



# LEGAL PROTECTION OF TOURISTS IN HIGH-RISK TOURISM ACTIVITIES ACCORDING TO CONSUMER PROTECTION LAW

Nabilah Luthfiyah Chusnida  
Fakultas Hukum, Universitas Brawijaya, Malang, Indonesia  
Email: [nabilahluthfiyah45@gmail.com](mailto:nabilahluthfiyah45@gmail.com)

Submitted: 09-01-2023; Accepted: 08-03-20232  
DOI: <http://dx.doi.org/10.30641/dejure.2023.V23.001-014>

## ABSTRACT

In tourism activities, business actors are required to provide protection to tourists according to the mandate of Law Number 8 of 1999 concerning Consumer Protection (UUPK). UUPK has regulated that tourists have rights, including security and comfort when traveling, especially in high-risk areas. Security and comfort are then regulated in SOPs which cover human resources, equipment, and services. This study examines how business actors provide legal protection for tourists in diving tourism as high-risk tourism. This study uses a normative legal method by dissecting principles and norms in SOP documents for the diving tourism business actors, and UUPK. The results of this study indicate that arrangements for legal protection and safety of tourists, and the rights of tourists as users or consumers of services in the tourism sector, both have been regulated in UUPK. Business actors also need to pay attention to several aspects in the diving tourism business. However, currently, there are still many business actors that prepare SOPs with exoneration clauses that are detrimental to tourists. Safety and comfort are not guaranteed, causing many victims to die and inappropriate compensation. Efforts to resolve disputes that can be carried out are litigation and non-litigation, however most business actors take non-litigation procedure using the mediation method.

**Keywords:** consumer protection; diving; high-risk tourism

## 1. INTRODUCTION

Tourism is the most important and interesting part of national development that is carried out in a planned, systematic, sustainable, and integrated manner. The implementation of such developments must pay attention to the responsibility to provide protection for religious values, the culture that lives in society, environmental sustainability and quality, as well as national interests. There is no doubt about the importance of the role of tourism in economic development in various countries. Development in the tourism sector will open new jobs<sup>1</sup>, increase local community income, and make a financial contribution in related business sector.<sup>2</sup>

Travel is a temporary trip by one person or more to another place outside their place of residence.<sup>3</sup> But now tourism has become a necessity of life for the community. Legal protection and the security faa tourist spot have a great influence on the growth and development of tourism in Indonesia, especially with the existence of natural resources in this country. Legal protection and security for tourists are crucial, considering that many tourists experience theft, fraud, and other criminal acts as well as accidents that harm them.<sup>4</sup> In the context of legal protection for tourists, what needs to be protected are the rights of tourists. Tourist rights include comfort, security, and getting Tourists have the right to get the best possible service from tourism management where the person concerned visits the tourist spot. Therefore, business actors in the tourism sector are required to

- 1 H M S Depa, "Perlindungan Hukum Kepada Wisatawan Jika Terjadi Kecelakaan Di Tempat Pariwisata," *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan*, no. 85 (2021): 744–66, <http://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/view/4069%0Ahttp://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/download/4069/2913>.
- 2 B. dan N. Roedjinandari. Supriadi, "Perencanaan Dan Pengembangan Destinasi Pariwisata" (Universitas Negeri Malang, 2017).
- 3 I. M. S Amerta, *Pengembangan Pariwisata Alternatif* (Surabaya: Scopindo Media Pustaka, 2019).
- 4 Muhaimin Muhaimin, "Kedudukan Kearifan Lokal Dalam Penataan Ruang Provinsi Bali," *Jurnal Penelitian Hukum De Jure* 18, no. 1 (2018): 59, <https://doi.org/10.30641/dejure.2018.v18.59-71>.

provide comfort, security, and safety for tourists in accordance with the mandate of the law. Indonesia is a region that has significant tourism potential ranging from marine tourism, mountain tourism, artificial nature tourism, pilgrimage tourism, artificial game tourism, and many more. According to a report from the Central Statistics Agency (BPS), the number of foreign tourist visits to Indonesia reached 510,246 in August 2022. This is the highest achievement in the last year. The number of foreign tourist visits increased by around 330.46% compared to the same period last year. In August 2021, there were only 118,533 visits by foreign tourists to Indonesia<sup>5</sup>. Then in 2022, there will be 550 million visits by domestic tourists. Thus, cumulatively, the number of foreign tourist visits in the January-September 2022 period was recorded at 2.27 million visits, an increase of 2,530.58 percent compared to the number of foreign tourist visits in the same period in 2021 of 86,240.<sup>6</sup>

Based on the data above, many tourists visit marine tourism attractions. Marine tourism, which includes diving, snorkeling, sailboat tours, fishing tours, and surfing tours, is a form of sport, a hobby, and an education, and has even become a profession for some people and residents in the area. Marine tourism is classified as a high-risk tourism activity. The definition of “tourism business with high-risk activities,” according to the elucidation of Article 26 letter e of Law No. 10 of 2009 concerning Tourism (hereinafter referred to as the “Tourism Law”) includes, among others, diving tourism, rafting, rock climbing, jet coasters, and visiting certain tourist attractions, such as seeing wildlife in the wild. Diving and snorkeling are currently used as the main livelihood for some people in coastal areas.

Diving and snorkeling tours is one of them available in Lombok, Banyuwangi, Malang, Karimun, Java, and Bali, among other places. Diving and snorkeling have risks regarding the safety and security of tourists and are types of nature tourism, along with ecotourism and adventure tourism. Diving and snorkeling are the destinations for 35% of tourists who come to Indonesia<sup>7</sup>. In developing diving and snorkeling tourism in Indonesia, several activities were carried out, one of which was to develop standard operating procedures and certification for marine tourism businesses.<sup>8</sup>

Tourists have the right to get protection from the tourism management they visit through laws and regulations made by the state or region. The intended safeguard has significant implications for the safety and security of tourists’ lives, dignity, and property. In addition, the aspect of legal protection for tourists is one aspect that must be considered in the context of Indonesia as a rule-of-law country. It is feared that the rights of the tourists cannot be fully protected. This is due to weak supervision carried out by business actors at tourist attractions.<sup>9</sup>

Arrangements for legal protection for tourists in statutory regulations should be regulated clearly and firmly to guarantee legal certainty. A trace of Law No. 8 of 1999 concerning Consumer Protection (hereinafter referred to as the UUPK) needs to be carried out to detect whether or not there are aspects of legal protection and security for tourists. Basically, the security of tourists from this accident concerns the rights and obligations of the parties involved in the related tourism business to maintain safe and comfortable conditions. The right of tourists in Article 4 of the UUPK is to obtain legal protection in the form of clear information, security, and comfort; to be served honestly; and to receive compensation. Then it also regulates the obligations of business actors in Article 7 letter b of the UUPK, namely, to provide correct, clear and honest information regarding the conditions and guarantees of goods and/or services as well as and provide explanation of the use, improvement and maintenance. Legal protection is not only regulated in the UUPK; legal protection for high-risk tourism

5 Badan Pusat Statistik, “Pelanggaran Kepariwisata Di Indonesia,” 2023, <https://www.bps.go.id/subject/16/pariwisata.html>

6 Bimrew Sendekie Belay, “Akibat Hukum Pencantuman Klausul Eksonerasi Pada Polis Asuransi,” *Jurnal Education And Development Institut I* 0, No. 8.5 (n.d.).

7 Ikke Febriandhika And Teguh Kurniawan, “Pengembangan Pariwisata Melalui Pemberdayaan Masyarakat Dilihat Dari Perspektif Implementasi Kebijakan,” *Jurnal Pariwisata Pesona* 5, No. 1, (2020), <https://doi.org/10.26905/Jpp.v5i1.2793>.

8 Abu Rizal and Joko Priyono, “Analisis Penerimaan Daerah Dari Sektor Pariwisata Kota Surabaya Tahun 2010-2014,” *Jurnal Ekonomi & Bisnis* 28, no. 2 (2016): 250–250, <https://doi.org/10.4234/jjoffamilysociology.28.250>.

9 Annisa Puspitadelia, “Perlindungan Hukum Bagi Wisatawan Di Masa Pandemi COVID-19 Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen,” *Jurist-Diction* 4 no. 3 (202 (n.d.), <https://doi.org/10.20473/jd.v4i3.26973>.

is also regulated in Article 20 letters c and f of the Tourism Law, namely in the form of legal and security protection as well as insurance protection for high-risk tourism activities. On the other hand, according to Article 26 letters d and e of the Tourism Law, one of the obligations of tourism business actors is to provide comfort, friendliness, security protection, and the safety of tourists, and to provide insurance protection for tourism businesses with high-risk activities.

Lately there are still many tourists who pay less attention to their safety and security when traveling, instead they prioritize their personal content to be uploaded on social media. but it is not uncommon for tour operators who do not have security and responsibility in dealing with possibilities as mentioned above because nature tourism has many unexpected things that will happen, like the appearance of when heading to the mountains or the tidal waves. Standard Operating Procedures or unclear prohibition signs posted by the manager are also lack of security in these tourist attractions.<sup>10</sup> Legal protection for tourists, both domestic and foreign, is still not optimal, and the laws in force have not provided sanctions that create a deterrent effect. So far, visitors are only visitors and are used as objects by irresponsible business actors. We all know that legal certainty to ensure the safety and comfort of tourists is very important.

All matters regarding procedures, certainty, security, and tourist comfort are listed in the SOP. However, in reality, there are still many standard clauses in the SOP in the form of transferring the responsibility of business actors to consumer. These standard clauses can be found in the form of standard operating procedures or terms and conditions. Meanwhile, in Law Number 8 of 1999 concerning Consumer Protection, Article 18 Paragraph (1) states that the terms of the contents of a standard clause containing business actors are prohibited from including content stating the transfer of responsibility to business actors.<sup>11</sup>

Several accidents caused people to drown or vanish while diving in Wakatobi in 2017 and on Tabuhan Island in 2021. The accident was caused by losing control and being swept away by the current. Some tourist attractions allow tourists who do not have a diving certification to dive. As a result, there are still many who have not mastered the underwater area. Business actors limit and transfer their responsibility regarding this matter by only providing compensation that has been paid in accordance with tickets and insurance or even no insurance at all, and there is no responsibility because it has been stated in standard operating procedures or Terms and Conditions that when tourists do not obey the rules, if something unexpected happens, then the tourism management is not responsible.

Research on legal protection for high-risk tourists according to the UUPK has not been widely carried out. Hendrikus et al, said that the legal protection for tourists in the Tourism Law in lower regulations has not been elaborated and so far the efforts made are the conciliation agreement among the parties to the dispute.<sup>12</sup> Then Sarsiti et al, stated that the Regional Government of Purbalingga Regency has not placed consumers as subjects in the tourism industry, because there is only one tourism object that already has regulations<sup>13</sup>, and even only regulates the formation of regional companies.<sup>14</sup> Meanwhile, I Putu Andika Sanjaya said that managers of tourist attractions must be held responsible if an accident occurs referring to Article 1366 of the Civil Code, Article 7 of Law Number 8 of 1999 concerning Consumer Protection, Article 26 of Law Number 10 of 2009 concerning Tourism and Article 6 number (3) of Bali Province Regional Regulation Number 5 of 2020 concerning Standards for Implementing Balinese Cultural Tourism.<sup>15</sup>

By using a study of contract theory and consumer protection theory and analyzing several cases that have occurred, this research is expected to act as a preventive strategy to prevent harm to consumers.

---

10 Made Metu Dhana, *Perlindungan Hukum Dan Keamanan Terhadap Wisatawan* (Paramita Surabaya, 2012).

11 Masrofah, "The Exoneration Clause Harms the Buyer Legal Protection for Consumers Against the Application of Exoneration Clauses in Online Sale," *UMPurwokerto Law Review* 3, n.d., <https://doi.org/10.30595/umplr.v3i1.10730>.

12 Depa, "Perlindungan Hukum Kepada Wisatawan Jika Terjadi Kecelakaan Di Tempat Pariwisata."

13 And Muhammad Taufiq. Sarsiti, Sarsiti, "Penerapan Perlindungan Hukum Terhadap Wisatawan Yang Mengalami Kerugian Di Obyek Wisata (Studi Di Kabupaten Purbalingga)," *Jurnal Dinamika Hukum* 12, No. 1 (2012): 27-44., n.d.

14 Depa, "Perlindungan Hukum Kepada Wisatawan Jika Terjadi Kecelakaan Di Tempat Pariwisata."

15 And Luh Putu Suryani Sanjaya, I. Putu Andika, Anak Agung Sagung Laksmi Dewi, "Perlindungan Hukum Wisatawan Yang Berkunjung Ke Tempat Wisata Berisiko Tinggi Di Bali," *Jurnal Konstruksi Hukum* 3, n.d.

Ideally, consumer protection at high-risk tourism objects is carried out meticulously and thoroughly. Mainly the government must be firm on tourism business actors, especially those included in the high-risk tourism classification. In addition, business actors must also be assertive and contribute more to the implementation of these tourism objects. Apart from the government and business actors who regulate in such a way, tourists must also contribute in an orderly way to traveling. A new contribution to dispute resolution is the existence of alternative dispute resolution and the application of insurance for tourist objects.

The purpose of this research is to examine how business actors provide legal protection to tourists participating in high-risk tourism, as well as the legal ramifications of the presence of standard clauses in standard operating procedures at these tourist destinations. So, there is a need for strict supervision and control to ensure security and comfort for tourists. Therefore, the issues that will be discussed in this paper include: first, the extent of legal protection for high-risk tourism. Then, secondly, what are the legal remedies for tourists based on the UUPK? Based on the problems above, the researcher will lay them out in a study entitled "Legal Protection of Tourists in High-Risk Tourism Activities According to Consumer Protection Law"

## 2. METHOD

The type of research used by the author is Normative or Juridical-Normative. In connection with the type of research normative juridical, the approach used is legal approach that applies in Indonesia (positive law) which usually uses or is based on data sources in the form of statutory approaches. Normative research is research conducted by examining library materials or secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. These materials are compiled and then reviewed and conclusions are drawn regarding the relationship with the problem under study. Primary legal material consists of laws and regulations, official records or treatises in the making of laws and regulations, and judges' decisions. Here the authors use primary data sources as follows, namely:

- a) Law Number 8 of 1999 Concerning Consumer Protection
- b) Law Number 10 of 2009 concerning tourism

Next is secondary legal material, which provides an explanation of all primary legal materials, such as books, scientific papers, articles, and other scientific literature materials. After processing the data through the literature, qualitative data analysis was then carried out, meaning that the results of this study were explained and described in sentences that were easily understood by the general public. To investigate what the researcher is studying, it is necessary to be able to describe facts that are specific to the subject matter. Researcher used legal constructions, legal instruments, and legal reasoning in this study, deductively from general to specific, and analyzed with qualitative methods. Researcher collected document data using library research. The data was obtained from legal theories, laws, practices, and many expert opinions. The results of this analysis will be described in written form, explaining the legal protection of tourists in high-risk tourism activities according to UUPK.<sup>16</sup>

## 3. FINDINGS AND DISCUSSION

### 3.1 Legal Protection for High-Risk Tourism

Based on the Regulation of the Minister of Tourism and Creative Economy Number 15 of 2014 concerning Diving Tourism Business Standards (hereinafter referred to as the Minister of Creative Economy Regulation No. 15 of 2014), a tourism business is a business that provides goods and/or services to meet the needs of tourists and organize tourism. A diving tourism business is a business that provides various facilities for diving under or on the surface of the water using special equipment, including the provision of guide services and safety equipment, for recreational purposes.<sup>17</sup> To get good legal protection, of course, business actors must have standards and comply with laws and regulations. Based on the level of importance, there are several groupings of requirements that are important to existing in these diving spots. Here is the description:

---

16 et al. Sri Mamudji, *Metode Penelitian Dan Penulisan Hukum* ((Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005).

17 Sri Mamudji; Zainuddin AI, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika, 2016).

## 1. Service Aspect

**Table 1**  
**Service Aspects in Organizing High-Risk Diving and Snorkeling Tourism**

Standard Operating Procedures	SOP in dive supervision
	SOP in the use of ships
	SOP regarding safety or first aid in an accident
	SOP in implementing activities
	SOP in handling tourist complaints
	SOP for cash and/or non-cash payments
	SOP in receiving and providing information via telephone, facsimile, and e-mail regarding: activity packages, schedules, products, and prices
	SOP of providing services and SOPs for picking up and dropping off tourists
	Nameplate made of safe and strong material with legible and clearly visible writing and installed in accordance with statutory provisions.
	Standard operational procedure documents and/or work implementation instructions
Insurance	Insurance services for employees and tourists

*Source: Processed by Researchers (2022)*

The most important aspect is the standard operating procedures. In every water tourism activity, standard operating procedures are the basis for implementing tourism at that object. Standard operating procedures cover many things and include certainty and security in traveling. Such as diving procedures, terms and conditions for refunds, then accountability when there is an accident while traveling, and insurance. In addition, insurance services can also be provided by insurance companies that collaborate with tourism business actors. Managers of tourist attractions that have a high risk use the services of a third party, in this case, an insurance company, to bear the risk for tourists if undesired things happen.

In this case, there are still many standard operating procedures that are standard unilateral agreements containing exoneration clauses therein, such as no refund, and then the transfer of responsibility, either in part or in whole. Therefore, to be able to ensure the safety and comfort of tourists, the standard operating procedures that are enforced are required to comply with statutory regulations considering that the standard operating procedures are the main source of information used by tourists, Therefore, in addition to being prohibited from containing exoneration clauses and placing standard operating procedures on information boards and websites, which is hardly noticed, in this case the writing must be clearly visible and easy to understand in accordance with Article 18, Paragraph 2 of the Consumer's Protection act. Standard clauses may be listed if they meet the requirements determined by law.<sup>18</sup>

## 2. Aspects of tools and human resources

**Table 2**  
**Aspects of Tools and Human Resources**  
**in Organizing High-Risk Tourism:**  
**Diving and Snorkeling**

Tool Requirements	Have communication devices
	Has flotation devices
	Has floating devices with flag
	Have a boat for diving in accordance with regional conditions.
	Has standard first aid and oxygen facilities.
	Has regulators, a buoyancy vest, a diving mask, fins, a wetsuit, an air pipe, and a ballast system.

<sup>18</sup> Rizal and Joko Priyono, "Analisis Penerimaan Daerah dari Sektor Pariwisata Kota Surabaya Tahun 2010-2014."

HR Requirements	Diving/snorkeling instructors are required to have competency or a license from a reputable national and/or international diving training institution.
	Diving/snorkeling instructors have the competence or license of a diving instructor from a reputable national and/or international diving training institution, specifically for scuba diving introduction activities.
	Diving Instructors must have knowledge and experience with dive sites, as well as the ability to manage tourist safety, including dealing with underwater emergencies.

*Source: Processed by Researchers (2022)*

Based on the table above, the equipment used to communicate when carrying out diving tourism activities must be owned, for example, surface marking communication devices, buoys with diving signs and flags, and dive boats complete with supporting facilities. This equipment needs to be owned by dive tourism business actors to be able to signal to other vessels that at that time there were diving activities under the sea, and must involve dive guides and instructors who have competence or licenses from reputable national and international training agencies, and have knowledge and track record of dive sites and have the ability to handle tourist safety, including handling underwater emergencies. This is because, in diving tourism, the main asset that can be offered to tourists is the beauty under the sea, so the role of the diving instructor is very substantial. In addition, equipment that is also important for businesses to have is first aid equipment and oxygen in accordance with the diving safety equipment standards recommended by the diving agency and/or statutory provisions, considering that diving is a high-risk activity. Diving business operators do not have to have security guard personnel; these personnel can be hired.

### 3. Aspects of Management

**Table 3**  
**Aspects of Management in Organizing**  
**High-Risk Diving and Snorkeling Tourism**

Facility	Office space equipped with equipment and supplies, a lighting system, and air circulation in accordance with the provisions of laws and regulations
	Have a light fire extinguisher (APAR) in accordance with statutory provisions.
	There is a secure storage area for valuables.
	Provide a room or area of worship in its completeness.
Program	Implement an environmentally friendly dive monitoring program that adheres to documented conservation and observation of marine biota.
	Carry out a medical check-up program for dive guides at least once a year.
	Has a competency improvement training program
	Have a well-documented K3 program implementation

*Source: Processed by Researchers (2022)*

The management aspects that have been mentioned are closely related to the two aspects that have been mentioned before. The programs that must be owned are also related to the human resources they have. Programs at each tourist attraction can also be a characteristic and a special attraction, such as beaches that have conservation education tours. The construction of tourism facilities is expected to create comfort, convenience, security, and safety for tourists during their visits. The completeness of these facilities is also an indicator of success in managing tourist attractions. In addition, the existence of programs and the construction of facilities is an effort to support the readiness of tourism destinations and be competitive. Not infrequently, there is a lack of adequate tools to support tourist attractions in their activities. The State's Tourism Act Article 23 paragraph 1 letter (a) that the central government and regional governments must provide tourists with information about tourism objects, legal protection, and safety procedures for them to feel comfortable and safe. The contents of UUPK can, of course, become a legal umbrella for tourists who visit a tourist spot that is classified as high-risk or provides high-risk activity facilities.<sup>19</sup>

<sup>19</sup> I Putu Andika Sanjaya, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani, "Perlindungan Hukum Wisatawan Yang Berkunjung Ke Tempat Wisata Berisiko Tinggi Di Bali," *Jurnal Konstruksi Hukum* 3, no. 2 (2022): 371–76, <https://doi.org/10.55637/jkh.3.2.4839.371-376>.

Underwater tourism often features the beauty of coral reefs. Although there is much more underwater beauty that can be enjoyed by divers, However, some tourist management do not allow tourists to use fins or boots when snorkeling. The impact if you don't use fins or boots is leg injuries and loss of balance, which caused the person to be swept away by the current. Even sometimes, someone who does not have a license is allowed to dive. This certainly disturbs the comfort and safety of tourists, so it can result in accidents when traveling. The following is a record of the last three years published in national news regarding accidents while snorkeling and diving.

**Table 4**  
**The number of victims who died while diving**  
**and snorkeling**

Year	Amount	Location
2020	1	Pulau Tabuhan, Kab. Banyuwangi
	1	Gili Meno, Lombok
2021	1	Pink Beach, Labuan Bajo
2022	1	Pantai Ngandong, Yogyakarta
	1	Gili Meno, Lombok
	1	Blue Lagoon, Bali
	1	Labuan Bajo
	1	Crystal bay, Nusa Penida
	1	Pantai Waru, Bali

*Source: Processed by Researchers (2022)*

2022 is the year with the highest number of diving and snorkeling tourism accidents. It can be seen from the data above that the locations where accidents often occur are the favorites for divers looking for extraordinary underwater views. The data above only shows the death toll. In fact, there are still many accidents that occur, such as sprained feet, exposure to poisoned animals, and broken bones because they were hit by hard objects on the seabed. From the aspects that must exist to provide legal protection that has been regulated in Creative Economy Ministerial Regulation No. 15 of 2014, the main urgency is regarding standard operational procedures. which regulates many things, including human resource management and the accountability of business actors. The standard operating procedure will also be used as a benchmark for all tourists when they are going to visit because it also includes operating hours, procedures for buying tickets, and dos and don'ts so that when they are going to travel, they have prepared a lot of things. If the standard operating procedure is actually the opposite, then the desired legal protection is lost because the standard operating procedure is the foundation for an activity to function. However, it can be seen that currently there are still many standard operating procedures that must be considered, given that diving and snorkeling are high-risk tourism, like the existence of clauses prohibited by article 18 UUPK. Likewise, aspects of service, tools, and human resources must be considered and owned by business actors.<sup>20</sup> If human resources and tools are inadequate, this will certainly have an impact on less comfortable services.<sup>21</sup>

Based on the description above, aspects of tourism, especially the standard operating procedures, should receive more attention. The main step of protection is to improve the SOP then insurance on the entrance ticket. Currently, the legal protection that has been carried out is the provision of insurance, but this has not yet been implemented in all high-risk tourist objects. Then the government in UUPK has also explained the prohibition on the use of standard clauses, it is hoped that the SOPs that are implemented may provide certainty and legal protection in accordance with the law.

### 3.2 Legal Remedies for Tourists Based on UUPK

In everyday life, consumer disputes always occur or arise. Juridically, the process of resolving consumer disputes based on Article 45 UUPK can be resolved using litigation and non-litigation procedure. Settlements

20 Jefferson Hakim, "Exoneration Clause on Law of Consumer Protection: Effects and Legal Efforts," *Jurnal Hukum Dan Peradilan* 8 no. 2 (201 (n.d.), <https://doi.org/10.25216/jhp.8.2.2019.297-314>.

21 Agustianto, "Pandecta An Exoneration Clause in Standard Agreements : Problems in Consumer Protection," *Pandecta* 17, No. 1 (2022) Article., n.d., <https://doi.org/http://dx.doi.org/10.15294/pandecta.v17i1.35401>.

through non-litigation channels are carried out by institutions that have been appointed to be in charge of resolving disputes between consumers and business actors. Liability is a broad legal term, which includes, among other things, the meaning that has been defined to mean “all the character of debt and liability” (the meaning includes almost every risk or responsibility, which is a liability or a particular thing).<sup>22</sup> Litigation efforts regulated in Article 48 UUPK, can be pursued by filing a lawsuit at the local District Court by making a lawsuit to sue the tourism business actor to provide compensation according to the provisions and what has been suffered by the tourist in accordance with the applicable general court provisions.

Non-litigation efforts are regulated in Article 45, paragraph 1, UUPK, which reads:

whereas consumers who are harmed by business actors can take legal action, namely, by suing through the authorized institution to settle disputes between consumers and business actors. Consumers can also file a lawsuit through the local district court.

Article 47 UUPK said:

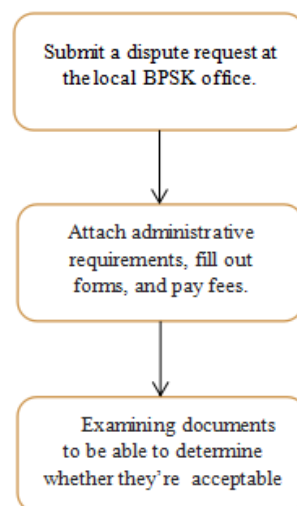
Out-of-court consumer dispute resolution is held to reach an agreement regarding the form and amount of compensation and/or regarding certain actions to ensure that losses suffered by consumers will not occur again or will not be repeated.

Based on the formulation of Article 45, paragraph 1, of the UUPK, consumer settlements out of court can be reached in two ways, namely:

- a. Settlement of claims for compensation immediately; and
- b. Settlement of claims for compensation through the Consumer Dispute Settlement Agency (BPSK).

If an attempt has been made to claim compensation directly but has not been followed up on, the consumer can take legal action to settle the consumer dispute through BPSK. BPSK's duties and authorities as regulated in Article 52 UUPK and The Decree of The Minister Of Industry and Trade Number 350/MPP/Kep/12/2001 dated December 10, 2001, concerning the Implementation Of Duties and Authorities of The Consumer Dispute Settlement Agency, namely carrying out the handling and resolution of consumer settle utilizing conciliation, mediation, and arbitration and providing consumer protection consulting. The following is the procedure for filing a dispute at BPSK:

**Chart 1**  
**Procedure for submitting disputes at BPSK**



*Source: Processed by the Author (2022)*

The chart above explains that the dispute resolution procedure at BPSK starts with a request to BPSK. Consumers or tourists who are harmed may propose that those who are harmed submit a request for settlement

---

<sup>22</sup> I Putu Gelgel, *Industri Pariwisata Indonesia Dalam Globalisasi Perdagangan Jasa (GATS-WTO) Implikasi Hukum Dan Implementasi Hukumnya* (Bandung: Refika Aditama, 2009).



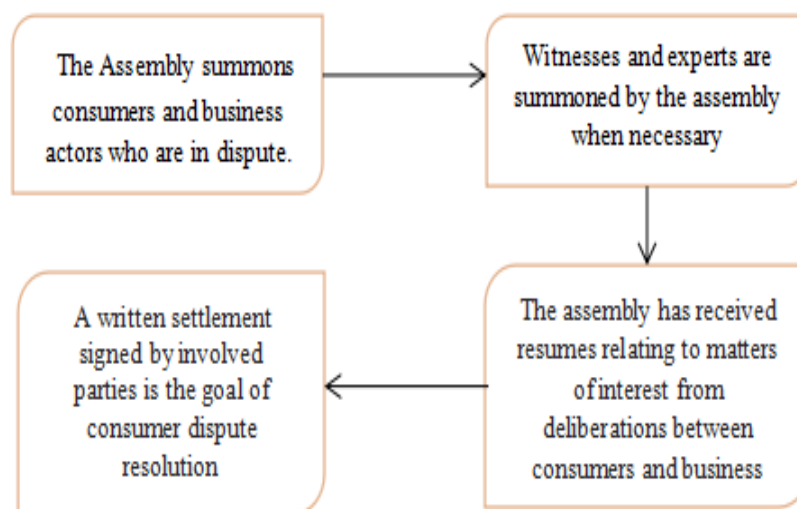
at the BPSK institution. The application can be in writing or made verbally through the nearest BPSK office. If the applicant has passed away, it can be submitted by his heirs or proxies. This can also apply if the applicant is underage, sick, a foreign citizen, or not in good health. Applications submitted in writing and received by BPSK are issued to the applicant with proof of receipt. The application is written in accordance with the form provided by the BPSK, signed by the applicant or his guardian, and then affixed with a stamp by the BPSK officer. After that, the applicant is given proof of receipt. Then the application file, both written and unwritten, is recorded by the BPSK office and stamped with the date, and given a registration number.<sup>23</sup>

A written application for consumer dispute settlement must contain the following information correctly and completely: Full Name; Address of the applicant; heir; or proxy (proven by identity and power of attorney); or full name and address of the business actor; contents of the principal application; evidence of loss; other information (time, place, date, photo, other evidence, and witnesses aware of the incident). Then the head of the BPSK summons the business actor by notifying him of the request from the applicant. Notifications and summons are made no later than 3 days after all files have been completed. Summons addressed to the business actor or the reported party must include the day, date, and time, the place of the hearing, and the obligation of the business actor to provide a letter of response to the report addressed to the consumer. The answer letter is submitted on the first day of trial or not than less 7 working days after receiving the request. In the next stage, after the summons has been fulfilled, both parties can determine whether to use the dispute resolution method. The method must be voluntarily agreed upon. There are 3 ways that can be taken by the parties: arbitration, mediation, and conciliation.

The following is the procedure flow:

#### 1. Mediation.

**Chart 2**  
**Procedure for submitting disputes at BPSK**



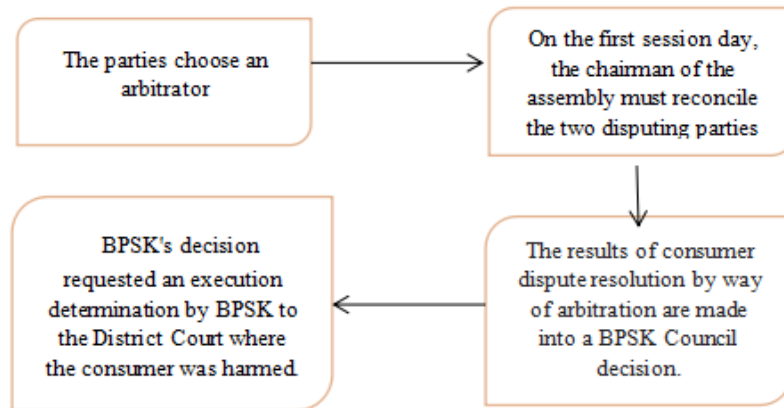
*Source: Processed by the Author (2022)*

The procedure for mediation efforts is a process of resolving disputes outside the court system at BPSK as an advisory board assisted by a mediator, with settlements submitted to both parties amicably. Mediation is usually carried out in a closed and deliberative manner so that there is no third-party interference. The results are also obtained from joint discussions and a win-win solution. In the chart above, it has been explained that this process begins with the summons of the parties, then the examination of witnesses and/or experts if necessary, and then, after it has been agreed, the assembly issues an agreement to be signed by both parties and carried out according to its contents.

<sup>23</sup> Agustianto, "Pandecta An Exoneration Clause in Standard Agreements : Problems in Consumer Protection"; Sanjaya, I. Putu Andika, Anak Agung Sagung Laksmi Dewi, "Perlindungan Hukum Wisatawan Yang Berkunjung Ke Tempat Wisata Berisiko Tinggi Di Bali."

## 2. Arbitration.

**Chart 3**  
**Procedure for submitting disputes at BPSK**

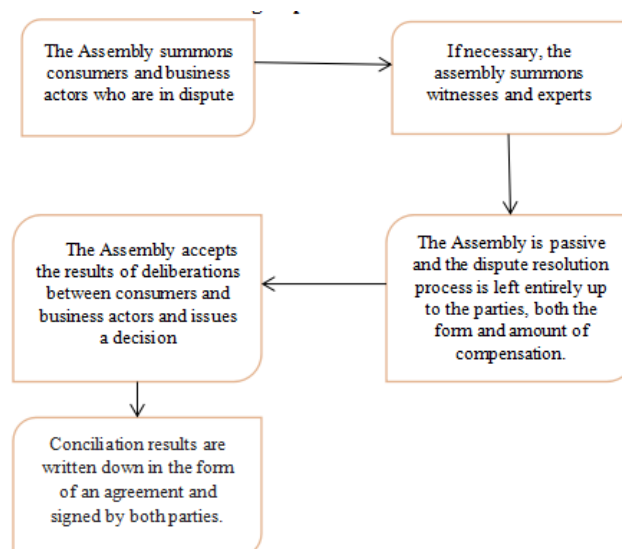


*Source: Processed by the Author (2022)*

The method of resolving disputes by way of arbitration is the arbitration process. Arbitration is one method of resolving disputes outside of court. In this process, the parties to the dispute fully submit the dispute to BPSK for resolution. Arbitration is the effort most often used by business actors at BPSK. Because in the process, the panel of judges plays an active role in debriefing, business actors and consumers can also present witnesses to hear their statements, and the decision is made by the panel of judges who feel fair and acceptable to both parties. In the settlement of disputes utilizing arbitration, the selection of arbitrators is carried out by the parties from members who can represent business actors, the government, and consumer parties as arbitral tribunals. After the process takes place, the settlement is made in the form of a judge's decision, which has permanent legal force and is then requested for execution by the competent district court according to the domicile of the disadvantaged consumer.<sup>24</sup>

## 3. Conciliation

**Chart 4**  
**Procedure for submitting disputes at BPSK**



*Source: Processed by the Author (2022)*

<sup>24</sup> Analisis hasil wawancara Bapak M.Said Sutomo, Hakim di BPSK dan ketua YLPK Jawa Timur, Hari Jumat 25 November 2022 Pukul 14.00 WIB.

Conciliation is a method of resolving consumer disputes outside of the court system by bringing the parties to the dispute together and leaving the settlement up to the parties. Beginning with the summons of the parties, the process continued with the summons of witnesses and/or experts. However, the assembly is only a passive conciliator. Meanwhile, the results of the decision were submitted to the plaintiff and defendant. After that, the decision is made in the form of an agreement signed by the parties.

Based on Article 56 Paragraph (2) of UUPK, the decision given by BPSK is final and binding, within a short trial period of 21 days. However, if you are not satisfied with the decision based on Article 54 Paragraph (3) of the UUPK, you may ask for legal remedies for objections to the District Court. The results of BPSK decisions regarding conciliation and mediation are one way of resolving disputes. This decision contains conciliation agreement without any administrative sanction. In BPSK's decision, the method of arbitration settlement is different from mediation and conciliation. Arbitration includes decisions, as in civil cases. There are case studies accompanied by legal considerations. After notification of the BPSK's decision, not less than seven days after the arbiter read of the decision, the parties must notify whether they will accept or reject the same. If one of the parties makes rejection, it may appeal the decision for a maximum of 14 days after the decision is issued. However, if both parties accept, they will be given no later than 7 days to implement the decision. The request/complaint report is considered completed if the business actor is able to carry out the contents of the agreed decision.<sup>25</sup>

Basically, according to UUPK, consumers can directly demand compensation from businesses. However, if the disputed business actor refuses or fails to respond to the consumer's claim for compensation, the consumer may sue the disputed business actor in the consumer's domicile. The lawsuit can proceed to court if the non-litigation settlement efforts are not carried out or are not successful, and the applicant or reporter can sue through the local court. Therefore, tourism that has paid for an entry ticket for protection that has been set up at a tourist location has an obligation if accidents and misfortunes occur in the area of a tourist location that has a high risk to include insurance as a form of security. Compensation is divided into two categories: material compensation and immaterial compensation. Material losses are losses that are actually suffered, such as repair costs plus the loss of profit that is expected to be replaced in the form of money, goods, or returned to its original state. Immaterial losses are losses due to violations of personal integrity, such as injury, disability, death, or humiliation. As for material compensation efforts carried out by business actors, namely:

1. Refunds and/or returns of goods and/or services at the same or nearly identical price
2. Get compensation according to the law in force at that time, adjusted to the value of the loss.
3. Non-material compensation, such as loss of time, work, or other things that were missed as a result of this dispute.
4. Receive a maximum compensation amounting to IDR 200.000.000. this only applies to disputes that are settled by arbitration, it can also be applied to a case in which the business party does not provide any kind of compensation, neither material nor non-material

Because the impact is also instantaneous, there are efforts and accountability that must be made. Material loss or the threat of danger to the consumer's life is caused by imperfect products. Many producers are not aware of their responsibility to protect consumers or ensure the safety and security of those who consume the products they produce. But until now, there are still those who transfer responsibility partially or completely. In addition to the previous efforts in litigation and non-litigation, it is necessary to provide insurance. But until now, they could not be given in full. The accountability provided by business actors is only in the form of compensation, the value of which is sometimes not proportional to the losses experienced.

In previous research, there was no specificity regarding the aspects of a tourist object that must be owned and an important explanation regarding standard operating procedures for tourism objects. Even though the discussion on legal protection does not mention the location, it goes into more detail about the dispute resolution efforts with an explanation of the flow. Several previous studies that have been described by researchers in the introduction did not explain the standard clauses in SOPs which are the essence of legal certainty for tourists.

---

25 Mosgan Situmorang and C C By-nc, "Measuring The Effectiveness of Consumer Dispute Resolution on Small Value E-Commerce Transaction Abstract," 2022, 537–50.

#### 4. CONCLUSION

Based on the description of the discussion above, the author concludes as follows: The UUPK has provided legal protection through the rights and obligations of business actors and consumers, which must be obeyed. In addition, the Tourism Law also explains the provision of insurance to tourists who are active on high-risk tours. Another protection that must be given is regarding the main aspects that must exist in these tourist objects, which are regulated in the Creative Economy Ministerial Regulation. In the main aspect, it says that the standard operating procedure is an important and main aspect that must be considered because it is the main basis of all activities and the human resources involved in it. Standard operating procedures are prohibited from containing clauses containing transfers of responsibility. Considering that the diving and snorkeling tourism business is an activity that carries a high risk, in addition to licensing aspects, standard operating procedures, and safety standards, an appropriate equipment maintenance system is also needed to minimize the risks that may occur.

Two types of legal remedies can be taken when a loss occurs: litigation and non-litigation. Submitting a dispute to the district court is the same as any other civil case. Dispute resolution outside the court is the choice of the parties and is voluntary. The parties are also free to determine the institution that provides the service and helps resolve disputes.

#### REFERENCES

- Agustianto. "Pandecta An Exoneration Clause in Standard Agreements : Problems in Consumer Protection." *Pandecta* 17, No. 1 (2022) Article., n.d. <https://doi.org/10.15294/pandecta.v17i1.35401>.
- AI, Zainuddin. *Metode Penelitian Hukum*,. Jakarta: Sinar Grafika, 2016.
- Amerta, I. M. S. *Pengembangan Pariwisata Alternatif*. Surabaya: Scopindo Media Pustaka, 2019.
- Belay, Bimrew Sendekie. "Akibat Hukum Pencantuman Klausul Eksonerasi Pada Polis Asuransi." *Jurnal Education And Development Institut* 10, No. 8.5 (n.d.).
- Depa, H M S. "Perlindungan Hukum Kepada Wisatawan Jika Terjadi Kecelakaan Di Tempat Pariwisata." *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan*, no. 85 (2021): 744–66. <http://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/view/4069%0Ahttp://ejournal.kopertais4.or.id/tapalkuda/index.php/qodiri/article/download/4069/2913>.
- Dhana, Made Metu. *Perlindungan Hukum Dan Keamanan Terhadap Wisatawan*. Paramita Surabaya, 2012.
- Gelgel, I Putu. *Industri Pariwisata Indonesia Dalam Globalisasi Perdagangan Jasa (GATS-WTO) Implikasi Hukum Dan Implementasi Hukumnya*. Bandung: Refika Aditama, 2009.
- Hakim, Jefferson. "Exoneration Clause on Law of Consumer Protection: Effects and Legal Efforts." *Jurnal Hukum Dan Peradilan* 8 no. 2 (201 (n.d.). <https://doi.org/10.25216/jhp.8.2.2019.297-314>.
- I Putu Andika Sanjaya, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani. "Perlindungan Hukum Wisatawan Yang Berkunjung Ke Tempat Wisata Berisiko Tinggi Di Bali." *Jurnal Konstruksi Hukum* 3, no. 2 (2022): 371–76. <https://doi.org/10.55637/jkh.3.2.4839.371-376>.
- Ikke Febriandhika And Teguh Kurniawan. "Pengembangan Pariwisata Melalui Pemberdayaan Masyarakat Dilihat Dari Perspektif Implementasi Kebijakan." *Jurnal Pariwisata Pesona* 5, No. 1, (2020). <https://doi.org/10.26905/Jpp.v5i1.2793>.
- Masrofah. "The Exoneration Clause Harms the Buyer Legal Protection for Consumers Against the Application of Exoneration Clauses in Online Sale." *UMPurwokerto Law Review* 3, n.d. <https://doi.org/10.30595/umplr.v3i1.10730>.
- Muhaimin, Muhaimin. "Kedudukan Kearifan Lokal Dalam Penataan Ruang Provinsi Bali." *Jurnal Penelitian Hukum De Jure* 18, no. 1 (2018): 59. <https://doi.org/10.30641/dejure.2018.v18.59-71>.

- Puspitadelia, Annisa. "Perlindungan Hukum Bagi Wisatawan Di Masa Pandemi COVID-19 Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen." *Jurist-Diction* 4 no. 3 (202 (n.d.). <https://doi.org/10.20473/jd.v4i3.26973>.
- Rizal, Abu, and Joko Priyono. "Analisis Penerimaan Daerah Dari Sektor Pariwisata Kota Surabaya Tahun 2010-2014." *Jurnal Ekonomi & Bisnis* 28, no. 2 (2016): 250–250. <https://doi.org/10.4234/jjoffamilysociology.28.250>.
- Sanjaya, I. Putu Andika, Anak Agung Sagung Laksmi Dewi, And Luh Putu Suryani. "Perlindungan Hukum Wisatawan Yang Berkunjung Ke Tempat Wisata Berisiko Tinggi Di Bali." *Jurnal Konstruksi Hukum* 3, n.d.
- Sarsiti, Sarsiti, And Muhammad Taufiq. "Penerapan Perlindungan Hukum Terhadap Wisatawan Yang Mengalami Kerugian Di Obyek Wisata (Studi Di Kabupaten Purbalingga)." *Jurnal Dinamika Hukum* 12, No. 1 (2012): 27-44., n.d.
- Situmorang, Mosgan, and C C By-nc. "Measuring The Effectiveness Of Consumer Dispute Resolution On Small Value E-Commerce Transaction Abstract," 2022, 537–50.
- Sri Mamudji, et al. *Metode Penelitian Dan Penulisan Hukum*. (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005.
- Statistik, Badan Pusat. "Pelanggaran Kepariwisata Di Indonesia," 2023. <https://www.bps.go.id/subject/16/pariwisata.html>
- Supriadi, B. dan N. Roedjinandari. "Perencanaan Dan Pengembangan Destinasi Pariwisata." Universitas Negeri Malang, 2017.

