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# LEGAL PROTECTION OF CONSUMERS RELATED TO BREACH OF BUSINESS PERFORMANCE

**Achmad Faisal**[1]
**Lamijan**[2]
Universitas Darul Ulum Islamic Centre Sudirman GUPPI[1,2]
Email: faisal.teakgarden@gmail.com[1] , imamlamijan@gmail.com[2]
*Correspondence: faisal.teakgarden@gmail.com

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**Abstrak:** Losses suffered by customers can come from unlawful acts of producers or the existence of a valid contractual relationship between producers and consumers. This study uses an analytical method with an empirical juridical approach or legal sociology, which is an approach to the problem by reviewing the regulations that have been enforced in society as positive law with its implementing regulations including its implementation in the field. Law No. 8 of 1999 concerning Consumer Protection and the Decree of the Minister of Industry and Trade mentions the Dispute Settlement Agency. Based on the explanation of UUPK article 45 paragraph (2) the settlement of consumer disputes as referred to in this paragraph does not rule out the possibility of an amicable settlement by the parties to the dispute. At every stage, efforts are made to use a peaceful settlement by both parties to the dispute. Based on the provisions of Article 45 paragraph (2) UUPK linked to the explanation, consumer dispute resolution can be carried out in the following ways: 1) Peaceful settlement by the parties to the dispute without involving a neutral court or third party; 2) Settlement through court; 3) Settlement out of court through the Consumer Dispute Settlement Agency. In liability based on a default, the obligation to pay compensation is none other than the result of applying the provisions of the agreement, which are legal provisions that both parties voluntarily comply with based on the agreement.

**Keywords:** Consumer; Protection; Default.

## INTRODUCTION

Shopper security is a basic piece of sound business exercises. In solid business exercises, there is an equilibrium of lawful security among customers and makers. The shortfall of adjusted security makes purchasers be in a feeble position. Particularly in the event that the item delivered by the maker is a restricted sort of item, the maker can manhandle this monopolistic position. It will harm consumers.

Losses suffered by customers can come from unlawful acts of producers or the existence of a valid contractual relationship between producers and consumers. There are times when the receiving party does not receive the goods or services to his expectations, meaning that the agreement signed between the parties does not always run smoothly in the sense that each party is satisfied. Producers are said to be in default if the buyer, in this case, the consumer, does not receive the goods or services that have been agreed upon, resulting in a loss for the consumer (Labrecque et al., 2021).

Default of one of the parties in the agreement is a failure to fulfill the conditions stated in the agreement. This is usually experienced more by parties who are weak/have a high dependence on other parties because these requirements are one-sided / more burdensome to the weak party.

This is because the standard agreement contains all of these standards. These contracts are used frequently and have a significant impact on company law, which is usually built on efficiency-oriented principles.

In addition to the default, losses can also occur outside of the contractual relationship, namely if an unlawful act occurs, which can be in the form of defects in goods or services that result in consumer losses, either due to damage or destruction of the goods themselves, or damage or destruction of goods due to defects on that item. Apart from being caused by default or unlawful acts, many losses experienced by consumers so far have also been caused by consumers being less critical of the goods offered, so the losses experienced by consumers are not only financial but can also be detrimental to the health or safety of the consumers' own lives (Mustaqim, 2016).

The possibility of consumer losses will increase even more if the goods/services circulating in society do not use the brand regularly, especially if there is counterfeiting of certain brands which allows a brand to be used on several similar goods, but with different quality, so that between goods there are those that might harm less critical consumers.

Protection of consumer interests is necessary because in general consumers are always on the losing side. Legal protection for consumers itself is carried out based on the principles of consumer protection as stipulated in Article 2 of Law number 8 of 1999 concerning Consumer Protection, which is formulated as follows "Consumer protection is based on benefits, certainty, fairness, balance, security, and consumer safety, as well as legal certainty"(Salim & Neltje, 2022).

These principles are placed as a basis

both in formulating laws and regulations as well as in various activities related to consumer protection.

According to Setiawan: "Consumer protection has 2 (two) aspects which lead to unfair trade practices and the problem of being bound by general terms in an agreement.

Supervision of the implementation of the obligations of these business actors must be increased, thus consumer rights will be easily fulfilled, because the obligations of business actors are rights for consumers. However, consumer rights are often ignored by business actors that are business actors have not properly fulfilled their obligations to consumers. There is always the possibility of deviant behavior on the part of producer-business actors regarding the products that are distributed to consumers. Therefore, consumers must be compensated for losses due to consuming products that are distributed.

## MATERIALS AND METHODS

This study uses an analytical method with an empirical juridical approach or legal sociology, which is an approach to the problem by reviewing the regulations that have been enforced in society as positive law with its implementing regulations including its implementation in the field (Hakim, 2017). the focus of this research is to discuss issues regarding customer protection with an analysis of law No. 8 of 1999 concerning Consumer Protection. Consumer protection is defined as a legal instrument created to protect the fulfillment of consumer rights. So every transaction can be protected by this law and religion has also regulated this matter. The data analysis method is used to examine the issue of legal protection for consumers in the process of buying and selling transactions, namely by using data analysis through selecting data that produces descriptive data, namely data from a theoretical basis, legal concepts, and legal doctrine (Quach et al., 2022)v.

## RESULTS AND DISCUSSION

### 1. Consumer Dispute Settlement Agency (BPSK)

Legally, the term BPSK is regulated in Law No. 8 of 1999 concerning Consumer Protection, and in the Decree of the Minister of Industry and Trade it states the Dispute Settlement Agency.

The following purchaser in this choice is called BPSK, which is the body accountable for taking care of and settling questions between Business Entertainers and Customers. In the conversation, BPSK is firmly connected with business entertainers and buyers. Consequently, customer regulation is characterized as the general standards and rules of regulation administering the relationship and issues between different gatherings each other connected with purchaser merchandise or potentially benefits in public activity.

In the mean time, as per the term (Purchaser Debate Settlement Office), BPSK is a unique foundation laid out under the Customer Security Act, whose principal task is to determine questions or debates among shoppers and business entertainers. Regulation number 8 of 1999 concerning Buyer Security permits settlement of purchaser debates outside the court, this is

expressed in Article 45 section (1) jo, Article 23. Out-of-court question settlement is completed to arrive at an understanding in regards to the structure and measure of remuneration and additionally with respect to specific activities to guarantee that misfortunes endured by customers won't happen once more.

BPSK is a non-primary foundation or establishment that has a capability as a foundation/foundation that settle customer issues beyond court. This institution was also formed by the Government to resolve consumer disputes that occur. BPSK is under the auspices of the Ministry of Industry and Trade while its operations are assisted by the local regional government. Proposing the establishment of BPSK in districts/cities to the Government in coordination with the province and facilitating BPSK operations. The principles of BPSK in resolving disputes are: prioritizing deliberation, fast, cheap, and fair. The existence of BPSK is expected to be able to provide consultation regarding consumer protection issues, bridge any disputes that arise from both parties, and be able to complete their duties in terms of receiving complaints from the public.

In light of the clarification of UUPK article 45 section (2) the settlement of customer debates as alluded to in this passage doesn't preclude the chance of a friendly settlement by the gatherings to the question. At each stage, endeavors are made to utilize a serene settlement by the two players to the debate. The settlement is done by the two players to the debate (business entertainers and customers) without going through a court or the Purchaser Question Settlement Office and doesn't struggle with this Regulation. In view of the arrangements of Article 45 section (2) UUPK connected to the clarification, the settlement of customer debates can be completed in the accompanying ways:[6]

a. Amicable resolution by the disputing parties without involving a court or a neutral third party.
b. Settlement through court.
c. Settlement out of court through the Consumer Dispute Settlement Agency

On a basic level, each buyer who is hurt can sue business entertainers through an establishment entrusted with settling debates among shoppers and business entertainers or through a court inside the general court climate. In the event that an out-of-court purchaser debate settlement exertion has been picked, a claim through a court must be sought after assuming the said exertion is pronounced fruitless by one of the gatherings or by the questioning gatherings.

**2. Dispute Resolution Through BPSK**

Strategies for settling BPSK debates are managed in the UUPK jo Kepmenperindag No.350/MPP/12/2001 concerning the execution of Obligations and Specialists. The settlement process is also arranged very simply and as far as possible a formal atmosphere is avoided. Submitting a lawsuit to BPSK, can be done by himself or his attorney or heir, in writing the BPSK secretariat, the secretariat will provide a receipt, if the application is submitted orally, the secretariat will record

the request in a form provided specifically, and affixed with the date and registration number.

An important note is that the application must be complete, because if not the head of the BPSK will reject the application. Summoning the business actor, a summons is made containing the day, date, time, and place of the trial as well as the obligation to provide answers to the settlement of consumer disputes to be submitted at the first trial.

If on the first day the business actor is absent and does not fulfill the summons, the business actor can be summoned once again, if he is still not present, the BPSK can ask the investigator for assistance to present the business actor, which can be chosen are conciliation, mediation, and arbitration. If what the parties choose is conciliation or mediation, then the chairman of the BPSK will immediately appoint an assembly by the provisions to be appointed as conciliator or mediator. In the event that mediation is picked, the method is for the gatherings to choose a third mediator from BPSK individuals who come from components of the public authority as director of the gathering (Putra et al., n.d.).

The trial is held no later than the 7th working day after receiving the request. This trial stage includes three things, namely trials by conciliation, mediation, or arbitration depending on the method chosen by the disputants. Trial by way of conciliation. Conciliation is the process of resolving disputes between parties by involving a neutral and impartial third party, this party is called a conciliator.

The conciliator just makes moves like establishing the point in time and spot for the gatherings' gathering, coordinating the topic of the discussion, and conveying messages starting with one party then onto the next on the off chance that the message can't be conveyed straight by the gatherings. This model of dispute resolution refers to a consensus between parties, where neutral parties can play an active or inactive role.

The conciliator might propose his perspective however isn't approved to choose the case. Settlement of buyer debates through a conciliator is done by the questioning gatherings themselves joined by the BPSK get together which acts latently as a conciliator. The Gathering completely presents the question settlement interaction to the gatherings, both in regards to the structure and measure of misfortunes. The consequences of the consultations which comprise an understanding between the shopper and the questioning business entertainer are then made as a composed arrangement endorsed by the questioning gatherings and submitted to the gathering to be framed in the choice of the BPSK get together which reinforces the arrangement.

Notwithstanding pacification, intervention is a course of arranging debate goal or critical thinking where unprejudiced outsiders cooperate with the questioning gatherings to assist with getting a good understanding, this party is known as a go between. The go between doesn't have the position to choose debates, yet just assists the gatherings with settling the issues submitted to him (Yusuf Shofie, 2018).

An understanding can happen with intervention on the off chance that the questioning gatherings figure out how to arrive at a common comprehension and mutually form a debate goal with substantial headings from the middle person (Ali, 2022). The go between completely presents the debate goal interaction to the gatherings, both with respect to the structure and measure of remuneration or certain activities to guarantee that purchaser misfortunes don't repeat. The aftereffect of pondering is an understanding among shoppers and business entertainers. Then, at that point, settled on as an understanding, endorsed by the gatherings, and submitted to the BPSK get together to be affirmed in the choice of the BPSK get together to fortify the arrangement. The choice is restricting on the two players and intercession doesn't contain managerial approvals.

Preliminary via mediation as per Regulation no. 30 of 1999 concerning mediation is an approach to resolving a common debate out of court, which depends on a discretion understanding made recorded as a hard copy by the gatherings to the question.[8] This arbitration is the most formal alternative form of resolving disputes before litigation. In this process, the disputing parties present their problems to a neutral third party and give him the authority to make a decision.

BPSK decision utilizing conciliation or mediation, This decision only confirms the contents of the peace agreement that has been approved and signed by both parties to the dispute. BPSK decisions by arbitration, like decisions in civil cases, determine the position of the case and its legal considerations.

The decision of the BPSK assembly is as far as possible based on deliberation to reach a consensus, but if it has been tried seriously it turns out that the result is not successful in reaching a consensus, then the decision is taken by a majority vote. Intervention and mollification choices don't contain managerial approvals while discretion is settled on by a board choice and endorsed by the executive and individuals from the gathering, the board's choice in mediation can contain regulatory authorizations. The BPSK decision can contain; a settlement, the case is dismissed, or the case is conceded. Legitimate issues emerge, concerning the arrangements of article 54 passage 3 of the UUPK and article 42 section 1 of the choice of the clergyman of industry and exchange number 350/MPP/Kep/12/2001, the BPSK choice is conclusive and restricting and it is as of now not feasible to allure or protest.

Then again, in Article 56 passage 2 of the UUPK, there is as yet a potential chance to present an issue with the region court, inside a time of 14 days after the BPSK choice is told. There are obstacles faced by BPSK in implementing UUPK, namely; institutional/institutional constraints, namely the existence of BPSK which only exists and is actively running in a few cities, there are a few contentions that BPSK isn't a body that completely does a legal capability, the three debate goal techniques illustrated above are basically non-suit question goal choices.

Basically, BPSK is under the Service of

Exchange so doing its obligations actually has chief power, consequently in a roundabout way opening up the chance of the rise of impediments in completing legal errands. Subsidizing imperatives, BPSK HR limitations, administrative requirements, direction and oversight limitations and the absence of coordination by the authorities in control, absence of reaction and understanding from the legal executive in regards to purchaser security arrangements, absence of effort, and low degree of familiarity with shopper regulation, absence of public reaction to UUPK and different organizations BPSK.

### 3. Dispute Settlement Through District Court

According to Article 48 of Law Number 1999 concerning consumer protection, consumer dispute resolution through courts refers to provisions regarding general courts. This means that the procedural law used in the trial and examination procedures is based on the Herzine Inland Regeling (HIR) or Rechtsreglemen Buitengewesten (RBg), both of which have no fundamental (principal) differences (SARI et al., 2015).

Documenting a claim in the common procedural regulation in force in Indonesia is known as the appointed authority's standard of delaying or being uninvolved. This means that the initiative for litigation comes from interested parties. Where this is controlled in Article 1865 of the Common Code, or at least, every individual who contends that he has a privilege to affirm his freedoms or contend for another person's privileges, highlighting an occasion, is expected to demonstrate the presence of said right or occasion. Then it very well may be seen that the definition of Article 1865 of the Common Code contains a few implications, which importance comprise of: (Rahayu et al., 2020)

1) A purchaser who is hurt or the main successor concerned
2) A gathering of purchasers who have similar interests;
3) Non-administrative buyer assurance establishments that meet the necessities, to be specific as lawful substances or establishments, which in their articles of affiliation obviously express that the reason for laying out such an association is to serve purchaser security and has completed exercises by its articles of affiliation;
4) The government as well as related offices if the products and additionally benefits consumed or used bring about enormous material misfortunes or potentially numerous casualties.

Claims recorded by a gathering of shoppers, non-legislative purchaser security associations, or the public authority as alluded to in passage (1) letter b, letter c, or letter d will be submitted to the general court. Further arrangements with respect to huge material misfortunes or potentially casualties that are not little as alluded to in passage (1) letter d are controlled by unofficial laws. Therefore, based on the provisions above, those who can file a lawsuit in the provisions of the Consumer Protection Act are any consumers who are harmed, their heirs, whether in the form of individuals or groups, Non-Governmental Consumer

Organizations, and the government.

With the consideration that the BPSK Assembly, the business actor, in this case as the Defendant, wants to file an appeal because the business actor feels that BPSK is not authorized to try this case, where the legal relationship between the Plaintiff and Defendant originates from a Fiduciary debt and credit agreement and the settlement must go through the general court.

**4. Continuing or Canceling the Agreement**

Obligation as per the Indonesian word reference is, the condition obliged to bear everything. So that being dependable as indicated by the overall Indonesian word reference is obliged to bear, bear, bear everything, and bear the outcomes. Obligation is human consciousness of conduct or activities that are deliberate or accidental. Obligation likewise implies going about as an epitome of familiarity with commitments. Obligation is normal, implying that it has become piece of human existence, that each person is troubled with liability. Obligation is a quality of enlightened people, people feel mindful on the grounds that they know about the fortunate or unfortunate results of their activities, and furthermore understand that the other party requires a preliminary or penance.

Hans Kelsen's lawful hypothesis An idea connected with the idea of legitimate commitment is the idea of legitimate liability (obligation). Someone legally responsible for certain actions can be subject to a sanction in cases where his actions are contrary to the law. Sanctions are imposed because of his actions that make the person responsible (Warjiyati, 2018). Responsibility for the agreement can be in the form of canceling/continuing the agreement and compensation.

The importance of dropping here isn't crossing out on the grounds that it doesn't meet the emotional necessities in the arrangement, but because the debtor has defaulted. So, the intended cancellation is cancellation as one of the possibilities that a creditor can sue against a debtor who has defaulted (Pangestu, 2019). In addition to being able to file a claim for cancellation, creditors can also file other demands, namely cancellation of the agreement and compensation, compensation only, fulfillment of the agreement, or fulfillment of the agreement and compensation. However, it should also be stated here that there are experts who call the term termination of the agreement for the same purpose as canceling the agreement.

Undoing conditions are considered to constantly be remembered for corresponding arrangements when one party doesn't satisfy its commitments. In such a case the understanding isn't invalid and void, yet the undoing should be mentioned by the adjudicator. This solicitation should likewise be made, despite the fact that the terms of scratch-off in regards to non-satisfaction of commitments are expressed in the arrangement. In the event that the undoing conditions are not expressed in the understanding, the adjudicator is at freedom to as per the conditions, in line with the litigant, provide a period to still fulfill his obligations, which period, but it

may not exceed one month.

The formulation of Article 1266 BW above turns out to contain various kinds of contradictions and creates an impression in such a way as if the agreement is automatically canceled because of the law once the debtor commits a default, despite the fact that the crossing out of the understanding should be mentioned by an adjudicator. Aside from that, it likewise gives the feeling that the debt holder additionally has the option to request abrogation of the understanding, despite the fact that as per Article 1266 BW just the bank has the privilege to request crossing out of the arrangement.

**5. Compensation for Losses**

In the application of provisions within the private law environment, there is a fundamental distinction between claims for harms in view of default and cases for remuneration in light of unlawful demonstrations. (Hamid & SH, 2017) On the off chance that the pay guarantee depends on default, the respondent and the offended party (maker and customer) are limited by an understanding first. In this manner, an outsider (not involved with the understanding) who is hurt can't guarantee remuneration because of reasons of default.

Compensation obtained due to default is the result of non-fulfillment of the main obligation or side obligation (performance obligation or warranty obligation) in the agreement. Forms of default can be: (Sinaga, 2018)

1) The debtor does not fulfill the achievements at all;
2) Debtors are late in fulfilling their achievements;
3) Debtors perform not as they should

The occurrence of a default on the part of the debtor in an agreement brings unpleasant consequences for the debtor because the debtor must:

1) Compensate for losses;
2) Objects that become the object of the engagement since the default occurs are the responsibility of the debtor;
3) If the commitment emerges from a complementary understanding, the bank might demand crossing out (end) of the understanding

Meanwhile, to avoid losses for creditors due to default, creditors can sue one of five possibilities:

1) Cancellation (termination) of the agreement;
2) Fulfillment of agreements;
3) Compensation payment;
4) Cancellation of the agreement accompanied by compensation;
5) Fulfillment of the agreement accompanied by compensation.

In liability based on a default, the obligation to pay compensation is none other than the result of applying the provisions of the agreement, which are legal provisions that both parties voluntarily comply with based on the agreement. Thus, it is not the law that demands whether compensation must be paid or how much compensation must be paid, but both parties determine the conditions and the amount of

compensation to be paid.

## CONCLUSIONS

Losses suffered by customers can come from unlawful acts of producers or the existence of a valid contractual relationship between producers and consumers. There are times when the receiving party does not receive the goods or services to his expectations, meaning that the agreement signed between the parties does not always run smoothly in the sense that each party is satisfied. Producers are said to be in default if the buyer, in this case, the consumer, does not receive the goods or services that have been agreed upon, resulting in a loss for the consumer.

Default of one of the parties in the agreement is a failure to fulfill the conditions stated in the agreement. This is usually experienced more by parties who are weak/have a high dependence on other parties. Because these requirements are one-sided / more burdensome to the weak party. Legitimately the term BPSK is managed in Regulation No. 8 of 1999 concerning Purchaser Security and in the Declaration of the Clergyman of Industry and Exchange it expresses the Debate Settlement Organization. In view of the clarification of UUPK article 45 section (2) the settlement of shopper debates as alluded to in this passage doesn't preclude the chance of a genial settlement by the gatherings to the question. At each stage, endeavors are made to utilize a quiet settlement by the two players to the debate. The settlement is done by the two players to the question (business entertainers and customers) without going through a court or the Purchaser Debate Settlement Office and doesn't struggle with this Regulation. In light of the arrangements of Article 45 section (2) UUPK connected to the clarification, customer debate goal can be done in the accompanying ways: 1) Serene settlement by the gatherings to the question without including an impartial court or outsider; 2) Settlement through court; 3) Settlement out of court through the Purchaser Question Settlement Office.

In liability based on a default, the obligation to pay compensation is none other than the result of applying the provisions of the agreement, which are legal provisions that both parties voluntarily comply with based on the agreement. Thus, it is not the law that demands whether compensation must be paid or how much compensation must be paid, but both parties determine the conditions and the amount of compensation to be paid.

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