

463 SETTLEMENT OF CONSUMER DISPUTES THROUGH THE CONSUMER DISPUTE RESOLUTION AGENCY AND THEIR PROBLEMS

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SETTLEMENT OF CONSUMER DISPUTES THROUGH THE CONSUMER DISPUTE RESOLUTION AGENCY AND THEIR PROBLEMS

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Abstract

In relation to fulfilling their daily needs, the position and existence of consumers in a dominant society are under businessmen. This has caused the potential loss of customers due to the actions of businessmen. It is not unusual for businessmen to exploit consumers for their interests and advantages without thinking and often neglecting the rights of consumers. This has given rise to disputes between consumers and businessmen that need to be resolved thoroughly and fairly, with legal certainty. The Act No. 8 of 1999 concerning consumer protection has regulated the resolution of consumer disputes which can be carried out outside the court through the Consumer Dispute Settlement Agency (BPSK). The existence of BPSK as a consumer dispute resolution institution does not seem to provide maximum protection to consumers because there are many problems, including the process and procedures for resolving disputes at BPSK. Based on the results of the research and analysis carried out, it is concluded that the resolution of consumer disputes through BPSK in terms of time is relatively faster because it has to be decided within a maximum of 21 working days compared to resolving consumer disputes through general courts which take years. But on the other hand, many problems exist related to the existence of BPSK as a consumer dispute resolution institution, including in the institutional sector, BPSK human resources, inconsistent laws, and so on.

Keywords: Consumer Disputes, Consumer Dispute Settlement Agency.

Abstrak

Dalam kaitannya dengan pemenuhan kebutuhan sehari-hari, posisi dan keberadaan konsumen dalam masyarakat yang dominan berada di bawah pengusaha. Hal ini menimbulkan potensi kerugian pelanggan akibat ulah para pelaku usaha. Bukan hal yang aneh jika para pelaku usaha memanfaatkan konsumen untuk kepentingan dan keuntungannya tanpa berpikir panjang dan seringkali mengabaikan hak-hak konsumen. Hal ini menimbulkan sengketa antara konsumen dan pengusaha yang perlu diselesaikan secara tuntas dan adil, dengan kepastian hukum. Undang-undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen telah mengatur penyelesaian sengketa konsumen yang dapat dilakukan di luar pengadilan melalui Badan Penyelesaian Sengketa Konsumen (BPSK). Keberadaan BPSK sebagai lembaga penyelesaian sengketa konsumen nampaknya belum memberikan perlindungan yang maksimal kepada konsumen karena banyak permasalahan, termasuk proses dan tata cara penyelesaian sengketa di BPSK. Berdasarkan hasil penelitian dan analisis yang dilakukan, disimpulkan bahwa penyelesaian sengketa konsumen melalui BPSK dari segi waktu relatif lebih cepat karena harus diselesaikan dalam waktu paling lama 21 hari kerja dibandingkan dengan penyelesaian sengketa konsumen melalui jalur umum, pengadilan yang memakan waktu bertahun-tahun. Namun di sisi lain, banyak permasalahan yang muncul terkait keberadaan BPSK sebagai lembaga penyelesaian sengketa konsumen, antara lain di bidang kelembagaan, sumber daya manusia BPSK, inkonsistensi undang-undang, dan sebagainya.

Kata Kunci: Sengketa Konsumen, Badan Penyelesaian Sengketa Konsumen.

Introduction

Progress in science and technology, including telecommunications and information, have resulted in an increase in the variety and quality of the production of goods and services, including an increase in the space for transactions that cross national boundaries. On the one hand, this condition will benefit consumers, especially the fulfillment of their rights to choose various goods and services that available in society according to their abilities. However, on the other hand, such conditions have the potential or risk of detrimental to the rights and

interests of the consumers because of the increasingly unbalanced position of consumers with businessmen, where consumers are in a weak position. Consumers become objects of business activities to reap the maximum profit possible by businessmen through promotional tips, sales methods, and the application of standard agreements that are detrimental to consumers.

In the dominant position of consumers who are weak compared to businessmen, this has the potential to lead to legal problems or disputes between consumers and businessmen, especially as a result of the enforcement of standard agreements which places consumers in a weak position compared to businessmen. Hulman Panjaitan has argued that a feature of a standard agreement is what is called an exoneration clause. General in the standard agreement that as far as possible the entrepreneur who determines the content and conditions minimizes its obligations and puts it on the debtor (another person, the consumer). This is what is known as an exoneration clause or an exemption clause.¹

To provide legal protection to consumers, the government has enacted Law no. 8 of 1999 concerning Consumer Protection dated April 20, 1999, State Gazette of the Republic of Indonesia of 1999 Number 42, Supplement to the State Gazette of the Republic of Indonesia Number 3821 (UUPK). Hulman Panjaitan has stated that this Law is one of the legal instruments which aims to serve as a guide and foundation for the Indonesian economy is facing the globalization era, particularly concerning consumer protection.²

Normatively, through Article 45 paragraph (2) UUPK it has been determined that consumer dispute resolution can be pursued through the court or outside the court based on the voluntary choice of the disputing parties. Previously in paragraph (1), it was stipulated that every consumer who has suffered losses can sue the businessmen through an institution that is tasked with resolving disputes between consumers and businessmen or through a court that is within the general court.

The settlement of consumer disputes outside the court that is meant by UUPK is carried out through the Consumer Dispute Resolution

¹ Hulman Panjaitan, *Keabsahan Perjanjian Baku Dalam Praktik*, Jurnal Hukum Honeste Vivere, Vol XIII, September 2001, pg. 516.

² Hulman Panjaitan, *Pemberlakuan Perjanjian Baku dan Perlindungan terhadap Konsumen*, Jurnal Hukum To'ra, Vol. 2 No. 1, April 2016, pg. 264.

Agency. Susanti Adi Nugroho³ argued that “the basic concept of establishing a BPSK institution is to handle dispute resolution between consumers and businessmen/producers which generally include a small amount of value, but in practice, there is no limit to the value of filing a lawsuit, so it is possible for consumer claims to cover a small to big amount of value”.

The purpose of establishing a Consumer Dispute Resolution Agency is to protect consumers and businessmen by creating a consumer protection system that contains elements of justice, benefit, and legal certainty. The existence of BPSK is expected to be part of a strategy for equal distribution of justice, especially for consumers who feel disadvantaged by the actions of businessmen, because disputes that occur between consumers and businessmen are usually small in nominal terms, so consumers are reluctant to file disputes in court because they are not proportional to the cost of the case the amount of loss experienced.⁴

In writing according to the law, consumer dispute resolution through BPSK provides some benefits for consumers, such as BPSK decide consumer disputes faster and the absence of court fees that consumers must pay when consumers file their lawsuit through BPSK. However, the many obstacles that being faced, like the existence of BPSK, have made BPSK less active in providing guarantees of justice for consumers, especially at the level of law enforcement practices. In certain areas, the presence of BPSK does not appear to be able to provide maximum protection to consumers. In this context, it is necessary to conduct research, what problems are occurring and exists institutionally and in law enforcement practice by selecting the topic "SETTLEMENT OF CONSUMER DISPUTES THROUGH CONSUMER DISPUTE RESOLUTION AGENCY AND THEIR PROBLEMS".

As for which is the subject matter is as follows:

³ Susanti Adi Nugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau Dari Hukum Acara Serta Kendala Implementasinya*, Jakarta: Kencana, 2011, pg. 17.

⁴ Hulman Panjaitan, *Reposisi dan Penguatan Kelembagaan Badan Penyelesaian Sengketa Konsumen Dalam Memberikan Perlindungan Hukum Kepada Konsumen dan Menjamin Keseimbangan Kepentingan Konsumen dan Pelaku Usaha*, Disertasi, Program Doktor Universitas Pelita Harapan, Jakarta, 2021, pg. 3.

1. How are the consumer dispute resolution practices carried out through the Consumer Dispute Resolution Agency?
2. What are the problems and constraints which exist in implementing consumer dispute resolution through the Consumer Dispute Resolution Agency?

Research Methods

The research in this dissertation is a normative legal research which is also known as doctrinal legal research⁵. The object of research is aimed at statutory regulations and applicable legal principles in the field of consumer protection and consumer dispute resolution practices. The approach method used is the statute approach by examining all laws and regulations related to the legal issue to be studied, namely, in particular, Law Number 8 of 1999 concerning Consumer Protection and some other organic rules in the form of Government Regulations, Presidential Decrees to Decree of the Minister of Industry and Trade of the Republic of Indonesia. Considering that the form of research is normative legal research, the type of data used is secondary data with primary, secondary, and tertiary legal materials.

Consumer Dispute Resolution through the Consumer Dispute Resolution Agency

The establishment of a Consumer Dispute Resolution Agency (BPSK) as a consumer dispute settlement institution outside the Court is intended to provide legal protection to consumers in a fair and useful manner with a fast time and low cost. At the beginning of its establishment, according to Presidential Decree No. 90 of 2001 concerning the Establishment of BPSK in the city governments of Medan, Palembang, Central Jakarta, West Jakarta, Bandung, Semarang, Jogjakarta, Surabaya, Malang, and Makassar, there were only ten cities that had BPSKs that functioned for assisting the community in resolving disputes between consumers and businessmen. However, in subsequent developments, the government has gradually established and established BPSKs in several districts/cities, which currently, based

⁵ It is called doctrinal research because this research is only aimed at written regulations.

on data from the Directorate General of Consumer Protection and Trade Order, Ministry of Trade of the Republic of Indonesia in 2018, the number of BPSKs in Indonesia is 171 BPSK.⁶

In practice, the procedures for filing a petition or lawsuit, up to case examination at BPSK as well as the legal provisions of the procedure, have been regulated in the Decree of the Minister of Industry and Trade of the Republic of Indonesia (Kepemrindag RI) No. 350/MPP/kep/12/2001 which can be described as follows:

- 1) Submission of applications to BPSK through the BPSK Secretariat can be made either verbally or in writing, either by the consumer concerned or by his proxy.
- 2) The request for consumer dispute resolution, both oral and written, is recorded by the BPSK Secretariat and given a registration number and date.
- 3) Applications for consumer dispute resolution that are made in writing, must be made correctly and completely regarding:
 - a. Name and full address of consumers, heirs, or proxies, accompanied by proof of identity.
 - b. Name and complete address of the businessmen.
 - c. The goods or services being complained of.
 - d. Proof of acquisition (receipts, invoices, receipts, and other evidence documents).
 - e. Information on the place, time, and date the goods or services were obtained.
 - f. A witness who knows the goods or services were obtained.
 - g. Photos of goods and service implementation activities, if any.
- 4) Each dispute settlement is examined by the Assembly and assisted by the Registrar. The Assembly consists of the Chairperson (who comes from elements of the Government) and members.
- 5) The Chairman of BPSK summons businessmen in writing accompanied by a copy of the application for consumer dispute

⁶ Data from the Directorate of Consumer Empowerment, Directorate General of Consumer Protection and Trade Order, Ministry of Trade, Republic of Indonesia, 25 June 2019.

resolution not later than 3 (three) days after the application is received completely and correctly.

In the summons to the Businessmen, it is clearly stated that the day, hour, and place of the trial are as well as the obligation of the Businessmen to provide a response letter to the consumer's application/lawsuit at the first trial.

- 6) The first trial will be held no later than the 7th working day from the receipt of the request by BPSK.

There is no uniformity as to whether the session at BPSK is open or closed. At BPSK for DKI Jakarta Province and BPSK for Medan City, BPSK's hearings are held openly. Whereas at the Bogor City BPSK according to the information conveyed by Mangihut Sinaga, a BPSK member, the trial was held in private for the trial through mediation because it involved the confidentiality of companies and consumers.⁷

- 7) There is no answer in the form of Replik and Duplicate.
- 8) Decisions on consumer dispute cases must have been passed within 21 (twenty-one) working days from the time the lawsuit or application is received at the BPSK secretariat.
- 9) Evidence in resolving consumer disputes is the burden and responsibility of the businessmen.
- 10) Evidence that can be used are:⁸
 - a. Goods and/or services.
 - b. Description of the disputing parties
 - c. Statement of witnesses and/or expert witnesses.
 - d. Letters and/or documents.
 - e. Other supporting evidence.
- 11) BPSK's decision is a final and binding decision.⁹
- 12) Against the BPSK's decision, an objection can be submitted through the District Court at the consumer's domicile within 14

⁷ BPSK Bogor Selesaikan 17 Kasus Sengketa Konsumen, Antara Megapolitan News.com, 18 February 2016 downloaded on Monday, 18 June 2018

⁸ Ibid, Article 21.

⁹ Indonesia, *Undang Undang tentang Perlindungan Konsumen*, No. 8 Tahun 1999, Op.cit, Article 54 paragraph (3).

- (fourteen) working days after receiving the notification of the decision or after the BPSK decision is read.¹⁰
- 13) The District Court must give a decision in an objection case not later than 21 (twenty-one) days from the first hearing.
 - 14) The decision of the District Court which examines and decides the objection case can be submitted for cassation to MARI within a maximum period of 14 (fourteen) working days.
 - 15) The Supreme Court of the Republic of Indonesia is obliged to issue a decision within 30 (thirty) days of receiving the appeal for cassation.

In the practice of resolving consumer disputes through the Consumer Dispute Resolution Agency, there are 3 (three) ways or methods used, namely conciliation, mediation, and arbitration. Settlement of consumer disputes through conciliation and mediation, the decision rests entirely with consumers and businessmen, in contrast to dispute resolution conducted by arbitration, BPSK members who act as arbitrators can give decisions on problems or consumer claims against businessmen.

Problems or Constraints in Consumer Dispute Resolution through BPSK

Based on the results of literature research as primary legal material as well as some data obtained through print and electronic media including social media, it can be argued that the problems or obstacles that exist in resolving consumer disputes through BPSK can be described as follows:

1. Funding Constraints

At first, as in the Presidential Decree No. 90 of 2001, BPSK funding is charged to the State Budget for special honorariums for members of the BPSK secretariat and the Regional Budget for operational costs, including for honoraria for BPSK members. However, further policies through the Presidential Decree on the formation of BPSK and the Regulation of the

¹⁰ Ibid, Article 56 paragraph (2) in conjunction with Article 7 paragraph (2) Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 350/MPP/kep/12/2001 concerning the Duties and Authorities of BPSK in conjunction with Article 3 paragraph (1) and Article 5 paragraph (1) of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2006 concerning Procedures for Submitting Objections to BPSK Decisions.

Minister of Trade No. 06/M-DAG/PER/2/2017 concerning BPSK, BPSK implementation costs for operational costs, honorarium for the head, deputy, and member of BPSK as well as an honorarium for the head of the secretariat and members of the BPSK secretariat are the burdens of the provincial Regional Budget according to regional financial capacity.

The problem that has emerged so far is the maximum readiness and allocation and participation of APBD funds from each region to BPSK, this has greatly affected the performance of BPSK as an out-of-court consumer dispute resolution institution. This obstacle is experienced by the South Tangerang City BPSK, which has not been paid for 8 months from June 2017 to February 2018, but they still carry out their duties to resolve consumer disputes.¹¹

2. Institutional Constraints

From an institutional perspective, the constraints experienced are related to the existence of BPSK in every Level II Region (City District), except in DKI Jakarta Province and it turns out that up to now not all Level II Regions (Regency/City) have BPSK. Besides, institutional constraints are related to institutional dualism and the authority possessed by BPSK, namely as a body that carries out executive and judicial duties at the same time and even advocacy tasks.

3. Regulatory Constraints

The regulatory constraints are those intended constraints and exist in the UUPK itself, which relates to:

a. Lack of completeness of regulation in terms of material (substantial)

The incompleteness in which referred to is related to the definition of consumers, according to which consumers only regulate individual persons, in the sense that they do not regulate business entities like consumers, unlike businessmen that consisting of individuals.

Including considering that the UUPK does not formulate what is meant by consumer disputes, but it is contained in

¹¹ Selama 8 Bulan Honor Tidak Dibayar, BPSK Tangsel Tetap Bersidang, Suara Dewan, Berita Parlemen & Demokrasi, downloaded on Sunday, 17 June 2018.

Kepmerindag RI Nomor 350/MPP/Kep/2001 concerning the Duties and Authorities of BPSK and Regulation of the Minister of Trade of the Republic of Indonesia No. 6/M-DAG/PER/2/2017 concerning BPSK, has resulted in many MARI decisions invalidating the BPSK decision to declare BPSK not authorized to examine and adjudicate the types of consumer disputes submitted to BPSK.¹²

b. There are contradictory rules

Contradictory rules or provisions are the provisions referred to in Article 54 paragraph (3) which state that the BPSK decision is final and binding. However, the provisions of Article 56 paragraph (2) stipulates that the parties can submit objections to the District Court no later than 14 (fourteen) working days after receiving the notification of the verdict. These two provisions are of a contradiction in nature because on the one hand stating that final means *in kracht van gewijsde* (permanent legal force) in the sense that there is no legal remedy, but on the other hand it is still possible to file an “objection” through the District Court and the District Court's decision can still be filed. appeal to the Supreme Court.

Also, at the level of implementing regulations of the UUPK, there are contradictory rules, namely the provisions contained in Kepmerindag No. 350/MPP/Kep/12/2001 with Perma No. 1 of 2006 concerning Procedures for Submitting an Objection Against the BPSK Decision. Article 42 paragraph (2) Kepmerindag No. 350/MPP/KEP/12/2001 determines that the BPSK decision as meant in paragraph (1) is requested for an execution order by BPSK to the District Court at the location of the consumer who was injured. Meanwhile, Article 7 paragraph (1) Perma No. 1 of 2006 determines that a consumer submits a request for execution of a BPSK decision that is not objected to the District Court at the consumer's legal domicile or in the jurisdiction of the BPSK that issues the decision.

¹² MARI Decision No. 103 K/Pdt.Sus-BPSK/2016 dated 31 May 2016 jo No. 647 K/Pdt.Sus-BPSK/2016 dated 8 September 2016 jo No. 796 K/Pdt.Sus-BPSK/2016 dated 21 September 2016 which contains the legal rule that disputes arising from agreements and therefore are disputes of default are not the authority of BPSK to examine and judge them but are the authority of the General Courts.

c. Legal remedies that are not recognized in procedural law
Procedural law according to the judicial system in Indonesia only recognizes *verzet* as a legal remedy for verdicts and appeals and cassation as an ordinary remedy and a judicial review as an extraordinary legal remedy. Thus, the justice system in Indonesia does not recognize any objection to legal remedies.¹³

d. Inconsistency between laws and regulations related to consumer protection

This can be seen from the inconsistency of Law no. 23/2014 on Regional Government, which in its appendix states that the authority to implement consumer protection is transferred from the Regency/City to the Province temporarily following Article 49 paragraph (2) of Law No. 8 of 1999 concerning Consumer Protection stipulates that the Government establishes BPSK in Level II Regions.

4. Human Resource Constraints BPSK

BPSK members from government elements who are recruited from representatives of agencies whose scope includes the fields of industry, trade, health, mining, agriculture, forestry, transportation, and finance, are accustomed to a rigid and careful system of government bureaucracy. This could hinder the process of BPSK in becoming an independent institution.¹⁴

Another obstacle is the lack of professionalism of BPSK members in resolving consumer disputes because BPSK members come from different scientific backgrounds. This situation is an obstacle as evidenced by the result that the BPSK decision does not meet the requirements as a decision and

¹³ Apart from Law no. 8 of 1999 concerning Consumer Protection, Law no. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition also recognizes legal remedies against the decision of the Business Competition Supervisory Commission (KPPU) through the District Court as well as objections submitted to the arbitration award in accordance with Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution and Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2015 concerning Procedures for Submitting a Simple Lawsuit as amended and refined by Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2019 concerning Amendments to the Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2015 concerning Procedures for Submitting a Simple Lawsuit.

¹⁴ Susanti Adi Nugroho, op.cit, pg. 215.

decides more than what is demanded (*ultra vires*). This has resulted in the BPSK decision being unable to be implemented (*non executabile*). The contributing factor is the lack of understanding and experience in the field of law for BPSK members.¹⁵

5. Obstacles the Absence of the Directs "For the sake of Justice based on the One Godhead"

The absence of "For Justice Based on Almighty Godhead" in the BPSK decision has resulted in obstacles or obstacles in the execution of the BPSK decision. These directions are what cause a decision to have an executorial title, which in the absence of such orders, a decision cannot be implemented (non-executable). This has been regulated in Article 2 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power which determines that the Judiciary is carried out "For the sake of Justice based on the One Godhead".

This obstacle has been experienced and occurred in the Central Jakarta District Court which rejected the request for execution of the decision of the Bandung City BPSK No. 66/Pts-BPSK/VII/2005 with his letter No.W7.Db.Ht.04.10.3453.2005 because there was no order "For Justice Based on One Godhead" in the Bandung City BPSK decision.

The BPSK decision which does not contain the words " For the sake of Justice based on the One Godhead " is understandable because the examination it conducts is not *pro iustitia* in nature because BPSK is not an institution that is intentionally formed as the executor of judicial power in Indonesia so that the decision can be objected to through the District Court.

6. Constraints on Selection of Dispute Resolution Methods at BPSK

It has been determined that there are 3 (three) ways or methods of consumer dispute resolution applied at BPSK, namely

¹⁵ Yogyakarta District Court Decision No. 09/Pdt.Eks/PN.Yk dated 17 September 2009 rejected the request for execution of the Yogyakarta City BPSK decision in the case between Veronika Lindawaty vs PT. Bank Century because it contains alternative verdicts containing words and/or in relation to refunds to consumers but does not explain the amount of money to be returned in a limited manner. His decision on August 8, 2009 found the Defendant guilty of illegally marketing Antaboga Delta Sekuritas' products.

conciliation, mediation, and arbitration. The selection is made based on the agreement of the parties. The problem that arises is, if one of the parties in a case does not agree or does not give his consent to choose one of the methods or methods of dispute resolution, then consumer dispute resolution through BPSK cannot be continued.¹⁶

Conclusion

The consumer dispute settlement process carried out through the Consumer Dispute Resolution Agency (BPSK) is carried out and starts with the submission of a petition/lawsuit by the consumer at BPSK where the consumer resides and the decision must have been passed within a maximum of 21 (twenty-one) working days based on the method. dispute resolution through conciliation, mediation, and arbitration. According to consumer protection law, the BPSK decision is final and binding but in other provisions in the consumer protection law, there are also legal remedies for objections, which can be submitted by parties who do not agree or feel aggrieved by the BPSK decision, which objections are submitted through District Court whose jurisdiction covers the residence of the consumer.

There are some problems or obstacles experienced by BPSK in resolving consumer disputes that can affect the legal protection provided to consumers in dispute resolution, including problems related to institutions, unclear and conflicting statutory provisions, human resources BPSK is related to coaching and supervision, and low coordination between the Responsible Apparatus.

To avoid problems and/or disputes between consumers and businessmen concerning meeting the needs of consumers in society,

¹⁶ In case No. 003/REG/BPSK-DKI/I/2015 between Aditya Rahmat Pardamean and PT. Kembang Griya Cahaya could not continue because the business actor did not give his approval to choose one of the three methods or methods of dispute resolution applied at BPSK. Likewise with reclamation consumer disputes who reported BPSK DKI Jakarta Province to the Ombudsman because they did not continue the process of examining consumer disputes because businessmen did not give their consent to choose one of the three ways of dispute resolution at BPSK (Berita dalam Bisnis.com, 4 January 2018, Konsumen PT. Kapuk Niaga Indah Laporkan BPSK Ke Ombudsman).

both consumers and businessmen are required to have good faith in conducting consumer transactions.

It is time to make improvements to several problems experienced by BPSK concerning the implementation of the provisions of the consumer protection laws and regulations, especially those related to the resolution of consumer disputes so that consumers are truly protected from the actions of businessmen which result in losses for consumers.

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Dhaniswara K. Harjono, Hulman Panjaitan

Settlement Of Consumer Disputes Through The Consumer Dispute Resolution Agency And Their Problems

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