

# Resolution of Consumer Disputes for Compensation Through Compliment Night Reviewed From Economic Analysis Of Law Theory

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#### ABSTRACT

When there is an agreement between the consumer and the business actor regarding participation as a member, the agreement that has been made together creates rights and obligations for each party and must be implemented in good faith. As agreed, the business actor has the right to receive a certain amount of payment and is obliged to provide member facilities such as accommodation, spa, gym and other services as agreed. On the other hand, the consumer has paid a certain amount of money as a member but has not received one of his rights, namely a complimentary night (lodging) for two nights at the hotel. Consumers have asked for their rights several times but business actors have not been able to fulfill them. The question arises, how to resolve disputes regarding compensation for consumer compliment night rights in terms of economic analysis of law theory? This case was resolved through court. The research method in this research uses a normative legal research method with a case approach. This research uses the theory of Economic Analysis of Law. The results of this research are to determine the resolution of compensation disputes regarding consumer rights in terms of economic analysis of law theory.

Keywords: Consumer dispute resolution, compensation, compliment night

#### Introduction

Agreements between consumers and business actors have legal consequences for the parties. According to Article 1338 of the Civil Code, all agreements that have been legally made will apply as law to the parties who make them. This means that it is made legally referring to Article 1320 of the Civil Code regarding the conditions for the validity of an agreement, which means that when an agreement has been reached between the consumer and the business actor, it will give rise to rights and obligations for the parties who made it.

One example of this is an agreement between the consumer and the business actor regarding participation as a member of the Borobudur Premier Club. As agreed, the business actor has the right to receive a certain amount of payment and is obliged to provide member facilities such as accommodation, spa, gym and other services as agreed. On the other hand, consumers have paid a certain amount of money as members but have not received one of their rights, namely a complimentary night (lodging) for two nights at the hotel. The agreement that has been made together gives rise to rights and obligations for each party and must be implemented in good faith. According to Article 1338 paragraph (1) of the Civil Code, it is stated that agreements must be implemented in good faith. If we look at the case being researched, consumers have requested their rights several times but have not been able to fulfill them due to various reasons stated by business actors. Furthermore, what is the implementation of good faith and what is the resolution of compensation experienced by consumers who have paid as members but have not yet received their rights.

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There are several examples of compensation in several cases that have been researched, including research conducted by Kadek Tia Yuliastari et al, in Buleleng Regency, laundry service business actors provide compensation that is not in accordance with the losses experienced by laundry service consumers. Responsibility for losses to consumers of business actors only provides compensation for half the price of the goods, while the efforts taken by consumers are through peaceful means through negotiations between business actors and consumers<sup>5</sup>(Yuliastari et al., 2018). Another research conducted by Andi Ahmad et al, in the city of Balikpapan, business actors returned change with candy. The validity of candy in payment transactions is based on the provisions of Article 2 paragraph (2) of Law Number 7 of 2011 concerning Currency and Bank Indonesia Regulation Number 6/14 /PBI/2004 concerning Issuance, Circulation, Revocation and Withdrawal, and Destruction of Rupiah currency which states that paper money and metal are legal means of payment in the territory of the Republic of Indonesia, then candy is not a legal means of payment because based on this article legal currency are banknotes and coins<sup>6</sup>.(Ahmad et al., 2022).

From the presentation given, the author is interested in conducting research on how to resolve consumer disputes regarding compensation for complaint rights in terms of economic analysis of law theory.

### Literature Review

Before we discuss how to resolve consumer disputes regarding compensation for complaint rights in terms of economic analysis of law theory, we need to know what a consumer is. The term consumer comes from the word consumer (English-American), or consumer/consumer (Dutch). Literally the meaning of the word consumer is anyone who uses goods and services. Meanwhile, Black's Law Dictionary defines a consumer as someone who buys goods or services for personal, family or home purposes, without any intention of reselling the goods or services. According to the Big Indonesian Dictionary, the meaning of the word consumer is a user or consumer. The general understanding of consumers is defined as the final user of the product handed over to them, that is, everyone who gets goods to use and not trade or buy and sell again.<sup>7</sup>(Rosmawati, 2018). Philip Kotler defines the consumer <sup>8</sup>(Ad-Ins, 2021) as a certain person or party who pays fees for a product or service to meet their needs. In other words, the definition of a customer is not far from the consumption activity itself.<sup>9</sup>(Kotler & Armstrong, 2012) According to Inosentius Samsul, consumers are the users or end users of a product, either as buyers or obtained in other ways, for example through gifts, gifts and invitations. Meanwhile, according to Darus Badrul Zaman, consumers are all individuals who use goods and services in a concrete and real way.<sup>10</sup>(Muthiah, 2018)

Based on the above, consumer protection is action taken by the government and related institutions to protect consumer rights. Consumer protection covers various aspects, including clear and honest information about products or services, fair prices, quality of products or services that meet standards, and protection from products that are unsafe or do not function properly. Consumer protection also provides certainty and confidence to consumers to carry

<sup>5</sup> Yuliastari, Kadek Tia, Ni Ketut Sari Adiningsih, and Ketut Sudiatmaka. 2018. "Tanggung Jawab Pelaku Usaha Jasa Laundry Terhadap Kerugian Konsumen Di Kabupaten Buleleng." *Jurnal Komunitas Yustisia* 1(3):228–38

<sup>6</sup> Ahmad, Andi, Dwi Ariyano, and Mawar Suriati. 2022. "Tinjauan Yuridis Terhadap Pelaku Usaha Yang Mengganti Uang Kembalian Dengan Permen Di Kota Balikpapan." *Jurnal Lex Suprema* 4(1):819–38

<sup>7</sup> Rosmawati. 2018. *Pokok-Pokok Hukum Perlindungan Konsumen*. 1st ed. Depok: Prenada Media Group

<sup>8</sup> Ad-Ins. 2021. "The Definition of a Consumer." Retrieved March 30, 2023 (<https://www.ad-ins.com/the-definition-of-a-consumer/>)

<sup>9</sup> Kotler, Phillip, and Gary Armstrong. 2012. *Principles of Marketing*. 14th ed. New Jersey: Pearson Education

<sup>10</sup> Muthiah, Aulia. 2018. *Hukum Perlindungan Konsumen: Dimensi Hukum Positif Dan Ekonomi Syariah*. Yogyakarta: Pustaka Baru Press

out transactions safely and avoid detrimental business practices. On the other hand, companies must also understand the rights and needs of consumers and ensure that the products or services they offer are safe and meet appropriate quality standards. This will help companies to build good relationships with consumers and achieve long-term success in business.

In Indonesia, the objectives of consumer protection as stated in Article 3 of the Consumer Protection Law Number 8 of 1999, include:

1. Increase consumer awareness, ability and independence to protect themselves;
2. Raising the dignity of consumers by preventing them from negative excesses of use and/or services;
3. Increasing consumer empowerment in choosing, determining and demanding their rights as consumers;
4. Creating a consumer protection system that contains elements of legal certainty and information disclosure as well as access to information.

If we look at Article 3 point 3 of the Consumer Protection Law Number 8 of 1999 concerning consumer protection related to demanding rights, in this case consumers who have paid dues and have become members have not received their rights, namely member facilities such as accommodation, spa, gym and membership services, others as agreed. On the other hand, consumers have not received one of their rights, namely a complimentary night (lodging) for two nights at the Borobudur Hotel.

What are consumer rights? Consumer rights are regulated in Article 4 of the Consumer Protection Law, as follows:

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 condition and guarantee 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;
- And
9. rights regulated in other statutory provisions

## Research Methodology

This research uses normative legal research. According to Soejono Soekanto and Sri Madmuji, the normative legal research method with the object of research study on legal principles is research on legal rules, which are standards for behavior.<sup>11</sup> (Saifullah, 2018) This research is normative legal research with a case approach carried out by examining cases related to the legal issues being faced. The case in this research focuses on Rolas Budiman Sitinjak as a consumer who has paid dues as a member but has not yet received his right to a complimentary

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<sup>11</sup> Saifullah. 2018. *Tipologi Penelitian Hukum (Sejarah, Paradigma Dan Pemikiran Tokoh Di Indonesia)*. Bandung: PT.Refika Aditama

night (lodging) for two nights at the Borobudur Hotel. This case is a case that has become a court decision that has permanent force or *inkracht*. The main study in this case approach is the judge's *ratio decidendi* or reasoning to arrive at a decision. *Ratio decidendi* or reasoning is needed both for practice and academic studies. The case approach emphasizes that several cases studied will become references for legal issues.

<sup>34</sup> Sources of legal materials used include: primary and secondary sources of legal materials. As a normative legal research, the focus of this research is based on the study of primary legal materials and secondary legal materials. Legal Materials are the most important part of legal research. To solve the legal issues faced, legal materials are used as a research source.<sup>12</sup>(Susanti & Efendi, 2014) The primary legal material referred to here is statutory regulations, in this research the Consumer Protection Law and Civil Procedure Law, the East Jakarta District Court decision 378/Pdt.G/2019/PN.Jkt.Tim and the High Court decision Number 182/PDT/2021/PT.DKI., is an important material.<sup>13</sup>(Muhjad & Nuswardani, 2012)

### Result and Discussion

If it is related to the case being researched Article 4 point 3 of the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services, in the case being researched the consumer has not received correct, clear and honest information regarding the party's demands. Concerned consumers who have become members have not received their rights, namely member facilities such as accommodation, spa, gym and other services as agreed. In fact, business actors should provide correct, clear and honest information to consumers who have not received one of their rights, namely a complimentary night (lodging) for two nights at the Borobudur Hotel.

If it is related to the case being studied in Article 4 number 4, the right to have their opinions and complaints heard regarding the goods and/or services used, in this case the consumer has not had his opinion fully heard, as the complaint has been submitted several times but his rights have not been fulfilled by the business actors.

What should be properly taken into account is the statement of Article 4 number 8 of the right to receive compensation, compensation and/or replacement, if the goods and/or services received do not comply with the agreement or are not as they should be, regarding compensation there needs to be an agreement or need well calculated. Referring to this article, in this case the compensation given by the business actor was not in accordance with what had been promised.

However, it should be noted that the compensation requested by the consumer should not exceed the appropriate price. Because in this case the consumer is asking for compensation for the right to complimentary nights (lodging) for two nights at the Borobudur Hotel, the first is material compensation of Rp. 202,288,000,- (two hundred and two million two hundred and eighty eight thousand rupiah) and both consumers also asked for immaterial compensation from the business actor in the amount of Rp. 500,000,000,- (five hundred million rupiah), and thirdly there is a late fee of Rp. 15,000,000 (fifteen million rupiah) per day if the business actor is late in fulfilling compensation for material and immaterial losses.

<sup>12</sup> Susanti, Dyah Ochtorina, and A'an Efendi. 2014. *Penelitian Hukum (Legal Research)*. 3rd ed. Jakarta: Sinar Grafika

<sup>13</sup> Muhjad, M. Hadi., and Nunuk Nuswardani. 2012. *Penelitian Hukum Indonesia Kontemporer*. 1st ed. Yogyakarta: Genta Publishing

So the compensation proposed by the consumer is too much, so there needs to be a measure of the amount of compensation that is in line with the fairness of the parties so that it does not burden the business actor. In this case, the good faith of all parties is needed to carry out what has been mutually agreed upon. Good faith is the intention of one party not to harm the other party. This is in accordance with Article 1338 paragraph 3 of the Civil Code that agreements must be implemented in good faith. We all know that good faith is one of the principles. The position of legal principles is the foundation of legal norms, basically providing direction, objectives and basic assessments for the existence of a legal norm.

Some experts even stated that the meaning of legal principles is the heart or heart of legal norms (legal regulations). According to GW Paton<sup>33</sup> this is based on 2 reasons, namely:<sup>14</sup>(Suprapti & Tarigan, 2021)

1. Legal principles are the broadest "foundation" for the formation of legal norms. So that each legal norm can in turn be returned to these legal principles.
2. Legal principles are the "reason" for the emergence of a legal norm or the "ratio legis" of a legal norm. We want to continue to create legal norms. Legal principles will not exhaust their power by creating legal norms, but will continue to exist and will continue to create new legal norms.

<sup>5</sup> The principle of good faith has two meanings, namely:<sup>15</sup>(Arifin, 2020)

1. Good faith in the objective sense, that an agreement made must be implemented with due regard for the norms of propriety and decency, which means that the agreement must be implemented in such a way that it does not harm either party.
2. Good faith in the subjective sense, namely the meaning of good faith which lies in a person's inner attitude. In property law, good faith can be interpreted as honesty. Good faith in the subjective sense can be interpreted as a person's honesty in carrying out a legal act, namely what lies in a person's inner attitude at the time the legal act is carried out. Good faith in this subjective sense is regulated in Article 531 Book II of the Civil Code.

In this case, the consumer dispute resolution requested compensation for the right to a complimentary night (lodging) for two nights at the Borobudur Hotel. We need to know what is the meaning of consumer dispute? Consumer disputes are defined as disputes between consumers and business actors where consumers demand compensation for damage, pollution, and/or because they consume products sold by business actors.<sup>16</sup>(Wahidi et al., 2023)

Regarding compensation as a form of responsibility for losses, it is regulated <sup>40</sup>Article 1366 of the Civil Code. Losses suffered by consumers themselves are regulated by <sup>42</sup>Article 1367 of the Civil Code. These two articles basically stipulate that compensation must be given for actions and negligence in matters under their supervision. These two articles are actually the basis for efforts to realize consumer protection. The government's efforts to protect consumer

<sup>14</sup> Suprapti, Endang, and Arihta Esther Tarigan. 2021. "Itikad Baik Dalam Perjanjian Suatu Perspektif Hukum Dan Keadilan." *SALAM: Jurnal Sosial Dan Budaya Syar-I* 8(1):147–58. doi: 10.15408/sjsbs.v8i1.19377

<sup>15</sup> Arifin, Miftah. 2020. "Membangun Konsep Ideal Penerapan Asas Iktikad Baik Dalam Hukum Perjanjian." *Jurnal Ius Constituendum* 5(1):66. doi: 10.26623/jic.v5i1.2218

<sup>16</sup> Wahidi, Ahmad, and Nur Jannani. 2023. "Kewenangan Badan Penyelesaian Sengketa Konsumen (BPSK) Dan Pengadilan Tuntutan Pengguna Malaysia (TTPM) Dalam Penyelesaian Sengketa Konsumen." *Jurnal Penelitian Hukum De Jure* 23(1): 87–100



rights have actually been regulated in statutory regulations, namely in <sup>22</sup> Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.<sup>17</sup> (Maliki & Fitriyah, 2023).

In the case studied, the consumer demanded compensation because in this case the consumer asked for compensation for the right to a complimentary night (lodging) for two nights at the Borobudur Hotel. There are two, the first is material compensation of Rp. 202,288,000,- (two hundred and two million two hundred and eighty eight thousand rupiah) and both consumers also asked for immaterial compensation from the business actor in the amount of Rp. 500,000,000,- (five hundred million rupiah), and thirdly there is a late fee of Rp. 15,000,000 (fifteen million rupiah) per day if the business actor is late in fulfilling compensation for material and immaterial losses. So the compensation proposed by the consumer is too much, so there needs to be a measure of the amount of compensation that is in line with the fairness of the parties so that it does not burden the business actor.

If the settlement of consumer compensation is linked to the theory of Economic Analysis of Law, then there is the application of economic principles as an alternative to rational choices used to analyze legal issues.<sup>1</sup> This theory comes from the flow of utilitarianism which prioritizes the principle of benefit, which was developed by the philosopher Jeremy Bentham (1748-1832) and the philosopher John Stuart Mill (1806-1873). The simple EAL approach is also based on economic considerations which are based on three basic values, namely: utility, value and efficiency. In Richard Posner's view, EAL is constructed as an economic conception of justice, which in principle aims to ensure that economic analysis of law can realize the maximum public interest (maximizing overall social utility). Based on the description of EAL, according to this research, EAL has three characteristics, namely: first, EAL tries to synergize law and economics, where law has the character of legal certainty while economics has an orientation towards benefit. Therefore, EAL emphasizes that law and economics can create useful legal certainty and guarantee benefits with legal certainty. Second, EAL tries to see law in broad dimensions with an interdisciplinary character. This means that a legal product not only has an internal dimension to a legal system, but also embodies other aspects that form the substance of legal regulations. If it is related to the relationship between law and economics, EAL tries to integrate the values of effectiveness and efficiency in the substance of legal policy. Good legal rules from an EAL perspective must also pay attention to the values of effectiveness and efficiency.

Third, EAL simply views law and economics as three interrelated aspects such as utility, value and efficiency. This confirms that if one of the aspects above is not fulfilled then the law is not optimal and maximal because it negates one of the existing aspects. If we refer to the provisions on administrative sanctions related to digital business, then referring to the idea of EAL, administrative sanctions in digital business should also refer to the values in the idea of EAL which include utility, value and efficiency which are aims to realize as many public interests as possible.<sup>18</sup> (Kurniawan, 2014). Sudikno Mertokusumo is of the view that if you are looking for the law, first look for the meaning of a word in the law because the law is authentic, in written form, and guarantees legal certainty.<sup>19</sup>(Asikin, 2020)

<sup>17</sup> Maliki, Achmad Ichsan, and Mas Anienda Tien Fitriyah. 2023. "Perlindungan Konsumen Berupa Ganti Kerugian Sebagai Pertanggungjawaban Pihak Pengelola Taman Wisata." *Jurnal Hukum Media Justitia Nusantara* 13(1): 8-16

<sup>18</sup> Kurniawan, I Gede Agus, Putu Aras Samsithawrati, Lourenco De Deus, and Mau Lulo. 2023. "Eksistensi Sanksi Administratif Bisnis Digital Dalam Perspektif Economic Analysis of Law." *Jurnal Ius Constituendum* 8(1): 115-31

<sup>19</sup> Asikin, Zainal. 2020. *Mengenal Filsafat Hukum*. Yogyakarta: Andi

Regarding the implementation of consumer protection from these three elements, the state, business actors and consumers do not yet have a good synergy of roles so that violations and legal loopholes still arise in the implementation of consumer protection. Thus, it can be concluded that the implementation of consumer protection has not been carried out well. Even though the consumer protection law clearly states that consumers have the right to obtain clear and correct information. The meaning of consumer protection can be linked to laws that protect consumers. As protected consumers, consumers are the object of protection for implementing statutory regulations. The next role is as a consumer protector, where consumers have responsibility for implementing consumer protection because regulations can be effective if there is a role from the community in the operation of the law.

Regarding the resolution of consumer disputes related to compensation, apart from being able to be done through BPSK, non-litigation channels can also be resolved through litigation in accordance with Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Claims (PERMA No.2/2015) which was later updated with Supreme Court regulations. Number 4 of 2019 concerning Procedures for Settlement of Simple Claims (PERMA) with the hope that if a dispute occurs, resolution through litigation requires a process that is simple, fast and low cost to obtain legal certainty that is fair and beneficial for justice seekers.<sup>20</sup> However, in this case the consumer settled through a breach of contract lawsuit at the East Jakarta District Court and took legal action to appeal to the Jakarta High Court. A judge is required to actively and continuously follow and explore the law, legal principles, legal theories, legal sources, doctrine, jurisprudence, applicable legal values, especially when giving legal considerations (ratio decidendi) to judges. must be able to interpret, reason and make legal arguments so that decisions are based on the value of justice, the value of benefits and the value of legal certainty so that the authority of the law will be reflected in the decision.<sup>21</sup> Basically, what the judge does at the trial is to consolidate concrete events, qualify concrete events, which means determining the legal events and concrete events and constituting or giving the law or punishment, which is basically the same as the activities of a legal graduate who works in the field of law. In particular, judges are always faced with concrete events, a case or conflict that must be resolved and resolved.(Mertokusumo, 2014)

<sup>1</sup> Legal discovery is the process of forming laws by judges or other legal officers who are given the task of implementing the law on concrete events. Legal discovery is a complex process or series of activities which basically starts from the legal response until the decision is made. So the momentum for the discovery of law begins after concrete events are proven and then the law must be searched for or discovered.

### Conclusion

Compensation for consumers has indeed been regulated in Article 4 point 8 UUPK, but in the case studied, the claim for compensation in this case was that the consumer asked for compensation for the right to a complimentary night (lodging) for two nights at the Borobudur Hotel, there were two, the first was material compensation in the amount of Rp. 202,288,000,- (two hundred and two million two hundred and eighty eight thousand rupiah) and both consumers also asked for immaterial compensation from the business actor in the amount of Rp. 500,000,000,- (five hundred million rupiah), and thirdly there is a late fee of Rp. 15,000,000 (fifteen million rupiah) per day if the business actor is late in fulfilling compensation for material and immaterial losses. So the compensation proposed by the

<sup>20</sup> Poesoko, Herowati.2023. *Perkembangan Hukum Acara Perdata Di Indonesia*. Yogyakarta: Laksbang Justitia

<sup>21</sup> Poesoko, Herowati. 2015. "Penemuan Hukum Oleh Hakim Dalam Penyelesaian Perkara Perdata." *Jurnal Hukum Acara Perdata ADHAPER* 1(2): 215-37



consumer is too much, so there needs to be a measure of the amount of compensation that is in line with the fairness of the parties so that it does not burden the business actor.

Settlement of consumer compensation is linked to the theory of Economic Analysis of Law, so there is the application of economic principles as an alternative to rational choices used to analyze legal issues.' The simple EAL approach is also based on economic considerations which are based on three basic values, namely: utility, value and efficiency. In Richard Posner's view, EAL is constructed as an economic conception of justice, which in principle aims to ensure that economic analysis of law can realize the maximum public interest (maximizing overall social utility). With the hope of being able to solve consumers with a win win solution. A judge is required to actively and continuously follow and explore the law, legal principles, legal theories, legal sources, doctrine, jurisprudence, applicable legal values, especially when giving legal considerations (ratio decidendi) to judges. must be able to interpret, reason and make legal arguments so that decisions are based on the value of justice, the value of benefits and the value of legal certainty so that the authority of the law will be reflected in the decision.

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