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## Airline Customers Conflict Resolution in The Framework of Legal Protection For Consumers in Indonesia

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**Abstract:** Aviation related issues include low supervision of airlines in Indonesia, the condition of aircraft that are old and less feasible and high rates of flight accidents. Management negligence and mistakes reach a level that endangers state security. An airline is an organization that provides flight services including cargo to passengers. They provide these services and form cooperation or alliances with other airlines for mutual benefit. However, the relationship between customers and airlines can sometimes lead to ruthless legal battles and violent conflicts. This paper discusses legal protection for airline customers in Indonesia. It seeks to investigate not only the legal arrangements regarding air transportation in Indonesia but mechanism to minimize/prevent disputes between consumers and airlines. Consumer dispute resolution with airlines refers to the Consumer Protection Act and Aviation Law. The research reveals that consumer-airlines conflicts can be resolved outside of the court through several dispute resolution models, including Consumer Dispute Settlement Agency, Non-Governmental Consumer Protection Agency, the Directorate of Consumer Protection agreed by the parties, based on Article 1338 of the Civil Code. This paper also show that it is necessary to make a simple dispute resolution system specifically for airline consumers in the form of an airline consumer dispute resolution assembly or a special arbitration agency.

**Keyword:** Regulation, Application, Territorial Principles, Indonesian Geographical Indications.

### INTRODUCTION

The airline is an organization that provides flight services for passengers or goods. They rent or own airplanes to provide these services and can form cooperation or alliances with other airlines for mutual benefit. Aviation services consumers are every airline service user available in the community. Consumer protection as stipulated in Law Number 8 of 1999 concerning Consumer Protection, is all efforts that ensure legal certainty to provide protection to consumers. Any effort that guarantees legal certainty is expected to be a fortress to eliminate arbitrary actions that harm consumers because arbitrariness will result in legal uncertainty and legal uncertainty that will not provide a protection for consumers. Legal protection for consumers is related to many aspects of life, especially in aspects of consumer life which suffer

a lot of losses. The right to obtain appropriate legal remedies is one of consumer rights. Consumer rights are closely related to aircraft accidents and prevention. These accidents are the right to security and safety, the right to obtain information, the right to obtain consumer education, and the right to obtain compensation. The right to security and safety is intended to ensure the safety and safety of consumers in the use of flight services, so that consumers can avoid physical or psychological losses when using airline services. The right to obtain clear and correct information so that consumers can get a true picture of a service and the conditions of flight services, because with this information consumers can choose the desired product / according to their needs and avoid losses due to errors in the use of flight services. Flight related issues in Indonesia include low supervision of airlines in Indonesia, the condition of the aircraft that is old and less feasible and the high number of flight accidents. This has an impact on the airline's consumers. Management negligence and mistakes reach a level that endangers state security. That is what happens when passengers on the international Lion Air and Air Asia routes are not transported to the International terminal so they do not pass immigration checks. The Lion Air incident occurred on Tuesday 10-May 2016 at Soekarno Hatta Tangerang airport against passengers on the T161 plane Singapore route Jakarta. Then six days later at Ngu Rah Rai airport, Denpasar Bali, there were many violations of consumer rights. Enforcement of consumer rights through dispute resolution faced in air transport practices was necessary. Therefore it is very important to find the concept of airline consumer dispute resolution in Indonesia.

## RESULTS AND DISCUSSION

### Regulation of Consumer Protection in Indonesia

Related to legal protection, Soedikno Mertokusumo stated: In its function as protection of the interests of human law, it has a purpose. The law has goals to be achieved. The main purpose of the law is to create an orderly society order, create order and balance. With the achievement of order within the community, it is hoped that human interests will be protected. In achieving its objectives, the law is in charge of dividing the rights and obligations between individuals in the community, dividing authority and regulating how to solve legal problems and maintaining legal certainty.<sup>1</sup> Repressive legal protection serves to resolve disputes. In the legislative arrangement, forms of protection provided to the community have been determined for arbitrariness from other parties, be they rulers, businessmen, or people who have better economics on the part of the victims. In principle, legal protection against weak parties is always associated with the protection of the rights of weak parties.<sup>2</sup> The subject referred to as a consumer means that everyone who is a user of goods and / or services. The term "person" actually raises doubts, whether only individuals are commonly called *natuurlijke person* or include legal entities (*recht person*). According to Az. Nasution, the person who meant natural people was not a legal entity. Because those who use, use and / or utilize goods and / or services for their own interests, family, other people, or other living beings not to be traded are only natural or human persons.<sup>3</sup> Az. Nasution in his book emphasizes several limitations about consumers,<sup>4</sup> namely:

1. Consumers are everyone who gets goods and / or services used for certain purposes;
2. The intermediate consumer is everyone who gets goods and / or services for commercial purposes);

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<sup>1</sup> See Sudikno mertokusumo, *mengenal hukum suatu pengantar*, Liberty, Yogyakarta. p.71.

<sup>2</sup> Ibid. p.265

<sup>3</sup> See Abdul Halim Barkatullah, *Hukum Perlindungan Konsumen Kajian Teoritis dan Perkembangan Pemikiran*, (Bandung : Nusa Media, 2008), p.10.

<sup>4</sup> See Az. Nasution, *Hukum Perlindungan Konsumen Suatu Pengantar*, Diadit Media, Jakarta, 2002, p.13.

3. End consumers are all natural people who get and use goods and / or services for the purpose of fulfilling their personal, family and / or household needs and not to be traded again (non-commercial).

Article 1 number 2 of Law No. 8 of 1999 concerning Consumer Protection, provides the definition of consumers as follows: "Consumers are everyone who uses goods and / or services available in society, both for their own interests, their families, other people and other living beings and are not for sale". The party protected by the Consumer Protection Act (UUPK) is the final consumer because the end consumer is the end user or user of a product. Another term that is closely related to consumer protection is matter. Objects are any tangible, movable or immovable object, objects that can be spent or cannot be spent, objects that can be traded, used, used, or utilized by consumers. The purpose of consumer protection is basically the ultimate goal that must be achieved. According to Article 3 of the Consumer Protection Law (UUPK), consumer protection aims to;

1. Increase consumer awareness, capability and independence to protect themselves;
2. Lifting the dignity of the consumer by avoiding the negative aspects of the use of goods / services;
3. Increasing consumer empowerment in choosing, determining, demanding their rights as consumers;
4. Creating a consumer protection system that contains legal certainty elements and information disclosure and access to information;
5. Growing awareness of business actors regarding the importance of consumer protection so that honest attitudes and responsibility for business are grown;
6. Improving the quality of goods and services that ensure the continuity of the business of producing goods or services, health, comfort and safety of consumers.

Janus Sidabalok argues that 4 main reasons for consumers must be protected,<sup>5</sup> namely:

1. Protecting consumers means protecting all nations as mandated by national development goals according to the 1945 Constitution of 1945;
2. Protecting consumers is necessary to avoid consumers from the negative effects of using technology;
3. Protecting consumers needs to give birth to human beings who are spiritually and physically healthy as actors of development, which also means to maintain the continuity of national development;
4. Protecting consumers needs to guarantee the source of development funds sourced from the consumer community.

### **Legal Aspects of Air Transport in Indonesia**

Abdulkadir Muhammad defines Transportation as a process of transferring passengers and / or goods from one place to another by using various types of mechanical transportation equipment which are recognized and regulated according to the transportation sector and technological progress.<sup>6</sup> Transportation has three main aspects, namely transportation as a business (business), transportation as an agreement (agreement) and transportation as an implementation process (applying process). Transportation as a business (business) is a business activity in the field of transportation services that use mechanical transport equipment. The commercial term in transportation is a equivalent taken from a trade term, namely business activity by buying goods and selling them again, renting goods, or selling services in order to obtain profits and / or profits. If the use of transportation equipment is accompanied by payment of a sum of money as compensation or rent, the transportation is called commercial transportation. According to Purwosutjipto, transportation is a reciprocal agreement between

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<sup>5</sup> See Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia*, PT. Citra Aditya Bakti, 2010, Bandung, p.6.

<sup>6</sup> See Abdulkadir Muhammad, *Hukum Pengangkutan Niaga*. Bandung: Citra Aditya Bakti, Bandung, 1998, p. 13

the carrier and the sender, where the carrier binds himself to carry out the transportation of goods and / or people safely from one place to a particular destination, while the sender binds himself to pay for transportation.<sup>7</sup> The use of a means of transport by a passenger or sender to transport passengers or goods to an agreed destination with a payment as a fee or rent. Payment of a sum of money as transportation costs proves that the carrier carries on the business activities of the company in the field of transportation services.<sup>8</sup> Transportation is a means to facilitate the economy, open access to remote or remote areas, strengthen national unity, establish national sovereignty, and affect all aspects of people's lives. The importance of transportation is reflected in the increasing demand for transportation services for the mobility of people and goods domestically and abroad, and acts as a driver and driver for regional growth and regional development. One important transportation is the implementation of flights as air transport. The implementation of aviation must be arranged in an integrated national transportation system and able to realize the provision of transportation services that are balanced with the level of needs, safe, safe, effective and efficient.<sup>9</sup> According to R. Soekardono, air transportation agreements are reciprocal agreements, where the carrier binds himself to carry out the transportation of goods and / or people to a particular destination, while the other party (sender-recipient, sender or recipient, passenger), needs to fulfill certain payments for the transportation.<sup>10</sup> According to Law No. 1 of 2009 concerning Aviation, an Air Freight agreement is an agreement between the carrier and the passenger and / or sender of cargo to transport passengers and / or cargo by airplane, in return for payment or in the form of other service benefits. Article 1 of Law Number 1 of 2009 concerning Aviation, Aviation is a unitary system consisting of utilization of airspace, aircraft, airports, air transportation, flight navigation, safety and security, the environment, as well as supporting facilities and other public facilities. Then Air Transport is any activity using an aircraft to transport passengers, cargo, and / or post for one trip or more than one airport to another airport or several airports, which is differentiated into Commercial Air Transport and Non-Commercial Air Transport.

### **Airline-Consumer Disputes Resolution as a Legal Protection Effort for Airline Customers**

Every airline must be responsible for its passengers. Responsible for losses to consumers both in terms of passengers and baggage. WJS Poerwadarminta gives meaning to aviation safety, flight is a matter of (safeguarding) survivors.<sup>11</sup> The most important thing is the provision of safety facilities in flight that are useful to protect users of transport services and also avoid the occurrence of things that have negative impacts or things that are not. It is expected that the company itself will cause a great loss for him.<sup>12</sup> The responsibility of the airline can be seen in the case of flight delays, aircraft accidents and baggage. Which is framed by Law No. 1 of 2009 concerning aviation and Permen No. 77/2011 concerning the responsibility of air transport carriers. In Article 2 of this Ministerial Regulation, it is explained that the carrier operating an aircraft must be responsible for losses against:

1. Passengers who have died, permanent disabilities or injuries;
2. Lost or damaged cabin baggage;
3. Lost, destroyed or damaged checked baggage;
4. Lost, destroyed, or damaged cargo;

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<sup>7</sup> See Purwosutjipto, H.M.N. *Pengertian Pokok Hukum Dagang Indonesia*. Jilid 3, Jakarta: Djambatan. Jakarta, 1995, p.3

<sup>8</sup> See AZ. Nasution, *Pengantar Hukum Perlindungan Konsumen*, Jakarta : Penerbit Daya Widya, 1999, p. 5.

<sup>9</sup> See Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, 2011, p. 47.

<sup>10</sup> See R. Soekardono, *Hukum Dagang Indonesia*, Cet. 2, Rajawali, Jakarta, 1986, p. 8.

<sup>11</sup> See W.J.S Poerwadarminta, *Kamus Umum Bahasa Indonesia*, Balai Pustaka Jakarta, 1986, p.363

<sup>12</sup> See Emmy Pangaribuan Simajuntak, *Hukum Pertanggungjawaban dan Perkembangannya*, Sesi Hukum dagang, Fakultas Hukum UGM, Yogyakarta, 1990, p.151. (20) Komar kanta, *Tanggung Jawab Profesional*, Ghalia Indonesia, Jakarta, 1994, p. 3

5. Delay in air transportation; and
6. Losses suffered by third parties.

### **Delay in Air Transport (Flight)**

The purpose of the flight is to realize the implementation of safe, orderly and regulatory, comfortable and economic for company flights.<sup>13</sup> Airlines are obliged to hold flights in order to achieve these objectives. But sometimes the goal is constrained, causing disruption to the interests of the airline's customers. Such as the occurrence of flight delays. Airlines as transport service providers are responsible for flight delays. The responsibility of the carrier is the obligation of the air transport company to compensate for the loss suffered by the passenger and or the sender of the goods and third parties. Responsibility can be known from the obligations specified in the agreement or law. The obligation of the carrier is to carry out transportation. This obligation is binding since the passenger or sender has paid off transportation costs.<sup>14</sup> Flight delays are set in Article 1 No. 30 of Law No. 1/2009 on Aviation. This article explains the meaning of the delay, delay as the difference between the time of departure or the scheduled arrival is due to the realization of the time of departure or arrival. Delay in flight made by the airline service provider is a violation, because it does not carry out a transport agreement properly in accordance with previously agreed. Violation or non-implementation of a transportation agreement in the following matters:

1. There is an illegal refusal from the carrier;
2. Only part of the transportation is carried out;
3. There is a delay from the carrier with the result that the target of the business implementation is blocked or cannot be carried out as it should.<sup>15</sup>

The Minister of Transportation Regulation No. PM 77 of 2011 on the Responsibility of air transportation. This regulation stipulates that air transport company must compensate for losses suffered by passengers or freight forwarders and third parties. The delay in air transportation as referred to in Article 2 letter e consists of:

1. Flight delay (flight delayed);
2. The passenger is not transported on the basis of aircraft capacity (denied passenger boarding);
3. Flight cancellation (cancellation of flight).

In addition, in Article 2 letter e the responsibility of the air transport carrier is noted for the delay in air transportation in the form of the rights of passengers who experience flight delays as referred to, thus obtaining compensation as follows:

1. Delay of more than 4 hours is given compensation of Rp. 300,000.00 (three hundred thousand rupiah) per passenger;
2. 50 percent compensation is given from the provisions, if the carrier offers other nearby destinations (re-routing), and the carrier must provide advanced tickets or provide other transportation to the destination if there is no transportation mode other than air transportation;
3. In the event that it is transferred to the next flight, passengers are exempt from additional fees, including (up grading class) or if there is a decrease in class, then the passenger must be given the remaining excess money for the ticket purchased.

The types of delays were further clarified in the Minister of Transportation Regulation Number PM 89 Year 2015 Handling of Flight Delay (Delay Management) at Scheduled Commercial Air Transport Business Entities in Indonesia ("Permenhub 89/2015"). According

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<sup>13</sup> See Nasution, M.N, *Manajemen Transportasi*, Ghalia Indonesia, Bogor, 2007, p.202

<sup>14</sup> See E, Saefullah Wiradipradja, *Tanggung jawab pengangkut dalam Hukum Pengangkutan Udara Internasional dan Nasional*, Liberty, Yogyakarta, 1989, p.111

<sup>15</sup> See E, Saefullah Wiradipradja, *Tanggung jawab pengangkut dalam Hukum Pengangkutan Udara Internasional dan Nasional*, Liberty, Yogyakarta, 1989, p.111



to Article 2 Permenhub 89/2015, flight delays in scheduled commercial air transport business entities consist of:

1. flight delay ;
2. no transport of passengers due to aircraft capacity (denied passenger boarding); and
3. flight cancellation.

In the event of delayed flight the Air Transport Business Entity is obliged to provide compensation and compensation to its passengers. Flight delays are grouped into 6 (six) categories of delays,<sup>16</sup> namely:

1. Category 1, delay 30 minutes to 60 minutes;
2. Category 2, delay 61 minutes to 120 minutes;
3. Category 3, delay 121 minutes to 180 minutes;
4. Category 4, delay of 181 minutes to 240 minutes;
5. Category 5, delay of more than 240 minutes; and
6. Category 6, flight cancellations.

Compensation that must be given by an Air Transport Business Entity due to flight delays in the form of:<sup>17</sup>

1. category 1 delay, compensation in the form of soft drinks;
2. late category 2, compensation in the form of drinks and snacks (snack boxes);
3. late category 3, compensation in the form of drinks and heavy meals;
4. late category 4, compensation in the form of drinks, snacks and meal);
5. late category 5, compensation in the form of compensation of Rp. 300,000;
6. late category 6, air transport business entities must transfer to the next flight or return all ticket costs (refund ticket); and
7. delays in categories 2 to 5, passengers can be diverted to the next flight or return all ticket costs (refund ticket).

Based on interviews with researchers with the airline Lion Air at Soekarno Hatta airport, the provisions for compensation due to aircraft delay due to airline management were carried out according to existing regulations. Delays of 3, 4, 5 hours passengers are given compensation amounting to 300 thousand rupiahs, for delays of 30 to 60 minutes passengers are given snacks / meals.<sup>18</sup> However, the Air Transport Business Entity is free from responsibility for compensation due to flight delays due to operational technical factors (factors caused by airport conditions at the time of departure or arrival), weather factors, and other factors caused in outside of airline management factors, technical operations and weather, including riots and / or demonstrations in the airport area. (25) This means that airlines are not required to compensate for all delays. Compensation is required only for delays caused by airline management factors such as delays in flight crews (pilots, co-pilots, cabin crew), catering, late handling on land, waiting for passengers, or aircraft unpreparedness. Meanwhile, those caused by operational technical factors, both at the origin and destination airports (airport closure, takeoff lines or flight traffic density, etc.). Weather factors (heavy rains, storms, smoke and so on) as well as external factors outside airline management, are not part of the airline's responsibility. In this regard, airlines are required to inform passengers with proof of official certificate from the relevant agency.<sup>19</sup>

## Plane Crash

The number of aircraft accidents has doubled in the last two years, or 2014 to 2016. The information is contained in data released by the National Transportation Safety Committee

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<sup>16</sup> See Article 3 of the Transportation Law No. 89/2015

<sup>17</sup> See Article 9 section 1 of the Transportation Law No. 89/2015

<sup>18</sup> See Ita Juwita, interview, Customer service of Lion Air Airlines, in Jakarta. On July 31, 2017, at 10:30 WIB

<sup>19</sup> See Aviantara edisi 3 Tahun 2017.p. 20-21

(NTSC) in November 2016. According to the NTSC, the number of aircraft accidents in 2014 was nine. In 2015, the number rose to 11 events. Until finally in 2016 it became 15 events, or more than doubled compared to 2014 when the ministerial era of President Jokowi's Working Cabinet began. While for the category of serious incidents, the numbers tend to be stable. NTSC recorded 23 incidents of serious incidents in 2014. The number had dropped by 17 incidents the following year. But in 2016, the number rose to 26 events. The most fatal accident occurred on December 28, 2014 which was experienced by the airline AirAsia Indonesia. Flight number QZ8501 Airbus A320 lost contact when taking the Surabaya - Singapore route. The plane was found falling in the Karimata Strait. All 155 passengers and seven crew members died. The number of aircraft accidents actually declined before 2014. NTSC released data on the number of accidents in the range of 2010 to 2016. In 2010, there were eight accidents. That number rose dramatically to 19 events in 2011, but slowly declined in the next three years, namely each of 13 incidents in 2012, nine incidents in 2013, and seven incidents in 2014

### **Luggage**

Regarding the amount of loss for passenger checked baggage items As stated in Law No. 1 of 2009 concerning Aviation in Article 168 paragraph (1) Amount of loss for each checked baggage and cargo as intended in article 144 and article 145 is stipulated by Ministerial Regulation. The ministerial regulation mentioned is Minister of Transportation Regulation No: PM 77 of 2011 concerning the Responsibilities of Air Transport Carriers. Based on the Minister of Transportation Regulation No.77 of 2011 concerning the Responsibilities of Air Transport Carriers. This is regulated in more detail regarding compensation for passenger carrying baggage as mentioned in Article 4, namely:

1. The carrier is not responsible for losses due to lost or damaged cabin baggage, except if the passenger can prove that the loss is caused by the actions of the carrier or the person employed by him;
2. If the proof of the passenger as referred to in paragraph (1) can be received by the carrier or based on a court decision that has a permanent legal force (*inkracht*) found guilty, then the compensation is set as high as the real loss of the passenger.

Regarding the amount of compensation for passenger checked baggage items also mentioned in Article 2, namely, the amount of compensation for passengers who experience loss, destruction or damage to the checked baggage as referred to in Article 2 letter c is determined as follows: loss of checked baggage or checked baggage contents or baggage recorded destroyed given compensation of Rp. 200,000.00 per kg and at most Rp. 4,000,000.00 per passenger; and damage to checked baggage, compensation is given according to the type, size and brand of checked baggage.<sup>20</sup> Registered baggage is deemed lost as referred to in paragraph (1), if it is not found within 14 (fourteen) calendar days from the date and time of arrival passenger at the destination airport. The carrier is obliged to give waiting money to passengers for carrying baggage that has not been found and, cannot be declared lost as referred to in paragraph (2) of Rp. 200,000.00 per day for a maximum of 3 calendar days. When there has been a loss to the consumer, then Article 19 of Law Number 8 of 1999 concerning consumer protection states that the business actor is responsible for providing compensation for the damage, pollution and / or loss of the consumer due to the consumption of goods and / or services produced or traded. Therefore, it is necessary to explain how the dispute resolution is regulated by the UUPK. Article 45 of Law Number 8 of 1999 concerning Consumer Protection:

1. Every consumer who is harmed can sue a business actor through an institution whose task is to settle disputes between consumers and business actors or through a court in the general court environment;

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<sup>20</sup> See Celina Tri Siwi kristianti, *hukum perlindungan konsumen*, Jakarta, 2009 : sinar Grafika.p.126

2. Consumer dispute resolution can be taken through a court or outside the court based on the voluntary choice of the parties to the dispute;
3. Settlement of disputes outside the court as referred to in paragraph 2 does not eliminate criminal responsibility as stipulated in the Act; and
4. If an effort to resolve consumer disputes outside the court has been chosen, the claim through the court can only be reached if the effort is declared unsuccessful by either party or by the parties to the dispute.

Settlement of disputes outside the judiciary, the Consumer Protection Act facilitates consumers who feel disadvantaged by filing a lawsuit with business actors outside the court, namely the Consumer Dispute Settlement Agency (BPSK). The claim mechanism is carried out voluntarily from both parties to the dispute. This applies to individual claims, while class Action claims are carried out through public courts.<sup>21</sup> The procedure for resolving consumer disputes at BPSK is very easy, consumers can come directly to BPSK namely by bringing a letter of dispute resolution request, filling out a complaint form and submitting supporting documents and documents. Then BPSK will invite the parties to the dispute to conduct a pre-trial meeting. BPSK has the authority to conduct an examination of the truth of reports and information given by the disputing parties, in this meeting the next steps will be determined, namely through a peace process or otherwise. Three ways of resolving disputes are based on the Dispute Resolution Agency by BPSK:

1. Conciliation

Article 1 number 9 in the Ministerial Decree explains that konsoliasi is: The process of resolving the disputes of consumers outside the court through the intercession of BPSK to bring together the parties to the dispute and the resolution submitted to the parties. The settlement of this method is carried out by the parties to the dispute accompanied by a panel that acts passively as a conciliator.

2. Mediation/Arbitration

Mediation dispute resolution is regulated by Ps 1 number 10 UUPK, explaining that it is a process of resolving consumer disputes outside the court with the BPSK regulation as an Advisor and the resolution is submitted to the parties. The completion of this method is carried out by the parties to the dispute by the passive assembly. Based on Article 1 point 11 arbitration is the process of resolving consumer disputes outside the court in this case the parties to the dispute fully submit the resolution to BPSK.

## CONCLUSION

The airline consumer dispute resolution is still based on Law No. 8 of 1999 concerning Consumer Protection. The procedure for resolving disputes takes years. It is necessary to make a simple dispute resolution system specifically for airline consumers in the form of airline consumer dispute resolution assemblies or specialties related to this matter. Because BPSK, which was given the authority by the UUPK, resolved all issues related to consumer protection. It is recommended that a special assembly be formed so that the dispute resolution of airline consumers does not need to be brought to court or to BPSK which resolves all consumer disputes in any field, so that the consumer rights of aviation masapi are better protected in order to provide legal certainty for consumers.

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<sup>21</sup> Consumer Protection Law No 8/1999



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