



How Consumers in Indonesia Are Protected Fairly?

Analysis of Law No. 8 of 1999 concerning Consumer Protection

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Abstract: The progress of the times accompanied by increasingly sophisticated technology, opens new opportunities in the national economic development sector. New opportunities, namely business opportunities, are expected to encourage the macroeconomic sector to become more advanced so as to be able to improve the level of welfare of the people of Indonesia, with an increase in business opportunities in the modern world, so goods and services as the main commodity will certainly develop as well. However, goods and services as an element in these economic transactions open up opportunities for the emergence of possible losses suffered by consumers as part of fraud, negligence, or intentional business actors. This condition raises an understanding of the need for protection of consumers as parties who are often harmed by the actions of these 'naughty' business actors. In fact, an institution has been formed which aims to bring consumers to defend their rights as consumers, namely the Indonesian Consumers Foundation, but consumers are still reluctant to go through the judiciary for themselves so that they are more resigned to what they experience.

Keywords: Law Enforcement; Consumer Protection; Justice

How to cite:

Wibowo, D. E. (2020). How Consumers in Indonesia Are Protected Fairly?. *Indonesian Journal of Advocacy and Legal Services*, 2(1), 57-70. <https://doi.org/10.15294/ijals.v2i1.36546>

A. Introduction

The progress of the times accompanied by increasingly sophisticated technology, opens new opportunities in the national economic development sector. This can be seen with the increase in various business opportunities that exist in the community. Positively, this business opportunity is expected to encourage the macroeconomic sector to become more advanced so as to be

able to improve the level of welfare of the Indonesian people as expected in the goals of the state as set out in the opening of the 1945 Constitution, namely to improve the welfare of the Indonesian people, by increasing business opportunities in the modern world this, then the goods and services as the main commodity will certainly grow as well. However, goods and services as an element in these economic transactions open up opportunities for the emergence of possible losses suffered by consumers as part of fraud, negligence, or intentional business actors. This condition raises the understanding of the need for protection of consumers as parties who are often harmed by the actions of these 'naughty' business actors.

The issue of consumer protection does not seem to be of particular concern either by the government or by the wider community as consumers. Before consumer protection was expressly known and developed, the understanding of consumers was more likely to be synonymous with the understanding of society in the development of matters relating to industry, trade, health and security issues. The things mentioned above finally gave birth to a regulation on Consumer Protection (Law No.8 of 1999; State Gazette of 1999 No. 42). In order to fulfil these philosophical points, Law No.8 Year 1999 confirms that the protection of Indonesian consumers is based on benefits, justice, balance, security and safety, and legal certainty (article 2 and article explanation). So, it is illustrated that the ratio of the Consumer Protection Act is: (a) Balancing the bargaining power of consumers against business actors; and (b) Encouraging business actors to be honest and responsible in carrying out their activities. The Consumer Protection Act was born in response to the development and development of the economy today. Consumers as the driving force in the economy are often in a weak or unbalanced position when compared to business actors and only become a tool in business activities to reap maximum profits by business actors.

Based on a general explanation of the Law of the Republic of Indonesia Number 8 of 1999 it is stated that the main factor that is the weakness of consumers in trade is the level of consumer awareness is still very low which is further known mainly due to low consumer education. Referring to this, the Consumer Protection Act is expected to be a strong legal foundation for the government and non-governmental consumer protection institutions to make efforts to empower consumers through guidance and consumer education. So hopefully all the interests of consumers in an integrative and comprehensive manner can be protected which in turn can improve the welfare of the Indonesian people. Legal case Losses experienced by consumers as part of fraud, negligence or intentional business actors. This condition raises the understanding of the need for protection of consumers as parties who are

often harmed by the actions of these 'naughty' business actors. In this case it will raise issues regarding the enforcement aspects of Law No. 8 of 1999 in protecting the interests of consumers has not been maximized.

B. Method

This paper is a normative juridical writing, where the method in this research is literature study. This research focuses on consumer protection in Indonesia based on the Consumer Protection Act. The data presented in this paper were obtained from previous studies and other data both print and online sources.

C. Result and Discussion

1. Legal Certainty in Consumer Protection

Before we look at the legal certainty in this law, we must first know and understand the meaning of consumers in the Consumer Protection Act. Law on Consumer Protection, in this case Law Number 8 of 1999, State Gazette of 1999 No. 42, Supplement to the State Gazette. No. 3821, Article 1 point 1 confirms that consumers are all users of goods and / or services available in the community, both for their own interests, family, other people and other living things and not for trading. Further, the Consumer Protection Act emphasizes the notion of 'consumer protection' itself as all efforts that guarantee legal certainty to provide protection to consumers. This means that this law guarantees legal compliance to end users of a product in the form of goods and services circulating among the public.¹

The legal certainty to provide protection to consumers, among others, is to increase the dignity of consumers who open access to information about goods and / or services for him and foster an honest and responsible business actor's attitude. While the objectives to be achieved in consumer protection (article 3) can generally be divided into three main parts, namely:

- a. Empowering consumers in choosing, determining goods and / or services needs and demanding their rights,
- b. Creating a consumer protection system that includes elements of legal certainty, information disclosure and access to obtain that information (article 3 letter d), and

¹ Ahmadi Miru & Sutarman Yodo, *Hukum Perlindungan Konsumen*, PT. RajaGrafindo Persada, Jakarta, 2004, pp. 35-37; Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia*, Bandung, BPHN & Binacipta, 1988, pp. 44-46.

- c. Raising awareness of business actors regarding the importance of consumer protection, so, as to grow honest and responsible attitude (article 3 letter e).

Consumer protection guaranteed by this law is directed to the existence of legal certainty for all the acquisition of consumer needs, which starts from "the seeds of life in the mother's womb to the burial place and all needs between the two". The legal certainty includes all efforts based on law to empower consumers to obtain or make choices about their goods and / or services as well as to defend or defend their rights if harmed by the behavior of the business actors providing the consumers' needs. Consumer empowerment is by increasing awareness, ability and independence to protect themselves so as to be able to lift the dignity of consumers by avoiding various negative excesses of the use, use and utilization of goods and / or services needs. Besides that, also the ease in the process of running consumer disputes arising from losses arising from losses of property, safety and health of the body, the use and/or utilization of consumer products. It is necessary to remember that before the Consumer Protection Act was issued, "*consumers are generally weak in the fields of economy, education and bargaining power*", therefore it is necessary to have a law that protects the interests of consumers who have been ignored.²

2. Consumer Protection Law Enforcement

Consumer protection in the country of Indonesia is still a matter of lack of attention. Therefore, in anticipating products or services that are detrimental or harmful to consumers, some countries accompanied by free trade have introduced the product liability doctrine in their legal procedures, as in Japan, Law No. 85 of 1994 concerning Product Liability lists four categories or groups of producers, namely goods makers, importers, people who write their names on the product as producers or importers, someone who puts their name on the product. The application of the strict product liability doctrine, concluded that the distributor of the product can be held liable for losses suffered by consumers even though the distributor is not the producer who makes the goods, but only because it repackages the product and does not provide instructions or instructions for use for consumers to use the product with secure.

² Sembiring, & JJ Armstrong, "Perbuatan Melawan Hukum Dalam Kaitannya Dengan Perlindungan Konsumen", *Thesis*, Universitas Indonesia, 2006, http://lib.ui.ac.id/file?file=pdf/abstrak/id_abstrak-95702.pdf; Sembiring Sentosa, *Himpunan Undang-Undang Tentang Perlindungan Konsumen dan Peraturan PerundangUndangan Yang Terkait*, Nuansa Aulia, Bandung, 2006, pp. 76-78

The reality of law enforcement shows that consciously or unconsciously the law legitimizes socio-economic injustice, for example the legal structure is very possible for entrepreneurs / or producers to oppress consumers as one of the economic agents. Through this doctrine, there has been a deregulation of the doctrine of acts against the law (Article 1365 of the Civil Code) which states that every act that violates the law, which brings harm to others, obliges the person who because of his mistake to issue a loss, compensates for the loss. To be considered as an illegal act based on Article 1365 of the Civil Code, an act must fulfil the following elements: a) There is an act against the law; b) The element of error; c) There are losses; d) There is a causal relationship that shows that a loss is caused by a person's mistake. There is an element of unlawfulness where an act against the law fulfils the following elements: (1) Contrary to the rights of others; (2) contrary to his own legal obligations; (3) Contradicting decency; (4) Contradictory to the necessity that must be heeded in the association of society regarding other people or objects. These elements are basically alternative, meaning to fulfil that an act against the law, does not have to be fulfilled by all these elements. If an action has fulfilled just one element, then the action can be said as an act against the law.³

In this case, the actions of the law committed by the defendants are contrary to the rights of others and their own legal obligations. So that it increasingly balances the position and role of consumers against entrepreneurs, even though one of the principles of the rule of law has emphasized that everyone has the same position / balance before the law. In relation to free trade, if we are unable to capture or describe the "hidden" messages of the free trade era, then sooner or later Indonesian consumers will experience / face increasingly complex problems in consuming increasingly diverse products and services. Product liability terminology is still relatively new in the doctrine of law in Indonesia. Some translate it as "Product liability" and some translate it as "Product responsibility".⁴

³ Inosentius Samsul, "Perlindungan Konsumen, Kemungkinan Penerapan Tanggung Jawab Mutlak", *Thesis*, Universitas Indonesia, 2004; Agnes M. Toar's opinion, as quoted by Johannes Gunawan, "Product Liability dalam Hukum Bisnis Indonesia", *Orasi Dies Natalis XXXIX Universitas Katolik Parahyangan*, Bandung, Januari 1994; Purnadi Purbacarka & Soerjono Soekanto, *Aneka Cara Pembedaan Hukum*, Bandung, Citra Aditya Bhakti, 1994, pp. 66-69

⁴ Subekti, S., *Hukum Acara Perdata*, Bandung, Binacipta, 1982, pp. 43-44; Sumantoro (ed), *Hukum Ekonomi*, Jakarta, UI Press, 1986, pp. 33-36; Sunaryati Hartono, *Hukum Ekonomi Pembangunan Indonesia*, Bandung, BPHN & Binacipta, 1988, pp. 76-77; <http://putri-happiness.blogspot.com/2011/05/ccontoh-kasus-perlindungan-konsumen.html>; <http://jenggoten.blogspot.com/2009/10/pengertian-product-liability.html>

In order to facilitate the discussion, Author will use more of the original term without reducing the meaning or substance. The following are some of the definitions or formulations according to the Black's Law Dictionary product liability refers to the legal liability of manufacturers and sellers to compensate buyers, users and even bystanders, for damages or injuries that are due to defects in good purchased. A tort which makes a manufacturer liable if its product has a defective condition that makes it unreasonably dangerous to the user or consumer. Whereas the understanding of the product of *thesprakelikeheid* is the responsibility of the factory owner for the goods he produces, for example relating to the health of the buyer, user (consumer) or product safety. Ius Constituendum is given an understanding as the rule of law which is aspired to apply in a country.⁵

The product liability doctrine is expected to be introduced into the tort torture doctrine as regulated in article 1365 of the Civil Code. Product liability is a term that is translated from product liability, in contrast to the doctrine of legal responsibility in general where product liability is caused by certain circumstances of the product (defective or harmful to others) is the absolute responsibility of the manufacturer called strict liability, with the implementation of liability this absolute responsibility, the manufacturer has been deemed guilty of loss to the consumer due to the defective product, except if he (the manufacturer) can prove otherwise that the loss was not caused by the manufacturer.⁶

In general, compensation due to defects in the goods itself is the responsibility of the seller. This means that the loss of goods purchased, consumers can submit claims based on the manufacturer's obligation to guarantee the quality of a product. This demand can be in the form of returning goods while demanding a return on the purchase price or exchanging goods of good quality. This compensation claim can be addressed to the producer and also to the seller as the party providing services to deliver goods / products from the producer to the seller (distributor) is obliged to guarantee the quality of the products they market, what is meant by a guarantee for the quality of this product is a guarantee or a guarantee that

⁵ Henry Campbell Black, *Black's Law Dictionary*, St. Paul Mini, West Publishing, Co. 1983, pp. 456-457; N.E. Algra & H.R.W. Gokkel, *Kamus Istilah Hukum Fockem – Andrea: Belanda – Indonesia* (Saleh Adiwinata, et.al (trans)), Bandung, Binacipta, 1983, pp. 56-57.

⁶ Abubakar, L., & Rodliah, N. "Sharia Governance on Islamic Banking: Spiritual Rights Perspective on Consumer Protection In Indonesia", *Diponegoro Law Review*, Vol. 2 No. 1, 2017, pp. 227-244; Yahanan, A., Febrian, F., & Rahim, R. A. "The Protection of Consumer Rights for Aviation Safety and Security in Indonesia and Malaysia", *Sriwijaya Law Review*, Vol. 1 No. 1, 2017, pp. 27-43.

the items purchased will comply with certain product quality standards. If this standard is does not meet, then the buyer or consumer can obtain compensation from the producer or seller. Article 1504 The Civil Code requires the seller to guarantee hidden defects found in the goods he sells. The defect must be a defect that is truly in such a way as to cause the item to be unable to be used perfectly, in accordance with the needs that should be lived by the object itself. Or the defect results in a reduction in the benefits of the object from the intended use.⁷

Regarding the issue whether the seller is aware of or will not be a defect is not a problem (Article 1506 of the Civil Code) whether he knows or not the seller must guarantee for any hidden defects in the goods he sells. According to Prof. Subekti in the Civil Code: these hidden words must be interpreted that the existence of the defect is not easily seen by someone who is too thorough, because it is very possible that a person who is very thorough will find the defect. For defects that are easily seen and duly buyers can see without difficulty, then for such defects the seller is not responsible. Because of such defects must be the responsibility of the consumer (buyer). Here applies the principle that the buyer is solely responsible for defects that are normally noteworthy and easy to see. Thus, an objective defect is easily seen normally without the need for careful examination from experts, is a hidden defect.⁸

In the case of hidden defects in the goods purchased, the buyer (consumer) can submit a claim or action to cancel the sale and purchase, provided that the provisions are promoted in a short time, with the details as specified in Article 1508 of the Civil Code: 1) If the defect is initially known by the seller, the seller is obliged to return the sale price to the buyer and supplement the payment of compensation consisting of costs, losses and interest; 2) If this defect is truly unknown to the seller, then the seller is only obliged to return the sales price and costs (the costs incurred by the buyer when purchasing and delivering the goods); 3) If the goods purchased are

⁷ Ayup Suran Ningsih, "The Doctrine of Product Liability and Negligence Cannot Be Applied to Malware-Embedded Software", *JILS (Journal of Indonesian Legal Studies)*, Vol. 4 No. 1, 2019, pp. 7-20. <https://doi.org/10.15294/jils.v4i01.29157>; Rizki. Baktiara Amrullah, "Internationalization of Consumer Law: A Game Changer, Hans W. Micklitz and Mateja Durovic, Springer Nature Switzerland, 2017, 89 pages, ISBN 978-3-319-45312-5", *JILS (Journal of Indonesian Legal Studies)*, Vol. 4 No. 2, 2019 <https://doi.org/10.15294/jils.v4i2.34770>

⁸ Ayup Suran Ningsih, *Op.Cit.*; Rosadi, S. D., & Tahira, Z. "Consumer Protection in Digital Economy Era: Law In Indonesia", *Yustisia Jurnal Hukum*, Vol. 7 No. 1, 2018, pp 85-97; Wood, J. T. "Consumer protection: A case of successful regulation". *Regulatory Theory*, 2017, p.633; Wei, D. "Consumer protection in the global context: the present status and some new trends". In *Consumer Law and Socioeconomic Development* (pp. 3-23). Springer, Cham, 2017.

destroyed as a result of a hidden defect, the seller is still required to return the sale price to the buyer.⁹

Unless the seller has requested to be promised not to bear anything in the event of a hidden defect in the goods he sells (Article 1506), then that means that any hidden defects in the goods purchased are at the buyer's own risk. For example in the sale of goods which by their nature are easily damaged, such as the sale of glassware (glass, plates and so on), if the sales are in large quantities, then if the seller has requested the promised not to bear anything in the event of hidden defects in goods it sells, and the buyer has agreed, then this means that there are hidden defects in the goods purchased at the buyer's own risk.¹⁰

This clause is indeed permitted by the provisions in Article 1493 of the Civil Code which states: Both parties are allowed with special agreements, expanding or reducing the obligations stipulated by this law; that they are allowed to enter into agreements that the seller will not be obliged to bear in accordance with anything. In the case of a guarantee of suitability or eligibility, it is usually required that the goods:

- a. Same with goods generally referred to as goods (same as similar goods);
- b. Having ordinary quality unless otherwise stated;
- c. Worthy of use for ordinary purposes; and
- d. Must be wrapped and given adequate labels.

The goods must comply with the information contained on the packaging or label. The liability specified in Article 1367 paragraph (1) requires the producer as the party producing the product to bear any losses that might be caused by the state of the goods produced. Producers are legally responsible and have the obligation to supervise the products they produce. This supervision must always be done carefully and according to expertise. If not as the party that produces the product can be considered negligent, and

⁹ Dyah, I. G. A. I. D., Para, P., & Kasih, D. P. D. "Perlindungan Hukum Terhadap Konsumen Terkait Iklan Yang Menyesatkan Ditinjau Berdasarkan Undang-Undang Perlindungan Konsumen Dan Kode Etik Periklanan Indonesia", *Kertha Semaya: Journal Ilmu Hukum*, Vol. 5 No. 2, 2017, pp. 1-5; Budianto, E., & Wulandari, D. A. "Critical Study of Criminal Aspects of Law Number 8 of 1999 Concerning Consumer Protection", *Journal of Law and Legal Reform*, Vol. 1 No. 2, 2020, pp. 333-352.

¹⁰ Rahmat, A., & Sinaulan, R. L. (2019, January). Community Empowerment In Consumer Law Protection. In *1st Non Formal Education International Conference (NFEIC 2018)*. Atlantis Press; Widiarty, W. S. (2018). The Legal Analysis of Consumer Protection Against the Circulation of Expired Food Products in Indonesia. *International Journal of Management and Bussiness Research*, 8; Kuncoro, A. B., Handayani, I. R., Muryanto, Y. T., & Karjoko, L. (2019, October). Consumer Protection Based on Justice in Order to Advance State Administration Systems in Indonesia. In *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)*. Atlantis Press.

this negligence if it later causes illness, injury or death / death of the consumer who uses the product it produces, then the producer must be held responsible. If this is what is meant by Article 1367 paragraph (1) of the Civil Code which states that a person can be held responsible for a loss caused by goods under his supervision.¹¹

Therefore, consumers as Plaintiffs must be able to prove that the producers have committed acts that violate the law and that is on the basis of the manufacturer's mistakes as the party producing the product. In this case the manufacturer's fault was emphasized. Whereas Article 1365 BW does not distinguish intentionality from lack of caution but only states that there must be an error on the part of the maker of unlawful acts so that the maker can be required to bear / pay compensation. According to Prof. Wirjono in the BW Civil Code does not need to be bothered whether there is intentional or less careful. In the law of proof there is a principle known as the *bewijsleer* principle or doctrine of proof which states that whoever postulates it is an obligation to prove the argument and the event in question. Especially in the case of mass produced goods, the consumer as the plaintiff proves that the product referred to was purchased by the producer, who is responsible for the negligent act, and that action is unlawful and there is an element of error and a causal relationship which causes the said loss. So in the case of producer accountability for the product which causes illness, injury or death / death of the consumer of the product requires the existence of proof in question.

This proof work is not an easy job, especially for a consumer who is a layperson of the law. Proving that someone's death or illness due to food, for example, requires laboratory tests. This certainly requires a lot of cost, time and energy. Therefore, this proof is not easy or simple at all. Provisions on this reverse verification are also regulated in the Civil Code as contained in Article 1244 BW. By applying the "*presumption of fault*" rationale the burden of proving the existence of an error is reversed. Defendant / producer is obliged to prove their innocence.

¹¹ Samudra, D. B., Mediawati, N. F., Multazam, M. T., & Wati, E. R. "Legal Protection for Consumer of the Unlicensed Vapor from Drug and Food Supervisory Agency". *FIAT JUSTISIA*, 11(4), 2018, pp.371-380; Howells, G., & Weatherill, S. *Consumer protection law*. Routledge, UK, 2017, pp. 112-115. See also Pasiouras, F. "Financial consumer protection and the cost of financial intermediation: Evidence from advanced and developing economies", *Management Science*, 64(2), 2018, pp. 902-924; Hensler, D. R. (2018). Using class actions to enforce consumer protection law. In *Handbook of Research on International Consumer Law, Second Edition*. Edward Elgar Publishing. UK

3. Legal Theory Analysis on Consumer Protection in Indonesia

Law Enforcement Theory According to Soerjono Soekanto¹², factors that influence law enforcement, namely:

a. Legal Factors

The practice of law enforcement in the field there are times when there is a conflict between legal certainty and justice, this is caused by the conception of justice as an abstract formula, whereas legal certainty is a normatively determined procedure. So, in essence the administration of law does not only include law enforcement, but also peace maintenance, because the administration of law is a process of harmonizing between the methods and patterns of real behavior aimed at achieving peace.

b. Law Enforcement Factors

The function of law, mentality or personality of law enforcement officers plays an important role, if regulations are good, but the quality of officers is not good, there is a problem. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcement.

c. Supporting Factors or Facilities

Factors supporting facilities or facilities include software and hardware, one example of software is education. Education received by the police today tends to be conventional practical matters, so that in many cases the police experience obstacles in their objectives, including knowledge of computer crime, in specific criminal acts which have so far been given authority to prosecutors, this is because technically the police are considered unable and not ready.

d. Community Factors

Law enforcement comes from the community and aims to achieve peace in the community. Every citizen or group has more or less legal awareness, the problem that arises is the level of legal compliance, namely high, moderate, or lacking legal compliance. The degree of community legal compliance with the law, is one indicator of the functioning of the law in question.

e. Cultural Factors

Culture according to Soerjono Soekanto, has a very large function for humans and society, namely regulating so that humans can understand

¹² Purnadi Purbacarka & Soerjono Soekanto, *Loc.cit.*, pp. 115-118; Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Jakarta, PT. Raja Grafindo Persada, 2008, pp. 8-10.

how they should act, act, and determine their attitudes when they relate to others. Thus, culture is a main line of behavior that sets rules about what must be done, and what is prohibited.

D. Conclusion

Law enforcement of consumer protection which is supported by the creation of a law on consumer protection which is an embodiment of the 1945 constitution which is to protect all Indonesians, promote public welfare in every public interest, uncertainty about the legal protection of consumers is an obstacle to consumer protection efforts. In fact, an institution has been formed which aims to bring consumers to defend their rights as consumers, namely the Indonesian Consumers Foundation, but consumers are still reluctant to go through the judiciary for themselves so that they are more resigned to what they experience. Furthermore Article 1367 of the Civil Code is very appropriate because of the absolute responsibility towards producers to provide compensation to consumers resulting from losses suffered by consumers caused by defective and dangerous goods. Consumer protection is the organized effort of a caring community, honest and responsible government and business actors in promoting rights. and consumer power in relation to the seller. Therefore, it seems that the consumer protection movement (consumerism) is not possible to encourage people to judge people by the amount of assets they collect and not from their deeds. Consumerism is precisely to increase public awareness of the fate of people who for a long time have been and are still "oppressed". Suggestions that in Indonesia there must be legal certainty, so that the law can apply consistently, independence is not influenced by the name of politics and power. In addition, in order for the law enforcement of consumer protection to be carried out there must be consumer empowerment, consumers must be formed into intelligent consumers so that it is not easily oppressed by business actors who have power in the economic field.

E. Acknowledgments

Author would like to express the thakfullness to Faculty of Law, Universitas Negeri Semarang, as well as to Indonesian Journal of Advocacy and Legal Services editorial team. I also thank to Faculty of Law Universitas Pekalongan, Central Java Indonesia.

F. Declaration of Conflicting InterestS

The authors state that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

G. Funding

None.

H. References

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