



THE CONSUMER PROTECTION IN THE BALANCE OF BUSINESS ACTORS AND CONSUMERS: A PARADIGM OF JUSTICE

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ABSTRACT

Consumer protection is a basic need because consumers are in a weaker position compared to business actors, who often pursue profits with business practices that can be detrimental. The aim of this research is to examine consumer protection in realizing a welfare state based on Pancasila, analyze the legal protection against the use of standard clauses, and formulate a legal reconstruction of consumer protection regarding the enforcement of administrative and criminal law in resolving consumer disputes. This research uses a socio-legal research approach. The results of this research are that reconstruction of legal protection for consumers is needed to prevent counterclaims against consumers who report violations. Thus, it is proposed that there be provisions for legal immunity for reporting consumers so that they cannot be prosecuted criminally or civilly before it is proven that the business actor is innocent. The formulation of criminal sanctions in the Consumer Protection Law also needs to be reconstructed so that it is in accordance with the legal system in force in Indonesia. Additional criminal sanctions such as revocation of business permits should not be the authority of criminal courts, but should be part of administrative authority.

1. Introduction

Every individual has diverse needs, as individuals and social creatures. Humans need other humans to fulfill their needs.¹ There are primary, secondary and tertiary needs. In fulfilling human needs, they consume or use goods and/or

1 Melinda Rahmawati, Ahmad Ruslan, and Desvian Bandarsyah., The Era of Society 5.0 as the unification of humans and technology: A literature review on materialism and existentialism, *Jurnal Sosiologi Dialektika*, Vol.16 Issue.2, 2021, page. 151-162

services originating from other humans. Therefore, every human being is a consumer of services provided by other humans who are called producers.²

Producers or business actors will seek the highest possible profits,³ producers/business actors must compete with each other with their own business behavior which can be detrimental to consumers.⁴ Therefore, consumers fundamentally need legal protection considering the weak position of consumers compared to the position of producers which is relatively stronger in many respects.⁵

In the Preamble to the Consumer Protection Law,⁶ it is stated that the existence of the Consumer Protection Law guarantees an increase in people's welfare as well⁷ as certainty regarding the quality, quantity and safety of goods and/or services obtained in the market, increases awareness, knowledge, care, concern, ability and independence and develops the attitude of responsible business actors.⁸ The phrase preamble to the Law has philosophical, juridical and sociological meaning.⁹ At the idea stage (dass sollen) the Consumer Protection Law can be enforced as well as possible to achieve legal objectives,¹⁰ namely legal justice, legal certainty and social welfare. However, on a practical level (dass sein) the reality is not as easy as turning the palm of your hand, not as expected.¹¹

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- 2 Raden Bella Bintang Maharani, Yuniar Rahmatiar, and Muhamad Abas., Perlindungan Hukum Terhadap Konsumen Akibat Produk Kecantikan Yang Mempunyai Efek Samping Terhadap Kulit, *Jurnal Legisla*, Vol.16 No.2, 2024, page.35-46
 - 3 Wisdom Kanda., Martin Geissdoerfer and Olof Hjelm, From Circular Business Models To Circular Business Ecosystems, *Business Strategy and the Environment*, Vol.30 Issue 6, 2021, page.2814-2829
 - 4 Aditya Migi Prematura, Suryani Suryani, and Agung Aditya, Consumer Protection Against Standard Clauses in Business Transactions Through E-Commerce, *Pena Justisia*, Vol. 21 No. 2, 2022, page 289-301
 - 5 Irma Aulia Ariani and M. Ikhsan Kamil., Tanggung Jawab Pelaku Usaha Atas Kerugian Konsumen Akibat Perbedaan Harga Barang Pada Label Dan Kasir Studi Dikota Mataram, *Unizar Recht Journal (URJ)*, Vol.3 No.3, 2024, page.375-387
 - 6 Ruwan Bandara, Mario Fernando and Shahriar Akter., Managing Consumer Privacy Concerns And Defensive Behaviours In The Digital Marketplace, Vol.55 Issue.1, 2020
 - 7 Bambang Sugeng Ariadi Subagyo, Zahry Vandawati Chumaida and Mochamad Kevin Romadhona., Enforcement of Consumer Rights Through Dispute Settlement Resolution Agency to Improve the Consumer Satisfaction Index in Indonesia, *Yuridika*, Vol.37 No.3, 2022, page.673-696
 - 8 Aselino Alfa Rizqie Ramadhan, Suharno Suharno and Nourma Dewi., Perlindungan Hukum terhadap Korban Jalan Berlubang di Tol Palembang-Lampung, *Jurnal Ilmu Hukum, Humaniora Dan Politik*, Vol.4 No.2, 2024, page.108-118.
 - 9 Achmad Taufan Soedirjo and Surya Jaya., Legal Criticism Of The Code Of Law The New Criminal Law Is Viewed From The Point Of View Philosophical, Sociological And Juridical, *Journal of Social Research*, Vol.2 No.8, 2023, page.2458-2473
 - 10 Ika Atikah., Consumer Rights Protection Against Price Gouging During The Covid-19 Pandemic In Indonesia, *UUM Journal of Legal Studies*, Vol.13 No.2, 2022, page.109-128
 - 11 Azhar Suganda, Andriansyah Hasibuan, Elsa Novri Regina, Mita Dewi Nasution, and Bonaraja Purba., Tinjauan Hukum Komersial Terhadap Perlindungan Hukum Konsumen Dalam E-Commerce Di Indonesia, *Jurnal Sosial Humaniora Sigli*, Vol.7 No.2, 2024, page.94-105

Monopoly¹² practices and less than optimal consumer protection put consumers in the lowest level position facing business actors.¹³ This consumer helplessness is clearly very detrimental to the interests of society.¹⁴ In general, business actors hide behind Standard Contracts or Standard Agreements that have been signed by both parties (between business actors and consumers), or through various false information provided by business actors to consumers in standard clauses.¹⁵

Bidding systems that are considered complex, tend to be convoluted and relatively expensive often require consumer rights and the obligations of business actors. As a result, people as consumers often do not clearly understand their rights and obligations in legal relationships with business actors. This uncertainty has the potential to harm consumers, especially in the face of unfair business practices or protecting power by business actors who are more dominant in the economic structure.¹⁶

Protection of national consumers is very important because it indirectly means protecting the entire nation, as mandated in the development goals stated in the Preamble to the 1945 Constitution. Consumers are an integral part of the national economy, so their rights must be guaranteed in order to create shared prosperity. Consumer protection also functions to prevent negative impacts from the use of technology. In today's digital era, technological developments often bring various risks, including personal data, digital-based fraud, and products that do not meet security standards.

The consumer's obligations are not fulfilled, the consumer will automatically not receive his rights and if the consumer's rights are not fulfilled, the business actor is obliged to compensate for the non-fulfillment of the consumer's rights. The majority of sanctions given for violations of Consumer Protection are in the form of compensation so that in certain cases it can be brought to the criminal chamber on the condition that there is evidence of elements of error in criminal cases.¹⁷ Consumer protection plays a role in creating a healthy business competition climate. When consumer rights are well protected, business actors are encouraged to provide products and services of higher quality and in

12 Or Brook and Magali Eben., Abuse Without Dominance And Monopolization Without Monopoly, *Elgar Online*, Chapter.14, 2023, page.259–281

13 Rachmadi Usman, *Aspek Hukum Pelindungan Konsumen Bank Indonesia*, Jambi: Sonpedia Publishing Indonesia, 2024, page.54

14 Vijay Kuriakose and Sreejesh S., Co-worker and Customer Incivility on Employee Well-Being: Roles of Helplessness, Social Support at Work And Psychological Detachment- A Study Among Frontline Hotel Employees, *Journal of Hospitality and Tourism Management*, Vol.56, 2023, page.443-453

15 Michell Anglly Marlina Oroh., Implikasi Hukum Tentang Perjanjian Baku (Standard Contract) Dalam Perjanjian Jual Beli Perumahan, *Lex Administratum*, Vol.12 No.4, 2024, page. 1-12

16 Dwi Atmoko and Ahmad Baihaki., Perlindungan Hukum Terhadap Konsumen Pada Produk Obat Tradisional Yang Beredar Di Masyarakat, *Jurnal Cahaya Mandalika*, Vol.5 No.2, 2024, page.694-703

17 Muchammad Shidqon Prabowo, Dewi Sulistianingsih., Reformulation of Consumer Protection Legal Policies In The Digital Business Era In Indonesia, *Diponegoro Law Review*, Vol.08 No.01, 2023, page.14-24

accordance with applicable standards. Consumer protection also ensures that development funds originating from the community, including from daily consumption, are used optimally. Protected consumers will be more confident in transactions, which ultimately contributes to economic growth and development aspirations.

In consumer protection, the question is how the provisions relating to running a business do not harm consumers and consumers obtain legal protection for their rights so as to create a balance between consumers and business actors based on the value of justice.¹⁸

Research from Fista states that consumer legal protection regulations have not been effective in preventing fraud committed by business actors in electronic transactions. It is hoped that the existence of a consumer legal protection law can prevent crimes committed by business actors and provide a legal umbrella for consumers.¹⁹

Other research from Aisyiah states that the implementation of criminal law in violations in the field of consumer protection shows that the principle of the reasonableness of losses that can be described by the criminal act is not fulfilled, the principle of subsidiarity that criminal law is only an ultimum remedium), the principle of proportionality in the form of a balance between losses and the purpose of punishment. the principle of legality in the principles of *lex certa* and *lex stricta*, and the principle of their practical use and effectiveness regarding enforcement, while the principle that is fulfilled is the principle of tolerance towards the formulation of criminal acts.²⁰

The purpose of this research is to examine consumer protection in realizing a welfare state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, analyze the legal protection against the use of standard clauses, and formulate a legal reconstruction of consumer protection regarding the enforcement of administrative and criminal law in resolving consumer disputes.

2. Research Methods

This research uses a socio-legal research approach.²¹ The specifications of this research are descriptive and descriptive analytical.²² It is descriptive analytical

18 Dimas Aryo Wibowo, Jopie Gilalo and Mulyadi., *Pertanggungjawaban Hukum Pelaku Usaha Objek Wisata Terhadap Konsumen Akibat Bencana Alam di Wilayah Kabupaten Bogor, Karimah Tauhid*, Vol.3 No.3, 2024, page.3032-3049

19 Yanci Libria Fista, Aris Machmud, and Suartini., *Perlindungan Hukum Konsumen Dalam Transaksi E-commerce Ditinjau dari Perspektif Undang-Undang Perlindungan Konsumen, Binamulia Hukum*, Vol.12 No.1, 2023, page.177-189

20 Siti Nur Aisyiah and Emmilia Rusdiana., *Kebijakan Sanksi Pidana Dalam Undang-Undang No 8 Tahun 1999 Tentang Perlindungan Konsumen, Novum: Jurnal Hukum*, Vol.11 No.1, 2024, page. 110-118

21 Ika Atikah., *Pengantar Metode Penelitian Hukum Sosio-Legal*. Bandung: CV Widina Media Utama, 2024, page.23

22 Juan Carlos Adiyaksa Sihombing and Aslan Noor, *Pertanggung Jawaban Hukum Terhadap Penimbunan Minyak Solar Dalam Mengantisipasi Kenaikan Harga Bahan Bakar Minyak Berdasarkan Undang-Undang Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi (Studi*

in nature, namely to describe all the symptoms and facts and analyze the problems that exist today. This research is also intended to obtain input on what must be done to overcome the problem of Reconstructing Consumer Protection Laws in Creating a Balance of Business Actors and Consumers Based on Justice Values.

3. Results and Discussion

3.1. The Consumer Protection Realizing a Welfare State Based on Pancasila and the 1945 Constitution of the Republic of Indonesia in Realizing Justice

Consumer protection is absolutely carried out by the state in accordance with the United Nations General Assembly Resolution.²³ Regulation of consumer rights through law is part of the implementation of a welfare state, because the 1945 Constitution of the Republic of Indonesia, apart from being a political constitution, can also be called an economic constitution, namely a constitution that contains the idea of a welfare state so that it can grow and develop.²⁴

Consumer protection is carried out on the basis of justice,²⁵ functions to increase awareness, ability and independence of consumers to protect themselves, is tasked with protecting public health and goods produced domestically and illegally imported in order to increase understanding to avoid and care for human health from food and non-food production for consumers who will use it and business actors in carrying out their business have a responsible attitude.²⁶

Consumer protection is all efforts to ensure legal certainty to provide protection to consumers, regulated in the Consumer Protection Law.²⁷ Consumer protection aims to accommodate developments that occur due to the influence of globalization of trade. In accordance with the legal objectives, the reasons

Kasus Putusan Nomor 113/Pid.B/Lh/2022/Pn Kwg, *Jurnal Ilmiah Wahana Pendidikan*, Vol.10 No.21, 2024, page. 444-457

23 Ramon Nofrial and Darwinsyah Minin., Reconstruction Of Consumer Protection Law In Making The Balance Business Based Business And Consumer Value Of Justice, *The 2nd Proceeding of Indonesia Clean of Corruption*, 2020, page.693-705

24 Franklin Junior Mangare., Keterbukaan Informasi Bagi Konsumen Penyandang Disabilitas Dalam Aspek Perlindungan Hukum, *Lex Privatum*, Vol.13 No.5, 2024. Page. 1-13

25 Ana Stojilovska., Energy Poverty and The Role of Institutions: Exploring Procedural Energy Justice-Ombudsman in Focus, *Journal of Environmental Policy & Planning*, Vol.25 Issue.2, 2023, page. 169-181

26 Nafis Dwi Kartiko, Samuel Putra Soegiono, Carissa Amanda Siswanto, and Astrid Athina Indradewi., Perlindungan Konsumen Sektor Keuangan: Peran OJK dalam Menghadapi Ancaman Phising dan Skimming, *Iuris Studia Jurnal Kajian Hukum*, Vol.5 No.2, 2024, page.347-363

27 Rachmat Suharno (etc)., Perlindungan Hukum Bagi Konsumen Barang Rekondisi Handphone Dalam Jual Beli Online Dihubungkan Dengan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen Juncto Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik, *Wacana Paramarta: Jurnal Ilmu Hukum*, Vol.23 No.2, 2024, page. 16-25

for establishing the Consumer Protection Law can be seen from philosophical, juridical and sociological aspects.²⁸

The philosophical aspect is Pancasila which underlies development for welfare, and material, but also spiritual in the era of economic democracy.²⁹ From the juridical aspect, it is the establishment of legal rules which function as the main guidelines in implementing consumer protection so that it runs in an orderly and fair manner and contains certainty regarding goods and/or services obtained from trade without causing consumer losses. The government and DPR formed the Consumer Protection Law in accordance with the authority specified in Article 5 paragraph (1), Article 21 paragraph (1), Article 27, and Article 33 of the 1945 Constitution of the Republic of Indonesia.

Related to the sociological aspect, consumer protection is based on the desire for national economic development in the era of globalization to be able to support the growth of the business world so that it is able to produce various goods and/or services that contain technological content so that it can improve the welfare of many people.

In implementing law enforcement, justice must be taken into account, but law is not identical with justice, law is general, binding on everyone, generalizing in nature. Everyone who steals must be punished without discriminating between who stole. On the other hand, justice is subjective, individualistic and does not generalize. Fair to one person may not necessarily be fair to another.

Radbruch said that the law must fulfill various works referred to as the basic values of the law.³⁰ The basic values of law are: justice, usefulness and legal certainty. Even though these three are the basic values of law, between them there is a Spannungsverhältnis (tension), because between the three basic values of law each has different demands from one another, so that all three have the potential to conflict with each other.

If we tend to adhere more to the value of legal certainty or from the perspective of regulations, then as a value it will immediately shift the values of justice and utility. Because what is important in the value of certainty is the regulation itself. Regarding whether the regulations fulfill a sense of justice and are useful for society is beyond prioritizing the value of legal certainty. Likewise, if we tend to stick to utility value alone, then as a value it will shift the value of legal certainty and the value of justice, because what is important for utility value is the fact whether the law is beneficial or useful for society. Likewise, if we only adhere to the value of justice, then as a value it will shift the value of

28 Nurul Hafilda, Marlia Sastro, and Elidar Sari., Interpretasi Hakim Terhadap Penerapan Klausula Baku Berdasarkan Undang-Undang Perlindungan Konsumen, *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh*, Vol.12 No.1, 2024, page. 106-129

29 Saan Mustopa, Muradi, Obsatar Sinaga, R. and Widya Setiabudi Sumadinata., The Development of Indonesian Pancasila Democracy, *Journal of Survey in Fisheries Sciences*, Vol.10, No.3, 2023, page.533-547

30 Mohammad Wangsit Supriyadi (etc). Pokok Pikiran Dan Sumbangsih Fundamental Gustav Radbruch Terhadap Perkembangan Ilmu Dan Hukum, *Quantum Juris: Jurnal Hukum Modern*, Vol.7 No.1, 2025, page.395-413

certainty and utility, because the value of justice is not tied to legal certainty or utility value, because something that is felt to be fair is not necessarily in accordance with the value of utility and legal certainty. Thus, we must be able to make comparisons between the three values or be able to strive for a compromise that is proportionally harmonious, balanced and harmonious between the three values.

3.2. The Legal Protection Against the Use of Standard Clauses

Protection is provided by the government as the holder of regulations and policies in a country.³¹ The government's responsibility can be carried out in the form of guidance and supervision.³² The aim of this guidance and supervision is to empower consumers to obtain and know their rights, not just their obligations, to build positive and dynamic business activities so that consumer rights can still be considered by business actors.³³

In connection with the above, the government protects consumers by providing regulations limited to the preparation of standard clauses, namely that it is prohibited to allow any form of transfer of responsibility from business actors to consumers in Article 18 paragraph (1) letter a.³⁴ It is best if a clear time period is given regarding this prohibition so that business actors producing goods can be freed from responsibility for losses experienced by consumers. In this case, Article 27 letter e UUPK provides a limit of 4 (four) years. If there are no clear regulations, it will close the possibility for business actors to escape responsibility by including standard clauses more quickly than the provisions stipulated in the law.

Regarding this matter, the prohibition includes a standard clause which states that business actors have the right to refuse to return goods and/or services purchased by consumers,³⁵ This also requires a time period because it is possible that for the reason of this article, business actors refuse any goods and/or services purchased by consumers without paying attention to everything, for example goods that have only been purchased one day because there is certain damage. Business actors refuse to return the goods (Article 18 paragraph (1) letter b).

31 Albert Kurniawa and R. Rahaditya., Perlindungan Hukum bagi Pemegang Hak Atas Merek dalam Sengketa Merek, *Jurnal Ilmu Hukum, Humaniora Dan Politik*, Vol.4 No.4, 2024, page. 914-921

32 Xinran Sun, Wenwen Wang, Jingru Pang, Xiaoxiao Liu, and Ming Zhang., Study On The Evolutionary Game Of Central Government And Local Governments Under Central Environmental Supervision System, *Journal of Cleaner Production*, Vol.296, 2021,

33 Lilik Prihatin, Maria Yosepin Endah Listyowati and Thomas Ichfan Hidayat., Perlindungan Hak Kekayaan Intelektual: Sebuah Esensial Hak Cipta Pada Era Revolusi Industri 4.0, *UNES Law Review*, Vol.6 No.4, 2024, page.11321-11329

34 Muhammad Fathan Zahran Dika and Anna Maria Tri Anggraini., Perlindungan Konsumen Atas Penerapan Klausula Eksonerasi Dalam Perjanjian Keanggotaan Fit Hub Menurut Undang-Undang Nomor 8 Tahun 1999, *Reformasi Hukum Trisakti*, Vol.6 No.4, 2024, page.1480-1491

35 Agus Suwandono (etc)., Penyuluhan Hukum Mengenai Larangan Pencantuman Klausula Baku Bagi Pelaku Usaha dalam Rangka Mewujudkan Pelindungan Konsumen, *PaKMAs: Jurnal Pengabdian Kepada Masyarakat*, Vol.4 No.1, 2024, page. 242–251

Article 18 paragraph (1) letter b is a counterpart to Article 18 letter c, where business actors have the right to reject goods returned by consumers and not return the money that consumers have paid for goods they have received. This does not apply absolutely, consumers can only return the goods they have received, of course with a refund of the payment for the goods, if the return is based on reasons justified by law.

The standard clause which contains the granting of authority from consumers to business actors to carry out all unilateral actions relating to goods purchased in installments is unfair.³⁶ This is because regarding goods that are paid in installments, it is as if the consumer himself has no rights until the goods are paid in full. Besides that, can also be qualified as a violation of consumer rights and conditions.³⁷

In Article 18 paragraph (1) letters e, f, g, and h, the government provides protection to consumers regarding the use of standard clauses, where business actors cannot put consumers in a lower position so that they must obey all regulations set by business actors, so that business actors can eliminate their responsibilities to consumers. Apart from that, the Consumer Protection Law also regulates that business actors are prohibited from including standard clauses in hidden places, written in small letters that are not clearly visible so that they are difficult for the public to understand. The standard clause containing Article 18 paragraphs (1) and (2) is declared null and void by law.

3.3. The Reconstruction of Consumer Protection Laws Against Administrative and Criminal Law Enforcement in Resolving Consumer Disputes

The enactment of the Consumer Protection Law as part of an economic legal instrument which has the function of protecting the interests of consumers from an imbalance in position with producers, the legislators have accommodated formal and material requirements in consumer protection law.³⁸

Legal protection arrangements for reporting consumers so as to avoid counterclaims from business actors/producers need to be reconstructed. Because so far what has become a polemic regarding legal protection for consumers is that reporting consumers are still vulnerable to being sued back by business actors/producers.³⁹ So in this problem there needs to be a clause in the law that explicitly states that reporting consumers cannot be sued back by business actors/producers. Therefore, to provide legal protection for

36 Solideo Willy Ticoh., Penerapan Eksonerasi Dalam Suatu Perjanjian Kontrak Proyek Pembuatan Jalan Pemerintah, *Lex Privatum*, Vol.13 No.4, 2024, page. 1-11

37 David Budiman., Implementasi Undang-Undang Perlindungan Konsumen terhadap Perjanjian Baku Bermuatan Klausula Eksonerasi, *Jurnal Pendidikan Tambusai*, Vol.8 No.1, 2024, page. 1218–1226.

38 Eddy Pelupessy (etc)., Penyuluhan Perlindungan Hukum Bagi Pelaku Usaha Kecil Masyarakat Lokal Di Distrik Abepura, *Jurnal Pengabdian UMKM*. Vol.3 No.2, 2024, page. 106-113.

39 Suwardi, Rossa Ilma Silfiah, Humiati, Kristina Sulatri, and Yudhia Ismail., Legal Protection of Consumers with Online Transactions, *Journal of Law, Politic and Humanities*, Vol.4 No.6, 2024, page. 2584-2595.

whistleblowers of consumer losses, it is necessary to add articles to the Consumer Protection Law, especially in Chapter.

There are three reasons why it is important to protect consumers through the immunity of reporting consumers from civil and criminal charges from business actors/producers.⁴⁰ First, these provisions are intended to protect victims and/or whistleblowers who take legal action as a result of fraudulent and irresponsible business practices or crimes from business actors/producers. This protection is intended to prevent acts of retaliation from the reported person through punishment and/or civil lawsuits while still paying attention to the independence of the courts. Second, the existence of this provision ensures that the Consumer Protection Law is consistent with the statements in Articles 22 and 28 of the Consumer Protection Law which regulate reverse evidence. Third, give consumers more courage to report the actions of business actors who often commit crimes in their business practices that harm consumers. Article 63 paragraph (1) determines that for criminal sanctions as intended in Article 62, additional penalties can be imposed, in the form of confiscation of certain goods; Announcement of the judge's decision; Payment of compensation; Orders to stop certain activities that cause consumer losses; Obligation to withdraw goods from circulation, and Revocation of business license.

Based on comparative studies it is stated that After April 9, 2003, the Iraqi market was flooded with various goods and products that did not meet the minimum industrial and commercial standards accepted in international trade and violated the basic rules of commercial credit, which caused significant damage to the national economy and seriously affected the safety, health, environment and even the psychology of consumers, as well as depleting their resources. All this happened without an effective protective economic policy in this area. Despite the issuance of the Iraqi Consumer Protection Law No. (1) of 2010, consumer protection associations were only given a potential role in the tasks assigned to the Consumer Protection Council, which led to a mixture of roles and a lack of recognition of their role outside the council, except for raising consumer awareness of their rights. As a result, these associations lost the authority to represent consumers collectively and free of charge before official, professional institutions and in litigation to protect their rights, unlike in comparative law. Realizing that consumer protection can only be achieved through the emergence of a representative framework that forms groups or associations aimed at creating a collective awareness to protect consumers through available legal means, we have chosen the topic of 'The Role of Associations in Consumer Protection' to use consumer protection associations in a good way to serve the national economy and consumers.⁴¹

40 Dewa Gede Sudika Mangku, Rahayu Subekti, and Ni Putu Rai Yulianti., Legal Protection for Consumers Recipient of COVID-19 Vaccine in Indonesia, *International Journal of Health Sciences*, Vol.6 No.2, 2022, page. 956-964

41 Abdulrahman Hussein Abdulrahman, Mustafa Natiq Saleh Saleh., The Role of Consumer Protection Associations in Protecting Consumers, *Migration Letters*, Vol.20, No. S2, 2023, page.373-382

As for the Iraqi Consumer Protection Law No. 1 of 2010, it did not provide an official definition for consumer protection associations. However, instead of that, the Iraqi legislator focused on defining the scope of work, duties, and rights of these associations, including providing guidance to consumers, protecting their rights, submitting and following up complaints with relevant authorities. The law also strengthened the powers of government bodies concerned with consumer protection and provided measures to ensure the protection of consumer rights.⁴²

In this regard, institutions in Iraq should pay more attention to updating current laws and regulations. In addition, these institutions should be more active and realistic in improving consumer rights. Consumer institutions should actively participate in providing an environment that protects consumers. The government should provide supervision and enforcement to ensure that both parties meet on a level playing field. Without effective and operational participation from consumer advocates, regulators tend to only hear from the industry and thus fail to ensure a level playing field between consumers and service providers.⁴³

The problem of consumer protection in Iraq is due to the lack of funds to support institutional arrangements for consumer protection is a common obstacle, despite the political will and interest to support the provision of consumer protection. In addition to money, experienced and trained staff are also often lacking, especially since consumer protection from unfair terms in standard form contracts is a relatively new area that requires specialized legal knowledge. The increased focus on consumer protection from unfair clauses also places a burden of experimentalism on legislators who want to enact consumer protection laws in their respective countries. Another common challenge is the lack of a well-articulated and clear mandate for consumer protection regulation and oversight.⁴⁴

The formulation of additional punishment in Article 63 follows the type of additional punishment in the Criminal Code as the *lex generalis* of the type of criminal punishment (sanction) in positive law. However, this article also regulates orders to stop certain activities that cause consumer losses (d) and revocation of business permits (f). When connected with the description of administrative sanctions in chapter II, sub-chapter 2, it appears that these two additional penalties are part of several types of administrative penalties.

42 *Ibid.*

43 Adnan Baqy Latif and Bikhtiar Sidiyq Rahim, The role of associations under the Iraqi Consumer Protection Law No. (1) for the year (2010) Comparative Study, *Journal of Legal and Political Studies*, Vol.1 No.2, 2013, page.154-84

44 Marwah Saadi Saleh, Asmah Laili Yeon., An Analysis of Consumer Protection in the Financial Service in Iraq: Consumer Loan Contract, *Journal of Law, Policy and Globalization*, Vol.72, 2018, page.11-17

The position of additional criminal penalties is to follow the main punishment.⁴⁵ In this context, additional penalties (Article 63) follow the main criminal sanctions contained in Article 62. This means that, if the law wishes to impose additional (sanctions) in the form of revocation of business permits (as a type of administrative sanction), from business actors for a violation they have committed, then the decision becomes one with the decision to impose the main criminal penalty (sanction). Because criminal cases are the absolute authority of the District Court,⁴⁶ the imposition of punishment, both basic and additional criminal sanctions, is carried out by the District Court.⁴⁷ If this happens, fundamental problems will arise relating to the authority of the District Court in imposing administrative sanctions. One of the main problems is the basis of legitimacy or authority possessed by the District Court in imposing administrative sanctions on business actors. In general, administrative sanctions are usually imposed by institutions or administrative authorities that have special authority in accordance with applicable laws and regulations. If the District Court is given the authority to impose administrative sanctions, then there must be a clear legal basis governing this authority so that it does not overlap with the authority of other administrative institutions. Apart from that, other problems that can arise are related to the authority in examining claims or resistance from business actors who feel they have been disadvantaged due to the revocation of their business permits. In the applicable legal system, the court has the function of assessing the validity of an administrative decision that is deemed to be detrimental to a particular party. However, it needs to be clarified whether the District Court has permission to hear administrative cases of this kind or whether this matter should fall under the authority of the State Administrative Court (PTUN). If there is no legal certainty regarding this secret, then there could be a conflict of authority which has the potential to hamper the effectiveness of legal protection for the parties to the dispute.

Based on the administrative law system, an authority to impose sanctions must coincide with supervisory authority,⁴⁸ both of which originate from the authority to issue state administrative decisions. It is not justified if a sanction is imposed by a party who is not the party who supervises and makes decisions because this involves authority which is always based on law or other regulations.⁴⁹

45 Suci Ramadani, Elwi Danil, Fadilla Sabri and Aria Zurnetti., Criminal Law Politics on Regulation of Criminal Actions in Indonesia, *Linguistics and Culture Review*, Vol.5 2021, page. 1373-1380

46 Dodon Alfiander., Disparity in the Considerations of Judges in Deciding Divorce Disputes in Religious Courts and District Courts, *Juris*, Vol.21, No.1, 2022,

47 Anis Widyawati, Pujiyono Pujiyono, Nur Rochaeti, Genjie Ompoy and Nurul Natasha Binti Muhammad Zaki., Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions, *Lex Scientia Law Review*, Vol.6 No.2, 2022, page. 327-358

48 Natasya Arsyiprameswari, Muhamad Adji Rahardian Utama, Seno Adhi Wibowo and Vania Shafira Yuniar., Environmental Law and Mining Law in the Framework of State Administration Law, *Unnes Law Journal*. Vol.7 No.2, 2021, page.347-370

49 Herlina., Penerapan Sanksi Administrasi Dalam Hukum Perlindungan Konsumen, *Galuh Justisi*, Vol.7 No.2, 2019, page. 1-13

Every State Administrative Decision that can be used as the basis for a state administrative dispute is a decision issued by a public official not in the capacity of a judicial decision,⁵⁰ so that even though there is an administrative sanction decision issued by a judge, because it was issued by a non-state official in the context of exercising administrative authority, the sanction decision becomes legally flawed.⁵¹

As is known, administrative sanctions and criminal sanctions differ in their objectives, nature and enforcement procedures.⁵² This difference also shows differences in the judicial environment that is competent to try them. Every decision of a District Court judge, regardless of the type of sanction imposed, cannot be used as a basis for a state administration dispute. This is because the judge's decision is an action in his capacity as a judicial institution, not as a decision issued by a state administrative body or official. In the legal system, state administrative disputes can only arise if there is a concrete, individual and final administrative decision issued by an official or state administrative body. Meanwhile, court decisions are judicial in nature and have their own legal channels for parties who object. In addition, the law has provided a clear mechanism for parties who do not accept the court's decision, namely through legal remedies such as appeal, cassation or judicial review. This mechanism aims to ensure that every judge's decision can be reviewed in accordance with the principles of justice. Basically, law is not only oriented towards legal certainty, but must also reflect the values of justice.

Law basically demands justice which must include fundamental values such as equality, human rights, truth, decency, and protection of the interests of society. Therefore, the expected legal order is one that is able to enforce the law fairly and consistently. This means that the law must be enforced in accordance with the provisions of an orderly and structured process, so that every individual who seeks justice can receive equal treatment before the law without discrimination. An orderly legal process will ensure that the rights and obligations of each individual are respected and fulfilled at every stage of law enforcement. The law must be able to guarantee legal certainty, ensure uniformity in the application of the law, and guarantee that predictions regarding law enforcement can be relied on. Legal certainty is very important so that people have confidence in the justice system, while uniformity in the application of the law aims to prevent inconsistencies that can create injustice. Law not only functions as a tool to regulate social life, but also as an instrument that realizes justice for all levels of society.⁵³

50 Soeleman Djaiz Baranyanan, Nilam Firmandayu and Ravi Danendra., The Compliance of Regional Autonomy with State Administrative Court Decisions, *Journal of Sustainable Development and Regulatory Issues (JSDERI)*, Vol.2 No.1, 2024, page. 35-52

51 Satria Koraag., Terjadinya Sengketa Tata Usaha Negara Akibat Dikeluarkannya Keputusan Pejabat Tata Usaha Negara, *Lex Administratum*, Vol.9 No.7, 2021, page.75-85

52 Sri Nur Hari Susanto., Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi, *Administrative Law and Governance Journal*, Vol.2 No.1, 2019, page.126-142

53 Imamulhadi Imamulhadi, Eva Nuriyah H., Idris., Environmental Justice Framework Based on Local Wisdom Model, *Jurnal Bina Mulia Hukum*, Vol.8 No.2, 2024, page. 207-226

In the context of consumer protection, the normative efforts of law makers to cover all opportunities for business distortions that cause harm to consumers are a proportional effort in realizing justice in society, but if the enactment of the law turns out to give rise to the potential to create a new imbalance in the legal relationship between consumers and business actors, in the sense of killing the rights to do business which are actually protected by the 1945 Constitution of the Republic of Indonesia (vide Article 27 paragraph (2) in conjunction with Article 33), then it can be said that the enactment of the Consumer Protection Law has deviated from its objectives. beginning of its implementation.

The characteristics of administrative and criminal law enforcement in Indonesia⁵⁴ and the implications of the incompatibility of the formulation of norms of the Consumer Protection Law with the (positive) legal system for law enforcement are that administrative law requires the existence of a basis (legitimacy) for authority to issue decisions,⁵⁵ supervise and impose administrative sanctions. The last two components, namely supervision and imposing sanctions, are part of administrative law enforcement. Meanwhile, in criminal law enforcement, the emphasis is on formulating offenses and threats of sanctions. However, an examination of the consistent components of decision authority, supervision and sanctions in terms of administrative law as well as the system of cumulating criminal penalties that are threatened, turns out to be inconsistent with the administrative (positive) law system and the character of the imposition of criminal sanctions in force in Indonesia. In fact, a legal code, legal rules, legal tools and law enforcement are parallel components. This means that if there are fundamental weaknesses in the norms and unclear basis for the legitimacy of imposing sanctions in a law, it will certainly make it difficult to enforce the law in practice.

Thus, Article 63 paragraph (1) is reconstructed as: For criminal sanctions as intended in Article 62, additional penalties may be imposed, in the form of: a) Confiscation of certain goods; b) Announcement of the judge's decision; c) Payment of compensation; And d) Obligation to withdraw goods from circulation. The deletion of letters e and f in article 63 of the consumer protection law is because this article is part of administrative law enforcement because it is not in line with the administrative law system and the character of criminal penalties that apply in Indonesia.

The novelty in this research lies in the legal reconstruction approach to consumer protection in relation to justice, legal certainty and usability in the national legal system. This research proposes substantial changes to the Consumer Protection Law, in particular by adding an immunity clause for consumer whistleblowers to protect them from counterclaims by business

54 Surahman (etc)., Retributive Justice in Law Enforcement Against Land Mafia in Indonesia: Perspectives of State Administration Law and Indonesian Criminal Law, *International Journal of Criminal Justice Sciences*, Vol.18 Issue.2, 2023, page. 259-274

55 Fia Agustina Najati and Anis Mashdurohatun., The Comparative Analysis of Consumer Protection Regulations in E-Commerce Transactions in Indonesia, Singapore and Malaysia, *Law Development Journal*, Vol.6 No.2, 2024, page. 200-213

actors, which has been a major problem in consumer protection. Apart from that, there is a mismatch between administrative and criminal sanctions in the Consumer Protection Law and the basic principles of positive administrative law in Indonesia, which can create uncertainty in its implementation. So the author recommends reconstructing Article 63 paragraph (1) of the Consumer Protection Law in order to create a just and proportional balance in legal protection for consumers.

4. Conclusion

Consumer protection is one manifestation of a welfare state based on Pancasila and the 1945 Constitution of the Republic of Indonesia. In its implementation, consumer protection must be based on justice and aims to provide legal certainty, increase consumer awareness, and encourage the responsibility of business actors. The three basic legal values of justice, legal certainty and usefulness must be balanced so that consumer protection is effective. The use of standard clauses in agreements between consumers and business actors often harms consumers. Therefore, the law prohibits unilateral standard clauses, including those that limit consumers' rights to return goods or transfer responsibility to consumers. The government is responsible for supervising and ensuring that business actors do not include standard clauses that are contrary to the law. Reconstruction of legal protection for consumers is needed to prevent counterclaims against consumers who report violations. Thus, it is proposed that there be provisions for legal immunity for reporting consumers so that they cannot be prosecuted criminally or civilly before it is proven that the business actor is innocent. The formulation of criminal sanctions in the Consumer Protection Law also needs to be reconstructed so that it is in accordance with the legal system in force in Indonesia. Additional criminal sanctions such as revocation of business permits should not be within the authority of criminal courts, but should be part of administrative authority. So the author recommends reconstructing Article 63 paragraph (1) by adjusting the types of additional penalties that can be imposed.

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