

Legal Responsibility of Travel Services for Consumer Losses

Ibrahim Nainggolan¹, Rahimah²

^{1,2}Faculty of Law, Universitas Muhammadiyah Sumatera Utara, Medan,
Indonesia

Jl. Kapten Muchtar Basri, No. 3, Glugur Darat II, Kec. Medan Timur, Kota
Medan, Indonesia

Email: ibrahimnainggolan@umsu.ac.id (Corresponding Author)

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Abstract

Organizing travel between the travel agency and its consumers, namely service users, has a legal relationship that creates responsibilities, rights and obligations between the parties. This human relationship in Islam is known as muamalah. One thing that people often do is an agreement. In Arabic, an agreement is 'uquud' which means a (recorded) contract agreement. Legal consequences will arise if business actors do not carry out their obligations properly and consumers will complain if the results received are not in accordance with the agreement at the time of the sale and purchase transaction that was carried out. In a contract or agreement, if the business actor can fulfill his obligations well then the business actor has made an achievement, but if the business actor has been negligent and cannot fulfill his obligations well then a default will arise. Apart from that, business actors or in this case travel agencies can also be subject to criminal penalties, Article 61 UUPK "criminal prosecution can be carried out against business actors and their management". It is also stated in Article 62 "Paragraph (1) Business actors who violate the provisions as intended in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). Paragraph (2) Business actors who violate the provisions as intended in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letters d and letter f shall be sentenced to imprisonment for a maximum of 2 (two)) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

Keywords: *Liability, Legal, Consumer, Travel Services.*

INTRODUCTION

Consumer protection is central to the implementation of buying and selling goods and/or services. In the business world, consumers must receive legal protection that can guarantee legal certainty and justice for them. In its development, there are more and more travel service bureaus, which also require tight competition. The business world is a place of competition that has its own dynamics and its existence cannot be avoided. Many business people consider that

competition is a negative thing, because they think it can threaten their respective businesses and result in a lack of profit to be made. Even though business competition is not of that nature, business competition can be carried out in a healthy way without harming other business people who are in fact competitors.

Organizing travel between the travel agency and its consumers, namely service users, has a legal relationship that creates responsibilities, rights and obligations between the parties. This human relationship in Islam is known as muamalah. One thing that people often do is an agreement. In Arabic, an agreement is 'uquud' which means a (recorded) contract agreement. Interaction that involves both parties, that is, in the sense that each party wishes to gain benefits or advantages, then from the interaction between the two parties, both parties bind themselves to each other. This aims to create rules so that in the future, no party will be harmed. Law is the totality of regulations whose implementation can be enforced by authorized bodies (Rumekoy & Maramis, 2014).

If in an agreement someone has been bound by an agreement, but someone does not fulfill their achievements, that is known as default (broken promise). This situation is a civil law case. Civil law is a collection of legal regulations that regulate legal relationships between one person and another, with an emphasis on individual interests. Therefore, default is categorized as a civil case. Based on the provisions of Article 1233 of the Civil Code, it states that "Every agreement is created either because of an agreement or because of law".

The service provider, namely the travel agency, as a business actor has entered into an agreement with the consumer and has responsibilities that must be carried out as a legal consequence of the existence of a service usage agreement between the two parties. The responsibilities of business actors are regulated in the Consumer Protection Law no. 8 of 1999 concerning Consumer Protection (UUPK). In the UUPK it can be seen that one of the responsibilities of business actors is the responsibility for compensation for consumer losses. Business actors are responsible for providing compensation or replacement services for losses experienced by consumers as a result of using traded services, or because the services received or utilized are not in accordance with the agreement..

Travel agencies as business actors also have responsibilities that must be carried out based on the agreements they agree with consumers so that the trip can run well, comfortably and safely to the destination. If the consumer does not receive the service as promised so that the consumer suffers a loss, then the business actor can be said to have committed a breach of contract.

In this regard, before traveling, the travel party and the consumer enter into an agreement in written or unwritten form. Travel agencies provide information regarding departure times, drivers and the brand of car used to pick them up. Meanwhile, consumers will give an amount of money according to the travel service tariff. From this agreement, responsibility will arise in the form of fulfilling the rights and obligations of the travel agency and consumers. However, in fact, there are still many discrepancies between what is promised and what is provided. Consumers often experience losses due to less than optimal service from service providers (Nuariyanto, 2022).

Based on Law Number 8 of 1999 concerning Consumer Protection, Article 4 specifically describes several consumer rights:

1. the right to comfort, security and safety in consuming goods and/or services;
2. the right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and conditions and guarantees promised;
3. the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;
4. the right to have opinions and complaints heard regarding the goods and/or services used;
5. the right to obtain appropriate advocacy, protection and efforts to resolve consumer protection disputes;
6. the right to receive consumer guidance and education;
7. the right to be treated or served correctly and honestly and not in a discriminatory manner;
8. the right to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be;
9. rights regulated in other statutory provisions.

It is the consumer rights described above that must be protected in cooperation or service sale and purchase agreements between consumers and travel business actors. As time goes by, many of the consumer rights above have the potential to be violated by travel service businesses. Therefore, research is needed regarding consumer protection.

Agreements made between travel agents and service users must take into account the rights and obligations of each party. Legal responsibilities for travel agents and service users have arisen since the agreement was established as outlined in a tour package procurement agreement, either verbally or in writing. Therefore, it is very necessary to be responsible in fulfilling the rights and obligations of each party in order to achieve justice for travel agencies and service users (consumers).

Travel parties often absolve themselves of responsibility for the loss of goods belonging to service users because of the basic clauses or standard agreements, service users are deemed to have known the rules of the agreement that has been made by the travel party. The losses experienced by consumers should be the responsibility of the service provider, because the special function of the Travel Bureau is to guarantee facilities, safety and comfort for consumers in accordance with what is stated in the "tourism service promise" which is then sold in the form of a "brochure." Tour" (Pratiwi & Vijayantera, 2023).

RESEARCH METHOD

A research cannot be said to be research if it does not have a research method (Koto, 2021). Research methods are one of the factors of a problem that will be discussed. The type of research used in this research is normative legal research. This research was conducted using a statutory approach. The statutory approach is carried out by reviewing all laws and regulations that are related to the legal issue being handled. (Marzuki, 2017). Analysis of legal materials is carried out using qualitative analysis methods which are used to explain legal events, legal materials or legal products in detail to facilitate legal interpretation (Zainuddin & Ramadhani, 2021).

DISCUSS AND ANALYSIS

Legal Protection for Consumers for Mistakes in Travel Services

Consumer protection law is a branch of legal science that grew and developed in the 1900s. Consumer protection law is a response to industrialization activities in the United States and Europe, as well as a response to the demands of globalization. In consumer protection, there are two legal terms, namely consumer law and consumer protection law. Consumer law and consumer protection law are new legal fields in academics and law enforcement practice in Indonesia (Pratiwi & Vijayantera, 2023). Consumer protection is actually legal protection related to consumer rights. Regarding consumer rights, it is important so that people can become careful and intelligent consumers. If consumers feel that there is discriminatory treatment, they will immediately become aware of it, and then consumers can take action to fight for their rights which are violated by traders. (Lestari, 2023).

Legal protection is the protection of honor and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions against arbitrariness. In other words, legal protection is a variety of legal measures that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party and has the concept that the law provides justice, order, certainty, benefit and peace. . In carrying out and providing legal protection, a place or container is needed for its implementation which is often called a means of legal protection, namely a means of preventive legal protection and a means of repressive legal protection. (Artanto & Bhakti, 2021).

Consumer Protection Law according to Az. Nasution is a consumer law that contains principles or rules that are regulatory in nature, and also contains characteristics that protect the interests of consumers. Consumer law is defined as the overall principles and legal rules that regulate relationships and problems between various parties and each other relating to consumer goods and/or services in social life.

The definition of consumer protection in Article 1 Number 1 of Law Number 8 of 1999 concerning Consumer Protection, hereinafter abbreviated to UUPK 8/1999 is "all efforts to ensure legal certainty to provide protection to consumers". The definition of consumer in Article 1 Number 2 UUPK 8/1999 concerning Consumer Protection is "every person who uses goods and/services available in society, whether for the benefit of themselves, their family, other people or other living creatures and not for trading." Meanwhile, the definition of Business Actor in Article 1 Number 3 UUPK 8/1999 concerning Consumer Protection is "every individual or business entity, whether in the form of a legal entity or non-legal entity which is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through agreements to carry out business activities in various economic fields".

Consumer protection based on Law Number 8 of 1999 concerning Consumer Protection is based on the principles of benefit, justice, balance, security and consumer safety which is jointly implemented based on five principles that are in accordance with national development, namely:

- a. The benefit principle is intended to mandate that all efforts in implementing consumer protection must provide the maximum benefit for consumers and business actors as a whole.
- b. The principle of justice means that participation of all people can be realized optimally and provide opportunities for consumers and business actors to obtain rights and obligations fairly.
- c. The principle of balance means that consumer protection provides balance between consumers, business actors and the government in a material or spiritual sense.
- d. The principle of consumer safety and security is to provide security and safety guarantees to consumers in the use and consumption, as well as utilization of goods or services consumed or used.
- e. The principle of legal certainty means that business actors and consumers obey the law and obtain justice in implementing consumer protection, and the state guarantees legal certainty.

In letter d of the rationale for the issuance of Law Number 8 of 1999, it is stated that in order to increase the dignity of consumers, it is necessary to increase consumer awareness, knowledge, concern, ability and independence to protect themselves and develop attitudes towards responsible business behavior. Based on these considerations, consumer protection aims to:

- a. Increase consumer awareness, ability and independence to protect themselves.
- b. Raising the dignity of consumers by preventing them from negative access to the use of goods or services.
- c. Increasing consumer empowerment in choosing, determining and demanding their rights as consumers.
- d. Creating a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information.
- e. Raising awareness of business actors regarding the importance of consumer protection so that an honest and responsible attitude in business can develop.
- f. Improving the quality of goods or services that ensures the continuity of the business producing goods or services, health, comfort, security and consumer safety (Asyhadie, 2014).

Consumer protection is the goal of the business to be achieved or the situation to be realized. Therefore, consumer protection objectives need to be designed and developed in a planned manner and prepared early on. Consumer protection objectives include activities for creating and implementing a consumer protection system. Consumer protection objectives are structured in stages, starting from awareness to empowerment. Achieving the goal of consumer protection does not have to go through stages based on this arrangement, but by looking at the urgency. For example, the goal of improving the quality of goods, its achievement does not have to wait until the first goal is achieved, namely increasing consumer awareness. Ideally, achieving consumer protection goals is carried out simultaneously.

Consumer rights in Article 4 UUPK 8/1999, namely:

- a. The right to security and safety in consuming goods

- b. The right to obtain correct, clear and honest information regarding the condition and guarantee of goods
- c. The right to choose and obtain goods in accordance with the exchange value and condition and guarantee of the goods
- d. The right to have opinions and complaints heard regarding the goods used
- e. The right to obtain protection and appropriate efforts to resolve consumer protection disputes
- f. The right to obtain the necessities of life
- g. The right to obtain compensation
- h. The right to a clean and healthy living environment
- i. The right to obtain consumer education.

Consumer obligations in Article 5 UUPK 8/1999, namely:

- a. Read or follow information instructions and procedures for using or utilizing goods for safety and security.
- b. Have good faith in carrying out transactions to purchase goods.
- c. Pay according to the agreed exchange rate.
- d. Follow appropriate legal resolution efforts for consumer protection disputes.

The rights of business actors in Article 6 UUPK 8/1999, namely:

- a. The right to receive payment in accordance with the agreement regarding the conditions and exchange value of goods and/or services traded;
- b. The right to obtain legal protection from consumer actions with bad intentions;
- c. The right to self-defense is appropriate in the legal resolution of consumer disputes.

The obligations of business actors in Article 7 UUPK 8/1999, namely:

- a. Have good faith in carrying out business activities;
- b. Treating or serving consumers correctly and honestly and not discriminatory
- c. Guarantee the quality of goods and/or services produced or traded based on the provisions of applicable quality standards for goods and/or services;
- d. Providing compensation, compensation, if the goods and/services received or utilized by consumers do not comply with the agreement.

Legal consequences will arise if business actors do not carry out their obligations properly and consumers will complain if the results received are not in accordance with the agreement at the time of the sale and purchase transaction that was carried out. In a contract or agreement, if the business actor can fulfill his obligations well then the business actor has made an achievement, but if the business actor has been negligent and cannot fulfill his obligations well then a default will arise. Default or breach of contract is the failure to carry out the performance or obligations as agreed in the contract. This act of breach of contract has the consequence of giving rise to the rights of the aggrieved party, demanding that the party who committed the breach of contract provide compensation or replacement. There are three types of default, namely: default not meeting achievements, default fulfilling achievements too late, and default not fully meeting achievements.

Responsibility of Travel Services for Consumers Who Have Been Harmed

Regulations regarding travel agencies in order to protect consumers of travel agency services stipulate that the travel agency company is a business entity in the form of a Limited
Legal Responsibility of Travel ... (Ibrahim Nainggolan & Rahimah)209

Liability Company and the travel agency company is responsible for losses experienced by consumers of travel agency services.

Legal responsibility is the obligation for business actors to bear all the consequences that arise when carrying out a legal action. The concept of legal responsibility is closely related to the concept of rights and obligations. The concept of rights here is a concept that emphasizes the understanding of rights and the understanding of obligations that must be fulfilled for business actors to be able to correlate with other people (Rahardjo, 2000). A concept related to the concept of legal obligation is the concept of responsibility in taking responsibility for legal actions. This means that business actors are fully responsible for sanctions if their actions are in conflict with applicable regulations. According to civil law, basic responsibility is divided into two types, namely responsibility based on risk and responsibility based on error. The principle of responsibility based on mistakes means that someone must be responsible for their mistakes that harm other people. Meanwhile, the principle of risk responsibility means that business actors must be responsible for all risks in carrying out their business activities. The responsibilities of business actors are stated in Article 19 UUPK which states that:

1. Business actors are responsible for providing compensation for damage, pollution and losses to consumers of services produced or traded;
2. Compensation as referred to in paragraph 1 may take the form of a refund or replacement of goods and/or services of the same or equivalent value, or health care and/or provision of compensation in accordance with the provisions of the applicable laws and regulations;
3. Compensation shall be provided within a period of 7 (seven) days after the date of the transaction;
4. Providing compensation as intended in paragraphs 1 and 2 does not eliminate the possibility of criminal prosecution based on further evidence regarding the existence of an element of error;
5. The provisions as intended in paragraphs 1 and 2 do not apply if the business actor can prove that the error is the consumer's fault.

Every tourist has the right to obtain, first, accurate information regarding tourist attractions, second, tourism services in accordance with standards, third, legal and security protection, fourth, health services, fifth, protection of personal rights; and insurance coverage for high-risk tourism activities. Law Number 8 of 1999 concerning Consumer Protection provides an opportunity for consumers who are disadvantaged by the actions of business actors which harm consumers to report business actors who violate the law or have problems in carrying out their business, to the Republic of Indonesia Police in the form of criminal sanctions. This is based on Article 61 UUPK "criminal prosecution can be carried out against business actors and their management". It is also stated in Article 62 "Paragraph (1) Business actors who violate the provisions as intended in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2) and Article 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). Paragraph (2) Business actors who violate the provisions as intended in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article

17 paragraph (1) letters d and letter f shall be sentenced to imprisonment for a maximum of 2 (two)) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

CLOSURE

Conclusion

Legal consequences will arise if business actors do not carry out their obligations properly and consumers will complain if the results received are not in accordance with the agreement at the time of the sale and purchase transaction that was carried out. In a contract or agreement, if the business actor can fulfill his obligations well then the business actor has made an achievement, but if the business actor has been negligent and cannot fulfill his obligations well then a default will arise.

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Suggestion

It is hoped that travel agencies will be more careful in carrying out and paying attention to their obligations in accordance with the contents of the agreed agreement. Because it can be subject to civil and criminal sanctions.

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