



Consumer Representative Actions in the Financial Sector

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ABSTRACT

The presence of a non-governmental consumer protection organization plays a vital role in assisting consumers whose position tends to be weak and overseeing the implementation of bank executions so that they are carried out fairly. The organization can also represent a broad group of consumers to appear before the court for consumer protection. This study analyzes the legal protection of consumers based on the omnibus financial law of the Financial Sector Development and Strengthening Law and the Consumer Protection Law, as well as the role of non-governmental consumer protection institutions in providing advocacy and consultation to consumers in the financial services sector. This study also addresses the legal standing of non-governmental consumer protection organizations in court. This study aims to analyze consumer protection in the financial services sector and the role of non-governmental consumer protection organizations in their involvement in consumer disputes in the financial services sector. The research results are based on case studies that non-governmental consumer protection organizations still file lawsuits on behalf of consumers in the financial services sector that do not meet the requirements as stipulated in the law.

1. Introduction

The Consumer Protection Law (Law 8/1999) is the first step in reforming Indonesia's consumer protection law enforcement. It serves as a guideline for business actors in producing goods or services so that they are safe and do not harm consumers when used. This law is also intended to improve the dignity and ability of consumers to protect themselves and to increase the sense of responsibility of business actors to create a balance between consumers and business actors in a healthy economic system. In principle, the scope of goods and services consumers enjoy is very broad and covers various sectors of society, including the financial services sector. With the issuance of the omnibus financial law, Law Number 4 of 2023 on the Development and Strengthening of the Financial Sector (Law 4/2023) further strengthens consumer protection in the financial services sector. The omnibus financial law becomes a legal umbrella that harmonizes various laws comprehensively in the financial services sector, including those related to consumer protection.

Looking at the practical realm of banking services, for example, in the credit collection process, not all banks make collection efforts gradually and do not open up opportunities for restructuring first (Prasetyaputera, 2020). On the other hand, the debtor's position as a consumer is very weak during credit distribution. As the creditor, the bank will offer a standardized credit agreement (standard contract) as the basis for granting credit without opening up opportunities for debtors to negotiate. A standardized contract can benefit the contracting parties by reducing transaction and negotiation costs. This standardized contract only leaves the consumer with whether to agree or reject the contract. This standardized contract is referred to as an unfair contract. The consumer's choice to read,

study, and understand the contents of the contract is still very limited. Consumers only base contract decisions on a small number of salient features and are very limited in assessing the risk of a transaction (Paterson, 2009).

The existence of a bargaining power gap between all parties in a standardized contract can be influenced by differences in potential resources, information, and experience between business actors and consumers. Especially in the context of bank lending, the debtor as a consumer becomes a party dependent on the bank as a creditor and is forced to submit collateral for the repayment of his debt. Ideally, a contract is an agreement that adheres to the principle of balance and freedom of contract. One example of a standard contract clause in other types of bank lending is that the customer authorizes the bank to debit his account without prior notice.

The existence of a standard contract above is a natural thing because banks carry a major responsibility in managing and channeling public funds. When extending credit, the bank must ensure that later it can receive credit repayment payments so that the business system runs smoothly. In the event that the debtor is in arrears or the credit becomes bad, the bank will try to resolve it in various ways, from billing, credit restructuring to executing mortgage rights (Achmad Gifary & Baftim, 2021; Kenly, Michelle; Saidin, 2022; Masri & Sri Wahyuni, 2022; Ofori et al., 2020). In fact, under certain conditions, a bank can transfer claim rights (cession) to attract capital through the delivery of receivables, which is preceded by the sale of receivables based on a cession agreement (Fabiola & Cahyono, 2022).

The granting of this credit is as referred to in Article 1754 of the Criminal Code regarding borrowing and lending; at a certain agreed time limit, the debtor promises to return the money to the creditor, or the creditor can collect the money loaned to the debtor along with handing back the debtor's collateral if any. However, the standard contract must still pay attention to the rights of debtors or consumers.

The community is the reason the poor economic condition is the main factor in the delinquency of credit payments and even bad credit, giving rise to various legal consequences, for example, the execution auction of mortgage rights against secured credit to replace repayment. The execution auction must not be carried out arbitrarily in exchange for payment by the creditor concerning Article 6 of Law Number 4 of 1996 (Law No. 4/1996). Both banks as creditors and debtors as consumers are equal parties based on credit agreements and receive legal protection. In the event of non-performing loans, banks must always prioritize the principle of prudence and continue to consider the interests of consumers in collection efforts, restructuring, and carrying out *parate executive*. Debtors must also cooperatively comply with the contents of the credit agreement on the submission of collateral objects when the debtor defaults to reduce legal risks and greater losses.

Suppose there is a conflict of interest between the bank and the debtor, a consumer. In that case, consumers can make various efforts to protect their interests, such as filing objections and communicating with the bank, or if the bank commits violations, they can file a report through Financial Service Authority. Debtors, as consumers, are also allowed to take legal action if there are legal risks and losses. In this case, debtors as consumers can act alone and consult with the Non-Governmental Consumer Protection Agency regarding what legal steps are appropriate and appropriate considering that not all consumers have basic legal knowledge in dealing with a problem with a business actor, in this case, a bank. The presence of the Non-governmental Consumer Protection Organization is very important to become a companion for debtors or consumers whose position tends to be weaker and oversee the implementation of bank executions so that they are carried out fairly. Non-governmental Consumer Protection Organizations must also act to protect the interests of consumers at large to protect arbitrary banking practices.

2. Method

This research applied the normative legal method. The approach used is the statute approach, the conceptual approach, and the normative judicial case study approach, which concerns the purpose of the law, values of justice, validity of legal provisions, legal concepts, and legal norms. The data sources used are secondary data obtained from various sources. The sources were related and relevant to the formulated questions. Secondary data are gained from library materials, books, journals, and other related research sources and analyzed qualitatively and descriptively.

3. Legal Protection for Consumers in the Financial Sector

3.1. Based on the Law on Mortgage Rights

Before entering into consumer protection arrangements in the financial services sector, in principle, consumers, in this case, debtors, had obtained legal protection in the Law on Mortgage Rights. In addition to the privilege right for creditors to carry out *separate executive*, the debtor responding to the execution is also protected in Article 20 paragraph (2), which emphasizes the agreement between the debtor as the giver of the mortgage right and the creditor as the holder of the Mortgage Right to be able to carry out a sale under the hands of the object of the mortgage right if it is possible to obtain the highest price from the sale so that it benefits both parties.

In general, the debtor, as the execution respondent, owns the collateral. However, it is also possible that the owner of the collateral (third party), who is not a debtor, guarantees the repayment of the credit agreement. Banks, as creditors, must be careful. For this reason, it is important to have an auction notification letter document accompanied by a request to vacate sent by the creditor to the execution respondent (either the debtor or the collateral owner) to prepare and know the course of the auction process. The proof of this notification letter is also one of the formal requirements that the creditor must attach as a seller or auction applicant to the State Assets Management and Auction Service Office as an agency authorized to hold a mortgage execution auction.

In addition, Regulation of the Minister of Finance Number 213/PMK.06/2020 (Regulation No. 213/PMK.06/2020) concerning Guidelines for the Implementation of Auctions has regulated the determination of the limit value of the auction object to be the responsibility of the seller/auction applicant. The limit of a certain value and the appraiser who is authorized to provide an assessment of the auction object have been regulated in detail to protect the rights of the execution respondent so that the bank as a creditor cannot be arbitrary in determining the limit value of the auction object which is the collateral belonging to the debtor/consumer.

3.2. Based on the Consumer Protection Law

The law emphasizes the form of consumer protection and its application to banking customers; as in Article 4, consumer rights are stated, among others: the right to comfort and safety in consuming goods or services; to obtain advocacy, protection, and efforts to resolve disputes properly; to receive guidance and consumer education; to be treated/served correctly, honestly and non-discriminatorily; to obtain correct, clear, and honest information about the conditions and guarantees of goods or services; and to have their opinions and complaints about the goods or services used heard. In addition, Article 7 letter (f) of the Consumer Protection Law also stipulates that business actors are obliged to provide compensation, compensation, and compensation for losses caused by the use and utilization of goods or services traded.

Referring to the Consumer Protection Law, which contains legal protection for debtors as consumers of banking and financial services, can open up opportunities through court channels if there are procedural errors in the auction of the object of mortgage rights. However, what needs to be remembered is that the actions of creditors in carrying out the auction of execution of mortgage

rights are also an effort to protect their rights, namely obtaining repayment. So that the trial process will be fierce arguing with each other.

Debtors must be wise in filing a lawsuit against creditors while considering the possible court costs. The presence of the Consumer Protection Law protects the position of weak consumers and becomes an umbrella for the community of users of goods/services. However, until now, there are still protection gaps in the Consumer Protection Law. For example, in the Consumer Protection Law, what is meant as a consumer is the final consumer, which burdens consumers in filing legal remedies against business actors in certain conditions. In addition, the consumer protection law under the Consumer Protection Law has not yet applied the principle of strict liability, which is very important in enforcing consumer protection.

The principle of strict liability is a form of responsibility without requiring the existence of an element of fault. However, there is an element of loss as a condition for filing compensation due to unlawful acts. The person in charge of the business (potential polluter) must carefully implement its business activities. Business actors compensate for damage, pollution, or consumer losses due to goods or services produced or traded (Rahmah & Suparto, 2019). Furthermore, Product Liability is a form of consumer safety and security protection for products without any contractual relationship, including Contractual Liability/Professional Liability (contractual relationship) or Criminal Liability (criminal responsibility of business actors for disruption of consumer safety, security, and safety). The Consumer Protection Law contains modifications to the principle of liability based on the existence of fault (presumption of negligence) and the responsibility of producers/business actors to carry out reverse proof (Samsul, 2004). This is emphasized in the practice of consumer dispute resolution, which uses the basis of Article 1365 of the Criminal Code on unlawful acts as a reference for compensation claims.

3.3. Based on the Law of Financial Sector Development and Strengthening Act

The law is omnibus in the financial sector. It replaces laws in the financial sector, including the Banking Law, Bank Indonesia Law, Deposit Insurance Corporation Law, Financial Services Authority Law, and so on.

Before the issuance of the omnibus law in the financial sector, consumer protection arrangements in the financial services sector were referred to as the Financial Services Authority Law. Article 4, letter (c) of Law Number 21 of 2011 concerning the Financial Services Authority (Law No. 21/2011) regulates the purpose of establishing the Financial Services Authority so that activities in the financial services sector can provide consumer and community protection. This is intended to create a reliable consumer protection system, empower consumers, and increase Financial Services Business Actors' awareness of the importance of consumer protection.

Consumer protection is regulated in the Financial Services Authority Law, including loss prevention, consumer complaint services, and legal defense, as stated in Article 28 to Article 30 of the Financial Services Authority Law. The regulation is then elaborated with the issuance of Financial Services Authority Regulation Number 6/POJK.07/2022 concerning Consumer and Community Protection in the Financial Services Sector (Regulation No. 6/POJK.07/2022), which regulates the implementation of consumer protection in the financial services industry starting from the product planning, service, and dispute resolution stages; clarifying the obligations of the principles of openness and transparency of product and service information; and increasing the protection of consumer data and information.

In Article 2 of the Financial Services Authority Regulation, there are five principles of consumer and community protection in the financial services sector, including education; openness and transparency of information; non-discriminatory fair treatment; responsible business behavior; protection of assets, privacy, and consumer data; and effective and efficient handling of complaints and dispute resolution. To implement this regulation, creditors must be more active and open in

conveying information, products, and banking services regarding risk factors that may occur to debtors. On the other hand, debtors must also actively explore all information about banking products and services and continue to communicate every time they encounter obstacles, including when experiencing difficulties in paying credit installments, so that they can find a middle ground and obtain an administrative settlement to minimize the risk of implementing a mortgage execution auction.

After the issuance of The Law of Financial Sector Development and Strengthening Act, there are arrangements and definitions of consumers in the financial services sector. Consumer under The Law of Financial Sector Development and Strengthening Act refers to every person who has or obtains the benefits of products or services from financial sector business actors. In contrast, consumer protection under The Law of Financial Sector Development and Strengthening Act includes all efforts to ensure legal certainty in protecting consumers. Arrangements regarding the rights and obligations of consumers and financial sector business actors are regulated in Articles 235-236. In Article 235, paragraph (2) letter f, consumer rights include obtaining advocacy, protection, and efforts to resolve consumer disputes by the provisions.

3.4. Consumer Protection Organization in Indonesia

In realizing consumer protection, the Consumer Protection Law contains 5 (five) principles that must be upheld, namely the principle of benefits, the principle of justice, the principle of balance, the principle of security and safety, and the principle of legal certainty. In practice, the Consumer Protection Law mandates 3 (three) institutions as an extension to implement the principles of consumer protection in the community, namely as follows:

1. National Consumer Protection Agency

It is an agency formed to support efforts to develop consumer protection and functions to provide advice and considerations for the government in regulating the rights and obligations of consumers and business actors, prohibitions and responsibilities of business actors, and consumer dispute resolution.

2. Non-governmental Consumer Protection Organization

It is a non-governmental organization that handles consumer protection and must be registered with the district/city government.

3. Consumer Dispute Settlement Agency

It is an agency tasked with handling and resolving disputes between business actors and consumers.

The Law of Financial Sector Development and Strengthening Act mentions the Alternative Financial Sector Dispute Resolution Institution as an out-of-court settlement institution for consumer and financial sector business actor disputes.

3.5. Settlement of Consumer Disputes in the Financial Sector

Consumer disputes consist of business actors and consumers caused by losses due to the consumption of goods or services from business actors (Christian, 2021). In a consumer dispute, consumers can take various legal remedies, both litigation and non-litigation (Alternative Dispute Resolution), by Article 1 paragraph (1) of the Consumer Protection Law, which includes all efforts to ensure legal certainty in protecting consumers.

3.5.1. Litigation or Court Pathway

Article 46 paragraph (1) of Consumer Protection Law regulates that consumer lawsuits can be filed individually, in a class action, in legal standing, and by the government. Regarding dispute resolution, Consumer Protection Law has a *lex generalis* and *lex specialist* position. Consumer Protection Law as *lex*

generalis means that the provisions in Consumer Protection Law can be applied to protect consumers in various sectors and become consumer protection guidelines for other specific provisions that contain the concept of consumer protection, for example, the Financial Service Authority Law.

On the other hand, the Consumer Protection Law acts as a *lex specialist* because the provisions of the Consumer Protection Law can deviate from several other laws and regulations to protect consumers. For example, the Consumer Protection Law can deviate from the Civil Procedure Code in that a consumer lawsuit can be filed at the domicile of the consumer as the plaintiff and not at the domicile of the business actor as the defendant, besides that, there is a reverse burden of proof on business actors as stipulated in Article 28 of the Consumer Protection Law which regulates the proof of the existence or absence of elements of fault in compensation claims as in Article 19, Article 22. Article 23 of the Consumer Protection Law is the responsibility of business actors. Business actors are charged with proving whether or not there is an element of fault, while consumers are responsible for proving the losses suffered (Simatupang, 2017).

3.5.2. Non-Litigation Pathway

Consumer Dispute Settlement Agency

Referring to Article 1 point 11 of Consumer Protection Law in conjunction with Article 1 point 5 of the Regulation of the Minister of Trade of the Republic of Indonesia Number 06/M-DAG/PER/2/2017 (Regulation No. 06/M-DAG/PER/2/2017) concerning Consumer Dispute Settlement Agency, it is an agency tasked with handling and resolving disputes between business actors and consumers on a small and simple scale. The establishment of the Consumer Dispute Settlement Agency itself adopts the Small Claim Tribunal (SCT) model that runs in developed countries, which is carried out through a quick event that must provide a decision within a maximum of 21 working days (Article 55 of Consumer Protection Law), and without any offer of appeal (Article 56 and Article 58 of Consumer Protection Law). In addition, the examination process is simple because the disputing parties can carry it out, and it has a low cost.

The legal basis for the establishment of a Consumer Dispute Settlement Agency is Article 49 Paragraph 1 of Consumer Protection Law and Decree of the Minister of Industry and Trade No. 350/2001 on the Duties and Authority of Consumer Dispute Settlement Agency (Decree No. 350/2001) which stipulates that in every city or regency Consumer Dispute Settlement Agency must be established. Dispute resolution through Consumer Dispute Settlement Agency can be through mediation, conciliation, or arbitration mechanisms. However, the Consumer Protection Law does not define the meaning of mediation, conciliation, or arbitration in consumer protection.

Based on Article 54 Paragraph (3) of Consumer Protection Law, Consumer Dispute Settlement Agency decisions from conciliation, arbitration, and mediation are final and binding. However, the parties can still file an objection to the District Court no later than 14 days after the Consumer Dispute Settlement Agency notification. This is contrary to the nature of Consumer Dispute Settlement Agency decisions which are final and binding, but to have the power of execution, Consumer Dispute Settlement Agency decisions must be requested for a determination (*fiat execution*) to the court. Furthermore, there is Supreme Court Regulation No. 1/2006 on How to File Objections to Consumer Dispute Settlement Agency Decisions which regulates the filing of objections to Consumer Dispute Settlement Agency decisions, including the provisions of Article 2 of this regulation which confirms that only Consumer Dispute Settlement Agency arbitration decisions can be objected to.

Alternative Financial Sector Dispute Resolution Institution

In principle, the Regulation of Financial Services Authority contains the technical arrangements regarding Alternative Financial Sector Dispute Resolution Institutions. The presence of an Alternative Financial Sector Dispute Resolution Institution to replace the 6 Alternative Dispute Resolution Institutions in the financial sector that existed before, namely: BAPMI, BMAI, BMDP, LAPSPI, BAMPPPI, and BMPPVI, and at the same time expand its scope to dispute resolution in the Fintech sector. The method of dispute resolution through the Alternative Financial Sector Dispute Resolution

Institution can be pursued through mediation and arbitration. Still guided by Regulation of Financial Services Authority Number 61/POJK.07/2020 concerning Alternative Financial Sector Dispute Resolution Institution, financial services business actors includes Commercial Banks, BPR, Securities Trader Intermediaries, Investment Managers, Pension Funds, Insurance Companies, Reinsurance Companies, Financing Institutions, Pawnshop Companies, Guarantee Companies, and Information Technology-Based Money Lending and Borrowing Service Providers both (conventional / Sharia).

The Alternative Financial Sector Dispute Resolution Institution also provides an understanding of consumers and parties who place funds or utilize services available to financial services business actors. The Alternative Financial Sector Dispute Resolution Institution also regulates the criteria for disputes that can be handled, namely a) complaints that have been resolved by the Business Actor but rejected by the consumer/consumer has not received a response to the complaint; b) disputes that are not being/ have been decided by the judiciary, arbitration/other alternative dispute resolutions: and c) civil disputes.

The existence of an Alternative Financial Sector Dispute Resolution Institution aims to reduce procedural and administrative delays, is confidential, and makes it easier for each party to the dispute to complete the process. In addition, the financial services industry uses Alternative Financial Sector Dispute Resolution Institutions to resolve disputes because professionals with the necessary skills for the particular type of dispute conduct it. Consumers and financial services business actors are assured of any disputes with Alternative Financial Sector Dispute Resolution Institutions because the objective of Alternative Financial Sector Dispute Resolution Institution services is that dispute resolution in the financial services sector can be organized in an independent, fair, effective, efficient, and accessible manner. Consumers can discover their rights and obligations from the decisions resulting in dispute resolution through the Alternative Dispute Resolution Institution. In contrast, for financial services business actors, the Alternative Financial Sector Dispute Resolution Institution decision is the basis for improving their services.

The Alternative Financial Sector Dispute Resolution Institution makes Arbitration decisions final, legally binding, and must be implemented voluntarily by the parties. Likewise, the peace agreement made by the parties in the mediation mechanism at Alternative Financial Sector Dispute Resolution Institution must be implemented voluntarily based on the contents of the agreement as a result of consensus between financial services business actors and consumers, and the agreement is set out in the *Akta van Dading*. In this regard, financial services business actors tend to have a higher level of compliance in implementing Alternative Financial Sector Dispute Resolution Institution decisions when compared to settlement decisions at the Consumer Dispute Settlement Agency. This is because the Alternative Financial Sector Dispute Resolution Institution is established by Financial Services Authority, which is the agency that supervises financial services business actors, so financial services business actors need to maintain their reputation in providing services in the financial services sector.

4. The Position and Role of the Non-Governmental Consumer Protection Organization Given the Consumer Protection Law

Through the Non-governmental Consumer Protection Organization, the government opens opportunities for the public to actively participate in ensuring the protection of Indonesian consumers. The government also recognizes the existence of a Non-governmental Consumer Protection Organization that meets the criteria and has the opportunity to actively contribute to achieving consumer protection.

A Non-governmental Consumer Protection Organization based on Article 1 point 9 of the Consumer Protection Law is a non-governmental institution registered and recognized by the government that has activities to handle consumer protection. The duties of Non-Governmental Consumer Protection Organizations are specifically regulated in Article 44 paragraph (3) of Consumer Protection Law, which is mainly to educate the rights, obligations, and precautionary

behavior of consumers in consuming goods or services; consultants for consumers in need; cooperate with relevant agencies to realize consumer protection including supporting consumers in fighting for their rights and conduct joint supervision with the government and the public on the implementation of Consumer Protection Law.

Non-governmental Consumer Protection Organization has an important role in society, namely as a forum to accommodate complaints from consumers harmed by business actors regarding consuming products and services provided and provide advice so that consumers can carry out their rights and obligations (Nugroho, 2014). Non-governmental Consumer Protection Organizations can provide legal assistance to consumers if resolving disputes between consumers and business actors is stalled by empowering consumers to fight for their rights independently, individually, and in groups in submitting settlements to the court.

One example of a Non-governmental Consumer Protection Organization that is well known to the public is the Indonesian Consumers Foundation which, to demonstrate its existence, mediates between consumers and businesses to resolve disputes between the two. Indonesian Consumers Foundation also encourages consumer involvement as a supervisor of public policy, facilitates the formation of consumer groups, and conducts supervision of goods and services circulating in the community (Susila, Gusti Ngurah Arya Dharma, 2016).

In Article 46 paragraph (1) letter c of Consumer Protection Law, it is stated that Non-governmental Consumer Protection Organizations can also file a lawsuit for violations by business actors by fulfilling the condition that the Non-governmental Consumer Protection Organization is in the form of a legal entity or foundation which in its articles of association expressly states the purpose of establishing the organization for the benefit of consumer protection and has carried out activities by its articles of association.

The Non-governmental Consumer Protection Organization lawsuit is used not only for the plaintiff's benefit but also for a broader (public) interest. This distinguishes it from other ordinary civil actions, both in terms of legal issues and lawsuit requests and objections. So, to be able to file a lawsuit, Non-governmental Consumer Protection Organization must prove in the articles of association/ by-laws of the institution that it is mentioned that its profession can provide legal services. Non-governmental Consumer Protection Organization cannot provide legal services and litigate in court because it is not a party that has the authority to act as a power of attorney/representative of the plaintiff/defendant or applicant to litigate in court and is not authorized to litigate as stipulated in the Consumer Protection Law. The characteristic of a consumer representative lawsuit through the Non-governmental Consumer Protection Organization is a lawsuit where one or more people file a lawsuit for themselves or represent a group of people with the requirement of similarity of facts of loss and legal standing that is legally proven. This representative lawsuit aims to provide a deterrent effect and raise policymakers' awareness of consumer protection.

4.1. Legal Standing of the Kalimantan Consumer Protection Foundation in a Consumer Lawsuit Against a Bank (Case Study of Case Number 122/PDT.G/2016/PN.BJM in Banjarmasin Court)

This research takes the example of one form of the Non-governmental Consumer Protection Organization, the Kalimantan Consumer Protection Foundation, based in Banjar Baru City, South Kalimantan, because of its involvement in several consumer cases in the financial services sector. The Kalimantan Consumer Protection Foundation website states that Kalimantan Consumer Protection Foundation serves consumers in fighting for consumer rights harmed by business actors through mediation and advocacy either at Consumer Dispute Settlement Agency or through court. The information on Kalimantan Consumer Protection Foundation's form of service overrides the main task of the Non-Governmental Consumer Protection Organization as mandated by Consumer Protection Law Article 44 paragraph (3) because the focus of Kalimantan Consumer Protection Foundation's activities is advocating or providing legal assistance for consumers in dispute resolution, both

litigation and non-litigation. At the same time, Non-Governmental Consumer Protection Organization's duties are, in principle, very broad, including educating the rights, obligations, and prudential behavior of consumers in consuming goods or services; consultants for consumers in need; cooperating with relevant agencies to realize consumer protection including supporting consumers in fighting for their rights and conduct joint supervision with the government and the public on the implementation of the Consumer Protection Law.

Based on a case study of case 122/Pdt.G/2016/PN.Bjm (Case No. 122/2016) in Banjarmasin Court, which was decided on December 20, 2017, with the verdict of the plaintiff's lawsuit (Individual as Debtor), which in this case was represented by Kalimantan Consumer Protection Foundation against PT Bank BNI (Persero) Tbk. (As creditor), Banjarmasin State Assets and Auction Service Office of Banjarmasin Land Office and Financial Services Authority were declared unacceptable with the consideration that Kalimantan Consumer Protection Foundation, as a Non-governmental Consumer Protection Organization, did not have legal standing as a plaintiff in the case *a quo*. The subject matter of the case concerns the unlawful conduct of the implementation of the auction of the execution of the mortgage rights carried out by the defendant.

Based on Article 45 paragraph (1) of the Consumer Protection Law, it is explained that consumers whom business actors harm can sue through an institution tasked with resolving disputes between consumers and business actors or courts within the general judicial environment so that if you refer to these provisions, two institutions are given the right to resolve disputes between consumers and business actors, namely institutions authorized to resolve disputes between consumers and business actors and the District Court. Furthermore, in Article 46, paragraph 2 of the Consumer Protection Law, it is emphasized that a lawsuit filed by a group of consumers, a non-governmental consumer protection organization, or the government, as referred to in Paragraph 1 letters b, c, and d, is submitted to the general court so that these provisions do not recognize consumer protection disputes filed individually to the District Court.

Kalimantan Consumer Protection Foundation can act to file a lawsuit for consumer protection. However, formally it must meet the formal requirements, namely whether the plaintiff is acting in the public interest/group of consumers or individuals. The distinction is intended by Consumer Protection Law to avoid confusion in the community as if as long as the consumer's interest in goods and services, the plaintiff can act as a Plaintiff, in this case, representing an individual to file a lawsuit in the District Court, even though formal requirements are needed to file a lawsuit. So Kalimantan Consumer Protection Foundation, in filing a lawsuit, cannot act on behalf of an individual but must act on behalf of the general public / a group of consumers who use goods or services as a whole; this means that Kalimantan Consumer Protection Foundation in the case *a quo* who filed a lawsuit on behalf of an individual is considered not to meet the formal requirements as regulated by the Consumer Protection Law.

In addition to this, Kalimantan Consumer Protection Foundation, which provides advocacy other than for itself, cannot automatically represent individual consumers to act before the court by filing a lawsuit in the district court because Article 45 paragraph 1 and Article 46 paragraph 2 of the Consumer Protection Law mentioned above, do not expressly authorize Non-Governmental Consumer Protection Organization to represent an individual consumer to act before the court because to act before the court must obtain permission from the authorities such as the advocate profession. Moreover, in the case *a quo*, Kalimantan Consumer Protection Foundation is proven not to have received a power of attorney from the aggrieved consumer as argued in the lawsuit but instead shows receiving power of attorney from other consumers who are not related to the case *a quo*, so Kalimantan Consumer Protection Foundation does not have the quality / legal standing to represent the aggrieved consumer as referred to in the lawsuit *a quo*.

In principle, the lawsuit *a quo* departs from the existence of a dispute that occurred between the debtor and the creditor related to the legal relationship of borrowing and lending as stipulated in Articles

1313 of the Civil Code and 1320 of the Civil Code (Civil Code 1847) and is not a dispute between consumers and business actors as stipulated in the Consumer Protection Law. Therefore, because the dispute is not a dispute related to consumer protection but rather a civil dispute, the person who can act for and on behalf of the plaintiff representing the Individual (in this case, the debtor) in court proceedings is an Advocate by the provisions stipulated in Law Number 18 of 2003 concerning Advocates (Law No. 18/2003).

Concerning the regulation of power of attorney in court, as stipulated in Book II of the Administrative and Technical Manual for General Civil and Special Civil Courts (Book II/2007), it is emphasized that those who can act as attorney/representative of the plaintiff/defendant or applicant in court, are

- *Advocates, by Article 32 of Law Number 18 the Year 2003 concerning Advocates; etc.*

In addition, the lawsuit is also contrary to the Circular Letter of the Supreme Court of the Republic of Indonesia Number 099/KMA/VII/2010 dated July 21, 2010 (KMA 2010), which states "that an Advocate who can act and litigate in Court is an Advocate who has been sworn in open court at the High Court in the area of legal domicile and appointed according to Law Number 18 of 2003 concerning Advocates and has an Advocate Identification Card (KTPA) issued by the Indonesian Advocates Association (PERADI)" while the Kalimantan Consumer Protection Foundation Management is not such an advocate so that the lawsuit *a quo* is formally defective and the consideration of the Panel of Judges in deciding the case *a quo* is correct and correct in applying the law by giving the verdict that the lawsuit *a quo* is declared unacceptable (*Niet Ontoankelijk Verklard*).

Based on the results of the author's investigation, it is found that Kalimantan Consumer Protection Foundation files many similar cases in the argument of representing the interests of individuals who are debtors against banks as creditors with similar verdicts, including Case Number 156/Pdt.G/2016/PN.Bpp in Balikpapan District Court; Case Number 03/Pdt.G/2015/PN.Sky in Sekayu District Court; and Case Number 248/Pdt.G/2019/PN.Jkt.Pst in Central Jakarta District Court. In carrying out its duties in protecting the interests of consumers, with reference to the decisions that have permanent legal force above, it shows that the Kalimantan Consumer Protection Foundation prioritizes its role in providing individual advocacy services. This is suspected of having an economic motive as well as maintaining the operational reputation of the institution.

In this condition, the public, as consumers who feel disadvantaged by business actors in the financial services sector and other sectors, must be vigilant and wise in seeking a non-governmental consumer protection agency as a consumer protection consultant. Consumer awareness is important and needs to get legal protection in the process of seeking justice. In addition to visiting a credible and objective Non-Governmental Consumer Protection Agency to ask for assistance in solving problems, consumers must seek information independently and consult with various parties or seek protection by submitting complaints or reports to government agencies.

The existence of an LPSM must be the concern of the government and the community, both from the consumer side as service users and business actors, as well as other non-government consumer protection institutions to supervise each other so that the goal of consumer protection is achieved to realize social justice among consumers and business actors. In this case, the government, through the Ministry of Trade, can supervise the Non-Governmental Organization for Consumer Protection by issuing a registration number for a list of consumer protection agencies.

5. Conclusion

The existence of a bargaining power gap between the parties in a standard contract can be influenced by differences in potential resources, information, and experience between business actors and consumers. Moreover, in the context of bank lending, the debtor as a consumer becomes a party dependent on the bank as a creditor and is forced to submit collateral for the repayment of his debt. In the event of non-performing loans, banks must always prioritize the principle of prudence and continue to consider the interests of consumers in collection efforts, restructuring, and carrying out

parate executive. Debtors, as consumers, are also allowed to take legal action if there are legal risks and losses. In this case, debtors as consumers can act alone and consult with Non-Governmental Consumer Protection Organization regarding what legal steps are appropriate, considering that not all consumers have basic legal knowledge in dealing with a problem with a business actor, in this case, a bank. The presence of Non-Governmental Consumer Protection Organizations is very important to be a companion for debtors or consumers whose position tends to be weaker and to oversee the implementation of bank executions so that they are carried out fairly and not arbitrarily. Some proposed recommendations that can be conveyed from the research results are:

- a. The government, through Financial Services Authority, by cooperating with financial services business actors, organizes education for the public through direct socialization and forum group discussions at educational institutions regarding products and forms of services and the risks of these products and services so that the public feels safe and comfortable in consuming these products and services, and aims to avoid differences in perceptions between financial services business actors and consumers regarding products and services in the financial services sector.
- b. National Consumer Protection Agency can provide input to the government based on the results of the evaluation and the development of legal issues in consumer protection so that the government improves consumer protection regulations through the revision of the Consumer Protection Law with the hope that additional provisions will be included that regulate the supervision of the role of Non-Governmental Consumer Protection Organization in the community as well as provide a reward and punishment system for Non-Governmental Consumer Protection Organization in carrying out its duties by the mandate of the Consumer Protection Law. In addition, the role of the Consumer Dispute Settlement Agency also needs to be strengthened and emphasized so that out-of-court dispute settlement through Consumer Dispute Settlement Agency provides more legal certainty, considering that settlement through Consumer Dispute Settlement Agency is an easy way that consumers can take to fight for their rights and obligations.
- c. Alternative Financial Sector Dispute Resolution Institution can conduct socialization and education to the public regarding the role and existence of these institutions considering that until now, Alternative Financial Sector Dispute Resolution Institution has not been widely recognized and can be an option for dispute resolution in the financial services sector outside the court channel.
- d. Non-Governmental Consumer Protection Organization is expected to carry out the mandate of the Consumer Protection Law to become a bridge and mediator in voicing consumer complaints to business actors. Besides, Non-Governmental Consumer Protection Organization is expected to always objectively supervise business actors in providing their products or services to not harm consumers, without the intention of increasing reputation or reaping unlawful institutional profits.
- e. The public is expected, before choosing or using goods and or services provided by business actors, always to prioritize the principle of prudence and carefully read the instructions and information presented, and if there are things that are not clear or not understood to immediately confirm to avoid the risk of unwanted losses related to these products and services.

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