



## **Business Actors Liability For Defective Products In The Perspective Of Law Number 8 Of 1999 Concerning Consumer Protection**

Nia Noviyani<sup>1</sup>, Sigit Wibowo<sup>2</sup>,

<sup>1</sup>Faculty of Law, Proclamation 45 University, Yogyakarta, Email: [nianoviyani@up45.ac.id](mailto:nianoviyani@up45.ac.id)

<sup>2</sup>Faculty of Law, Proclamation 45 University, Yogyakarta, Email: [sigitwibowo@up45.ac.id](mailto:sigitwibowo@up45.ac.id)

### **Abstract**

*The widespread circulation of defective or damaged products received by consumers continues to cause losses, while the implementation of business operators' responsibilities is often not in line with the provisions of Law Number 8 of 1999 concerning Consumer Protection. The gap in this research lies in the suboptimal application of the principle of business operator responsibility and the fulfillment of consumer rights to compensation in practice. This study aims to analyze the form of business operator responsibility for defective products and the regulation of consumer rights in obtaining compensation based on the Consumer Protection Law. The research method used is normative juridical with a regulatory approach and literature study of primary and secondary legal materials. The results show that business actors are strictly liable for consumer losses due to defective products, with the obligation to provide compensation in the form of refunds, replacement of goods, health care, and/or compensation within a maximum period of seven days from the transaction. Consumer rights to compensation are regulated in Articles 4, 19, and 23 of Law Number 8 of 1999, with dispute resolution through non-litigation or litigation channels. The scientific contribution of this research reinforces the application of the strict liability principle as the basis for legal protection of consumers against the distribution of defective products.*

**Keywords:** *Liability, business actors, defective products, consumer protection.*

### **A. INTRODUCTION**

The perspective on consumer protection is a problem that arises from the liability of business actors to consumers for losses caused by the products they sell. This problem is commonly referred to as product liability or product responsibility.<sup>1</sup> In general, product liability arises from the imbalance between producers and consumers. Consequently, businesses or producers, who initially aimed to market their products, now focus on implementing precautionary principles to ensure consumers are not harmed by the goods and/or services they use. Consequently, the issue of product liability is now receiving significant attention from various groups, including industry, insurance companies, trade, government, and legal experts.<sup>2</sup>

Most business owners have the freedom to produce and sell their products without considering the quality of the products. This issue requires consumers to be more careful and meticulous when purchasing or using products to avoid significant losses, ensuring the safety and security of consumers. Furthermore, business owners or manufacturers often produce products that do not meet applicable standards, resulting in many products being damaged and unfit for consumption.<sup>3</sup>

<sup>1</sup> Janus Sidabalok, 2006, *Hukum Perlindungan Konsumen di Indonesia*, Citra Aditya Bakti: Bandung, p. 11.

<sup>2</sup> Lumantow, C.H, *Tinjauan Yuridis Tanggungjawab Produsen Terhadap Produk Cacat Dalam Kaitannya Dengan Perlindungan Konsumen Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen*, *Jurnal Hukum Unsrat*, Vol 1 (2), 2017, p. 35-43

<sup>3</sup> Aulia Muthiah, 2018, *Hukum Perlindungan Konsumen, Dimensi Hukum Positif dan Ekonomi Syariah*, Pustaka Baru Press: Yogyakarta, p. 179



The inability of consumers to deal with the actions of business actors is clearly very detrimental to the public, in this case consumers. Generally, business actors protect themselves through standard agreements or what are called Standard Contracts agreed upon by both parties, between the business actor and the consumer, or usually through misleading information from the business actor that can cause losses for consumers.<sup>4</sup> Defective products produced by business actors are clearly very detrimental to consumers, if in this case the business actor is reluctant to take responsibility for the mistakes they make. Therefore, every business actor should be more careful in the production process and when the goods are sold, because it is to avoid losses that will be suffered by consumers due to consuming defective products. The most important legal basis for consumer issues is Law Number 8 of 1999 concerning Consumer Protection, which aims to protect consumer rights. However, the Consumer Protection Law does not regulate in detail regarding products or services that are defective in production, either regulated in the general provisions chapter, or in subsequent chapters. Basically, in problems that occur regarding defective products, the business actor is not entirely responsible based on what is stated in Law Number 8 of 1999 concerning Consumer Protection that the business actor is only responsible for compensation if a defective product is found to be traded and then harms the other party.<sup>5</sup>

In principle, the provisions of the law do not differentiate between any business actor who carries out their business activities, as long as the producer or business actor carries out their business activities correctly, honestly, relevantly, and in conveying information that the business actor provides to consumers, it is not misleading and does not harm consumers morally and financially, because in this case it is the consumer who will use and utilize the goods and/or services offered by the business actor.<sup>6</sup>

Consumers trust businesses in their buying and selling activities, building on their reputation, product quality, customer service, transparency, security guarantees, recommendations, and user experience. By addressing these factors, businesses can increase consumer trust and build long-term relationships with customers. However, in reality, some businesses still fail to deliver on promises. This leaves consumers who purchase these products

<sup>4</sup> Gunawan Widjaja dan A. Yani, 2000, *Hukum Tentang Perlindungan Konsumen*, PT. Gramedia Pustaka Utama: Jakarta, p. 1

<sup>5</sup> A. A. Utomo, 2019, *Tanggung Jawab Pelaku Usaha Terhadap Konsumen Tentang Produk Cacat Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen*. *Lex Privatum*, Vol 7(6), 2019, p. 12

<sup>6</sup> Gunawan Widjaja dan A. Yani, 2000, *Hukum Tentang Perlindungan Konsumen*. PT. Gramedia Pustaka Utama: Jakarta, p. 37



feeling disadvantaged. This type of disadvantageous service includes defective or damaged goods.<sup>7</sup>

Based on the provisions contained in Article 19 of Law Number 8 of 1999 concerning Consumer Protection:

1. Business actors are responsible for providing compensation for damage, pollution and/or consumer losses resulting from consumption of goods and/or services produced or traded;
2. Compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and/or services of the same type or equivalent value, or health care and/or the provision of compensation in accordance with applicable statutory provisions;
3. Compensation will be provided within a period of 7 (seven) days after the transaction date;
4. The provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal charges based on further evidence regarding the existence of an element of error;
5. The provisions referred to in paragraphs (1) and (2) do not apply if the business actor can prove that the error is the consumer's fault.

So, if a business actor or producer who trades the goods they produce finds that the goods received by consumers are damaged, defective, and cannot be used, then the consumer is the one who is harmed. Therefore, laws and regulations are made which aim to protect the interests of consumer rights in terms of preventing losses experienced by consumers, and for business actors, they are obliged to be responsible for all losses arising from the goods or services traded not being in accordance with the standards expected by the community, in this case, consumers.<sup>8</sup>

The government also plays a crucial role in overseeing the implementation of laws and regulations related to consumer protection, which should be properly implemented. The purpose of consumer protection is to enhance the dignity and worth of consumers and to ensure that businesses conduct their business activities responsibly in implementing,

<sup>7</sup> M.S.K.G. Suka, dkk, *Analisis Yuridis Undang-Undang No 8 Tahun 1999 Tentang Perlindungan Konsumen Terhadap Accountability Penjual Clouthing Line Terhadap Konsumen Akibat Barang Yang Cacat:(Studi Kasus SICKMYND)*, *Perkara: Jurnal Ilmu Hukum dan Politik*, Vol. 2(1), 2024, p. 256-277

<sup>8</sup> R.F. Kuntag, *Pertanggungjawaban Pelaku Usaha Terhadap Konsumen Yang Dirugikan Atas Kerusakan Barang Ditinjau Dari Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen*. *Lex Privatum*, Vol. 9(2), 2021, p.



developing, and regulating consumer protection. Consumers have rights that are guaranteed and protected to prevent harm, enabling them to exercise social control over the actions of business actors. Therefore, Law Number 8 of 1999 concerning Consumer Protection aims to further enhance consumer protection efforts to eliminate imbalances between the rights and obligations of businesses and consumers.

Basically, the goods produced are defective. Most of them are caused by weak government supervision of the goods during production. In many cases, consumers often do not receive products according to their wishes because the information provided by business actors is not appropriate, so the goods received or consumed are defective products. In this case, the defects in question are production defects or construction defects. These problems are more often encountered in the market between the parties, namely consumers and business actors, due to a lack of supervision and business actors not carrying out in accordance with applicable provisions, and there is no pressure, so that free trade occurs. For example, in canned food products that expand in packaging, moldy food may occur due to being displayed for too long, or food that emits an unpleasant odor when the packaging is opened. This is very clearly detrimental to consumers who consume these goods; business actors should be fully responsible for the goods produced so that consumers feel safe about the products they consume. Business actors, in this case, in providing promotions or advertisements for traded goods, are not appropriate and unclear, so that products produced by food processing businesses are also often indicated as having hidden defects that are difficult for consumers to detect.<sup>9</sup>

Based on the description of the background, the author is interested in further examining this research. Next, the author will examine how business actors' responsibilities towards consumers regarding defective products are reviewed under Law Number 8 of 1999 concerning Consumer Protection. The author is also interested in reviewing how consumer rights are regulated under Law Number 8 of 1999 concerning Consumer Protection. For these two reasons, this research was conducted.

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<sup>9</sup> S. Licardi, dkk, *Pertanggungjawaban hukum terhadap produk cacat yang merugikan konsumen ditinjau dari Undang-Undang No. 8 Tahun 1999*, *Jurnal Kewarganegaraan*, Vol. 7(2) 2251-2257, 2023, p. 4



## **B. RESEARCH METHOD**

This research is included in legal research that refers to literature, namely by researching and reviewing library materials or what is called normative legal research.<sup>10</sup>

The research method that the author examines in writing this article is the normative juridical method. The research approach used in this article is the Law approach. The legal sources used in writing this article are primary legal sources, including statutory regulations, then secondary legal sources used include literature books, scientific research journals, news, and tertiary legal materials used in this study include legal dictionaries. The writing of this article aims to examine "The Responsibility of Business Actors for Defective Products Reviewed from Law Number 8 of 1999 Concerning Consumer Protection" by examining the provisions of laws and regulations, namely primary legal sources and secondary legal sources including Law Number 8 of 1999 concerning Consumer Protection, provisions of other laws and regulations that examine consumer protection, relevant books related to consumer protection, and other legal sources that can be used in writing this scientific article.

## **C. RESULTS AND DISCUSSION**

### **1. Responsibilities of Business Actors to Consumers Regarding Defective Products Reviewed from Law Number 8 of 1999 Concerning Consumer Protection**

The provisions contained in Article 1 number 3 of Law Number 8 of 1999 concerning Consumer Protection generally use the term business actor instead of using the term producer, which reads as follows: "business actor is every individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or together through an agreement to carry out business activities in various economic fields". In this definition, what is included therein are BUMN or State-Owned Enterprises, cooperatives, and private companies engaged in production, import, and retail trade, distributors, and so on. In terms of business activities, the business actor here is the party that is fully responsible for the consequences that arise in the form of losses. Based on what is contained in Article 8 paragraph (1) letter d, it explains that business actors are prohibited from producing and/or trading goods and/or

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<sup>10</sup> Soerjono Soekanto dan Sri Mamudji, 2004, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, PT Raja Grafindo Persada: Jakarta, p. 13



services that do not comply with the conditions, guarantees, special features, or efficacy as stated in the label, label, or description of the goods and/or services.<sup>11</sup>

In civil law, the provisions most frequently used and closely related to the principles governing the relationship between consumers and business actors are found in Book III on obligations and Book IV on evidence and prescription of the Indonesian Civil Code (KUHPerduta). Book III discusses the legal relationship between consumers and business actors, which may arise either from statutory provisions or from agreements. This legal relationship includes obligations to give something, to perform a certain act, or to refrain from doing something, as regulated in Article 1234 of the Civil Code. Furthermore, the rules concerning consumer legal relationships are set out in Articles 1313 to 1351 of the Civil Code, which stipulate that the relationship between consumers and business actors may arise from a specific agreement, thereby creating rights and obligations for each party. In addition, obligations arising from statutory provisions may result from legal acts that generate rights and obligations for both consumers and business actors, as stated in Article 1352 of the Civil Code. The most essential context of obligations arising by operation of law is those formed as a consequence of unlawful acts, as regulated in Article 1365 of the Civil Code. This liability involves both the party committing the act and the party suffering the loss, as further stipulated in Articles 1367 to 1369 of the Civil Code.<sup>12</sup>

The rivalry that occurs in society is among business actors who trade their products, especially including very tight goods, so that it affects the prices offered by business actors to consumers to be more affordable and ignore the quality that is in accordance with applicable standards according to statutory provisions, these products are usually offered through advertisements, mass media, promotions, or offered directly, what consumers must do is to be careful about the goods that will be purchased, consumed, and used because if they do not apply the principle of caution, the consumer will be harmed if it turns out that the product is defective. In this case, products are categorized as defective, divided into 3 (three) categories, namely product defects due to production errors, product defects due to design, and the most frequently found is unclear information so that consumers do not know if the product is indicated to have

<sup>11</sup> Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Pasal 8 ayat (1) huruf d

<sup>12</sup> S. Licardi, dkk, *Pertanggungjawaban hukum terhadap produk cacat yang merugikan konsumen ditinjau dari Undang-Undang No. 8 Tahun 1999*. *Jurnal Kewarganegaraan*, Vol. 7(2) 2251-2257, 2023, p. 3



hidden defects, this can be caused by negligence of business actors or producers during the production process and driven by weak supervision.<sup>13</sup>

Regulations regarding legal protection for consumers based on the principles of consumer protection are regulated in Article 2 of Law Number 8 of 1999 concerning Consumer Protection, which reads as follows: "Consumer protection is based on the benefits, justice, balance, security, and safety of consumers, as well as legal certainty." The provisions regarding the principles of consumer protection relate to the legal relationship between consumers and protection as regulated therein, and as a basis for formulating legislation.<sup>14</sup>

Based on the legal theory of Hans Kelsen, namely a concept related to the concept of legal obligations, is the concept of legal responsibility (liability). A person who is legally responsible for certain actions may be subject to sanctions in the case of his own actions, which make that person have to carry out his obligations and responsibilities.<sup>15</sup>

Therefore, the provisions regarding defective products that are detrimental to consumers, all forms of responsibility are given to the business actor, the regulations regarding this responsibility are stated in Law Number 8 of 1999 concerning Consumer Protection, Article 19, namely as follows:

1. Business actors are responsible for providing compensation for damage, pollution and/or consumer losses resulting from consuming goods and/or services produced or traded.
2. Compensation as referred to in paragraph 1 may be in the form of a refund or replacement of goods and/or services of the same type or equivalent, or health care and/or the provision of compensation in accordance with the provisions of applicable laws and regulations.
3. Compensation will be provided within a period of 7 (seven) days after the transaction date.
4. The provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal charges based on further evidence regarding the existence of an element of error.

<sup>13</sup> Amelia Fitri Bella Maharani, "Produk Cacat Tersembunyi Dalam Perspektif Hukum Perlindungan Konsumen di Indonesia: Analisis Product Liability", *Lex Prudentium Law Journal*, Vol 1, 2022, p. 53–61.

<sup>14</sup> Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Pasal 2

<sup>15</sup> Hans kelsen diterjemahkan oleh Raisul Muttaqien, 2013, *Teori Hans Kelsen Mengenai Pertanggungjawaban*. Penerbit Nusa Media: Bandung, p. 141



5. The provisions referred to in paragraphs (1) and (2) do not apply if the business actor can prove that the error is the consumer's fault.

The conclusions that can be drawn from the provisions contained in Article 19 of Law Number 8 of 1999 concerning Consumer Protection are as follows:<sup>16</sup>

1. Form of responsibility from business actors who harm consumers as a result of consuming the goods or products they sell.
2. The forms of liability for compensation include replacing products that contain defects, refunds in accordance with the agreement, health care and compensation including insurance.
3. Compensation for losses must be provided within a maximum period of 7 (seven days) after the transaction date.
4. In this case, business actors can defend themselves by providing reverse proof if the fault lies with the consumer and the business actor is declared not guilty.

Therefore, the objective stated in the provisions of Article 19 of Law Number 8 of 1999 concerning Consumer Protection is that business actors are obliged to compensate for any losses experienced by consumers, whether losses in the form of damage, financial losses, pollution losses, or losses in the form of health, then business actors are obliged to be responsible in accordance with the provisions stated in Article 19 of Law Number 8 of 1999 concerning Consumer Protection, namely the form of responsibility includes refunds, replacement of goods during transactions, maintenance, or by providing compensation. This form of compensation must be fulfilled within a maximum period of 7 (seven) days after the transaction date. The purpose of this regulation is for business actors to understand consumer rights and their responsibilities as business actors in accordance with applicable regulations, so that the problem does not reach the courts. If we examine Article 19 paragraph (5) further, we can conclude that if the fault is not on the consumer, but if it turns out that the consumer is indicated to have made a mistake, the business actor can be released from their responsibility to compensate for the loss.<sup>17</sup>

1. Evidence Caused Based on the Element of Error

Article 22 of Law Number 8 of 1999 concerning Consumer Protection questions the criminal aspect of the problem of violations of Articles 19, 20, and 21 where the burden

<sup>16</sup> Aulia Muthiah, *Op Cit*, p. 188

<sup>17</sup> Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Pasal 19 ayat (5)



of proving the element of fault in criminal cases is placed on the producer and/or service.

## 2 Business actors refuse to take responsibility

Article 23 of Law Number 8 of 1999 concerning Consumer Protection states: “business actors who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the Consumer Dispute Resolution Agency or submitted to the Judicial Body at the consumer's domicile.” Article 23 of Law Number 8 of 1999 concerning Consumer Protection continues from the provisions of Article 19 which states that if a business actor refuses to pay compensation to a consumer, the business actor can be sued to the Consumer Dispute Resolution Agency or the court. Thus, Article 19 offers a peaceful means. If the parties do not utilize it, a judicial body can be chosen to resolve it.

## 3 Intermediary Responsibilities

- 1) Producers or business actors who trade goods or services to other producers are responsible for compensation, claims for compensation and lawsuits filed by consumers if there are:
  - a. In the case of producers or business actors who sell business results without making changes to the structure or price of the goods or services sold.
  - b. Then what usually happens is that when a transaction occurs, the business actor is not informed by the previous business actor that there has been a change in the quality or standard of goods and services.
- 2) Producers or business actors are released from responsibility in the form of compensation for losses and if this happens to consumers, if it is found that other business actors or producers who sell the goods have made changes to the goods they sell as referred to in paragraph (1).

The regulations contained in Article 24 of Law Number 8 of 1999 concerning Consumer Protection contain responsibilities for goods produced by other producers traded, so in this case, the provisions also contain responsibilities for other parties involved in the buying and selling activities. The affirmation of responsibility in this case prioritizes the producer, unless the goods produced are then changed so that they are not the same as when they were originally



finished being produced. Regarding this problem, the person who is fully responsible is the business actor who changed the structure of the goods.<sup>18</sup>

The following are the forms of consumer dispute resolution regarding defective products as stipulated in the Consumer Protection Law: these can be conducted in court or out of court through the Consumer Dispute Resolution Agency (LPSK). These settlements can be pursued based on the choice of the disputing parties. Out-of-court dispute resolution aims to reach an agreement between the business actor and the consumer regarding the form of responsibility or the amount of compensation to prevent recurrence.<sup>19</sup> The form of dispute resolution carried out through non-litigation, namely BPSK, the first is the pre-trial stage whose purpose is to obtain information from business actors and consumers that results in a fair settlement for both parties. In this case, BPSK as a consumer dispute resolution institution is expected to direct business actors and consumers to take the path of mediation, arbitration, and conciliation in accordance with the provisions stated in Article 52 letter a of Law Number 8 of 1999 which states that BPSK resolves consumer disputes through mediation, conciliation, and arbitration.

In the author's opinion, the provisions in Article 19 paragraph (2) and paragraph (3) of the Consumer Protection Act stipulate that compensation must be provided no later than 7 (seven) days after the transaction date. This provision is intended to provide legal certainty for consumers and encourage business actors to immediately take responsibility for product defects experienced by consumers. However, in practice, this provision is often unrealistic because product defects are usually discovered when the goods have been received by consumers or after the goods have been used, and then related to proving product defects requires a considerable time related to inspections, technical tests, and negotiations. And business actors often delay using administrative reasons or internal investigations. For automotive products, for example, completely new cars/vehicles (not second-hand vehicles), it is only discovered several months later, after a complaint/complaint is submitted by the consumer.

The provisions contained in Article 19 paragraph (3) of the Consumer Protection Law state that the 7-day time limit is not intended to undergo a proof process, but only to provide an opportunity for producers to pay or seek other solutions, including dispute resolution through the courts. However, it should be noted that the provisions for returning goods will still be

<sup>18</sup> Pasal 24 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Pasal 24

<sup>19</sup> Pasal 47 Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Pasal 47



tested by the good faith of the parties in implementing the sales and purchase agreement, as the main agreement.<sup>20</sup>

According to Roskowski, in equating strict liability with absolute responsibility, it does not matter whether there is an error or not, but the business actor is responsible for losses arising from defective products due to consuming goods produced by the business actor.<sup>21</sup> In Article 8 of the Law on Consumer Protection, there are regulations regarding prohibited actions for business actors, namely, in paragraph (2), it is stipulated that business actors are prohibited from trading damaged, defective, or used goods, and contaminated goods without providing complete and correct information about the goods in question. Furthermore, in Article 19 of the Law on Consumer Protection in the Chapter on Business Actors' Responsibilities, it is stipulated that business actors are responsible for providing compensation for damage, contamination, and/or losses to consumers due to consuming goods and/or services produced or traded.<sup>22</sup>

Furthermore, Article 22 of the Consumer Protection Law stipulates that proving the existence or absence of fault in criminal cases is the burden and responsibility of the business actor.<sup>23</sup> Furthermore, the explanation of Article 22 also states that this provision is intended to implement a reverse burden of proof system. The reverse burden of proof in consumer protection means that in consumer protection cases, the burden of proof falls directly on the business actor from the outset, and the consumer is only required to prove their losses.<sup>24</sup>

Dispute resolution through the BPSK is not a requirement for consumers before ultimately resolving the dispute through the courts. However, BPSK decisions have sufficient legal force to provide shock therapy for fraudulent businesses, as they can serve as preliminary evidence for investigators.<sup>25</sup>

The Consumer Dispute Resolution Agency (BPSK) was established as a special institution for resolving consumer disputes outside the courts as stipulated in Article 49 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection (UUPK).<sup>26</sup> BPSK is given the authority to resolve disputes between consumers and business actors through mediation,

<sup>20</sup> Hukumonline.com, Hukumnya Jika Jangka Waktu Pengembalian Barang Dibatasi oleh Penjual, sumber: <https://www.hukumonline.com/klinik/a/hukumnya-jika-jangka-waktu-pengembalian-barang-dibatasi-oleh-penjual-1t620bb0a047294/> diakses 22 des 2025.

<sup>21</sup> Janus Sidabalok, 2010, *Hukum Perlindungan Konsumen di Indonesia*, Citra Aditya Bakti: Bandung, p. 116

<sup>22</sup> Undang-Undang tentang Perlindungan Konsumen, Pasal 19

<sup>23</sup> Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Pasal 22

<sup>24</sup> Hukumonline, Hakim Akan Gunakan Pembuktian Terbalik, sumber: <https://www.hukumonline.com/berita/a/hakim-akan-gunakan-pembuktian-terbalik--hol17152/> diakses 14 Oktober 2023.

<sup>25</sup> Gunawan Widjaja dan Ahmad Yani, 2003, *Hukum Perlindungan Konsumen*, Gramedia: Jakarta, p. 73

<sup>26</sup> Undang-Undang Nomor 8 tahun 1999 tentang Perlindungan Konsumen Pasal 49



conciliation, and arbitration mechanisms as stipulated in Article 52, letter a of the UUPK. In addition, BPSK also has the authority to determine whether or not there is a consumer loss, summon business actors, and issue decisions on compensation and administrative sanctions. BPSK decisions are final and binding, as stipulated in Article 54 paragraph (3) of the UUPK, which normatively indicates that the legislators want BPSK to be an effective, fast, and simple legal protection instrument for consumers.

Consumer dispute resolution through the Jakarta Consumer Dispute Resolution Agency (BPSK) can be said to be ineffective in resolving consumer disputes. In 2015, out of 512 trials held at the Jakarta BPSK, only 130 cases were resolved. In 2016, there were 216 cases, of which 90 were resolved. In 2017, 128 cases were submitted, of which approximately 75 were resolved. In 2018, of the 170 cases submitted to the BPSK, only 75 were resolved through mediation, conciliation, and arbitration. Meanwhile, 95 cases did not reach an agreement between the parties. Although the existence of the BPSK is highly anticipated by the public, especially consumers and business actors, several obstacles remain in resolving consumer disputes through the BPSK.<sup>27</sup>

Achmad Ali argues that when one wants to know the extent of the effectiveness of the law, one must first be able to measure "the extent to which the legal rules are obeyed or not obeyed." Furthermore, Achmad Ali also stated that, in general, the factors that greatly influence the effectiveness of a law are the professionalism and optimal implementation of the roles, authorities, and functions of law enforcers, both in explaining the tasks assigned to them and in enforcing the law.<sup>28</sup> In practice, the implementation of BPSK decisions sometimes becomes problematic when business actors do not file objections but also fail to implement the BPSK decision. Similarly, the execution of BPSK decisions uses the basis stipulated in the HIR/RBg. The BPSK does not act on behalf of consumers. Instead, it acts as an arbitrator to resolve consumer and business disputes. With the existence of objections to BPSK decisions from the District Court to the Supreme Court, consumers' rights are not fulfilled with certainty, resulting in consumers being delayed in obtaining compensation because they must wait for the completion of the legal process. When this is linked to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, an inconsistency appears, as its decisions, which are final and binding, do not provide for appeals or cassation.<sup>29</sup> The obstacles faced by the

<sup>27</sup> Rahmi Rimanda, *Keberadaan Badan Penyelesaian Sengketa Konsumen (Bpsk) Sebagai Lembaga Quasi Yudisial Di Indonesia*, Jurnal Bina Mulia Hukum, Vol. 4 No. 1, September 2019, p. 36

<sup>28</sup> Achmad Ali, 2010, *Mengungkap Teori Hukum dan Teori Peradilan Vol.1*, Kencana: Jakarta, p. 375.

<sup>29</sup> Isis Ikhwanayah, 2010, *Hukum Persaingan Usaha Dalam Implementasi Dan Praktik*, Unpad Pres: Bandung, p. 68



Consumer Dispute Resolution Agency in resolving disputes are: First, institutional obstacles, namely the overly complex duties of the Consumer Dispute Resolution Agency, including tasks related to dispute resolution and tasks outside of dispute resolution (guidance and supervision efforts). Second, funding obstacles, the absence of regulations that clearly and in detail regulate the allocation that should be allocated to the Consumer Dispute Resolution Agency. Third, human resource obstacles for the Consumer Dispute Resolution Agency, the lack of BPSK human resources who have expertise in resolving consumer disputes. Fourth, low awareness of consumer protection law, which is due to the lack of information to the public regarding their rights as consumers to be able to claim their rights through dispute resolution at the Consumer Dispute Resolution Agency.<sup>30</sup>

## **2. Regulations Concerning Consumer Rights to Obtain Compensation for Losses Caused by Defective Products That Harm Consumers Based on Law Number 8 of 1999**

Based on the opinions of experts, Endang Saefullah argues that a product can be defined as something that can be seen in real life and held, or also called tangible goods, which means goods that are movable or immovable. However, in the problem of product responsibility or also called product liability, it is stated that the product is not only something that is visible and can be held, but also in the form of intangible goods, for example, electricity, then natural production goods such as animal food, then writing, such as that found on flight maps, as well as household equipment.<sup>31</sup>

The next expert opinion, namely Philip Kotler, defines a product as something that can be bought and sold, owned by the public, consumed by the public, and used so that it is useful according to the public's needs. Defective or damaged products, also called defective products, which require business actors to be responsible for them, are categorized into 3 (three) groups: production/manufacturing defects, design defects, and warning or instruction defects.<sup>32</sup> Further understanding of production defects or Production/manufacturing defects is a product or goods that are very far from the product quality standards according to the provisions expected by consumers, furthermore Manufacturing defects or defects caused by the production process

<sup>30</sup> Imam Budi Santoso, dan Dedi Pahroji, "Optimalisasi Peran Dan Fungsi Badan Penyelesaian Sengketa Konsumen Dalam Penyelesaian Sengketa Konsumen Di Kabupaten Karawang", *Jurnal Unsika*, Vol. 11 No. 24, Sep-Nop 2012, p. 6

<sup>31</sup> Endang Saefullah, *Tanggung Jawab Produsen di Era Perdagangan Bebas, makalah disajikan dalam Seminar Perspektif Hukum Perlindungan Konsumen dalam Era Perdagangan Bebas*, Universitas Islam Bandung, 9 Mei 1998, p. 35

<sup>32</sup> *ibid*, p. 36



can be defined as a discrepancy between the level of consumer satisfaction, product details, and violations of provisions that are in accordance with consumer expectations.<sup>33</sup>

The responsibility that business actors are required to carry out due to defective products being traded was initially only specifically for beverage and food products, but was then expanded to include all products produced by business actors.<sup>34</sup> The definition of a design defect or design defect is a condition where a product contains a risk that can be dangerous and prevention can be carried out in accordance with what is expected by consumers, in this case this design defect was initially caused by business actors who did not prepare the product that would be produced which usually includes the structure, raw materials, or construction.<sup>35</sup>

Furthermore, the discussion regarding the rights to obtain compensation has not been specifically stated in Law Number 8 of 1999 concerning Consumer Protection, both in form and amount; the regulation only clarifies the rights that must be fulfilled by business actors towards consumers. This is in accordance with the opinion of Kennedy, President of the United States, expressed in a speech held at the United States Congress on September 15, 1962, which stated that there are 4 consumer rights that must be fulfilled, namely the right to safety or the right to product safety, then the right to be informed or the right to product information, the right to choose or the right to choose a product, the right to be heard or the right to have one's opinion heard.<sup>36</sup>

Then, in addition to that, European economic circles group the basic rights of consumers, including the right to protection of health and safety, the right to protection of economic interest, the right of redress, the right to information and education, and the right to representation/the right to be heard.<sup>37</sup> The consumer rights that European society believes in are the right to health and safety protection, the right to protection of economic interests, the right to compensation, the right to information, and the right to be heard.<sup>38</sup>

<sup>33</sup> Amaliyah, 2003, *Perlindungan Konsumen atas Bahan Tambahan Pangan pada UU No. 8 Tahun 1999 tentang Perlindungan Konsumen jo UU No. 7 Tahun 1996 tentang Pangan*, Skripsi Program Sarjana Ilmu Hukum pada Fakultas Hukum Universitas Islam Bandung, p. 49.

<sup>34</sup> David Ouhgton and John Lowry, 1997, *Text Book on Consumer Law*, Blackstone Press Limited: London, p. 185

<sup>35</sup> *ibid*, p. 50

<sup>36</sup> I. Samsul, 2004, *Perlindungan Konsumen Kemungkinan Penerapan Tanggung Jawab Mutlak*. Universitas Indonesia: Jakarta, p. 127.

<sup>37</sup> *Ibid*, p. 128

<sup>38</sup> Yayasan Lembaga Konsumen Indonesia, 1981, *Pokok-Pokok Pikiran Tentang Permasalahan Perlindungan Konsumen, Buku II*. Jakarta, p. 24



The consumer rights grouped by European economists agreed on the right to compensation as a consumer right that must be fulfilled by business actors. The International Organization of Consumer Unions (IOCU) then put forward several consumer rights, summarized by Kennedy, namely:

- 1) Consumers have the right to receive compensation.
- 2) Consumers also have the right to consumer education<sup>39</sup>

Furthermore, the IOCU argues that the impact of consumption on the environment is referred to as "the right to a healthy environment," or the right to a clean living environment.

In Indonesia, there are five basic consumer rights, namely:

- 1) Consumers have the right to security and safety
- 2) Consumers have the right to information
- 3) Consumers have the right to choose
- 4) Consumers have the right to be heard
- 5) Consumers have the right to a clean living environment<sup>40</sup>

According to the legal systems in England and America, rights arise from legal principles, which are intended to foster a system that protects members of society. In addition to the Anglo-American legal system, Continental European Law, specifically Dutch law, defines rights as arising from legal principles, but these legal principles themselves arise from an awareness of the law. Another opinion is expressed by Barker, who cites Hartono, who states that consumer rights should meet three criteria:

- 1) Rights arise from the need for human development.
- 2) Rights arise from human recognition.
- 3) State institutions must guarantee and protect these rights.

The provisions as contained in Law Number 8 of 1999 concerning Consumer Protection, namely the form of responsibility for defective products, are contained in Article 4, Article 6 and Article 7. In Article 4 of Law Number 8 of 1999 concerning Consumer Protection, it has been explained regarding the rights that consumers must obtain. Furthermore, in the explanation of Article 4 letter a, consumers have the right to comfort, security, and safety in consuming goods or services, because if the product has defects, the one who will be harmed is the consumer.<sup>41</sup>

Then, in Article 4 letter c of Law Number 8 of 1999 concerning Consumer Protection, it is stated that consumers have the right to obtain clear and honest information, related to

<sup>39</sup> *Ibid*, p. 20

<sup>40</sup> *Ibid*, p. 21

<sup>41</sup> Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen Pasal 4



products received that do not match the description, are defective or missing, often consumers do not receive the truth or clarity of information and even no notification at all from business actors. Likewise, consumers are usually reluctant to make complaints or report defective or damaged goods, business actors usually make it difficult for consumers to complain. Therefore, this action is very unjustified and does not comply with applicable regulations, namely in Article 4 letter d of Law Number 8 of 1999 concerning Consumer Protection which states that "consumers have the right to have their opinions and complaints heard regarding the goods and/or services consumed." Furthermore, in the regulations contained in Article 4 letter e which reads "consumers have the right to obtain advocacy, protection, and efforts to resolve consumer protection disputes properly." Then what is stated in Article 4 letter h is that consumers have the right to obtain compensation, damages and/or reimbursement due to the losses they experience."<sup>42</sup> However, consumers are often unaware that they have rights that must be fulfilled by businesses. According to Article 6, letter a of Law Number 8 of 1999 concerning Consumer Protection, businesses are required to receive payment in accordance with the agreement regarding the conditions and exchange value of the goods and services traded.<sup>43</sup>

The principles of consumer protection are explained in more detail in Article 2 of Law Number 8 of 1999 concerning Consumer Protection, which states that "consumer protection is based on the benefits of justice, balance, security and safety of consumers, and legal certainty." The purpose of the principles of consumer protection is to provide consumers with guarantees of protection and legal certainty regarding the rights that consumers must receive. Furthermore, Article 3 of Law Number 8 of 1999 concerning Consumer Protection discusses the objectives of consumer legal protection, including:

- 1) Increase consumer awareness, ability, and independence to protect themselves.
- 2) Elevate consumer dignity by preventing them from accessing negative aspects of goods and services.
- 3) Increase consumer empowerment in choosing, determining, and demanding.

If in the future it is found that a business actor has violated consumer rights as explained in Law Number 8 of 1999 concerning Consumer Protection, the business actor is obliged to protect the interests of consumers, violations of rights are contained in Law Number 8 of 1999 concerning Consumer Protection as follows:

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<sup>42</sup> Ahmadi Miru dan Sutarman Yodo, 2014, *Hukum Perlindungan Konsumen*, Jakarta: Raja Grafindo Persada: Jakarta, p. 13

<sup>43</sup> Undang-Undang No. 8 Tahun 1999 tentang Perlindungan Konsumen Pasal 6 huruf a



- 1) Business actors violate consumers' rights to comfort, security, and safety when consuming goods and services.
- 2) Business actors violate consumers' rights to choose goods or services and to obtain them according to the exchange rate, conditions, and guarantees promised.
- 3) Business actors violate consumers' rights to have their opinions and complaints heard regarding the goods and services they use.
- 4) Business actors are required to guarantee the quality of the goods and services they produce and trade based on applicable goods and services quality standards.

Based on Article 45, paragraph 2 of Law Number 8 of 1999 concerning Consumer Protection, it can be seen that the regulation is intended to ensure peaceful dispute resolution, before the parties undertake further dispute resolution through the Consumer Dispute Resolution Agency (BPSK) or the judiciary. The provisions of Article 47 of Law Number 8 of 1999 concerning Consumer Protection and its explanation can be seen that the final result of consumer dispute resolution outside the court is:

- 1) An agreement must be reached between the two parties.
- 2) Responsibility for compensation to consumers.
- 3) The form and amount of compensation provided to consumers.
- 4) Business actors must guarantee, in a written statement, that they will not repeat the same actions related to losses.

Compensation for losses caused by the actions of business actors is explained in Article 19 of Law Number 8 of 1999 concerning Consumer Protection, including:

- 1) In the case of compensation, the business actor is responsible for providing compensation for damage, pollution, and/or services produced.
- 2) Compensation as referred to in paragraph (1) may take the form of a refund or replacement of similar or equivalent goods or services.
- 3) Compensation must be provided within 7 (seven) days after the transaction date.<sup>44</sup>

Regulations regarding consumer rights are an implementation of a prosperous country based on the 1945 Constitution. The detailed consumer rights are:<sup>45</sup>

- 1) The right to comfort, security, and safety in consuming goods and/or services;

<sup>44</sup> Aulia Muthiah, 2018, *Hukum Bisnis-Hukum Perlindungan Konsumen*, (Yogyakarta: Pustaka baru pers: Yogyakarta, p. 86

<sup>45</sup> I. Samsul, Op Cit. p. 8.



- 2) The right to choose goods and/or services and to obtain them in accordance with the exchange rate, conditions, and guarantees promised;
- 3) The right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services;
- 4) The right to have opinions and complaints regarding the goods and/or services used heard;
- 5) The right to receive appropriate consumer protection advocacy;
- 6) The right to receive consumer guidance and education;
- 7) Furthermore, consumers have the right to be treated and served properly and honestly and without discrimination;
- 8) Consumers also have the right to receive compensation, restitution, and/or replacement if the goods and/or services received do not comply with the agreement or are not as intended;
- 9) Other laws and regulations governing consumer rights.

Therefore, what is contained in Article 27 paragraph (2) and Article 33 of the 1945 Constitution of the Republic of Indonesia is an explanation of consumer rights which are defined as the fourth generation of human rights which aim to be the key to human rights in the future, from the explanation of consumer rights that the issue of consumer rights to consumer comfort, security and safety is a very important concept in legal protection for consumers. The provision of compensation is based on three things, namely: personal injury (including death or mental disorders), damage to personal property, and loss of economic profit. The main objective is to provide punishment in the form of an obligation to pay compensation to consumers due to actions carried out by business actors.<sup>46</sup>

In the Consumer Protection Act, the concept of compensation is based on subjective losses, meaning the form of loss must be experienced by the consumer, and then the subjective circumstances are calculated. This issue is discussed in two theories:

- 1) *Conditio Sine Qua Non* was put forward by Van Buri
  - a. Based on the explanation of this theory, this theory is a consequence that arises from an event whose existence cannot be eliminated, and then all of these events form a "cause".

<sup>46</sup> David Oughton and John Lowry, 1999, *Question & Answers Law of Torts*, Blackstone Press Limited: London, p. 223.



- b. Furthermore, van Buri put forward the *conditio sine qua non*, arguing that every condition that is omitted in the event of an effect is considered as every condition being a cause. This understanding has clearly received criticism from the parties and cannot be applied to the legal system.

2) *Adequate veroorzaking (von kries)*

This theory holds that a condition is a cause if, by its nature, it is capable of producing an effect. The Hoge Raad formulates that an act is a cause if, according to experience, it can be expected or predicted that the effect in question will occur.<sup>47</sup>

The liability of business actors in providing compensation is generally in the form of money. Based on the legal system in Indonesia, money is a legal and practical means of payment, so it does not cause complex problems. The form of liability for compensation can be in the form of restoring the situation to its original, state and prohibiting the business actor from repeating the error.<sup>48</sup>

In more detail, consumer rights regulations regarding defective products are regulated in Article 1504 of the Civil Code, which states: "The seller must guarantee the goods against hidden defects, which are such that the goods cannot be used for the intended purpose, or which reduce their use so much that if the buyer had known about the defect, he would not have bought it at all, or would not have bought it except at a lower price".<sup>49</sup>

Based on the author's thoughts contained in Article 19 of Law Number 8 of 1999 concerning Consumer Protection, there is no definition of defective products; however, this regulation explains more specifically regarding the responsibility of business actors who must fulfill their responsibilities, namely replacing losses due to defects in the products they sell.

Therefore, business actors are required to apply the principles of responsibility for the products they trade, in Article 19 of Law Number 8 of 1999 concerning Consumer Protection which relates to the provisions of Article 23 of the Consumer Protection Law which states: "business actors who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as referred to in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through a consumer dispute resolution body or submitted to a judicial body at the consumer's domicile." This regulation is further continued in Article 28 of Law

<sup>47</sup> Ahmadi Miru dan Sutarmanto Yodo, Op Cit, p. 136.

<sup>48</sup> Mariam Darus Badruzaman, 1996, *KUHPerdata Buku III Hukum Perikatan dengan Penjelasan*, Alumni: Bandung, p. 30

<sup>49</sup> H. H. Tuanaya, *Prinsip Tanggungjawab Produk (Product Liability) Menurut Undang-undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen*, *Pamulang Law Review*, Vol. 4(2), 147-156, 2021, p. 151-152



Number 8 of 1999 concerning Consumer Protection which states: "proving whether or not there is an element of error in a claim for compensation as referred to in Article 19, Article 22, and Article 23 is the responsibility of the business actor."

Based on the principle of product liability, the business owner is responsible. Therefore, in the cases described above, the business owner's responsibility is to recall the defective product.<sup>50</sup>

#### **D. CONCLUSION**

1. The form of business actor's responsibility towards consumers for defects in the products they produce is reviewed from Law Number 8 of 1999 concerning Consumer Protection is absolute (product liability). Furthermore, in this case, full responsibility is given to the business actor for the goods being traded and the business actor is required to compensate consumers for losses due to the use of goods or services that are damaged, defective, or not in accordance with the promised quality. The form of compensation can be in the form of a refund, replacement of goods or services, health care, or the provision of compensation which must be given within a maximum period of 7 (seven) days after the transaction, but the business actor can be released from responsibility if it can prove that the loss occurred due to consumer error.
2. Regulations regarding consumer rights to obtain compensation for losses suffered by consumers due to defective products based on Law Number 8 of 1999, namely consumer rights to compensation are regulated in Article 4, Article 19, and Article 23 of the Consumer Protection Act, which guarantees consumer rights to comfort, security, safety and compensation if the product received does not comply with the agreement. Dispute resolution can be carried out through litigation (Court) if a peaceful and non-litigation agreement is not reached, namely BPSK. The purpose of regulating the right to compensation is to provide effective legal protection for consumers and encourage business actors to act in good faith and be more responsible in every stage of production and distribution.

#### **SUGGESTION**

1. Strict supervision is needed for business actors or producers in producing the goods and/or services they trade, because weak supervision results in business actors not implementing the quality of goods in accordance with the quality standards contained in the provisions of the law. Furthermore, consumers should pay attention to the principle of caution in

<sup>50</sup> Sudjana dan Elisandris Gultom, 2016, *Rahasia Dagang dalam Perspektif Perlindungan Konsumen*, Cv. KENI Media: Bandung, p. 158



consuming goods or services because often the goods received do not match consumer expectations.

2. Provisions regarding defective products should be more clearly stated and detailed in statutory regulations, and business actors should pay attention to consumer rights that must be fulfilled, even though the Consumer Protection Law explains the responsibilities that must be fulfilled by consumers.

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