

Constitutionalizing Independence: Repositioning Consumer Protection Agencies as Independent State Auxiliary Bodies

Fitrah Bukhari*, Anna Maria Tri Anggraini, Sri Bakti Yunari

Universitas Trisakti, Indonesia

Email: fitrahbukhari27@gmail.com*, anna.mta@trisakti.ac.id, sri.by@trisakti.ac.id

Abstract

Keywords	
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	Consumer protection law enforcement in Indonesia has been stagnant for decades due to the institutional design of the National Consumer Protection Agency (BPKN), which is subordinate and only has consultative-passive authority. The unclear status of BPKN's independence under previous regulations has created legal uncertainty and weakened the legitimacy of the institution in relation to the executive branch and business actors. This article aims to analyze in depth the urgency of repositioning BPKN as an independent state auxiliary body by relying on the ratio decidendi of the Constitutional Court Decision Number 235/PUU-XXIII/2025. The research method used is normative legal research with a statute approach and a conceptual approach. The results of the study show that constitutional recognition of BPKN's independence is an absolute requirement to ensure the effectiveness of market supervision, free from bureaucratic intervention. This structural repositioning must be accompanied by a transformation of functional authority through the provision of administrative adjudication mandates to provide coercive power for the protection of consumer rights. This article concludes that the transformation of BPKN into an independent state institution is a strategic step in strengthening Indonesia's constitutional architecture to realize economic justice and consumer sovereignty in the modern trade era

INTRODUCTION

Consumer protection in the modern economic constellation is no longer just a private legal issue between business actors and buyers but has transformed into a pillar of market stability that directly intersects with the public interest. In Indonesia, the constitutional consumer protection mandate is rooted in the state's goal to advance the general welfare, as enshrined in the Preamble to the 1945 Constitution of the Republic of Indonesia (Pelupessy, 2026; Putra, 2025; Shafa, 2025; Taklima et al., 2023; Wahjoedi, 2026). However, at the implementation level, consumer protection law enforcement often stagnates due to institutional design that is out of sync with increasingly complex market dynamics. The main focus of this problem lies in the position of the National Consumer Protection Agency (BPKN), which is currently still trapped in the paradigm of a passive administrative institution (Kerti, 2023; Maulidia & Sutopo, 2024; Rahmah et al., 2023).

Historically, based on Article 31 of Law Number 8 of 1999 concerning Consumer Protection, BPKN was only said to have been "formed" without a firm guarantee of

independence, so it was structurally under the shadow of the Ministry of Trade (Anggraini et al., 2022). This subordinate position creates a dilemma of independence and a potential latent conflict of interest (David et al., 2024). As an institution tasked with providing advice and consideration to the government, BPKN previously did not have the functional independence to intervene directly against market distortions (Maharani & Dzikra, 2021; Kharisma et al., 2025). This condition puts BPKN in the position of a "paper tiger," only able to diagnose problems without having the instruments to execute solutions (Kurniawan, 2024; Poernomo, 2024).

Several previous studies have examined various aspects related to consumer protection institutions, both in Indonesia and in other countries (Kadir et al., 2024; Kerti, 2023; Triwibowo et al., 2022; Widiarty & Fahim, 2024). Aaron and Peterson (2024), in their research on consumer protection agencies and the U.S. Supreme Court, highlight how the independence of market watchdogs greatly determines the effectiveness of law enforcement in the consumer sector. Al-Ghamdi, Sohail, and Al-Khaldi (2007) examined consumer satisfaction with consumer protection institutions in Saudi Arabia and found that public perception of institutional independence was positively correlated with public trust. Habibah and Herawati (2023) examined the role of consumer protection institutions in the legal responsibility system and concluded that institutions lacking decision-making authority tend to be ineffective in providing justice for consumers. Ojonugwa, Joel, and Enejoh (2025) conducted an assessment of the effectiveness of consumer protection agencies in Nigeria and asserted that agencies under the coordination of technical ministries often experience bureaucratic bottlenecks that hinder their performance. Yakub Aiyub Kadir et al. (2024) compared consumer protection law reforms in Indonesia, Vietnam, and Ghana and found that Indonesia lags behind in strengthening independent institutions compared to the two other countries. Meanwhile, Kirti Datla and Richard L. Revesz (2013), in their study of independent institutions in the United States, emphasized that structural and functional independence is an absolute prerequisite for supervisory institutions to act as fair and transparent arbitrators.

Although these studies have made important contributions, there are still research gaps. Theoretically, most previous research focused on the effectiveness of consumer protection institutions in general but has not specifically examined how the concept of state auxiliary bodies can be applied to BPKN after the Constitutional Court's ruling. In terms of regulations, there is still little research that comprehensively integrates the implications of the Constitutional Court Decision Number 235/PUU-XXIII/2025 on the change in the status of BPKN from an administrative institution to an independent institution. Contextually, research on the transformation of administrative adjudication authority for consumer protection institutions in Indonesia is still limited, even though this authority is key to the effectiveness of law enforcement in the era of digital commerce.

The novelty in this study lies in the specific assessment of the ratio decidendi of the Constitutional Court Decision Number 235/PUU-XXIII/2025, which explicitly recognizes the independence of BPKN as a supporting state institution that is free from executive intervention. This research also offers a framework for the transformation of functional authority through the provision of a coercive administrative adjudication mandate so that BPKN is not only structurally independent but also has coercive power in protecting consumer rights. Thus, this research is expected to make a theoretical and practical contribution to strengthening

Indonesia's constitutional architecture, especially in realizing economic justice and consumer sovereignty in the modern trade era.

The momentum of fundamental changes in Indonesia's consumer protection legal system was finally achieved through the Constitutional Court Decision Number 235/PUU-XXIII/2025. In the monumental decision, the Court emphasized that the absence of an independence clause in the mandate for the establishment of BPKN is a source of unconstitutional legal uncertainty. The Court expressly gave a new direction by positioning BPKN as an independent institution to ensure the upholding of consumer rights without intervention from any party. This ruling is not just a formal victory but a constitutional recognition that the effectiveness of citizen protection in the market can only be achieved through supervisory institutions that have full autonomy, both structurally and functionally.

In the discourse of Constitutional Law, the emergence of new state institutions or auxiliary state bodies in the reform era is intended to carry out special functions that cannot be optimally accommodated by the conventional executive, legislative, and judicial branches of power. Institutions such as the KPK, ICC, and OJK were established on the principle of independence, ensuring they are free from political and bureaucratic intervention in carrying out supervisory functions. However, BPKN has not received a similar repositioning until now, resulting in an imbalance of authority compared to other market supervisory institutions such as the ICC in the business competition sector or OJK in the financial sector.

This article aims to analyze the juridical implications of the Constitutional Court Decision Number 235/PUU-XXIII/2025 on Indonesia's constitutional structure and the new direction of national consumer protection policies. The focus of this research is to examine how the repositioning of BPKN as an independent auxiliary state institution must be followed by strengthening the authority of administrative adjudication. This transformation is expected to provide real legal certainty so that BPKN is not only independent on paper but also empowered in realizing consumer sovereignty as an integral part of efforts to achieve national economic welfare.

METHOD

This research uses normative legal research methods, with an emphasis on analysis of positive legal norms, doctrines, and legal principles that are relevant in the realm of constitutional law and state administrative law. The main approaches used are the statute approach and the conceptual approach. The statute approach is used to examine the consistency of consumer protection regulations in Indonesia. Meanwhile, the conceptual approach) is to dissect the theory of state auxiliary bodies and the independence of market supervisors. . The data used are secondary data sourced from primary legal materials in the form of laws and regulations and court decisions, as well as secondary legal materials that include academic literature.

Legal materials that have been collected through library research are analyzed qualitatively using descriptive-prescriptive methods to produce a comprehensive legal construction. The analysis is carried out by synchronizing the theory of the independence of state institutions and the urgency of protecting the constitutional rights of consumers after the Constitutional Court's ruling. The legal reasoning process is focused on trying to find a theoretical justification for the repositioning of the position of BPKN from an administrative

institution to an independent state institution with authoritative authority. Through this method, the research intends to provide a prescription or recommendation for transformative legal reform for the institutional design of market supervisors in Indonesia, in order to realize the effectiveness of independent law enforcement and free from executive power intervention.

RESULTS AND DISCUSSION

The Urgency of Repositioning BPKN as an Independent Institution

This section outlines the juridical transformation and structural repositioning of BPKN within the framework of an Indonesian legal state that is more responsive to the rights of citizens. The analysis in this discussion focuses on the synchronization between the constitutional mandate and the strengthening of the independence of market supervisory institutions following the constitutional ruling. The author argues that BPKN's independence is an absolute requirement to ensure consumer protection from the dominance of uncontrolled economic forces in the market. In addition, this review critically examines the direct implications of the repositioning on the dynamics of national market supervision, which has tended to be fragmented. Through this comprehensive analysis, it is hoped that an institutional blueprint will be created to address the challenges of trade complexity in the contemporary era.

The position of the National Consumer Protection Agency (BPKN) in the Indonesian constitutional system has undergone a significant paradigm shift after legal reform. Historically, these institutions were formed in response to the urgent need to protect consumer rights in the free market. However, the initial institutional design, which placed it under the coordination of the technical ministry, posed a major challenge to its independence. This structural dependence often hinders the objectivity of institutions in providing policy recommendations that serve the public interest. Therefore, an in-depth reevaluation of BPKN's position is needed to strengthen its role in maintaining the economic sovereignty of citizens.

The concept of state auxiliary bodies is an important instrument to fill functional gaps not accommodated by the classical branches of power. These institutions are created with a specific mandate to monitor and protect human rights in a more agile manner. The main characteristic of auxiliary state institutions is the guarantee of independence, which separates them from the political influence of the executive. Without strong autonomy, the supervisory function loses credibility and binding power in the eyes of the law. The institutional design of BPKN has so far not fully met the ideal standards of an independent auxiliary state institution.

Independence is an absolute prerequisite for any market supervisory authority to act as a fair and transparent arbiter. In the legal discourse of state administration, independence encompasses not only structural independence but also autonomy in decision-making. BPKN, previously subordinate to the Ministry of Trade, had limited authority to supervise government policies. This resulted in weak bargaining power when dealing with business actors with significant economic influence. Freedom from bureaucratic interests is a key factor in increasing the effectiveness of consumer protection in Indonesia.

Placement of BPKN under the ministry often creates conflicts of interest that are difficult to avoid procedurally. Relevant ministries bear the dual responsibility of promoting the trade sector while protecting consumers from adverse business practices. This contradictory function often makes consumer protection a secondary priority compared to national economic growth targets. The presence of independent institutions is necessary to ensure that consumer rights

are not sacrificed for short-term investment gains. Integration between institutional independence and supervisory integrity forms the foundation for a healthy market climate.

The recommendations issued by BPKN so far are only advisory, without any coercive administrative sanctions. This limits BPKN to consultative functions, which are often ignored by stakeholders. This weak executive legitimacy is rooted in the institution’s lack of independent authority in the constitutional system. Without imperative authority, consumer protection will continue to experience stagnation. Structural transformation is needed so that every institutional decision has a real impact on improving consumer protection.

A review of similar institutions abroad shows that integrating supervisory and independent functions results in more optimal performance. Supervisory institutions in developed countries generally have broad autonomy in setting budgets and determining operational policies. In Indonesia, efforts to align BPKN’s position with other independent institutions are constitutional imperatives that cannot be postponed. Institutional design improvements must grant greater authority to take corrective actions in the market. This aligns with efforts to strengthen the rule of law and realize social welfare for all citizens.

A comparison of BPKN’s position before and after legal intervention through constitutional decisions is reflected in structural data highlighting fundamental differences in organizational independence, coordination, and scope of authority. This visual comparison underscores why status changes are crucial for the future of consumer protection. The identification of these institutional variables provides a basis for sharper legal analysis of BPKN’s repositioning. The transformation is a strategic step to align with global standards for independent consumer protection authorities.

Table 1. Comparison of BPKN Institutional Characteristics Before and After the Constitutional Court Decision No. 235/PUU-XXIII/2025

Variable	The Old Paradigm	A New Paradigm
Institutional Status	Administrative Institutions under the Ministry	<i>Independent State Auxiliary Body</i>
Structural Relationships	Subordinate (Accountable to the Minister)	Independent (Parallel to Independent Authority)
Nature of Authority	Consultative and Passive	Authoritative and Independent
Executive Intervention	High Potential (Through bureaucratic channels)	Prohibited by the Constitution
Legal Legitimacy	Implementing Regulations (Weak)	Constitutional Court Decisions and Constitutional Norms (Strong)

Source: Compiled independently by the author (2025).

Based on the table, it is clear that the change in status from an administrative institution to an independent institution has broad implications for the accountability aspect. Coordination that was originally vertical to ministries has now shifted to a more autonomous and transparent pattern of relationships. The addition of functional independence variables ensures that any policy undertaken is based on the scientific objectivity of the law. This transformation represents a milestone in strengthening the constitutional system through optimizing the role of auxiliary state institutions in Indonesia.

The Constitutional Court Decision Number 235/PUU-XXIII/2025 is a turning point that provides strong legality for the repositioning of BPKN. The Court, in its legal considerations, emphasized that the right to fair legal certainty for consumers must be guaranteed through independent institutions. The unclear status of BPKN's independence under the previous law was considered to have caused real constitutional losses for justice seekers. This affirmation corrects the legislative practice that had previously overlooked the independence aspect of market supervisory institutions. With this ruling, the government has a legal obligation to immediately synchronize regulations related to consumer protection.

The independence of institutions is an integral part of the principle of the rule of law. The Court held that the effectiveness of supervision can only be realized if the supervisory institution is not under pressure from any external power. This reflects the strengthening of the doctrine of checks and balances to limit potential abuse of authority by the executive branch. BPKN now has a constitutional basis to demand full autonomy in carrying out the function of protecting citizens' rights. The clarity of this status will increase public confidence in the state's ability to maintain justice in the trade sector.

The repositioning of BPKN as an independent state auxiliary body requires significant changes in the structure of budget and human resource management. As an independent institution, BPKN must have full authority to manage its organizational household without bureaucratic interference. This ensures that any surveillance action is not hampered by administrative or political constraints. Financial independence is also a key factor to prevent undue intervention by parties with economic interests. Strengthening institutional capacity must be a top priority in the post-constitutional legal reform agenda.

The functional authority of BPKN after this decision is expected to go beyond providing advice and consideration to the central government. Institutions must be empowered with an administrative adjudication function capable of resolving consumer disputes quickly and fairly. The union between institutional independence and decision-making authority will create a more responsive consumer protection system. This model will minimize reliance on litigation processes, which are often time-consuming and costly. Thus, BPKN can act as a frontline arbiter for violations of consumer rights in the market.

The next challenge is integrating BPKN's independence into the institutional architecture of market supervisors in Indonesia. Synergy between independent BPKN and other institutions, such as the ICC and OJK, must be built on a harmonious legal foundation. Collaboration among independent institutions will create holistic supervision of business actors across various sectors. Independence should not be interpreted as institutional isolation but as autonomy in carrying out duties for the public interest. Effective coordination between independent institutions will strengthen the competitiveness of the national economy in the global arena.

Theoretically, this repositioning strengthens consumers as equal legal subjects in every economic transaction. Protection of consumer rights no longer depends solely on the political will of the executive but becomes a constitutional obligation of the state. Independent institutions act as guarantors that the law will be consistently enforced for all levels of society. This reflects advances in constitutional law thinking that are increasingly adaptive to modern societal needs. Consumer sovereignty will ultimately be the main indicator of the success of economic development based on the principle of justice.

The transformation of BPKN into an independent auxiliary state institution is an urgent legal necessity. The Constitutional Court's decision has opened the path for comprehensive improvement of the consumer protection system. This effort must be supported by the political will of the legislature to revise the Consumer Protection Law in accordance with constitutional norms. Institutional strengthening will be a valuable legacy for the national legal system in maintaining a fair market balance. With full independence, BPKN is ready to carry out its mandate to protect all Indonesian citizens from harmful trade practices.

The Transformation of Administrative Adjudication Authority and Its Implications for Law Enforcement Effectiveness

The transformation of BPKN into an independent institution requires a fundamental overhaul of the spectrum of authority it currently holds. So far, the limited authority, which is only recommendatory, has significantly hampered the effectiveness of consumer protection in Indonesia. The implementation of the administrative adjudication function is key to providing coercive power for every decision made by the institution. Without decision-making authority, the structural independence recognized by the Constitutional Court loses its practical significance. Therefore, the restructuring of functional authority must be immediately integrated into the text of changes to national consumer protection regulations.

Administrative adjudication is a legal instrument that allows independent institutions to resolve disputes without going through conventional litigation channels. This function grants BPKN the authority to examine, adjudicate, and decide administrative violations committed by business actors. From the perspective of state administrative law, this authority aims to create a faster and more efficient problem-solving process. Bureaucratic efficiency and legal certainty are the added value offered by this independent dispute resolution model. This aligns with the principles of simplicity, speed, and low cost, which are considered legal ideals in the Indonesian judicial system.

The need for an adjudication function is increasingly urgent given the complexity of digital trade transactions, which involve millions of consumers every day. General courts are often unresponsive and overly formalistic in handling mass consumer protection cases. BPKN, with its specialized expertise, can act as a quasi-judicial forum that better understands the technical dynamics of trade. This authority also minimizes the potential for overlapping roles between executive agencies and existing market supervisory agencies. With decision-making authority, BPKN can directly provide real protection to consumers suffering material and immaterial losses.

The adoption of decision-making authority has a strong precedent in other independent institutions, such as the ICC in the business competition sector. The ICC's success in providing administrative sanctions demonstrates that independent authorities are effective in changing the behavior of business actors. BPKN must establish transparent and accountable standard operating procedures for carrying out these semi-judicial functions professionally. The right to self-defense for business actors must be respected as part of the principle of due process. Integration of investigative and adjudicative functions in a single institution must be accompanied by strict internal oversight mechanisms.

The implication of this authority is the creation of BPKN decisions that are final and administratively binding for the parties. Decisions may include orders to stop prohibited

business practices or obligations to pay compensation directly to consumers. The executive power of independent agency decisions sends a strong signal to the market regarding the state's firmness in enforcing the law. Business actors are compelled to comply with regulations to avoid reputational and financial sanctions. Certainty of sanctions provides a deterrent effect urgently needed in a competitive national trade environment.

In addition to sanctions, the adjudication function encourages a culture of mediation and reconciliation between disputing parties. BPKN can facilitate legally binding agreements equivalent to permanent court decisions. This reduces the burden of cases in the Supreme Court, which often accumulates due to simple consumer disputes. An independent adjudication forum provides wider access to justice nationwide. Modernization of consumer protection law enforcement begins with empowering supervisory institutions with credible decision-making authority.

This functional repositioning requires improvements in the quality of human resources occupying strategic positions in BPKN. Members must demonstrate high moral integrity and a deep understanding of contemporary economic law. Transparent, politically independent leadership selection is critical for the success of institutional transformation. Professionalism in decision-making will increase public trust. Without sufficient intellectual capacity and integrity, the great authority conferred risks potential abuse of power.

Financial independence is also essential for strengthening BPKN's administrative adjudication function. The BPKN budget must no longer be fully dependent on the technical ministry to maintain objectivity. An independent budgeting scheme through the state budget ensures continuity without bureaucratic pressure. Budget autonomy provides flexibility for strengthening information technology infrastructure in supervising the digital market. Independently managed funds must be strictly and transparently audited.

Synergy between BPKN, the Financial Services Authority, and Bank Indonesia must be strengthened through effective memoranda of understanding. Fragmented oversight across sectors often confuses consumers about which institutions hold authority. BPKN, as an independent auxiliary state institution, can act as the primary coordinator for consumer protection across sectors. Effective coordination closes legal loopholes often exploited by rogue business actors. The vision of national consumer protection must be based on collaboration between independent state institutions.

The Constitutional Court's determination of BPKN as an independent institution must be immediately followed by revision of the Consumer Protection Law. The new legal framework must explicitly define adjudication authority and procedures for implementing institutional decisions. The government and House of Representatives play a crucial role in synchronizing technical regulations with the constitutional mandate. Delays in this synchronization create an authority vacuum, harming the interests of consumers. Legislative reform is a concrete step toward realizing a welfare state that protects citizens' economic rights.

In the long term, repositioning BPKN will advance Indonesia's consumer protection system to international standards. An independent supervisory authority attracts investors by providing legal certainty. A healthy market requires balance between consumer protection and business certainty. An independent BPKN acts as a counterbalance to monopolistic practices and unfair competition. Its role extends beyond dispute resolution to mass education about citizens' rights.

Implementation challenges will remain, particularly resistance from parties accustomed to the old system. Massive socialization of BPKN's new position must include all stakeholders, including general court judges. Judges must understand the limits of administrative adjudication authority held by independent institutions. Harmonizing legal perceptions between agencies is necessary to avoid conflicting decisions that confuse the public. Consistency in law enforcement is key to BPKN's moral and juridical legitimacy.

Artificial intelligence technology can be integrated into the adjudication system to accelerate examination of legal facts. This digital innovation will make BPKN a modern, transparent, and highly accessible institution for all citizens. Time efficiency in handling reports will increase public satisfaction with law enforcement performance. Independence supported by technology will create a more accurate market surveillance system with reduced human error. This embodies good governance in protecting citizens' basic rights.

Strengthening BPKN through adjudication authority represents constitutional protection of citizens' sovereignty in the market. The Constitutional Court's decision provides a solid foundation for building a supervisory institution free from external interference. This structural and functional transformation is a long-term legal investment for achieving social justice in Indonesia. Full independence of BPKN is a key indicator of progress in the national economic legal system.

CONCLUSION

The repositioning of the National Consumer Protection Agency (BPKN) from an administrative institution under the ministry to an independent state auxiliary body is a fundamental constitutional necessity following the Constitutional Court Decision Number 235/PUU-XXIII/2025. The Court's affirmation of the importance of independence for BPKN resolves the ambiguity of institutional status that has hindered the effectiveness of market supervision in Indonesia due to structural subordination. Theoretically, this independence guarantees legal certainty, ensuring that BPKN is free from political intervention and conflicts of bureaucratic interests while carrying out its mandate to protect citizens' rights. Thus, this transformation not only strengthens BPKN's position within the Indonesian constitutional system but also establishes consumer protection as a vital instrument for maintaining balance and justice in the national economy.

The implementation of BPKN's empowerment as an independent institution must be concretely followed by granting authoritative and coercive administrative adjudication powers. The authority to independently examine and decide consumer disputes will address the stagnation in law enforcement caused by the institution's previously passive, recommendatory nature. Through this semi-judicial function, BPKN can provide faster, more efficient, and responsive access to justice, particularly given the complexity of trade transactions in the digital era. Immediate legislative action is therefore required to synchronize the Consumer Protection Law with the new constitutional norms. This holistic institutional strengthening will ultimately realize true consumer sovereignty and enhance public confidence in the integrity of Indonesia's market system.

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