

CRITICAL PERSPECTIVES IN LEGAL PROTECTIONS FOR CONSUMERS DUE TO ADVERSE ADVERTISING

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Abstract

The position of consumers and business actors and their economic transactional relationships deserve the attention of regulators and even all parties. Philosophically, juridically and sociologically can be observed an unbalanced position between business actors and consumers. Business actors have resources, resources, marketing to relationships that are much larger and wider when compared to consumers. It can even be noted that consumers have legal awareness, and their rights as consumers are relatively low, so that about businesses, actors often get injustice. The injustice in question can be observed in one of them in advertising. In its settings on Consumer Protection Act, business actors are not yet clear about the arrangement of legal liability for advertising that is detrimental to consumers. Therefore, this study discusses two main issues: how is the nature of legal protection for consumers due to harmful advertising in a philosophical perspective? Considering that the problems studied in this study are normative problems surrounding the emptiness of legal norms, the method used in this study is a type of normative legal research method.

Based on the research results in this study, it was concluded that the arrangement for consumer protection in Indonesia is still relatively not maximal, looking at deals that have not contained legal liability from business actors who issue products advertised by advertising companies. Of course, the philosophical aspect contained in looking at the perspective of Pancasila is Sila 2 and Sila 5, which contain elements of human rights. So the principle of justice regarding rights and obligations for business actors has not been regulated in a balanced manner. More appropriate steps are needed to strictly control the issue of sanctions for businesses that harm consumers through advertising on broadcasting companies. So that in practice, it becomes a legal awareness for consumers, law enforcement, business actors, or broadcasting companies to pay attention to advertising that is broadcast so that it does not become a reason consumers experience losses in consuming goods and services produced by business actors.

Keywords: Legal, Consumer, Advertising and Harm Protection

I. Introduction

One of Indonesia's national development goals is to realize a just and prosperous society that is equally material and spiritual in the era of economic democracy based on Pancasila and the Constitution of the Republic of Indonesia year 1945 after this referred to as the 1945 Constitution. Thus, national economic development in the era of globalization must be able to support the growth of the business world so that it can produce a variety of goods and services that have technological content that can improve the welfare of many people while getting certainty of goods and or services obtained from trade without causing losses to consumers. Article 27 of the 1945 Constitution affirms that every citizen is entitled to a decent life for humanity. To obtain a decent life for humanity, to realize prosperity and intelligence, it is necessary to provide goods and services in sufficient quantities, good quality, and at affordable prices by society as consumers.¹

Lack of knowledge and understanding of consumers for goods and services, causing harm to consumers because consumers do not know if the goods purchased turned out to be of low quality, contain elements of fraud, brand counterfeiting, misleading advertising, and so on. In addition, business competition often gives birth to fraudulent practices that, in general, harm consumers. Therefore, consumers need to get legal protection.

Philosophically the issue of consumer protection is not merely a matter of individuals but is a common problem and a national problem because basically everyone is a consumer. Therefore, protecting consumers is protecting everyone. Therefore, the issue of legal protection to consumers is a matter of national law as well. Thus the protection of consumers aims to ensure the safety, security, and health of citizens, as the purpose of the state. The purpose of the State of Indonesia in the Opening of the 1945 Constitution, Alinea to IV: Then rather than that to form a Government of the State of Indonesia that protects the entire Indonesian nation and all Indonesian blood and to promote the general welfare, educate the life of the country, and participate in implementing world order based on independence, lasting peace and social justice.

The position of consumers as weak parties is also recognized internationally, as reflected in the United Nations General Assembly Resolution, No.A/RES/39/248 of 1985 on guidelines for consumer protection that require that consumers, wherever they are from all nations, have certain fundamental rights, regardless of social status. These fundamental rights are the right to clear, correct, and honest information, the right to security and safety, the right to vote, the right to be heard, the right to indemnity, the right to basic human needs, the right to a good and clean environment and the right to maintain that environment, and the right to primary education. The

¹ Janus Sidabaiok, 2006, *Hukum Perlindungan Konsumen Di Indonesia*, Citra Aditya Bakti Bandung, h. 1

United Nations has called on all its members to impose these consumer rights in their respective countries.

Consumer protection is essential because, in general, consumers are in a weak² position in the presence of business actors. Therefore the protection of consumers is to build Indonesian people entirely based on the philosophy of statehood of the Republic of Indonesia, namely Pancasila and the 1945 Constitution.

Juridically, consumers who are assets and actors of national development participate in economic activities must be protected by law. What else is the State of Indonesia referred to as a state of law? As stated in Article 1 paragraph 3 of the 1945 Constitution, as a State that stands above the law, the state must protect the rights of its citizens. Every citizen is entitled to legal protection to improve their dignity and dignity. The law uses institutions to bring about justice in society. According to Aristotle, justice is a political policy that becomes the basis of state regulations and other laws and regulations. It's a measure of rights. One must control oneself in seeking one's gain by seizing what belongs to others or rejecting what should be given to others.³

Regulation of consumer protection itself, not only contained in Consumer Protection Act but also contained in several other laws and regulations such as Law No. 7 of 1996 on Food. (LN. 1996-99, TLN. 3656) Law No. 32 of 2002 on Broadcasting (LN. 2002.139, TLN.4252), Law No. II of 2008 on Information and Electronic Transactions, (LN. 2008-58, TLN. 4843), after this known as the ITE Act. Government Regulation of the Republic of Indonesia Number 69 of 1999 on Food Labels and Advertisements, Government Regulation No. 57 of 2001 on Consumer Dispute Resolution Agency, Government Regulation No. 58 of 2001 on Fostering and Supervising The Implementation of Consumer Protection, Government Regulation No. 58 of 2001, On Consumer Protection Agency of Non-Governmental Organizations.

Factually (sociologically) can be considered, how business actors do not want to be responsible to consumers for their products that bring losses. Business actors often corner consumers and look for victim weaknesses to cover up and abdicate their responsibilities. Social facts that harm society are a form of lack of ethics and morals of business actors. We cannot simply ignore the legal facts, which are often complained about by the consumer community.

Responsibility is the result of an act, and when a person does an action, it will impact others. The impact or consequence must be borne by the person who did the deed. Responsibility is demanded because there is a mistake that can harm the rights and interests of others. About consumer protection advertising, business actors must be responsible for advertisements that cause harm to consumers. Law No. 8 of 1999

² Susanti Adi Nugroho, 2008, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Implementasinya*, Kencana, Jakarta, h. 2

³ Muhammad.S.T, 2008, *Perkembangan Pemikiran Teori Ilmu Hukum*, Pradnya Paramita, Jakarta, h. 63

has regulated the responsibility of business actors, as stated in article 19 of Consumer Protection Act.

Many ads violate the rights of consumers. But consumers cannot claim their rights because of their lack of knowledge about their rights as consumers; this situation brings an imbalance in the position of advertising companies and consumers, so that business actors dare to advertise their products even though, in reality, what they say in the ad is not valid, which can result in harm to consumers or even endanger the lives and safety of consumers.

II. Discussion

2.1. Legal Protection for Consumers in Advertising Activities Based on Laws and Regulations in Indonesia

Legal protection of consumers can be done preventively or repressively, as stated by Phillipus M. Haddon. Regarding consumer protection in advertising activities, the legal guardian should be contained in existing laws and regulations. Still, the provisions in this law cannot protect consumers in advertising activities because the arrangements contained in Consumer Protection Act refer to products and not advertising information.

Advertising activities need to get special attention from the government because consumer interests must be protected in it. Therefore, this section wants to outline consumer protection related to advertising activities from existing laws and regulations that protect consumers. Law No. 8 of 1999 on Consumer Protection (Consumer Protection Act) contains legal rules on consumer protection. It is an umbrella for other laws concerning consumers while integrating the legislation to strengthen law enforcement in consumer protection.⁴ Consumer Protection Act is a special provision (*lex specialis*) against the requirements of laws and regulations before Consumer Protection Act. Following the legal principle *lex specialis derogat legi general*, the provisions outside Consumer Protection Act remain valid as long as they are not explicitly regulated in the Consumer Protection Act or not contrary to the Consumer Protection Act. This is contained in Article 64 Chapter XIV of the transitional provisions, which affirm all provisions of the laws and regulations aimed at protecting consumers that have existed at the time this law was enacted remain in force as long as it is not explicitly regulated and does not conflict with the provisions in this law.

The prohibition against business actors related to this advertising activity starts from article 8, which prohibits business actors from producing goods or services that are not by the promises stated in the advertisement or promotion of goods and or benefits. This requires businesses to act honestly with consumers regarding what is conveyed through advertising, not to harm consumers. Taking into account the substance of the provisions of article 9, it is essentially a form of

⁴ Janus Sidabaiok, *Op cit*, h. 51

prohibition that is focused on the behavior of business actors who offer, promote, advertise goods and / services incorrectly and as if the goods have met specific quality standards, have discounts in excellent and new circumstances, have obtained and have sponsors, do not contain hidden defects, are completeness of certain goods or as if they come from a specific area.

Regarding the prohibition of offering, promoting, advertising a good and service incorrectly, and as if the goods are from a specific area, in the field of Intellectual Property Rights regulates the "Indication of Origin and Geographical Indication" as stipulated in Law No. 15 of 2001, meaning that in addition to violating the provisions of the Consumer Protection Act, business actors can be prosecuted by Law No. 15 of 2001 on Brands, because it is considered to deceive consumers over the origin of the brand. Pay attention to the content of article 20 Consumer Protection Act that can be categorized as limiting advertising businesses, namely companies that produce an advertisement, so advertising companies must be responsible if advertising harms consumers.

The burden of such responsibility should not be the burden of the advertising company alone because the most responsible is the company that owns the goods and services. After all, the information provided by the advertising company comes from business actors, unless the advertising company creates advertising excessively beyond the information provided to it. Still, as long as the advertising company does not change the information's material, of course, the advertising company cannot be held accountable. Still, this form of accountability is not regulated in the Consumer Protection Act.

Advertising companies certainly have their creativity, but the invention is by the approval of the product owner' business actors, because the company concerned who knows about the usefulness and benefits of an advertising company is not an advertising company, so about most reliable advertising information is the company that owns the product, unless the advertising company contains data, not by the request of the company involved. Therefore, the law needs to regulate the company's responsibility that owns the product to protect the interests of consumers in advertising activities.

The substance of article 9 of Consumer Protection Act is also related to representations where business actors are obliged to provide a correct picture of the goods and services they trade. This is the cause of consumer losses is a misrepresentation of specific goods and services. The losses experienced by consumers in Indonesia are also primarily due to being tempted by advertisements or brochures of goods and services that are not true. Information in the form of promises stated in the offer, promotion, and advertising of such goods and services can be a means of evidence that the judge considers on a lawsuit based on the default of business actors.

Like with the provisions in article 9, article 10 Consumer Protection Act also concerns prohibitions that focus on the behavior of business actors whose purpose is to strive for orderly trade and a healthy business climate to preserve products traded

in the community in a way that does not violate the law. Similarly, since the provisions of article 10 contain a prohibition on offering, promoting, advertising, or making untrue or misleading statements against certain goods and services, it automatically prohibits in this article concerning the issue of representation as outlined in article 9. Article 11 still concerns the case of the improper presentation done by business actors, as in the provisions of the previous articles. Therefore, article 11 discusses prohibitions that, in addition to being directed at the behavior of business actors, are also prohibitions aimed at ways of sale made by business actors.

According to researchers, the provisions of article 19 concern the responsibility of business actors cannot to reach advertisers because the obligation set out in article 19 is limited to the commitment of business actors to defective products. If at the time of use, consumers cause losses. This provision does not cover the responsibility of business actors to advertising information that harms consumers. Therefore, this article limits the responsibility of business actors only seven days after the transaction because this article is intended to lead more to daily transactions made by consumers. The provisions of article 19 cannot be used as a basis for consumers in demanding the responsibility of business actors harmed by advertising information. In his view of justice, John Rawls reveals that justice is the ultimate virtue in social institutions, as is true in the system of thought. However elegant and economical, a theory must be rejected or revised if it is not true; for the sake of increasingly laws and institutions, no matter how efficient and neat, it must be reformed or abolished if it is unjust.⁵

2.2. Consumer Protection in the Philosophical Perspective of Pancasila

As one of the products of consumer protection law, the establishment of the Consumer Protection Act should be by the values contained in Pancasila and the Basic Law of the Republic of Indonesia of 1945 as a philosophical foundation. Explicitly Pancasila as the basis of the philosophy of the Consumer Protection Act is reflected in the considerations especially parts a and d. (a) That national development aims to realize a just and prosperous society that is materially and spiritually equitable in the era of economic democracy based on Pancasila and the Basic Law of the Republic of Indonesia of 1945, (d) that to improve the dignity and 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.

But in the description of the articles contained in this Consumer Protection Act does not protect consumers optimally, not even by the principles and values contained in Pancasila and the Basic Law of the Republic of Indonesia of 1945, especially the 2nd and 5th precepts. The 2nd precept had human values: (a)

⁵ Rawls, John, 1971, *Theory of Justice*, Harvard University Pers, Cambridge, h. 3-4

recognition of human dignity, (b) fair treatment of human beings.⁶ Furthermore, the values contained in the fifth precept are: (a) develop a just attitude towards others, (b) develop noble deeds, which reflect the attitude and atmosphere of family and shoulder to shoulder, (c) love for progress and development.⁷ Furthermore, in the context of legal politics itself, the 2nd precept: just and civilized humanity becomes the basis of legal politics that respects and protects non-discriminatory human rights, and the 5th precept: social justice for all Indonesians becomes the political basis of law in the life of socially just society so that those who are socially and economically weak are not oppressed by the strong arbitrarily.⁸

From the two precepts above, there is a recognition of human rights, including consumer rights related to consumer advertising activities; consumers have the right to get the correct information and the right to get compensation from business actors if the information in the advertisement harms consumers. Therefore consumers need to get legal protection so that they are not treated arbitrarily by business actors, Socially and economically, above the consumer. The values contained in Pancasila should be reflected in the articles of the Consumer Protection Act. About consumer protection by the matters contained in Pancasila, it must be by the values of justice. The question of justice is essential so that there are two precepts in Pancasila that pay attention to justice. Paying attention to consumer protection arrangements in the Consumer Protection Act has not provided justice to consumers, especially in advertising activities.

Pancasila, as a legal mind, can have a constitutive function as well as a regulative function. With its constitutive role, Pancasila determines the basis of a legal system that gives meaning and meaning to the law itself. Without foundation provided by Pancasila, the law will lose its purpose and meaning as law. Pancasila, with its regulative function, determines whether the law as a product is fair or unfair. Pancasila as grundnorm, which creates a constitution, determines the content and forms of various lower statutes and regulations that are entirely hierarchically arranged. Pancasila in the hierarchical arrangement guarantees the compatibility or absence of contradictions between multiple laws and regulations, both vertically and horizontally. This has the consequence that there is no conflict between one norm and a hierarchically higher legal norm, especially with Pancasila.⁹ A law will not work properly if there is no synchronization in the making of the law either in the relevant law or with other laws horizontally.¹⁰

⁶ Jazim Hamidi & Mustafa Lutfi, 2010, *Civic Education, Antara Realitas Politik dan Implementasi Hukumnya*, Gramedia Pustaka Utama, Jakarta, h. 57-57

⁷ *Ibid.*

⁸ Rachmaat Safa'at, 2013, *Rekonstruksi Politik Hukum Pangan dari Ketahanan Pangan ke Kedaulatan Pangan*, Universitas Brawijaya Press, Malang, h. 138

⁹ Istislam, 2012, *Sanksi Paksaan Pemerintah dalam Perlindungan dan Pengelolaan Lingkungan Hidup*, Disertasi, Program Pascasarjana Universitas Airlangga, Surabaya, h. 253-254

¹⁰ Arief Amrullah, 2007, *Politik Hukum Pidana dalam Perlindungan Korban Kejahatan Ekonomi di Bidang Perbankan*, Bayu media Publishing, Malang, h. 110

The arrangement of responsibility for business actors that is limited to only seven days, as well as unclear sanctions arrangements and inconsistencies in the Consumer Protection Act itself, namely articles 54 consumer protection act and 56, the decision of the Consumer Dispute Resolution Agency, which is considered final and binding, but in the following article mentions against the conclusion of the Consumer Dispute Resolution Agency can be objected to the court, where the provisions of article 56 of the Consumer Protection Act are followed by the Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2006, on the procedure of filing legal efforts objecting to the decision of the Consumer Dispute Resolution Agency has implications for the unprotection of consumers in advertising activities.

These provisions are incompatible with the values contained in Pancasila, which firmly upholds the values of justice, even inconsistencies in the Consumer Protection Act both in the law itself and between the Consumer Protection Act and Supreme Court Circular No. 1 of 2006. The position of the Supreme Court Circular Letter No. 1 of 2006 is clearly under the law so that it can be overturned for the sake of the law.

Based on the Pancasila Congress, which took place from May 30 to June 1, 2009, it was concluded that Pancasila is a guiding rule and national legal politics so that federal law must be developed leading to:

- a. Maintaining the integrity of the nation both from ideological and territorial aspects;
- b. Based on efforts to build democracy and nomocracy at the same time;
- c. Based on efforts to make justice for all Indonesian people;
- d. Based on the principle of acceptable religious tolerance.¹¹

Thus, the formation of legislation must pay attention to the various principles of law formation and the type of a hierarchy and its content. Therefore the formation of laws in Indonesia must be based on the Basic Law of the Republic of Indonesia of 1945 and reflect the character of the Indonesian state based on Pancasila.¹²

Pancasila is the highest material source that determines the content material in the formation of the Law and as a benchmark of philosophy in constitutional testing of legal norms. Therefore there needs to be an assessment and research into the Consumer Protection Act. The spirit and content material is by Pancasila values to protect consumers in advertising activities. According to Pataniari Siahaan, it is not appropriate for the establishment of the Law with the Basic Law of the Republic of Indonesia of 1945 because:

- a. Lack of commitment to the law.
- b. Limitations of mastery of legal techniques.
- c. Lack of ability to formulate the core of the problem that must be arranged

¹¹ Pataniari Siahaan, *Politik Hukum Pembentukan Undang-Undang Pasca Amandemen BASIC LAW OF THE REPUBLIC OF INDONESIA 1945*, Konpress, Jakarta, h. 367

¹² *Ibid.*

and how to arrange it.¹³

Indonesia as a state of law means that every decision is not carried out based on power alone, about consumer protection in basic and philosophical advertising activities that can be used as a source of law in reconstructing the Consumer Protection Act is Pancasila as the legal ideal and fundamental law of the Republic of Indonesia of 1945 as a source of national law.

III. Conclusion

Regulation of consumer protection in Indonesia is still relatively not maximal. Looking at the existing arrangements that consumer losses due to advertising are only the responsibility of advertising companies, without any legal rules governing the legal liability of business actors who issue products advertised by advertising companies. Of course, the philosophical aspect contained in looking at the perspective of Pancasila is Sila 2 and Sila 5, which have elements of human rights. What is the right of the aggrieved consumer, on the one hand, is regulated to be reimbursed by the advertising company, while those involved there include the company of the goods/services advertised. So the principle of justice regarding rights and obligations for business actors has not been regulated in a balanced manner.

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Laws and Regulations

Constitution of the Republic of Indonesia of 1945

¹³*Ibid.*

Criminal Code

Civil Code

Law of the Republic of Indonesia Number 7 of 1996 on food

Law of the Republic of Indonesia Number 8 of 1999 on Consumer Protection

Law of the Republic of Indonesia Number 11 of 2008 on Information and Electronic
Transactions