

Consumer Protection Law for Advertising Damage Based on the Value of Justice in Indonesia



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ABSTRACT: Advertising is a means to offer a product or goods made attractive and influencing consumers based on norms in accordance with the Consumer Protection Act, but in practice, advertisements are often found that are detrimental and misleading consumers. The responsibility of the state in providing legal protection to consumers is a non-negotiable obligation. The existence of justice based on Pancasila which is conceptualized into legal principles is a condition sine qua non, because it contains moral and ethical values that direct the formation of laws that meet philosophical, sociological and juridical value.

KEYWORD: Law, Protection, justice, Value, Indonesia

INTRODUCTION

The existence of a nation when it enters the stage of a welfare state like the Indonesian state, therefore, demands for government intervention through the formation of laws that protect the weak are very strong. During this period, the state began to pay attention to, among other things, the interests of labor, consumers, small businesses and the environment. In fact, consumer protection is a consequence of technological and industrial advances.¹ Due to the development of industrial products on the one hand, on the other hand, consumers need protection.² Actually the consumer protection legal system is the same, as evidenced by the inclusion of several related laws, including the law in the field of employment (Law Number 13 year 2003 concerning Manpower) and the environment in the General Elucidation of Law Number 8 year 1999 concerning Consumer Protection.

The significance of regulating consumer rights in Indonesia through Law Number 8 year 1999 concerning Consumer Protection is part of its implementation as a welfare state, because the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD NRI year 1945) Apart from being a political constitution, it can also be called an economic constitution, namely a constitution that contains the idea of a welfare state that has grown and developed due to the influence of socialism since the 19th century.³

The existence of economic development and development in general and in particular in the field of industry and national trade has resulted in various variations of goods and/or services being consumed. On the one hand, this condition benefits consumers because the consumer's needs for the desired goods/or services can be fulfilled and the freedom to choose various types and quality of goods/and or services is increasingly wide open according to the wishes and abilities of consumers..⁴

The tight competition changes behavior towards unfair competition because business actors have conflicting interests between them. Prasasto Sudyatmiko, presented 4 (four) examples of elements that influence unhealthy business behavior, namely conglomeration, cartel/trust, insider trading and unfair/cheat competition. Although not always against the law, This

¹ Dahlan, A. (2014). Mengagag Negara Kesejahteraan. *el-Jizya: Jurnal Ekonomi Islam*, 2(1), 1-22.

² Tumbel, T. G. M. (2020). Perlindungan Konsumen Jual Beli Online Dalam Era Digital 4.0. *Lex Et Societatis*, 8(3).

³ Riwanto, A., & Gumbira, S. W. (2017). Politik Hukum Penguatan Fungsi Negara Untuk Kesejahteraan Rakyat (Studi Tentang Konsep Dan Praktik Negara Kesejahteraan Menurut UUD 1945). *Jurnal Hukum dan Peradilan*, 6(3), 337-360.

⁴ Quintarti, M. A. L. (2020). Perlindungan Hukum Bagi Konsumen Akibat Produk Makanan Yang Tidak Memenuhi Standar Mutu Menurut Undang-undang Republik Indonesia Nomor 8 Tahun 1999. *Jurnal Inovasi Penelitian*, 1(4), 859-864.

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conglomeration tends to give birth to injustice in the midst of society, among others, because it can give birth to monopolistic practices and fraudulent business practices. Insider trading is an act that straddles the principle of equality in obtaining the opportunity to access a company. There are at least 4 (four) forms of actions that are born as a result of the unhealthy business practices mentioned above, namely, raising prices, lowering quality, dumping, and falsifying products.⁵

The role of economic actors has a very significant place in the development of the country in general. Meanwhile, the position of consumers is also economic actors, which is expected to strengthen our efforts to build the form of society that we hope for, namely one that is advanced, independent, prosperous, and just. However, in reality, consumers in modern society will be faced with several problems, including:

1. Modern business demonstrates the capacity to maintain mass production of new goods due to advanced technology and efficient research and management;
2. The number of goods and services marketed is substandard, dangerous or useless;
3. Inequality of bargaining position is a serious problem (freedom of contract);

The concept of absolute sovereignty of consumers rests on the ideal of perfect competition, but competition continues to decline so that the power of consumers in the market becomes weak. The goods are increasingly sophisticated, causing consumers do not know it.⁶

These facts and circumstances have caused consumers to fully trust business actors. Therefore, today's technology is increasing, causing consumers to be unable to make choices of increasingly sophisticated goods and consumers do not know it⁷. Moreover, people are only tempted by advertisements of a certain product which sometimes mislead and harm consumers. Thus, there is a need for legal protection for consumers, because the absence of consumer protection is part of the symptoms of countries that lose in free trade.⁸

Intense competition can change behavior towards unfair competition because business actors have conflicting interests between them. This unfair competition in turn can harm consumers (Sutantra, 2001: 1). The growth and development of the goods and services industry on the one hand brings positive impacts, among others, which can be mentioned the availability of needs in sufficient quantities, better quality, and the existence of alternative choices for consumers to fulfill their needs. However, on the other hand there are negative impacts, namely the impact of the use of technology itself and business behavior that affects the consumer community. Therefore, consumer protection, the key to which is that consumers and business actors need each other.

Efforts to increase the dignity of consumers need to increase awareness, knowledge, care, ability and independence of consumers to protect themselves and develop the attitude of responsible business actors. Based on these considerations, legislation is needed to realize a balance in protecting the interests of consumers and business actors so as to create a healthy economy.

The existence of legal instruments that protect consumers is not intended to kill the business of business actors, but on the contrary, consumer protection can encourage a healthy business climate that encourages the birth of companies that are strong in facing competition through the provision of quality goods and/or services. And does not harm consumers. Therefore, in Indonesia all economic policies, including the reconstruction of the Consumer Protection Act (Law Number 8 year 1999) must be based on the principles of Pancasila, so that the state does not lose control in and remains focused on efforts to protect consumers as part of the responsibility of the state for the welfare of the people. Pancasila as an ideology has the main character as a national ideology, because it must be explored and formulated for the benefit of building the Indonesian nation state. With a solid national ideology, all social, cultural, and political dynamics can be directed to create positive opportunities for the growth of the nation's welfare.

Systematic consumer protection in Indonesian law is reflected in Law Number 8 of 1999 concerning Consumer Protection. This motivation is motivated by the understanding that the philosophy of national development includes the development of laws that provide protection for consumers to form a complete Indonesian human being.

⁵ Sukarmi, S. (2021). Putusan Kppu Sebagai Dasar Dalam Gugatan Kelompok (Class Action) Atas Pengembalian Kerugian Konsumen Akibat Pelanggaran Persaingan Usaha Tidak Sehat. *Arena Hukum*, 14(1), 112-129.

⁶ Jhoni, J. (2018). Perlindungan Hukum Terhadap Konsumen Akibat Bahan-Bahan Berbahaya Pada Makanan. *Jurnal Hukum Tri Pantang*, 4(1), 45-64.

⁷ Rohman, S. N. (2015). *Tinjauan Yuridis Perlindungan Konsumen Dalam Pencantuman Label Produk Makanan Sesuai Dengan Undang-Undang No. 8 Tahun 1999 Tentang Perlindungan Konsumen* (Doctoral dissertation, Universitas Pembangunan Nasional Veteran Jakarta).

⁸ Lumolos, H. D. (2019). Upaya Hukum Konsumen Kepada Pelaku Usaha Akibat Barang Yang Digunakan Dalam Keadaan Rusak Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen. *Lex Privatum*, 6(8).

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Based on the description of the background, the problems in this study can be formulated, namely: How is the concept of consumer legal protection against harmful advertising based on the value of justice?

RESEARCH METHODS

The method used in this study is a type of normative legal research method,⁹ with approach *statue approach*, *philosophical approach* and *conceptual approach*.¹⁰ The collection of legal material sources consists of primary legal materials, secondary legal materials and tertiary legal materials, using a qualitative descriptive analysis.¹¹

RESEARCH RESULTS AND DISCUSSION

The development of industry and trade due to the free market has caused various problems in Indonesia, both from an economic and legal perspective, including the development of advertising for a product which has a great influence on consumers, which causes losses on the part of consumers, where the advertisement of a product being marketed is misleading. nor harm consumers.¹²

Consumer protection efforts are an effort to ensure legal certainty from arbitrary actions that may harm consumers because it is in the interests of business actors. It is necessary to increase the dignity of consumers, it is necessary to increase the awareness, knowledge, care, ability, and independence of consumers to protect themselves and to develop the attitude of responsible business actors. This partiality to consumers is actually a manifestation of the people's economy and realizing justice.

These consumer rights consist of consumer rights as human beings (who need to live) and consumer rights as legal subjects and citizens (sourced from law or law) and consumer rights as parties to contracts (in contractual relationships). with the manufacturer). In a legal sense, what is meant by rights are legal interests that are protected by law, while interests are demands that are expected to be fulfilled. Interest essentially contains power that is guaranteed and protected by law and implements it.¹³ Consumer empowerment is intended because it is not easy to expect the awareness of business actors who generally carry out economic principles to get the maximum profit possible with the minimum possible capital. The need to reconstruct the consumer protection law which consists of 15 chapters and 65 clause, none other than the weak position of consumers compared to the position of producers, resulting in an imbalance of rights and obligations resulting in injustice.

The provision of protection to consumers also aims to maintain the existence of consumers themselves as a potential in economic development, which means protecting consumers is the same as maintaining production continuity. This means that in addition to the socio-economic aspect, consumer protection also includes development aspects, the essence of which is expected to protect consumers is the goal for the welfare of the results of economic development.¹⁴ In fact, the position of society as a consumer is impossible to ignore, if the issue of consumer protection which clearly concerns the livelihood of many people does not receive enough attention, it is a matter of great surprise.¹⁵

Along with the function of the state as the organizer of public welfare, in an effort to realize consumer protection, the government plays a central role, namely that the government must be able to work towards the realization of the protection of the interests of consumers properly through the creation of a favorable climate, the fulfillment of consumer rights both through the making of regulations. -good regulations and implement these regulations as well as possible as a law enforcement function. And don't get the impression that obeying the applicable law will actually bring you losses and on the contrary it is more profitable if you act against the law.

Taking into account and elaborating from the basic idea of the Pancasila Welfare State Law as conceptualized in the 1945 Constitution of the Republic of Indonesia with the normative idea of regulating consumer protection in the consumer protection

⁹ Benuf, K., & Azhar, M. (2020). Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *Gema Keadilan*, 7(1), 20-33.

¹⁰ Christiani, T. A. (2016). Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object. *Procedia-Social and Behavioral Sciences*, 219, 201-207.

¹¹ Sigit Sapto Nugroho, Anik Tri haryani, farkhani (2020), *Metodologi Riset Hukum*, Oase Pustaka, Surakarta.

¹² Laila, K. (2017). Perlindungan hukum terhadap konsumen atas iklan yang melanggar tata cara periklanan. *Jurnal Cakrawala Hukum*, 8(1), 64-74.

¹³ Sigit Sapto Nugroho, (2020), *Pengantar Hukum Indonesia*, Lakeisha, Klaten, hal 32

¹⁴ UTAMI, P. (2011). *Implementasi Pasal 4 Angka 1, 4 & 8 Undang-Undang Perlindungan Konsumen No. 8 Tahun 1999 Terhadap Konsumen Korban Konversi Gas Elpiji (Studi di Malang Raya)* (Doctoral dissertation, University of Muhammadiyah Malang).

¹⁵ Widjiastuti, A. (2013). *Hukum Perlindungan Konsumen yang Berfungsi sebagai Penyeimbang Kedudukan Konsumen dan Pelaku Usaha dalam Melindungi Kepentingan Bersama*.

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law, it can be understood that the absence of Pancasila principles results in a provision in a rules lose their meaning or even their philosophical meaning.¹⁶

The existence of the Pancasila principle which is conceptualized in legal principles is a *conditio sine quanon*, because it contains moral and ethical values that direct the formation of laws that meet philosophical values with a core sense of justice and truth, sociological values that are in accordance with the cultural values prevailing in society, as well as juridical values in accordance with applicable laws.¹⁷

Consumer protection settings in UUPK based on the legal principles of the implementation of consumer protection as contained in 2 clause, which consists of the principle of benefit, the principle of justice, balance and legal certainty. According to the explanation UUPK, then what is meant by:

1. The principle of benefit is intended to secure that all efforts in implementing consumer protection must provide the maximum benefit for the interests of consumers and business actors as a whole. Asas keadilan dimaksudkan agar partisipasi seluruh rakyat dapat diwujudkan secara maksimal dan memberikan kesempatan kepada konsumen dan pelaku usaha untuk memperoleh haknya dan melaksanakan kewajibannya secara adil;
2. The principle of balance is intended to provide a balance between the interests of consumers, business actors, and the government in material and spiritual terms.;
3. The principle of consumer safety and security is intended to provide guarantees for security and safety to consumers in the use of, and utilization of goods and/or services consumed or used;
4. The principle of legal certainty is intended so that business actors and consumers obey the law and obtain justice in carrying out consumer protection and the state guarantees legal certainty.

These five legal principles of consumer protection if adapted to the principles of Pancasila which are sourced from its five precepts, then Pancasila which contains five (5) principles, the substance of each of the principles of Pancasila from the first principle (1) is containing ethics, the second principle (2) is the principle of humanity, the third principle (3) nationalism, the fourth principle (4) populist/democracy, and the fifth principle (5) social justice. Thus, the common thread of conformity, with regard to and elaboration between the contents of the principles of Pancasila and the legal principles of consumer protection, is as follows:¹⁸

1. The ethical principles of the first precepts of Pancasila on the legal principles of consumer protection are contained in the principles of consumer safety and security;
2. The principle of humanity in the second principle of Pancasila on the legal principle of consumer protection is contained in the principle of balance;
3. The principle of nationalism in the third principle of Pancasila on the legal principle of consumer protection is contained in the principle of benefit;
4. The principle of populist/democratic in the fourth principle of Pancasila on the legal principle of consumer protection is contained in the principle of legal certainty;
5. The principle of social justice in the fifth principle of Pancasila on the legal principle of consumer protection is contained in the principle of justice.

Taking into account the substance of clause 2 of the Consumer Protection Act including the explanation above, it is reflected that its formulation refers to the philosophy of national development, namely the development of Indonesian people as a whole which is based on Pancasila as the philosophy of the Republic of Indonesia. Furthermore, the five principles mentioned in 2 clause. According to Radbruch, the Consumer Protection Act is in accordance with the substance of the law, according to Radbruch, in the form of justice, benefit and legal certainty as 3 (three) basic legal ideas or 3 (three) basic values that can be equated with legal principles, as stated by Gustav Radbruch, the substance can be divided be: (1) the principle of benefit which includes the principle of consumer safety and security; (2) The principle of justice which includes the principle of balance and; (3) The principle of legal certainty.¹⁹

¹⁶ Serlika Aprita, S. H. (2019). *Penerapan Asas Kelangsungan Usaha Menggunakan Uji Insolvensi: Upaya Mewujudkan Perlindungan Hukum Berbasis Keadilan Restrukturatif Bagi Debitor Pailit dalam Penyelesaian Sengketa Kepailitan*. Pustaka Abadi.

¹⁷ Nugroho, S. S. (2016). Grounding Pancasila Law as the Future of National Law Basis. *Law Research Review Quarterly*, 2(2), 147-166.

¹⁸ Holijah, H. (2015). Keadilan Bagi Konsumen: Membedah Undang-undang Republik Indonesia Nomor 8 Tahun 1999. *Nurani: Jurnal Kajian Syari'ah dan Masyarakat*, 15(1), 01-26.

¹⁹ ATIKAH, I. (2020). *Perlindungan Hak-Hak Konsumen dalam Hukum Negara*.

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These three principles, there are difficulties to realize simultaneously. What is often in the spotlight is the issue of the principle of justice which, according to Friedman *every function of law, general or specific is allocative*.²⁰ In accordance with the fifth principle of Pancasila, which is the most special and especially social justice for all Indonesian people, is the goal of the other five precepts.

As for justice, according to Radbruch's perspective, which teaches that we must use the principle of priority where the first priority always falls on justice, then benefit, and finally legal certainty.²¹ However, it is a case of priority, meaning that legal objectives are prioritized according to the case at hand. Meanwhile, according to John Rawls' theory of justice,²² stated that there are 3 (three) things that are solutions to the problem of justice, namely:

1. Principle of greatest equal liberty, this formulation refers to Aristotle's formulation of similarity, therefore equality in obtaining and using it is based on natural law. This is inherent in the notion of equal, namely equal degrees between fellow human beings, so that the concept of justice applied is the concept of social justice;
2. The difference principle, this formulation is a modification or balance to the first formulation which requires equality for everyone if it benefits everyone;
3. The principle of fair equality of opportunity, namely economic inequalities must be arranged in such a way as to provide opportunities for everyone to enjoy them. Dengan konsep keadilan tersebut, John Rawls, membagi keadilan kedalam:
 - a) Formal justice, applying the same justice to everyone in accordance with the sound of the rules;
 - b) Substantive justice, justice is more than just formal justice, because applying the law means seeking essential justice, and in carrying out substantive justice it must be supported by a sense of social justice, justice that contains rights and obligations that are acceptable to the general public.

With this theory of justice from John Rawls, it can be stated that justice as equality with no exchange of freedom or welfare of one person (individual) with the welfare of others is allowed. Basic freedoms must be distributed equally and must not be sacrificed for the sake of economic achievement, because injustice exists in the society at the bottom, and justice depends on freedom, equality and human rationality to achieve social justice by prioritizing the weak or disadvantaged.²³

This opinion is in line with the objectives to be achieved in consumer protection for the fulfillment of consumer rights. Providing protection to consumers is the same as providing protection to the community, because all humans are consumers. Thus the achievement of justice is the main of all goals to be achieved, and the highest justice is social justice for all humans. The concept of justice to be achieved is the fulfillment of the purpose of consumer protection in Indonesia as a human respect for human dignity as consumers.²⁴

CONCLUSION

Based on the results of the discussion of the problems described above, it can be concluded that the existence of Pancasila principles which are conceptualized into legal principles is a condition sine qua non, because they contain moral and ethical values that direct the formation of laws that meet philosophical, sociological values. and juridical.

Actually, there is a compatibility between the principles of Pancasila and the legal principles of consumer protection in Law Number 8 year 1999 concerning Consumer Protection. As for the application of the principles of Pancasila in the legal principle of consumer protection, it requires the reconstruction of the protection law, especially with regard to legal protection against harmful advertisements based on the values of justice of Pancasila.

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²¹ Nugroho, S. S. (2016). Pengembangan Epistemologi Ilmu Hukum Berbasis Transendental. *Perspektif*, 21(2), 97-104.

²² Fattah, D. (2013). Teori keadilan menurut John Rawls. *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, 9(2), 30-45.

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