OBJECTIVES

This study aims to evaluate the role of the Consumer Dispute Resolution Agency (BPSK) in supporting alternative dispute resolution mechanisms as a measure to protect consumer rights in Indonesia. In addition, this study also aims to assess the effectiveness of alternative dispute resolution methods, such as mediation and arbitration, in providing fast, affordable, and satisfactory solutions for the disputing parties. The study was conducted by referring to the legal provisions governing the authority of BPSK in the Consumer Protection Law, as well as through an analysis of the success of the implementation of these methods in practice. The results of this study are expected to provide insight into the extent to which alternative dispute resolution mechanisms are able to be an efficient and effective means of ensuring the protection of consumer rights in Indonesia.

3. RESEARCH HYPOTHESIS

This study starts from two main questions: first, to what extent does the Consumer Dispute Resolution Agency (BPSK) contribute to facilitating alternative business dispute resolution mechanisms to protect consumer rights in Indonesia; and second, to what extent is the effectiveness of alternative business dispute resolution mechanisms in ensuring the protection of consumer rights in Indonesia.

4. CONTRIBUTION

This research is expected to provide significant contributions to the development of legal studies related to business dispute resolution and consumer protection. Through a legal approach, this study will evaluate the strengths and weaknesses of the existing legal framework in protecting consumer rights, while offering new insights to strengthen the theory of consumer protection law that is relevant to the dynamics of the digital era and economic globalization. In addition, this study aims to provide strategic recommendations for BPSK in increasing the effectiveness of alternative dispute resolution mechanisms, including mediation, conciliation, and arbitration, to be more responsive to consumer needs. This approach is expected to create a simpler, more affordable, and more consumer-friendly resolution process. The results of this study can also be used to improve consumer literacy regarding their rights and provide practical guidance in choosing the most appropriate dispute resolution method so that consumers are more confident in dealing with conflicts with business actors.

5. CONCEPTUAL FRAMEWORK

This study focuses on the protection of consumer rights, as regulated in Law Number 8 of 1999 concerning Consumer Protection, including basic rights such as the right to comfort, safety, accurate information, and the right to receive compensation for losses experienced. In this context, the Alternative Dispute Resolution (ADR) mechanisms discussed include various methods, including:

1. Arbitration is a method of dispute resolution where the parties agree to appoint one or more arbitrators whose job is to listen to arguments from both parties and then make a final and binding decision. (Kolopaking, 2021; Winarta, 2022; Wajdi et al., 2023). Consumer dispute resolution can be carried out outside the court, but the resulting decision has the same legal force as a court decision. Arbitration is a method of dispute resolution in which both parties agree to submit the resolution of the problem to an arbitrator who will provide a final and binding decision. In resolving consumer disputes through arbitration, the parties have the freedom to choose an arbitrator who has expertise in the relevant field. Arbitration offers the advantage of a faster resolution process and lower costs compared to litigation.
2. Mediation is a method of dispute resolution that involves a third party, namely a mediator, whose job is to help the parties reach a voluntary agreement. (Putra et al., 2024). A mediator does not have the authority to make a final decision on a dispute but rather acts as a liaison who helps the disputing parties reach a mutually beneficial agreement. In cases of consumer disputes, mediation is very effective because the process takes place in a closed, informal manner, and emphasizes finding a solution that is acceptable to both parties without any coercion or intervention from other parties.
3. Conciliation is a method of dispute resolution carried out by a conciliator who brings together the two parties by discussing the problem openly until a mutual agreement is reached. (Winarta, 2022; Santoso & Tahir, 2024). In conciliation, the conciliator functions to provide advice or recommendations to both parties, but the decisions taken are not binding. Therefore, the

parties are free to accept or reject the advice given by the conciliator.

As part of alternative dispute resolution (ADR), these three methods will be analyzed from a legal perspective to evaluate how effective they are in resolving consumer disputes. The use of arbitration, mediation, and conciliation in dispute resolution offers the advantages of flexibility, speed, and lower costs when compared to litigation. In the case of consumer disputes, these three methods allow for an effective solution while maintaining good relations between the parties involved. The selection of the most appropriate method will depend on the characteristics of the dispute and the preferences of each party.

6. THEORY AND LITERATURE REVIEW

6.1. Theory of Legal Protection

The theory of legal protection is a concept that explains how the law functions to protect the rights of individuals and society from arbitrary actions, as well as to ensure justice and legal certainty (Lifante-Vidal, 2020). Legal protection can be interpreted as an effort made by the state to protect the rights of individuals and society through laws and regulations (Tahzib, 2021). According to Philipus M. Hadjon, legal protection is a guarantee provided by the state to legal subjects to exercise their rights and interests, both in preventive and repressive forms (Sihombing, 2023). Satjipto Rahardjo argues that legal protection is protection against human rights (HAM) that are harmed by others (Abidin et al., 2022; Ismail et al., 2024). This protection aims to ensure that society can enjoy all the rights granted by law. Meanwhile, Philipus M. Hadjon stated that legal protection consists of two forms, namely preventive protection that can prevent disputes by providing an opportunity for the public to express their opinions before a government decision is taken, and repressive protection that can resolve disputes that have occurred through the legal process (Simarmata et al., 2024). Some basic principles in the theory of legal protection include: (1) The principle of justice that guarantees that all parties receive their rights fairly. (2) The principle of balance that provides a balance between the interests of consumers, business actors, and the government. (3) The principle of security and safety that guarantees security and safety for consumers in using goods or services, and (4) The principle of legal certainty that guarantees that every individual will obey the law and obtain justice in implementing protection (Lifante-Vidal, 2020). From this description, it can be concluded that the theory of legal protection emphasizes the importance of the role of the state in protecting the rights of individuals and society through fair and effective regulations. Through a preventive and repressive approach, as well as the basic principles behind it, this theory serves as a foundation for upholding justice and legal certainty in society. The theory of legal protection emphasizes the importance of providing guarantees to individuals to protect their rights. In the context of consumer protection, this theory emphasizes that consumers must be protected from unfair and exploitative business practices.

6.2. Theory of Legal Certainty

The theory of legal certainty is a very important concept in the legal system, which emphasizes the need for clarity and consistency in the application of the law (Sagita & Alfa, 2024; Harijono et al., 2024). Legal certainty can be interpreted as a condition in which the law is applied clearly, consistently, and predictably (Lifante-Vidal, 2020; Demin, 2020; Shcherbanyuk et

al., 2023). This allows individuals and society to know their rights and obligations and the consequences of legal actions taken. Jan Michiel Otto defines legal certainty as the possibility that in a particular situation, there are clear, consistent, and easily obtained rules, and they are applied consistently by government agencies and judges (Kusuma & Adhari, 2021). Gustav Radbruch considers legal certainty as one of the basic values of law that must be maintained for the sake of national security and order (Jan 2022). He argues that justice and legal certainty must be considered simultaneously. Meanwhile, Hans Kelsen stated that law is a system of norms that provides guidelines for individual behavior in society (Anwar, 2023). Legal certainty is achieved if the norms are applied without any doubt. The principles of legal certainty consist of: (1) Clarity of rules. This means that legal rules must be formulated clearly so that they do not cause doubt or multiple interpretations. (2) Consistency of application, meaning that the law must be applied consistently by all parties, including the authorities and judicial institutions. (4) Accessibility, meaning that legal rules must be easily accessible to the public so that they can understand and obey the law, and (4) Independence of the judiciary, namely that judges must be independent in applying the law without any influence from outside parties so that the decisions taken can be trusted (Hamzah, 2023; Susanto, 2024). The theory of legal certainty emphasizes efforts to ensure that the law is applied clearly and consistently so that individuals can understand their rights and obligations. In the context of consumer protection, legal certainty provides assurance that consumers can assert their rights in a structured and predictable manner.

7. RESEARCH METHODOLOGY

The method used in this study is a type of normative legal research that focuses on secondary data sources (Benuf & Azhar, 2020; Tan, 2021). Normative legal research is a type of research in the field of law that focuses on the analysis of legal norms in laws and regulations, and other legal sources (Purwati, 2020; Tan, 2021). This study aims to analyze and evaluate the principles of positive law originating from laws and regulations regarding alternative resolution of business disputes as a form of protection of consumer rights through arbitration, mediation, and conciliation. The approaches used include the legislative approach, conceptual approach, and case approach.

Normative legal research data analysis is generally descriptive and analytical in nature and aims to describe and analyze applicable laws, understand the theories behind these norms, and provide critical views on the application and appropriateness of the law in certain situations (Dadek et al., 2023), by collecting legal materials, analyzing legal texts, exploring legal concepts, applying legal norms, and drawing conclusions.

8. RESULTS

Legal protection in alternative business dispute resolution in Indonesia, especially through BPSK, is one of the significant efforts to protect consumer rights (Umar et al, 2023; Rayhan et al, 2023; Saputra, 2024; Rohmannudin et al, 2024). BPSK was established based on Law Number 8 of 1999 concerning Consumer Protection (Irfansyah, 2021) which clearly regulates its duties and authorities in handling disputes between consumers and business actors. BPSK has a crucial role in supporting the realization of consumer protection.

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alternative business dispute resolution in Indonesia (Rohmannudin et al, 2024), as part of efforts to protect consumer rights. In the context of business dispute resolution, legal certainty provides assurance that consumers can assert their rights in a structured and predictable manner (Fassa, 2024; Suwasta et al, 2024). Several elements of legal certainty that are relevant in the context of BPSK can be seen in Table 1.

Table 1. Legal Certainty in Resolving Business Disputes through BPSK

Chapter	Information
Article 1 Paragraph 11	Stating that BPSK is the body tasked with handling and resolving disputes between business actors and consumers.
Article 23	If the business actor refuses or does not fulfill the demands of consumers, then consumers have the right to sue the perpetrator attempt to court. This provides an alternative path law for consumers if they are not satisfied with the decision BPSK.
Article 49 Paragraph 1	The government formed BPSK in the regions to resolve consumer disputes outside the courts. This shows that BPSK functions as an alternative institution for resolving disputes disputes, which provides easy access for consumers and business actors.
Article 54 Paragraph 3	The government formed BPSK in the regions to resolve consumer disputes outside the courts. This shows that BPSK functions as an alternative institution for resolving disputes disputes, which provides easy access for consumers and business actors.
Article 57	BPSK decisions must be registered with the local District Court to obtain permanent legal force. This shows that even though the BPSK decision is final, it does not have permanent legal force before being registered, so that potentially causing uncertainty in the implementation decision.

As an institution established in Indonesia, BPSK has the main objective of providing alternative consumer dispute resolution services. In the context of consumer rights protection, BPSK plays an important role by providing a simpler, faster, and more affordable dispute resolution mechanism compared to litigation in court. BPSK helps consumers obtain justice and effective solutions through arbitration, mediation, and conciliation processes.

Alternative dispute resolution is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Arbitration, mediation, and conciliation are three ADR methods used as alternative dispute resolution in court. Although these three methods function as alternative dispute resolution, there are fundamental differences between arbitration, mediation, and conciliation. Arbitration produces a final and binding decision, while mediation and conciliation emphasize more on the

collaborative process and voluntary agreements reached with the assistance of a third party. In mediation and conciliation, the parties have more control over the final outcome because the decision is non-binding and focuses more on the satisfaction of both parties. Meanwhile, in arbitration, the arbitrator has the authority to make a final decision without the need for the approval of both parties. The fundamental differences between the three ADR methods can be seen in Table 2.

Table 2: Differences in ADR Methods in Business Dispute Resolution

Aspect	Arbitration	Mediation	Conciliation
Third Party Authorities	The arbitrator's decision is final and binding.	Just a mediator facilitates communication without authority to decide the outcome.	The mediator provides recommendations or suggestions, but not binding.
Nature of Decision	Binding like a verdict court	Not binding, results by agreement the parties	Not binding, only suggestion or recommendation
Procedure	More formal, like a court	Informal and flexible	Informal and flexible
	The arbitrator acts as a "judge" with full authority.	The mediator is the facilitator without authority to decide the outcome of the case.	The mediator makes recommendations that can be accepted or rejected.
Role of Third Parties Excess	Fast, sure and binding result	Flexible, and maintain good relationship between The parties	Providing concrete suggestions, a more peaceful process and flexible

Settlement of business disputes through alternative mechanisms such as arbitration, mediation, and conciliation plays an important role in protecting consumer rights in Indonesia. ADR provides a faster, more flexible, and more efficient method compared to litigation in court. In the context of business disputes involving consumers, this mechanism not only offers a cost-effective solution but also provides a more responsive and friendly channel for consumers who are often in a weaker position than business actors.

1. Reduce costs and turnaround time

One of the main advantages of ADR is its efficiency in terms of time and cost compared to litigation in court (Harahap, 2024). Court processes are generally time-consuming and involve high costs, such as attorney fees, evidence collection, and other court costs. This can be a constraint for consumers who often have limited resources. With ADR, consumers can file complaints and resolve disputes at a lower cost and in a shorter time. For example, the Indonesian Consumer Dispute Resolution Agency (BPSK) provides consumers with the

opportunity to resolve disputes with business actors through mediation or conciliation in a shorter time.

2. Flexibility in the settlement process

Alternative dispute resolution methods also offer greater flexibility than formal litigation (Syaroni & Widyaningrum, 2024). In ADR, the parties are not bound by strict procedures as in litigation, so they can freely choose the time, place, and method of resolution that suits their needs. This flexibility is especially beneficial for consumers who may need a quick solution to their problems, such as replacing damaged products or compensation for losses caused by non-conformity of service. With a more flexible process, ADR allows consumers and businesses to reach fair and mutually beneficial agreements.

3. Facilitate peaceful resolution and maintain good relations

ADR, especially mediation and conciliation, emphasizes dialogue and collaboration between consumers and businesses. This process aims to reach an amicable agreement and does not emphasize "who is at fault" but "how to reach a solution". In consumer disputes, this amicable process is very useful because it allows consumers to express their complaints without feeling judged or pressured, and businesses can also understand consumers' problems from a more open perspective. Thus, ADR not only provides a solution to the problem but also helps maintain good relations between consumers and businesses.

4. Protection of consumer rights through mediation and conciliation

In business disputes, consumer rights are often vulnerable to being ignored due to the imbalance in bargaining power between consumers and business actors. Mediation and conciliation help protect consumer rights by involving a neutral third party called a mediator or conciliator, whose job is to ensure that the process is fair and impartial. The mediator or conciliator also provides guidance to consumers to understand their rights during the settlement process. In Indonesia, BPSK acts as an institution that provides mediation and conciliation services specifically for consumer disputes. With the facilitation of a third party, consumers can feel more protected, and business actors are motivated to fulfill their obligations fairly.

5. Enforcement of binding arbitration awards in consumer disputes

If the mediation or conciliation process does not reach an agreement, consumers can take arbitration as a last resort. Arbitration provides a final decision that is binding on the parties, meaning that business actors are required to implement the decision if proven guilty. The arbitration mechanism ensures that consumers receive justice with a binding decision so that their rights can be restored effectively. In addition, because the arbitration decision is binding, consumers do not need to spend more time seeking a resolution.

6. Maintaining the privacy and confidentiality of disputes

The ADR process also maintains the confidentiality and privacy of the parties involved. In business disputes, consumers may feel more comfortable not having their case made public for reputational or privacy reasons. Court litigation is open and decisions are often a matter of public record, which can be detrimental to the parties involved, especially the business. However, in ADR, the parties can agree that all information during the dispute resolution process will remain confidential. This is especially beneficial for consumers who want to resolve their issues without negatively impacting their relationship with the business or their own reputation.

7. Effectiveness in realizing restorative justice

In addition to fast and binding resolution, ADR is also oriented towards a restorative justice approach, which focuses on recovery and resolution, rather than punishment. In the context of consumer disputes, this restorative approach provides an opportunity for business actors to correct mistakes and fulfill consumer rights. For example, if there is a defective product or inappropriate service, business actors can immediately provide compensation or replacement without having to go through a long legal process. Consumers not only obtain their rights but also gain satisfaction that the business actor has resolved the problem in a positive way. This approach builds consumer trust and provides an opportunity for business actors to improve the quality of their products.

Although ADR is very effective in resolving consumer disputes, there are several challenges that need to be addressed to optimize ADR. One of the main challenges is the low level of consumer awareness of ADR mechanisms and the institutions that provide these services. Many consumers still do not know that they can file complaints through BPSK or other arbitration institutions. In addition, there are also challenges in terms of accessibility and the limited number of dispute resolution institutions in several regions. On the other hand, business actors' awareness to accept and comply with ADR decisions, especially those that are non-binding, is also still a problem. Business actors are sometimes reluctant to follow up on the results of agreements because of their non-binding nature, especially in mediation or conciliation. This shows the importance of further education for consumers and business actors about the benefits and obligations in resolving disputes through ADR.

9. CONCLUSION

BPSK plays a major role in providing more effective and efficient alternative dispute resolution for consumers in Indonesia. With consumer-friendly mechanisms ranging from mediation, conciliation, to arbitration, BPSK enables consumers to fight for their rights without having to go through a long and expensive court process. Through its various efforts in providing access, ensuring transparency, maintaining confidentiality, and encouraging peaceful resolution, BPSK supports the protection of consumer rights and encourages awareness and compliance of business actors in carrying out fair and responsible business practices.

The effectiveness of alternative business dispute resolution in protecting consumer rights in Indonesia can be an effective and efficient solution to meet the need for justice for consumers. Through a more flexible, cheap, fast, and consumer-friendly mechanism, ADR plays a major role in protecting consumers from unfair business practices. Although there are some challenges in its implementation, ADR provides a more beneficial solution for consumers and business actors and is able to create a better balance in resolving business disputes.

To improve the effectiveness of consumer dispute resolution in Indonesia, efforts are needed to increase the capacity of related institutions such as BPSK. Increasing consumer awareness of their rights and the procedures that can be taken through ongoing education and campaigns is also important. In addition, legal reforms that strengthen the provisions for alternative dispute resolution in Law Number 8 of 1999 concerning Consumer Protection can provide a stronger basis for consumers to access effective and fair dispute resolution mechanisms. With these various steps, it is hoped that alternative business dispute resolution can become a means of protecting consumer rights that is more optimal in the future. Thus, alternative business dispute resolution through arbitration, mediation, and conciliation mechanisms is not only a more efficient way than litigation but also a concrete form of consumer rights protection in Indonesia.

10. SUGGESTIONS AND RECOMMENDATIONS

The government needs to strengthen alternative consumer dispute resolution institutions such as BPSK by increasing human resource capacity and funding. BPSK as a non-litigation institution plays an important role in resolving consumer disputes efficiently without having to go through the courts. In addition, government agencies, business actors, and consumer protection organizations need to increase collaboration to provide inclusive and responsive dispute resolution services. Thus, dispute resolution can be carried out effectively and still protect consumer rights as a whole.

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