

CONSUMER PROTECTION RELATED TO DISPENSING PUMP MANIPULATION IN SPBU (GAS STATION)

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Abstract

*Services in business activities at spbu often created problems between business operators and consumers that can cause cost to consumers. Underhanded practices are carried out by SPBU owner by manipulation digital technology systems that automatically measure the flow of fuel (dispensing pump) that is not in accordance with the measurements. This writing aims to review and analyze responsibility of business operators and legal protection for consumers related to manipulation dispensing pump of SPBU. The method used in this research is normative juridical with descriptive analytical research specifications conducted with the approval of the regulations in the field of employment in terms of layoffs conducted by companies and research by interviewing the parties involved in industrial relations. Based on the research results obtained answers is: **First**, the responsibility of business operators who carry out manipulation dispensing pump is to revoke the PASTI PAS predicate within a period of two months and terminating cooperative relationship if the business operators is consideres to inflict losses many consumers by Pertamina and granting compensation in accordance with Article 19 of UUPK. **Second**, legal protection for consumers is protection in the form of preventive and repressive, where prevention is carried out coaching by the government or Pertamina and repressive with law enforcement or settlement of consumer disputes both through the court and outside the court.*

Keyword: Consumers, Business Operators, Manipulation Dispensing Pump.

A. INTRODUCTION

Along with changes in the space for people to make the move quickly and easily causing consumer needs in the use of fuel oil (hereinafter referred to as BBM) continues to increase. The government established a national oil company known as PT. Pertamina (hereinafter referred to as Pertamina) to facilitate the public in obtaining fuel through the Public Fuel Filling Station (hereinafter referred to as SPBU).

Consumer protection is still relatively new in Indonesia, but there are still many cases of consumers who are disadvantaged but consumers find it difficult to demand compensation, even consumers seem very weak position before business, because what is customary in Indonesia is the principle of "take it or leave it", consumers in Indonesia are only used as objects of business activity by business actors¹. Associated with technological advances too often consumers do not know what has been implemented by businesses in their products. The enactment of law Number 8 of 1999 concerning Consumer Protection on April 20, 1999 is expected to create fair business activities not only for business people, but trade directly for the benefit of consumers, both as users, users and as users of goods and / or services offered by business actors².

The implementation of purchasing services at gas stations often results in problems between businesses and consumers that can cause harm to consumers. One of them is by engineering a digital measuring system that automatically calculates fuel flow (hereinafter referred to as dispensing pump) through an additional switch on / off button and the Printed Circuit Board (PCB) that occurs in the Riau gas station and Kiaracandong, Bandung. This causes the incompatibility of measurements, scales and the amount of fuel according to the actual size. Business actors tend to focus on getting maximum profits without regard to consumers as mere profit objects. In fact, the efforts to empower and protect consumers are regulated in Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK). And regarding measuring instruments regulated in Law No. 2 of 1981 concerning Legal Metrology (hereinafter referred to as the Legal Metrology Law).

Seeing the facts that occur in the field, it is still found fraudulent practices carried out by SPBU business actors by engineering a digital technology system that automatically measures the calculation of fuel flow (hereinafter referred to as dispensing pump) which does not match the measurements, scales and amounts according to the actual measurements. Even more clearly this case began when the Directorate of Consumer Protection and Orderly Commerce (hereinafter referred to as Directorate General of PKTN) Ministry of Trade conducted a sudden inspection (hereinafter referred to as sudden inspection) at eight gas stations in Bandung. In the sudden inspection, an additional device was found in the fuel oil measuring pump in the form of an electronic circuit or a Printed Circuit Board (hereinafter referred to as PCB) at one of the controlled stations. The two gas station machines are located on RE Martadinata and Kiaracandong, Bandung City. After testing the fuel pump at the gas station, the results exceed the allowable error limit of around 0.5 percent (100

1 Suyadi, *Perlindungan Hukum Konsumen Produk Pangan Olahan yang Mengandung Bahan Rekayasa Genetik*, *Jurnal Dinamika Hukum*, Vol. 10 No. 1 Januari 2010, page. 70

2 Gunawan Wijaya dan Ahmad Yani, *Hukum Tentang Perlindungan Konsumen*. PT. Gramedia Pustaka Utama, Jakarta, 2003, page. Ix (seperti dikutip dalam Suyadi, *ibid.*)

milliliters) of every 20 liters issued³. This is certainly very detrimental to people who are consciously aware or not at all (do not know) seen from the rights of consumers who must be protected.

Seeing the case exposure above, it should be noted again that consumers as the party protected in the UUPK must know and know who are the people who can be held accountable for the losses suffered by consumers. When viewed from the value of fairness to consumers, businesses should also be held liable for the value of losses suffered by consumers in addition to criminal sanctions and administrative sanctions. Fraud through dispensing pumps is also regulated in Law No. 2 of 1981 concerning Legal Metrology (hereinafter referred to as the Legal Metrology Law) which is a provision intended to guarantee the public's need for the truth or provisions of a measuring instrument, weighing and equipment so that it is expected to avoid possible losses arising from the use of these tools. Establishing consumer rights in a statute without being able to be defended or prosecuted for compliance is not enough because it only functions as a dead letter and is not beneficial to consumers. Consumers are ultimately entitled to get other rights in accordance with their position as consumers based on applicable laws and regulations⁴. Some of our previous studies related to this research are The Existence of BPSK (Consumer Dispute Resolution Agency) in Supervising the Inclusion of Standard Clauses in the Indonesian Consumer Protection Law System, Published in *Jurnal Ius Kajian Hukum dan Keadilan*, Volume 7 NO. 3 December 2019, Another research is Re Evaluation of the Application of the Caveat Venditor Doctrine in the Responsibilities of Business Actors to Consumer, Published in *Arena Hukum* Vol 10 No. 3 Year 2017. The uniqueness and novelty of this study is that this study has many cases in society so that a deeper analysis is needed.

The purpose of this research is to analyze the form of the SPBU business actor's responsibility related to dispensing pump engineering towards consumers in Bandung and to analyze the the legal protection for consumers related to dispensing pump engineering by SPBU business operators in the city of Bandung.

B. RESEARCH METHODS

The method of approach carried out by the author is to use the normative juridical approach, namely library research conducted by examining library materials or secondary data⁵. This approach is carried out to study and study problems in the community by referring to laws and regulations in the field of labor in the case of unilateral termination of

3 <http://jabar.tribunnews.com/2018/10/21/kecurangan-di-dua-spbu-di-bandung-manipulasi-display-meteran-bensin-hingga-buat-konsumen-rugi> di akses 5 Februari 2019 pukul 10:30 WIB.

4 Janus Sidabalok, *Hukum Konsumen di Indonesia*, Bandung: Citra Aditya Bakti, 2010.page. 41-43.

5 Soejono Soekanto dan Sri Mamudji, *Penulisan Hukum Normatif Suatu Tinjauan Singkat*, Jakarta:PT Raja Grafindo Persada, 2009, page.. 13-14.

employment by the company. This research phase is carried out by collecting data through the Library Research stage with the aim of expanding and deepening knowledge about the problem under study. Literature study is a source to obtain / get the problem that will be examined and to find out whether or not there is (at least) the required data⁶. And also carried out stages of field studies.

This research data obtained from library research and field research are then analyzed using qualitative juridical methods that can produce descriptive analytical data in the form of a description or explanation relating to consumer law protection in terms of Law No. 8 of 1999 concerning Consumer Protection and and Law Number 2 of 1981 concerning Legal Metrology. The data collection locations used by the author in this study are CISRAL (Center of Indonesian Scientific Resources and Library) or Central Library of Padjadjaran University, Jatinangor, Mochtar Kusumaatmadja Turnover, Faculty of Law, Padjadjaran University, Bandung, PT Pertamina Retail Office, Jakarta and the Riau Gas Station Office, Bandung.

C. DISCUSSION

1. Forms of Responsibility of Business Actors in Gas Station Related to Dispensing Pump Engineering to Consumers in Bandung

The implementation of legal metrology is an instrument of consumer protection. Standards and measurements that are subject to legal metrology arrangements for example are intended to provide consumer protection in the face of practices that are not transparent and difficult to check by consumers such as in the fields of (1) refueling (BBM), (2) setting telephone bills, (3) sales of rice, (4) determination of electricity, water and gas bills⁷. This statement was stated by Jhon Brich A.R. in his writings, *Benefit of Legal Metrology for the Economy and Society, A Study for the International Committee of Legal Metrology*

"From its beginning measurement was recognized as a provider of objective information. However when used in trade transactions where the measurement process lacked transparency, and there was asymmetry of information between the trader providing the measurements and the trader accepting these measurements (usually the purchaser in retail transactions, the producer in the farm produced the transactions and the smaller business in commercial transactions) there was considerable scope for uncertainty, disputation, transaction costs and market inefficiency. (133, 134, 139). These transaction costs can result from concerns about the accuracy of the measurement e.g.

6 Nana Darna, Elin Herlina, Memilih Metode yang Tepat Bagi Penelitian Bidang Ilmu Manajemen, *Ekonomologi Jurnal Ilmu Manajemen*, Volume 5, Nomor 1, April 2018, page. 287

7 John Brich, A.R., *Benefit of Legal Metrology for the Economy and Society, A Study for the International Committee of Legal Metrology*, International Committee of Legal Metrology, 2003, page. 16-17

short measure, and the consistency of the measurement e.g. paying more than other customers. Typical examples of trade measurement transactions that may lack transparency and are difficult to check are 1. Petroleum sales to service stations and motorists. 2. Billing of telephone calls. 3. Sale of firewood 4. Sale of grain and rice by farmers based on moisture measurements. 5. Sale of alcohol where stamped glasses are not used 6. Utility measurements i.e. electricity, water and gas. "

The responsibility for setting accurate measurement standards rests with the government through legal metrological instruments. The power is in the hands of the President who can be delegated to the minister for central government affairs, to the governor for provincial government affairs, and to the regents and mayors for affairs at the district / city level. The government seeks to ensure the health and safety of consumers by setting product standards in accordance with their respective characters⁸. The existence of regulatory standards in the product is intended so that the products delivered to consumers can be guaranteed quality and presentation, among others safer, healthier, and low cost⁹.

The reality in the community is often the occurrence of fraudulent acts or actions carried out by business actors in selling their goods. In 2018, the Directorate for Consumer Protection and Discipline of the Ministry of Commerce (DG PKTN) of the Ministry of Trade conducted a sudden inspection (inspection) of two gas station machines that were on the RE road Martadinata and Kiaradondong, Bandung City. During a sudden inspection, an additional device was found in the fuel oil measuring pump in the form of an electronic circuit (PCB). The test results show results that exceed the allowable error limit of about 0.5 percent (100 milliliters) of every 20 liters issued. The reality in the community is often the occurrence of fraudulent acts or actions carried out by business actors in selling their goods. In 2018, the Directorate for Consumer Protection and Discipline of the Ministry of Commerce (DG PKTN) of the Ministry of Trade conducted a sudden inspection (inspection) of two gas station machines that were on the RE road Martadinata and Kiaradondong, Bandung City. During a sudden inspection, an additional device was found in the fuel oil measuring pump in the form of an electronic circuit (PCB). The test results show results that exceed the allowable error limit of about 0.5 percent (100 milliliters) of every 20 liters issued¹⁰.

8 Consumer International, *The Decision Making in The Global Market, Trade, Standard, and Consumer*, 2005, page. 111 (seperti dikutip dalam Inosentius Samsul, *Penegakan Hukum Perlindungan Konsumen Melalui Penyelenggaraan Metrologi Legal Dalam Era Otomi Daerah*, *Jurnal Negara Hukum*, Vol. 6, No. 2, November 2015, page. 170-171).

9 *The Consumer and Standard, Guidance and Principles for Consumer Participation in Standard Development*, *International Standard Organisation*, March, 2003., page. 4.

10 <http://jabar.tribunnews.com/2018/10/21/kecurangan-di-dua-spbu-di-bandung-manipulasi-display-meteran-bensin-hingga-buat-konsumen-ruqi> di akses 5 Februari 2019 pukul 10:30 WIB.

As regulated in Article 1365 of the Civil Code, the actions of the SPBU business actors can be categorized as illegal acts if they meet the following elements:

a. There is deed

An act against the law begins with an act of the culprit. Acts here are intended both to do something (in the active sense) and not do something (in the passive sense). Based on this, the SPBU business actors have actually done something actively, namely by adding additional on / off switch and PCB buttons to the SPBU dispensing pump machine.

b. This act is against the law

The acts carried out by the SPBU business actors must be in conflict with the law. Dispensing pump engineering actions are prohibited in the UUPK and the Legal Metrology Law. Obtaining a dose of fuel in accordance with the value or price purchased is a consumer right regulated in Article 4 UUPK number 3 which explains that consumers have the right to information that is true, clear and honest about the conditions of guarantee of goods and / or services but basically business actors with aware and intentionally disregard the rights of these consumers. Business actors are also liable as a consequence of consumer rights as stipulated in Article 7 of UUPK number 2 and 3 that business actors in conducting business activities must provide true, clear and honest information about the condition of goods and / or services and treat or serve consumers properly and honest and not discriminatory. So basically business operators violate consumer rights guaranteed by the law and contradict the legal obligations of the business actors themselves..

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11 Aulia Muthiah, Tanggung Jawab Pelaku Usaha kepada Konsemen tentang Keamanan Pangan dalam Perspektif Hukum Perlindungan Konsumen, *Dialogia Juridicia, Jurnal Hukum Bisnis dan Investasi*, Vol.1 (1), 05 Mei 2017, page. 10

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c. There is an error on the part of the perpetrator

Mistakes are actions and consequences that can be accounted for by the offender. Article 1365 of the Civil Code states that errors include intentional and negligence. Basically, the SPBU's engineering action is a form of deliberation in which the business actor has awareness and knows the consequences of his actions that will harm consumers.

d. There is a loss

The losses arising from the engineering action of this dispensing pump are in the form of material losses, namely the loss of profits for consumers against the lack of the amount of fuel they should get.

e. There is a causal relationship between deeds and losses

The causal relationship between an act committed and the loss incurred is also a condition of an act against the law. In this case, causation in fact has been found, namely the addition of a switch on / off button and a PCB in the dispensing pump machine.

Basically, the standardization system of measurements on gas station machines has been carried out both from the metrology agency, Pertamina Retail, and the gas stations according to the Legal Metrology Law that every measuring device must be re-tested. Re-measuring the fuel measuring pump that comes out of the nozzle is a mandatory procedure for every gas station because it relates to the interests of consumers to obtain the amount of fuel in accordance with the amount paid. After re-measuring each fuel pump measuring must be carried out a supervision to ensure the accuracy of measurements in order to achieve orderly measurement. The metrological agency checks every 4 months which in the stipulated rules, when the dose of fuel is still within a tolerance of 0.5 in accordance with the Decree of the Minister of Industry and Trade No. 251 / MPP / Kep / 6/9 then it is still considered valid¹². The results of the inspection of the two fuel dispensing pumps in

12 Interview with Wawuhan Dagit, Marketing di PT. Pertamina Retail Jakarta pada tanggal 23 Juli 2019.

the Riau and Kiaracandong fuel stations exceed the applicable error limit, which is almost twice the tolerance limit given. Article 27 of the Legal Metrology Act, paragraph (1) states that there is a prohibition on installing measuring instruments, instructions or other tools in addition to measuring instruments, measurements or scales that have been tackled or have been re-enacted.

Consumer protection through Article 30 of the Legal Metrology Law states that there is a prohibition by businesses in the form of producing and / or trading goods and / or services that do not meet or are not in accordance with the required standards and statutory provisions; not in accordance with the net weight, net or net content, and the amount in the calculation as stated on the label or label of the item; not according to the size, size, scale and amount in the calculation according to the actual size. Article 8 letter (c) of the UUPK confirms that business actors are prohibited from producing and / or trading goods and / or services that are not in accordance with the actual size, measurement, scale and amount. The emphasis in this law is the owner of the gas station concerned, but in the general context the business actor is also inseparable from Pertamina as the fuel supplier to its partners. Pertamina, as the holder of the BBM business license, continues to make efforts on the feasibility of the gas station, whether it is in line with Pertamina's program every month.

Based on Article 24 UUPK paragraph (1) states that business actors who sell goods and or services to other business actors will continue to be responsible for claims for compensation and / or consumer claims even though they do not have a contractual relationship with the consumers concerned. The responsibilities referred to in this article are responsibilities based on unlawful acts. The basis of this responsibility is mainly due to the conditions specified in that article, namely if other business actors selling goods and / or services resulting from their production to consumers do not make any changes to the said goods and / or services, or if other business actors who carry out sale and purchase transactions with first party business actors, not aware of changes in goods and / or services made by the first business actor, or the first business actor concerned has produced goods and / or services that are not in accordance with the promised sample, quality and composition previous. Pertamina does not fulfill the provisions of liability based on this article so that in Article 24 paragraph (2) of the UUPK it is explained about the arrangement for the release of responsibility. Other business actors who purchase goods and / or services from the main business actor resell after making changes to the said goods and / or services, then the first business actor is exempted from responsibility for compensation claims and / or consumer claims.

Regarding the fraudulent acts of the SPBU business actors, although Pertamina is not legally responsible for the practice of reducing quantities, Pertamina is still ethically responsible so as not to have a negative effect on the image and good name of Pertamina's trademark.

Pertamina, in its efforts to revoke the PASTI PAS predicate, which has the relevant SPBU within two months. This predicate can be owned again if the gas station corrects its shortcomings. Pertamina, in this case, only seals dispensing pumps that are felt to be problematic so that gas station operations continue as usual. Pertamina will then terminate employment if the business actor is deemed to have harmed many consumers and has not made improvements¹³. Meanwhile, in terms of regulations that exist in Pertamina for compensation involving fraudulent elements that have been brought to the legal domain, Pertamina does not yet have specific rules related to the compensation mechanism for consumers who are generally large in number and difficult to identify.

Losses can be interpreted as reducing the assets of one party caused by unlawful acts by another party¹⁴. There are several main objectives for the responsibility of business actors, namely the provision of compensation, risk distribution and prevention¹⁵. Compensation in UUPK only covers refunds or replacement of goods and / or services of a similar or equivalent value, or health offerings and / or pension benefits in accordance with applicable laws and regulations. This means that the compensation adopted in the UUPK is subjective compensation¹⁶. The UUPK regulates the liability of business actors for consumers in Article 19 paragraph (1) where the business actor is responsible for providing compensation for actions that cause losses on goods consumed or traded. Article 19 paragraph (2) further explains that the intended compensation can be in the form of refunds or replacement of funds of goods or services of similar or equivalent value, or health care funds or compensation.

The UUPK adopts a liability system for business actors on the basis of a fault (liability base on fault), because the basic character of a liability base on fault is basically an act against the law. In addition, the UUPK also adopts this reverse verification system as affirmed in Articles 19, 22, 23 and 28 of the UUPK. Article 19 paragraph (4) of the UUPK explains that the business actor is charged with the principle of presumption of liability so that it adheres to the principle of reverse proof for the business actor to dispute the presumption imposed on him so that it does not become the consumer's obligation to prove the loss suffered. In the principle of the burden of proof reversed, the defendant is considered responsible until the person concerned can prove he is innocent, this is certainly contrary to the presumption of innocence law commonly known in law but if applied in the case of consumers it would

13 Interview with Muhammad Subhan, Marketing di PT. Pertamina Retail Jakarta pada tanggal 28 Juli 2019 Pukul 13:56 WIB.

14 Shidarta, *Hukum Perlindungan Konsumen Indonesia*, Edisi Revisi, Grasindo, Jakarta, 2004, page.133

15 Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, Cetakan Ketiga, Sinar Grafika Offset, Jakarta, 2011, page.22

16 Ahmadi Miru dan Sutarman Yodo, *Hukum Perlindungan Konsumen Edisi Revisi*, PT. RajaGrafindo Persada, Jakarta, 2015, page.136

seem that this principle is quite relevant because of the obligation to proving that the wrong is in the business actor.

As a consequence of this principle, Article 19 paragraph (3) of the UUPK applies a time limit for compensation payment 7 (seven) days after the transaction. The 7 (seven) days time limit is not intended to undergo the verification process but only provides an opportunity for business actors to pay or find other solutions. Article 23 of Chapter VI of the UUPK also regulates the legal consequences if the business actor is not responsible for consumer losses. Business actors who refuse and / or do not respond and / or do not meet compensation for consumer guidance as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) can be sued through BPSK or submit to the judiciary in the place of consumer.

2. Legal Protection of Consumers Regarding Dispensing Pump Engineering by SPBU Business Actors in the City of Bandung.

Legal protection can be interpreted as protection by law or protection by using institutions and legal means¹⁷. Satjipto Raharjo defines legal protection as protecting human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights provided by law¹⁸. Legal protection is the main form of protection because it is based on the idea that the law as a means that can accommodate the interests and rights of consumers comprehensively, besides that the law also has a force of force that is recognized so that it can be implemented permanently¹⁹.

The principle of legal protection for the people of Indonesia is based on the Pancasila and the concept of the rule of law. Both sources prioritize recognition and respect for human dignity. Normally the UUPK is the legal basis for consumer protection in Indonesia. However, the enactment of the UUPK does not abolish the provisions of existing laws and regulations that also provide legal protection to consumers²⁰. Article 1 number (1) of the UUPK states that consumer protection is all efforts that guarantee legal certainty to provide protection to consumers. Legal protection is basically the fulfillment of consumer rights that should be given to consumers, so that consumer protection is actually identical to the legal protection of consumer rights²¹.

According to Philip Kotler (2007: 8), the understanding of consumers is all individuals and households who buy or obtain goods or services for personal consumption. According to Aziz Nasution, consumers in general are all people who get goods or services used for

17 Wahyu Sasongko, *Ketentuan-Ketentuan Pokok Hukum Perlindungan Konsumen*, Penerbit Universitas Lampung, Bandar Lampung, 2007, page. 31

18 Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2000, page. 53

19 Wahyu Sasongko, *Op. Cit*, page. 30

20 Agus Suwandono, *Modul Ruang Lingkup Hukum Perlindungan Konsumen*, page. 20

21 Shidarta, *Op.Cit*, page. 19

certain purposes. (Shidata, 2000: 51)²². While disputes occur when there are differences of opinion or opinions between certain parties regarding certain matters. One party feels that his rights have been impaired by the other party, while the other does not feel that way. Therefore, consumer disputes are disputes between consumers and business actors (public or private) about certain consumer products, goods and / or services. Some things need to be explained: first, the consumer in dispute must be the consumer referred to in the UUPK, namely the user, user and / or beneficiary of his family or household and not for commercial purposes. Second, the disputed product must be a consumer product, meaning that the product is goods and / or services that are generally used, used or utilized to meet the interests of the self, family and / or household of the consumer.²³

There are two forms of legal protection, namely preventive and repressive means of legal protection. Preventive legal protection in consumer protection in the form of guidance and policies through rules and laws. Legal protection for consumers of gas stations is based on UUPK and the Legal Metrology Law. The government is responsible for fostering the implementation of consumer protection that guarantees the obtaining of the rights of consumers and business actors in accordance with Article 29 of the UUPK. Basically there are still many consumers who do not know that there are laws that regulate and protect their rights. Provisions in Article 30 of the UUPK promise to protect consumers through empowerment through Consumer Protection Institutions or agencies, namely the National Consumer Protection Agency (BPKN), Non-Governmental Consumer Protection Institutions (LPKSM), the Indonesian Consumers Foundation (YKLI), and BPSK. With the existence of these institutions / agencies can provide fresh air to consumers because their rights have been protected by the government and have institutions that provide socialization and accommodate consumer complaints.

Awareness of the legal protection of consumers should also be recognized by business actors. Irawan as the supervisor of the Riau gas station said that he himself knew what the UUPK was, and consumers who came to the gas station had rights and obligations that were protected by the UUPK. Every recruitment of new employees Irawan said that there is always a training program about consumers that must be followed. Irawan's statement was enough to explain that every gas station manager and employee must know about the rights of consumers and legal protection of consumers because they face the customer

22 Philip Kotler, *Manajemen Pemasaran, Analisis Perencanaan, Pengendalian*, Prentice Hall, Edisi Bahasa Indonesia, Salemba Empat, Jakarta, 2007, page. 8 (seperti dikutip dalam Sutrisni, Moh. Zainol Arief, *Pelayanan Pengisian BBM yang tidak memuaskan Di Lingkup Sumenep*, *Jurnal Jendela Hukum*. Volume I Nomor 2 September 2014, page.5

23 Maslihati Nur Hidayati, *Analisis tentang alternatif penyelesaian sengketa perlindungan konsumen: Studi tentang efektifitas adan penyelesaian sengketa perlindungan konsumen*, *Lex journalica*, vol 5 no 3, Agustus 2008, page. 171

directly every day²⁴. Pertamina in realizing consumer protection for its rights enforces its own voluntary program in its company. Pertamina built the Pertamina Way program as an initial transformation towards improving negative image in the eyes of the public. This program was born from Pertamina's desire to satisfy consumers who use gas stations. Pertamina shows that of the many facilities and services available at Pertamina's gas stations, the thing most consumers want is the guaranteed quantity and quality of fuel sold and the quality of service that is channeled through the PASTI PAS program at the gas station²⁵. The PASTI PAS program implements 3S-PAS namely Smile-Greetings-Greetings by fuel filler officers and PAS is a guarantee of operator service when serving consumers, namely the measurement, return, and service. Basically, Pertamina put a notification board that listed consumer rights in the form of:

- a. Get 3S (Smile, Greetings, Greetings);
- b. designation of the number 0 (zero) before filling fuel;
- c. Receive proof of payment when requested.

The notice board also explained that if there were consumers whose rights were not fulfilled, they could contact the SBPU guarantor and if the complaint was not resolved, the consumer could contact the official Pertamina Call Center provided. Regarding the safety and confidentiality of the reporter's identity, Pertamina will guarantee and protect it. Meanwhile, in terms of regulations that exist in Pertamina for compensation involving fraudulent SPBU business actors which have been brought to the legal domain, Pertamina does not yet have specific rules related to the compensation mechanism to consumers who are generally large in number and difficult to identify. Kiaracondong Gas Station Administration Staff Yati Mulyadi stated, Protection from consumers that can be done by the gas station, one of which is by checking the dispensing pump measuring device every day before it operates by the gas station. Furthermore, the Legal Metrology Agency also conducts repetition of the SPBU engine in order to maintain the accuracy of the BBM dose accepted by consumers so that there is a guarantee of accuracy in the accuracy of measurements and the existence of order and legal certainty in the use of measurement units, unit standards, measurement methods and UTTP.

Repressive protection in the form of law enforcement through sangketa settlement as regulated in UUPK Chapter X concerning the settlement of consumer sangketas. Disputes that occur require resolution efforts that can provide solutions or benefits for both parties. Dispute resolution efforts are efforts or ways to submit individual or group rights

24 Interview with Irawan Pengawas SPBU 34-40133 Riau Kota Bandung pada hari Kamis 11 Juli 2019.

25 Customer satisfaction is everything, *Energia* edisi September 2018, *Corporate communication*, sekretaris Perseroan, PT Pertamina, page. 20.

claims to ensure the fulfillment of consumer rights. Efforts to settle the sangket by means of the article 45 states that every disadvantaged consumer can sue the business actor through an institution tasked with settling the sangketa between the consumer and the business actor or through the judiciary within the general court environment. Of the many ways of resolving disputes outside the court, the UUPK only introduces three types, namely arbitration, conciliation and mediation which are forms or ways of resolving disputes that are charged to BPSK. This settlement has a legal basis which is contained in the Indonesian Civil Code (Book III, Articles 1851-1854 concerning peace / *dading*) and then in Article 45 paragraph (2) jo Article 47 of the UUPK.

In resolving its dispute BPSK continues to examine disputes based on applicable law instead of making peace between the two parties. This settlement does not rule out the possibility of a peaceful settlement by the disputing parties in advance. In general, in every dispute resolution process, efforts are always sought to be resolved amicably. What is meant by peaceful settlement of disputes is the settlement carried out by the two disputing parties (business actors and consumers) without going through a court or BPSK and not in conflict with the law. This applies in the case of fuel purchasing services at this gas station, usually business actors if consumers feel the services provided are not in accordance with the guarantee, they will first offer a solution by negotiating with consumers and sometimes even giving compensation to consumers. This is done because the reputation of the business owner is built and will ultimately affect the sales.

The principle of peaceful dispute resolution is more mediated, the principle of mediation is voluntary or subject to the agreement of the parties, in the civil field, simple, closed and confidential, and mediates or is as a facilitator. The mediator must determine the schedule for the meeting to complete the mediation process. If deemed necessary, the mediator can mediate between consumers and business actors separately (caucuses). The experience and ability of the mediator is expected to make mediation effective between the parties to the dispute²⁶.

Therefore, in practice, business actors always prioritize peaceful settlement of trumpets. However, if the peaceful settlement of the Sangketa does not reach an agreement, then the consumer can settle it through BPSK beginning with a request or complaint, both written and unwritten in which the event has harmed the consumer. For those who can sue only a consumer or heir. While other parties such as the government, consumer groups, and non-governmental organizations can only submit their claims to the court not to BPSK, this is as referred to in Article 46 of the UUPK.

26 Arif Rahman, *Penyelesaian Sengketa Konsumen Melalui BPSK Kota Serang, Jurnal Hukum*, Vol 2 No 1 Juni 2018, page. 35

Settlement of consumer trumpets through the court is regulated in Article 48 of the UUPK which is only possible if both parties have not chosen to make an effort to settle a sangketa outside the court and an attempt to settle the sangketa out of court, is declared a failure or unsuccessful by one of the parties or both of them. Disputes that can be resolved outside the court are limited.

That is, it can only be used for certain legal fields, namely in the civil field, this is due to the nature of the civil law itself, which concerns the legal relationship between one human and another so that there is no public element. Referring to Article 46 Paragraph (1) of the UUPK, the form of a claim that can be done through a court consists of 4 types, namely the consumers or heirs concerned, a group of consumers who have the same interests, non-governmental consumer protection institutions that meet the requirements, namely in the form of legal entities or foundations which in their articles of association expressly state that the objectives of the organization are for the benefit of consumer protection and have carried out activities in accordance with their articles of association, and the government and / or related institutions if the goods and / or services consumed or utilized result in large material losses and / or not a small number of victims.

Reducing the amount of fuel is an act that cannot be proven directly in plain view without the aid of tools, namely measuring vessels as required by the Metrology Agency. In accordance with Article 60 UUPK, business actors may be subjected to administrative sanctions of Rp.200,000,000.00 (two hundred million rupiah). However, there are still obstacles due to the provision that states that the decision of BPSK is final and binding, namely Article 54 paragraph (3) of the UUPK, contrary to what is stipulated in Article 56 paragraph (2) of the UUPK which provides an opportunity for the parties involved in submitting an objection to the decision BPSK which has been received to the district court no later than 14 working days after receiving notification of the decision. In the case of the reduction in fuel doses, which is caused by fraud by business actors, the offense that allows it to be applied is the consumer protection offense regulated in the UUPK and the offense related to violations of the provisions of the Legal Metrology Law. Looking at it from the perspective of consumer protection, reducing the amount of fuel received by consumers is a violation of Article 4, Article 7 and Article 8 of the UUPK, which is threatened with a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2 billion.

Then, if you see the provisions in the Legal Metrology Law, dose fraud is prohibited through Article 25 (prohibiting the use of measuring instruments that store), and Article 30 (prohibiting trading products that are not in accordance with the quantities). Sanctions against these provisions, as regulated in Article 32 paragraph (1) and paragraph (2), are in the form of criminal threats, each with a maximum of 1 year imprisonment or a fine of Rp. 1 Million; and 6 months in prison or a fine of Rp. 500 thousand.

Settlement of disputes in court has shortcomings and constraints such as the settlement of sangketa conducted through the judicial route very slowly, due to the large number of cases that accumulate, expensive case fees and also according to them the decisions given by the court are sometimes considered not to solve the problem more complicated, because the decisions of the court objectively cannot create and / or provide peace to the parties involved in the trial so that there is always one party that must be defeated in a court session

D. CONCLUSION

Based on the settlement discussed earlier, the following conclusions can be drawn that the responsibility of SPBU business actors related to dispensing pump engineering is the act of revoking the PASTI PAS predicate that has a gas station within two months and termination of employment if the business actor is deemed to have harmed many consumers and has not made repairs by Pertamina and the provision of compensation in accordance with Article 19 of the UUPK and legal protection that can be obtained by consumers related to dispensing pump engineering by SPBU business actors is preventive and repressive legal protection. Preventive legal protection is through a repeat policy to check the accuracy of gas station machines, as well as providing consumer guidance through Consumer Protection Institutions or agencies. Besides that, Pertamina as a business actor creates a voluntary program known as PASTI PAS. Repressive protection is the existence of law enforcement through the settlement of sangketa both outside the court and through the court.

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