



Policy Paper

Mapping the Problems and Challenges of Consumer Access to Redress in Indonesia: Recommendations for Strengthening and Developing Consumer Access to Redress

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Recommendations for Strengthening and Developing Consumer Redress Mechanism



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LIST OF ABBREVIATIONS

ADR	: Alternative Dispute Resolution
APPK	: Consumer Protection Portal Application
BPKN	: National Agency for Consumer Protection
BPOM	: National Agency of Drug and Food Control
BPSK	: Consumer Dispute Settlement Agency
UDHR	: Universal Declaration of Human Rights
HAM	: Human Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
KUHPer	: Code of Civil Law
LAPS	: Alternative Dispute Resolution Institution
SJK LAPS	: Alternative Dispute Settlement Institutions for the Financial Services Sector
LPKSM	: Consumer Associations (registered to the government)
ODR	: Online Dispute Resolution
SIMADU	: Complaint Management System
PMH	: Unlawful Act (Tort)
KPPU	: Indonesian Competition Commission
OJK	: Financial Services Authority
PERMA	: Supreme Court Regulation
POJK	: Financial Services Authority Regulation
PUJK	: Financial Services Business Actors
RPJMN	: National Medium Term Development Plan
SIMPKTN	: Consumer Protection and Commerce Management Information System
UNGCP	: United Nations Guidelines for Consumer Protection
UNGPs	: United Nations Guiding Principles on Business and Human Rights
UU	: Law/Legislation
PPLH Law	: Environmental Protection and Management Law
CPL	: Law No. 8 Year 1999 on Consumer Protection

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CHAPTER I

INTRODUCTION AND CONCEPTUAL FRAMEWORK

I.A. Introduction: The Challenge of Providing Consumer Redress

As a manifestation of the role of the state to protect consumer rights, Indonesia has issued Law no. 8/1999 concerning Consumer Protection (Consumer Protection Law), which has been in effect since April 20, 2000. This legislation is the main reference in the protection of consumer rights, regulating a number of materials, including the definition and scope of consumers, obligations of businesses, consumer dispute resolution mechanisms, and institutions for consumer dispute resolution. The Consumer Protection Law is a form of state responsibility in creating a consumer protection system, so that there is an aspect of legal certainty, both for businesses, in order to grow an honest and responsible attitude, as well as for consumers, which is an acknowledgment of their dignity. In its development, in addition to the Consumer Protection Law, several sectoral legislations have also become important parts of consumer protection instruments, both in the context of trade in goods and the provision of services, such as health, transportation, etc. Even for businesses, this aspect is also essential to ensure healthy business competition.

In the context of redress, Chapter X of the Consumer Protection Law regulates dispute resolution, meaning ways available for consumers to obtain redress. In detail, the provisions of Article 45 paragraph (1) of the Consumer Protection Law regulates and provides space for consumers to claim their rights, through state-based judicial mechanisms, such as using a small claims court, or through state-based non-judicial mechanisms—the appointed agency in this case being the Consumer Dispute Settlement Agency (BPSK). This institution has the authority to settle consumer disputes and is formed at the provincial and district/city levels. This step was originally intended to facilitate and bring closer access to consumer dispute resolution. Yet, within ten years of implementing the Consumer Protection Law, only 166 BPSKs have been formed, and even then, only about 78 BPSKs are operating.¹

¹ See: “Consumer Protection: Government Targets 200 BPSK by 2019”, in <https://ekonomi.bisnis.com/read/20150513/12/432909/perindungan-konsumen-governmental-targetkan-200-bpsk-pada-2019>.

In its development, the creation of Law no. 23/2014 concerning Regional Government has in fact withdrawn the issue of consumer protection from what was originally at the district/city level, to become solely a matter for the provincial government.² This means that the establishment and operation of BPSK is now fully under the authority of the provincial government. Unfortunately, until now not all provinces have BPSK, with budget constraints often being mentioned as the reason for delaying the establishment of BPSK.

In addition to establishing BPSK, the Consumer Protection Law also orders the establishment of the National Consumer Protection Agency (BPKN), which is tasked with developing consumer protection, with various assessment activities and information dissemination. In its development, referring to the function of receiving complaints related to consumer protection, since 2017, BPKN has also carried out a dispute resolution function, based on the complaints they received from various sectors.³

Apart from the consumer redress mechanism provided by the Consumer Protection Law, a number of sectoral legislations mentioned above also provide access to consumer redress for each sector; such as in the financial services sector, managed by the Financial Services Authority, the transportation sector through the Ministry of Transportation, the drug and food sector through the Food and Drug Supervisory Agency (BPOM), and the trade sector through the Ministry of Trade. The Ministry of Trade, as the designated government institution in consumer protection, through the Directorate General of Consumer Protection and Trade Compliance, also has an important role in the context of consumer protection in general. This Directorate is responsible for policy making, law enforcement, consumer education and awareness raising, and receiving consumer complaints, as well as coordination with other ministries/agencies.

The availability of both court and non-court options for consumer dispute resolution, as well as the various mechanisms in each sector, while was intended to provide options for consumers, may also overwhelm them and cause

² For full discussion, see: Shidarta, "BPSK in the Middle of Shifting Budgetary Authority", in <https://business-law.binus.ac.id/2017/11/30/bpsk-di-tengah-pergeseran-kewenangan-penganggaran/>.

³ Result of interview with Chairman of BPKN, Rolas Budiman Sitinjak, September 15, 2021.

confusion on whom to first approach for complaints and settling disputes. A more streamlined consumer dispute resolution mechanism is needed to ensure that consumers obtain redress in a swift, affordable manner. Decisions from each mechanism needs to have an equal legal standing to ensure that it will be followed through by both disputing parties.

As an effort to strengthen and develop consumer protection, the government has also issued Presidential Regulation no. 50/2017 on the National Strategy for Consumer Protection. This Presidential Regulation is a follow-up to the Consumer Protection Law and the mandate of the 2015–2020 National Medium–Term Development Plan (RPJMN). Unfortunately, the direction of consumer protection policies has not specifically placed consumer redress as one of the pillars of its development strategy. This National Strategy itself is based on 3 pillars: (i) increasing the effectiveness of the government's role, (ii) increasing businessess compliance, and (iii) increasing consumer empowerment. On the priority of increasing consumer empowerment, the strategy only relies on implementing effective consumer education and advocacy, as well as providing an integrated, reliable, and reliable consumer information system.⁴

Based on the record of consumer redress practices so far, although the Consumer Protection Law and several sectoral legislations have regulated the consumer redress mechanism, in the future several reform and development steps are needed. This is mainly in response to the development of trade and industry, which continues to grow and develop in complexity. One of them is economic digitalization, which has brought its own challenges in the context of protecting consumers today. This is due to the rapid expansion of digitalization to almost all sectors, including retail, transportation logistics, financial services, manufacturing, agriculture, education, health and broadcasting and media services (OECD, 2014).

UN General Assembly Resolution 70/186 on Consumers Protection adopted on December 22, 2015, in particular even considers the significant development of commerce through electronic systems (e-commerce), which requires updating and strengthening consumer

⁴ This Presidential Regulation has a validity period of three years, from 2017 to 2019. Unfortunately, until now, the continuation of the Presidential Regulation regarding the national strategy for consumer protection has not been published for the next period.

protection. Through this resolution, the United Nations also renewed the United Nations Guidelines on Consumers Protection, which was adopted for the first time through Resolution 39/248, by the United Nations General Assembly, on April 16, 1985. In that guide, one of the materials emphasized that United Nations member countries should encourage the development of fair, effective, transparent, and impartial mechanisms for dealing with consumer complaints—as part of access to redress, through administrative, judicial and alternative dispute resolution, including dispute resolution for cross-border cases.⁵

A year after the issuance of the resolution, at the meeting of economic ministers of ASEAN countries, in Vientiane, Laos, on August 3, 2016, the ASEAN Strategic Plan on Consumers Protection 2025 was also agreed. This strategic plan has 4 strategic goals, namely: (i) A Common ASEAN Consumer Protection Framework is Established; (ii) A High Common Level of Consumer Empowerment and Protection is Ensured; (iii) High Consumer Confidence in the AEC and Cross-border Commercial Transactions are Instituted; and (iv) Consumer Concerns in all ASEAN Policies are Integrated. Interestingly, the ASEAN Committee on Consumer Protection (ACCP), as the joint authority between ASEAN countries' consumer protection institutions, which was appointed to implement the strategic plan, has agreed on several key elements of effective consumer protection. One of them is the element of access to redress mechanism, in addition to elements of adequate consumer law, effective law implementation and enforcement, aware consumers, effective consumer organization, and responsible business conduct.⁶

Similar developments also occurred in other regions, for instance in Europe, with the issuance of the EU Directive 2019/2161, which amended Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU with respect to with better enforcement and modernization of consumer protection rules in the European Union. This regulation specifically emphasizes the importance of access to proportional and effective redress for consumers. Article 11a of this Directive emphasizes on the member states of the European Union, to be able to consider the gravity and nature of any unfair commercial practice, which results in consumer harm, as well as other relevant circumstances, related to that

⁵ Resolution 70/186 on Consumers Protection adopted by the General Assembly on December 22, 2015, available at https://unctad.org/system/files/official-document/ares70d186_en.pdf.

⁶ For details see: <https://aseanconsumer.org/>.

loss. This means that access to redress that must be provided to consumers is not only in the form of compensation for damage, but also restoration of other relevant aspects.⁷

The need for strengthening access to consumer redress, as one of the elements to ensure the effectiveness of consumer protection, is in line with the challenges and problems of implementing the Consumer Protection Law. In addition to problems in the dispute resolution mechanism, which is the main entry point for consumers to obtain redress, today's legislation also does not accommodate consumer compensation that is immaterial in nature, only limited to material loss or damage. Whereas the redress should also cover other relevant aspects, such as the coverage developed by the European Union countries above. Other relevant aspects can be in the form of immaterial redress, as compensation for immaterial losses, for example in the form of an apology to the public, or compensation as compensation for immaterial losses.

The Consumer Protection Law, which is already 22 years old, and created under conditions and landscape that were not as complex as today's business world, seems no longer adequate as a comprehensive reference for consumer protection. Today's business relations are no longer merely transactional relationships between businesses and consumers (B2C), but have developed, for example, the business-consumer relationship between the final consumers (B2C2C), which is the impact of the emergence of the *sharing economy* concept.⁸ This development has certainly had an impact on changes in the scope of responsibility of each actor involved in the transaction. Therefore, it is also important to review the effectiveness of existing models and mechanisms for the redress of consumer rights, particularly as regulated in the Consumer Protection Law, to be able to respond to the various developments and challenges above.

⁷ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L2161&from=EN#d1e1096-7-1>.

⁸ Sharing economy is an act of modernization of collaborative consumption. This is done in order to be able to provide access to all resources owned by the company that can be consumed or used together with other users (known as partners). See: Pia A. Albinsson and B. Yasanthi Perera (eds.), *The Rise of the Sharing Economy: Exploring the Challenges and Opportunities of Collaborative Consumption*, (California: Praeger, 2018).

I.B. Relationship of Consumer Rights and Human Rights: Delineating the Definition of Consumers

To place consumer protection in the framework of human rights, it is necessary to thoroughly examine national and international legal instruments related to these two matters. It must be acknowledged that in the ontological issue of what human rights are, it will not be enough to see it as a mere legal issue, but it will involve more philosophical and perhaps historical aspects. However, in this study, the process of identifying consumer rights in terms of human rights will place more emphasis on legal instruments, with the assumption that the theoretical problems have been resolved. If this relationship departs from the assumption that consumer rights are human rights, then the first thing that must be examined normatively is the legal instrument regarding human rights itself. To what extent can the concept of human rights be interpreted to touch on aspects of consumer protection?⁹

Furthermore, consumer rights can be understood as an elaboration and expansion of economic rights, as an inalienable part of human rights. It also seems that in a consumer society, where everyone buys consumer goods and services, the consumer's right to be protected is an important part of the right to an adequate standard of living which has been recognized in Article 11 of the ICESCR as well as resonating from the UDHR.¹⁰ This is what led to the birth of the United Nations Guidelines on Consumer Protection (UNGCP) in 1985, which was amended in 1999, and again in 2015. According to Sinai Deutch (1994), an adequate standard of living in the UNGCP is an extension of Article 25 of the UDHR and Article 11 of the ICESCR. He stated that this standardization could be met through an adequate consumer protection system. This view is rooted in the first Section of the UNGCP, which emphasizes the important role of government in promoting "just, equitable, economic and social development". The group of rights related to physical security referring to the UNGCP are extensions of the right to health described in Article 12 of the ICESCR. Then in Section 13 the

⁹ Sinai Deutch, Are Consumer Rights is Human Rights? *Osgoode Hall Law Journal* 32.3, 1994, p. 543. See also: Monika Jagielska and Mariusz Jagielski, Are consumer rights human rights? in James Devenney and Mel Kenny, *European Consumer Protection*, (Cambridge University Press, 2012, p. 343.

¹⁰ Sinai Deutch, *Ibid.*

UNGCP states that government policies should enable consumers to obtain optimal benefits from their economic resources.

With the above considerations, Sinai Deutch concludes that consumer rights have the potential to be recognized as human rights because they have several characteristics of human rights, namely:¹¹

1. International recognition of consumer rights and product safety in both guidelines and treaties can be seen as a universal acknowledgment of a right. Consumer rights are applied to every individual because there is an assumption that consumers are every individual.
2. That the rights of consumers to safe products and access to justice are given to maintain human dignity and welfare.
3. Then, these rights can protect against arbitrary violations by the government or other powerful entities, in this case businesses.

Another point of view is given by Ilias Bantekas, who observes three models of the relationship between human rights and consumer rights (2012), namely: *first*, supporting the notion that consumer rights are a subspecies of property rights. The underlying rationale rests on the existence of contract-based consumer rights; the *second* showing that there are situations where consumer rights are adversely affected if they are not based on a contractual relationship; *third*, centered on the idea that economic and social rights should be accessible and affordable to all, it is unacceptable for the state to privatize essential public services and goods, and then deny all responsibility for providing them to their rightful owners—citizens. This paradigmatic formulation aims to describe citizens as consumers of goods and services, which on the contrary are economic and social rights, while public goods and services are then offered by the private sector rather than the state itself.¹²

This view has implications for the obligation to guarantee consumer rights in the positive law of a country, especially in relation to the obligations of non-state actors (businesses), to fulfil a set of obligations, as well as take remedial actions that arise because of unlawful

¹¹ *Ibid.* p. 547.

¹² Ilias Bantekas, Consumer Rights as Human Rights, Cyprus Human Rights Law Review, 2012, p. 1.

or contractual acts. There are at least four situations that can be considered to address liability issues arising from consumer relations:¹³

1. States concerned can use their duty to prevent violations of consumer rights, through public intervention in consumer contracts that benefit consumers as a legal obligation.
2. Grouping consumer rights to existing rights, as is the case with the so-called right to a healthy environment.
3. Establishing regional consumer rights similar to human rights, which will operate in the same way as other human rights.
4. Assign rights in a hybrid manner directed directly at suppliers and producers, which creates a series of obligations, as well as the obligations to respect, prevent and fulfil those found in the articulation of human rights.

The concept of consumer rights largely originates from the area of private law, which grows as the influence of the interaction between basic rights and the legal domain in contractual relationships. Fundamental rights in contractual relations are held to effect in the same way as in state-citizen relations (direct effect).¹⁴ The intersection between basic rights and contract law cannot be separated from the strategic position of consumers in the world economy, because two-thirds of all spending in the economy is spent by consumers. Consumers can be defined to include almost everyone around the world. Consumers are the largest economic group in the economy, influencing and being influenced by almost every public and private economic decision. Recognition of the need for consumer protection is even more important today, due to the expansion of free trade around the world.¹⁵

The recognition of the importance of protecting consumer rights is reinforced by the statement of the President of the United States, John F. Kennedy, who stated that it was true that consumer safety must be protected from all goods and services, or technology marketed, which are harmful to health or life.¹⁶ This statement accentuates the term

¹³ *Ibid*, p. 3.

¹⁴ Monika Jagielska and Mariusz Jagielski, *Op.Cit.*, pp. 344-345.

¹⁵ Eun Hae Choi, *A Human Rights Approach to Consumer Safety and Well-being: the Balance between Deterring Violations of Consumer Rights and Promoting Free Trade*, A thesis submitted to Auckland University of Technology, 2020, p. 7.

¹⁶ *Ibid*.

consumer rights or consumer rights to safety, which refers to their rights related to product safety. At this point, consumer protection needs to take a more holistic approach to safety, by including elements of consumer welfare in its scope.¹⁷ Therefore, pressure needs to be exerted through regulatory controls to protect consumers, through new legislative and administrative measures. The *Consumer Bill of Rights* then highlights the importance of protecting consumers themselves, which mentions four different rights, including: (1) the right to safety; (2) the right to know; (3) the right to choose; and (4) the right to be heard.¹⁸

The gradual recognition of consumer protection at the national level as a distinct policy objective has shifted the focus of the welfare state, by adopting a more protective role towards consumers.¹⁹ In this context, Brian Johnson observes three main approaches to government intervention when it comes to consumer protection. *First*, requirement of disclosure by businesses that inform consumers about their products and services. *Second*, combating unlawful acts or practices by market participants, including and especially those of a discriminatory nature. *Third*, command-and-control interventions, which limit prices, terms, and the products that can be offered. The first two approaches emphasize market strengthening interventions, while the third approach focuses on product design through state authority-based command and control.²⁰

In the perspective of national interest, substantively, consumer protection legislation must imply that there is someone who can be clearly identified as a consumer. Paradigmatically consumers have joined with many other economic actors, with whom it can claim to be part of a diverse group. A further implication is that there is an initial difficulty in identifying who the consumer is. Therefore, there is no universally agreed definition of the term consumer

¹⁷ President John F. Kennedy's statement to Congress in 1962 today marks a historic moment in relation to the birth of consumer policy. The speech was made in response to public outrage over the scandal over Thalidomide, a sedative drug used in the treatment of nausea in pregnant women. In the years following the widespread use of thalidomide in Europe, Australia, and Japan, about 10,000 children were born with phocomelia. Then this situation led to the prohibition of Thalidomide in most countries in 1961. The tragedy of Thalidomide was avoided in the United States because Frances Kelsey of the Food and Drug Administration withheld her approval, based on consideration of her concerns about damage to the patient's peripheral nervous system and the potential effects of the biologically active drug. The tragedy of Thalidomide also highlights the importance of rigorous and relevant testing of drugs before they are introduced to the market. See: James H. Kim and Anthony R. Scialli, Thalidomide: The Tragedy of Birth Defects and the Effective Treatment of Disease, *Toxicological Sciences* 122 (1), 1–6 (2011), p. 1.

¹⁸ Iris Benöhr, *EU Consumer Law and Human Rights*, (Oxford: Oxford University Press, 2013), p. 13.

¹⁹ *Ibid.*

²⁰ Brian Johnson, Toward a 21st century approach to consumer protection, 2018, <https://www.consumerfinance.gov/about-us/newsroom/toward-21st-century-approach-consumer-protection/>, accessed October 18, 2021.

itself, even though a number of laws, both criminal and civil, attempt to define it according to the purpose of creating the norms of law itself.²¹

UNGCP itself sets the definition of a consumer conventionally, while acknowledging the need for flexibility in defining consumers. In this guide, the term consumer refers to a natural person, regardless of nationality, acting primarily for personal, family, or domestic purposes, and recognizing that states may adopt different definitions to address specific domestic needs.²² Meanwhile, in legislating consumer protection, the European Union also has not fully agreed on the definition of the consumer. Several amendments to the EU Directive related to consumer protection rules in the European Union have not been able to provide a consistent definition of consumers. However, the various EU Directives basically provide the same scope of coverage regarding the definition of a consumer, that a consumer is:²³

1. A natural person.
2. Acting for purposes that are outside their business, trade, or profession.

When referring to the definition of consumer rights above, there are two important things that arise:²⁴ First, consumers should be protected from all product-related threats regardless of the severity of the loss, from minor injury to death; and second, the safety and welfare of consumers must be protected at the most basic level as essential to maintaining human dignity.

Meanwhile, the definition of consumer in Article 1 number 2 of Law no. 8/1999 on Consumer Protection basically refers to the scope of consumer as regulated in the United Nations Guideline on Consumers Protection. This provision states, "a consumer is every person who uses goods and/or services available in the community, both for the benefit of oneself, family, other people, and other living creatures and not for trading". However, the definition seems outdated for the current context because it only emphasizes end users, users of goods and/or services, and the scope is implicitly domestic. The mechanism has not yet

²¹ Peter Cartwright, *Consumer Protection and the Criminal Law: Law, Theory, and Policy in the UK*, (Cambridge: Cambridge University Press, 2009), p. 2.

²² Robin Simpson, et.al., *Manual on Consumer Protection*, UNCTAD, 2016, p. 6.

²³ Bastian Schuller, *The definition of consumers in EU consumer law*, in James Devenny and Mel Kenny, *European Consumer Protection: Theory and Practice*, (Cambridge: Cambridge University Press, 2012), p. 124.

²⁴ Cho., *Op.Cit.*, p. 11.

protected consumers in business transactions conducted across national borders, including access to redress for them, nor has the mechanism been specifically regulated.

In this study, the scope of consumers refers to the definition as referred to in the Consumer Protection Law, with an extension to the definition set forth by the United Nations Guideline on Consumers Protection 2015. This expansion is solely intended to accommodate the significant development of business transactions using electronic systems, which are cross-border, and has not been properly accommodated in the Consumer Protection Law. Therefore, access to redress for consumers also needs to include a redress mechanism for consumers transacts with businesses (B2C) across national borders. In addition, the complexity of the relationship between businesses and consumers today also needs to be accommodated in it, because the relationship is not only between businesses and final consumers, but there is also the involvement of intermediate consumers. Meanwhile, human rights, apart from being an approach in analysis, to emphasize the aspects that are most beneficial to consumers, especially in access to redress, is also intended to identify differences, as well as meeting points between consumer rights and human rights.

I.C. Access to Redress as a Consumer Right: Identification of its Elements

The creation of the UN Guidelines on Consumer Protection (UNGCP), which was adopted by the UN General Assembly through Resolution 39/248 on April 9, 1985, has become the basis for the recognition of consumer rights as a matter of international law. This guide sets out general principles for consumer protection, emphasizing to UN member states the importance of establishing policies for consumer protection, including aspects of dispute resolution and consumer redress. Responding to actual developments in international business transactions, this guide has also been revised several times, as mentioned above. This guidance was last updated through Resolution 70/186 which was adopted by the UN General Assembly on December 22, 2015. This guide is basically intended to achieve several objectives as stated in the general principles of the latest resolution.²⁵

1. Access by consumers to essential goods and services;

²⁵ Benöhr, *Op.Cit.*, pp. 13-14.

2. Protection of vulnerable and disadvantaged consumers;
3. Protection of consumers from hazards to their health and safety;
4. Promotion and protection of the economic interests of consumers;
5. Access by consumers to adequate information, to enable them to make informed choices according to individual wants and needs;
6. Consumer education, including education about the environmental, social and economic consequences of consumer choices;
7. Availability of effective consumer dispute resolution and redress;
8. Freedom to form relevant consumer groups or organizations, and the opportunity for those organizations to present their views in decision-making processes that affect them;
9. Promotion of sustainable consumption patterns;
10. The level of protection for consumers using electronic commerce, which is not less than that provided in other forms of commerce—conventional;
11. Protection of consumer privacy and free flow of global information.

Furthermore, the instrument is designed to protect consumers more effectively by allowing some degree of flexibility and emphasizing the importance of securing consumer safety.²⁶ With such a construction, this instrument leaves each country to decide how they will interpret their international obligations, such as regulating corporate practices to protect consumers, without compromising the desire to make a profit in the global market. This is inseparable from the spirit of UNGCP which aims to set a minimum benchmark in providing international consumer protection, along with the expansion of global free trade. In other words, the *soft law* approach is designed to focus on preparing a solid foundation by placing national law as an instrument to interpret the instrument in their own way.²⁷ This is clearly articulated by this instrument by accentuating the importance of securing consumer safety:

Countries should adopt or encourage the implementation of appropriate measures, including legal systems, safety regulations, national or international

²⁶ *Ibid.*, p. 54.

²⁷ *Ibid.*

standards, voluntary standards and maintenance of safety records to ensure that products are safe for their intended or normally foreseeable use.

As stated in the purpose of the establishment of this guide, one of the things that is emphasized in the general principles of UNGCP is the importance of providing consumers with an effective redress mechanism. Therefore, access to redress must be one of the main focuses in the development and evaluation of consumer protection policies. In relation to the need to provide access to effective dispute resolution and redress, this guide emphasizes a number of aspects as elements of consumer redress:²⁸

- The need to encourage the development of fair, effective, transparent, and impartial mechanisms for dealing with consumer complaints, through administrative, judicial, and alternative dispute resolution, including for cross-border cases.
- The need to establish legal and/or administrative measures to enable relevant consumers or consumer organizations to obtain redress, through formal or informal procedures, that are prompt, fair, transparent, inexpensive, and accessible. Any such procedures must take into account the needs of vulnerable and disadvantaged consumers.
- The need to provide access to consumer redress, which does not incur undue costs, delays, or burdens of the economic value at stake (disputed value), and at the same time does not burden the public and businesses too much.
- The need to encourage all businesses to resolve consumer disputes in a fast, fair, transparent, inexpensive, accessible, and informal manner. This can be done by establishing a voluntary mechanism (*internal complaints handling system*), including consulting services and complaints procedures, which can provide assistance to consumers.
- The need for clarity of information about available redress and other dispute resolution procedures must be made available to consumers.

²⁸ See section F, Dispute resolution and redress, United Nations guidelines for consumer protection, 2015.

- The need to ensure a collective dispute resolution procedure (*collective redress*), which can be carried out quickly, transparently, fairly, inexpensively, and accessible to both consumers and businesses.
- The need for governments to work with businesses and consumer groups, to advance consumer and business understanding of how to avoid disputes, dispute resolution, and redress mechanisms available to consumers.

In other words, any redress policy formulated in a consumer protection policy (legislation/regulation) in a country must at least be able to accommodate a number of elements above. Furthermore, in the context of today's human rights developments, access to consumer redress is also an important part of the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs), one of the pillars of which is the necessity of providing effective access to redress. Overall, there are 3 pillars that become the foundational principles in this guide, namely the state duty to protect, corporate responsibility to respect, and access to remedy. In the context of consumer protection, the implementation of the first pillar can be represented by the presence of the Consumer Protection Law, as a manifestation of the state's efforts to protect the public (consumers) from human rights violations that may be perpetrated by businesses. In this context the state needs to take appropriate steps to prevent, investigate, punish, and redress such violations through effective policies, legislation, regulations, and justice systems.

Then in Pillar 2, related to the company's responsibility to respect human rights, its aspects include the creation of internal policies that adopt human rights principles, the material of which includes clarity of information for consumers, for example those formulated by the existence of *terms of services*, or in the Consumer Protection Law when This is referred to as a standard clause contract. Meanwhile, Pillar 3 of the UNGPs emphasizes that victims (including consumers in it) who are affected by business activities must have access to effective redress. As part of the state's obligation to protect human rights in relation to business, the state must ensure effective redress, whether through judicial, administrative, legislative, or other appropriate mechanisms.

Remedy in this context may include apologies, restitution, rehabilitation, financial and non-financial compensation, as well as sanctions in the form of both criminal and administrative sanctions against businessess.²⁹ The UNGPs conceptually articulate these remedies into three categories, namely state-based judicial mechanisms (Principle 26), state-based non-judicial mechanisms (Principle 27), and non-state-based complaint mechanisms (Principle 28). In addition, states must ensure that judicial mechanisms can be effective when other remedies or alternative mechanisms are not available. In more detail, access to remedies according to the UNGPs is grouped into judicial mechanisms and non-judicial mechanisms. Both are subdivided into state-provided and non-state-provided mechanisms, and can be mapped into the following six categories:³⁰

a. Internal complaints handling

Conceptually, internal complaints handling emphasizes that businessess are responsible for providing compensation for damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded. Internal complaints handling systems require that businessess must always be responsible for expressions of dissatisfaction with goods or services provided to consumers. This system should be provided to consumers with only clear information and assistance. If this process does not reach a consensus, then the parties can resolve it either through a court mechanism, or out of court as a dispute resolution mechanism.

b. Self-regulatory external consumer redress

This mechanism exists because laws and other regulations originating from the state are an expensive way and it is impossible to accommodate all the needs of norms. So self-regulatory external consumer redress can fill the void and can improve compliance because regulations are made in associations or associations of businessess. Therefore, a contract or MoU is needed between businessess in the group as a form of mutual agreement. This can be done to regulate behavior patterns as well as out-of-court redress mechanisms.

²⁹ UN Guiding Principle on Business and Human Rights: Implementing the United Nations “Protect, Respect, and Redress” Framework.

³⁰ Allan Asher, at.al., *Models for Internal Complaint Systems and External Consumer Redress Schemes in ASEAN*, Foundation for Effective Markets and Governance, pp. 20-53.

c. Government established external consumer redress

Redress access provided by the government can be in the form of statutory bodies, Alternative Dispute Resolution (ADR) bodies, and licensing schemes. The statutory body is an institution mandated by law such as BPSK, BPKN, and OJK. Meanwhile, the licensing scheme is a mechanism that puts a consumer redress mechanism as a condition that must be met by businesses to obtain certain permits or licenses.

d. Public sector redress

This mechanism specifically addresses the issue of public services. In Indonesia, it can be matched with the existence of an Ombudsman who is mandated to handle complaints in the field of public services.

e. Small claims court

A small claims lawsuit is a judicial mechanism located in a certain court area which is usually limited by the value of the material claim.

f. Private organization to improve complaint system

This mechanism is created by representatives of businesses and the government to jointly establish an effective complaint and redress system.

g. Cross border redress

Access to redress in cases of cross-border consumer disputes is usually provided by regional organizations conducting cooperation in the field of consumer protection.

The various redress mechanisms above show that non-judicial mechanisms have a wider scope of actors because they are not limited to the state alone. Therefore, it is important to place non-judicial mechanisms as an alternative route, assuming that these mechanisms are more accessible and cheaper than judicial mechanisms. So, institutions such as BPSK, Ombudsman, as well as several complaint channels within the ministry in charge of public services, including those provided by the private sector (businesses), need to ensure that there is an effective redress mechanism for consumers. Principle 31 of the UNGPs on Business and Human Rights provides several criteria for effective non-judicial remedies, namely:

- a. **Legitimate:** enabling the trust of the intended stakeholder group, and being accountable for fair conduct of the complaints process;
- b. **Accessible:** being known to all target stakeholder groups, and providing adequate assistance to those who face special barriers to access;
- c. **Predictable:** providing a clear and known procedure with a timeframe for each stage, and clarity on the types of processes and outcomes available and the ways in which monitoring is carried out;
- d. **Equitable:** ensuring that aggrieved parties have appropriate access to the sources of information, advice and expertise necessary to engage in a complaints process in a fair, respectful and informed manner;
- e. **Transparent:** keeping complainants informed of the progress of their complaint, and providing sufficient information on the performance of the mechanism to build confidence in its effectiveness and meet the public's interests at risk;
- f. **Rights-compatible;** ensure that outcomes and remedies are consistent with internationally recognized human rights;
- g. **A source for continuous learning:** use relevant efforts to identify lessons for improving mechanisms and preventing future losses and abuses;
- h. **Based on engagement and dialogue :** consult targeted stakeholder groups on performance and design, and focus on dialogue as a way to address and resolve complaints.

In the context of redress, Chapter X of the Consumer Protection Law has specifically regulated dispute resolution. The provisions of Article 45 paragraph (1) emphasize that "Every consumer who is harmed can sue businessess through an institution tasked with resolving disputes between consumers and businessess or through courts within the general court environment". Thus, the Consumer Protection Law provides space for consumers to claim their rights either through state-based judicial mechanisms, such as using a small claims court or through state-based non-judicial mechanisms. Regarding this second mechanism, the government has regulated consumer protection institutions at the national level in the form of the National Consumer Protection Agency (BPKN), as well as

in the regional level in the form of the Consumer Dispute Settlement Agency (BPSK), as well as on consumer dispute resolution and criminal provisions.

I.D. Access to Redress for Consumers in ASEAN: A Comparative Analysis

Like other countries in the region, almost all countries in ASEAN also have specific policies or legislation related to consumer protection, although each country adopts a regulatory model and applies different standards in consumer protection, including those related to access to redress for consumers. In general, consumer protection policies in all ASEAN countries have implemented standards as emphasized by UNGCP 1985, although there are still countries that do not have consumer protection legislation, such as Brunei Darussalam and Cambodia. However, the rapid development in business transactions has prompted ASEAN countries to update their consumer protection laws. This is as emphasized in the ASEAN Strategic Action Plan for Consumer Protection (ASAPCP) 2025, which focuses on efforts to strengthen consumer protection laws in all ASEAN countries, increase access to information for consumers, provide consumer redress mechanisms that can be implemented effectively, and strengthening the institutional capacity of consumer protection. The following section illustrates the situation of consumer protection in ASEAN, especially in terms of policies and protection mechanisms:³¹

1. Brunei Darussalam

The legal framework for consumer protection in Brunei refers to the 2011 Consumer Protection and Fair-Trade Order (CPFTO). The CPFTO covers business-to-consumer (B2C) transactions, both domestic, and exports from Brunei. Consumers who are disadvantaged by businesses must first settle through the internal complaints handling system in each business. The application for compensation through an out-of-court mechanism can only be taken after the internal process is unsuccessful. The redress mechanism in Brunei Darussalam is carried out through two mechanisms: non-court and court. The out of court mechanism is carried out through the Competition and Consumer Affairs Department (CCAD), an institution under the Department of Economic Planning and Development (JPKE)

³¹ Models for Internal Complaint Systems and External Consumer Redress Schemes in ASEAN, Output 8: ASEAN Complaint and Redress Mechanism Models.

of the Prime Ministers' Office. This agency is responsible for implementing the CPFTO and the 2002 Price Control Law. CCAD handles consumer complaints in general regarding lawsuits on B2C transactions and their redress. This complaint can be made by telephone, email, fax, post, and complaint form and is accessed free of charge.

Meanwhile, access to consumer redress through a court mechanism can use the small claims tribunal, based on the Small Claims Tribunal Order 2006. This institution is authorized to handle claims filed by consumers based on the CPFTO. This judicial mechanism can provide several redress, namely asking for a refund of a sum of money given by consumers, providing compensation according to what was suffered, ordering the repair of goods to producers, and ordering changes to contracts between consumers and businesses.

2. Cambodia

Cambodian Consumer Protection Law was enacted on October 4, 2019.³² This law acknowledges the right to receive compensation for the consumers. Cambodia also has the Consumer Protection National Commission established in July 2020 pursuant to the executive regulation specifying the organization and its function. This institution consists of the representatives of sectoral ministries chaired by Minister of Trade. The Consumer Protection Competition and Fraud Repression Directorate-General (CCF) becomes the secretariat which is responsible for the implementation of consumer protection law.

Currently Cambodia has not had any consumer association even though the recent consumer protection law has acknowledged the consumer's rights to have the association registered in Ministry of Home Affairs. Meanwhile, the consumer redress mechanism in Cambodia is only available through civil court in relation with unlawful act or other actions. Actually CCF also has role as the facility for the consumers to file complaint, however it has not been publicly well-known.³³

3. Laos

³² See : Preah Reach Kram No. ns/rkm/1119/016 https://aseanconsumer.org/file/pdf_file/Law-on-Consumer-Protection.pdf

³³ Handbook on ASEAN Consumer Protection Laws and Regulations, Second Edition, September 2021. p. 36

Laos passed the Consumer Protection Law in June 2010 and was signed by the President in September 2010. Previously, consumer protection was fragmented, in both regulatory and institutional aspects. This law stipulates that the dispute mechanism between consumers and businesses is carried out by several methods, namely: conciliation or direct negotiation between consumers and businesses, mediation, through administrative procedures with the division of authority between the central and regional governments based on the value of the lawsuit, or through the courts. The obligation to provide internal complaints handling is also regulated by this law, which provides access for consumers who feel aggrieved to be able to request compensation or compensation from businesses. Businesses must reply within three days of receiving the request.

4. Malaysia

Consumer protection in Malaysia is regulated in the 1999 Consumer Protection Act. After several amendments, this legislation now covers both conventional and electronic trade. Just like Indonesia, Malaysia also has an advisory body, namely the National Consumer Advisory Council under the Ministry of Domestic Trade. The consumer redress in Malaysia is guarded by three agencies, namely Tribunal Tuntutan Pengguna Malaysia (TTPM – Tribunal for Consumer Claims)³⁴, Consumer Complaint Management Centre (CCMC), and Federation of Malaysian Consumers Associations (FOMCA) through an institution named National Consumers Complaints Centre (NCC).

Malaysian Consumer Protection Law refers to the Consumer Protection Act 1999 (CPA) which acknowledges the right to redress. One of the contents of the latest amendment of CPA specifies the extension of TTPM jurisdiction in order to handle dispute of which value does not exceed RM50,000.³⁵ Before TCC was established, all disputes between the consumer and supplier and/or producer were brought before the civil court, which often costs money and time. With regard to that problem, TCC was born as an alternative facility for the consumers to file compensation with convenient, low-cost, and quick mechanism.³⁶ TCC has jurisdiction in handling whichever claim of which jurisdiction refers to CPA. The consumer can file claim with value not exceeding RM50,000.

³⁴ Section XII Consumer Protection Act 1999.

³⁵ Revision of CPA, 8 July 2019.

³⁶ *Op Cit*, Handbook on ASEAN Consumer Protection Laws and Regulations, Second Edition, p. 48.

In addition to that, consumer can also file complaint to the Ministry of Domestic Trade and Consumer Affairs be it directly to the Consumer Complaint Management Centre (CCMC) or by telephone, website, and post. The redress will then be done through FOMCA as a consumer agency which has been umbrella of 16 consumer associations. This institution is adequately powerful as recorded to have handled more than 25 industry sectors in Malaysia. Technically, the complaint can be done through various facilities, such as, telephone, email, e-complaint, post and fax. NCCC will become the mediator between the complainant and respondent.

Interestingly, Malaysia has a similar e-court model launched in 2004 under the name e-tribunal. This model is integrated with e-complaint as an initial mechanism that must be taken. E-tribunal is a small claims court conducted through an electronic system and specifically handles consumer complaints. In addition, Malaysia also has a Financial Mediation Bureau of Malaysia which handles complaints free of charge. This institution developed into an ADR channel in the financial sector.

5. Myanmar

Consumer protection in Myanmar is regulated through Myanmar Consumer Protection Law enacted in 2014. On March 15, 2019, the law was amended in order to adjust with the emerging trend pursuant to Law No 9/2019.³⁷ The new Consumer Protection Law-2019 consists of 25 chapters and 84 sections, developing with the special chapters on guarantee, product security and responsibility, withdrawal and prohibition procedure of harmful goods and services, product label, and cooperation with consumer association. The consumer redress is at least provided by two main agencies, that is, Department of Consumer Affairs (DOCA) and Consumer Affairs Committees (CAC).

a. Department of Consumer Affairs (DOCA)

Consumer Protection Law provides the redress mechanism through DOCA which can be accessed through telephone, post, Facebook, and also online via DOCA official website. As

³⁷ See: The Consumer Protection Law of Myanmar https://aseanconsumer.org/file/post_image/ConsumerProtectionLaw%202019.pdf

an agency under Ministry of Trade, DOCA is not only available at the national level, but also³⁸ has representative office at the regional level. Law has granted this institution an authority to settle the consumer dispute and impose the administrative sanction.

b. Consumer Affairs Committees (CAC)

Consumer Affairs Committees (CAC) consists of the representatives from DOCA, related ministries, and private sector organizations. This institution can settle the consumers' complaint through mediation if they suffer for loss of goods and services. This institution has the authority to impose sanction pursuant to the certain articles as follows:

- (1) If the business fails to fulfil their job (Article 21) or provide guarantee for the goods and services (Article 24, 25, and 27), the Regional and National Offices can impose administrative sanctions as the following: warning, repair, replacement, and refund.³⁹ The Office needs to report their investigation result to CAC to decide the legal action to take.
- (2) In terms of CAC conducting investigation and finding the violations from the business in the section and limitation specified in section 23 can be imposed sanction as follows: compensation for damage, fine, prohibition of selling certain goods in a limited time, and the withdrawal of business permit temporarily or permanently (coordinating with related ministries).⁴⁰

6. Philippines

Consumer protection in the Philippines refers to the 1992 Consumer Law, which regulates several things that must be done by business, and the handling of consumer complaints. Despite having a Consumer Law, the regulation regarding the redress mechanism in the Philippines is still carried out on a sectoral basis, through 3 main departments, namely the Ministry of Health, the Ministry of Agriculture, and the Ministry of Trade. Consumers can claim compensation in these three sectors. The department will carry out investigations according to its competence and continue the legal process both civil and criminal through the courts. Specifically for the Ministry of Commerce, they have both central and regional agencies, and at the central level they have a consumer hotline, to receive, review, and

³⁸ See: DOCA's Consumer Access to Redress Mechanism <https://complaint.doca.gov.mm/my-MM/submit-complaint>

³⁹ *Op Cit*, Handbook on ASEAN Consumer Protection Laws and Regulations, Second Edition, p. 49-51.

⁴⁰ *Ibid*.

resolve consumer complaints. In addition, there are also Consumer Welfare Desks, which are part of the Ministry of Commerce's program as a channel for consumer complaints. This institution cooperates with businesses to provide an internal complaints handling system channel for each business. If there is no common ground, consumers can access redress efforts through the trade department.

7. Singapore

Singapore has a Consumer Protection-Fair Trading-Act (CPFTA) which is the umbrella law for consumer protection in this country. The law has gone through several rounds of amendments, of which the latest was in 2016. The consumer must first seek dispute resolution out of court or also via The Consumers Association of Singapore (CASE). The institution can be the mediator by inviting the consumer and businesses. If the dispute cannot be resolved through out of court, the consumer can file lawsuit to civil court.

Most claim based on CPFTA can be filed to Small Claims Tribunal which can handle dispute for the value up to S\$20,000. This limit can be upgraded to be \$30,000 if both parties agree and submit the Memorandum of Consent online.⁴¹

Value of Claim	Individual	Other Entities
Up to S\$5,000	S\$10	S\$50
From S\$5,000 to S\$10,000	S\$20	S\$100
More than S\$10,000 to S\$20,000	1% of the total claim	3% of the total claim
More than S\$20,000, to S\$30,000*	1% of the total claim	3% of the total claim

If the consumer seeks for another way regarding goods which are not conforming with CPFTA, the court can arrange the unconditional order or with conditions such as compensation, refund for goods and others deemed as fair. Therefore, there is a possibility that consumer can sue the consequential loss resulted from the non-conforming goods.

⁴¹ See: About the Small Claims Tribunal, <https://www.statecourts.gov.sg/cws/SmallClaims/Pages/GeneralInformation.aspx>,

The redress under CPFTA for the non-conforming goods is only applicable for the consumer, not business.

In Singapore, a mechanism for resolving disputes over financial services products is also provided specifically through the Financial Industries Disputes Resolution Center (FIDReC), which is an alternative dispute resolution institution similar to LAPS JK in Indonesia. However, FIDReC is actually a self-regulatory body, while LAPS JK is a form of cooperation between regulatory agencies and associations in the financial sector.

8. Thailand

The Consumer Protection Law in Thailand is considered the earliest among other ASEAN countries, having been passed in 1979. In addition to this law, consumer protection in Thailand is also carried out sectorally, starting from the sectors of medicine, food, advertising, and others. Thailand has OCPB as the main institution that provides complaint services, mediates, and represents consumers if cases are processed through the courts. This court process has its own procedural law, which is regulated by the 2008 Consumer Case Procedure Law.

The trial is free of charge and the lawsuit can be made orally or in writing. The procedural law also stipulates that these trials be conducted more quickly, investigations are proactive, and the courts are given additional powers to issue protective orders. Thailand has an internal complaints handling system that can serve as an example for Indonesia. While specifically for health services, this country provides the Thailand National Health Security Office (NHSO) which provides health protection for Thai citizens.⁴² NHSO complaint channels are available at the provincial and regional levels, and through national call centers, and are considered to be a good model for implementing an internal complaints handling system. In this model, one of the most important is to provide multiple channels for consumers to submit their complaints.⁴³ Not only that, Thailand's financial and banking sector also has a self-regulation institution, which is also a best practice in this model. Although there is no special service for handling complaints, this institution can play a role

⁴² Models for Internal Complaint Systems and External Consumer Redress Schemes in ASEAN, Output 8: ASEAN Complaint and Redress Mechanism Models, p. 23.

⁴³ *Ibid.* p. 24.

in conducting conciliation between consumers and banks even in the absence of certain regulations or jurisdictions.⁴⁴

9. Vietnam

Consumer protection in Vietnam is specifically regulated in the 2010 Consumer Protection Law, which stipulates that consumer dispute resolution can be carried out by means of negotiation, mediation, arbitration, and court proceedings. Vietnam has the Vietnam Consumers and Standards Association which receives complaints and mediates between consumers and businesses. In addition, there is also the Business Competition and Consumer Protection Authority which accepts and mediates consumers in the event of a violation of the law. This institution provides a hotline that becomes a channel for consumers to complain about their detriment. In addition, an out-of-court mechanism can be carried out through the Ministry of Industry and Trade, which can impose sanctions such as stopping the supply of goods/services, suspending business activities, as well as ordering the abolition of provisions that violate consumer rights if the transaction is contract-based. Meanwhile, the court for consumer disputes is carried out through a fast-track legal procedure.

⁴⁴ *Ibid.* p. 26.

CHAPTER II

ANALYSIS OF PROBLEMS AND CHALLENGES OF CONSUMER RIGHT TO REDRESS

II.A. Access to Redress according to the Consumer Protection Law

In the context of access to consumer redress, which is reflected in the consumer dispute resolution mechanism, in general the Consumer Protection Law provides it in two ways, namely through public courts or out of court. The provisions of this law emphasize that every consumer who is harmed can sue businessess through institutions tasked with resolving disputes between businessess and consumers, or through courts within the general court environment.⁴⁵ Article 45 paragraph (2) states that the disputing parties may voluntarily choose to resolve their disputes through court or out-of-court mechanisms. In cases where both parties have chosen to go through an out-of-court mechanism and fail to reach a settlement, Article 45 paragraph (4) added an option to take the dispute further to court.

– Dispute Resolution through the Civil Court

The court-based settlement mechanism as referred to in Article 45 paragraph (1) above places the right to file a lawsuit in court only for consumers. Perhaps this can be understood that there is indeed a gap in bargaining position between consumers and businessess, so that this norm and the CPL as a whole are intended to protect consumers as the parties with weak bargaining power. In Indonesia, the civil court mechanism can be done through a small claims court. However, Supreme Court Regulation (PERMA) No. 2/2015 as the legal basis for this mechanism stipulates in a limitative manner that the plaintiff and the defendant in a small claims court must be domiciled in the jurisdiction of the same court (see Article 4 paragraph (3)), thus localizing and limiting the use of this mechanism for cross-regional disputes.

The use of this civil court mechanism, besides being able to be done individually (personally) or through their heirs, consumers are also allowed to file a lawsuit in groups

⁴⁵ Article 45 paragraph (1) of the Consumer Protection Law.

(collective redress), through class action and legal standing mechanisms, as regulated in the civil procedural law applicable in Indonesia.

a. Class Action in Consumer Protection

A class action lawsuit is one of the consumer redress mechanisms in Indonesia. The CPL has recognized and provided a legal basis for class action through Article 46 paragraph (1) letter b, whose procedure refers to PERMA No. 1 of 2002. The regulation defines a class action as a procedure for filing a lawsuit in which one or more persons representing a group file a lawsuit for themselves or for each of them, and at the same time represent a large group of people, who share the same facts or basis. between the representatives of the group and the group in question. In general, the principle of class action refers to four requirements adopted from Article 23 of the US Federal Rule of Civil Procedure, namely numerosity, commonality, typicality, and adequacy of representation. These four things distinguish it from legal standing, for example, that those who represent must be able to identify themselves as victims as well as the consumers they represent.⁴⁶

When referring to the means provided by the CPL, there are at least three institutions with potentials for carrying out class action, namely BPKN, BPSK, and LPKSM. This last institution is actually given the authority by CPL to file a lawsuit, but to distinguish it from legal standing, in the context of class action, it must identify itself as a victim. Meanwhile, BPKN is not designed as an institution that directly seeks access to redress for consumers. Normatively, this institution only functions to provide recommendations to the government to improve the consumer protection climate in Indonesia. In other words, BPKN's has limited authority, in contrast to the Australian Competition and Consumer Commission, which is also authorized to represent individuals in class actions. Meanwhile, BPSK is an institution established to provide a mechanism for resolving consumer disputes outside the court. Therefore, its function is limited to dispute resolution, so it is not given the authority to sue businesses who are considered detrimental to consumers.

b. Use of Legal Standing in Consumer Redress in General Courts

⁴⁶ See: Shidarta, *Consumer Protection Law in Indonesia*, (Jakarta: Grasindo, 2006).

In relation to the use of the legal standing mechanism for the redress of consumer rights, the provisions of Article 46 paragraph (1) letter c of the Consumer Protection Law have given the right to the Non-Governmental Consumer Protection Agency (LPKSM), to be able to file a legal standing lawsuit. This lawsuit can be carried out as long as the LPKSM in question meets the regulated requirements, namely: in the form of an association or foundation legal entity, which in its articles of association clearly states that the purpose of establishing the organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association. In this regard, CPL designs that LPKSM must first be registered and recognized by the government. Despite the existence of the arrangement, the legal standing stipulation in this article is actually still limited. This is different from the Law on Environmental Protection and Management (Law No. 32/2009), which in detail regulates the legal standing for environmental organizations to be able to file legal standing lawsuits, including the requirements, in a selective manner.

The CPL also does not specifically regulate the opportunity for BPKN to be able to file a legal standing lawsuit in the context of consumer redress. Even though it actually refers to Article 46 paragraph (1) letter d of the CPL, it can be interpreted as legal standing for the BPKN. The formulation of the article stipulates that the Government and/or related agencies may file a lawsuit if the goods and/or services consumed or utilized result in large material losses and/or no small number of victims. Thus, the use of the article as legal standing must match BPKN as the government or related agency, either using the constitutional legal basis or also state finance law.

In addition to being regulated in the CPL, access to consumer redress through a special legal standing lawsuit mechanism in the financial services sector is also regulated in the Financial Services Authority Law. The provisions of Article 31 paragraph (1) of the FSA Law stipulates that, in order to protect consumers and the public, the FSA has the authority to conduct legal defenses, which include: a) ordering or taking certain actions to the Financial Services Institutions to resolve complaints from Consumers who have been harmed by the said Financial Services Institutions; b) file a lawsuit: (1) to recover the assets belonging to the injured party from the party causing the loss, either under the control of the party causing

the loss or under the control of another party in bad faith; and/or (2) to obtain compensation from parties who cause losses to Consumers and/or Financial Services Institutions as a result of violations of the laws and regulations in the financial services sector.

– Out of Court Dispute Resolution Mechanism

As explained earlier, the CPL provides the basis for the holding of dispute resolution outside the court. If this mechanism is adopted, a lawsuit through the court can only be taken if the *out-of-court* mechanism is declared unsuccessful. Practically, this can be found in dispute resolution through arbitration, that the involvement of court mechanisms in this context is in the context of filing objections. This means that parties who do not accept the BPSK decision can take settlement efforts in the general court.



Conceptually, the BPSK decision does not presuppose a *final and binding* force, even though the legal norms say it is a final decision. Article 54 paragraph (3) of the CPL states that the decision of the BPSK assembly is final and binding, so there is an impression that there is no

longer any appeal against the decision and has direct executive power. This quasi-judicial model can also be found in the business competition sector. In disputes in this sector, businessess can file an objection through the district court on the results of the KPPU's decision. Meanwhile, BPSK as a quasi-judicial institution offers 3 consumer dispute resolution mechanisms, namely conciliation, mediation, and arbitration. So far, BPSK refers to the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001 (SK 350/2001), in exercising its authority to resolve consumer disputes.

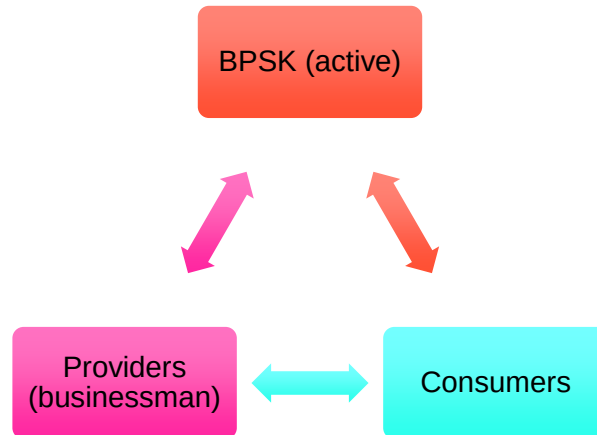
a. Conciliation trial

In this process, BPSK do not take an active role in the dispute resolution process, but acts as an intermediary between consumers and businessess. The principle of dispute resolution in this way consists of 2 aspects:⁴⁷ First, the process of resolving consumer disputes regarding the form and amount of compensation is left entirely to the parties. Second, the results of the deliberation between consumers and businessess are issued in the form of a BPSK decision. BPSK's authority as a conciliator according to SK 350/2001 includes: summoning the disputing parties, summoning witnesses and experts if necessary, then providing a conciliation forum, and answering questions about the CPL.

b. Use of mediation mechanisms

Mediation is carried out at the initiation of one or both parties. In contrast to conciliation, this process places BPSK as an active party in providing a forum and acting as an intermediary between consumers and businessess. This can be seen in the task of BPSK in the context of mediation, namely actively reconciling consumers and businessess in dispute and actively providing advice or suggestions for resolving consumer disputes in accordance with the CPL or other relevant laws. The principle of settlement through mediation, among others, is that the form or amount of compensation in the settlement of this dispute is left entirely to the parties while BPSK acts as a mediator as previously mentioned. Then the results of the deliberation of consumers and businessess are issued in the form of a BPSK decision.

⁴⁷ Article 29 Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001.



Thus the mediator does not have the authority to decide consumer disputes unilaterally because the dispute resolution is carried out by the parties with the BPSK Assembly as a companion. If the mediation process is successful, before BPSK issues a decision, a written agreement is made between the businesses and the consumer.⁴⁸

c. Use of arbitration mechanisms

The parties in this mechanism fully submit the dispute resolution process to the BPSK Assembly as arbitrator. The parties choose an arbitrator from BPSK who comes from elements of businesses and consumers as the assembly. The consumer side chooses the arbitrator from the consumer side, and the businesses choose the arbitrator from the businesses element. Then the chosen arbitrator will involve the government element arbitrator as the third arbitrator. In this mechanism there are two trials, namely the first trial and the second trial. In the second trial, there is a reading of the contents of the consumer's lawsuit and a letter of response from the perpetrator. Before the businesses reads the answer, the consumer can withdraw their lawsuit by making a statement of revocation of the case. Then the second trial is carried out no later than 5 days from the first trial. If the two consumers are not present at the trial, the lawsuit is null and void. On the other hand, if

⁴⁸ Susanti Adi Nugroho, *Consumer Dispute Resolution Process Judging from the Procedural Law and Obstacles in Its Implementation*, (Jakarta: Kencana, 2015), p. 111.

the businessess is not present in the arbitration process, the lawsuit from the consumer can be granted without the presence of the businessess (*verstek*).

II.B. Access to Consumer Right to Redress in Sectoral Legislation

In its development, consumer protection in Indonesia, including access to consumer redress is not only regulated in the Consumer Protection Law, but is also regulated in various sectoral legislation. There are at least 24 sectoral legislation that regulates consumer protection, including providing a different redress access mechanism for each sector. The 24 laws are spread as a reference for consumer protection rules and access to redress for the following sectors: finance and banking, health, telecommunications and information, transportation, trade, food and medicine, and housing.

Sector	Legal Framework
Finance and Banking	– Law Number 24 of 2004 concerning Deposit Insurance Agency⁴⁹ – Law Number 7 of 1992 concerning Banking⁵⁰ – Law Number 21 of 2008 Islamic Banking – Law Number 3 of 2011 concerning Fund Transfers – Law Number 21 of 2011 concerning the Financial Services Authority
Health	– Law Number 29 of 2004 concerning Medical Practice – Law Number 36 Year 2009 concerning Health – Law Number 44 of 2009 concerning Hospitals – Law Number 36 of 2014 concerning Health Workers – Law Number 38 of 2014 concerning Nursing

⁴⁹ Law no. 7 of 2009 concerning the Stipulation of Government Regulation in Lieu of Law Number 3 of 2008 concerning Amendments to Law no. 24 of 2004 concerning the Deposit Insurance Corporation.

⁵⁰ Amended through Law no. 10 of 1998 concerning Amendments to Law no. 7 of 1992 concerning Banking and Law no. 11 of 2020 concerning Job Creation.

Telecommunications and Information	– Law Number 36 of 1999 concerning Telecommunications – Law Number 32 of 2002 concerning Broadcasting – Law Number 19 of 2016 Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions
Transportation	– Law Number 23 of 2007 concerning Railways – Law Number 17 of 2008 concerning Shipping – Law Number 1 of 2009 concerning Aviation – Law Number 22 of 2009 concerning Road Traffic and Transportation
Trading	– Law Number 7 of 2014 concerning Trade – Law Number 10 of 2011 Amendments to Law Number 32 of 1997 concerning Commodity Futures Trading
Food and Medicine	– Law Number 18 of 2012 concerning Food – Law Number 33 of 2014 concerning Guarantee of Halal Products
Housing area	– Law Number 1 of 2011 concerning Housing and Settlement Areas – Law Number 20 of 2011 concerning Flats

The diversity of consumer protection arrangements that accommodate these various sectors is also one of the reasons for the creation of Presidential Decree No. 50 of 2017 concerning the National Strategy for Consumer Protection. It is hoped that the issuance of this Presidential Regulation will provide policy directions and strategies for the implementation of national consumer protection that are more synergistic, harmonious, and integrated for ministries/agencies, local governments, and relevant stakeholders. Unfortunately, after the end of the period for the Presidential Regulation to come into effect in 2020, no Presidential Regulation has yet been issued for the next period.

In addition to the arrangements that are spread out in various sectoral legislations, almost every ministry/institution that provides public services and oversees certain business

sectors, as the implementation of sector legislation, also provides its own consumer complaint mechanism. Some sectors even provide their own alternative dispute resolution institutions, as is the case in the Consumer Protection Law. While others only accommodate consumer complaints, without providing any dispute resolution mechanism. In detail, the dispute resolution and consumer redress mechanisms in various sectors are as follows:

– ***Access to Redress to Consumers in the Financial Services Sector***

The protection of consumer rights in the financial services sector in general still refers to the provisions of the Consumer Protection Law, while specifically regulated in the Financial Services Authority Law, Banking Law, Sharia Banking Law, Deposit Insurance Agency Law, and Funds Transfer Law. In the international context, guidelines on consumer protection in the banking, insurance, and financial institutions sector were formulated by the World Bank in 2012 which developed best practices on consumer protection institutions, openness and sales practices, maintenance and handling of customer accounts, data protection and privacy, mechanisms for dispute resolution, insolvency and guarantee schemes, financial literacy and consumer strengthening, as well as consumer protection and business competition.⁵¹ In addition, several guidelines issued by the Financial Action Task Force (FATF) for the financial sector have also specifically emphasized the importance of consumer protection in the financial sector.

Specifically related to consumer redress access to the financial sector, the G20 High Level Principles on Financial Consumers Protection have also emphasized the importance of providing a complaint mechanism and access to redress for consumers in this sector. Principle 9 states that authorities must ensure that consumers have access to adequate complaint handling and redress mechanisms that are accessible, affordable, independent, fair, accountable, timely and efficient. In addition, it is also emphasized that the mechanism must not impose unreasonable costs, delays or burdens on consumers.⁵² As a follow-up to encouraging the implementation of these principles, the G20/OECD Task Force has also

⁵¹ The World Bank, Good Practices for Financial Consumer Protection. Washington DC, June 2012.

⁵² See: G20 High-level Principles on Financial Consumer Protection, October 2011.

been established with the task of streamlining the implementation of consumer protection in the financial sector.⁵³

In Indonesia, the issuance of the Financial Services Authority Law in 2011 has established the Financial Services Authority (OJK), which has a function as a regulator and supervisor of several financial sectors: banking, capital markets, insurance, pension funds, financing institutions, and other financial service institutions. Therefore, specifically in the context of dispute resolution, including access to consumer redress, this sector will refer to the OJK as an institution that provides a complaint mechanism and settlement of consumer disputes that are harmed by financial service institutions.⁵⁴ This refers to one of the principles of consumer protection in the financial services sector, namely handling complaints and resolving consumer disputes in a simple, fast, and affordable cost.⁵⁵

As part of the consumer protection mechanism, OJK itself has issued 3 main policies that form the basis for several protection mechanisms:

- a. OJK Regulation Number 76/POJK.07/2016 concerning Improving Financial Literacy and Inclusion in the Financial Services Sector for Consumers and/or the Community, and
- b. OJK Regulation Number 61/POJK.07/2020 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector.

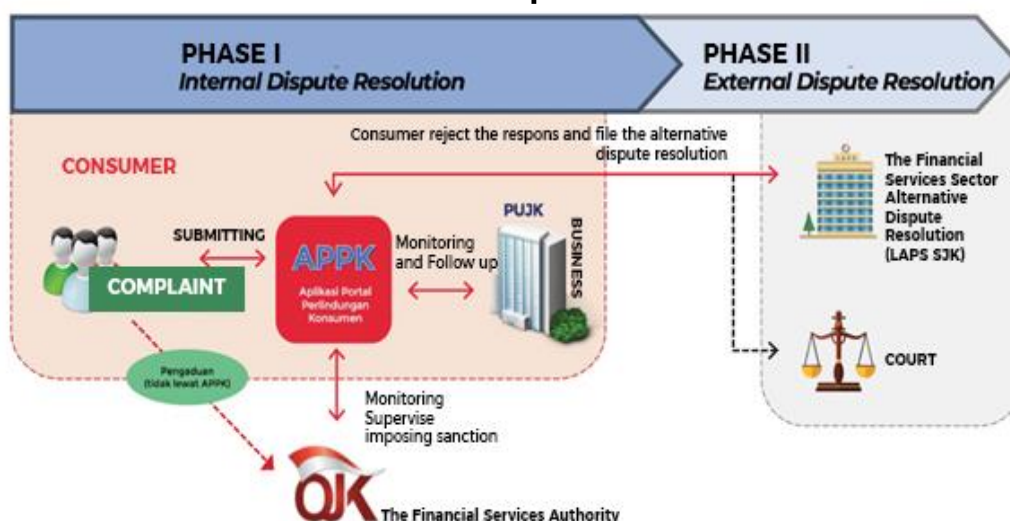
In terms of procedural access, there are at least 3 mechanisms provided by OJK for handling consumer complaints, including also to get access to redress, namely: internal complaints handling system, Consumer Protection Portal Application (APPK), and Alternative Institution for Financial Services Sector Dispute Resolution (LAPS-SJK). This mechanism is outside the mechanisms as regulated and provided for in the Consumer Protection Law and the Civil Code (KUHPerdata).

⁵³ See: <https://www.oecd.org/finance/financial-education/g20-oecd-task-force-financial-consumer-protection.htm>.

⁵⁴ See: Article 29 of the OJK Law

⁵⁵ See: Article 2 of POJK 1/2013

Financial Sector Consumer Dispute Resolution Flowchart



Source: Financial Services Authority

(i) Internal complaints handling System

Financial Services Providers (PUJK) are required to provide a mechanism for complaints and resolutions for violations of consumer rights. For these complaints, FSBs are required to examine their internal affairs in a competent, correct and objective manner. After that, the PUJK must analyse the veracity of the complaint. If an error is found on the part of the PUJK, then there is an obligation to submit an apology and offer compensation (redress/remedy) or repair of products and/or services.⁵⁶ This mechanism offers a cheaper and shorter process when compared to other mechanisms. However, the use of this mechanism really requires goodwill from businesses, so that redress for consumers can be provided effectively, because this mechanism is provided and completed directly by the PUJK, so there is no control mechanism from a competent authority to be involved.

⁵⁶ Article 38 POJK 1/2013.

(2) APPK Mechanism (Consumer Protection Portal Application)⁵⁷

In addition to the internal complaint mechanism, currently OJK has also provided a complaint service for consumers to submit their complaints for losses suffered due to services from PUJK. This mechanism places OJK as a statutory body that has the authority to receive complaints and seek settlements. The presence of this mechanism gives consumers a choice, whether to report directly through the APPK mechanism or resolve it internally with the PUJK. In this mechanism, OJK acts as a mediator between the FSB and consumers, to resolve disputes between the two. If it does not reach a common ground, then the parties can take legal channels or mechanisms outside the court such as LAPS. In the financial services sector, LAPS is a special agency that resolves disputes through alternative dispute resolution.

(3) Alternative Dispute Resolution Institution Mechanism (LAPS)

Prior to 2021, alternative out-of-court mechanisms in the financial services sector consist of 6 Alternative Dispute Resolution Institutions (LAPS) for the Financial Services Sector registered with OJK. The six LAPS handle certain sub-sectors, according to their respective fields. After OJK issued POJK 61/2020, LAPS was merged into one institution that handles all disputes in the financial services sector, both conventional and sharia, through the Alternative Financial Services Sector Dispute Resolution Institution (LAPS SJK), which is domiciled in DKI Jakarta.

The development refers to best practice in several countries that handle financial service disputes in one institution, for example, The Australian Financial Complaints Authority (AFCA), the Financial Industry Disputes Resolution Center (FIDREC) in Singapore, and the UK's Financial Ombudsman Service (FOS).⁵⁸ Members of the LAPS in Indonesia consist of Self-Regulatory Organizations (SROs), and associations in the Indonesian financial services sector, which co-signed the deed of "Minutes of the Establishment Meeting Through

⁵⁷ APPK refers to the Financial Services Authority Regulation (POJK) Number: 18/POJK.07/2018 concerning Consumer Complaint Services in the Financial Services Sector; and 2. Financial Services Authority (POJK) Regulation Number: 31/POJK.07/2020 concerning the Implementation of Consumer and Community Services in FSS by OJK.

⁵⁸ See: Financial Services Authority, Integration of Alternative Dispute Resolution Institutions in the Financial Services Sector, 2018, pp. 33-47.

Electronic Facilities of LAPS SJK", on September 22, 2020, with a total of 3 SROs and 19 Associations.⁵⁹ Therefore, conceptually this institution is a self-regulatory body, and is a form of cooperation between private and public bodies to organize consumer dispute resolution in the financial services sector.

Although a number of mechanisms for handling complaints or complaints from consumers for the financial services sector have been provided, in practice there are still some obstacles and challenges. This challenge, for example, is related to the cost of resolving disputes through the SJK LAPS which is quite expensive, although the amount has been determined proportionally according to the value of the dispute. The following table compares the cost of proceedings at LAPS SJK:⁶⁰

	Registration	Administration	Honorarium	Deposit
Mediation	2,500,000	<i>Min.</i> 10,000,000	<i>Min.</i> 25,000,000 ⁶¹	5,000,000
Arbitration	2,500,000	<i>Min.</i> 5,000,000	<i>Min.</i> 12,000,000	2,500,000
Binding opinion	2,500,000	2,500,000	<i>Min.</i> 50,000,000	2,500,000

However, LAPS SJK still recognizes the concept of "Small & Retail Claims" as a case, with the disputed values as follows:

- up to IDR 200,000,000.00 (two hundred million rupiah) for disputes in the financing, pawnshops and financial technology sectors;
- up to IDR 500,000,000.00 (five hundred million rupiah) for disputes in the banking sector, capital market, insurance for claims for life insurance, venture capital, and credit guarantees;

⁵⁹ See: <https://lapssjk.id/member-laps-sjk/>.

⁶⁰ Regulation of Alternative Dispute Settlement Institutions in the Financial Services Sector Number 06 concerning Dispute Settlement Service Fees.

⁶¹ The Mediator's Honorarium is calculated at 33.33% (thirty-three-point thirty three percent) of the Arbiter's Honorarium rate.

- c. up to IDR 750,000,000.00 (seven hundred fifty million rupiah) for insurance sector disputes for general insurance claims.

The parties in the resolution of small claims disputes at LAPS SJK are not charged any dispute resolution service fees as regulated in the LAPS SJK Regulations. Therefore, there are opportunities for groups of people with low incomes to settle disputes on financial services through this institution in more affordable manner. In addition to cost constraints, SJK LAPS, which currently only exists in Jakarta, is also considered less accessible by consumers living outside Jakarta. As the interest in using alternative dispute resolution mechanisms is certainly not limited to consumers in Jakarta, there needs to be further innovation to develop online dispute resolution so that it can be more easily accessed.

– ***Access to Redress for Consumers in the Trade Sector***

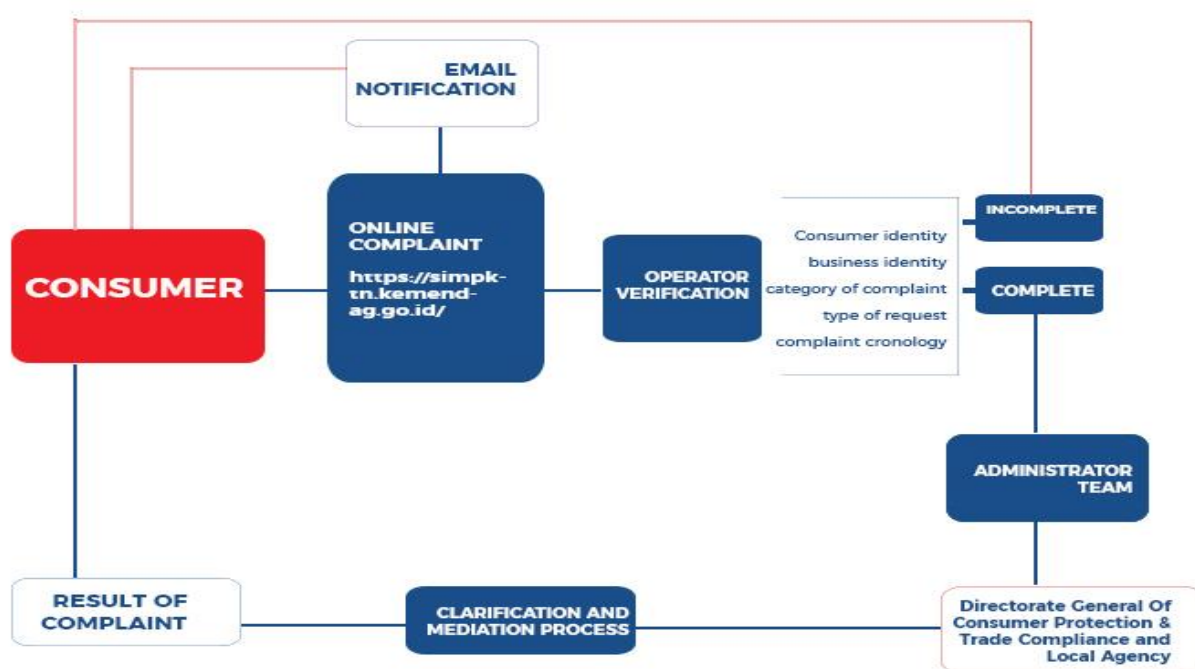
Access to redress in the trade sector has been provided through the Ministry of Trade, which is also the coordinator of consumer protection in Indonesia. Currently, the redress mechanism in the trade sector is provided through a complaint service at the Directorate General of Consumer Protection and Trade Compliance of the Ministry of Trade. The complaint service can be done directly (*offline*) or online through the Information System for the Management of Consumer Protection and Trade Compliance (SIMPKTN) portal. SIMPKTN provides at least two things: the Siswas-PK and the National Portal which both serve consumer complaints. The difference is, the National Portal is a one-door mechanism for complaint services from 9 ministries/institutions in charge of each sector. Meanwhile, Siswas-PK is an integrated service with 34 provincial offices, which are in charge of trade, to record consumer complaints. In this system, provincial offices will receive a distribution of complaints handling according to the type of complaint.

The online complaint service through Siswas-PK can be accessed via WhatsApp, email, or also the website. Consumers can demand refunds, replacement of goods and/or services of similar or equivalent value, health care, compensation, and other claims. After the consumer fills out the complaint form and completes the file/evidence, then the officer will analyse it to determine whether the case is in the area of the CPL or not. If not, then the

process will be transferred to the relevant institution, but if it falls under the domain of the CPL, it will be completed by the Ministry of Trade. The settlement of the Siswas-PK complaint service was carried out in two ways, namely: clarification and mediation. Consumers who find an agreement with businesses in the clarification and mediation process can then get a redress based on the demands that have been determined in the complaint form. If they do not find a common ground, then the consumer can take the next dispute resolution process through BPSK or also the court.

Meanwhile, the National Portal was formed to facilitate consumers in accessing complaint services at 9 Ministries/Agencies. The Directorate General of Consumer Protection and Trade Compliance is the coordinator for consumer protection affairs managed by BPOM, Ministry of PUPR, Ministry of Transportation, Ministry of Health, Ministry of Communication and Information Technology, Ministry of Energy and Mineral Resources, Bank Indonesia, and the Financial Services Authority. Consumers can complain to the National Portal related to complaints about the business activities covered by the ministry/institution. In addition to that, the said system also accommodates the complaint of the consumers from foreign countries.

Flowchart of SISWAS-PK Ministry of Trade



Source: SISWAS-PK Ministry of Trade

Furthermore, the handling of consumer complaints through SiswasPK is done through a mediation process, which is also available via BPSK. Normatively, the CPL basically places the Ministry of Trade as the national coordinator of consumer protection, and BPSK in charge of handling disputes. Therefore, it is really necessary to harmonize authority among stakeholders, so that there is a clearer roadmap for consumer redress. In this context, there are two terms that often create confusion, namely complaints and disputes. According to the Ministry of Trade, complaints are different from disputes,⁶² although the settlement was done through mediation. This is also later developed online through the development of an ODR mechanism, which is specifically aimed at the e-commerce sub-sector.

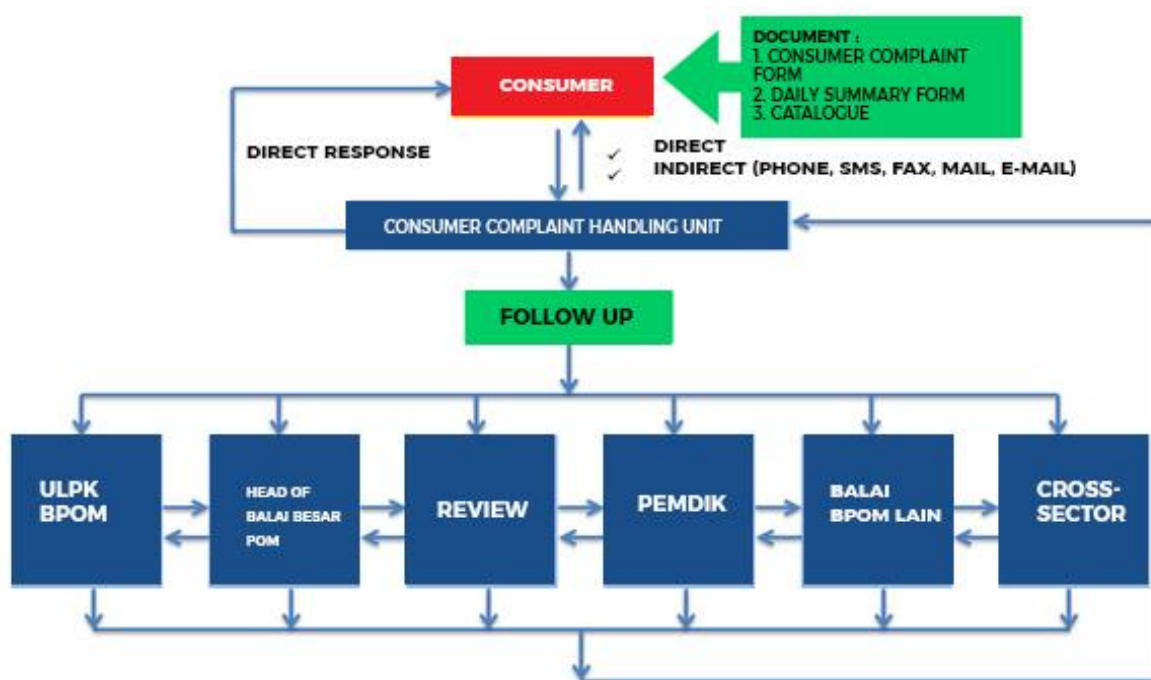
The problem is that the concept will create further confusion when the ODR is separated from BPSK as a dispute resolution institution. First, mediation is a form of Alternative Dispute Resolution. Second, ODR is part of the online ADR mechanism. Third, the authority of ADR in Indonesia is under BPSK. Therefore, distinguishing *complaints* from *disputes* so as not to appear that there is an overlap between the authority of the Ministry of Trade and the authority of BPSK is no longer relevant. If the role of BPSK is only to receive the overflow of cases that have not been resolved by the Ministry of Trade and BPKN, then its role as an alternative dispute resolution institution seems to be neglected. The implementation of ODR should involve a dispute handling agency mandated by the CPL. Meanwhile, the role of BPKN is actually needed to clarify the division of authority related to the settlement of this dispute. Institutional innovation can be done, for example, by making BPKN an institution that handles ODR and its flow is integrated with the ODR process at BPSK. But in essence there is a need to clarify the flow of consumer dispute resolution so as not to overlap and avoid forum shopping.

– ***Access to Redress for Consumers in the Drug and Food Sector***

Consumer protection in the drug and food sector is provided by the Food and Drug Supervisory Agency (BPOM), as the supervisor in this sector. One of BPOM's supervisory functions is carried out by receiving consumer complaints regarding drugs and food

⁶² Interview with Gusmalinda Sari, Directorate of Consumer Empowerment, Ministry of Trade, on September 17, 2021.

circulating in the market. Consumers can complain through the Consumer Complaints Service Unit (ULPK) at the central BPOM and 73 POM Technical Implementation Units (UPT), which are spread throughout Indonesia.⁶³ Complaints submitted by consumers can be done face-to-face or online via telephone, website, email, SMS, WhatsApp, social media, or also BPOM mobile app. Since 2019, consumer complaints have also been complemented by the presence of the HaloBPOM Complaints Car. The following is the flow of complaints at ULPK BPOM:⁶⁴



Source: Food and Drug Supervisory Agency (BPOM)

BPOM has opened quite a number of complaints channels for drug and food consumers, both directly and online. This expands access for the public to be able to report their findings to BPOM. However, this mechanism does not offer any form of redress such as compensation or other forms such as apology. The redress mechanism in the form of complaint handling is similar to that applied in other sectors, by bringing together businesses and consumers, so that the redress can be carried out directly by businesses, has not been implemented in this sector. The flow chart above shows that the follow-up to

⁶³ Consumer Complaints Service Unit, <https://ulpk.pom.go.id/id/MM/20190824202016/0.html>, accessed on September 1, 2021.

⁶⁴ Decree of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number Hk.04.1.23.04.16.1769 Year 2016 concerning Minimum Service Standards for Consumer Complaints Service Units within the Food and Drug Supervisory Agency.

consumer complaints is carried out with a series of actions within BPOM, so that the output of the complaint is in the form of an answer from BPOM, not in the form of redress. However, even though it is not specifically regulated in the management of BPOM complaints, consumers can still use the mechanism provided by the CPL, to obtain redress if their rights are impaired.

– ***Access to Redress for Consumers in the Transportation Sector***

In the transportation sector, the mechanism for redressing consumer rights can be carried out directly by businessess or using state mechanisms through the Inspectorate General of the Ministry of Transportation. Transportation consumers can complain about their losses to SIMADU (Complaint Management System) which is provided online. The object of complaint through SIMADU is not limited to certain types or sectors of transportation but includes all types of transportation. Complaints through SIMADU are not only limited to transportation services under the Ministry of Transportation, but also include the Public Service Agency in the ministry. In other words, SIMADU does not only take care of complaints from consumers, but also includes other violations, for example in the context of public services.

SIMADU is a working group within the inspectorate general institution, which includes an investigative inspectorate. This system is more like an Alternative Dispute Resolution, because it not only accepts complaints, but also follows up on them through a mediation process. Mediation is carried out in the event that the complainant demands their right. In this follow-up process, the SIMADU working group will bring together the parties, namely the complainant and the complained, to jointly resolve complaints that have been registered through the system. In this channel, SIMADU has accommodated material and immaterial losses as objects of complaint. On the other hand, the outcome of this process is not only in the form of compensation but can also be in the form of an apology, directly or through the media.

Apart from the Ministry of Transportation, the settlement of consumer complaints in the transportation sector can also be carried out through internal complaints handling

provided by businesses in several transportation sub-sectors. This refers to the respective sectoral legislation, such as the Transportation Law and the Railway Law, which require service providers to provide a complaint channel for their consumers. Meanwhile, for shipping consumers (ship transportation), the Shipping Law only stipulates that sea transportation service providers must include their passengers in insurance, in accordance with statutory regulations. The rest is related to access to shipping consumer redress, referring to the Consumer Protection Act and the Civil Code, including to obtain compensation.

(1) Aviation Service Consumers

Access to redress for consumers of aviation services, when the losses are caused by the airline, is stipulated in the Aviation Law, and the technical aspects refer to Minister of Transportation Regulation (Permenhub) No. 89/2015 on Delay Management on Scheduled Commercial Air Transport Business Entities. This regulation is binding on every Business Entity conducting commercial flight activities to provide service recovery. The form of redress of consumer rights for these losses is designed to be implemented without going through a dispute process, but is attached directly as an obligation of businesses in the event that the conditions stipulated by Ministerial Regulation 89/2015 have occurred. This regulation only provides redress for consumer rights for losses caused by flight delays, and does not accommodate other forms of loss. The scope of these losses include: flight delays; passenger is denied boarding by reason of aircraft capacity; and flight cancellations.

If the above conditions occur, the business entity is required to pay compensation in several predetermined categories, namely: a) category 1 delay, compensation in the form of soft drinks; b) category 2 delay, compensation in the form of drinks and snacks (snack box); c) category 3 delay, compensation in the form of drinks and full meal; d) category 4 delay, compensation in the form of drinks, snacks, and full meal; e) category 5 delay, monetary compensation in the amount of IDR 300,000; f) category 6 delay, the air transportation business entity is obliged to transfer the passenger to the next flight or refund the entire ticket fee; and g) for delays in categories 2 to 5, the passenger can be transferred to the next flight or have the entire ticket fee refunded.

(2) Railway Consumer

The mechanism for redressing consumer rights in the railway sector is specifically regulated in Permenhub No. 47/2014. In the provisions of Article 5, the provision of compensation to consumers is regulated, related to train delays that are divided into two types, namely compensation for urban train delays and compensation for intercity train delays. As also applies to the aviation sector, the restoration of consumer rights is designed by attaching an obligation to PT Kereta Api Indonesia (KAI), to provide compensation in the event of certain conditions.

In the event of a delay in the departure of urban trains, the provisions of Article 5 paragraph (1) of the Minister of Transportation Regulation stipulate that every passenger will receive compensation in the form of:

- a. If the train is delayed for 30 minutes to 1 hour, it is obligatory to provide a delay information form for passengers who need it;
- b. If the train delay occurs for more than 1 hour, it is obligatory to provide 100% ticket refund for passengers who cancel the trip.

Then related to inter-city train delays, the details are regulated in the provisions of Article 5 paragraph (2) and paragraph (3) of the Minister of Transportation Regulation. The provisions state that in the event of a delay in departure, and if there are obstacles or disturbances in the train journey, which results in a delay in arrival at the destination station, passengers will receive compensation as follows: for a delay of more than 3 hours, passengers must be provided with drinks and snacks; for more than 5 hours, compensation is given in the form of full meal and drinks, and multiples apply.

Further, in relation to access to consumer redress in the transportation sector, although in general it can be said to be implemented well, until now there has been no specific regulation regarding the procedure for resolving disputes through SIMADU. For example, it is said that the mediation process will be carried out if there is a claim for rights from consumers on businessess for the losses they have suffered. However, this system is not yet

comprehensive regarding the mediation mechanism that can be carried out, including accommodating opportunities for online mediation. Meanwhile, the internal complaints handling mandated by the Ministry of Transportation regulations has not explicitly accommodated immaterial losses. Some of the regulations mentioned above only accommodate losses due to time delays, although it is stated that if consumers feel other losses, they can seek redress through SIMADU.

For further development, the consumer redress model in the transportation sector can refer to the Victoria Transport Ombudsman, a non-profit institution and independent dispute resolution agency. The specialist transport ombudsman handles complaints and conducts investigations to provide redress for consumers who feel harmed. During this investigative process, the Victorian Transport Ombudsman seeks fair and reasonable negotiations. If an agreement is not reached, the Ombudsman will issue a binding decision on the parties.⁶⁵

– ***Access to Redress for Consumers in the Telecommunication and Information Sector***

The main reference for restoring consumer access to the telecommunications and information sector remains the Consumer Protection Law. This is because the two main legislations that serve as references for this sector (Law No. 36/1999 on Telecommunications and Law No. 11/2008 on Information and Electronic Transactions, as amended by Law No. 19/2016), have not specifically regulated aspects of consumer protection, including redress. However, in particular, the Telecommunications Law has recognized a number of rights of telecommunication service users, which can be equated as consumer rights. This means that in principle the formulation of the law has recognized and contains elements of consumer protection. The rights of consumers of telecommunications services themselves include:

- a. The right to receive service at the promised quality
- b. The right to receive compensation when not receiving service, service is interrupted or does not match what is promised

⁶⁵ For an overview, see <https://www.ptovic.com.au/complaints>

- c. The right to receive an accurate service charge according to the agreed rate
- d. The right to obtain continuity of service, for example due to changes in technology and the continuation of the service provider's business, in the form of compensation
- e. Protection for third party services using telecommunication facilities, such as banking telemarketing or SMS banking.

In detail, consumer protection in the telecommunications sector is regulated in the Ministry of Communication and Informatics Regulation (Permenkominfo) No. 13/2019 concerning the Implementation of Telecommunication Services, which emphasizes the complaint aspect as a mechanism in consumer redress. However, in general, the scope of consumer protection in the telecommunications sector includes the following stages: (i) before using: in the form of clear and accurate information, tariffs, and service coverage; (ii) when using: quality of service, customer care, and complaint handling; and (iii) after stopping use, in the form of compensation and returns. Referring to this coverage, including the material of Permenkominfo 13/2019, all businesses providing telecommunications services are required to provide a call center as an internal complaints handling system mechanism. In addition to this mechanism, consumer complaints can also be submitted to the service.kominfo.go.id page, on the BRTI Complaints portal. Previously this mechanism was managed by the Indonesian Telecommunications Regulatory Agency (BRTI), but since this institution was dissolved by the President in 2019, the complaint service function has been managed by the Directorate of Post and Information Control, Ministry of Communication and Informatics (Kominfo).

Specifically in the information sector, referring to the Law on Information and Electronic Transactions, the situation is similar, although the challenges and problems are slightly different. In this sector Kominfo has issued at least two regulations: Permenkominfo No. 20/2016 concerning Protection of Personal Data in Electronic Systems, and Permenkominfo No. 5/2020 concerning Private Scope Electronic System Operators, which is a derivative of PP No. 71/2019 concerning the Operation of Electronic Systems and Transactions.

In the context of personal data protection, apart from the problem of effectiveness in its implementation, Permenkominfo No. 16/2020 has specifically regulated dispute resolution

and access to consumer redress, in their capacity as owners of personal data. In this regulation, if a consumer experiences a loss related to their personal data, they can file a complaint with the Minister, whose authority is delegated to the Director General (Informatics Applications). Consumer complaints will then be followed up with a deliberation process, which invites businessess (electronic system operators) and consumers (personal data owners), to seek solutions to complaints. In addition to the deliberation mechanism, this regulation also opens the opportunity to use alternative dispute resolution mechanisms (referring to the Consumer Protection Law), as well as using a civil lawsuit mechanism (referring to the provisions of Article 26 of the Electronic Information and Transactions Law).⁶⁶

Permenkominfo No. 5/2020 places more emphasis on the obligations of businessess in their capacity as electronic system operators. These include the obligation to register, cut off internet content that violates laws and regulations, and provide data access for the purposes of supervision and law enforcement. Meanwhile, in relation to the protection of consumer rights, it is related to the opening of a content complaint service by Kominfo, through the Kominfo complaint service page that provides access for consumers to complain about content. This regulation also regulates the normalization mechanism (redress) of blocked content access, but from the regulated requirements, this request for normalization can only be made by businessess, and cannot be used by intermediate consumers (content creators), let alone end consumers (content viewers or users). This regulation is indeed more focused on regulating social media platforms, especially those based on user generated content, although the scope is said to apply to all private sector electronic system operators. In addition, in the context of the use of social media, the scope of coverage of consumers and businessess is still unclear, as well as the transactional relationship between them.

⁶⁶ The provisions of Article 26 paragraph (1) of the ITE Law regulates that any person whose personal data is processed or transferred arbitrarily, may file a lawsuit for the losses incurred under this law.

- ***Access to Redress for Consumers in the Housing Sector***

Access to redress in the housing sector is regulated in at least two laws, namely Law no. 1/2011 concerning Housing and Settlement Areas (CPLP) and Law no. 20/2011 concerning Apartments. The two legislations regulate the channels that consumers can take if they experience a loss or there is a consumer dispute. In this regard, the CPLP and the Apartment Law provide a role for the community to conduct arbitration and mediation in the field of housing management. One of these roles can be carried out by non-governmental organizations representing consumers, related to these development issues. If the deliberation process does not reach a common ground, then the aggrieved party can seek redress through the courts or also out of court, using alternative dispute resolution mechanisms. Lawsuits in the housing sector can be filed by individuals, legal entities, communities, and/or the government or related agencies. These two laws also provide an opportunity for a representative lawsuit, which refers to PERMA No. 1 Year 2002 on Class Action.

Meanwhile, out-of-court dispute resolution may use mechanisms including: arbitration, consultation, negotiation, mediation, conciliation, or also expert judgment, in accordance with the provisions of the legislation. The process still refers to the Consumer Protection Law and the Arbitration and Alternative Dispute Resolution Law. Both laws provide a means of redress through arbitration, consultation, negotiation, mediation, and conciliation. The CPL itself provides a means of redress through BPSK, as an alternative dispute resolution agency, specifically for consumers, in addition to dispute resolution services provided by BPN, which since 2017 has also provided opportunities for consumers to mediate and arbitrate consumer disputes. Complaints and dispute resolution include pre-construction, during the construction process, and post-construction (housing/apartment) complaints.

Consumer redress access in the housing sector can also use the mechanism provided by the Ministry of Public Works and Public Housing (PUPR). The mechanism is available through the complaints page.pu.go.id. The report will then be assessed whether it falls under the authority of the Ministry of PUPR. If it is not under the authority of the Ministry, then the

complaint will be forwarded to the lapor.go.id portal, which is managed by the Presidential Staff Office (KSP).

II.C. ISSUES AND CHALLENGES IN ENSURING CONSUMER RIGHT TO REDRESS

– Issues with the Legal/Regulatory Framework

The Consumer Protection Law was formed as an umbrella law for consumer protection in Indonesia, which has both vertical and horizontal implications. First, the regulations under it—related to consumer protection, must refer to the provisions of the CPL. Second, other laws that regulate consumer protection—which is sectoral in nature, must refer to the CPL. The problem at this time, when referring to the Law on the Formation of Legislations (Law No. 12/2012 as amended by Law No. 15/2019), in the hierarchy of legislation the concept of umbrella law is no longer known; all laws are equal.⁶⁷ As a result, in the current context of consumer protection, there are regulatory disparities in sector legislation. For example, in the financial sector, consumer protection does not only cover end users but also includes intermediate consumers.⁶⁸ This means that the scope of consumer protection in sectoral laws is very likely to be different from that of the CPL.

If we trace the history of its formation, it can be said that the discussion process of CPL was carried out in a relatively short time, only 6 months. Initially this law was planned only to protect consumers of goods, but in the final discussion process, a proposal emerged to also accommodate the service sector. Due to time constraints, each occurrence of the word “goods” in the CPL is added with the phrase “and/or services” to comply with the proposal. This has actually caused a number of problems, as the construction that was built from the start only focused on the goods sector, while the service sector only emerged later, whereas the model of accountability for consumers in the goods and services sector has different characteristics between the two.

⁶⁷ In the past there was an *Undang-Undang Pokok* (Basic Law) which indicated that a law was placed as an umbrella law.

⁶⁸ See Article 1 point 3 of POJK 31/2020 that consumers are parties who place their funds and/or take advantage of services available at PUJK.

In terms of content, the CPL also has more regulation about businessess rather than consumers. Therefore, the approach used to protect consumers according to this law still emphasizes strict regulation and the imposition of a series of obligations to businessess. The essence of this law is to regulate businessess so that consumers are protected. This situation gives the impression that the CPL is more about regulating how businessess play, rather than thinking about how consumers can recover their rights. This can be seen in the following table, which shows that the CPL specifically regulates consumer dispute resolution in only 3 articles.

Provision	Material Regulated
Article 1	Definition of Consumers and Businessess
Articles 2-3	Principles and Scope
Articles 4-7	Rights and obligations of consumers and businessess
Articles 8-17	Quality standards of goods and services, misleading advertisements, advertisements with prizes or sweepstakes.
Article 18	Prohibition on standard clauses
Articles 19-28	Responsibility of businessess
Articles 29-30	Guidance and supervision
Articles 31-43	BPKN institution
Article 44	LPKSM institution
Articles 45-48	Dispute resolution
Articles 49-58	BPSK Institution
Article 59	Investigation
Articles 60-63	Administrative sanctions and criminal sanctions
Article 64	Transition clauses
Article 65	Closing clauses

Consumer rights according to CPL are regulated in Article 4, which consists of 8 types of rights, namely: the right to comfort, security, and safety in consuming goods and/or

services; the right to choose goods and/or services and to obtain them in accordance with the exchange rate and the promised conditions and guarantees; the right to correct, clear and honest information regarding the condition and guarantee of goods/and or services; the right to have their opinions and complaints heard on the goods and/or services used; the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes; the right to receive consumer guidance and education; the right to be treated or served correctly and honestly and not discriminatorily; the right to obtain compensation, compensation, and/or replacement if the goods and/or services received are not in accordance with the agreement or not properly; and rights regulated in the provisions of other laws and regulations.

The eight types of rights, including the rights regulated in other laws that intersect with consumer protection, also seem to need to be complemented by several rights that are currently not explicitly regulated in the existing laws and regulations. The importance of placing consumer rights is to become the basic assumption that there has been a violation of consumer rights, so that it can be remedied through existing mechanisms. As the market continues to change, consumer rights should also experience a balanced development. For example, the development of financial technology and e-commerce has had an impact on consumer rights and human rights in general, so that accommodative efforts are needed in the form of regulations as a fulfilment of the state's obligation to protect. With a clear basis of rights, consumers can demand effective redress.

In the context of e-commerce, for example, there is a fairly strong relationship between business and the protection of the right to consumer privacy. The need for businesses for personal data as a series of registration processes or other things on a platform makes the need for recognition and protection of the right to privacy—especially consumers, increasingly urgent. Ideally, the regulation of the right to privacy in general and the responsibilities of the platform in this context is regulated through the Personal Data Protection Law, which also regulates the redress mechanism. However, as an umbrella law in consumer protection, CPL also needs to recognize the right to privacy as part of consumer rights, with a view to mainstreaming this right in every business activity. The special need for recognition of the protection of the right to privacy for consumers can refer to a number

of cases of consumer data leakage, involving businesses, such as e-commerce, which act as controllers of consumer personal data.

– Issues with Institutional Framework

The Consumer Protection Law specifically places the task of resolving consumer disputes on BPSK. Unfortunately, the regulation regarding BPSK is under formulated in this law, resulting in a less than powerful function of this institution in the effort to restore consumer rights. As described earlier, BPSK provides three settlement channels, namely conciliation, mediation, and arbitration. The CPL stipulates that the arbitral award issued by the BPSK assembly is final and binding, but this provision has been negated by the CPL itself, stating also that the BPSK decision can still be objected to.

Thus, arbitrations regulated by CPL and conducted by BPSK are fundamentally not as binding as arbitrations regulated by Law no. 30/1999 on Arbitration and Alternative Dispute Resolution. According to Law no. 30/1999, an arbitration award cannot be objected to in any court or institution, although it is possible to apply for an annulment to a district court, as long as it fulfils the conditions stipulated in Article 70 of Law no. 30/1999 (as amended by MK Decision No. 15/PUU-XII/2014). An appeal to the Supreme Court of an arbitral award may only be made against a court decision that grants the request for annulment of the arbitral award, not an appeal or an attempt to object to the arbitral award.

Meanwhile, the submission of an objection through the district court to the arbitration decision issued by BPSK, as stipulated in the CPL, actually presupposes this as an appeal. In fact, in the judicial system in force in Indonesia, there is no known appeal mechanism in the district courts, so in theory and practice this step is not appropriate. An appeal in the district court is not possible, with the aim of avoiding the repetition of the decision by the district court on what has also been decided by BPSK.

BPSK as an institution in charge of handling consumer disputes is actually very important to ensure the restoration of consumer rights. However, in addition to the procedural problems of dispute resolution as described above, the forms of redress that can be sued at BPSK also

have not accommodated the current situation. For example, related to the responsibility of providers of goods and/or services to protect consumers' personal data (in their capacity as data controllers), or also other immaterial losses such as verbal/physical harassment for the use of services. BPSK also needs to develop the scope and form of redress that is gender and child sensitive, for example in the form of redress in the form of sanctions such as apologies or restoration of dignity.

Similar to BPSK, BPKN also still faces a number of challenges to be able to effectively ensure access to redress for consumers. BPKN as of now do not have the formal mandate to resolve disputes but has been handling mediation cases since 2017.⁶⁹ While this is not necessarily negative, there perhaps need to be a way to ensure the decisions made in the mediation process by BPKN are enforceable/accountable, in addition to the need to delineate this with BPSK's role in dispute resolution, as mandated by UUPK.

Although it is said that BPKN supports the implementation of the dispute resolution function of BPSK, there is no clear division of roles between the two. This means that the opportunity for the same consumer complaint or dispute to be reported and processed simultaneously by BPSK and BPKN at the same time remains open. In this case, CPL can more explicitly formulate the division of the role in consumer dispute resolution between the two agencies. For example, BPKN may resolve consumer disputes that are cross-provincial, i.e when businesses are domiciled in a different province from the consumers. This may also fill the gap that exists in the small claims court procedure, where it currently requires that both consumers and businesses are from the same jurisdiction. However, this may also become a burden for consumers residing outside of Jakarta, not to mention that to have this role added to BPKN may require further legal/regulatory basis.

As BPKN is based in Jakarta, there is still a challenge in providing redress to consumers domiciled in other provinces, as their dispute resolution process requires a direct meeting between the consumer and business in dispute. Therefore, the ODR system, such as the one being developed by the Ministry of Trade, should be able to overcome the issue of

⁶⁹ Result of interview with Chairman of BPKN, Rolas Budiman Sitinjak, September 15, 2021.

accessibility and improve coordination between relevant institutions and sectoral regulators with mandates to provide consumers dispute resolution.

Furthermore, the institutional complexity of dispute resolution and consumer redress is reflected in the many entities in charge of consumer protection and redress policies. Therefore, the role of BPKN as a national consumer protection authority, including the Ministry of Trade and other sectoral ministries/regulators, who are responsible for consumer protection, needs to be defined more clearly, so as not to overlap with each other. This overlap of tasks affects the effectiveness of the existing institutional framework, so that through harmonization, information collected through consumer complaints can be centralized, assessed, and used more systematically, to then be incorporated into evidence-based policy making and law enforcement.

– Issues with Consumer Redress Mechanisms

Indonesia actually has many dispute resolution institutions between consumers and businesses, to ensure access to redress for consumers. These include many sectoral regulations and institutions in consumer protection, which results in many choices of forums for consumers/victims, to seek redress. Consumer dispute resolution forums take various forms, ranging from internal complaints handling systems, alternative dispute resolution institutions such as BPSK, or also through the courts.

Basically, it will be more cost and time-efficient if consumer redress can be provided by businesses through an internal complaints handling mechanism. Therefore, it is important to ensure that all businesses made such mechanism available for consumers as a first step to file and resolve their complaints. If this fails, consumers can then use the other options provided to resolve the dispute by the government; either via a sector regulator, BPSK as an out-of-court dispute resolution mechanism, or the court (including small claims court) as regulated in the CPL. The remaining issue, especially concerning the different sectors, is to ensure that consumers reach the correct institution/agency so that consumers may obtain redress swiftly. The possible solution to this has been discussed in the previous section.

redress for losses suffered by consumers will be highly time and cost efficient if it can be resolved using internal mechanisms provided by businesses. Therefore, it must be ensured that in the future all businesses will provide an internal complaints handling system. Only then if the use of the mechanism fails, consumers can use the various complaints options provided in each sector as well as those generally regulated in the CPL. The problem is the extent of the division of authority between the various institutions so that they are able to effectively provide a redress mechanism for consumers.

Further, the UN General Assembly in its Resolution 70/186 on December 22, 2015, regarding Consumer Protection has mandated that consumer confidence and trust are important aspects in improving the economy. This means that consumer confidence and trust can promote long-term financial stability, growth, efficiency and innovation. Therefore, this requires a legal framework, effective supervision, and implementation for the sake of creating consumer welfare. In general, if we examine the identification of consumer redress access in Indonesia, by referring to the UNGCPs specifically on materials related to access to redress, we can map the problems as follows:

UNGCPs in the Context of Access to Redress	Indonesia's current condition
15. Member States should work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers in appropriate cases.	There is still a lack of enforcement specifically on dispute resolution by BPSK. The agency still faces constraints in financial and human resources as it relies on the provincial government budget for their daily operations. As of now, the decisions or settlements made though BPSK can only executed by court order at a cost

37. Member States should encourage the development of fair, effective, transparent, and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases. Member States should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and accessible. Such procedures should take particular account of the needs of vulnerable and disadvantaged consumers. Member States should provide consumers with access to redress that do not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and businesses.	ADRs like BPSK as well as government-led complaints handling mechanism such as the one available in BPKN and Kemendag do not charge any cost to process complaints or settle consumer disputes. Unfortunately, the consumer redress is still limited in the big cities as BPKN is only available in Jakarta and BPSK in provincial level. Previously, BPSK was also established at the regency/city level, however the enactment of the Regional Autonomy Law requires that the financing of BPSK be managed from the provincial level. As such, the accessibility and availability of BPSK may differ in each jurisdiction. Several complaint services have expanded channels ranging from SMS to websites.
38. Member States should encourage all businesses to resolve consumer disputes in an expeditious, fair, transparent, inexpensive, accessible and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.	CPL already requires business to provide their own internal complaints handling mechanism to receive and respond directly to consumer complaints. Unfortunately, only major businesses may set up a specific customer care and help desks to provide guidance, process complaints and redress for consumers.

39. Information on available redress and other dispute-resolving procedures should be made available to consumers. Access to dispute resolution and redress mechanisms, including alternative dispute resolution, should be enhanced, particularly in cross-border disputes.	Information on procedures for dispute resolution and provision of compensation from businesses are still difficult for consumers to find in some cases. An alternative mechanism for resolving cross-border disputes is only recently being developed by the Ministry of Trade and BPKN.
40. Member States should ensure that collective resolution procedures are expeditious, transparent, fair, inexpensive and accessible to both consumers and businesses, including those pertaining to over indebtedness and bankruptcy cases.	Collective redress is only available via civil court (a class action lawsuit). CPL stipulates that a class action lawsuit may only be filed by consumer associations that are registered to the government (LPKSM, see Article 46 paragraph (1) point c).
41. Member States should cooperate with businesses and consumer groups in furthering consumer and business understanding of how to avoid disputes, of dispute resolution and redress mechanisms available to consumers and of where consumers can file complaints.	BPKN and BPSK ensures that their members include representatives from the government, businesses and consumer groups.

More specifically in relation to access to consumer redress regulated by the CPL, whether using a state-based judicial mechanism, in the form of a small claims court, or through a

state-based non-judicial mechanism (alternative dispute resolution), the notes on the problem are as follows:

a. Redress Mechanisms Through Alternative Dispute Resolution

As described in point number 2 above, the Consumer Protection Law has mandated the establishment of alternative dispute resolution mechanisms, to handle disputes between consumers and businesses, one of which is BPSK. This institution is a quasi-judicial institution because it carries out a judicial function—dispute resolution, but in fact it is not within the jurisdiction of the judiciary. In principle, the decision of the BPSK assembly is final and binding, as is stated in the CPL and the Decree of the Minister of Trade and Industry (Kepmenperindag) No. 350/MPP/Kep/12/2001, although the provisions of Article 56 paragraph (2) of the CPL actually provide an opportunity to file an "objection" to the BPSK decision. The formulation of these provisions makes the decision of this quasi-judicial institution not to have executive power and also does not guarantee legal certainty for the restoration of consumer rights.

In addition, the implementation of dispute resolution through the arbitration mechanism at BPSK is also still difficult to carry out across regional jurisdictions, because of the necessity for the complainant and the reported party to be in the same domicile (province). In practice BPSK continues to process complaints even though the complainant and the reported party have different domiciles (provinces), taking into account certain reasons. For example, BPSK DKI Jakarta does not strictly apply this principle as the agency welcomes consumers from other regions to settle their disputes. The agency stresses on the importance of "good faith" from both the consumers and businesses to resolve their dispute.⁷⁰

Another problem with BPSK's authority is the scope of consumers which is regulated by Kepmenperindag No. 350/MPP/Kep/12/2001, which states that the application must include the name and address of the businesses and the applicant must be the end consumer.

⁷⁰ See FGD Results Report "Identification of Gaps and Needs Assessment in Developing a Model for the Redress of Consumer Rights in Indonesia", ELSAM-GIZ, July 28, 2021.

This provision creates confusion when the litigants are businesses in a marketplace in the e-commerce sector. The addresses of businesses in the marketplace do not necessarily go through a verification process, so it is difficult to include such businesses in a dispute. Especially when the business is an individual, it becomes more difficult to find the identity and address of the person concerned to be a requirement in a dispute resolution.

In addition to BPSK, the CPL also established BPKN as an advisory body, a function of which is to receive complaints about consumer protection from the public, non-governmental consumer protection institutions, or businesses. BPKN is a Non-Ministerial Government Institution (LPNK) established under the CPL, which is then regulated in more detail through Government Regulation (PP) No. 57/2001 on the National Consumer Protection Agency (BPKN). As of 2017 BPKN has also provided complaint services as well as consumer dispute resolution, although according to law this institution serves as an advisory body. Since opening the service, BPKN has received at least about 7000 complaints, and according to them 60% of these have been successfully resolved.⁷¹ Similar to the mechanism for the *Siswas-PK* of the Ministry of Trade, the term complaint is distinguished from a dispute, even though the resolution is through a mediation process which is a form of alternative dispute resolution.

b. Redress Through Small Claims Court

The main problem in using a small claims court mechanism is the narrow scope of the parties, as regulated by Supreme Court Regulation (PERMA) No. 2/2015 concerning Procedures for Settlement of Small Claims Court. This regulation sets the limitations that the plaintiff and the defendant in a small claims court must be domiciled in the same jurisdiction of the Court (see Article 4 paragraph (3)). This narrows access to rights redress for consumers who are harmed by providers of goods and/or services (businesses) whose domicile is different from that of consumers. At first the mechanism even required the principal to be present and could not be accompanied/represented by their legal advisor. This was later revised through PERMA No. 4/2019, which stipulates that consumer can appoint a law office to represent them, which is in the same domicile as the business owner,

⁷¹ Result of interview with Chairman of BPKN, Rolas Budiman Sitinjak, September 15, 2021.

although in practice sometimes there are judges who demands the principal to be present in person.⁷²

Another challenge of using this mechanism is the procedural requirements regulated by Article 4 PERMA No. 4/2019, which requires clarity of the domicile address or place of residence of the defendant, as a condition for filing a small claims court. As a result, the mechanism is difficult to use to resolve consumer disputes, in transactions using electronic systems, especially e-commerce. This difficulty is due to the fact that not all businesses on the e-commerce platform include their identity and domicile address correctly in the store description listed on the platform. In addition, this dispute resolution mechanism cannot be used by consumers who experience losses when producers/businesses are abroad. If referring to the case of Malaysia, it is important to review the existence of a small claims court specifically for consumers. In Malaysia, the existence of the e-tribunal, in addition to functioning as a small claims court specifically for consumer disputes, is also integrated with e-complaints as a one-stop consumer complaint service. The e-tribunal uses a legal process through an electronic system, which can cut the problem of distance and domicile.

The current small claims court in Indonesia is basically not devoted to consumer disputes but is limited to the value of material claims. This means that any dispute can use this settlement mechanism, as long as it meets a clear limit on the value of a material claim, with a view to distinguishing it from civil procedural law in general. Therefore, each plaintiff must be able to explain the form of the loss, why this loss arose, the details of the amount of the loss, and most importantly, the material loss must be proven.⁷³ This is rooted from the stipulations of the CPL itself, which are still limited to material compensation. This is, for example, found in Article 19 paragraphs (1) and (2) of the CPL, which stipulates that consumer losses are due to, among others, damage, pollution, and/or consumer losses due to consuming goods and/or services produced or traded. While the forms of compensation include refunds or replacement of goods and/or services of similar or equivalent value,

⁷² See FGD Results Report "Identification of Gaps and Needs Assessment in Developing a Model for the Redress of Consumer Rights in Indonesia", ELSAM-GIZ, July 28, 2021.

⁷³ Heri Hartanto, et.al, "Mechanism for Determining Compensation for Environmental Damage", Journal of Civil Procedure Law, Vol. 3 No. 2 2017, p. 229.

health care, and the provision of compensation.⁷⁴ This limitation has direct implications for the limited legal basis for a request for redress through dispute resolution institutions such as BPSK and civil courts (small claim court) if the losses suffered basically cannot be measured in monetary terms.

However, in practice, claims for immaterial losses in consumer disputes have often been carried out, with reference to the regulation of unlawful acts in the Civil Code.⁷⁵ However, the form of compensation that is formulated, and subsequently becomes the basis for judges, is also limited to three types, namely: costs, losses, and interest. Meanwhile, immaterial losses such as fear, anxiety, shame, or humiliation must ultimately be included in the lawsuit with a certain monetary value. This does not allow a form of redress such as an open apology in the mass media.

c. Application of Criminal Offense Mechanism

The formulation of criminal offenses in an administrative law, such as the Consumer Protection Act, is usually used to increase compliance with the law. The criminal provisions in the CPL are formulated in Article 62, which regulates criminal sanctions for violations of administrative provisions in several articles. However, there are several problems from the formulation of the article, namely: (i) the provisions of this article has criminalized acts that could actually be adjusted according to administrative procedures, such as the conditions for granting certain permits; (ii) This provision indicates a deviation from the criminal doctrine which is *ultimum remedium*. This is problematic because basically the CPL is an administrative penal law, so it should prioritize other mechanisms before using criminal mechanisms. However, this article actually allows businessess to be directly processed using criminal channels, as a *premium remedium*.

With this note, it is necessary to put back legal politics or the purpose of establishing consumer protection law in Indonesia. Is it aimed at punishing violators (businessess) or to protect and restore consumer rights? Meanwhile, effective redress for victims—consumers,

⁷⁴ Law no. 8 of 1999 concerning Consumer Protection (CPL) is regulated in Chapter 6 concerning Responsibilities of Businessess, Article 19 paragraphs (1) and (2).

⁷⁵ Article 1365 of the Civil Code.

are one of the important requirements and must be met by a law or consumer protection law in a country. Therefore, the decriminalization of several criminal acts in the CPL needs to be considered in the future, because in general the retributive paradigm in criminal law—especially administrative crimes, has been abandoned.

– **Challenges to Access to Redress in Consumers of Digital Businesses**

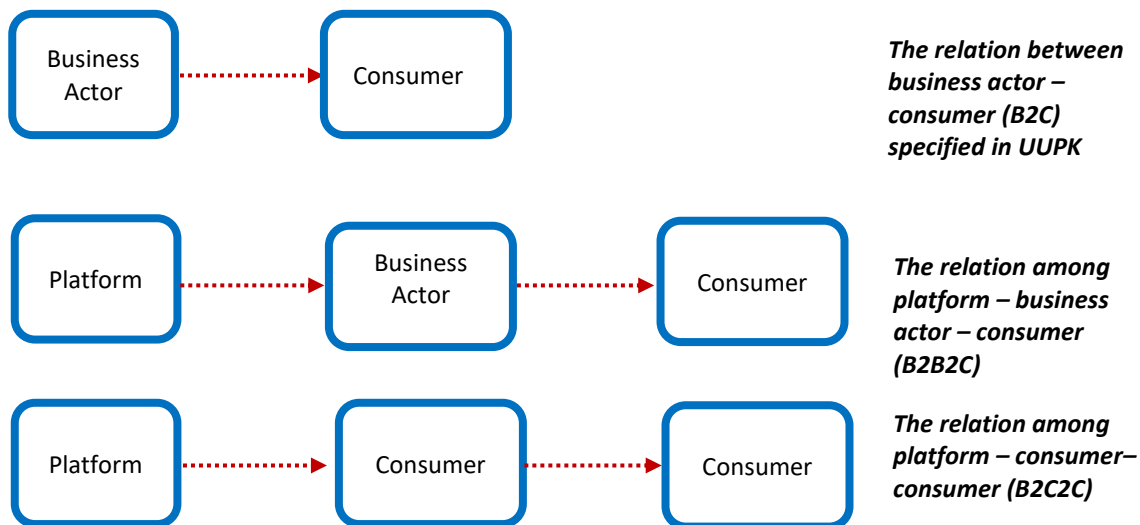
Terminologically, consumer disputes are not defined by the Consumer Protection Law, only emphasizing disputes between businesses and consumers. The definition of a business according to this law is every individual or business entity, whether in the form of a legal entity or not a legal entity, which is established and domiciled or carries out activities within the jurisdiction of Indonesia, either alone or jointly, through an agreement to organize business activities in various economic fields. This limitation of the definition of businesses becomes problematic in the context of today's digital economy development, especially along with the development of the sharing economy concept, which presents a variety of new business models, with a more complex pattern of relationships between businesses and their consumers. For example, the e-commerce and ride-hailing (taxi) business models cause difficulties in using CPL as a reference in regulating the relationship between businesses and consumers.

When there is a violation of consumer rights in the business activities of the two business models, who should be responsible for providing access to redress for their consumers? In the context of e-commerce, there are three actors at once in a transaction: platform provider (intermediary), business (seller/partner), and consumer (buyer). In such a relationship, then where should consumers file their demands if it refers to the redress mechanism regulated by the CPL? Is it to business (partners) or to platform providers? On the one hand, businesses are alleged to have violated consumer rights, related to product liability, but on the other hand, platform providers actually have the capacity to prevent such businesses from becoming users of their platform. This is similar to when someone is harmed by a driver, when using a ride-hailing service. Can the relationship between service users and drivers be considered as the relationship between consumers and businesses? Then where is the position of the platform provider? Currently the driver

(partner) can be seen as a consumer and a businessess at the same time, he is a consumer of a ride-hailing platform provider, but at the same time he is also a service provider to consumers (consumers).

The relationship protected in the current CPL is solely the relationship between businesses and consumers or commonly known as B2C. Meanwhile, the development of e-commerce technology shows increasingly complex developments, for example, there are relationships that are B2B, B2B2C, B2C2C, C2C, including C2B. In its development, dispute resolution outside of B2C relations actually no longer refers to the CPL, but can refer to settlements through civil law in general.

Complexity of Relationship between Businesses and Consumers



Responding to the development of increasingly complex relationships between businesses and consumers, which is reflected for example in e-commerce business transactions, actually indicates the need to review the scope of the CPL. Consumer protection legislation today should be more flexible not only to accommodate business relationships in the B2C model, but also to cover more complex relationship models. Moreover, in e-commerce

business transactions the parties involved and participating in it are no longer limited to human relations, but also involve the relationship between humans and machines (electronic), where the intimacy of e-relationships is much more limited, although it must still guarantee the element of human involvement.⁷⁶ Aspects of consumer protection in electronic business transactions are also more complex, because online trading activities often intersect with security and privacy protection issues.⁷⁷ Therefore, the potential for consumer disputes regarding these matters must also be of particular concern.

Furthermore, the urgency of the presence of an ODR mechanism is very closely related to the increasingly rapid use of online business transactions, such as e-commerce. The scope of ODR in general is not only in B2C transactions, but also includes B2B and C2C relationships.⁷⁸ This system will facilitate the settlement of domestic consumer disputes, including disputes that are cross-border in nature. However, the use of technology in ODR cannot be seen only to facilitate the communication process, but also for the sake of data security.⁷⁹ Therefore, the use of ODR needs to be carried out by the ODR administrator as the party carrying out administrative and coordinating functions.⁸⁰

When referring to the current legislation, the special agency that handles alternative consumer dispute resolution is BPSK. Therefore, the proposal to integrate the use of the ODR mechanism with BPSK requires an adjustment step to the legislative and regulatory framework first. First, the scope of transactions protected by CPL must be in line with the scope of handling ODR. This means that B2C or C2C transactions in e-commerce need to be considered to enter into consumer protection. Second, it is necessary to strengthen the authority for BPSK in conducting ODR in the context of consumer protection. Of course, the idea to include ODR in BPSK should also be followed by special attention to the existing capabilities of BPSK implementers.

⁷⁶ Lee, et al. "Trust and Distrust in E-Commerce." Sustainability. Kookmin University, Seoul 02707, Republic of Korea. 29th March 2018. p. 3; Reddy, Anusha. "Online Dispute Resolution: A New Approach to E-Commerce Dispute." South East Asia Journal of Contemporary Business, Economics, and Law, vol. 13. p. 12.

⁷⁷ Wang Faye Fangfei, 2014, Law of Electronic Commercial Transaction: Contemporary Issues in the EU, US, and China. New York, Routledge, p. 28.

⁷⁸ Albornoz, Martin. "Feasibility Analysis of Online Dispute Resolution in Developing Countries." *The University of Miami Inter-American Law Review*, vol. 44, 2012, p. 44.

⁷⁹ Point 26, Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law.

⁸⁰ Point 27, Technical Notes on Online Dispute Resolution of the United Nations Commission on International Trade Law.

If this ODR is developed outside of BPSK, then at least there will be adjustments in terms of regulation. For example, the discourse on the ODR/SiPena design which is a collaboration between BPKN and the Ministry of Trade, which first requires clarity on the scope of the ODR to be created. If this ODR covers the ADR process in general, namely conciliation, mediation, and arbitration, then there needs to be clear rules taking into account the role of BPSK as an institution mandated by law as an actor in dispute resolution (alternative). If BPKN participates in handling dispute resolution, then this is not something that is impossible. If we look at other countries, for example similar institutions in the United States or Australia, the functions of BPKN and BPSK actually exist in an institutional form.

CHAPTER III

RECOMMENDATIONS FOR STRENGTHENING ACCESS TO CONSUMER REDRESS

Since the creation of Law no. 8/1999 concerning Consumer Protection, Indonesia has quite comprehensive instruments available to protect consumer rights, including access to consumer redress, both state-based judicial mechanisms, and non-judicial based ones. Consumer protection practices that are recorded with the availability of consumer complaint mechanisms, consumer dispute resolution, and consumer rights restoration, show that an effective redress mechanism has been running for consumers. However, a number of problems in the formulation of the material for the Consumer Protection Law, the development of consumer protection institutions, as well as the increasingly innovative transactional relationship between businesses and consumers, especially along with the development of information and communication technology, have made this legislation obsolete in the current context.

In addition, specifically related to providing access to effective redress for consumers, a number of consumer protection instruments both at regional and global levels also require reform and strengthening access to consumer redress. This departs from the consideration that consumer confidence and trust are key factors in promoting economic stability, growth, efficiency, and long-term innovation. United Nations General Assembly Resolution 70/186 on Consumers Protection adopted on December 22, 2015 for example, emphasizes again the importance of general principles, which define the main characteristics of consumer protection legislation, consumer protection enforcement agencies, and effective redress.

Departing from a number of problems and challenges for consumer protection, particularly those related to access to consumer redress, as described in Chapter II above, it is necessary to take steps to improve and strengthen access to consumer redress, with a scope that includes: (1) improvement of policies, both at the legislative and regulatory levels; (2) strengthening and developing consumer protection institutions; (3) strengthening dispute resolution mechanisms to ensure effective redress for consumers.

III.A. Improvement of Consumer Protection Policy

One of the important targets of the ASEAN Strategic Plan for Consumers Protection (ASAPCP 2016– 2025) is the modernization of consumer protection legislation in ASEAN member countries, which will become a pillar to achieve the objective of having a common standard of consumer protection in the region. This modernization at least covers matters related to consumer protection from unfair contract terms; consumer protection in electronic commerce; product liability/safety; and protection of consumer data privacy. In general, the renewal of Law no. 8/1999 concerning Consumer Protection needs re-identification of a number of definitional limits and scope of consumers, businesses, the scope of consumer protection itself, limits on complaints, dispute resolution, and compensation. Furthermore, with reference to the analysis of problems and challenges as described above, to ensure the effectiveness of consumer redress access, improvements are needed in terms of:

- The need for recognition and protection of the right to data privacy as part of consumer rights

The CPL contains 9 types of consumer rights, which does not specifically accommodate the protection of rights related to the processing of consumer personal data, which is the basis for digital economic transactions, especially e-commerce. The protection of the right to consumer privacy needs to be regulated in the CPL in order to provide effective redress for consumers, when there is a violation or misuse in the processing of consumer personal data by businesses (data controllers). This is also in line with the ASPCP target, which requires the modernization of consumer protection legislation in ASEAN member countries, one of which is related to consumer privacy data protection materials. In addition, when referring to the ASEAN Agreement on Electronic Commerce (AAEC), which was ratified by the Indonesian government on September 7, 2021, in the development of e-commerce in the region, it also emphasizes a number of aspects related to the protection of personal data, namely: provide a legal and regulatory framework regarding the protection of personal data in the online sphere (7(5)(a)–(c)); Second, eliminating and minimizing obstacles in the transfer of electronic data across national borders (Article 7(4)(a)–(c)); and Third, prohibition of data localization (Article 7(6)(a)–(c)).

- The need to accommodate immaterial losses and redress (compensation) in consumer redress

In the current formulation, the compensation or redress referred to in the CPL is still limited to accommodate material compensation, in the form of refunds, replacement of goods/services, health care, or the provision of compensation. Meanwhile, losses that are immaterial in nature, including redress that are immaterial in nature have not been accommodated. Whereas in an act of violation related to consumer rights, there are times when losses that are immaterial in nature also appear, and should also open up opportunities for the responsibility of businesses to recover consumers immaterially. For example, the obligation to apologize, the obligation to notify consumers of mistakes made by businesses, etc.

- The need to regulate and provide an ODR scheme as an alternative for consumer dispute resolution

Strengthening non-judicial dispute resolution mechanisms, particularly through BPSK and other mechanisms, needs to adapt to the development of cross-border digital transaction methods and the involvement of increasingly diverse actors. Therefore, to ensure the effectiveness of consumer redress, the CPL needs to specifically regulate and accommodate the use of online dispute resolution (ODR) mechanisms, which can be developed by each existing redress channel. In addition, the CPL can also be a strong legal basis for creating a national network of ODR specifically for consumer disputes, which includes public institutions for consumer dispute resolution, alternative dispute resolution institutions, and other ODR institutions.

- The need to strengthen and clarify the executive status of BPSK Decisions

The CPL explains that BPSK decisions are final and binding, this departs from the logic that all decisions resulting from conciliation, mediation or arbitration processes must be final and can be executed immediately. This principle also applies for example in mediation decisions related to information disputes, which are regulated by Law no. 14/2008 on Public

Information Disclosure, which stipulates that the mediation decision from the Information Commission is final and binding. In contrast to decisions made through a non-judicial adjudication dispute resolution process, it is possible to object. The problem is in the CPL, even though it says the BPSK decision is final and binding, but in setting the next provisions there is an opportunity for the losing party to file an objection to the court. This results in the emergence of regulatory legal uncertainty regarding dispute resolution mechanisms – arbitration through BPSK, and far from the criteria for cheap, fast, and simple consumer redress. Therefore, the option that can be taken is to regulate the authority of BPSK as arbitration institutions in general, as regulated by Law no. 30/1999 on Arbitration and Alternative Dispute Resolution. According to the law, an objection to the court is only possible in relation to a request for annulment of the arbitral award, with a number of requirements that must be met first, not as an appeal (changing the decision).

- It is necessary to emphasize the obligation for businessess to provide internal complaints handling as a mechanism for restoring consumer rights

As one of the efforts to make the redress of consumer rights effective, apart from providing a state-based judicial and state-based non-judicial redress mechanism, the CPL in the future also needs to require businessess to provide a complaint mechanism and resolve consumer complaints internally. This choice was taken because businessess are actually the closest parties to consumers in the transaction process, so that internal dispute resolution will make it easier for both parties, because it cuts costs and settlement time, rather than having to go through a court mechanism or other non-dispute-based alternative settlements. judicial. Basically, this mechanism has also been developed by many e-commerce platform providers, in trading transactions using electronic systems.

In addition to improving the formulation of the CPL to ensure the effectiveness of access to redress for consumers, at the policy level to improve the regulation of dispute resolution through the court mechanism, which is regulated by PERMA No. 4/2019 concerning Changes in PERMA No. 2/2015 concerning Procedures for Settlement of Small claims courts also needs to be improved. This regulation improvement is primarily intended to accommodate the need for cross-domicile dispute resolution that is often experienced by consumers. In the

event that the domicile of the plaintiff is different from that of the defendant, the plaintiff can file a lawsuit by appointing a proxy, incidental attorney, or representative who is domiciled in the defendant's jurisdiction. However, this is contradictory to the next provision, that the plaintiff and the defendant are obliged to attend in person every trial with or without being accompanied by a proxy, incidental attorney, or also a representative. The plaintiff's absence at the first trial, for example, causes the lawsuit to be considered void. This is of course detrimental to consumers because it narrows the redress channel, due to the existence of strict domicile restrictions.

In addition, along with the development of e-court and e-litigation mechanisms by the Supreme Court, court institutions under the Supreme Court as a channel for judicial consumer redress, also need to maximize e-litigation facilities that are part of the e-court program. Electronic system-based business transactions, which are no longer limited by distance and time, also indicate the need for the same redress process, which is not limited by a particular domicile. Therefore, the small claims court arrangement regulated by PERMA No. 4/2019 should also be fully integrated with e-litigation policies.

III.B. Strengthening and Developing Consumer Protection Institutions

Referring to the current Consumer Protection Law, consumer protection institutions have actually been designed in such a way, to provide access to redress for consumers, through a series of complaint and dispute resolution mechanisms. The design of consumer protection institutions seeks to involve all relevant stakeholders, including: the government, BPNP, BPSP, businesses, and the consumer community which are accommodated through the LPKSM (Non-Governmental Consumer Protection Organisation). However, even though all stakeholders have been comprehensively involved, there are still a number of tasks, functions, and authorities that need to be improved to make consumer protection more effective, particularly with regard to access to consumer redress.

- Properly positioning the government's role in consumer protection

In general, the government is responsible for protecting consumer rights, which is reflected in consumer-friendly policies and regulations. Normatively, the government also has the responsibility to foster and supervise the implementation of consumer protection.⁸¹ There are three objectives of the guidance, namely: creating a business climate and fostering healthy relationships between businesses and consumers, then encouraging the development of LPKSM, increasing the quality of human resources in consumer protection, and increasing research and development activities in the field of consumer protection. In order to increase access to redress, the existing deficiencies in the current regulations need a lot of improvement, which requires the role of the government.

In this capacity, the government, especially the Ministry of Trade, can have a significant role in ensuring the presence of effective redress access for consumers, through roles related to: (i) preparing the draft amendments to the Consumer Protection Law and the initiative to discuss it with the house of representative (DPR); (ii) improving the roadmap for access to redress so that it is clearer and easier to understand by consumers from various backgrounds; (iii) requiring businesses to ensure there is a mechanism for protecting consumer rights and providing access to effective redress, in their business transactions, through the creation of regulations that bind businesses. For example, by requiring the presence of an internal dispute resolution for businesses; (iv) creating a policy framework related to effective redress, both in domestic and cross-border disputes, especially as a follow-up to the ratification of the ASEAN Agreement on Electronic Commerce, and (v) initiating the establishment of an ODR mechanism and organize sectoral ministries/institutions to prepare themselves in the ODR network at the ASEAN level.

Furthermore, responding to the various consumer protection sectors, provided by various ministries, institutions, the government—with the coordination of the Ministry of Trade, also needs to prepare protocols and coordination steps, to ensure the harmonization of these various sectors, in order to ensure legal certainty in consumer protection. The output of the harmonization and coordination can be in the form of a one-stop redress, which includes

⁸¹ Government Regulation Number 58 of 2001 concerning the Guidance and Supervision of the Implementation of Consumer Protection

various redress mechanisms at the ministry level. This step is also related to the position of the Ministry of Trade, as the coordinator of consumer protection institutions in Indonesia. The Ministry of Trade has attempted to integrate the non-judicial redress mechanism from various consumer protection sectors, but it still needs strengthening and development. The presence of a one-door mechanism for 9 sectors of the ministry/institution, will ensure the presence of a simple and easily accessible mechanism, so that it is also easier for consumers to get access to redress. Therefore, this system must continue to be developed and accommodate sectors that have not yet entered and are involved in this integration.

- Clarifying the role of BPKN and the division of authority with BPSK

The National Consumer Protection Agency (BPKN) is a state institution, qualified as a Non-Ministerial Government Institution (LPNK), with the task and function of providing advice and consideration to the government in formulating consumer protection policies. BPKN conducts research and studies on applicable laws and regulations in the field of consumer protection, as well as on goods and services concerning consumer safety. BPKN also has a duty to encourage the development of LPKSM. This institution also has a co-responsibility of the provision of access to the restoration of consumer rights, with the authority to receive complaints from the public, non-governmental organizations, and businesses, relating to consumer protection. In an effort to expand the role of BPKN, to improve effective redress for consumers, BPKN needs to do the following:

1. Developing consumer protection policies and access to inclusive consumer redress, through research work on consumer protection policy models that are friendly to vulnerable groups.
2. Examining the effective redress models that can be provided to consumers with different backgrounds.
3. Evaluating and providing advice regarding Indonesia's preparations for the implementation of the ASEAN Agreement on Electronic Commerce, especially regarding access to redress, both domestically and across national borders.
4. Ensuring the implementation and achievement of the ASEAN Strategic Plan on Consumers Protection 2025, particularly identifying consumer protection standards

and effective access to redress for consumers, for the development of regional standards.

Furthermore, in an effort to develop BPKN, it is also necessary to clarify the division of roles and relationships between BPKN and BPSK, which actually have different functions as regulated by CPL. In its development, BPKN has participated in handling consumer complaints and also provided a mediation mechanism between the parties (consumers and businesses) as also done by BPSK. This development can be seen from two sides, firstly that access to redress is getting wider, because BPKN can provide a mediation forum to resolve consumer disputes. Second, there is the potential for overlapping cases between the two institutions. This means that there is a possibility that cases that have been handled by BPSK are then resubmitted to the dispute resolution process through BPKN.

Basically, the development of BPKN towards a dispute settlement body is positive because it is no longer merely an adviser in consumer protection, but is also involved in providing a redress channel for consumers. However, to clarify the division of roles between BPKN and BPSK, clearer arrangements are needed to divide the roles and authorities of BPKN and BPSK. This division of roles and authorities is intended to ensure legal certainty in consumer protection, to avoid double jeopardy or even double decisions that could contradict the BPKN decision and the BPSK decision. The division of authority for complaints and dispute resolution between BPKN and BPSK can be carried out based on the categories:

1. Types of cases, cases in certain sectors are under the authority of BPKN, however BPSK has the authority to receive complaints and resolve certain types of cases (this logic follows the development of a number of special courts in Indonesia).
2. The case value, cases with a certain nominal or loss value are under the authority of BPKN, while for lower nominals, they are under the authority of BPSK.
3. The locus of the case, if the dispute involves consumers and businesses across provinces, this will be under the authority of BPKN, while if consumers and businesses are domiciled in one province, the resolution will be through BPSK.

In addition to the division of roles and authorities above, it is also necessary to develop an ODR mechanism, which is provided through the two non-judicial mechanisms. Not only that, data integration between institutions is also needed to avoid overlaps in handling consumer dispute cases. This can be done by developing an integrated consumer dispute case handling system, which can be initiated by BPKN, as well as the Ministry of Trade.

- Strengthening the capacity and increasing the quantity of BPSK

The Consumer Dispute Settlement Agency (BPSK) is an institution specifically formed as an institution providing access to justice and consumer redress. This institution carries out the handling and settlement of consumer disputes through conciliation, mediation, or arbitration methods. BPSK also supervises the inclusion of standard clauses and reports to general investigators, if there is a violation of the provisions of Law no. 8/1999. With developments over the last two decades, in order to improve access to redress for victims of consumer rights violations, BPSK must of course continue to adapt to improve its resources, including human resources.

In addition, in order to present an effective redress scheme for consumers, of course, it is also necessary to think about the accessibility of consumers without discrimination, to access redress institutions. Thus, increasing the number of BPSKs in the regions is actually an option that needs to be considered, given the unequal access to redress in the regions, because there is an institutional vacuum of BPSK. This needs to be accompanied by strengthening budget support and the capacity of officers who handle consumer complaints in each BPSK that is formed. Then BPSK needs to participate in encouraging and being involved in the establishment of an ODR mechanism in consumer dispute resolution. This is mainly to respond to the withdrawal of consumer protection authority to the provincial level only, as regulated by Law no. 23/2014 concerning Regional Government. Considering the area of each province in Indonesia, the development of an ODR mechanism will be able to overcome the problem of distance and time. Although of course it must still provide a direct handling mechanism (offline), and consider the internet network access infrastructure in each region.

- Strengthening capacity and standardization of LPKSM

According to the Consumer Protection Law, the Non-Governmental Consumer Protection Organization (LPKSM) is tasked with disseminating information on various knowledges about consumer protection. LPKSM can also be a means of carrying out redress efforts through judicial channels, for example through class action. In addition, LPKSM can also carry out the functions of mainstreaming consumer rights at the grassroots, to expand public awareness of their rights as consumers. With this role, LPKSM actually has a very important and vital role and function in developing a good and strong consumer protection ecosystem.

With these considerations, in the future it is necessary to design the institutional development of LPKSM, to ensure the effectiveness of consumer protection, including ensuring that every consumer can access redress, when they are harmed in a business or trade transaction. This development design must be able to encourage and foster the birth of a more diverse and varied LPKSM, which can represent each consumer protection sector (financial service consumers, transportation consumers, drug and food consumers, etc.), and also accommodate increasingly complex consumer models and positions.

In addition to encouraging the growth of various LPKSM, another aspect that needs to be emphasized in the future is the development of policies regarding standardization of LPKSM, to ensure consumer protection services from each LPKSM. The most ideal design can refer to the standardization and accreditation of legal aid services as regulated by Law no. 16/2011 concerning Legal Aid. However, although it is not as strict as the standardization of legal aid services, at least the design of this LPKSM standardization can guarantee the capacity and quality of LPKSM, in assisting and providing assistance to consumers, to access redress.

- Ensuring the presence of an internal complaints handling system for each businessess

Even though businessess are parties to a consumer dispute, in its development, businessess can also act as the first line in providing access to redress for consumers. This concept

basically departs from the formulation that every businessess has an obligation to respect consumer rights, one of the rights of consumers in it is the right to an effective redress. In general, respect for consumer rights can be realized, one of which is by complying with the obligations of businessess in the CPL. Thus, the potential for consumer rights to be injured will be minimized. Then in the context of access to redress, businessess are the main party to prevent a dispute process—which may take time and cost. Therefore, an internal complaints handling system needs to be present in business activities, with a view to speeding up the redress process, and consumers are also helped, because this mechanism is relatively fast and inexpensive, and can be resolved internally between the two entities—consumers and businessess.

Therefore, as a step to provide various access to effective redress for consumers, consumer protection institutions in the future also need to ensure that every businessess must provide an internal complaints handling system mechanism. However, with the various capacities of each businessess, of course it is necessary to formulate more detailed rules regarding the form of the internal complaints handling system that must be provided. This rule includes clarifying the gradation of obligations in providing the mechanism, for each level (small, medium, large) of each businessess. The gradations regulated in the Limited Liability Company Law and the Small and Medium Enterprises Law, can be a reference in the formulation of this obligation gradation. In addition, specifically for small and medium enterprises (SMEs), the provision of an internal complaints handling system can also take advantage of SME associations. So, to facilitate and empower SMEs in providing this mechanism, they can provide this internal complaints handling system through their associations (one association, one internal complaints handling).

III.C. Improvement and Development of Consumer Redress Mechanisms and Procedures

The accessibility and ease of consumer redress mechanisms are the main means of delivering effective redress for consumers. Although the Consumer Protection Law and its implementing regulations have provided sufficient detail for the consumer redress mechanism, through a set of complaints and dispute resolution procedures, with some notes on the problems above, a number of developments in this mechanism are needed.

Improvement and development of these redress mechanisms and procedures can also be based on a number of good practices developed by a number of ministries/agencies, as well as similar good practices in various countries. From a number of problems and good practices that already exist, several things that can be developed to strengthen the effectiveness of redress, are:

- Need for strengthening consumer redress procedures

Developing and strengthening redress procedures can be based on good consumer redress practices, which have been developed and put into practice, among others, in the financial and trade sectors. In the financial sector, there are currently three mechanisms available, namely: an internal complaints handling system, a Consumer Protection Portal Application, and an Alternative Financial Services Dispute Resolution mechanism. These three mechanisms give the consumer a choice to determine the mechanism that is most beneficial to them—to obtain redress. One of the highlights in the financial sector is the presence of the LAPS SJK institution, which was originally a mechanism developed by the association of financial service providers, in collaboration with OJK. Alternative dispute resolution institutions such as this can be applied to other sectors, with several considerations: (i) Offering a fast and executable mechanism; and (ii) Offering business compliance because these institutions are self-regulation organizations (SROs). The development of these mechanisms and procedures can be done by establishing and providing alternative dispute resolution institutions, referring to the SJK LAPS, in each sector, or integrating all sectors into one national LAPS, which is specialized in resolving consumer disputes.

- Development of an online dispute resolution (ODR) mechanism

Based on current practice, Indonesia already has the modalities to develop an integrated ODR system. For example, this practice has been developed by the Supreme Court through the e-litigation system, then the Consumer Protection Portal Application (APPK) by the OJK, as well as the internal complaints handling system mechanism that has been provided by business online. Several options for developing ODR policies can be carried out, for

example by creating a centralized and integrated ODR platform, developing an ODR hub platform, creating a special consumer ODR portal, or also decentralizing ODR. The development options of these various systems are intended to provide an alternative to the ODR model, which is most easily accessible and used by consumers, to ensure effective redress for them. Therefore, to ensure the accessibility and acceptability of the system, this mechanism must also be equipped with clear procedures, in order to make it easier for consumers to access and use it.

- The need for instrument to affirm the legal certainty regarding the access to consumer redress

Considering the numerous facilities for consumer redress provided by each sector, so as to facilitate the consumer, it needs an instrument to ensure that they can access the redress more quickly and effectively. This is intended to avoid resolving the same case in different forums, although consumers still have the choice to use the easiest and most profitable mechanism for them. So basically, the mechanism is aimed at avoiding two dispute resolution processes for the same case. This mechanism is important to ensure legal certainty in consumer redress, because if this instrument is not provided, it will be detrimental to both parties. If the opportunity for dispute resolution is made too open, then there is a possibility that the losing party will then take the same case to another forum. As a result, if this situation occurs, it will cost more, take more time, and result in delays in the consumer's own redress process. Therefore, there needs to be a mechanism to ensure that the existing mechanisms are not optional vehicles for parties who want to seek profit solely for themselves—the parties.

- Expanded forms of redress for consumers

As previously described above, the forms of losses experienced by consumers are certainly not limited to losses that are material or can be measured by money, but also include losses that are immaterial. The immaterial losses suffered by consumers can be in the form of losses of benefits, which are likely to be received by consumers in the future, or losses from loss of profits that may be received by consumers in the future. Not only that, but these

losses can also include feelings of shame. These various potentials and risks of immaterial losses indicate the need to broaden the basis for consumer losses, which are not solely related to damage, pollution, and/or consumer losses due to consuming goods and/or services provided or traded. In accordance with the recommendations above, the immaterial losses suffered by consumers should also be regulated by CPL, so that later it can become the basis for claims for losses suffered. Furthermore, procedurally, dispute resolution institutions, both on a judicial and non-judicial basis, in their procedures and procedural law also need to accommodate claims for redress or compensation of an immaterial nature.

- Develop consumer interest-based redress

Strengthening affected consumers is vital to the redress process, though this is too often overlooked. In order to empower consumers, governments and companies must avoid processes or means of communication that are demeaning, culturally insensitive, or insufficiently respectful of the needs of the people or groups affected. As a form of consumer empowerment, both the government and companies must ensure that consumers understand their rights and understand the existing redress mechanism channels. Therefore, any redress process must take into account the needs of affected individuals or groups, thus avoiding discriminatory measures. Including if in a case it appears that the position of consumers and companies is not balanced (power imbalance), then the redress channel must be sensitive to involve consumer organizations, to balance the bargaining positions of both parties. Strictly speaking, redress in the context of internal complaints handling, redress with state-based judicial and non-judicial mechanisms, as well as non-judicial based on non-state, needs to involve consumers in every process. In addition, all these mechanisms must also pay attention to the experience and needs of consumers for the losses they have suffered.

INSTITUTE FOR POLICY RESEARCH AND ADVOCACY (ELSAM)

ELSAM was established in 1993 with the background of the need to conduct studies relating to the impacts of development to human rights, which will be the important evidence in policy advocacy. Having such a need, ELSAM focuses on two major strategies in carrying out its activities, by conducting study and policy advocacy. ELSAM has the vision to create Indonesia as a democratic and just society and country that respect for human rights. While its mission is to be a non-governmental organisation striving for human rights, including civil-political rights, economic, social and cultural rights. With those vision and mission, ELSAM aims at realizing society adhering to the values of human rights, justice, and democracy, both in the policy, legislation and regulation, implementation and institutionalization. Departing from those vision, mission and goal, ELSAM aims at contributing to the development of inclusive society, holding on to the human rights principles, in a democratic system.

ELSAM combines the working methods of human rights think-tank organizations as well as human rights advocacy organizations. This character is what makes ELSAM unique compared to similar human rights organizations in Indonesia. ELSAM attempts to continually promote the presence of evidence-based policies to strengthen the protection of human rights in Indonesia. Uniquely, this approach is also reflected in the capacity of ELSAM staff, who though divided by function, overall they have the capacity to carry out research and advocacy work.

MAIN ACTIVITIES

1. Mainstreaming and integrating human rights principles into policy making process
2. Conducting study and production of human rights knowledge in support of policy advocacy on business and human rights, Internet and human rights, and the sustainability as an effort to achieve the ecological justice.
3. Conducting human rights education, including tailor-made training programme with thematic subjects, and training that promotes the utilisation of human rights-based approach to the policy makers, including local government and business sector.

There are at least two important achievements of ELSAM that should be noted, first is its success in encouraging policy making to strengthen respect, fulfilment and protection of human rights, both at the national and local levels. For example, the Truth and Reconciliation Commission Law, Witness and Victim Protection Law, and currently ELSAM is seriously endorsing the Personal Data Protection Law. Second, ELSAM is able to keep up to date with various new human rights issues, by being able to deeply elaborate a human rights-based approach in its work on various issues.

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