Consumer Protection Enforcement Law Characteristics on Civil Law Aspects in Indonesia

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Abstract---Law enforcement on consumer protection reflects the norms or rules of consumer protection law that apply in the community to be obeyed. The use of law enforcement instruments in consumer protection is a civil lawsuit that can be made by consumers, either individually or in groups, non-governmental organizations and the government. Consumer protection is something that is very important, because basically all humans are consumers. This consumer protection has been regulated in Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK). The purpose of this law is to balance the rights and obligations of consumers and actors so as to provide protection to both parties, even though the interests of consumers and business actors are different. This difference in interests can trigger disputes between consumers and business actors. This consumer protection law enforcement can be done in court or out of court. Law enforcement on consumer protection is currently weak and tends to weaken. This can be seen from the number of complaints, complaints and consumer disputes submitted through social media, the voices of readers and those that go to BPSK, BPKN, LPKSM and YLKI, but very few get to the court process, there are even many cases that are decided at BPSK, but in court it is different. Therefore, as mentioned above, the problem raised in this study is how the characteristics of consumer protection law enforcement in Indonesia are.
Keywords---characteristics, civil law aspects, consumer protection, law enforcement.

Introduction

According to Jimly Asshiddiqie, law enforcement is the process of making efforts to enforce or actually function legal norms as behavioral guidelines in traffic or legal relationships in social and state life (Wardiyah, 2019). Law enforcement is applied to cases relating to the legality of a legal relationship or legal status (legality) between legal subjects. The legal order that regulates legal relations or legal status between legal subjects is included in the dwingend recht category which in law (ushul fiqh) is called wadl’iy law. This legal order serves to protect the values of truth and humanity. Law enforcement applied to cases related to the relationship of rights and obligations between legal subjects (Redelmeier et al., 2003). This legal order is included in the category of aanvullend recht which in Islamic law is called takliyfiy law. This type of legal order serves to protect the value of justice (Arto, 2017).

Indonesia as a state of welfare law always has the ideals as stated in the preamble of the 1945 Constitution. One of the concrete forms is to protect all its citizens from bad deeds that could harm the people. Consumer protection law is an effort by the state to protect its citizens (consumers) from fraudulent acts of business actors.

Law No. 8 Year 1999 concerning Consumer Protection (hereinafter referred to as UUPK) still does not show any partisanship and accommodation of consumer complaints. The weak implementation of UUPK is exploited by business actors to sell unsafe and understanding products. This condition is further exacerbated by weak and inadequate consumer education on the negative consequences of using unsafe and substandard goods. Therefore, all parties want the best law enforcement for consumer protection (Suherman, 2021).

Law enforcement on consumer protection has not been going well because there are still many cases that have not been touched by the law. There are many cases that have not been resolved such as cases of poisoned biscuits, cases of Ajinomoto, cases of drug poisoning, fish, meatballs and tofu with formalin and others. This is because the government and law enforcement seem to let go in the sense of not taking action against business actors who are detrimental to the community (Esseiva et al., 2007; Jennings et al., 2014).

Law enforcement on consumer protection in Indonesia has special characteristics (Herron & Robinson Jr, 1993; Furukawa et al., 1998). These characteristics include consumer disputes that occur because of an imbalance in position between consumers and business actors, consumers who are accepting only, the many types of consumer transactions that are regulated by different regulations and the dispute resolution process is protracted and takes a long time. From the explanation above, the problem raised in this paper is what are the characteristics of protection law enforcement in the aspect of civil law in Indonesia? (Fon & Parisi, 2006; Çağdaş et al., 2020).


**Literature review**

According to Soerdjono Soekanto, law enforcement is an activity to harmonize the relationship of values that are outlined in the rules/views of values that are solid and manifest and act as a series of final stages of value elaboration to create, maintain and maintain peaceful social life (Soekanto, 2007). Concrete law enforcement is the application of positive law in practice as it should be obeyed. Concrete law enforcement is the application of positive law in practice as it should be obeyed. Therefore, giving justice in a case means deciding the law in concerto in maintaining and guaranteeing the observance of material law by using the procedural method established by formal law (Umarova, 2021).

In law enforcement, there are 2 (two) theories of legal compliance, namely 1) rationalist theory and 2) cooperative theory (Rahmadi, 2011). The rationalist theory emphasizes compliance with the law through law enforcement and deterrence. This theory was developed based on the consideration that business actors always try to get the maximum profit. They comply with the law only if compliance benefits business actors (Saytitqulova, 2021). They will not comply with the law or violate the law when it is in their judgment that the sum of the benefits gained by committing the violation exceeds the costs or costs incurred as a result of imposing sanctions. Therefore, to change the behavior of businesses pursuing profit, the legal approach model used is through a strict supervision program by the government supported by the imposition of sanctions for violations found (Suryasa, 2019).

Cooperative theory is based on the consideration that business actors are the same as ordinary people who obey the law (Homsombat et al., 2021). Business actors who have good faith try to comply with laws or regulations which are often complex and conflicting. Based on this view, business actors' compliance with the law is not driven by the threat of sanctions, but is caused by awareness of obeying the law and the ideal values owned by business actors. Awareness of obeying the law is based on the belief in the existence of a valid law that is formulated and implemented fairly for all targeted business actors. In this theory, law enforcement efforts are made through the development of laws that are easy to understand and implement, the expansion of legal socialization efforts to make them easier to understand and the development of cooperative methods of compliance or through a consensus approach (Baranov et al., 2021).

**Method**

The research method used is empirical legal research. The problem approach used is exploratory (exploratory research), explanatory (explanatory research) and conceptual (conceptual approach). The nature of descriptive analytical research. Types of secondary and primary data, the data sources are library and field data. Interview data collection techniques and document studies. Data processing is editing and coding. Data analysis is juridical qualitative.
Discussion

Consumer disputes born from unbalance position between business actors and consumers. Examining the position of consumers with business actors can be studied from the existence of free market theory (free market theory) and government intervention theory through its policies (public regulation theory). In the free market theory put forward by Adam Smith, that the practice of the economy must be seen in the freedom of doing business and it is the market that regulates and creates the mechanism, not government policy (public regulation). In this case, consumers have a role (consumer sovereign) to direct the production of goods and services in accordance with what they want.

Public regulation theory is a reaction to free market theory. Public regulation theory states that it is government policies that direct the economy and the traffic of goods and services in accordance with their wishes. Philosophically, through a series of government regulations, it is expected to create protection for consumers from products, both goods and services that are not safe for consumers and avoid bad behavior by business actors.

Free market theory has a positive side that gives a big role to consumers, however, the free market development it is often used by business actors to solely pursue profits, so that aspects of social welfare and protection of consumer rights are often ignored. The facts that are often faced by consumers are the imbalance in the position of bargaining power between consumers and business actors. This can be seen from the number and prevalence of standard agreements that only benefit business actors.

Business actors and consumers economically have an unequal position. Economically, business actors have a higher economic position, while consumers have a lower economic position than business actors. The balance of position between consumers and business actors is basically a balance of protection between them. The balance of protection is in the form of balancing the interests that exist in society or in other words a means of social control.

The imbalance in economic position between consumers and business actors causes the consumer’s position to weaken. In addition, there are several factors that make the consumer’s position weaker, namely: a) The politics of development provides more flexibility for business actors, in the form of loosening legal norms in the application and arrangement of consumer law; b) The judiciary is not consistent in its decisions, often there are differences in court decisions in similar cases; c) The legal system has not yet fully explored and formulated policies to protect consumers; and d) The attraction of various interests among economic actors who are not consumers, which parties have strong access in various lines, including decision makers. This sociological factor is beyond the reach of the law (Siahaan et al., 2005).

In the world of trade and industry which continues to grow and develop in a complex manner lately, it appears that the position and needs of the business world are very dominant. Business actors are not only able to address market needs, but are also able to take policies based on government regulations that
favor their interests. An example is the Low Cost Green Car (LCGC) policy. “Under the pretext of increasing industrial productivity and employment, the government then launched a regulation on exemption from the car sales tax. People who don’t think too much about the impact will certainly benefit, and those competing to buy a car may not be the only one. This means that this policy leads to vehicle consumerism which will result in consumers becoming weaker if they are dependent on products that are not actually consumer needs, but merely wants.” (Rahmawanti & Lubis, 2014).

The position of this consumer is getting weaker as the development of information technology that allows everyone to access information and publish it to anyone. However, the freedom of technology does not necessarily make consumers stronger, but must still adhere to the rules of good communication. Otherwise, consumers can be entangled with cases outside the consumer dispute itself, namely defamation, for example the case of Prita Mulyasari dealing with Omni International Hospital in 2008.

**Consumer behavior adhering to take it or leave it principle**

Consumer behavior is a direct action in obtaining, consuming, and disposing of goods and services, including the decision-making processes that precede and follow that action (Engel et al., 1994). According to to Schiffman and Kanuk in their book Consumer Behavior, which states that consumer behavior is the term consumer behavior refers to the behavior that consumers display in searching for, purchasing, using, evaluating and disposing of products and services that the expect will satisfy their needs. That is, the term consumer behavior refers to the behavior displayed by consumers in searching for, purchasing, using, evaluating and disposing of goods and services that they expect will satisfy their needs (Mulyadi, 2012). Consumer behavior is centered on the way individuals make decisions to utilize their available resources (time, money, effort) to buy goods related to consumption. The consumer decision-making process goes through 3 (three) stages that are related to each other, namely: the input stage, the process stage and the output stage (Hawkins et al., 2009).

The input stage in decision making affects consumer recognition of the need for products and consists of 2 (two) main sources of information, namely business from marketing from business actors and external sociological influences from consumers (family, friends, neighbors, social and cultural status). The cumulative influence of the marketing effort of the business actor, the influence of family, friends, neighbors and existing societal codes of behavior are all inputs that may influence what consumers buy and how they use what they buy (Hawkins et al., 2009).

The process stage in decision making, focuses on the way consumers make decisions. Various psychological factors inherent in each individual (motivation, perception, knowledge, personality and attitude) affect the way outside input at the input stage affects consumer recognition of the need for information seeking before purchase, and evaluation of various alternatives. The experience gained through the evaluation of various alternatives will in turn affect the psychological nature of existing consumers. The output stage in consumer decision making
consists of making decisions that are closely related to buying behavior and evaluation after buying (Hawkins et al., 2009).

The consumer behavior is very influential in making decisions to buy or take post-purchase actions of goods or services, namely when consumers feel aggrieved by business actors. There are several factors that influence consumer behavior, namely a) internal factors include consumer perceptions, consumer reactions, personality, character, logical thinking, lifestyle, motivation and educational background; b) consumer external factors include the situation and various other external environments that have encouraged the formation of consumer behavior (Fahmi, 2016).

This consumer behavior is also caused by several other factors, namely: a) the low level of consumer awareness of their rights; b) the consumer society has not yet been conditioned because the public does not yet know their rights and where their rights are distributed if they encounter difficulties or lack of a reasonable standard of goods or services; c) The consumer society has not yet been conditioned to become a society that has the will to demand their rights. From the consumer behavior, consumer can be divided into 2 (two) types, namely:

- Well informed consumers are characterized by: a) having a certain level of education; b) have sufficient economic resources, so that they can play a role in the market economy; and c) fluent communication
- Consumers who are not informed, the characteristics are: a) lack of education; b) belongs to the lower middle class category and c) not fluent in communicating.

From the 2 (two) types of consumers, in fact, Indonesian consumers still have not carried out their obligations to take legal action to resolve disputes when they are harmed by business actors, as regulated in Article 5 paragraph (4) of the UUPK. This attitude of acceptance reflects that the enforcement of consumer protection laws in Indonesia has not been going well. This is because the level of consumer legal awareness is still low (Anklam & Battaglia, 2001).

From a legal perspective, basically there is no awareness of their rights as consumers. The level of consumer awareness of their rights is very low. The results of the final report on the optimization of consumer protection in Indonesia in 2016 show that around 67% of consumers have low knowledge of their rights and this can also be seen from the number of complaints received by consumers in 2020 which amounted to 931 cases. For example, consumers are more accepting, not critical and not careful, especially when dealing with standard clauses (Procter et al., 2019; Jin & Wagman, 2021). This standard clause can be in the form of an agreement, leaflet or document. This standard clause often puts the consumer in a disadvantaged position. For example, goods that have been purchased cannot be excluded, opening the seal means buying, and so on.

The factor for the low level of consumer legal awareness is the legal culture of the Indonesian people. Legal culture is the value adopted, which affects the attitudes of the citizens of the community, including the attitude of their actions in the field of law. Indonesian society is a very strong society trying to maintain
harmonization in the relationship between them. This greatly affects their attitudes and actions in the legal field. The Indonesian people view that litigation in court is a shame/disgrace, because it will disturb the harmony of relations among fellow citizens. This reluctance to go to court also affects consumers who are victims of defective products.

The issue of consumer protection also cannot be separated from the issue of the free market economy that has occurred so far. Trade liberalization contributed greatly to problems at the consumer level. The traffic of mass-produced goods or services and the use of sophisticated technology have an impact on consumers' ignorance of every product they consume. Ignorance and dependence of consumers on business actors is also a fundamental weakness that will ultimately cause harm to consumers.

**Consumer disputes are not suitable to be resolved through formal, convoluted and expensive litigation**

One of the consumer dispute resolutions is through the judiciary (litigation). Litigation comes from English, namely litigation which means court. The task of the court is to resolve disputes that arise and finally make a fair decision. The settlement of consumer disputes through this court is based on Article 45 of the UUPK and Article 48 of the UUPK. According to Article 48 of the UUPK states: "the settlement of consumer disputes through the courts refers to the provisions of the general court that apply by taking into account the provisions of Article 45 of the UUPK". With this provision, the dispute resolution refers to the provisions of HIR and Rbg.

The process of resolving consumer disputes through the courts is slow and complicated, where to settle a dispute in court takes a long time. All of this is due to the many formalities and technicalities of case settlement, from the examination stage to the judge's decision. Dispute resolution through this court technically has several levels of court so that a judge's decision has permanent legal force. Each level requires a long period of time. The stage that are passed in court proceedings are courts of first instance in district courts, if the parties are not satisfied with the judge's decision, they can file an appeal at the second level of court, namely to the high court. If the parties are not satisfied with the second-level decision, they can file an appeal to the Supreme Court. This takes a long time.

This long legal process results in high court costs that must be incurred. One of the principles in civil proceedings in court is that litigation is subject to fees, so the costs incurred in the proceedings will be borne by the litigants. In addition, the costs that can also be incurred by the parties are attorney fees.

Apart from the issue of the length of time and the high cost of resolving consumer disputes in court, the court is also considered unresponsive. The court's unresponsiveness can be seen from the lack of the court's ability to protect and defend in accordance with applicable regulations. However, the legal position is not indiscriminate. Law enforcers are seen as sharp when defending the lower classes of society and blunt to resolve the disputes of the upper classes. This is
considered not to provide legal certainty in its enforcement. Court decisions are also considered incomplete in resolving a case, this is because many court decisions are considered not to provide justice (Rahmawanti & Lubis, 2014).

**Consumer disputes is one of the business disputes that are dominated by interest not right or power**

Business is a trade, industrial or financial affair or activity associated with the production or exchange of goods or services, by placing the money of entrepreneurs at certain risks with the motive of seeking profit. According to Richard Burton, business is all business activities that are carried out by people or entities on a regular and continuous basis, namely in the form of activities to procure goods or services or facilities to be traded, exchanged or leased with the aim of making a profit (Simatupang, 2003).

Business activities are increasing from time to time, it is unavoidable that disputes will occur between the parties involved. The dispute can occur between business actors and business actors or business actors and consumers. Disputes arise for various reasons and the problems that lie behind them, mainly because of conflicts of interest between the parties. Disputes that arise between parties involved in various kinds of business or trade activities are called business disputes. Business disputes are disputes that occur in the transaction process centered on a market economy.

Business disputes can occur because of a conflict of interest that occurs between the parties involved, where both have the same desire for an object that is considered valuable. This conflict of interest arises when two parties fight over one object. In addition, in business there are truth claims, namely claims of truth on one side and assuming the other party is guilty. Disputes because truth claims are put in terms of right or wrong. Arguments for these claims will be based on the terminology of truth, not interests, norms and laws. Conflicts of interest are more compromised in their resolution than conflicts due to truth claims.

Commonly and fundamentally the relationship between business actors and consumers is a relationship in the business field, which is a continuous and continuous relationship. This relationship occurs because both of them really want each other and have a fairly high level of dependence between one another. Business actors really need and rely heavily on consumer support as customers. Without consumer support, it is impossible for business actors to guarantee their business continuity. On the other hand, consumers need business actors to fulfill their needs. The relationship between business actors and consumers occurs since the process of production, distribution, marketing and supply.

**The wide scope of consumer transactions**

The variety of consumer transactions is due to the many fields of consumer transactions which can be broadly divided into 2 (two) namely goods and services. In the field of goods, consumer transactions can be in the form of buying and selling, leasing, and so on. In the service sector, consumer transactions can be distinguished in the field of financial services and non-financial services.
Financial services are activities carried out in the banking sector, capital market, insurance, pension funds and other financial sectors or in other words, a business field that is engaged in collecting funds from the public and distributing the funding and by obtaining profits in the form of interest or percentages. Non-financial services are businesses that do not raise funds or distribute funds to the public, for example leasing, tourism and so on.

The existence of consumer transactions in the field of financial services causes various institutions to settle them, especially dispute resolution outside the court. In the field of financial services, the dispute resolution institution is the OJK, as regulated in the Financial Services Authority Regulation Number 16/1/PBI/2014 concerning Consumer Protection for Payment System Services. The addition to BPSK that there are institutions outside the court which are the dispute resolution institutions.

Business actors involved in consumer transactions can be producers, distributors, importers, agents, and retailers. Each of these business actors has a different position and role, and each form of business actor has the potential to harm consumers. For example, in the sale and purchase of LPG, the producer, in this case Pertamina, distributes the gas through distributors, agents and retailers. Consumers buy LPG gas from retailers. When the LPG reaches the consumer, it turns out that the LPG gas content is not in accordance with what should be stated on the gas savings, this is certainly detrimental to the consumer and who will be responsible for the loss to this consumer.

**Conclusion**

Law enforcement on consumer protection in Indonesia has special characteristics, namely 1) Consumer disputes arise from the absence of a balance between business actors and consumers; 2) Consumer behavior that adheres to the take it or leave it principle; 3) Consumer disputes are not suitable to be resolved through formal, complicated and expensive litigation; 4) A consumer dispute is a business dispute which is dominated by interests, not rights or power; and 5) The breadth of the scope of consumer transactions.

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