
Legal Protection For Consumers Of Parking Services Indonesia In Kabanjahe

Listra Sembiring¹, Henry Aspan², Hasdiana Juwita Bintang³

¹Student of Universitas Pembangunan Panca Budi, Medan, Indonesia

²Lecturer of Universitas Pembangunan Panca Budi, Medan, Indonesia

³Lecturer of Universitas Pembangunan Panca Budi, Medan, Indonesia

ABSTRACT

Conducting this research aims to find out what the legal relationship is between parking service users and parking service managers and what are the civil responsibilities of parking managers toward consumers of parking services. Using the normative legal research method, it was concluded: in the use of parking, both the manager and the consumer, have a legal relationship, namely the goods safekeeping agreement in this case so that the obligation in the parking agreement is that the consumer surrenders his vehicle to the parking manager to be placed in the parking area he manages, and pays parking fee (service) to the parking manager. The obligation of the parking manager is to maintain and maintain the consumer's vehicle safely while it is parked in the parking service area and must return it to the way it was originally received. Thus the legal responsibility of the parking manager for the loss of goods or vehicles belonging to consumers related to the existence of a standard clause on the transfer of responsibility in parking tickets is that the parking manager is obliged to be responsible for giving compensation to consumers whose vehicles are lost in the parking area managed by the parking manager because the manager parking is proven to have defaulted on the parking agreement which is a goods custody agreement.

Keywords: Legal Protection, Consumer, Parking Services

INTRODUCTION

Indonesia's population in 2022 reached 275 million people. Indonesia ranks fourth in the world in the category of the largest population. Motorized vehicles in Indonesia that are active until February 2023 reached 153,400,392 units. The figure includes 147,153,603 units of private vehicles, namely 127,976,339 units of motorcycles (87 percent) and 19,177,264 private cars. The rest is freight and people transportation, namely 5.7 million units of large cars, 213,788 units of buses, and 85,113 units of special vehicles. These numbers require a very significant amount of road space and vehicle area. Motorized vehicles do not have to run continuously, requiring stopping space or a parking area.

Parking is a temporary state of motionlessness due to abandonment by the driver. Parking spaces are generally indicated by traffic signs or not. Parking spaces, parking lots, and buildings can be found off-street, whether organized by the government, legal entities, citizens, or the private sector. Parking spaces can be organized on a free/unpaid or paid basis. Each region of each province has its policy on parking areas tailored to the region's needs and interests. The government still provides general guidelines through the law. Regarding the law relating to parking as a public facility, there are regulations that directly or indirectly regulate parking, such as Law Number 22 of 2009 on Road Traffic and

Transportation, Law Number 8 of 1999 on Consumer Protection, Government Regulation Number 43 of 1993 on Road Infrastructure and Traffic, and Government Regulation Number 34 of 2006 on Roads.

Parking management is an activity that contains legal aspects. The development of parking management in Indonesia grew from the management of roadside parking carried out by local governments, then developed into particular parking lots and buildings. Currently, it is easy to find public parking locations in Indonesia that are well organized. There are also private companies specializing in the management of parking services. This development is a potential business that provides very significant profits. Data-based computerized recording machines assist these private companies. The data in question is intended to manage the administration of incoming and outgoing vehicles that utilize particular areas for parking vehicles. Utilization of these facilities generally uses tariffs adjusted to the type of vehicle and the area or place of management. The transaction media can be tickets, cards, smart cards, RFID, Magnetic cards, etc. Modernization also allows payments to be made by debit or flash card. Such an organization's primary purpose is order, regularity, beauty, and profit.

One of the most essential things in parking management is the protection of consumers who use parking services related to the safety of vehicles parked in parking lots. Users and providers of parking lots certainly do not want the parked vehicle to experience damage or loss of parked vehicles; the risks that occur are indeed the responsibility of the parking manager, both as an incident of loss of vehicles and vehicle accessories. Things like that are often disputed between parking managers and consumers because of the inconvenience obtained by consumers. Hence, binding an agreement between the parking manager and parking consumers is necessary. The standard agreement in the parking ticket is that the parking manager is not responsible for the loss of the vehicle or goods in the vehicle; even in the event of loss, the parking manager does not provide compensation to the consumer.

The absence of responsibility of parking business actors is one of the violations committed by parking business actors based on Law No.8 of 1999 concerning Consumer Protection. Law No.8 of 1999 concerning Consumer Protection regulates consumer rights and the responsibilities and obligations of business actors. However, in practice, the business actors do not fulfill their obligations to provide services in terms of parking security and are responsible for the loss of goods and vehicle accessories. It is stated in Law No.8 of 1999 concerning Consumer Protection that every consumer is entitled to the right to comfort, security, and safety, which implies that consumers are entitled to obtain products and services that are comfortable, safe, and secure.

Therefore, to learn more about how legal responsibility is given in these circumstances, the author conducted research outlined in a paper entitled "Legal Protection For Consumers of Indonesia Parking Services In Kabanjahe."

METHODS

Secondary law is to find a theoretical basis by comparing one theory with another and tertiary legal materials. The reason for using tertiary legal material is to look up a term. The data analysis method used is qualitative analysis. In this research, the author collects legal materials, including a. Primary legal materials, namely legal materials with binding legal force; the author uses primary legal materials, including the Civil Code and Consumer

Protection Law. b. Secondary legal materials, namely materials that provide explanations of primary legal materials, the author uses secondary legal materials, including literature books, scientific works and research results, journals, articles, supporting archives, and other legal materials published in electronic media on the internet. c. Tertiary legal materials, namely legal materials, can guide primary and secondary legal materials; the authors use tertiary legal materials, including legal dictionaries, large Indonesian dictionaries, and encyclopedias. Furthermore, the research data is analyzed with a statute approach by examining all laws and regulations related to legal issues.

RESULT AND DISCUSSION

Parking Management in Indonesia

At least with the increase in economic growth in Indonesia in the last five years, it is easy for people to buy motorized vehicles. The increase in the number of vehicles raises issues with the parking management system needed by the community as part of the facilities needed by motorized vehicles. There is a need for vehicles when stopping or parking. This need is based on the aim of ensuring safety and public order. According to Article 11, paragraphs (1) and (2) of Law Number 14 of 1992 concerning Road Traffic and Transportation:

1. Public parking facilities can be provided to support the safety, security, order, and smoothness of traffic and road transportation.
2. Parking facilities for the public, as referred to in paragraph (1), can be organized by the Government, legal entities, or Indonesian citizens.

Several parking principles are used in DKI Jakarta, namely On Street Parking and Off Street Parking. In the concept of On-street Parking, parking is done on the side of the road, which is intended for the proper function of the road. Alternatively, it can be interpreted as a place to park on the edge of the public road. The principle of off-street parking is parking where the vehicle's location is not on the road. This kind of parking takes place in public parking lots, mainly open to the public, and particular parking lots are limited to their use (Fiona, 2017).

In Indonesia, parking rates vary according to the purchasing power and economic level of the people in each region. Generally, parking rates in Indonesia range from two-wheeled to four-wheeled vehicles or more, ranging from Rp. 1,000 to Rp. 50,000, depending on the place (except in the airport area), time, and type of vehicle. Compared to Japan, parking fees range from JPY 100 to YJ 3,600, which in Rupiah terms is Rp. 388,000. In Indonesia, a car is not a luxury item, but in Japan, a car is a luxury item because taxes and parking fees are very high. The difference is that Japan provides convenient modes of public transportation so that people also get the right choice and good facilities. The following is the parking tariff in Karo District according to Karo District regulation NO 05/2012 concerning business service retribution:

1. At the tourist attraction location
 - a. Taxi Rp. 3,000,- /parking
 - b. Public/non-public bus Rp. 5000,- /parking
 - c. Public passenger car Rp. 3000,-/parking
 - d. Sedan/jeep/pic up Rp. 3000,- / parking
 - e. Two-wheeled vehicles Rp.1000,-/parking

2. At the location of the auction venue
 - a. Truck type goods car Rp. 3000,-/parking
 - b. Pic up cars, public buses Rp. 2000,-/parking
 - c. Rickshaw/wheelbarrow, wheelbarrow, and 2 (two) wheeled vehicles

There are at least 70 parking management companies in Indonesia, in addition to those managed by local governments. Parking management managed by local governments also aims to increase local revenue (PAD). The privately owned parking management companies in Indonesia include PT Securindo Packatama Indonesia, PT A-Plus Solution Pratama (A-Plus Parking), PT Centrepark Citra Corpora (Centrepark), PT Adhi Sukses Pratama (Adhil Parking), PT Eratek Prima Indonesia (Era Parking), PT Surya Utama Nusaparka (Sun Parking), PT. Nusapala Parking (NP Parking), PT Sun Parking Service International (SSI), PT Lestari Mandiri Erajaya (eQ-Park), PT Anugrah Binakarya (EZ Parking), PT Autopark Indonesia (Auto Parking), PT Bina Langgeng Optima Kreasi (Block parking and security Service), PT Karunia Parking Antasurya (Kpasparking), PT Sinar Indo Utama Parking (SIU Parking), and others. The Local Government plays a vital role in controlling and utilizing space for parking management in its area. The issue of parking must be regulated so as not to cause chaos in the city/region; if on-street parking causes congestion, if it is not regulated, it also causes illegal levies and corruption.

Parking management by the local government is included in local revenue, called local retribution, and classified as local taxes based on Law No. 32 of 2004 concerning regional autonomy and Law No. 33 of 2004 concerning sources of local revenue. According to Ismail, the local government collects this parking tax from parking management entrepreneurs or buildings, hotels, malls, or other locations that manage parking, in contrast to parking fees paid by motorists to parking managers or guards (classified as retribution), which are used directly by parking guards to maintain the parked vehicle (Mourin, 2013).

Several studies on revenue analysis through retribution in several regions in Indonesia show that local retribution from parking contributes significant local revenue. It is supported by the spirit of independence of each region through decentralization. Based on the analysis of Thamrin Simanjuntak, as cited by I Gusti Ayu Purnawati (2014), it is argued that each region in Indonesia is given the right to carry out regional autonomy by providing broad, honest, and responsible authority that can ensure regional development and development. Such authority is granted proportionally, which is realized by regulating, sharing, and utilizing equitable national resources, as well as balancing central and regional finances. The availability of parking areas or parking lots is a guarantee for the convenience of vehicle users.

This principle leads to the concept that parking management is a public law. However, suppose a relationship between the parking manager and the customer has occurred. In that case, the concept of certainty and rights and obligations is a concept in private law because there is an agreement in the relationship.

In practice, there are two types of parking based on the place or location of the parking business, namely on the shoulder of the road and parking outside the shoulder of the road (yard or specific parts that become one with the section). Parking on the shoulder of the road is parking on the side of the road, while parking outside the shoulder, for

example, is parking in malls or shopping centers, making houses, and so on (Indah, 2014). According to the provisions of Article 1 point 15 of Law Number 22 of 2009 concerning road traffic and transportation, Parking is a state in which the vehicle is stopped or not moving for a while and left by the driver.

Legal Context of Parking Management in Indonesia

Parking management in Indonesia consists of two types, namely those managed by the local government, which are included in the local revenue source of the retribution category, and parking management managed by the private sector, especially by parking management service companies (security parking). Parking managed by the local government is included in local retribution. According to Article 1 of Law Number 28 of 2009 concerning Local Taxes and Levies, local retribution is a levy in the region as payment for specific services or licenses provided by the local government to benefit specific individuals or entities.

The subject of Mandatory Retribution is an individual or entity involved in payment for the use of services or licenses from the local government, including collectors or collectors of local retribution. Later, Local retribution will become Regional Original Revenue (PAD) included in the Regional Revenue and Expenditure Budget (APBD). Every Indonesian citizen (WNI) or legal entity running a parking business must first obtain a permit from the head of the local area. The characteristics of retribution are:

1. The local government collects retribution,
2. In the collection, there is economic coercion,
3. There is a contra performance that can be directly pointed out,
4. Retribution is imposed on every person/entity that uses/enjoys services prepared by the state.

Local retribution, according to Law No. 18 of 1997 concerning local taxes and local retribution as last amended by Law No. 34 of 2000 and Government Regulation No. 66 of 2001 concerning local retribution, can be grouped into 3 (three), namely: General service retribution business service retribution and specific license retribution. Extraordinary parking lot retribution is a group of business service retribution. Business service retribution is retribution for services the local government provides by adopting commercial principles because the private sector can also provide it.

Retribution is collected using a Regional Retribution Assessment Letter (SKRD) or other equalized document. SKRD is a retribution assessment letter that determines the amount of retribution principal. Other equated documents include entrance tickets, coupons, and subscription cards. Suppose a specific retribution payer does not pay the retribution on time or pays less. In that case, he is subject to administrative sanctions in the form of interest of two percent per month from the outstanding retribution that is not or underpaid and billed using a Regional Retribution Bill Letter (STRD). STRD is a letter to collect retribution and or administrative sanctions in the form of interest and or fines. The regional head stipulates the procedure for implementing regional retribution collection.

This construction of parking management can be seen from the perspective of leasing and can be seen from the perspective of entrusting goods. Whatever form of relationship occurs, it must be a legal relationship. According to Prof. Mr. Dr. L.J Van Apeldoorn, legal relationships are relationships arising from the association of human

society (relationships arising from marriage, descent, blood relatives, residential neighborliness, nationality, and other matters). These things are done by determining the limits of the powers and obligations of each person towards those with whom he is related (Van, 1993).

From the lease side, parking management uses the construction that the manager lends the land or parking area, while the risk of loss is not the renter's responsibility. In the construction of parking management from the side of entrusting goods, the manager must protect the goods entrusted to him. Article 1548 of the Civil Code (from now on referred to as KUHPer) states that leasing is an agreement by which one party binds himself to give the enjoyment of an object to the other party during a specific time and with the payment of a price, which the latter party has agreed to pay. The elements of leasing in that Article are:

- a. some parties are mutually in rights and obligations;
- b. One party is entitled to obtain/receive payment and is obliged to provide enjoyment of a property, while the other party is entitled to obtain/receive enjoyment of a property and is obliged to submit a payment;
- c. The existence of schuld and Haftung.

A lease is a reciprocal agreement, in Dutch, called huureverhuur. The subjects of the leasing law are the renting party and the renter. The object of leasing is all types of objects: movable, immovable, tangible, and intangible. The principles contained in the legal leasing relationship are an agreement prioritizing convenience. As contained in Article 1551, it is stated that the leasing party is required to deliver the leased goods in a state that is maintained in all respects. Suppose it is analogous that parking management is a lease of land or yard. In that case, the manager should provide security and comfort for the designation of vehicles that will be parked in the leased area, such as providing a safe parking area protected from sun and rain and complete facilities for parked vehicles' needs.

Unlike the legal relationship that is said to be entrusted with goods. Article 1694 of the Civil Code states that entrustment occurs when one person receives an item from another with the condition that he will keep it and return it in its original form. According to Article 1695 of the Civil Code, custody of goods is divided into actual and secret custody. If parking management activities are considered a legal relationship of entrustment of goods, it can be categorized as true entrustment. This entrustment is only in the form of goods or movable objects. As in the Mall/supermarket, there is a place to store goods. As is also the case in an inn or hotel, the goods brought by guests into the room are also an entity that is considered a deposit (Article 1709 of the Civil Code). Even the trustee (Hotel management) is responsible for all guest goods from theft or damage caused by its officers.

About the provisions regarding the object of the entrusted object, Article 1706 of the Civil Code specifies: 1) The trustee is obliged regarding the care of the goods entrusted to him, and 2) maintain the same interest as he maintains his goods. The trustee is obliged to return the same goods as entrusted. Article 1720 has set an obligation for the trustee, namely that he may not demand from the person who entrusts the goods proof that the person owns the goods. Regarding the rules regarding the entrustment of goods in the Civil Code, parking management, in general, in Indonesia, carried out by the Security Parking Company, is a legal relationship of entrustment of goods. All rights and obligations that

both parties should carry out have been regulated in these Articles. This goods custody agreement is accurate. Custody procedures, in general, carrying out the custody of Goods can be divided into three stages:

1. Application for Custody of Goods
2. Inspection of Custody Goods
3. Decision on Custody of Goods.

Custody of motorized vehicles to the parking manager is carried out through stages such as: 1) enter the gate that provides a standard agreement (in the form of a ticket), 2) agree to the agreement made by the manager, 3) place the vehicle in the area provided, 4) carry out the obligation to pay for vehicle storage services according to the agreement that has been in ticket. The agreement contained in the ticket/parking ticket is a standard agreement. This means that in the storage of vehicles managed by parking management service entrepreneurs, the managers believe that they must maintain the vehicle as their vehicle. In terms of the facilities offered, it should also be adequately proven. About the provisions regarding the offer of custody services, the provisions of Article 1707 state loudly as follows:

- a. If the baile has offered to keep the goods;
- b. If he has asked for an agreed fee for the storage,
- c. If the entrustment has taken place more or less for the benefit of the trustee;
- d. If it has been agreed that the depositor will bear all kinds of negligence.

To analogize these provisions to vehicle custody, the following can be identified:

- a. Vehicle entrustment is a true entrustment;
- b. The entrusting party and the entrusted are capable parties. It is proven that the driver is an adult and has a driver's license as a sign of his capability, and the trustee is a capable party because the party is a legal subject in the form of a particular legal entity;
- c. The parking agreement states a fee for the vehicle storage service. In this research, the wage/tariff is determined by the government, and the private sector determines the tariff based on the parking time;
- d. The higher vehicle storage causes high profits also received by vehicle storage entrepreneurs;
- e. In the end, the entrustment object is the trustee's responsibility.

Standard Agreement and Exoneration Clause in Parking Agreement

The conditions regulated in Book III of the Civil Code concerning the obligation. An agreement is an agreement that can generally be made either in writing or unwritten with an obligation. In the general provisions regarding agreements, there is a definition of an agreement formulated in Article 1313 of the Civil Code: an agreement is an act by which one or more people bind themselves to one or more other people. Things that fulfill the conditions can be declared an agreement. The conditions for the validity of an agreement according to Article 1320 of the Civil Code are:

- a. Agreement of those who bind themselves;
- b. Capacity to agree;
- c. A sure thing;
- d. A halal cause.

Agreements that have been executed with conditions according to Article 1320 of the Civil Code have the following consequences:

- a. Applies as a law to the makers;
- b. Cannot be withdrawn other than by agreement of both parties or for reasons stated by the law as sufficient for that;
- c. Must be executed in good faith.

The enactment of agreements as laws makes the strength of the agreement significant in legal relations, especially in business matters. Written agreements are essential for consumers and providers of goods and services. In its development, the term standard agreement is often used in business activities, business and trade, and banking. In this agreement, its provisions are determined mainly by parties with a stronger bargaining position than other parties. Standard agreements are written concepts or promises, prepared without discussing their contents and usually poured into an unlimited number of agreements of a specific nature.

A standard agreement is an agreement in which almost all of the clauses are standardized by the user, and the other party has no opportunity to negotiate or request changes. According to Hondius in Purwahid Patrik (1994), the standard terms in the agreement are the terms of the written concept contained in several agreements that will still be made, and the standard terms are conditions that are not certain in number without negotiating the contents first.

Mariam Darus Badruzaman (1986) formulates a standard agreement: Standard agreements are agreements whose contents are standardized and set out in the form. Standard agreements are exempt clauses and exclusion in England and exenatide clauses in the Netherlands, also known as *Stedelijk, be warned*. Remi Syahdaeni understands this clause as a clause that aims to exempt or limit the responsibility of one party to the lawsuit of the other party if the party concerned does not participate at all or does not correctly carry out its obligations specified in the agreement.

In principle, in business activities, the purpose of making this standard agreement is for efficiency, both time and cost. However, there are times when the provisions made in this standard agreement are not balanced and ignore the interests of other parties. Especially those related to the interests of consumers who are massive in number. The initial concern with standard agreements is related to the agreement's content rather than the procedure for agreeing. Clauses of particular concern are clauses or provisions that are unreasonably burdensome for one party, in this case, the party receiving the offer.

Exoneration or exoneration (English) is defined by I.P.M. Ranuhandoko B.A. in his book "English-Indonesian Legal Terminology" as "Releasing a person or business entity from a claim or responsibility." This exoneration clause is defined as an exclusion clause of obligation/responsibility in the agreement.²⁰ Some examples of standard clauses contained in parking tickets in Jambi City can be seen in the following formulation: Some forms of standard clauses found in Jambi City are as follows:

- a. "Any damage or loss of (part of) the vehicle is the driver's responsibility. The vehicle owner is obliged to insure the vehicle.
- b. "Loss of vehicle/items in the vehicle is not the responsibility of the parking attendant."

- c. Examples of standard clauses found in Secure Parking tickets are: "Insurance of the vehicle and items inside and all risks for all damage and loss of parked vehicles and items inside are the obligation of the vehicle owner himself (no reimbursement in any form from the parking provider.)"

Parking management in Indonesia is a service that involves the public as consumers of parking services. Service is any service in the form of work or achievement provided for the community to be utilized by consumers. Furthermore, the definition of consumer is every person who uses goods and services available in the community for the benefit of themselves, their families, other people, and other living creatures and not for trade.

Although GCPL states that prohibited standard clauses are null and void and obliges the listing business to revoke them, these provisions are like paper tigers. The prohibition and requirement on the inclusion of standard clauses is a form of balance between consumers and business actors based on the principle of freedom of contract. Furthermore, this provision is an effort to prevent various actions that harm consumers due to ignorance, unbalanced positions, and so on, which may be utilized by business actors to obtain profits by violating the law.

Some legal experts reject the presence of this standard agreement because it is considered:

- a. The position of the entrepreneur in the standard agreement is the same as a form of private law (*Legia particular whatever*); the standard agreement is not an agreement;
- b. The standard agreement is forced (*dwang-contract*);
- c. Common law system countries apply the doctrine of unconscionability. The doctrine of unconscionability authorizes agreements to avoid things perceived as contrary to conscience; standard agreements negate justice (Lina, 2017).

An exoneration clause is a condition that explicitly relieves the employer from responsibility for adverse consequences arising from the performance of the agreement. The exoneration clause may originate from the employer's formulation unilaterally or from the formulation of the law. Exoneration clauses have the opportunity to cause oppression of one another.

Agreements with exoneration clauses must be executed in good faith. An exoneration clause in an agreement is permissible. The exoneration of losses arising from the employer's willfulness contradicts decency. The state can be present in private law needs if balance and justice are difficult to realize by the parties due to justification reasons from one of the parties that are contrary to the law or legal principles.

Legal Relationship between Parking Manager and Consumer

Law Number 8 of 1999 concerning consumer protection (from now on referred to as UUPK) has regulated the standard agreements allowing the legal relationship between consumers and producers. The GCPL regulates that consumers are entitled to all correct information about the goods or services they consume. Everything in the parking area or under the supervision of parking management is the responsibility of the parking service business actors, including parking officers who directly or indirectly take care of parking in the parking area. The responsibility that business actors bear is not limited to damaged or lost goods but includes all losses suffered by consumers, both material and immaterial

losses or losses for inconvenience to parking services caused by parking service actors (Dheny, 2015).

The regulation of standard clauses itself can be found in the PK Law, namely in Article 18 paragraph (1) of the PK Law, which states that: "Business actors in offering goods and services intended for trade are prohibited from making/including standard clauses in every document and agreement if:

- a. Stating the transfer of responsibility of the business actor;
- b. Stating that the business actor has the right to refuse the delivery of goods back to the consumer;
- c. Stating that the business actor has the right to refuse the return of money paid for goods and services provided by consumers;
- d. Stating the granting of power from consumers to business actors, directly or indirectly, to take all unilateral actions related to consumer goods in installments.
- e. Regulate the matter of proof for the loss of usefulness of goods or utilization of services purchased by consumers.
- f. Give the right to business actors to reduce the benefits of services or reduce the consumer's property, which is the object of buying and selling services.
- g. Stating that consumers are subject to regulations in the form of new rules, additions, continuation, and further changes made unilaterally by business actors when consumers utilize the services they buy.
- h. Stating that the consumer authorizes the business actor to waive the mortgage, lien, or security rights against the goods purchased by the consumer in installments."

It is concrete that consumers of parking services in Indonesia have legal legitimacy to enjoy justice and comfort in enjoying the services provided for parking services. There is no reason for entrepreneurs to justify cheating consumers by making clauses that shift responsibility.

CONCLUSION

The form of legal protection for consumers of parking services in terms of positive law is that the parking manager is obliged to guarantee the security and safety of the object of the goods entrustment agreement during a specific period. In the Civil Code, if there is damage or loss of the object of entrustment of goods, the parking manager must be responsible for providing compensation. The legal relationship is born through a goods entrustment agreement, not a land rental agreement. Goods entrustment agreement, the responsibility of the parking manager to consumers who use parking services is to maintain the entrusted goods as well as possible, like maintaining their belongings and returning the goods/vehicles in their original state. Meanwhile, the Consumer Protection Law also regulates consumer rights to obtain safety, security, and comfort in enjoying the services offered. If harmed, every consumer can sue the business actor through an institution in charge of resolving disputes between consumers and business actors or through courts in the general judicial environment.

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