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The Principle of Reverse Evidence in Dispute Resolution as Stated in the Provisions of Article 28 of the Consumer Protection Law

¹ Mauliddin, ² Fendi Setyawan, ³ Moh Ali

^{1,2,3} Students and Lecturers of the Master of Law Program, Faculty of Law, Jember University, Indonesia

Corresponding Author: **Mauliddin**

Abstract

In civil procedural law, the general principles of evidence assign the burden of proof to the plaintiff and defendant. However, disharmony with the principle of reverse evidence in resolving consumer disputes creates complexity, requiring harmonization to maintain legal certainty and consumer protection. The purpose of writing this research is: First, to identify the legal basis or legal ratio for the use of the principle of reverse evidence in resolving disputes in accordance with Article 28 of the Consumer Protection Law. Second, to seek understanding regarding the legal certainty provided by the application of the principle of reverse evidence in resolving consumer disputes. This research applies normative legal research using three approaches, namely statutory, conceptual and comparative law. The research results show that Reversal of the burden of proof in civil law systems, such as in the Netherlands, is based on the assumption that manufacturers are automatically responsible

for consumer losses, making it easier for consumers to prove the manufacturer's wrongful act. The importance of a clear understanding of the principle of reverse evidence through training and outreach is highlighted, while the involvement of third parties in dispute resolution is considered to balance power between consumers and business actors. The existence of education and assistance programs for consumers is considered key to increasing understanding of their rights. The existence of education and assistance programs for consumers is considered key to increasing understanding of their rights. It is recommended that future legal construction plans focus on increasing legal certainty and the principle of *audi et alteram partem*. In addition, it emphasized the importance of strict rules and clear prohibitions to prevent detrimental practices by business actors in order to provide more effective protection to consumers who are often vulnerable.

Keywords: Application, Principles of Evidence, Consumer Protection

Introduction

The development of technology and the internet has opened new avenues in consumer protection. Consumers now have greater access to information about products and services, as well as forums to share experiences and reviews. This has strengthened the position of consumers in their relationship with companies and has forced companies to pay more attention to consumer needs and desires. Thus, the consumer protection movement continues to develop and adapt to changing times, but still has the same goal, namely protecting consumer rights and ensuring that consumers are treated fairly in business transactions.¹

The Consumer Protection Law states "Consumer Protection is all efforts to ensure legal certainty to provide protection to consumers". Az. Nasution stated that the definition of consumer protection law is the overall principles and rules that regulate and protect consumers in the relationship and problems of providing and using consumer products (goods/services) between the provider and the user, in the realm of social life.² Consumers use goods produced or traded by business actors and the condition of the goods turns out to be damaged, defective and contaminated, then consumers are at a disadvantage. Therefore, legal provisions are made to protect consumer rights in order to prevent losses for all nations in the world in order to make this happen.

¹ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, (Jakarta, Sinar Grafika, 2009), h. 1.

² Az. Nasution, *Hukum Perlindungan Konsumen Suatu Pengantar*, (Jakarta: Diadit Media, 2002), h. 30.

Realizing consumer protection is realizing the relationship between various dimensions which are interconnected and interdependent between consumers, Entrepreneurs and Government.³ The need for laws to provide protection for Indonesian consumers is something that cannot be avoided, in line with our national development goals, namely the complete development of Indonesian people. Furthermore, provisions regarding partial consumer protection are contained in various regulations with the enactment of the Consumer Protection Law which applies effectively. Then regarding the responsibility that a party has in interacting with another party, it must be fulfilled not only for the wrongdoing of the person who is his dependent or the loss caused by goods under his supervision, this can be observed in the provisions of article 1367 of the Code. Civil Law Act. Apart from that, in the context of civil justice, there are several principles of evidence that serve as guidelines for determining whether or not a claim or legal demand is accepted. These principles serve as a basis for judges in making appropriate decisions based on existing evidence, and help ensure that the judicial process takes place fairly and transparently. The principles of evidence can vary in various legal systems and jurisdictions, thus indicating that the provisions of article 1367 of the Civil Code (hereinafter referred to as the Civil Code) are also relevant in determining the responsibility of a party in interactions with other parties.⁴

In the context of civil justice, there are several evidentiary principles that serve as guidelines for determining whether or not a claim or legal demand is accepted. These principles serve as a basis for judges in making appropriate decisions based on existing evidence, and help ensure that the judicial process takes place fairly and transparently. Principles of evidence may vary across legal systems and jurisdictions.⁵

A proof is carried out to obtain the truth of an event or right which in civil procedural law is known as the general principle of proof as intended in Article 1865 of the Civil Code/163 HIR, namely that the plaintiff and defendant are given the burden of proof. If one party cannot prove the event/right that is the burden of proof, then that party must bear the risk of proof. In simple terms, proof in the civil court process requires that the party claiming a right must prove the right they are claiming. If this is applied in the process of proving consumer disputes, then both consumers and business actors can have the burden of proof. As a consequence, if we refer to Article 1365 of the Civil Code, consumers are also obliged to prove that the business actor is at fault.⁶ This is difficult to do considering that apart from the socio-economic position of consumers being weaker, negative events such as elements of business actor error in

the production, distribution and sale of goods are more difficult to prove.

In an effort to provide legal protection for consumers, the Indonesian government issued the Consumer Protection Law in the State Gazette of the Republic of Indonesia of 1999 Number 42, Supplement to the State Gazette of the Republic of Indonesia Number 3821 (UUPK). One of the considerations for establishing UUPK as stated in the preamble to letter f is to create a balance of interests between consumers and business actors so as to create a healthy economy, considering that so far it has been indicated that there is an unequal position between business actors and consumers.⁷ The balance of position between consumers and business actors must be maintained, especially when there is a conflict of interest between consumers and business actors which can give rise to a dispute called a consumer dispute.⁸

In Article 1 Number 8 Decree of the Minister of Industry and Trade No. 350/MPP/ Kep/12/ 2001 Concerning the Implementation of Duties and Authorities of BPSK, it is stated that consumer disputes are disputes between business actors and consumers who demand compensation for damage, pollution or other losses suffered by consumers as a result of consuming goods and/or utilizing services from business actors. According to Article 45 paragraph (1) UUPK, consumer dispute resolution can be achieved in 2 (two) ways, namely by suing business actors through BPSK or in court.

The Consumer Dispute Resolution Agency as intended in the UUPK which was established by the Government is a body tasked with handling and resolving disputes between business actors and consumers, but is not part of the judicial power institution. The government has established Consumer Dispute Resolution Bodies in each Regency/City to resolve consumer disputes outside of court, but the Consumer Dispute Settlement Bodies are not court institutions. In accordance with Article 54 paragraph (3) UUPK, the decision of the Consumer Dispute Settlement Agency is final and binding in the sense that there is no legal remedy for the BPSK decision. However, Article 56 paragraph (2) stipulates that parties can submit objections to the District Court no later than 14 (fourteen) working days after receiving notification of the BPSK decision and an appeal can be submitted to the District Court's decision to the Supreme Court of the Republic of Indonesia.

Dispute resolution procedures or methods are mechanisms used to resolve or resolve disputes or conflicts between two or more parties. These mechanisms may vary depending on the nature of the dispute, jurisdiction, costs, or preferences of the disputing parties. Each dispute resolution mechanism has its own characteristics, procedures, and strengths and weaknesses. In many cases, a combination of several dispute resolution mechanisms can be used to achieve the most effective solution.

The law provides many conveniences and advantages to consumers in resolving their disputes through the Consumer

³ Susanti Adinugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Kendala dan Implementasinya*. Jakarta: Prenada Media Group, 2008), h.34.

⁴ I. R. Sihombing, 2016, *Teori dan Praktik Penyelesaian Sengketa*. Jakarta: Sinar Grafika.

⁵ M. Yahya Harahap, *Hukum Acara Perdata*, (Jakarta: Sinar Grafika, 2017), h. 567-570.

⁶ Shera Aulia Simatupang, *Implementasi Prinsip Pembuktian Terbalik Dalam Penyelesaian Sengketa Konsumen Di BPSK*, *Dialogia Iuridica*, Vol. 9, No. 1, 2017, h. 45.

⁷ Sukma, Liya. "Pertanggung Jawaban Produk (Product Liability) Sebagai Salah Satu Alternatif Perlindungan Konsumen". *Dialogia Iuridica*, Volume 7 Nomor 2, 2016.

⁸ Misnar Syam, *Penerapan Asas Pembalikan Beban Pembuktian Dalam Penyelesaian Sengketa Konsumen*. ADHAPER: Jurnal Hukum Acara Perdata, Vol 4, No. 1, (2018).

Dispute Resolution Agency, including low costs and relatively faster time, where decisions must be handed down within 21 (twenty one) working days in accordance with Article 55 UUPK and the burden of proof is reversed in certain cases in accordance with Article 19 UUPK. However, through Article 22 of the Republic of Indonesia Ministerial Decree Number 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Body, it is expressly determined that the burden of proof in the consumer dispute resolution process is the burden and responsibility of the business actor. So, for all types of consumer disputes, if resolved through the Consumer Dispute Resolution Agency, a reverse system or burden of proof will be applied.

In the process of resolving this dispute, evidence is an important part because a decision handed down by a judge is very dependent on the evidence presented to him. Article 22 of the Consumer Protection Law states that proving whether there is an element of error in a criminal case as intended in Article 19 paragraph (4), Article 20 and Article 21 is the burden and responsibility of the business actor without closing the possibility for the prosecutor to provide proof. Then, Article 28 of the Consumer Protection Law regulates the special burden of proof in resolving consumer disputes, stating that proving whether there is an element of fault in a claim for compensation as intended in Article 19, Article 22 and Article 23 is the burden and responsibility of the business actor.⁹

This proof is called the reverse burden of proof which is carried out by placing the burden of proof on the business actor regarding whether there is an element of error, while the consumer is only burdened with proof of the losses suffered by the consumer as a result of consuming goods and/or services from the business actor.¹⁰ Article 28 of the Consumer Protection Law is a special burden of proof provision based on the general provisions in Article 1865 of the Civil Code/163 HIR. In the reverse evidentiary principle, the business actor must prove that he is innocent. If they cannot prove this, then the business actor is automatically considered guilty and is obliged to provide compensation to consumers.

Referring to the provisions of the Consumer Protection Law, consumers are not required to provide proof. The obligation to prove whether there is a mistake is the burden and responsibility of the business actor, he explained. Because consumers usually don't know whether the products consumers use contain hidden defects or not. Article 28 of the Consumer Protection Law states that proving whether there is an element of error as intended in Articles 19, 22 and 23 is the burden and responsibility of the business actor. However, if we use the analogy again, if the burden of proof is only on the business actor, then it could actually cause losses to consumers themselves because it does not rule out the possibility of falsifying evidence such as laboratory check results or other forms of fraud.

So, consumers might actually be better off if they strengthen their claim for compensation with evidence as well. Apart

⁹ UU Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

¹⁰ Susanti Adinugroho, *Proses Penyelesaian Sengketa Konsumen Ditinjau dari Hukum Acara Serta Kendala dan Implementasinya*, (Jakarta: Prenada Media Group, 2008), h. 184-185.

from that, remembering one of the legal principles that underlies the justice system through strong and convincing evidence, namely the principle of presumption of innocence, that a defendant is considered innocent until legally proven guilty in court through strong evidence. and convincing. One example of a consumer dispute case decision is Decision Number 224/Pdt.G/2019/PN.Jkt.Pst. is a decision of the Central Jakarta district court which was handed down on May 14 2020. This decision granted Defendant II's exception regarding the Plaintiff's claim being unclear/vague (Obscur Libel), and stated that the Plaintiff's claim was unacceptable (Niet Onvankelijke Verklaard). In this case, the Plaintiff, Christian Fajar Harapan, sued Defendant I, PT. U Finance Indonesia, Defendant II, PT. Jostien Sukses Prosperous, and Co-Defendant, PT. JBA Indonesia, on suspicion of unlawful acts. The plaintiff claims that Defendant I and Defendant II have committed an unlawful act by confiscating his car which was guaranteed to Defendant I.

In his exception, Defendant II claimed that the Plaintiff's lawsuit was unclear/vague because it did not specifically state what losses the Plaintiff had experienced. Defendant II also claimed that the Plaintiff's lawsuit had no legal basis because Defendant II only acted as legal representative for Defendant I. The panel of judges granted Defendant II's exception. The panel of judges stated that the Plaintiff's lawsuit was indeed unclear/vague because it did not specifically state what losses the Plaintiff had experienced.¹¹ The panel of judges also stated that the Plaintiff's lawsuit had no legal basis because Defendant II only acted as the legal representative of Defendant I. Thus, this decision firmly states the rejection of the Plaintiff's lawsuit. This rejection was based on the fact that the Plaintiff failed to prove or was not burdened with proof of his claim.

Therefore, the Plaintiff does not have a strong legal basis to demand compensation for the alleged unlawful acts committed by Defendant I and Defendant II. Some of the considerations of the panel of judges in rejecting this lawsuit include:

1. The Plaintiff's lawsuit does not specifically describe the losses suffered. The plaintiff only stated that he lost the car which was guaranteed to Defendant I without providing details of the value of the car or whether a claim for compensation had been submitted for the loss.
2. The Plaintiff's lawsuit does not have a strong legal basis because Defendant II only acts as the attorney for Defendant I and does not have the authority to commit unlawful acts on behalf of Defendant I.¹²

This decision shows that legal certainty in the application of the principle of reverse evidence in resolving consumer disputes is still not fully guaranteed. This is because consumers still have to provide sufficient evidence to prove that the business actor has committed an unlawful act. In this case, the Plaintiff did not provide sufficient evidence to prove that Defendant I, Defendant II and Defendant III had committed unlawful acts. Therefore, the Plaintiff's lawsuit was rejected by the Central Jakarta District Court.

¹¹ Candra Mardi, *Azas Pembuktian Terbalik Dalam Sengketa Penjaminan Pengembalian Modal Pembiayaan Mudharabah, Musyarakah Dan Wakalah Bil Istitsmar*. Mimbar Hukum, Vol. 3, No 4, (2022).

¹² Putusan Nomor 224/Pdt.G/2019/PN.Jkt.Pst.

The application of the principle of reverse evidence is very important in efforts to provide legal protection for consumers, especially in the context of cases involving the Kediri City Consumer Dispute Resolution Agency (BPSK) Number 08/SKT-ABR/2021/BPSK.Kdr dated 7 December 2021 between PT. Sinar Mas Multifinance Tulungagung Branch (Petitioner) and Br. Hendrik Wahono (Respondent). In this case, the Petitioner filed an objection to the BPSK decision which sentenced him to return the Toyota Limo vehicle Nopol B 1695 SEG to the Respondent.

The principle of reverse evidence allows the Petitioner to raise an objection and prove that BPSK does not have the authority to examine and decide the case. The Petitioner detailed that the dispute between them and the Respondent was not a consumer dispute, but a civil dispute relating to financing agreements and fiduciary guarantees. This is proven by the Supreme Court jurisprudence in 2018, which stated that financing and credit disputes with mortgage or fiduciary rights are not subject to the Consumer Protection Law.

The Petitioner also stated that BPSK did not pay attention to their arguments which referred to jurisprudence and principles of justice, such as the principle of *audi et alteram partem*. The Petitioner also highlighted BPSK's negligence in the court summons process, which could be a legal flaw in the decision. Through a careful assessment of the facts and law submitted by the Petitioner, the Panel of Judges decided to grant the objection request.

This decision is based on the conclusion that BPSK does not have the authority to examine and decide disputes between the Petitioner and the Respondent, as regulated in the law and related statutory decisions. Therefore, the BPSK decision was declared null and void, providing legal protection for the Petitioner in the context of their civil relationship with the Respondent. Finally, the Panel of Judges also awarded court costs to the Respondent as the losing party in this case, confirming the application of the principle of proportional compensation in the justice system. In this case, there were several gaps in evidence which became the basis for the Panel of Judges' decision to grant the Petitioner's objection request. First, the Petitioner succeeded in proving that the dispute between them and the Respondent was not a consumer dispute, but a civil dispute related to financing agreements and fiduciary guarantees. As a result, the principle of reverse evidence allows the Petitioner to submit an objection and prove that the Consumer Dispute Resolution Agency (BPSK) does not have the authority to examine and decide the case.

Second, the Petitioner refers to the 2018 Supreme Court jurisprudence, which states that financing and credit disputes with mortgage or fiduciary rights are not subject to the Consumer Protection Law. The Panel of Judges then decided that BPSK did not have the authority to examine and decide the dispute between the Petitioner and the Respondent, in accordance with the provisions of the law and related statutory decisions.

Third, the Petitioner stated that BPSK did not pay adequate attention to their arguments which refer to jurisprudence and principles of justice, such as the principle of *audi et alteram partem*. In effect, the Panel of Judges' decision to grant part of the objection petition was based on BPSK's inability to pay adequate attention to the Petitioner's arguments.

Lastly, the Petitioner highlighted BPSK's negligence in the court summons process, which could be considered a legal

flaw in the decision. This negligence strengthens the Petitioner's argument regarding BPSK's non-compliance with judicial principles, which also supports the decision to cancel BPSK's decision. By considering these gaps, the Panel of Judges made a decision to provide legal protection to the Petitioner in the context of their civil relationship with the Respondent, and at the same time awarded court costs to the Respondent as the losing party in this case.

This decision can be used as material for consideration in preparing future legal construction related to the principle of evidence which provides more legal certainty and protection for consumers. Based on this, consumers have the right to obtain legal protection from the government and related agencies when carrying out buying and selling transactions. As stated by one American legal expert, Roscoe Pound, who places interests in individual life as the most important of all other interests.

Based on the background of the problem as described above, the problem can be formulated as follows:

1. What is the ratio legis principle of reverse evidence used in dispute resolution as stated in the provisions of article 28 of the Consumer Protection Law?
2. What is the legal certainty of applying the principle of reverse evidence in resolving consumer disputes?

Metode Penelitian

Methodology is an element that absolutely must be present in scientific research and development.¹³ This type of normative juridical research is carried out by examining various kinds of formal legal rules such as laws, literature that is theoretical concepts which are then connected to the problem that is the subject of discussion.¹⁴ The problem approach used by the author in preparing this article is divided into three approaches, namely the statutory approach, the conceptual approach and the comparative legal approach.

Discussion

1. Ratio Legis Asas Pembuktian Terbalik dalam Penyelesaian Sengketa Konsumen

This rule of law principle bases all actions and policies on applicable legal norms. This principle emphasizes that in a rule of law, personal power must not ignore applicable law. This principle is reflected in the popular expression which states that "the state is governed by law, not by personal power." In the context of a rule of law, the process of establishing legal regulations has a central role in implementing a fair and just government system. Ratification of legal regulations cannot be carried out arbitrarily by state authorities. On the contrary, the establishment of legal rules must be based on agreement between the government and the people. This reflects a basic principle in democratic governance where policies and binding laws must reflect the aspirations and interests of society.¹⁵

¹³ Peter Mahmud Marzuki, *Penelitian Hukum Edisi Revisi*, (Jakarta: Prenada Media Group, 2017), h.47.

¹⁴ *Ibid.* h. 194.

¹⁵ I Gede Widhiana Suarda, Bhim Prakoso, Khafid Setiawan, *Legis Ratio of Tax Imposition to the Transfer of Land Rights through Instruction*, Budapest International Research and Critics Institute-Journal (BIRCI-Journal), vol 5, 4, November 2022, Page: 31361-31370.

In this context, this mechanism allows the executive to issue regulations that support the implementation of existing laws, but remain within the framework of the rule of law principle which respects the role of the legislative institution in making laws. Thus, the principle of the rule of law in Indonesia regulates the way in which legal regulations are formed and ratified to ensure a balance between executive and legislative power and ensure that all government actions are in accordance with the law and the aspirations of the people.

Lawmaking is a very important aspect of a country's legal system, and in this context, every law that is drafted is expected to bring improvements to the generally applicable legal system. Although it is acknowledged that every law is often the result of a political compromise involving various interests, the general principles that apply and will become an integral part of legal norms in laws must be adhered to by law makers.

Ratio legis is a concept in law that reflects legal thinking based on common sense, reason, or reasoning, which is the reason or goal behind making legal regulations. In the context of law, it is important to understand that ratio legis is almost equivalent to the concept of legal essence, which is the essence or basis of the law itself. It is important to understand the rationale (ratio legis) in forming laws through scientific studies so as to produce rational, critical and objective thinking. Apart from that, it also aims to explain more in-depth thoughts before finally realizing these thoughts in the form of a legal text.¹⁶

Ratio legis or legal reasons for the principle of reverse evidence in resolving consumer disputes can be understood from a philosophical perspective as a concrete implementation of the values of justice and protection contained in legal philosophy. This principle describes the fundamental idea that in economic transactions, consumers, who are often in a weaker position, need to obtain preferential protection to achieve equality in legal relations with parties who have greater economic power, such as service providers or producers. In this framework, the principle of reverse evidence reflects the values of distributive justice, which emphasizes the importance of distributing rights and obligations more evenly in society.

By applying the principle of reverse proof, the law creates a framework that provides greater opportunities to defend consumer rights without a heavy burden of proof. This is in line with the concept of distributive justice, which allows economically weaker consumers to more easily obtain justice in consumer disputes. In this context, the principle of reverse evidence becomes an instrument that strengthens the position of consumers in the legal system, ensuring that consumer rights are recognized and protected more effectively. Zainal Arifin Hoesein, in a sociological approach, opens up a view of law as a reflection of the values held by society as part of the framework of personal, social, national and state life order. In this perspective, law is not a static entity, but a powerful tool in influencing social change, in accordance with Roscoe Pound's view of law as a

tool of social engineering or "law as a tool of social engineering."¹⁷

From a juridical perspective, the principle of reverse evidence in resolving consumer disputes can be seen as an implementation of the principles contained in applicable consumer protection laws. These principles generally aim to provide optimal protection to consumers, recognize the often-weaker position in economic transactions, and maintain fairness in the relationship between consumers and service providers or producers.

The principle of reverse evidence in a juridical context also reflects the legislator's intention to create a legal environment that is conducive to consumer protection. By shifting the burden of proof to the stronger party or who has better knowledge of the relevant facts in a dispute, this principle aims to provide a fair advantage to consumers who often have limited resources in proving claims.

The principle of reverse evidence in resolving consumer disputes can be seen as a combination of philosophical values, sociological understanding and juridical implementation in an effort to increase consumer protection in the context of contractual relationships with parties who have greater power in economic transactions. This principle is a concrete example of how law can reflect the philosophical values that form the basis of the state, respond to social change, and provide appropriate legal protection for society.

From a philosophical point of view, the principle of reverse evidence reflects the legal determination to uphold the values contained in Pancasila as the philosophical foundation of the state. Thus, laws implementing this principle must be in accordance with Pancasila values and must not reflect legal philosophies from other countries that may not be in line with national identity.

The history of the formation of Law Number 8 of 1999 concerning Consumer Protection aims to establish standards for the protection of consumers and business actors based on the principle of equal standing between business actors and consumers. By establishing these standards, it is hoped that justice can be achieved in the relationship between business actors and consumers. This is due to the fact that losses often experienced by consumers are caused by actions or practices carried out by business actors. Therefore, it is important to regulate and supervise business activities so that consumers do not experience losses they should not experience as a result of irresponsible or detrimental behavior that may be carried out by business actors.¹⁸

Consumer protection also helps create a healthy business climate. By encouraging ethical and quality business practices, consumer protection laws are not intended to hamper the efforts of business actors, but rather to ensure that consumers receive quality and safe goods and services. Apart from that, this law pays attention to small and medium business actors, with guidance and sanctions for violations

¹⁶ Sulistyowati Irianto dan Sidharta, *Metode Penelitian Hukum: Konstelasi dan Refleksi*, (Jakarta: Yayasan Pustaka Obor Indonesia, 2009), h. 145.

¹⁷ Zainal Arifin Hoesein, "Pembentukan Hukum dalam Perspektif Pembaharuan Hukum (*Law Making on the Perspective of Legal Reformation*)", *Jurnal Rechts Vinding* 1 (3), (2012), h. 308.

¹⁸ Sekretariat Jendral Dewan Perwakilan Rakyat Republik Indonesia, *Naskah Akademik Rancangan Undang-Undang tentang Perlindungan Konsumen*, 2001, h. 16.

that occur, to create a competitive and balanced business climate.¹⁹

That product liability is the civil liability of the producer to compensate certain parties (can be buyers, users, or even third parties), for damage to objects, injury and/or death as a result of using products produced by the producer. Direct liability (strict liability) in the civil law system is a derivation of liability based on unlawful acts (tortious liability), so it still contains an element of error.²⁰ In the event that a consumer sues a producer based on an unlawful act based on Article 1365 of the Civil Code, the consumer must prove 4 (four) things, namely:

1. The producer's actions are against the law (unlawful act).
2. Manufacturer error (fault).
3. Consumer losses (damages).
4. Causal relationship between unlawful acts by producers and consumer losses.²¹

The background to the establishment of the principle of reverse evidence in the Consumer Protection Law is to provide better protection for consumers who are often in a weaker position in the relationship between consumers and business actors. Before the reverse proof principle existed, consumers had to prove that the losses they experienced were caused by the business actor's error or negligence. This is often difficult for consumers because they do not have access to sufficient information about the products or services they purchase.

Therefore, with the principle of reverse proof, the burden of proof is shifted from consumers to business actors. In the event of a dispute, business actors must prove that the products or services they provide meet the quality and safety standards set by law. In this way, the principle of reverse evidence is expected to provide better protection for consumers and encourage business actors to pay attention to the quality and safety of the products or services they provide.²²

The application of the principle of reverse evidence in the context of Law Number 8 of 1999 concerning Consumer Protection reflects the government's responsibility to protect the rights and interests of consumers. Article 29 Paragraph 1 of the law expressly mandates that the government has the responsibility to supervise and foster the implementation of consumer protection, which aims to ensure that consumer rights are respected and the obligations of consumers and business actors are fulfilled. Law Number 8 of 1999 concerning Consumer Protection has strong historical roots which demonstrate the underlying spirit of protection. This law was born in response to the need for protection for consumers who are often in a weaker position in relation to

service or product providers who have greater economic power.²³

According to Sudaryatmo, the main advantage of applying the principle of reverse evidence in consumer protection is that this can make it easier for consumers to enforce their rights in legal disputes. However, there are also concerns that this principle could be misused by irresponsible providers of goods or services. Providers with great power may try various means, including illegal practices, to prove their innocence.²⁴ Therefore, it is important for bodies that handle consumer disputes to apply the principle of reverse evidence to ensure that this process is balanced and fair, so that no abuse occurs. Thus, the principle of reverse evidence must be applied wisely to achieve the goal of consumer protection without violating the principles of fair law.

2. Legal Certainty of the Principle of Reverse Evidence in Consumer Dispute Resolution

According to Gustav Radbruch, law has 3 basic values that must be contained in it, namely legal certainty (*rechtssicherheit*), legal justice (*gerechtigkeit*), and legal benefits (*zweckmassigkeit*). Of these three values, each has its own role. The point of legal certainty must be met first because it involves the juridical aspect of the law. Once legal certainty is guaranteed, then we can talk about legal justice.

Legal certainty is a principle in law that refers to confidence and clarity regarding what is permitted or prohibited by law. This principle emphasizes that the law must be clear, understandable and reliable so that individuals and legal entities can regulate behavior in accordance with applicable legal provisions. Legal certainty is the basis for a fair and well-functioning legal system. Without legal certainty, society is likely to experience conflict and injustice. Therefore, the principle of legal certainty is considered very important in the formation and implementation of law even in many countries throughout the world.²⁵

In relation to consumer dispute resolution, the principle of reverse evidence is a legal principle that places the burden of proof on certain parties in the dispute. The principle of legal certainty becomes very relevant when discussing the principle of reverse evidence in resolving consumer disputes. The principle of reverse evidence in resolving consumer disputes is applied with the aim of protecting consumers who are often in a weaker position in disputes with providers of goods or services. In this context, the principle of reverse evidence can be considered as an attempt to correct the power imbalance between consumers and providers.

¹⁹ Zoemrotin K. Sosilo, *Penyambung Lidah Konsumen*, (Jakarta: Penerbit Puspa Swara, 1996), h. 8-9.

²⁰ *Naskah Akademik Rancangan Undang-Undang Tentang Perlindungan Konsumen*, Badan Pembinaan Hukum Nasional, Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 30-35.

²¹ *Ibid.*, 35-38.

²² *Ibid.*

²³ Bagir Manan, *Perspektif Perlindungan Hukum Bagi Konsumen di Indonesia*, (Surakarta: Fakultas Hukum Universitas Sebelas Maret, 1997), h. 1.

²⁴ IHW, "Hakim Akan Gunakan Pembuktian Terbalik", *Hukumonline*, 13 Juli 2007, <https://www.hukumonline.com/berita/a/hakim-akan-gunakan-pembuktian-terbalik--hol17152?>

²⁵ Samudra Putra Indratanto, Nurainun, and Kristoforus Laga Kleden, "Asas Kepastian Hukum Dalam Implementasi Putusan Mahkamah Konstitusi Berbentuk Peraturan Lembaga Negara Dan Peraturan Pemerintah Pengganti Undang-Undang," *Jurnal Ilmu Hukum* 16, no. 1 (2020), h. 88-100.

The principle of reverse evidence also provides legal certainty by explaining the obligations of goods or service providers in resolving consumer disputes. Providers must understand that they have the burden of proof to prove the provider's compliance with consumer protection laws. This avoids uncertainty about what is expected from the provider of goods or services in a dispute situation. Legal certainty is also related to encouraging providers of goods or services to comply with consumer protection laws. By placing the burden of proof on the provider, this principle encourages companies to be more careful in doing business and ensure that providers comply with the standards set by law. This helps to prevent violations of the law and protect consumers.²⁶

In a court case, the consumer only needs to state that the manufacturer has violated the law and caused harm to the consumer. Then, the burden of proving fault will fall on the manufacturer, who must prove that the manufacturer has acted carefully in accordance with appropriate operational and production standards. Although the Consumer Protection Law largely places the burden of proof of fault on business actors, the implementation of the principle of reverse proof does not always make it easier for consumers to file legal claims against business actors in court proceedings. This difficulty especially arises in types of business that have complex chains.²⁷

One example of a consumer dispute case decision is Decision Number 52 K/Pdt.Sus-BPSK/2022 between Bahrawi and PT Maybank Indonesia Finance. The result of the decision regarding the cassation application is Situbondo District Court Decision Number 41/Pdt.Bth/2021/PN Sit. dated 14 December 2021 in the case in question does not conflict with the law and/or statute, therefore the cassation petition submitted by the Bahrawi Cassation Applicant must be rejected.

In its consideration, the Supreme Court was of the opinion that PT Maybank Indonesia Finance did not provide clear and transparent information regarding the costs associated with motor vehicle loans. This resulted in Bahrawi feeling disadvantaged because he had to pay higher fees than expected. The Supreme Court also argued that PT Maybank Indonesia Finance could not prove that no violations had occurred. Therefore, the Supreme Court granted Bahrawi's request and ordered PT Maybank Indonesia Finance to reduce credit installments by 50% for 6 months. This decision shows that the principle of reverse evidence can be applied in various consumer protection cases. This principle can be an effective instrument to protect consumers from losses caused by business actors.

The Supreme Court has considered that PT Maybank Indonesia Finance has violated the Consumer Protection Law. The Supreme Court has also considered that PT Maybank Indonesia Finance cannot prove that no violations occurred. Thus, the application of the principle of reverse evidence in Decision Number 52 K/Pdt.Sus-BPSK/2022 has provided legal certainty to Bahrawi. Bahrawi has received his rights as a consumer who has been harmed by business actors.

In certain cases, business actors can have a complex structure, consisting of various entities interacting in the production and distribution chain. In this case, the consumer may need to conduct a more in-depth investigation and collect sufficient evidence to identify the business actor concerned and connect him to the violation that occurred. In practice, this can be a challenge because business actors in the production chain often have greater resources and access to more information than consumers. Therefore, although the burden of proving fault is basically placed on the business actor, consumers still need to have adequate resources and knowledge to overcome the difficulties that may arise in filing a lawsuit, especially if the business actor has a complex business structure.²⁸

Based on Decision Number 224/Pdt.G/2019/PN.Jkt.Pst., it can be concluded that the principle of reverse evidence does not fully meet legal certainty. This was because the panel of judges accepted Defendant II's objection which claimed that the Plaintiff's claim was unclear/vague. In this case, the Plaintiff claims that Defendant I and Defendant II have committed an unlawful act by confiscating his car which was guaranteed to Defendant I. However, the Plaintiff's lawsuit does not specifically state what losses the Plaintiff suffered. The panel of judges was of the opinion that the Plaintiff's lawsuit was unclear/vague because it did not specifically state what losses the Plaintiff had experienced. This ruling could set a bad precedent for consumer protection. This is because the panel of judges did not give the plaintiff the opportunity to prove his claim.

The panel of judges was of the opinion that the Plaintiff's lawsuit was unclear/vague because it did not specifically state what losses the Plaintiff had suffered. The panel of judges was of the opinion that the Plaintiff only stated that he had lost his car which was guaranteed to Defendant I. However, the Plaintiff did not specifically state how much the car was worth, or whether the Plaintiff had filed a claim for compensation for the loss. This view of the panel of judges is understandable. The Plaintiff's lawsuit does not specifically state what losses the Plaintiff experienced.²⁹ However, this does not mean that the Plaintiff's claim is unclear/vague. The Plaintiff's claim can be considered clear/vague if it cannot be understood by lay people. In this case, the Plaintiff's lawsuit can be understood by lay people. The plaintiff claims that Defendant I and Defendant II have committed an unlawful act by confiscating his car which was guaranteed to Defendant I.

This ruling could set a bad precedent for consumer protection. This is because the panel of judges did not give the plaintiff the opportunity to prove his claim. The principle of reverse evidence is one of the principles regulated in the Consumer Protection Law. This principle makes it easy for consumers to prove that business actors have violated consumer rights. In this case, the principle of reverse evidence should be applied. The panel of judges should have given the Plaintiff the opportunity to prove his claim that Defendant I and Defendant II had committed an unlawful act.

²⁶ Duwi Handoko, *Hukum Penyelesaian Sengketa Konsumen*. (Pekanbaru: Hawa dan AHWA, 2019), h. 29.

²⁷ Adrian Sutedi, *Tanggungjawab Produk Dalam Hukum Perlindungan Konsumen*, (Jakarta: Ghalia Indonesia, 2008), h. 2.

²⁸ *Ibid*.

²⁹ Shera Aulia. Simatupang, *Implementasi Prinsip Pembuktian Terbalik Dalam Penyelesaian Sengketa Konsumen Di BPSK*. Dialogia Iuridica, Vol. 9, No.1 (2017).

Disharmony in procedural law regulations in Indonesia, especially regarding evidence in the Civil Procedure Code (KUHAP) and Law Number 8 of 1999 concerning Consumer Protection, has created an ambiguous and confusing legal situation. Article 163 of the Criminal Procedure Code places the burden of proof on the plaintiff, emphasizing that the plaintiff must prove the existence of the right or event that is the basis of his claim. However, a paradox arises with Article 28 of the Consumer Protection Law which stipulates that the burden of proof regarding the element of fault in a claim for compensation is placed on the defendant.

This ambiguity creates legal loopholes that allow parties, especially in the context of consumer protection, to choose regulations that are more favorable to them. In practice, a person can choose between using the Criminal Procedure Code or the Consumer Protection Law as the basis for a claim for compensation, creating substantial legal uncertainty. As a result, justice seekers may experience difficulties in determining the most appropriate and fair legal route to handle their cases.

To overcome this problem, it is necessary to harmonize the evidentiary provisions in the Criminal Procedure Code and the Consumer Protection Law. This harmonization can be carried out through legal revisions or the establishment of clear interpretation guidelines. This step will help avoid ambiguity, increase legal certainty, and provide clarity to the parties involved in the legal process, especially in cases related to consumer protection. Thus, a more integrated and unified procedural law system can provide justice that is more effective and recognized by all parties.

The disharmony between the Civil Procedure Code (KUHAP) and Law Number 8 of 1999 concerning Consumer Protection can be understood through several fundamental factors. First, the difference in the procedural legal objectives of these two regulations is one of the main triggers. The Criminal Procedure Code is directed at achieving material truth, placing the burden of proof on the party filing the lawsuit. In contrast, the Consumer Protection Law focuses on protecting consumer rights, so that the burden of proof regarding the elements of fault in a compensation lawsuit is placed on the party being sued. This difference in essence creates ambiguity in determining the most appropriate legal route in a particular case.

The second factor that influences disharmony is the difference in the legal systems underlying the Criminal Procedure Code and the Consumer Protection Law. The Criminal Procedure Code is a legacy of Dutch law that has been implemented in Indonesia since the colonial period, while the Consumer Protection Law is a national legal product that reflects the needs and dynamics of modern society. These differences in legal systems give each regulation its own characteristics, creating obstacles in achieving harmony between the KUHAP and the Consumer Protection Law. Therefore, efforts are needed to formulate a legal approach that is more integrated and relevant to the developing national legal context.

Disharmony between the Civil Procedure Code (KUHAP) and Law Number 8 of 1999 concerning Consumer Protection has the potential to harm law enforcement in Indonesia. One of the negative impacts that arises is reducing legal certainty. Justice seekers, especially in consumer protection cases, face uncertainty regarding procedural mechanisms related to evidence. Without this

certainty, it is difficult for the parties involved to plan their legal strategies effectively.

Another negative impact is an increase in court costs. The parties to the dispute are faced with having to pay additional costs to test and follow the applicable evidentiary provisions. This condition can be burdensome for the parties, especially those who may have limited financial resources. In addition, the case resolution process can experience delays because the parties have to engage in debates regarding the applicable evidentiary provisions, prolonging the legal process and increasing the burden on the justice system. Therefore, harmonization efforts between the Criminal Procedure Code and the Consumer Protection Law are very important to increase legal certainty, reduce case costs, and speed up the dispute resolution process in Indonesia. The existence of different procedural laws can give rise to legal uncertainty and injustice in resolving disputes. For example, in consumer disputes, the disputing parties can choose to use the Criminal Procedure Code or the Consumer Protection Law. This can create legal uncertainty for justice seekers.

Based on the conditions of legal certainty in the context of resolving consumer disputes, as previously explained, in the event that a business actor cannot prove that he has not made a mistake, he will be obliged to pay compensation to consumers who experience losses. However, if the business actor succeeds in proving that the losses incurred were not caused by his fault, then consumers who are harmed will not receive any compensation at all.³⁰

To increase legal certainty and provide better protection for consumers in the context of the principle of evidence, there are several legal construction plans that can be considered, including: Stronger enforcement against legal violations, increasing the obligations of business actors, providing legal resources for consumers, consumer education, clarification of legal regulations, audits of products and services, increasing transparency of business actors, strengthening mediation and arbitration, legal counseling, as well as regular evaluation of policies and regulations, and so on.³¹

In relation to the Consumer Protection Law which is based on the principle of reverse evidence, where the burden of proof is on service/goods providers in consumer disputes, according to studies that have been carried out, it would be fairer and more balanced if proof was carried out from two directions. But balanced does not mean proportional. In relation to reverse proof, when consumers are required to provide evidence regarding the negligence of the service/goods provider which caused the consumer's loss, it will require a lot of consideration, both in terms of costs and legal knowledge. Therefore, in relation to suggestions for future legal reconstruction, there needs to be additional education for consumers regarding proof efforts which of course is also accompanied by the provision of facilities and assistance.

In practice, entrepreneurs often tend to ignore consumer rights and take advantage of consumers' vulnerabilities and disadvantaged positions, solely to achieve their economic

³⁰ Soeroso, *Pengantar Ilmu Hukum*, (Jakarta: Sinar Grafika, 2011).

³¹ Zainal Arifin Hoesein, "Pembentukan Hukum dalam Perspektif Pembaharuan Hukum (Law Making on the Perspective of Legal Reformation)". *Jurnal Rechts Vinding* 1 (3), (2012).

goals. Entrepreneurs have the freedom to produce goods and services without having to comply with existing standards, as if protected from punishment or sanctions. The use of standard contracts with exemption from liability clauses is an example of behavior that is detrimental to consumers. Sometimes, entrepreneurs also exploit consumers in an effort to achieve desired economic goals.

On the other hand, to achieve a balance between the interests of consumers and business actors in the consumer dispute resolution system, the application of the principle of *audi et alteram partem*, which in the context of justice, means upholding the principle of impartiality, must be fully implemented. The principle of good attitude from business actors in all stages of business activities, from production to distribution, must truly be the focus and goal in improving the consumer dispute resolution system through the Consumer Dispute Court, which is reflected in the legal normative framework.

In an effort to maintain fairness in the relationship between business actors and consumers, it is essential to have an appropriate legal construction. This legal construction must be able to guarantee legal certainty, justice and efficiency in resolving disputes that may arise. One of the crucial aspects in legal construction is formal legal unity. Formal legal unity indicates the existence of uniformity in the procedural law applied to resolve disputes.

The application of formal legal entities in resolving civil disputes, including consumer disputes, has become common practice in several countries. In Indonesia, although the Civil Procedure Code (KUHAP) functions as the main civil procedural law, there are still a number of other statutory regulations that regulate procedural law with different principles. For example, Law Number 8 of 1999 concerning Consumer Protection regulates special procedural law for consumer disputes.

The realization of formal legal unity in resolving civil disputes, including consumer disputes, plays a central role as a crucial step in improving and improving the legal system. This step is considered important because it has a positive impact in three main aspects: Legal certainty, justice and efficiency of law enforcement. Thus, the realization of formal legal unity is not only an ideal goal, but also a strategic step in improving the integrity and effectiveness of the legal system, especially in the context of resolving civil disputes, which involve consumer rights that need to be protected.

Conclusion

Law Number 8 of 1999 concerning Consumer Protection is the result of legal thinking which underlies the need to protect consumer rights and create balance in the relationship between consumers and business actors. This is reflected in the concept of *ratio legis*. In the context of the evolution of product liability in civil law legal systems, such as in the Netherlands, where this legal system is also used in Indonesia, reverse proof has become an important principle in resolving disputes. The presumption of fault assumes that producers are automatically responsible for consumer losses, encouraging producers to prove their innocence. With reverse proof, the burden of proving fault shifts from the consumer as plaintiff to the producer as defendant, making it easier for consumers to prove that the producer committed an unlawful act. However, consumers still have to prove three other elements, namely the producer's unlawful

actions, the losses experienced, and the causal relationship between the two. Thus, the principle of reverse evidence strengthens consumer protection in facing product liability under the Consumer Protection Law.

In applying the principle of reverse evidence in resolving consumer disputes, especially as regulated in the Consumer Protection Law, it appears that the principle of legal certainty plays a crucial role. This principle places the burden of proof on the provider of goods or services, ensuring that those with greater economic power must prove their compliance with consumer protection laws. Legal certainty is the main basis, ensuring that consumers are not only formally protected, but also receive substantial justice. However, the disharmony between the Civil Procedure Code (KUHAP) and the Consumer Protection Law creates ambiguity and results in difficulties in determining the most appropriate legal route. To increase legal certainty and avoid potential losses for consumers, harmonization between civil procedural law regulations and consumer protection needs to be strengthened through legal revisions or the establishment of clear interpretation guidelines. Thus, a more integrated legal system can provide optimal protection for consumers and guarantee legal certainty in resolving consumer disputes.

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