

Consumer Protection in Business Law: Conflict of Norms and its Implications under Article 18 of Law No. 8 of 1999 on Consumer Protection



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ABSTRACT: Consumer protection is an important aspect of business law that often clashes with the principle of freedom of contract. This paper analyzes the conflict between Article 18 of the Consumer Protection Law (UUPK) and Article 1320 of the Civil Code (KUHPPerdata) in the context of consumer protection in Indonesia. The norm conflict arises mainly in the use of standard clauses in standard contracts, which can harm consumers. John Rawls' theory of justice and Gustav Radbruch's theory of legal certainty are used to understand how the law can balance the interests of consumer protection and freedom of contract. In addition, technological developments and globalization also complicate the application of GCPL in electronic and cross-border transactions. The author suggests several legal strategies to address this conflict, including revision of laws, integration of technology, and harmonization of international law. In conclusion, effective consumer protection requires a balance between substantive justice and legal certainty and adaptation to technological change and market dynamics.

KEYWORDS: Consumer protection; Freedom of Contract; UUPK (Consumer Protection Law); Normative Conflict.

I. INTRODUCTION

Consumer protection is one of the fundamental pillars of business law, serving to maintain a balance between the rights and obligations of businesses and consumers. In the era of globalization and the digital revolution, the transactions between businesses and consumers have undergone significant transformation, creating new complexities in business-consumer relationships. The development of information and communication technology has introduced digital platforms that broaden the scope of commerce, enabling cross-border transactions that were previously unimaginable (Riefa, 2015). In this context, consumers no longer deal solely with goods and services offered conventionally, but also through online transactions that often involve standard contracts with pre-formulated clauses. This phenomenon has shifted the paradigm of consumer protection, demanding legal adaptation to the new realities in the global business landscape (Micklitz et al., 2017).

Law No. 8 of 1999 on Consumer Protection (UUPK) was introduced in response to the need for legal protection for consumers in Indonesia. UUPK is designed to safeguard consumers' rights from harmful business practices, establish standards of conduct for businesses, and provide fair dispute resolution mechanism (Shidarta, 2000).. One crucial aspect of UUPK is the regulation of standard clauses that are often used in standard contracts.

Article 18 of the Consumer Protection Law (UUPK) explicitly prohibits businesses from including standard clauses that disadvantage consumers. This prohibition covers various forms of clauses deemed unfair, such as the transfer of business liability, refusal to accept the return of purchased goods, or granting authority to businesses to take unilateral actions that harm consumers (Widjaja & Yani, 2001). However, the implementation of Article 18 of the Consumer Protection Law (UUPK) often conflicts with the principle of freedom of contract as stipulated in Article 1320 of the Indonesian Civil Code (KUHPPerdata). This principle, which is one of the fundamental tenets of contract law, grants parties the freedom to determine the content and terms of a contract according to their mutual agreement (Badruzaman, 2001). The inconsistency between consumer protection and freedom of contract creates a normative conflict that significantly impacts the effectiveness of consumer protection in Indonesia.

Consumer Protection in Business Law: Conflict of Norms and its Implications under Article 18 of Law No. 8 of 1999 on Consumer Protection

This normative conflict becomes increasingly complex in the context of electronic transactions and cross-border trade. The development of e-commerce has introduced new challenges in enforcing consumer protection laws, particularly when dealing with businesses operating from different jurisdictions (Smedinghoff, 2008). This situation raises questions regarding legal jurisdiction and the application of the Consumer Protection Law (UUPK) in international transactions. Furthermore, the evolution of technology has given rise to new forms of digital contracts, such as blockchain-based smart contracts, which challenge traditional concepts of agreement and contract execution (Werbach & Cornell, 2017). This raises questions about how consumer protection principles can be applied in the context of these rapidly advancing technologies.

On the other hand, the rise of the sharing economy, as represented by platforms like Airbnb and Uber, has blurred the line between consumers and businesses, creating a new category of "prosumer" that requires a different legal protection approach (Cohen & Sundararajan, 2015). This situation calls for a reinterpretation and potentially a reformulation of the consumer protection concepts within the Consumer Protection Law (UUPK).

In the Indonesian context, the implementation of the Consumer Protection Law (UUPK) also faces structural and cultural challenges. The wide digital and informational gap across various regions in Indonesia leads to unequal access to consumer protection information and mechanisms (Nasution, 2002). Additionally, the legal culture in Indonesia, which tends to avoid conflict and prefer informal resolution, can affect the effectiveness of the dispute resolution mechanisms outlined in the UUPK (Lev, 2000).

The normative conflict between consumer protection and freedom of contract also reflects a broader dilemma between state intervention and market autonomy. On one hand, consumer protection represents the role of the state in safeguarding the weaker party in economic transactions. On the other hand, freedom of contract emphasizes individual autonomy and market efficiency (Trebilcock, 1993). Balancing these two interests is a key challenge in the formulation and implementation of consumer protection policies. The implications of this normative conflict are evident in various legal cases involving standard clauses. For example, in the case of Anny R. Gultom and Hontas Tambunan versus PT. Securindo Packatama Indonesia (Secure Parking Case) in 2007, the Supreme Court ruled that a standard clause that absolves parking operators from responsibility for vehicle loss is null and void. This decision affirms the supremacy of the Indonesian Consumer Protection Law (UUPK) over the principle of contractual freedom in the context of consumer protection (Putusan MA No. 2078 K/Pdt/2009).

However, the implementation of this decision in everyday business practices still faces challenges. Many business operators continue to include similar clauses in their agreements, relying on consumers' lack of knowledge or their reluctance to file legal lawsuits. This situation highlights the gap between law in theory and practice, which requires more effective law enforcement strategies. Furthermore, the development of technology and new business models has created a "grey area" in the application of the Indonesian Consumer Protection Law (UUPK). For instance, in the case of online transportation services like Gojek and Grab, questions arise regarding the legal status of drivers, whether they are considered employees of the company or independent contractors, which has implications for the company's responsibility towards consumers (Nastiti, 2017).

In the realm of e-commerce, the practices of collecting and using consumer data by digital platforms also raise new issues related to consumer privacy protection that are not yet fully accommodated in the Indonesian Consumer Protection Law (UUPK) (Dewi, 2015). This indicates the need for harmonization between the UUPK and other related regulations, such as Law No. 11 of 2008 concerning Electronic Information and Transactions.

This normative conflict also has an international dimension. As Indonesia becomes increasingly integrated into the global economy, harmonizing consumer protection standards with international practices becomes increasingly important. For example, in the context of the ASEAN Economic Community, differences in consumer protection standards among member countries can become barriers to regional market integration (Rachagan & Kanniah, 2015).

Facing this complexity, a holistic and adaptive approach is needed in interpreting and applying consumer protection principles. Innovative legal strategies are required to bridge the gap between consumer protection and contractual freedom, while still maintaining the necessary flexibility to accommodate technological developments and new business models.

In this context, this study aims to conduct an in-depth analysis of the normative conflict between consumer protection as regulated in Article 18 of the Indonesian Consumer Protection Law (UUPK) and the principle of contractual freedom in Article 1320 of the Civil Code. Furthermore, this study will explore legal strategies that can be implemented to address this normative conflict, taking into account technological developments, global market dynamics, and the specific socio-cultural context of Indonesia.

Through this comprehensive analysis, it is expected that policy recommendations can be formulated to enhance the effectiveness of consumer protection in Indonesia, while still maintaining a balance with the principle of contractual freedom and encouraging innovation in business practices.

The questions that arise and subsequently form the problem formulation based on the background of the issue are as follows:

Consumer Protection in Business Law: Conflict of Norms and its Implications under Article 18 of Law No. 8 of 1999 on Consumer Protection

1. How does the normative conflict between Article 18 of Law No. 8 of 1999 concerning Consumer Protection and the principle of contractual freedom in Article 1320 of the Civil Code affect the effectiveness of consumer protection in Indonesia, particularly in the context of technological development and economic globalization?
2. What legal strategies can be implemented to address this normative conflict to ensure more effective consumer protection, considering the balance between the interests of consumers, business operators, and the development of business innovation?

This study is based on a normative juridical research approach, which is a type of research aimed at examining and studying the reform of transportation law in the era of disruption with the goal of achieving legal certainty and justice. This normative research focuses on normative legal science, a discipline of law characterized by its specific nature where the analysis is centered on positive law.

Normative legal research has long been a method used by legal scholars to investigate various legal issues. This research method includes the exploration of:

- a. Legal principles
- b. Legal systematics
- c. Legal synchronization
- d. Legal comparison
- e. Legal history

The distinctive feature of normative legal research can also be recognized through its legal sources, which consist of legal materials containing normative regulations, rather than legal materials in the form of information and social facts.

II. RESULT AND DISCUSSION

A. Normative Conflict between Consumer Protection and Contractual Freedom

John Rawls' Theory of Justice, known as "justice as fairness," offers a valuable perspective in analyzing the normative conflict between consumer protection (Article 18 of Law No. 8 of 1999 concerning Consumer Protection, UUPK) and contractual freedom (Article 1320 of the Civil Code). Rawls proposed two principles of justice: first, each person has an equal right to the most extensive basic liberties compatible with similar liberties for others; second, social and economic inequalities must be arranged so that:

1. They are to the greatest benefit of the least advantaged, and
2. They are attached to offices and positions open to all under conditions of fair equality of opportunity (Rawls, 1971).

In the context of this normative conflict, Rawls' first principle supports contractual freedom as part of individual basic liberties. However, Rawls' second principle justifies the restriction of this freedom to protect the weaker party (consumers) from inequalities that may arise from the abuse of contractual freedom by the stronger party (business operators).

Article 18 of the UUPK can be seen as a manifestation of Rawls' second principle. By prohibiting standard clauses that disadvantage consumers, this law seeks to create greater equality in the consumer-business operator relationship. This aligns with Rawls' idea that inequalities are only justifiable if they benefit the least advantaged in society (Freeman, 2007).

However, the application of Rawls' theory also faces challenges in this context. First, there is a question of how to define "benefit for all" in the context of business transactions. Overly strict limitations on contractual freedom may benefit consumers in the short term but can hinder innovation and market efficiency, ultimately harming consumers (Trebilcock, 1993).

Second, Rawls' principle of "positions and offices open to all" may conflict with the market reality where business operators possess significant information advantages and bargaining power. Although the Indonesian Consumer Protection Law (UUPK) strives to balance these powers, in practice, consumers often remain in a less advantageous position (Shidarta, 2000).

Furthermore, Rawls' concept of the "veil of ignorance," where principles of justice must be chosen without knowing one's position in society, offers an intriguing perspective. If we imagine a situation where an individual does not know whether they will be a business operator or a consumer, which principles would they choose? Most likely, they would opt for a system that balances consumer protection with contractual freedom, similar to what is sought by the combination of the UUPK and the Civil Code (Rawls, 2001).

However, criticisms of Rawls' theory suggest that this approach may be too abstract and overlook the complexities of social and economic realities (Nozick, 1974). In the context of consumer protection in Indonesia, factors such as gaps in legal knowledge, access to justice, and rapidly changing market dynamics may not be fully captured within the Rawlsian framework.

Nevertheless, Rawls' theory provides a strong ethical justification for state intervention in protecting consumers while still acknowledging the importance of contractual freedom. This indicates that the normative conflict between Article 18 of the UUPK

Consumer Protection in Business Law: Conflict of Norms and its Implications under Article 18 of Law No. 8 of 1999 on Consumer Protection

and Article 1320 of the Civil Code is not an irreconcilable contradiction but rather reflects a legal effort to balance various interests in a complex society.

Gustav Radbruch, in his theory of the purpose of law, identifies three fundamental elements: justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*), and purposiveness (*Zweckmäßigkeit*). Radbruch argues that legal certainty is the most important aspect because, without it, people do not know what to comply with, leading to chaos (Radbruch, 1999).

In the context of the normative conflict between Article 18 of the UUPK and the principle of contractual freedom in Article 1320 of the Civil Code, Radbruch's theory offers a valuable analytical framework. Legal certainty requires that legal rules be clear, consistent, and predictable in their application. However, the conflict between these two legal norms creates significant uncertainty.

On one hand, Article 1320 of the Civil Code affirms the principle of contractual freedom, providing certainty that legally formed agreements are binding as law for the parties involved. This principle has long been a cornerstone in Indonesian civil law and offers predictability in business transactions (Badruzaman, 2001).

On the other hand, Article 18 of the Indonesian Consumer Protection Law (UUPK) restricts this freedom by prohibiting certain standard clauses. Although aimed at protecting consumers, these restrictions can create legal uncertainty. Business operators may be unsure whether the clauses in their contracts will be deemed valid, while consumers might be unaware of the extent of their rights protection (Widjaja & Yani, 2001).

This conflict reflects the tension between formal certainty (supported by the principle of contractual freedom) and substantive certainty (pursued through consumer protection). According to Radbruch, when a conflict arises between legal certainty and justice, legal certainty should take precedence. However, when injustice reaches an intolerable level, unjust law must yield to justice (Radbruch, 2006).

In this context, the question arises: has the potential injustice resulting from the unrestricted application of contractual freedom reached an intolerable level? If so, the restrictions in Article 18 of the UUPK can be justified even at the expense of certain aspects of legal certainty.

However, the implementation of Article 18 of the UUPK also faces challenges regarding legal certainty. Terms such as "abuse of circumstances" or "unreasonable clauses" within the UUPK can have varying interpretations, creating uncertainty in their application (Shofie, 2000). This highlights the need for a balance between the flexibility to protect consumers and the clarity needed to provide predictable guidance for business operators.

Furthermore, in the context of the digital economy and globalization, legal certainty becomes increasingly complex. Cross-border transactions and new business models create grey areas in the application of the UUPK. For instance, how is Article 18 of the UUPK applied to electronic contracts involving parties from different jurisdictions? This uncertainty can hinder innovation and economic growth (Smedinghoff, 2008).

On the other hand, an argument can be made that Article 18 of the UUPK actually enhances legal certainty in the long run. By establishing minimum standards for consumer protection, the UUPK creates clear "rules of the game" for all business operators, reducing the uncertainty that may arise from varied interpretations of what constitutes fair business practices (Miru & Yodo, 2015).

Furthermore, legal certainty in Radbruch's theory is not only about predictability but also about legitimacy. Laws perceived as unjust by society lose their legitimacy and ultimately threaten legal certainty itself. In this context, Article 18 of the Indonesian Consumer Protection Law (UUPK) can be seen as an effort to maintain the legitimacy of the legal system by responding to society's need for greater protection in consumer transactions (Sidharta, 2006).

However, Radbruch also emphasizes the importance of purposiveness as one of the objectives of law. In this context, it is necessary to consider whether the restriction of contractual freedom produces greater benefits for society as a whole. This requires empirical analysis of the impact of the UUPK on market behavior, innovation, and consumer welfare (Cooter & Ulen, 2016).

In short, the analysis based on Radbruch's theory of legal certainty shows that the normative conflict between Article 18 of the UUPK and the principle of contractual freedom reflects a broader tension between various legal objectives. Resolving this conflict requires a balanced approach that considers the need for legal certainty, substantive justice, and social utility.

The normative conflict between Article 18 of the UUPK and the principle of contractual freedom in Article 1320 of the Civil Code through the lens of Rawls' theory of justice and Radbruch's theory of legal certainty demonstrates the complexity and nuances of this issue. Both theories offer complementary perspectives in understanding the implications of this normative conflict on the effectiveness of consumer protection in Indonesia.

Consumer Protection in Business Law: Conflict of Norms and its Implications under Article 18 of Law No. 8 of 1999 on Consumer Protection

Rawls' theory of justice provides an ethical justification for restricting contractual freedom to protect the weaker party, in line with the objectives of Article 18 of the UUPK. However, this theory also reminds us of the importance of maintaining a balance between consumer protection and economic freedom that can benefit all parties in the long term.

On the other hand, Radbruch's theory of legal certainty highlights the challenges in aligning consumer protection with the need for clear and predictable rules. This normative conflict creates legal uncertainty but can also be seen as an effort to achieve a better balance between formal certainty and substantive justice.

The synthesis of these two perspectives indicates that the effectiveness of consumer protection in Indonesia depends not only on the substance of the law but also on how the law is applied and interpreted. A flexible yet consistent approach is required in implementing Article 18 of the Indonesian Consumer Protection Law (UUPK), which takes into account both the need for justice and legal certainty.

Furthermore, this highlights the necessity for ongoing evaluation of the impact of the UUPK in practice, as well as adaptations to technological developments and new business models. Only in this way can the framework of consumer protection laws in Indonesia remain relevant and effective in balancing various interests within an ever-evolving business landscape.

B. Legal Strategies to Address Normative Conflicts and Enhance the Effectiveness of Consumer Protection

To address the normative conflict between consumer protection (Article 18 of the Indonesian Consumer Protection Law, UUPK) and contractual freedom (Article 1320 of the Civil Code), as well as to enhance the effectiveness of consumer protection in Indonesia, several legal strategies can be implemented.

Rawlsian Distributive Justice Approach can be one of the solutions. John Rawls' theory of justice emphasizes the importance of distributive justice and protection for the least advantaged in society. In the context of consumer protection, consumers often find themselves in a weaker position compared to business operators. By adopting a Rawlsian approach, several legal strategies can be applied, including strengthening the principle of balance. This can be realized by revising the UUPK to more explicitly adopt Rawls' "difference principle," which allows for inequalities only if they benefit the least advantaged. This can be translated into provisions that require business operators to prove that their standard clauses not only benefit them but also provide advantages to consumers (Rawls, 1999). Additionally, mechanisms to balance information asymmetry can be developed, mandating business operators to provide more comprehensive and easily understandable information about their products and services. This aligns with Rawls' concept of the "original position," where all parties have equal access to information (Freeman, 2007). Strengthening consumer protection institutions is also necessary, such as enhancing the role and capacity of institutions like the National Consumer Protection Agency (BPKN) to act as an institutional "veil of ignorance," ensuring that policies and business practices do not disadvantage the most vulnerable consumers.

Radbruch's Legal Certainty Approach can also be utilized. Gustav Radbruch emphasized the importance of legal certainty while acknowledging that, in certain situations, justice can override legal certainty. Strategies based on this theory include codification and harmonization. Codifying the consumer protection principles scattered across various regulations into a comprehensive consumer protection code will enhance legal certainty by providing a clear single source for business operators and consumers (Sidharta, 2006). Developing consistent jurisprudence through court decisions that interpret and apply the UUPK is also crucial. This will help create reliable precedents, increasing predictability in the application of consumer protection laws (Mertokusumo, 2010). Additionally, applying the principle of proportionality in assessing standard clauses by considering the balance between the interests of business operators and consumers aligns with Radbruch's idea of balancing legal certainty and justice (Radbruch, 2006).

Integration of Technology and Legal Innovation is another important strategy. Given the advancements in technology and new business models, legal strategies must incorporate innovation. The use of blockchain-based smart contracts can be explored to enhance transparency and certainty in consumer transactions, helping to address information asymmetry issues and strengthen the enforcement of contract clauses (Werbach & Cornell, 2017). Furthermore, implementing "regulatory sandboxes" for innovative business models can allow limited experimentation under regulatory supervision, helping to balance innovation with consumer protection (Zetzsche et al., 2017). Developing AI systems to analyze and assess the fairness of standard clauses is also a significant step, aiding consumers and regulators in identifying potentially harmful clauses (Surden, 2014).

By implementing these legal strategies, Indonesia can effectively navigate the normative conflicts between consumer protection and contractual freedom, ensuring that consumer rights are safeguarded while maintaining a conducive environment for business innovation and economic growth.

Strengthening Alternative Dispute Resolution Mechanisms should also be a priority. Given Indonesia's socio-cultural context, which tends to avoid direct confrontation, enhancing alternative dispute resolution mechanisms is crucial. Developing accessible,

Consumer Protection in Business Law: Conflict of Norms and its Implications under Article 18 of Law No. 8 of 1999 on Consumer Protection

swift, and effective Online Dispute Resolution (ODR) platforms for resolving consumer disputes, especially for e-commerce transactions (Cortés, 2018), as well as implementing mandatory mediation systems for consumer disputes before cases are brought to court, can improve efficiency and reduce the burden on the judicial system (Boulle, 2011). Strengthening the Consumer Dispute Resolution Agency (BPSK) by increasing its capacity and reach, including training mediators and arbitrators in contemporary consumer issues, is also an important step (Nugroho, 2015).

Consumer Education and Empowerment are equally important. Legal strategies should include efforts to enhance legal literacy and consumer awareness. Legal literacy programs that develop public education on consumer rights and how to enforce them align with Rawls' principle of equal opportunity (Rawls, 2001). Collaborating with educational institutions to integrate consumer protection materials into school and university curricula can help build a generation of more rights-aware consumers (Howells, 2020). Additionally, utilizing social media to disseminate information about consumer protection and report harmful business practices is essential (Lim, 2017).

International Legal Harmonization must also be considered, given the global nature of many modern consumer transactions. Ratifying international conventions on consumer protection, such as the United Nations Guidelines for Consumer Protection, can align Indonesia's consumer protection standards with global best practices (United Nations, 2016). Cooperation within the ASEAN framework for harmonizing consumer protection laws is also important to facilitate consumer protection in cross-border transactions (Rachagan & Kanniah, 2015). Furthermore, integrating consumer protection principles into international trade agreement negotiations is necessary (Howells & Wilhelmsson, 2018).

These legal strategies, informed by Rawls' theory of justice and Radbruch's theory of legal certainty, aim to create a better balance between consumer protection and contractual freedom. By adopting a multi-dimensional approach that includes legal reform, technological integration, strengthening dispute resolution mechanisms, consumer empowerment, and international harmonization, the effectiveness of consumer protection in Indonesia can be significantly enhanced. Implementing these strategies requires close coordination among various stakeholders, including policymakers, business operators, consumer organizations, and academics. Regular evaluations of the effectiveness of these strategies are also necessary to ensure that Indonesia's consumer protection legal framework remains responsive to technological developments and changing market dynamics.

III. CONCLUSIONS

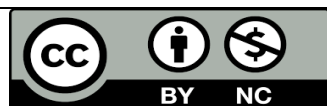
- a. The normative conflict between consumer protection (Article 18 of the Indonesian Consumer Protection Law, UUPK) and contractual freedom (Article 1320 of the Civil Code) can be analyzed through the lenses of John Rawls' theory of justice and Gustav Radbruch's theory of legal certainty. Rawls provides an ethical justification for restricting contractual freedom to protect consumers as the weaker party, while Radbruch emphasizes the importance of legal certainty in creating clear and predictable rules. To achieve effective consumer protection in Indonesia, a balance between substantive justice and legal certainty is necessary, along with adaptation to technological developments and the ever-evolving market dynamics.
- b. Legal strategies grounded in Rawls' distributive justice theory and Radbruch's legal certainty theory can create a better balance between consumer protection and contractual freedom in Indonesia. This approach involves legal revisions, technological integration, strengthening dispute resolution mechanisms, consumer education, and international harmonization to enhance the effectiveness of consumer protection. Implementing these strategies requires coordination among policymakers, business operators, consumer organizations, and academics, as well as regular evaluations to adjust to technological advancements and changing market dynamics.

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Consumer Protection in Business Law: Conflict of Norms and its Implications under Article 18 of Law No. 8 of 1999 on Consumer Protection

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