

## VALUE BALANCE IN CONSUMER PROTECTION

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### ABSTRACT

This research aims to describe how the realization of ' Balance ' in the Consumer Protection Act, describes how the responsibility of the parties (consumers, businessmen and the Government) so that it can realize the value of the balance in the protection of consumer, Research conducted in the framework of the preparation of this dissertation is to type the socio-juridical, in addition to researching the secondary legal materials in the form of legal regulations, manual and electronic law library, relevant research results in the field of law of particular problems in the field of consumer protection and other written materials, as well as researching various legal facts about consumer protection which occur in the field as well as its impact on the general public. The results showed that: 1) a form of value balance in consumer protection legislation lies in the synergy between the rights and obligations the rights and obligations of consumers, businessmen, as well as the duties and responsibilities of the Government, the supporters of both public institutions and private consumers are dispute resolution Efforts, and the use of contract oversight) of overall indicators are assessed if merged between the assessment of consumers and businessmen, as well as assessment of the Government then obtained 32 indicators of where the total number of indicators corresponding to the value of the balance of a total of 10 indicators, while the total number of which is not in accordance with the value of the balance as much as 21 indicators and only one indicator that his judgment balanced. So that the efforts made in the framework of the fulfilment of the rights and obligations of consumers and businessmen as well as maximize the task and responsibility of the Government is still having a lot of obstacles or not be able to realize the value of balance.

*Keyword: Balance Value, and consumer protection.*

### INTRODUCTION

After fifteen years since the promulgation of Act No. 8 of 1999 on the protection of consumers to the next in this dissertation only written UUPK, enacted by the Government. Currently still just felt still large number of weaknesses in its implementation, especially in terms of guaranteeing the rights of consumers and consumer dispute resolution.

The more advanced a country's economic development that also have an impact on the development of the industry and the world economy, then increasingly require devices laws regulating and protecting the rights of consumers in order to create a business climate that is balanced between consumers and businessmen.

In fact the position of businessmen and consumers from the beginning has not been balanced. Businessmen have the capability of knowledge about the ins and outs of production of goods and granting of services that exceed the levels of consumer knowledge and capabilities will also capital and higher bargaining position. The imbalance in the contractual relationships that occur between consumers and businessmen is characterized by the large number of unilateral

agreements (contracts baku) which is sometimes very incriminating and detrimental for consumers.

The unbalanced position will create a situation where consumers have to take it for granted that agreement has been prepared by the trade or if it is not received, then the consumer will not get the goods and or services needed (take it or leave it).

According to the Constitution, the State is obligated to protect all their citizens, creating a general well-being, as well as realizing a fair and prosperous society. One form of protection that is the formation of UUPK. In order to ensure that goal is achieved, the country of intervention against the contractual relationship between the consumer and the trade that no other aims to create a 'balanced relationship' between consumers and businessmen, even by thrifty authors, including inside the Government, which in this dissertation the author gives the term "three main pillars in the protection of consumers".

In terms of UUPK article 2 expressly stated that: "the consumer protection benefits of berazaskan, justice, balance, security and safety of the consumer, as well as legal certainty" in particular the principle of balance is intended to provide a balance between the interests of consumers, businessmen and the Government in the sense of material and spiritual.

Consumer protection is right part and parcel of a healthy business activities. In a healthy business activities there is a balance between legal protection of consumers, businessmen and the Government, the absence of a balanced protection cause consumers are on a weak position. The more so if the product produced by the businessmen is the kind of product that is limited, businessmen may be abusing its position that such monopolistis. It certainly would be detrimental to consumers.

The reality of the pointed out that Consumer protection practice (Das Sein) there is still a difference with what it should be (Das Sollen) as set forth in the provisions of the consumer protection law and other related regulations. The occurrence of differences between the two poles of the childbirth issues (issue) is large, i.e.: "the practice of consumer protection as long as it's not reflective of the values of balance in an attempt to realize the welfare of society" with such issues is becoming very interesting and deserves to be in question, and then researched and analyzed in depth through this research.

Based on the description in the introduction above, the formulation of the problem in this study is: what form of 'Balance' in consumer protection legislation? How is the responsibility of the parties (consumers, Businessmen and the Government) so that it can realize a balance in the consumer's shield cover. Hence the purpose of this study is to find out how a form of 'Balance' in the consumer protection act and to find out how the responsibility of the parties (consumers, Businessmen and the Government) so that it can realize a balance in the consumer's shield cover.

The results of this study are expected to provide the benefit as an effort towards the development of knowledge in the field of consumer protection law and policy reference in formulating policy on the development of the law of consumer protection law in particular.

## THEORETICAL FRAMEWORK

In terms of UUPK No. 8 in 1999 referred to in chapter II of the principle and the aim of consumer protection said that benefits, fairness, balance, security and safety of consumers as well as legal certainty. Surely this spelled out the principle of values that had previously been made and animates aspects influenced this legislation.

In the Consumer Protection Act, in addition to the value of the balance as a highly influential in an effort to realize the objectives of consumer protection, also known the existence of the other values which according to the author of a very big influence in an attempt to create a balanced State in realizing the protection of consumers, including the values of Justice, the value of the benefit, the value of safety and security and legal certainty.

The value of the balance in question to provide a balance between the interests of consumers, businessmen, and the Government in the sense of material and spiritual.

As meant in everyday language, the word "balanced" refers to the notion of a "State of the Division of the burden of sides are in a State that is out of balance". In the context of this study "balance" is understood as "a State of silence or alignment because of the various styles employed none dominates the other, or because none of the other master elements.

By looking at the substance of article 2 of the UUPK Similarly, his explanation, and then it can be grouped into three principles of law i.e.:

1. The principle of expediency which includes the principles of security and the safety of consumers;
2. The principle of Justice which includes the principle of balance;
3. The principle of legal certainty.<sup>1</sup>

*Radbruch mentioning fairness, expediency and certainty of law as a basic idea of the "three laws" or "three basic laws" value Among these three principles are often the main beam is a matter of fairness, which Friedman States that: "in terms of the law, justice will be judged on how u.s. law treats people and how it distributes its benefits and cost" and in this connection Friedman also stated that "every function of law general are specific, is allocative "as a principle of law, this principle of placing itself which becomes the first reference either in legislation or in settings in a variety of activities related to the consumer protection movement by all parties involved.*

*Fairness, expediency and certainty of the law by many legal purposes refer to as jurist. The issue of law, either as a destination or Radbruch Achmad Ali said the existence of difficulties in realizing the simultaneously. Achmad Ali said, if it is said the purpose of the law at once embodies fairness, expediency and certainty of law, if it does not pose a problem?*

*In fact often between one and the other goals occur collisions., in the case of certain laws when the judge wants an award fair according to its perception, then the consequences are often detrimental to the benefit to the wider community, and vice versa. In this connection, Radbruch teaches:*

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<sup>1</sup> Ahmadi Miru & Sutarman Yodo, 2011, **Hukum Perlindungan Konsumen**, Jakarta: Rajawali Pers, hal.26-35.

"That we should use the principle of priority in which the first priority always falls on the new benefit, justice and legal certainty" Achmad Ali can't agree completely that, as Radbruch's opinion says.

The author himself agrees to adhere to the principle of priority, but not with such order of priority has set what is taught Radbruch, i.e. consecutive first new justice benefit then the last legal certainty. Also with the opinion of the Ahmadi, who consider Miru things more realistically if it embraced the principle of priority case?

Intended purpose of the law, the three prioritized according to the case at hand, so that in case of a possible priority on benefit, while in the case of B the priority on legal certainty.

Thus it can be said that through the principle of the priority of a case, the purpose of the law to achieve fairness, Expediency, Legal Certainty or all depending on the existing conditions or encountered in each case.

The principle of the balance of the right into the principle of Justice, given the nature of the intended balance was also justice for the interests of each party, i.e. consumers, businessmen, and the Government. The interest of the Government in this connection cannot be seen in the relationship of trade transactions directly accompanying the trade and consumers. The interest of the Government in order to represent the interests of the public that its presence is not directly between the parties but through restrictions in the form of the policy set forth in the various laws and regulations.

The balance of protection between businessmen and consumers saw the function of law according to the view of the Roscoe Pound as a means of controlling the life of society with a balance of "interests" that exist in the community or in other words as a means of social control.

The balance of legal protection of businessmen and consumers is inseparable from the existence of the arrangements concerning the legal relations between the parties. According to Bellefroid, generally good legal relations which are public or private based on principles or the principle of freedom, a subject of law free to do what it wants with limited by the wishes of others and maintaining social order.

With the principle or the principle of equality, every individual has the same position in the law to carry out and confirm his rights. In this case, the law gives the same treatment against individuals. While the principle or the principle of solidarity is in fact the reverse side of the principle of freedom.

If the principle or principles of freedom that stands out is right, then in principle or the principle of solidarity that stood out was liabilities and as if each individual agree to preserve the life of the society which is a mode of survival for mankind. Through principle or principles of solidarity developed the possibility of countries came to the actual nature of the private rights protected by reason of permanent life together. It is this Government's interest in the relationship is implemented as intended in the principle of balance.

John Rawls in his *A Theory of Justice* discusses more about the concept of Justice expressed by the utilitarian and devise a theory that justice is a reasonable thing.

The principle of Justice House of utilitarian that justice has been run though one party is losing its origin only kindness can be obtained by a large quantity of (The greatest happiness of the greatest number). According to Rawls can it is possible something was said to be fair though, there is some inequality in terms of distribution, but the inequality that occurred should be able to protect or enhance their position the least advantaged in society/maximize the State minimum.

Based on the foregoing, the author concludes that fair does not mean it should be divided evenly, but his position weaker party should be protected.

When examined further between the theory and the theory of Utilitarian John Rawls about the concept of Justice as follows:

According to Utilitarian pragmatism (Bentham, Hume, and J.S. Mill), Justice will be obtained if the maximum use of goods for a community, in this case the Average Utility is calculated per capita so that famous phrase "The Greatest happiness of the greatest number".

According to John Rawls, Justice will be obtained if the maximum use of the goods is done evenly with attention to the personality of each (us justice fairness).

The size of the leftism of Justice Utilitarianism is happiness to mankind as much as possible then the laws must also be able to give a benefit (utility) for people as possible having regard to the parties in the sense of giving benefits to pay attention to the personality of each.

John Rawls further revealed that can be said to be fair though, there is some inequality. However, such inequality should be able to improve the position of those who are least advantaged. So the fair should not be equitable in the sense that the same taste and equally but the weaker his position that must be protected.

Next in the study also elaborated further on the legal theory advanced by Roscoe Pound, namely the theory of Balance of interests where Pragmatism, is the basis of the ideology theory of the balance of interests. In line with the pragmatism of his empire, the Pound is likely to avoid construction-construction theory of outrageously abstract as general theories that emerged in Europe, for the Pound, the law should not be left in the concepts of logical-analytical or immersed in the technical juridical expressions are too exclusive. Instead, the law had to be landed in the real world, i.e. the social world are crowded with the needs and interests of competing interests.

Basically, " initial conditions "the structure of a society always in conditions that were less balanced, some are too dominant, and some are marginalized. To create a civilized ' world ', the structural imbalances that inequality-needs to be reorganized in the pattern of a proportional balance. In the context of the purposes of the law, which is logical analytical and versatile-abstract (pure law) or that contains the description of the reality of what they are (a sociological), cannot be relied upon.

The type of law, is at best only reinforces what is. La doesn't change the situation. Therefore, the progressive step that is necessary to enable the law to organize the change. From this emerged a

theory about Pound law as a tool of social engineering. The question then arises, what should be done by law in the context of social engineering that? The answer is 'organizing interests that exist in society ".

The importance of such interests must be arranged in such a way that a proportionate balance is achieved. The benefits of harmonious society is a structure in such a way to reach a maximum in satisfaction of the need with may avoid clash and waste ".

## **RESEARCH METHODS**

Research conducted in the framework of the preparation of this dissertation is to type the socio-juridical, in addition to researching the secondary legal materials in the form of legal regulations, manual and electronic law library, relevant research results in the field of law of particular problems in the field of consumer protection and other written materials, as well as researching various legal facts about consumer protection which occur in the field as well as its impact on the general public. The legal research type (a combination of normative and sociological) use with differing legal research basing on normative and sociological legal research. Normative legal research done by perusing the library material is secondary data. While sociological legal research or empirical mainly examines the primary data. Through the merger of the two methods of the study expected that what is found there is a rapprochement between knowledge and its object so that the truth is found to have a high degree of validity, the objective and logical, since it concerns the correspondence between the objects with what is already known. The population was made the object of research is the consumer that is in the city of Makassar with consider several reasons among which that Makassar as major cities in between other large cities are there in Indonesia especially Indonesia as a representation in the eastern region with a population of consumers/big enough then the question of consumer protection is almost evenly distributed in all regions of Indonesia so that the restriction of population are expected in addition to help facilitate research without lowering the quality of the representation of the population that exists throughout Indonesia. As for the samples to be taken is divided into three large groups, namely the Group of consumers, a group of businessmen and Government groups, the more samples taken then the percentage rate gaffe will be getting smaller, particularly for a sample of consumers and businessmen that the number is large enough then the researchers will take randomly stratified using a Stratified Random Sampling method, while for the Government as far as possible approaching the amount of the population so that the answers received may be closer to reality that is happening in the field. Data collection is done using engineering documentation, interviews and questionnaires. As the questionnaire data-collecting instruments drawn up in the form of a question by following the liker scale. Data analysis using frequency tables then see the tendencies of each answer and then drawn inferences from the respondent's answer and then explained in the descriptive answer to existing problems.

## **RESULTS AND DISCUSSION**

### **Realization of the value of the balance in the consumer protection act. (Law number 8 in 1999).**

From a number of 65 section contained in the UUPK after the authors examine as already described, there are 32 chapter by author contains implied therein the interests and values of balance.

According to the author, if the consumer really be protected, then the rights and obligations (interest) consumers, businessmen and the responsibility of the Government as well as the roles and functions of the consumer protection agencies both private as well as public, coupled with the rest of the criteria stated in the articles of UUPK which is a form of crystallization of the value of the balance should be met and implemented carefully, for the fulfillment of the rights, obligations and responsibilities that would protect consumers and also businessmen from various losses that may arise from various aspects and terms of realization the value of the balance.

To make it easier to understand how that balance value form is reached, as the author of the show in the figure below, where 3 main pillars, namely consumers, businessmen and the Government must be sustained by a good consumer protection Agency, is also sustained by the efforts of the Government in his making programs which support the efforts of consumer protection in the community, and also ditopoang by the efforts of consumer dispute resolution (litigation and Litigation) that adequate , so hope to bring about justice and consumer protection is beneficial to the entire community of Indonesia may soon be realized.

In the picture above shows how the author wants the writers up and named as "theory of harmonization of the main Pillar 3 in consumer protection," which runs with basing an understanding of the concept of the value of the balance.

The principle of balance is grouped into the principle of Justice, given the nature of the intended balance was also justice for the interests of each party, i.e. consumers, businessmen and the Government.

According to the opinion of the author, in line with the theory of Roscoe Pound that the intended balance is the balance of interests that exist in the consumer, Government and trade (3 main pillars of consumer protection), so as to materialize the balance then the required synergy between all the interests realization.

Synergy between the expected interest manifested on 3 main pillars above, supplemented with Government efforts, consumer protection agencies, consumer dispute resolution attempts and settings as well as supervision over the use of contract in society, it is believed by the author will be able to realize a balance in consumer protection that will eventually create harmonization or condition/the ideal atmosphere in consumer protection, where all parties will feel the benefits and advantages that will embody the prosperity and justice for all the people.

**Responsibility of parties (3 main pillars), namely consumers, Businessmen and the Government can realize the balance in consumer protection.**

Conclusion the author can take from the responses above, respondents associated 9 indicators related to consumer rights are reviewed from the perspective of the consumer obtained 5 indicators corresponding to the expectations, terms/rules the author of legislation that give meaning to the positive (+), and there are three indicators that are not in accordance with the provisions of the legislation/author give the meaning of the negative (-) and there is 1 indicator where the value is balanced. This shows that despite the positive factors more than the negative factors, according to save the author remains still present obstacles that can be a barrier to the achievement of balance in consumer protection. (As seen in the table below)

The conclusion that can be drawn from the assessment of consumers over the responsibility of the perpetrators of the attempt of the review/consumer perspective is of 8 indicators related to the responsibility of the perpetrators of the attempt, not entirely in accordance with the expectations, terms/regulations that authors give meaning to the negative (-). This indicates that the item relating to the responsibility of businessmen according to the responses of consumers is still very low, so it will also be a factor restricting efforts to realize a balance in consumer protection.

The conclusion that can be drawn from the author's response on trade relating to the responsibility of the perpetrators of the above efforts, the relevant indicators that relate, retrieved 2 indicators that do not correspond to the value of the balance (negative) and 1 indicators corresponding to the value of the balance (positive), meant that it could be related to responsibility of businessmen, also still less so still the obstacle/barrier to efforts to realize the balance in consumer protection.

The conclusion that can be drawn from the above indicators 5 related to the responsibilities of the consumer as seen from the perspective of trade is there are 3 indicators corresponding to the value of the balance (positive) and 2 indicators that do not correspond to the value of the balance (negative), so according to the author though plus many more items but still troubled that also becomes a factor restricting the efforts of balance in consumer protection.

Of the 7 indicators related responsibility of the Government which is assessed from the perspective of trade, then it can be inferred the result where the 6 indicators are not assessed in accordance with the value of the balance (negative) with the expectation, provisions/legislation that exists, and only 1 indicators corresponding to the value of the balance (positive), so almost all indicators except 1 which became a barrier in an attempt the achievement of balance in consumer protection.

Of the overall indicator is assessed if merged between the assessment of consumers and businessmen, then the valuation obtained 32 indicators of where the total number of indicators corresponding to the value of the balance (positive) a total of 11 indicators, while the total number of which is not in accordance with the value of the balance (negative) as much as 21 indicators and only one indicator that his judgment balanced.



So overall it can be concluded that the efforts made in the framework of the fulfilment of the rights and obligations of consumers and businessmen still encounter many obstacles/constraints, if compared with the corresponding to expectations and conditions of legislation in consumer protection. (Corresponding to the value of the balance).

## CONCLUSIONS AND SUGGESTIONS

- (1) a form of Value balance in UUPK is the synergy of the various interests in the protection of consumers is implied in several articles related to the interests of the parties, in this case consumers, businessmen, and the Government and supported by public and private institutions in the field of consumer protection, which concretely materialize in the form of harmonization of existing interests on all sides, that unsettled or satisfy the rights and obligations as well as his Government's responsibility was implemented with the best , and supported by the role of protection institutions responsible men, supported the efforts of consumer dispute resolution as well as the use of contractual arrangements raw, then that's when existence of value balance is achieved and can be perceived benefits for the whole community including consumers, businessmen and also the Government.
- (2) the assessment results of taken from a number of 399 respondents consumers and 92 respondents businessmen by assessing 32 indicators of rights, obligations and responsibility for the consumers, the trade and the Government, then obtained a corresponding indicator 10 between the existing provisions in the regulations with the condition of reality that is perceived by the public, 21 indicators that do not correspond between the applicable provisions with a reality that exists in society and only 1 balanced indicators , this can be meant that still more violations that have not been able to correspond to the expectations of society and the provisions/regulations in the field of consumer protection and still little that is in compliance with the expectations, terms and legislation related to consumer protection.

Or in other words, the language is easy to understand that the criteria of the related interests/rights, obligations and Responsibilities which exist at consumers, businessmen and Government as long as it has not been entirely can be realized so as to fulfil the mandate in terms of legislation in the field of consumer protection, and haven't been able to reflect the attainment of balance.

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