

# The Legal Certainty for Resolving Consumer and Business Actor Disputes from the Perspective of Social Engineering Justice from Roscoe Pound

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## **Abstract**

*Legal certainty in resolving disputes between consumers and business actors is important so that fair disputes and harmonious relations remain for business actors and consumers. Even so, there are juridical problems related to legal certainty in resolving consumer disputes, namely the lack of clarity regarding the orientation of litigation and non-litigation settlements. Facing these problems, this research aims to analyze the reconstruction of consumer dispute resolution referring to Roscoe Pound's social engineering theory. This research is normative legal research by prioritizing conceptual and statutory approaches. The research results confirm that to ensure legal certainty, changes or revisions to laws and regulations related to consumer protection need to be made to ensure justice in consumer disputes. Reconstruction of consumer dispute resolution refers to the social engineering theory of Roscoe Pound, so it is necessary to emphasize that consumer disputes must be optimized non-litigationally first through BPSK and if not satisfied, can file a simple lawsuit in court as an effort to minimize the costs and time associated with consumer disputes.*

**Keywords:** *Legal Certainty; Legal Disputes; Social Engineering.*

## **1. INTRODUCTION**

Consumer disputes are actually something that is common in the business world. Consumer disputes are a form of disagreement between consumers and business actors regarding certain matters which have implications for the rights and obligations of both consumers and business actors.<sup>1</sup> With this understanding, consumer disputes that inevitably occur must be handled wisely and based on the provisions of statutory regulations. Procedures and mechanisms regarding consumer disputes have actually been regulated in positive law to provide protection and guarantee legal certainty for consumers and business actors in dispute.<sup>2</sup> The procedures and mechanisms regarding consumer disputes in the Indonesian constitution, namely the 1945 NRI Constitution, are actually an effort to guarantee protection, certainty and optimization of legal procedures to provide protection for parties in dispute in accordance with the provisions of Article 28D paragraph (1) of the 1945 NRI Constitution. Furthermore, consumer

<sup>1</sup> Neelam Chawla and Basanta Kumar, "E-Commerce and Consumer Protection in India: The Emerging Trend," *Journal of Business Ethics* 180, no. 2 (2021): 581–604, <https://doi.org/10.1007/s10551-021-04884-3>.

<sup>2</sup> Wetria Fauzi Nedi Pernando, Busyra Azheri, "Perlindungan Hukum Terhadap Konsumen Atas Kerusakan Barang Pengguna Jasa Pengiriman Angkutan Online," *Soumatara Law Review* 4, no. 1 (2021): 6.

disputes in Indonesia are specifically regulated in Law no. 8 of 1999 concerning Consumer Protection (hereinafter referred to as PK Law). Article 4 e of the PK Law actually confirms that effective dispute resolution and guaranteeing legal certainty and protection are part of consumer rights.

This means that regulations regarding consumer disputes must be comprehensive to ensure the fulfillment of consumers' rights to obtain legal certainty and protection in relation to consumer disputes. Article 45 of the PK Law also emphasizes procedures for resolving consumer disputes. Article 45 paragraph (1) of the PK Law actually confirms that consumer disputes are resolved through local court institutions. However, consumer dispute resolution can also be carried out through out-of-court dispute resolution (non-litigation) depending on the choice and voluntary will of the disputing parties.<sup>3</sup> Apart from that, the PK Law also specifically facilitates the establishment of a Consumer Dispute Resolution Agency (BPSK) which has the main task of resolving disputes that occur between consumers and business actors. Article 52 letter a of the PK Law emphasizes that BPSK has the task of facilitating consumer settlements that focus on conciliation, mediation and arbitration. If you understand the substance of Article 52 letter a of the PK Law above, BPSK actually focuses on resolving consumer disputes that are non-litigation or outside of court.

This is reinforced by the provisions in Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR Law) which confirms that several methods of resolving disputes outside the court include conciliation, mediation and arbitration. The practice of resolving consumer disputes at BPSK refers to data from the Directorate of Consumer Protection and Orderly Commerce that in 2020, of the 4,468 consumer disputes handled by BPSK, 2,597 disputes were resolved through mediation, 1,492 were resolved through arbitration, and 380 disputes were resolved through conciliation.<sup>4</sup> Even so, from this data, 578 cases failed to be resolved and 151 cases were objected to. From this description, there are juridical problems related to resolving consumer disputes in Indonesia. Legal uncertainty regarding the resolution of consumer disputes in Indonesia is increasingly visible in the formulation of Article 45 paragraph (2) of the PK Law which confirms that consumer disputes can be conducted through litigation or non-litigation.

The word "can" as formulated in Article 45 paragraph (2) of the PK Law creates legal uncertainty because in legislative science, the word "can" means ability or choice. The above means, referring to the lexical provisions in Article 45 paragraph (2) of the PK Law that consumer dispute resolution can be carried out through litigation or non-litigation as well as other efforts. This has the potential to lead to unsystematic consumer dispute resolution so that there are many disputes that are not handled and are not resolved optimally. Based on the description above, this research focuses on the analysis of legal certainty regarding consumer dispute resolution based on statutory

<sup>3</sup> Caroline Cauffman and Catalina Goanta, "A New Order: The Digital Services Act and Consumer Protection," *European Journal of Risk Regulation* 12, no. 4 (2021): 758–74, <https://doi.org/10.1017/err.2021.8>.

<sup>4</sup> Ahmad Wahidi, Mustaklima Mustaklima, and Nur Jannani, "The Authority of Badan Penyelesaian Sengketa Konsumen (BPSK) and Tribunal Tuntutan Pengguna Malaysia (TTPM) in Consumer Dispute Resolution," *Jurnal Penelitian Hukum De Jure* 23, no. 1 (2023): 87, <https://doi.org/10.30641/dejure.2023.v23.87-100>.

regulations and how the reconstruction of consumer dispute resolution refers to Roscoe Pound's social engineering theory.

Research that discusses consumer disputes has actually been analyzed by three previous researchers, including: (1) research conducted by Sitepu and Muhamad (2021) which discusses the effectiveness of consumer disputes by BPSK.<sup>5</sup> The novelty of Sitepu and Muhamad's (2021) research is that it confirms that additional BPSK authority is needed to make BPSK's authority more effective. Further research by (2) Suhardin, et al. (2022) which discusses efforts to resolve consumer disputes through conciliation. The novelty of research conducted by Suhardin, et al. (2022), namely that the commitment of the parties to resolve disputes by conciliation at BPSK is needed so that BPSK obtains a comprehensive report regarding the dispute that occurred.<sup>6</sup> Further research by (3) Sukirman, et al. (2023) which discusses e-commerce dispute resolution. The novelty of research conducted by Sukirman, et al. (2023) is that e-commerce consumer dispute resolution can be done post- and pre-purchase to ensure justice for the parties.<sup>7</sup>

The three previous studies above further emphasize that the author's research discussing consumer dispute resolution referring to Roscoe Pound's social engineering theory is original and has not been discussed comprehensively by the three previous researchers. This research which focuses on consumer disputes is actually normative legal research. In normative legal research, legal theory and statutory regulations are the main focus of analysis.<sup>8</sup> The primary legal materials in this research are the PK Law and the ADR Law. Secondary legal materials consist of literature results such as journal articles, books, and research results discussing consumer disputes and Roscoe Pound's social engineering theory. Non-legal materials are language dictionaries. Data analysis was carried out qualitatively by collecting and categorizing existing legal materials and adapting them to the research objectives. The approach used is a conceptual and statutory approach.

## 2. ANALYSIS AND DISCUSSION

### 2.1. The Legal certainty for Resolving Consumer Disputes

Consumer disputes are actually a common thing that occurs in legal relationships between business actors and consumers. Linguistically, "dispute" means a difference in views, opinions or perceptions regarding something.<sup>9</sup> Referring to this view, a consumer dispute is a difference in views, opinions or perceptions regarding the legal relationship between business actors and consumers. In the PK Law itself, there is actually no

<sup>5</sup> Rida Ista Sitepu and Hana Muhamad, "Efektifitas Badan Penyelesaian Sengketa Konsumen (Bpsk) Sebagai Lembaga Penyelesaian Sengketa Konsumen Di Indonesia," *Jurnal Rechten : Riset Hukum Dan Hak Asasi Manusia* 3, no. 2 (2022): 7–14, <https://doi.org/10.52005/rechten.v3i2.79>.

<sup>6</sup> dan Yohanes Suhardin Cindy Octabriel Sirait, Janus Sidabalok, "Upaya Mempertahankan Hak Konsumen Melalui Penyelesaian Sengketa Dengan Cara Konsiliasi Di Badan Penyelesaian Sengketa Konsumen Kota Medan," *Fiat Iustitia: Jurnal Hukum* 3, no. 1 (2022): 93–113.

<sup>7</sup> Rizky Amelia et al., "Penyelesaian Sengketa Konsumen Dalam E-Commerce Di Indonesia," *Fundamental: Jurnal Ilmiah Hukum* 12, no. 1 (2023): 199–210, <https://doi.org/10.34304/jf.v12i1.92>.

<sup>8</sup> Zainudin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009).

<sup>9</sup> Pusat Bahasa Departemen Pendidikan Nasional, *Kamus Bahasa Indonesia* (Jakarta: Departemen Pendidikan Nasional, 2008).

definition that expressively explains consumer disputes.<sup>10</sup> However, by referring to the term consumer dispute in the linguistic meaning above, it can be concluded that consumer dispute generally means differences in views, opinions or perceptions regarding claims for something related to consumer protection law. Consumer disputes are something that inevitably occurs in the legal relationship between consumers and business actors, so the law needs to provide regulations that explain the mechanisms and procedures for resolving consumer disputes. The importance of legal regulations regarding the resolution of consumer-related disputes is actually agreed by Ahmad Miru that legal regulations that discuss the resolution of consumer-related disputes have two aspects, namely the integrative aspect and the restitutive aspect.<sup>11</sup>

In the integrative aspect, legal regulations relating to the resolution of consumer-related disputes are intended to bring together and reconcile business actors and consumers regarding the subject matter of the dispute.<sup>12</sup> Efforts to bring together and reconcile business actors and consumers are carried out through certain procedures and mechanisms so that it is hoped that a fair for the parties. Second, in the restitutive aspect of regulation regarding consumer disputes, it is hoped that it can provide a sense of justice for parties in dispute, especially for parties whose rights have been violated so that they can receive appropriate restitution or compensation. In this restitutive aspect, consumer dispute resolution must be based on the provisions and procedures regulated by the state.<sup>13</sup> In Indonesia, regulations regarding consumer disputes are specifically regulated in Article 45 of the PK Law. In Article 45 paragraph (1) of the PK Law, it is emphasized that in general consumer disputes can be resolved through the scope of courts in the area of competence of courts within the scope of the General Court. Even so, if you read systematically between Article 45 paragraph (1) of the PK Law and Article 45 paragraph (2) of the PK Law, then in fact there are alternative or optional options for resolving consumer disputes either through litigation (*in this case through mechanisms and procedures in court*) or through non-litigation channels (through processes and channels outside the court).

Referring to the provisions of Article 45 paragraphs (1) and (2) of the PK Law above, there are actually two legal problems related to the regulation of consumer dispute resolution, namely: first, if you read systematically the provisions in Article 45 paragraphs (1) and (2) The PK Law above means there is actually a dualism in resolving consumer disputes, both through litigation and non-litigation.<sup>14</sup> Problems occur when the PK Law only provides optional or alternative space regarding the resolution of consumer disputes, whether resolved through litigation or non-litigation. In practice, this can happen when a consumer dispute is resolved non-litigationally and one of the parties does not accept

<sup>10</sup> Rusmiyah, "Upaya Hukum Perlindungan Konsumen Terhadap Pengguna Jasa Angkutan Kereta Api Di Indonesia," *Jurnal Legisla* 14, no. 2 (2022): 152–64.

<sup>11</sup> Abdul Halim Barkatullah, *Hak-Hak Konsumen*, 1st ed. (Bandung: Hikam Media Utama, 2019).

<sup>12</sup> Tomáš Peráček, "E-Commerce and Its Limits in the Context of the Consumer Protection: The Case of the Slovak Republic," *Juridical Tribune* 12, no. 1 (2022): 35–50, <https://doi.org/10.24818/TBJ/2022/12/1.03>.

<sup>13</sup> Afif Noor et al., "Regulation and Consumer Protection of Fintech in Indonesia," *Linguistics and Culture Review* 6, no. August 2021 (2021): 49–63, <https://doi.org/10.21744/lingcure.v6ns3.1938>.

<sup>14</sup> K Hidayat and A Witasari, "Tinjauan Yuridis Perlindungan Hukum Terhadap Konsumen Dalam Transaksi Jual-Beli Secara Online (E-Commerce)," in *Prosiding Konstelasi Ilmiah Mahasiswa UNISSULA*, 2022, 275–91, <http://jurnal.unissula.ac.id/index.php/kimuh/article/download/20466/6606>.

the results, so they can submit a further process through litigation. This process tends to be long and protracted even though the legal relationship between consumers and business actors can be seen in the realm of economics and business which prioritizes profit or economic aspects.<sup>15</sup> This means, with this optional formulation, it actually has the potential to make the consumer dispute process take longer with the potential for the practice that when non-litigation dispute resolution is not satisfactory, it is resorted to in litigation so that it will take a lot of time and costs so it is not efficient.

Second, the formulation of the provisions of Article 45 paragraph (2) of the PK Law is also problematic because it emphasizes that consumer disputes “can” be resolved through litigation and non-litigation. The word can here creates legal ambiguity and has implications for the lack of legal certainty in resolving consumer disputes. The word can in the formulation of statutory regulations means alternative.<sup>16</sup> By referring to the formulation of Article 45 paragraph (2) of the PK Law, the words can mean that consumer disputes can be resolved through litigation, non-litigation, or other channels. This happened because of the incorrect formulation of the word can in Article 45 paragraph (2) of the PK Law. Based on the two legal problems related to consumer dispute resolution above, the problem is efforts to resolve consumer disputes proportionally, both through litigation and non-litigation.

Disproportionate regulations as regulated in Article 45 paragraph (2) of the PK Law above, actually have implications for resolving consumer disputes, for example in 2016-2020 there were 578 consumer dispute cases that failed to be resolved out of a total of 4,468 consumer dispute cases.<sup>17</sup> This actually shows that there are around more than 10% of all consumer dispute cases that fail to achieve the results that the parties expected. The existence of this phenomenon actually shows that there has been legal uncertainty regarding the provisions of consumer disputes. The legal uncertainty regarding consumer disputes as regulated in Article 45 paragraph (2) of the PK Law above must also be understood in relation to the birth of the PK Law which emphasizes consumer protection including providing freedom to resolve disputes through litigation and non-litigation. Even though they have good intentions, the problems related to legal uncertainty through the formulation of Article 45 paragraph (2) of the PK Law must also be criticized because the legal uncertainty regarding the regulation of consumer disputes actually has implications for disputes that last for a long time and appear to not achieve the desired results. the parties.

The importance of legal certainty in the formulation of statutory regulations is important so that the good intentions of the legislators can be implemented properly through the preparation of good statutory regulations.<sup>18</sup> Legal certainty in the formulation of statutory regulations also has relevance, especially in relation to two aspects, namely:

<sup>15</sup> Nurul Fibrianti, “Konsumen Indonesia: Dilindungi Dan Melindungi,” *Jurnal Hukum Progresif* 11, no. 1 (2023): 71–81, <https://doi.org/10.14710/jhp.11.1.71-81>.

<sup>16</sup> Maria Farida Indrati, *Ilmu Perundang-Undangan(1) (Jenis, Fungsi, Materi Muatan)* (Yogyakarta: Kanisius, 2007).

<sup>17</sup> Misnar Syam et al., “Consumer Protection Enforcement Law Characteristics on Civil Law Aspects in Indonesia,” *Linguistics and Culture Review* 5, no. S2 (2021): 1471–81, <https://doi.org/10.21744/lingcure.v5ns2.1976>.

<sup>18</sup> Paola IAMICELI Fabrizio CAFAGGI, “Uncertainty, Administrative Decision-Making and Judicial Review: The Courts’ Perspectives,” *European Journal of Risk Regulation* 14, no. 2 (2021): 3.

first, viewed theoretically, legal certainty is one of the basic values of law as formulated by Gustav Radbruch. In Gustav Radbruch's view, the three basic legal values include justice, benefit and certainty.<sup>19</sup> The value of certainty as one of the basic values of law is important considering that in an effort to protect the community and individual rights. Patricia Popelier emphasizes the importance of aspects of legal certainty which include three things, namely:<sup>20</sup> Firstly, in relation to statutory regulations, legal certainty is very important, especially how certain legal regulations are implemented. Patricia Popelier even emphasized that legal certainty should be as rigid (complex) as possible, especially with regard to individual rights.<sup>21</sup>

Second, legal certainty relates to whether a legal rule is applicable or not. This means that the more certain legal rules are, the easier they are to be implemented in society. Third, legal certainty is related to how easy it is for the public to find out whether a legal regulation is still valid or not.<sup>22</sup> By formulating laws that guarantee legal certainty, the validity of the law can be easily understood and known by the public. In connection with Patricia Popelier's views above, Jaap Hage emphasizes that the function of legal certainty finds its relevance when it comes to a Continental European-based state system (civil law) which prioritizes the role of rules as the heart of law.<sup>23</sup> Referring to the views of Patricia Popelier and Jaap Hage above, in relation to consumer dispute resolution as regulated in Article 45 paragraph (2) of the PK Law, it actually creates confusion when providing options regarding consumer dispute resolution, both litigation and non-litigation. This confusion occurs due to an error in formulating the word "can" which means alternative so that the understanding is that consumer dispute resolution is the consumer's choice, whether through litigation, non-litigation or other resolution.

In fact, in order to better guarantee legal certainty, the regulations should not contain the word "can" but simply formulate that consumer dispute resolution is carried out through litigation and non-litigation. Apart from that, further provisions must also explain each consequence of consumer dispute resolution options so that consumer dispute resolution carried out via litigation and non-litigation does not overlap and slow down the time for resolving consumer disputes and create dispute resolution inefficiencies. Based on the results of the analysis above, it can be concluded that the resolution of consumer disputes as regulated in statutory regulations does not actually guarantee legal certainty due to the legal ambiguity of the word "can" which is alternative and optional in nature so that it is possible for there to be overlap in dispute resolution between litigation and non-litigation channels. litigation. To ensure legal certainty, changes or revisions to statutory regulations related to consumer protection need to be made to ensure that aspects of legal certainty can be implemented in consumer disputes..

<sup>19</sup> E. Fernando M. Manullang, "Misinterpretasi Ide Gustav Radbruch Mengenai Doktrin Filosofis Tentang Validitas Dalam Pembentukan Undang-Undang," *Undang: Jurnal Hukum* 5, no. 2 (2022): 453–80, <https://doi.org/10.22437/ujh.5.2.453-480>.

<sup>20</sup> A'an Efendi Dyah Ochtorina Susanti, *Ilmu Hukum*, 1st ed. (Jakarta: Prenadamedia Group, 2021).

<sup>21</sup> A'an Efendi.

<sup>22</sup> Avelia Rahmah Y. Mantali Sardjana Orba Manullang, Mawarni Fatma, Rai Iqsandri, "Legal Certainty Aspects in Regulation of the Attorney General Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative," *Legal Brief* 11, no. 5 (2022): 3291–98, <https://doi.org/10.35335/legal>.

<sup>23</sup> Itok Dwi Kurniawan, "Correlation between Justice, Legal Certainty, and Benefit in Law Enforcement in Indonesia," *JIMPS: Jurnal Ilmiah Mahasiswa Pendidikan Sejarah* 8, no. 4 (2023): 3970–77.

## 2.2. The Reconstruction of Consumer Dispute Resolution Referring to Roscoe Pound's Social Engineering Theory

Legal uncertainty regarding consumer disputes as formulated in Article 45 paragraph (2) of the PK Law is based on the inaccurate formulation of the word “can” as well as a lack of understanding regarding the essence of litigation and non-litigation dispute resolution. Regarding the inaccuracy in the formulation of the word “can”, it can be understood that this is simply a technical problem in the preparation of statutory regulations. It should also be noted that when the PK Law was drafted, legal science in Indonesia was not yet advanced and comprehensive after 2011. This is because in 2011 guidelines for the formation of statutory regulations were formulated referring to Law no. 12 of 2011.<sup>24</sup> The drafters of the PK Law are of the view that the word “can” in Article 45 paragraph (2) of the PK Law is intended to provide a choice whether consumer disputes are carried out in litigation or not. Even so, the problem with the word “can” in Article 45 paragraph (2) of the PK Law actually has significant implications in the form of consumer disputes that can be carried out through litigation, non-litigation and other efforts.

Another problem related to inaccurate wording in Article 45 paragraph (2) of the PK Law also has the potential to cause dualism and disharmony in consumer disputes.<sup>25</sup> This is because it is possible for non-litigation disputes to occur and dissatisfaction is then followed by a litigation process which tends to take a long time so that justice in consumer disputes is very difficult to achieve. In this context, the drafters of Article 45 paragraph (2) of the PK Law actually failed to understand the essence of dispute resolution, both through litigation and non-litigation. Litigation dispute resolution is actually interpreted as resolving disputes by referring to the applicable legal system where the peak of dispute resolution is usually in court institutions.<sup>26</sup> The orientation of the litigation dispute resolution process is oriented towards the validity of evidence and special procedures which are commonly referred to as procedural law. Because it emphasizes the validity of evidence and special procedures, it is natural that the court process sometimes takes a long time and costs a lot of money. It is this efficiency problem that apart from litigation settlement, there is room for non-litigation settlement. Referring to Article 6 of the ADR Law, it is actually emphasized that non-litigation dispute resolution is actually an effort to resolve disputes and conflicts without relying on court procedures.<sup>27</sup>

In fact, Article 6 of the ADR Law also emphasizes that if it is tied to non-litigation settlement then its provisions can also exclude procedures in the process of disputes in court institutions. Referring to the ADR Law and the basis for the formulation of the PK Law, it can be understood that the substance of the PK Law which provides

<sup>24</sup> Ahmad Redi, *Hukum Pembentukan Peraturan Perundang-Undangan*, 1st ed. (Jakarta: Sinar Grafika, 2018).

<sup>25</sup> Riyadus Solikhin, “Perkembangan Dan Urgensi Penerapan Online Dispute Resolution (ODR) Dalam Penyelesaian Sengketa Perdagangan Elektronik Di Indonesia,” *Padjadjaran Law Review* 11, no. 1 (July 2023): 66–80, <https://doi.org/10.56895/plr.v11i1.1235>.

<sup>26</sup> Zil Aidi, “E-Litigation Sebagai Sarana Mewujudkan Asas Contante Justitie Pada Peradilan Perdata Di Indonesia,” *Cendekia Hukum* 6, no. 2 (2021): 208.

<sup>27</sup> I Made Wahyu Chandra SatrianaNi Made Liana Dewi, “Non Litigation Dispute Resolution in Settlement of Civil Disputes,” *LEGAL BRIEF* 10, no. 2 (2021): 215.

space for the implementation of non-litigation dispute resolution can be understood as an effort to make the process of resolving consumer disputes more certain and faster. This is actually in line with the orientation of non-litigation dispute resolution, apart from prioritizing the parties meeting to make joint decisions, it is also oriented so that dispute resolution takes place more quickly and in a more focused manner. Referring to non-litigation consumer dispute resolution as confirmed in the PK Law, referring to the principle of *lex specialis derogate legi generalis*, what is referred to as non-litigation dispute resolution is as confirmed in the ADR Law which includes: conciliation, mediation and arbitration.

Further provisions regarding consumer disputes state that further resolution of consumer disputes is the authority of BPSK. Article 52 letter a of the PK Law confirms that BPSK has the authority to handle consumer disputes through conciliation, mediation and arbitration. The unique characteristic of BPSK is that the BPSK Decision to show its binding force must be registered at the local District Court as stipulated in Article 57 of the PK Law. If analyzed, the provisions for non-litigation dispute resolution in the provisions of the PK Law actually have two weaknesses, namely: first, non-litigation dispute resolution in the provisions of the PK Law does not explain, as emphasized by the ADR Law, that non-litigation processes can exclude litigation processes. This has implications for the possibility of BPSK decisions that have been registered in the District Court and then being submitted to another lawsuit process which takes quite a long time and process.<sup>28</sup> Second, the PK Law also does not state that if non-litigation measures are taken, they can be formulated in litigation if the parties in particular want a more valid and evidence-based judicial process. The absence of these provisions has implications for legal uncertainty in resolving consumer disputes.

Efforts to improve or reformulate the PK Law are actually needed to ensure legal certainty in resolving consumer disputes. To realize reconstruction or improvements related to the provisions of the PK Law to ensure legal certainty in resolving consumer disputes, it can be formulated by referring to the concept of social engineering as put forward by Roscoe Pound. The concept of law as social engineering initiated by Roscoe Pound emphasizes the creativity (legal creativity) of law makers so that the law can be in accordance with the needs and developments of the times.<sup>29</sup> Roscoe Pound's rationale actually emphasizes that the main characteristics of law are definite, rigid and text-based, so it will be difficult for law to adapt to developments in society if it is not specifically formulated. The specific formulation of law in Roscoe Pound's perspective is intended so that the law provides space for the needs and development of society so that the law can guide society to a certain better attitude or behavior.<sup>30</sup>

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<sup>28</sup> Anna Maria Tri Anggraini et al., "Consumer Protection in the Retail and Financial Services Sectors against the Practice of Exoneration Clauses," *Journal of Consumer Sciences* 7, no. 2 (2022): 83–96, <https://doi.org/10.29244/jcs.7.2.83-96>.

<sup>29</sup> A.O. Okesola, "Law as a Means of Social Engineering: Some Perspective on Nigeria," *NAUJCP* 9, no. 2 (2022): 105–18.

<sup>30</sup> Xingzhong Yu William P. Alford, "Pound For Pound? Roscoe Pound's Adventures In China And Questions They Pose For Scholars Of Contemporary China," *Asian Law Review* 18, no. 1 (2022): 1–32.



Although basically Roscoe Pound's ideas are identified with the orientation of common law countries with the role of court decisions, Roscoe Pound's ideas are also suitable to be applied in civil law countries like Indonesia which prioritize the important role of statutory regulations. There is an important orientation of Roscoe Pound's ideas to be implemented in Indonesia which is based on statutory regulations, namely<sup>31</sup>: First, the idea of social engineering initiated by Roscoe Pound prioritizes legal responsiveness, which means that the law must facilitate and provide space for social development in society. This is relevant when in the preparation and formulation of statutory regulations, social development in society can be facilitated. Second, the idea of social engineering initiated by Roscoe Pound also emphasized that the law must regulate certain behavior for society so that society can be regulated to behave in accordance with the purpose of formulating a law.<sup>32</sup> This view is relevant to the function of a law with an imperative formula to regulate society so that it can behave in a certain way.

Referring to Roscoe Pound's ideas about social engineering relating to legal uncertainty in resolving consumer disputes actually emphasizes efforts to revise the PK Law by referring to Roscoe Pound's ideas about social engineering. In this case, revisions to the provisions regarding consumer dispute resolution in the PK Law must pay attention to legal certainty, effectiveness and efficiency, as well as the value of justice. Thus, consumer dispute resolution as regulated in the PK Law must be revised with several orientations, such as: (i) removing the provision for the word "can" in Article 45 paragraph (2) of the PK Law so that it emphasizes that consumer dispute resolution is resolved non-litigationally and can be submitted. in the litigation process, (ii) confirmation that consumer dispute resolution must be emphasized on a non-litigation basis first through BPSK and if not satisfied, can file a simple lawsuit in court as an effort to minimize the costs and time associated with consumer disputes.

### 3. CONCLUSION

Consumer dispute resolution as regulated in statutory regulations does not actually guarantee legal certainty due to the legal ambiguity of the word "can" which is alternative and optional in nature so that it is possible for there to be overlap in dispute resolution between litigation and non-litigation channels. To guarantee legal certainty, changes or revisions to statutory regulations related to consumer protection need to be made to ensure that aspects of legal certainty can be implemented in consumer disputes. Reconstruction of consumer dispute resolution refers to Roscoe Pound's social engineering theory, so it is necessary to revise consumer protection laws. Revisions to the consumer protection law were carried out by improving the formulation of statutory regulations and emphasizing that consumer disputes must be optimized in a non-litigation manner first through BPSK and if not satisfied, can file a simple lawsuit in court as an effort to minimize the costs and time associated with consumer disputes.

<sup>31</sup> Harwis Alimuddin M. Yusuf Yahya, "Roscou Pound: Hukum Sebagai Alat Rekayasa Sosial (Keterhubungannya Dengan Kaidah La Yunkaru Tagayyur Al- Ahkam Bi Tagayyuri Azzaman)," *Indonesian Journal of Shariah and Justice* 2, no. 2 (2022): 148.

<sup>32</sup> M. Yusuf Yahya.

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