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Comparative Study of Burden of Proof in Civil Procedure and Consumer Protection Law

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Abstract

This article compares the burden of proof system in resolving consumer disputes under Indonesian Civil Procedure Law and the Consumer Protection Law. It addresses two primary issues: the divergence in evidentiary burdens and the dispute resolution mechanisms adopted by each legal regime. Employing a normative-juridical research method, this study analyzes both primary and secondary legal materials using legislative and comparative legal approaches. The findings reveal that Civil Procedure Law adopts the principle of actori incumbit probatio, where the burden of proof lies with the plaintiff—often disadvantaging consumers due to their

limited access to evidence and legal resources. In contrast, the Consumer Protection Law (Law No. 8 of 1999) introduces a reverse burden of proof, requiring business actors to prove they are not at fault, thereby offering more equitable legal protection. The article includes case studies such as Supreme Court Decisions No. 681/Pdt.G/2019/PN.Jkt.Sel. and No. 175 K/Pdt.Sus-BPSK/2021 to illustrate the practical consequences of each burden of proof model. The analysis underscores the structural disadvantage consumers face under traditional civil litigation and how the reverse burden compensates for this imbalance. This research contributes to legal scholarship by clarifying legal terms (burden of proof, presumption, and standard of proof) and by emphasizing the need for procedural harmonization. Additionally, it contributes to the development of consumer law in Indonesia by offering doctrinal clarification and practical recommendations to strengthen access to justice. Ultimately, the study recommends aligning evidentiary standards with substantive justice to enhance consumer protection and ensure fairness in dispute resolution systems.

Keywords

Burden of Proof; Consumer Protection Law; Civil Procedure Law; Consumer Dispute; Reversed Burden of Proof.

I. Introduction

Trade is an order of activities related to the transaction of Goods and/or Services within the country and beyond the territorial boundaries of the country for the purpose of transferring rights to Goods and/or Services to obtain rewards or compensation.[1] In Indonesia, the regulation of trade activities has several objectives and one of the objectives is to improve consumer protection (*see article 3 letter j of the Trade Law).*

The need for increased consumer protection is influenced by various factors, including the weak bargaining position of consumers against business actors, generally lower levels of consumer education and knowledge, as well as the impact of industrialization and technological advances. Although industrial development provides advantages in the form of a variety of products and ease of access, this also encourages unfair competition between business actors who compete with each other to control the market so that it has an impact on the decline in the quality of goods and/or services.[2]

Globalization and free trade have also expanded the distribution of goods and services across countries. This opens up a gap for dangerous or unsuitable products to circulate, which risks harming consumers. Therefore, a regulation is needed that provides legal certainty for consumer protection in these trading activities. This is in line with the United Nations Guidelines for Consumer Protection *(*UNGCP*)* which emphasizes the importance of a fair, effective, and consumer-friendly national legal system.[3]

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1 Negara Republik Indonesia, "Undang-Undang Nomor 7 Tahun 2014 Tentang Perdagangan," Pub. L. No. 7 (2014).

2 Aris Prio Agus Santoso, Ecclisia Sulistyowati, and Tri Wisudawati, *Consumer Protection Law (A Practical and Applicable Approach)*, Digital (Yogyakarta: Pustaka Baru Press, 2024).

3 United Nations, "United Nations Guidelines for Consumer Protection," United Nations Conference On Trade And Development § (2016), https://unctad.org/publication/united-nations-guidelines-consumer-protection?utm_source=chatgpt.com. The UN Guidelines for Consumer Protection serve as a reference for member countries, including Indonesia, in formulating the main characteristics of an effective consumer protection system. This guideline also encourages the establishment of law enforcement

In the Indonesian legal system, Law Number 8 of 1999 concerning Consumer Protection (abbreviated as UUPK) is present as a *lex specialis* that provides special protection for consumers. This law regulates the legal relationship between end consumers and business actors, including corporations, state-owned enterprises, cooperatives, importers, traders, distributors and others.

The parties are legal subjects who have legal ties as consumers and business actors in carrying out trading activities of goods and/or services. Such trade activities can occur from various sectors of life, such as the financial sector (banks, financial institutions, *fintech*); the transportation sector (traditional or application-based) responsible for the safety, comfort, and security of consumers during the use of services; the tourism sector such as hotels, travel agents, or ticketing providers, responsible for ensuring services in accordance with the contracts or promotions offered; Education such as private educational institutions as business actors have an obligation to provide educational services in accordance with agreements with students or students' parents. Consumers (students/parents) are entitled to the promised quality of education; and many other sectors.

The legal relationship between business actors and consumers is established because of the bond of rights and obligations between the parties to agree to carry out a trade activity of goods and/or services. The word "legal relationship" is known from the term *rechtsverhouding* or *rechtsbetrekking* which means the relationship that occurs between one legal subject and another legal subject and or between the legal subject and the legal object that occurs in a society where the relationship is governed by law and therefore there are rights and obligations between the parties in the legal relationship.[4]

Trade activities of goods and/or services carried out by business actors and consumers are the manifestation of the existence of an alliance (*verbintenis*) both born due to agreement

agencies, compensation mechanisms, and the development of legal and regulatory frameworks at the national and regional levels that are in line with each country's economic, social, and environmental conditions.

4 Romli Arsad, *Introduction to Law*, Digital (Bandung: Alqaprint Jatinangor, 2020).

(agreement/contractual) and due to law.[5] This is as Riduan Syahreni said, quoted in I Ketut Oka[6] regarding an engagement (*verbintenis*) defined as a legal relationship between two parties in the field of wealth, where one party (creditor) is entitled to an achievement, and the other party (debtor) is obliged to fulfill that achievement. Therefore, in every engagement there are "rights" on the one hand, and "obligations" on the other. The fulfillment of these rights and obligations is an achievement in the legal relationship of the trade of goods and or services.[7]

Transactions in the wider trade in goods and/or services encourage the birth of various complexities of legal relations between business actors and consumers to fulfill each other's rights and obligations. The complexity that occurs also presents problems such as defective or non-conforming goods/services, the provision of misleading information, the abandonment of warranties or guarantees, violations of data privacy, trade monopolies, online transaction cases, defaults (breach of promises), unlawful acts, and even fraud or counterfeiting that are susceptible to occur or be experienced by parties, especially consumers from various sectors of trade activities.

The contractual relationship between consumers and business actors is a form of activity in the realm of civil law regarding an alliance which is also a private jurisdiction between legal subjects in conducting trade transactions of goods and/or services.[8] The problems that arise from the existence of these legal relationships have the potential to cause disputes between business actors and consumers.

Etymologically, the word "dispute" comes from Sanskrit which means critical or critical. Based on KBBI, the word "dispute" means something that causes differences of opinion; quarrel; disputes; or cases (in court).[9] Thus, a consumer dispute is a dispute between a Business

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5 R.Subekti and R. Tjitrosudibio, *Civil Code*, Cet 35 (Jakarta, Indonesia: Pradnya Paramita, 2004). Article 1233

6 I Ketut Oka Setiawan, *Law of Alliance*, Digital (Jakarta: Sinar Grafika, 2021).

7 R.Subekti and R.Tjitrosudibio, *Civil Code*, 35th ed. (Jakarta: Pradnya Paramita, 2004).

8 Aulia Muthiah, *Consumer Protection Law, Positive Legal Dimension and Sharia Economics* (Yogyakarta: Pustaka Baru Press, 2020).

9 Language Development and Development Agency, "Kamus Besar Indonesian," Ministry of Primary and Secondary Education of the Republic

Actor and a Consumer who demands compensation for damage, pollution, and/or suffering losses due to consuming goods and/or utilizing services produced or traded.[10]

Efforts to sue for damages for damage, pollution, and/or suffer losses due to consuming goods and/or utilizing services produced or traded, can be pursued by the disputing parties in accordance with the positive law *(ius constitutum)* applicable in Indonesia. Dispute resolution can be pursued through litigation (court) and non-litigation (out of court) mechanisms. The legal options used are also divided into two, namely based on the Civil Code and the Civil Procedure Law *(lex generalis),* or based on the Consumer Protection Law *(lex specialis).*

In every dispute resolution mechanism in Indonesia, there is an important element that is the basis for the judge's decision, namely proof. Evidentiary efforts are made by the parties in dispute to prove the truth of an event or the right of the postulates presented, including by consumers and business actors who are undertaking efforts to resolve consumer disputes, both in litigation and non-litigation. Juridical proof as stated by theoretical and legal practitioner Lilik Mulyadi, quoted in Laela & Anita[11]that in the sense of proof contains elements, which are part of the civil procedure law, is a process to convince the judge of the truth of the postulates presented by the parties to the civil case in court and is the basis for the judge in order to render a verdict.

Proof in English law often uses two terms, namely *proof* and *evidence.* As for Dutch law, it is called "*bewijs*".[12] The term *evidence* in a special meaning was put forward by Sir Roland Burrows, quoted in Achmad & Wiwie[13] meaning that evidence or evidence is placed before

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of Indonesia (Indonesia, 2016), https://kbbi.kemdikbud.go.id/entri/sengketa.

10 Ministry of Trade, "Regulation of the Minister of Trade of the Republic of Indonesia Number 72 of 2020 concerning the Consumer Dispute Settlement Agency," Pub. L. No. 72, 21 1 (2020), https://peraturan.bpk.go.id/Details/160335/permendag-no-72-tahun-2020.

11 By Laela Fakhriah and Anita Afriana, *The Legal Dimension of Proof in Civil Dispute Resolution*, *UNPAD PRESS*, Print 1 (Bandung: UNPAD PRESS, 2021).

12 Achmad Ali and Wiwie Heryani, *Legal Principles of Civil Evidence*, 1st ed. (Jakarta: Kencana, 2012).

13 Ali and Heryani.

the court so that the court can decide the disputed event. Included in the sense of evidence, it includes testimony, *whether oral* (oral), *documentary or real*. In this case, so that the disputed event can be proven or unproven.

The law of proof is a set of legal rules that govern evidence, namely all processes using legal evidence, and actions are carried out with special procedures to find out the juridical facts at the trial, the system adopted in the evidence, the conditions and procedures for submitting the evidence and the authority of the judge to accept, reject, and assess a piece of evidence.[14] Meanwhile, the burden of proof is the burden from the judge on the litigants to submit evidence in accordance with the provisions of the applicable procedural law, and prove the truth of the facts presented based on the evidence submitted, so that the judge is confident of the truth of the facts presented (in the case of civil proceedings, the belief is *a preponderance of evidence*).[15]

In the civil procedure law system, Prof. Soedikno Mertokusumo was quoted in Koesparmono & Armansyah[16]as saying that the truth that must be sought by the Judge is the formal truth, in contrast to the criminal proceedings where the Judge seeks material truth. Formal truth means that the Judge must not exceed the limits proposed by the litigant. This is in line with the reading of article 178 paragraph (3) of the HIR[17]where the Judge is prohibited from issuing a verdict on a case that is not prosecuted or decides to exceed what is prosecuted/sued. So that the principle *of Actori Incumbit Probatio* which means "whoever postulates, he is obliged to prove."[18] Thus, the interested parties (the

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14 Alpha, *The Law of Proof in Criminal, Civil, and Corruption Proceedings in Indonesia*, 1st ed. (Jakarta: Raih Asa Sukses, 2011).

15 Ali and Heryani, *Legal Principles of Civil Evidence*.

16 Koesparmono Irsan and Armansyah, *A Guide to Understanding the Law of Evidence in Civil Law and Criminal Law*, ed. Gramata (Bekasi: Gramata Publishing, 2016).

17 Indonesia Republic, "Updated Indonesian Regulations (Het Herziene Indonesisch Reglement.)," jdih.mahkamahagung.go.id § (1926), https://jdih.mahkamahagung.go.id/legal-product/herzien-inlandsch-reglement-hir/detail.

18 R.Subekti and Tjitrosudibio, *Civil Code*. Stated in Article 163 HIR/283 RBg/1865 of the Civil Code reads *"Whoever claims to have a right, or mentions an event to establish that right or to deny the rights of another, must prove the existence of that right or the existence of that event*".

Plaintiff and the Defendant) are charged with the obligation to prove the postulates presented both in the lawsuit (for the Plaintiff) and in the answer (for the Defendant).[19]

In practice, the evidentiary system in civil procedure law places a greater burden of proof on the plaintiff (generally the consumer). This is because the Plaintiff must first prove the existence of the event/right to all claims submitted in the lawsuit. Then only from the Defendant's side can the Plaintiff's lawsuit refute the postulates of the Plaintiff's lawsuit through its answer (duplicate). If the Plaintiff does not provide strong evidence, it will affect the consideration of the judge's decision to reject the postulates of the lawsuit filed, because the judge is passive and the judge must not violate the principle *of ultra vires* or *ultra petitum partium* outlined in article 178 paragraph (3) of the Criminal Code: *the judge is prohibited from giving more than requested.*

It is different from the evidentiary system adopted in Law Number 8 of 1999 concerning Consumer Protection.[20] A quo law adheres to the principle of *reversed burden of proof* as explained in the explanation of article 22. In this system, business actors (as defendants) are obliged to prove that they have not committed violations or negligence. Consumers do not need to prove the fault of business actors to obtain compensation, because business actors are absolutely responsible (*strict liability*).[21] Such a situation is known as the reverse burden of proof.[22]

This condition puts consumers in a dilemma when it comes to choosing the legal system to use in resolving disputes. If you choose the general civil route (1865 Civil Code/163 HIR/283 RBg[23]),

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19 Fakhriah and Afriana, *The Legal Dimension of Proof in Civil Dispute Resolution*.

20 State of the Republic of Indonesia, "Law No. 8 of 1999 on Consumer Protection," Pub. L. No. 8, Law No. 8 of 1999 1 (1999), https://peraturan.bpk.go.id/Home/Details/45288/uu-no-8-tahun-1999.

21 Aulia Muthiah, *Consumer Protection Law: Positive Legal Dimensions and Sharia Economics*, Elektonik (Yogyakarta: Pustaka Baru Press, 2020).

22 By Laela Fakhriah, *Capita Selecta of Indonesian Civil Procedure Law*, ed. Editorial Mandar Maju, 1st ed. (Bandung: CV.Mandar Maju, 2019).

23 Republic of Indonesia, "Regulations of Legal Proceedings for Regions Outside Java and Madura. (Regulation on the Regulation of the Legal System in the Regions Outside Java and Madura. (RBg.)," Pub. L. No. S. 1927-227., kepaniteraan.mahkamahagung.go.id 248 (n.d.),

consumers as Plaintiffs are faced with a heavier burden of proof than business actors (Defendants) because they have to prove the truth first of the postulates of the lawsuit, while the consumer protection system provides convenience in terms of proof with *reversed burden of proof*). Therefore, understanding the differences in the burden of proof system is very important, especially for consumers and business actors from various sectors of trade in goods and/or services. Both need to weigh the advantages and disadvantages of each system before choosing a dispute resolution mechanism. Based on this background, this study formulates two main problems:

1. How does the burden of proof system regulated in the Civil Procedure Law and the Consumer Protection Law compare to consumer disputes?
2. What is the mechanism for resolving consumer disputes regulated in the Civil Procedure Law and the Consumer Protection Law?

II. Method

This research uses a type of normative juridical (doctrinal) research. As Terry Hutchinson says, quoted in Djulaeka & Devi[24], that normative legal research is also called doctrinal law research which means research that provides a systematic explanation of the rules that govern a particular category of law, analyzes the relationships between rules, and explains areas of difficulty and may predict future development.

Using a statutory approach because what is being studied is various legal rules that are the focus and central theme of a research.[25] In this case, the researcher focuses on explaining the differences between the burden of proof system in the Civil Procedure Law and the reverse burden of proof system in the Consumer Protection Law for consumer dispute resolution. The researcher also explained the

https://kepaniteraan.mahkamahagung.go.id/images/peraturan/undang-undang/rv_reglement.

24 Djulaeka and Devi Rahayu, *Legal Research Methods Textbook*, Electronics (Surabaya: Scopindo Media Pustaka, 2021).

25 Jonaedi Efendi and Johnny Ibrahim, *Normative and Empirical Legal Research Methods*, Cet 2 (Jakarta: Kencana, 2018).

mechanism of consumer dispute resolution options that the parties can pursue when using the system of proof of the Civil Procedure Law and the Consumer Protection Law.

This is in line with Soerjono Soekanto's argument, quoted in Djulaeka & Devi Rahayu[26] that in normative research, the following things are carried out: research draws on legal principles, namely carried out on written and unwritten positive laws; systematic research, which is carried out on the basic meaning of legal systematics, including legal subjects, rights and obligations, legal events, legal relations and legal objects; comparative legal research is carried out on different legal systems that apply in society; legal history research, namely by analyzing legal events chronologically and looking at their relationship with existing social phenomena; Research on the level of synchronization of laws and regulations is carried out in 2 (two) ways, either vertically analyzed are laws and regulations that have different degrees and regulate the same field, and both horizontally analyzed are laws and regulations that have the same degree and regulate the same field.

The author uses primary legal materials and secondary legal materials. Primary legal material which is authoritative legal material means that it has authority, consisting of laws and regulations, official records or treatises in making laws and regulations and judges' decisions.[27] Meanwhile, secondary legal materials are in the form of publications about the law that are not official documents. As supporting materials, secondary materials consist of publications such as textbooks, legal dictionaries, legal journals, and so on.[28] The primary legal materials used in this study include: Civil Code (Civil Code), Updated Indonesian Regulations (*Het Herziene Indonesisch Reglement/HIR*), Law Number 8 of 1999 concerning Consumer Protection, and so on.

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26 Djulaeka and Rahayu, *Textbook of Legal Research Methods*.
27 Djulaeka and Rahayu.
28 Djulaeka and Rahayu.

III. Comparison of The Burden of Proof System based on The Civil Procedure Law and The Consumer Protection Law on Consumer Disputes

The Burden of Proof System based on The Civil Procedure Law in Consumer Disputes

Proof is the presentation of legal evidence to the judge who examines the case to provide certainty about the truth of an event presented.[29] The Law of Evidence is a comprehensive rule about evidence that uses valid evidence as a tool with the aim of obtaining the truth through a decision or determination of a judge.[30] Proof is the most important stage in resolving cases in court because it aims to prove the occurrence of a certain event or legal relationship that is used as the basis for filing a lawsuit in court. Through this stage of proof, the judge will obtain the basis for making a verdict in the settlement of a case.

The law of proof in the civil procedure law system in Indonesia refers to written legal sources, namely the Civil Code (abbreviated as the Civil Code) and HIR (*Het Herziene Indonesisch Reglement*) which is translated into the Revised Indonesian Regulations (RIB) which are *lex generalis* for consumer dispute resolution efforts. HIR (*Het Herziene Indonesisch Reglement*) is the result of the renewal of the *Inlandsch Reglement* (IR) through Staatsblad 1941 No.44 which applies as a civil and civil criminal procedure law in Indonesia based on Emergency Law No. 1 of 1951. Even today, the HIR is still valid with RBg and RV based on Article II of the Transitional Rules of the 1945 Constitution of the Republic of Indonesia. The Revised Indonesian Regulations (RIB) only contain matters related to civil cases while matters related to criminal cases are regulated by the Criminal Procedure Code and its implementing regulations.

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29 By Laela Fakhriah, *Electronic Evidence in the Civil Proof System*, ed. Dinah Sumayyah, Print 1 (Bandung: PT Refika Aditama, 2017).

30 Ali and Heryani, *Legal Principles of Civil Evidence*.

The existence of the Civil Code and HIR as a source of material law and a source of formal law in the Indonesian legal system, makes it a positive law (*ius constitutum)* for the settlement of cases in the civil/private realm which also provides the basis for the application of the evidentiary system contained in it, namely article 1865 of the Civil Code, article 163 of the Civil Code, and article 283 of the Criminal Code.

Article 1865 of the Civil Code reads:

> *"Every person who postulates that he has a right, or in order to establish his own right or to deny the right of another, pointing to an event, is obliged to prove the existence of that right or event."*

Article 163 of the HIR reads:

> *"Whoever claims to have a right, or mentions an event to assert that right or to deny the rights of others, must prove the existence of that right or the existence of that event."*

Article 283 of the Criminal Code reads:

> *"Whoever thinks he has a right or a circumstance to strengthen his right or to deny the right of another, must prove that right or circumstance."*

Based on the content of the above articles, it can be observed that there is an obligation for a legal subject who feels that he has a right or affirms his own rights, or an event (event) or refutes/denies the rights of others, then the subject of the law is obliged to provide proof of the existence of the right or event (event) that he affirms. As also stated by Prof. Achmad Ali and Dr. Wiwie Heryani in their book entitled Principles of Civil Proof Law[31] that through article 1865 of the Civil Code, article 163 of the Civil Code, and article 283 of the Civil Code, we can see what can be proven *(Quod Erat Demonstrandum),* namely Events (*factum)* and Rights *(ius).*

Events and rights are the objects of proof in the Indonesian civil procedural law system which is positioned as the main points that must

31 Ali and Heryani.

be proven by the parties when in dispute. The following is a description of the rights and events in question[32]:

1). Event

Proven events are events presented by the parties to a dispute before the Tribunal. This is because in a civil case that must be proven by the litigants is not the law, but the event or legal relationship. The law does not have to be submitted or proven by the parties, because the judge is considered to have known the law to be applied, both written and unwritten laws.[33] As the existence of the principle of *proof "ius curia novit*" means that the judge is always fixed on knowing the law of every case he tries, so that the judge must not refuse to examine the case until it is decided on the grounds that there is no legal basis.

However, the events presented by the Plaintiff and the Defendant are not necessarily all important to the judge as the basis for considering his decision, therefore it must still be filtered by the judge. It is this relevant event that must be determined by the judge. Then there are several things that do not need to be proven, namely:

a. Everything that is submitted by one of the parties and acknowledged by the other party.
b. Everything that the judge sees in front of the court.
c. Everything that is considered known to the public (*notorious events).*

2). Rights.

Rights are the object of proof. The right can be proven as stipulated in article 163 of the HIR (283 RBg) with the postulate that: *"Whoever claims to have a right, or mentions an event to establish that right or to deny the rights of others, must prove the existence of that right or the existence of that event."* The same argument is also regulated in book IV of article 1865 of the Civil Code.

In the object of research in civil cases, when what is proven is an event, what must be proven is the truth. Then the truth that must be sought by the judge is formal truth, meaning that the judge must not

32 Ali and Heryani.
33 Fakhriah.

exceed the limits proposed/requested by the parties to the case. This is emphasized in article 178 paragraph (3) of the HIR or article 189 paragraph (3) of the Criminal Code, which reads: "*prohibiting the judge from issuing a decision on a case that is not prosecuted or will grant more than what is prosecuted*".

The obligation to prove and the burden of proof are issues that determine the course of the examination of the case and determine the outcome of the case, which proves it must be done by the parties (not the judge) by submitting evidence, then the judge based on the consideration by looking at the situation and conditions of the case, which will determine which party must prove and whose truth is used as one of the bases for making the final decision (Teguh Samudera, quoted in Rahman Amin).[34]

The process of proving the truth of an event or right presented by the parties, directs the parties to also pay attention to the evidence to be used that is valid in nature and is expected to be able to prove the truth that it postulates. In this case, the evidence recognized in the civil procedure law system refers to article 1866 of the Civil Code, article 164 of the Civil Code, and article 284 of the Civil Code.

Based on the a quo articles, the evidence used in the settlement of civil cases, including consumer disputes, consists of written proof, witnesses evidence, suspicion, confessions, oaths, and/or all those that are subject to the rules listed in the following chapters. In addition to the evidence contained in the above article, there are some experts who say that HIR still knows other means of evidence, namely the results of local examinations, as stipulated in the articles below:

Article 153 paragraph (1) of the HIR :

> *"If deemed necessary or advantageous, the chief may appoint one or two commissioners from the council, who with the assistance of the court clerk shall look at the place or constitute coercion in that place, which may be evidence for the judge".*

Article 154 paragraph (1) of the HIR :

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34 Rahman Amin, *The Law of Proof in Criminal and Civil Cases*, Print 1 (Yogyakarta: CV.Budi Utama, 2020).

> *"If the district court considers that the case can be clarified if examined or seen by an expert, then it can appoint the expert, either at the request of both parties, or because of his position".*

Prof. Achmad Ali and Wiwie Heryani said that in civil evidentiary law, there are separate principles that are different from what is known in other evidentiary laws. This is because civil procedure law has its own characteristics as part of private law. The following are the principles that are in line with the nature of the civil procedural law itself, namely[35]:

a. Asas *Audi Et Alteram Partem.*

   The principle of '*Audi Et Alteram Partem'* or '*Eines Manres Rede Ist Keines Mannes Rede'* is the principle of equality between the two parties to the case before the Court. This means that the judge should not give a verdict without giving both sides a chance to hear. With the principle of *Audi Et Alteram Partem*, the judge must be fair in assigning the burden of proof to the litigant, so that the opportunity to lose or win for both parties remains the same, not lame or biased.

   The legal rules of proof apply the same, both for the Plaintiff and the Defendant. Both the Plaintiff and the Defendant can prove all evidence, except in special cases such as between the Plaintiff and the Defendant entering into an evidentiary agreement.

b. Asas *Ius Curia Novit*

   This principle fixes that every judge must be considered to know the legality of the case he is investigating. The judge is not allowed to decide the case at all, on the grounds that the judge does not know the law. Likewise, judges must create their laws if they have to deal with them that have not been regulated by law or jurisprudence. The creation of laws by these judges is usually by using the analogy method or *argumentum a contrario.*

   Based on the principle *of ius curia novit*, the parties in the proof are only obliged to prove the disputed facts. Meanwhile, proving the legal problem is the obligation of the judge. The principle of *ius curia*

35 Ali and Heryani, *Legal Principles of Civil Evidence.*

novit is also embraced by positive law in Indonesia, including the provisions of article 10 of the Principal Law on Judicial Power Number 48 of 2009.[36]

c. Asas *Nemo Testis Idoneus In Propria Causa.*
   This means that no one can be a witness in his own case. Witnesses as evidence must be brought in by other people who are not parties to the case in question. In connection with this principle, there are provisions that prohibit certain groups of people who are considered "incapable" to be witnesses *(recusatie*) are:
   - people who are absolutely incapable
   - people who are relatively incapable.

d. Asas *Ultra Ne Petita.*
   This principle limits the judge so that the judge can only grant as demanded. The judge is prohibited from granting more than the Plaintiff demands. Limiting civil judges to a "*preponderance of evidence*", is only bound to valid evidence.

e. Asas *De Gustibus Non Est Disputandum.*
   This principle is actually a strange principle, because it is applied in law. This principle means that regarding taste is indisputable. This principle in the evidentiary law is the "absolute right" of the Defendant.

f. Asas *Nemo Plus juris transferre potest quam ipse habet.*
   This principle dictates that no person can transfer more rights than he has.

The concept of burden of proof *(*Bewijslast[37]*)*. The meaning of the word "proof" is explained by Edward W. Cleary, quoted in Prof. Achmad & Wiwie[38] has two meanings, namely:

- As evidence, such as testimonies, documents, and others

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36 Republic of Indonesia, "Law No. 48 of 2009 concerning Judicial Power," Pub. L. No. 48, Database Regulation 49 (2009), https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009.

37 "Bewijslast" in Dutch, and also in the context of Indonesian law, means the burden of proof.

38 Ali and Heryani, *Legal Principles of Civil Evidence.*

- As proven, which means that we believe that the data given about a fact is indeed true.

From various understandings of the burden of proof, Prof. Achmad & Wiwie[39] concluded that the burden of proof is an affirmative obligation for the parties to appear before the court by proving the facts about the subject matter in dispute. The burden of proof only arises if: there is absolutely no evidence submitted by the parties; or the evidence submitted by the parties is equally strong or equally weak. Then the burden of proof from the judge to the parties to the case: to submit evidence in accordance with the provisions of the applicable procedural law; and prove the truth of the facts presented based on the evidence submitted, so that the judge is confident of the truth of the facts presented (in the case of civil proceedings, his belief is (*preponderance of evidence*).

The principle of the burden of proof is regulated by article 163 of the HIR (article 283 Rbg, article 1865 of the Civil Code) which contains:

Article 1865 of the Civil Code:

> *"Every person who postulates that he has a right, or in order to establish his own right or to deny a right of another, pointing to an event, is obliged to prove the existence of that right or event."*

Article 163 of the HIR*:*

> *"Whoever claims to have a right, or mentions an event to establish that right or to refute the right of another, must prove the existence of that right or the existence of that event."*

This means that both the Plaintiff and the Defendant, can be burdened with proof. The plaintiff is obliged to prove the event/right submitted, while the defendant is obliged to prove his rebuttal. If the Plaintiff cannot prove the event/right he asserts in the lawsuit then he must be defeated. Similarly, if the Defendant cannot prove his rebuttal stated in the answer, then he must also be defeated. Therefore, if one

39 Ali and Heryani.

of the parties is burdened with proof and cannot prove, it will be defeated. This is called proof risk.[40]

In proof, there is the principle of "*actori incumbit probatio*" which means that whoever has a right or denies the existence of another person's right, must prove it. This means that in the event that the evidence submitted by the Plaintiff and the Defendant is equally strong, both the Plaintiff and the Defendant may be burdened with proof by the judge.[41]

In article 1865 of the Civil Code *, it is stated that "Every person who postulates that he has a right, or in order to establish his own right or to deny the right of another, pointing to an event, is obliged to prove the existence of that right or event."* In addition, there are certain articles in the Civil Code that expressly regulate the burden of proof which are guidelines for Judges in the process of examining and proving cases before the trial based on the evidence submitted by the litigants, including;[42]

- Article 1244
- Article 1365
- Article 1769
- Article 1394
- Article 1977
- Article 252
- Article 489
- Article 533
- Article 535
- Article 468 paragraph (2) of KUHD

The concept of the burden of proof is also known as the theory of the burden of proof which is a guideline for judges in deciding who should be burdened with proof in each case that examines it. Theories of the burden of proof consist of:[43]

a. Teori *Negativa Non Sunt Probanda*

   This theory is based on the principle of the burden of proof "*Negativa non sunt probanda*", a principle that states that something negative is difficult to prove. This principle means that whoever puts forward something must prove it, so not the party who denies it.

40 Fakhriah, *Electronic Evidence in the Civil Proof System*.

41 Aris Prio Agus Santoso and et al, *Civil Procedure Law*, Digital (Yogyakarta: Pustaka Baru Press, 2021).

42 Amen *The Law of Proof in Criminal and Civil Cases*.

43 Ali and Heryani, *Legal Principles of Civil Evidence*.

This theory is merely corroborating, so some legal experts also name it the "*bloot affirmative theory*", including Asser-Anema-Verdam. And also Prof. Dr.R.M. Sudikno Mertokusumo SH.

Nowadays, adhering to the theory of "*Negativa non sunt probanda*" no longer exists. Because with this theory, it is almost always the Plaintiff who is burdened with proof. This theory assumes that according to the negative nature is beyond the limits of the ability to prove because it is according to the adage that reads: *ultra posse nemo obligatur* (no person is obliged to do more than he is able), then the person who declares/states something must be burdened with proof.

b. Theory of Rights

The basis of this theory is that it is the "right" that underlies the civil process. With the meaning, the civil process always carries out the rights of individuals. This theory argues that the purpose of civil law is solely to defend rights. Thus, whoever submits or claims to have a right, he is the one who is burdened with proof.

The difference with the theory of "*Negativa non sunt probanda"* is that in the theory of "*Negativa non sunt probanda*" the Plaintiff must prove the whole. As for this theory of rights, not all events must be proven by the Plaintiff. Adherents of this theory of rights include Asser-Anema Verdam. Divides the event into general events and special events.

Adherents of this theory of rights divide the burden of proof as follows:

- The Plaintiff is obliged to prove the existence of a special event that gives rise to rights.
- The Defendant is obliged to prove that there is no general event, there is a special event that prevents the occurrence of the right, and there is a special event that cancels the right.

c. The Theory *of De Lege Lata* (According to Positive Law)

According to this theory, for the Plaintiff to file his lawsuit means that the Plaintiff is asking the judge to apply the legal provisions applicable to the event being filed. Therefore, the Plaintiff must be burdened with proof to prove the truth of the event he submits, and then find the legal basis to apply to the event.

d. Theory *Ius Publicum* (Public Law)
   This theory emphasizes that although civil procedural law is part of private law, nevertheless the public interest is included in it. This is because the interests of the judiciary are also the interests of the public. Because of this, this theory tends to want judges to be given greater authority in seeking the truth. This theory requires that the parties be burdened with obligations of a public legal nature, where the obligation must be accompanied by a criminal witness.
e. Teori *Audi Et Alteram Partem*
   This theory is based on the principle of civil procedural law in general, namely the principle of "*Audi Et Alteram Partem*". The basis of the same position procedurally from both parties to the case. This principle requires judges to provide equal opportunities for the parties to win procedurally. Therefore, the judge must divide the burden of proof among the parties to the litigation properly, where sometimes only the defendant and sometimes both.

Thus, the judge really has to fairly divide the burden of proof, so that if the Plaintiff sues the Defendant about the sale and purchase agreement and not the defendant must prove the absence of an agreement between the Plaintiff and the Defendant. If the Defendant states that he bought something from the Plaintiff, but that the sale was void because of compensation, then it is the Defendant who must prove that he has a bill against the Plaintiff. The Plaintiff in this case does not need to prove that he does not owe the Defendant.

In this study, the researcher used cases that occurred based on a Court Decision that has permanent legal force (*inkracht van gewijsde)*. This case has undergone a trial process at the first level, appeal, and cassation.

- The decision at the first level is number 681/Pdt.G/2019/PN.Jkt.Sel.
  Plaintiffs : Rizal; Kaiser Renort Edward Sahat Simanungkalit; Lucian Julia.
  Defendant : PT.Perusahaan Listrik Negara (Persero).

  The Panel of Judges ruled that:

In Exceptions : Rejecting the Defendant's exclusion in its entirety.

In the Subject Matter : Rejecting the Plaintiffs' lawsuit in its entirety; To punish the Plaintiffs to pay the costs incurred in this case.

- Decision at the appeal level number 507/PDT/2020/PT DKI
  The Panel of Judges ruled that:
  - To receive an appeal from the Appellants / original Plaintiffs I, II, III;
  - Upholding the decision of the South Jakarta District Court dated March 23, 2020 Number 681/Pdt.G/2019/PN.Jkt.Sel., which was appealed for;
  - Punishing the Appellant / originally Plaintiff I, II, III pay the costs of the case at the first level and the appeal level.
- Decision at the Cassation level number 257K/Pdt/2022
  The panel of judges of the Supreme Court rejected the appeal from the party who filed the appeal.

South Jakarta District Court Decision No. 681/Pdt.G/2019/PN.Jkt.Sel.[44]; jo Jakarta High Court Decision Number 507/PDT/2020/PT DKI[45]; jo Supreme Court Decision Number 257 K/Pdt/2022[46] is a concrete example of how the court qualifies a lawsuit related to consumer losses not as a consumer dispute based on Law Number 8 of 1999 concerning Consumer Protection

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44 South Jakarta District Court of the Republic of Indonesia, "South Jakarta District Court Decision Number 681/Pdt.G/2019/PN. Jkt.Sel," Pub. L. No. Number 681/Pdt.G/2019/PN. Jkt.Sel (2019), https://putusan3.mahkamahagung.go.id/direktori/putusan/zaeba64a079c538a89f2313134343035.html.

45 Jakarta High Court of the Republic of Indonesia, "Jakarta High Court Decision Number 507/PDT/2020/PT DKI," Pub. L. No. 507/PDT/2020/PT DKI (2020), https://putusan3.mahkamahagung.go.id/direktori/putusan/135b4c5f43ed49dd07ec9ae560f041ec.html.

46 Supreme Court of the Republic of Indonesia, "Supreme Court Decision Number 257 K/Pdt/2022," Pub. L. No. 257 K/Pdt/2022 (2022), https://putusan3.mahkamahagung.go.id/direktori/putusan/zaecfb6860827d528384313431303235.html.

(UUPK), but as an unlawful act (PMH) as stipulated in Article 1365 of the Civil Code[47].

In this case, the Plaintiffs filed a lawsuit against the power supply company for losses arising from the death of their ornamental fish, which was allegedly caused by the interruption of the electric current. The defendant (business actor) argued that the termination was caused by a technical interconnection disruption and not due to negligence or intentionality.

In its judgment and consideration, the panel of judges stated that: "Considering that because it turns out that the Plaintiffs' lawsuit is an Unlawful Act, not a dispute about consumers, it is not a condition to delay the Plaintiffs filing a lawsuit a quo, therefore the exclusion of the Defendant must be declared rejected.

This decision confirms that the element of consumptive legal relations between business actors and consumers is not found substantially, so the court does not apply a dispute resolution mechanism based on the UUPK. Further, the panel considered that the Defendant could not be held liable for the loss because:

- Electrical faults fall into the category of technical faults of 500 kv interconnection systems, and
- Based on Article 21 paragraph (4) of Government Regulation Number 14 of 2012 concerning Electricity Supply Business Activities, business actors are not required to provide compensation for disturbances that occur due to conditions as referred to in Article 21 paragraph (2) letters b and c.

This decision illustrates that in the event that the lawsuit is qualified as an Unlawful Act (PMH), the applicable legal system is the Civil Code jo. HIR, where the consumer as the plaintiff is burdened with the obligation to prove all elements of PMH, namely the act, error, loss, and causal relationship between the act and the loss. Consequences:

47 R.Subekti and Tjitrosudibio, *Civil Code*.

- Consumers do not get the convenience of the *reversed burden of proof* system guaranteed in Article 22 of the Consumer Protection Law (UUPK).
- The lawsuit becomes more burdensome in terms of proof, especially because the civil judge is passive and only assesses based on the evidence submitted by the parties.

This case shows that the substance of consumer protection is not fully guaranteed, especially when consumer lawsuits are qualified under the Unlawful Acts regime. This shows the need to:

- Harmonization between the UUPK and sectoral regulations so that consumer protection can still be applied even if business actors are engaged in the public utility sector such as electricity, water, or telecommunications.
- Judicial guidance that is more progressive and contextual in assessing consumptive legal relationships, so that it is not fixated on the format of the lawsuit alone but pays attention to the substance of the relationship between consumers and business actors.

Decision number 681/Pdt.G/2019/PN.Jkt.Sel. shows that the Plaintiff (consumer) has failed to prove the truth that there has been an unlawful act (PMH) committed by the Defendant. The postulates of the Plaintiffs' lawsuit were also declared to be unfounded, so they were declared rejected in their entirety. Thus the Plaintiffs are on the losing side.

This condition shows that the evidentiary system in the civil procedure law requires the consumer as the plaintiff to prove the claim strongly. This presents its own challenges, especially when consumers are in a weaker position in terms of information and access to evidence than business actors. To understand more about the implications of this system, the following are presented the advantages and disadvantages of the proof system based on the Civil Code for business actors and consumers.

- Advantages for Business Actors and Consumers
  1. Structured Procedure:

- The HIR provides a clear framework for determining who must prove a postulate. *(see article 163 of the Civil Code, 283 Rbg, 1865 of the Civil Code)*
- Simplify the court process with well-established rules.

2. Balance of Rights and Obligations:
   - HIR ensures that both parties have an equal opportunity to present evidence. (see *the theory of Audi Et Alteram Partem).*
3. Pushing for Valid Evidence:
   - The court only accepts relevant and accountable evidence. (*see Article 1866 of the Civil Code, 164 HIR)*

- Disadvantages for Business Actors and Consumers

1. Heavy Burden on Plaintiffs:
   - The HIR places the burden of proof on the party who postulates a right. This can burden consumers who often have limitations in accessing evidence. Because business actors are considered to know more about the production process of their products than consumers. So that consumers will have more difficulty accessing this evidence.
2. Time-Consuming Process:
   - Drafting and submitting evidence can be time-consuming, especially if evidence is difficult to obtain or involves complex documents.
3. Lack of Specific Protections for Consumers:
   - HIR is neutral, so it does not provide additional protection for consumers whose position is often weaker than that of business actors.
4. Does not support proof load reversal:
   In consumer protection cases, a reversal of the burden of proof is often necessary to protect consumers. However, the HIR does not explicitly accommodate this principle.

The Burden of Proof System Based on The Consumer Protection Law

Consumer protection is all efforts that ensure legal certainty to provide protection to consumers.[48] According to Shidarta's opinion, quoted in Aulia Muthiah,[49] the Consumer Protection Law is part of consumer law that contains principles or rules that are regulatory and contain properties that protect the interests of consumers, while consumer law is a law that regulates relationships and problems between various parties with each other related to consumer goods or services in life. So Aulia Muthiah[50] concluded that consumer law and consumer protection law are essentially the same and do not need to be differentiated from each other. Because these two things aim to provide a balanced relationship between business actors and consumers so that consumer rights are protected without having to forget their obligations. So that consumer protection law is a series of norms that aim to protect the interests of consumers for the fulfillment of goods and or services based on benefits, justice, balance, security, consumer safety, and legal certainty.[51]

The history of consumer protection in Indonesia began to be heard and popular in the 1970s, which was marked by the establishment of a non-governmental organization, namely the Indonesian Consumer Institute Foundation (YLKI) in May 1973. After YLKI, history also records the establishment of the Consumer Development and Protection Institute (LP2K) in Semarang in February 1988. Both institutions are members of *Consumers International* (CI). The existence of this consumer protection organization plays an important role in terms of advocacy and public awareness of their rights as consumers. Based on history, the emergence of the consumer protection movement is motivated by several things related to the position of consumers and commercial agents, the process of industrialization, and globalization that occurred in the United States and Europe. The consumer protection movement in Indonesia is also influenced by movements that occur in the United States and European countries

48 Indonesia, Law Number 8 of 1999 on Consumer Protection.
49 Muthiah, *Consumer Protection Law, Positive Legal Dimension and Sharia Economics*.
50 Muthiah.
51 Muthiah.

such as the United Kingdom, the Netherlands, Belgium and other countries.[52]

In Indonesia, the law that gives legitimacy to all efforts to regulate the rights and obligations of consumers and business actors in a concrete manner is regulated in Law Number 8 of 1999 concerning Consumer Protection. The explanation of the Law a quo states that the formulation of the Consumer Protection Law refers to the philosophy of national development that national development, including legal development that provides protection for consumers, is in order to build the whole Indonesian human race which is based on the state philosophy of the Republic of Indonesia, namely the state foundation of Pancasila and the state constitution of the 1945 Constitution.

The main parties involved in the trade of goods and or services are business actors and consumers. Consumers are every person who uses goods and/or services that are available in society, either for the benefit of themselves, their families, other people, or other living beings and not for trade (*see article 1 paragraph (2) of the Consumer Protection Law*). Business actors are any individual or business entity, whether in the form of a legal entity or non-legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements to carry out business activities in various economic fields (*see article 1 paragraph (3) of the Consumer Protection Law).*

Consumer protection has a broad scope including consumer protection of goods and services starting from the stage of activities to obtain, produce, distribute goods and or services to include the consequences of the use of these goods or services. So that the scope of consumer protection can be distinguished in two aspects, namely:[53]

1. Protection against the possibility of goods being handed over to consumers is not in accordance with what has been agreed.
2. Protection against the imposition of unfair conditions on consumers.

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52 Dwi Atmoko and Adhalia Septia Saputri, *Consumer Protection Law*, ed. Nur Azizah Rahma, 1st ed. (Malang: CV. Literacy of Nusantara Abadi, 2022).

53 Rosmawati, *Consumer Protection Legal Principles*, Print 1 (Jakarta: Kencana, 2018).

The Consumer Protection Law applies a reverse burden of proof system which as stated in the Explanation of article 22 that *"this provision is intended to apply the reverse burden of proof system*". The meaning of reverse proof is the burden of proof on the defendant to be able to prove his innocence, or deny that what is accused of him is a mistake by way of comparison with the evidence submitted by the public prosecutor against the defendant in a case, so that the public prosecutor and the business actor prove each other.[54]

The *reverse proof system* is one of the legal principles regulated in the Consumer Protection Law in Indonesia, namely Law No. 8 of 1999. This principle emphasizes that in the case of consumer disputes, business actors have the burden of proof to prove that they are not guilty or have fulfilled their obligations *(see articles 22 jo 28*). And business actors are responsible for providing compensation for damage, pollution, and/or loss to consumers due to consuming goods and/or services produced or traded (*see article 19*). This is different from the general evidentiary principle in civil procedure law, where the Plaintiff (in this case the consumer) is usually the one who must prove the existence of a violation *(see article 163 HIR, 283 Rbg, 1865 Civil Code*).

In article 28 of the Consumer Protection Law which reads *"Proof of the existence or absence of elements of fault in a compensation lawsuit as referred to in Article 19, Article 22, and Article 23 is the burden and responsibility of business actors"*. Through this article, the proof charged to business actors for the presence or absence of elements of errors that are investigated/reported, encourages business actors to be more careful in producing and distributing products, both goods and/or services. So as long as business actors are careful with their products, business actors cannot be blamed. This article reflects one of the principles about the position of consumers in legal relations with business actors, the principle/doctrine is "*the due care theory*". [55] This is also in line with the rules prohibited for business actors as stated in articles 8 to 17 of the Consumer Protection Law.

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54 Fajar Nurgoro Handayani and Ahmad Raihan Harahap, *Consumer Protection Law*, Print 1 (Yogyakarta: Bintang Pustaka Madani, 2021).

55 Santoso, Sulistyowati, and Graduate, *Consumer Protection Law (A Practical and Applicable Approach)*.

The application of reverse proof in the Consumer Protection Law is closely tied to the existence of the principles of responsibility. This is because the principle of liability is a very important matter in consumer protection law, to analyze who should be liable and to what extent liability can be imposed on the parties concerned.[56] In general, the principles of responsibility in law can be distinguished as follows:[57]

a) Error *(liability based of fault)*
b) Presumption[58] is always responsible *(presumption of liability)*
c) Presumption is always irresponsible *(presumption of nonliability)*
d) Absolute responsibility (*strict liability*)
e) Limitation of liability

From the above principles of responsibility, the author sees only 3 principles that reflect the principles of consumer protection and the burden of reverse proof adopted in the Consumer Protection Law. The principle is that presumption is always responsible, presumption is always irresponsible, and absolute responsibility. Here are the explanations:

The Presumptive Principle of Always Being Responsible.

This principle states that the Defendant is always considered responsible (*presumption of liability principle*) until he can prove his innocence. So the burden of proof is on the Defendant.[59] This principle shows the existence of the reverse burden of proof (*omkering van bewijslast)* contained in the Consumer Protection Law as affirmed in articles 19, 22, and 23 (*see article 28 of the Consumer Protection Law*). Other relevance can also be seen from the purpose of consumer protection regulated in Article 3 of the Consumer Protection Law. The basis of the theory of proof reversal theory is that a person is presumed guilty, until the person concerned can prove otherwise. This is certainly

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56 Celina Tri Siwi Kristiyani, *Consumer Protection Law*, 1st ed. (Jakarta: Sinar Grafika, 2008).
57 Kristiyani. Pages 92-98
58 In KBBI, "presumption" means "basic assumption" or "initial assumption". The meaning of the word Presumption is: Presumption about something without (must) prove it first
59 Christian. Page 94

contrary to the legal principle of *presumption of innocence* which is commonly known in law.

In the case of consumers, such a principle will appear to be quite relevant. If this theory is used, the one who is obliged to prove the error is on the side of the sued business actor. The defendant must present evidence of his innocence. Of course, consumers do not then mean that they can file a lawsuit at will. The position of the consumer as the Plaintiff is always open to be sued back by the business actor, if he fails to show the fault of the Defendant. If the business actor cannot prove his innocence or cannot provide proof of his innocence from the losses suffered by the consumer, then the business actor is responsible for providing compensation for damage, pollution, and/or loss to consumers due to consuming goods and/or services produced or traded *(see article 19 of the Consumer Protection Law).*

The main goal of implementing this system is to create a balance in the relationship between consumers and business actors. Consumers are often in a weaker position in terms of information and resources than business actors. Therefore, imposing the entire burden of proof on consumers is considered unfair. This reverse proof system helps reduce information asymmetry and ensures that businesses are responsible for the safety and quality of the products or services they offer.[60]

60 Christian. Pages 107-108.

The Presumptive Principle of Not Always Being Responsible.

This principle is the opposite of the *presumption of liability principle*. The presumptive principle of not always being liable is known only in the very limited scope of consumer transactions and such restrictions are usually common *sense* justified.[61] In this principle, the party charged with proving the mistake depends on the case that occurred. If the error occurs because of the consumer, the consumer cannot hold the business actor responsible so that there is no reverse burden of proof. And the party charged with proving the mistake is with the consumer.

This can be reflected in article 27 of the Consumer Protection Law which reads that business actors who produce goods are exempt from liability for losses suffered by consumers, if: the goods are proven not to be circulated or are not intended to be distributed; defects in goods arising at a later date; defects arising from compliance with the provisions regarding the qualification of goods; negligence caused by consumers; the expiration of the prosecution period of 4 (four) years since the goods were purchased or the expiration of the agreed period.

The Principle of Absolute Responsibility.

The principle of *strict liability* is often identified with the principle of *absolute liability*. *Strict liability* is a principle of responsibility that establishes fault not as a determining factor. However, there are exceptions that allow for exemption from liability, such as *force majeure circumstances*. In contrast, *absolute liability* is the principle of no-fault liability and there are no exceptions. In addition, a somewhat similar view that attributes the difference between the two lies in the absence of a causal relationship between the responsible subject and his fault. In *strict liability*, the relationship must exist, while *absolute liability* does not always exist. That is, *absolute liability* can be that the Defendant who is held accountable is not the direct perpetrator of the mistake (for example in the case of a natural disaster).

The principle of absolute responsibility in consumer protection relationships is generally used to ensnare business actors, especially manufacturers of goods that market their products that are detrimental

61 Shidarta, *Consumer Protection Law* (Jakarta: Grasindo, 2000).

to consumers. The principle of responsibility is known as *product liability*. According to this principle, the manufacturer is obliged to be liable for the losses suffered by the consumer for the use of the products it markets. Product liability lawsuits can be filed based on three things, namely: breach of warranty, there is an element of negligence, and applying absolute liability.

A slightly different variation of the application of absolute liability lies in *risk liability*. In *risk liability*, the obligation to compensate is imposed on the party that creates the risk of the loss. However, the Plaintiff (consumer) is still given the burden of proof, although not as much as the Defendant. In this case, he only needs to prove the existence of a causal relationship between the actions of the business actor (producer) and the losses he suffers. The rest can be used the principle *of strict liability*.

Therefore, through this principle of absolute responsibility in the producer responsibility law, it is hoped that producers/business actors realize how important it is to maintain the quality of the products they produce. Because if not, in addition to harming consumers, there will also be a huge risk that they must bear. Business actors are expected to be more careful in producing before being thrown/promoted to the market to consumers.

An example of the application of a reverse evidentiary system in consumer disputes is the Supreme Court decision No. 175 K/Pdt.Sus-BPSK/2021.[62] In this case, PT Citra Van Titipan Kilat (TIKI) as a business actor was sued for unilateral changes in the type of service, weight, and cost of shipping goods, which caused losses to consumers (Alvarendra Ataya Anas, represented by his father Muhammad Anas, RA., M.Si).

This case was initially examined through an arbitration mechanism at BPSK Bekasi City with Registration Number 011/REG/BPSK/BKS/2020. The BPSK decision a quo declared TIKI guilty and imposed administrative sanctions and fines. After that,

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62 Supreme Court of the Republic of Indonesia, "Supreme Court Decision Number 175 K/Pdt.Sus-BPSK/2021," Pub. L. No. 175 K/Pdt.Sus-BPSK/2021 (2021), https://putusan3.mahkamahagung.go.id/direktori/putusan/zaebf64d77715a5e9ecf303733303134.html.

the business actor filed an objection to the Bekasi District Court. The Panel of Judges of the Bekasi District Court through its decision number 295/Pdt.Sus-BPSK/2020/PN.Bks rejected the objection and upheld the BPSK decision. Furthermore, the appeal to the Supreme Court was also rejected, with some limited corrections related to the authority to impose criminal sanctions by BPSK.

The Supreme Court affirmed that *"The Petitioner as a business actor remains liable for consumer losses, even if the violation is committed by his staff."* This shows that the Supreme Court expressly applies the principle of reverse proof (*see Article 28 of the UUPK),* namely:

- The business actor did not succeed in proving his innocence.
- Consumers are not burdened to prove the mistakes of business actors directly.
- The failure of the internal staff of business actors remains the responsibility of the business actors legally.

This decision reflects the *principles of presumption of liability* (presumption of always responsibility) and *strict liability* (absolute responsibility), which are characteristic of the evidentiary system in the UUPK. Consumers only need to show the existence of losses and the relationship with the services/products used, while the proof of innocence is on the side of the business actor.

From the Supreme Court decision case No. 175 K/Pdt.Sus-BPSK/2021, the researcher found that:

1. Internal evidence of business actors strengthens responsibility.
   The existence of a letter of acknowledgment by TIKI staff (Erni Wati) stating that there is a violation of the SOP is evidence that business actors have failed to prevent negligence, and therefore cannot release responsibility.
2. Business actors are still burdened with responsibility even though there are individual staff mistakes.
   This reflects the principle of risk liability: business actors bear the risk from the people under their control.
3. The judge did not demand in-depth proof of losses from consumers.

No detailed proof is required from the consumer for motives, internal chronology, or technical negligence. This is in accordance with the spirit of the UUPK which eases the burden on consumers.

4. The authority of the BPSK is still recognized, except in the criminal aspect.
   The Supreme Court only corrected the warning related to criminal sanctions (because BPSK does not have criminal authority), but the substance of the responsibility of business actors is still recognized as legitimate. This is because BPSK is a non-litigation institution with administrative civil authority, not a criminal justice institution. Based on Article 52 paragraph (1) of the UUPK, BPSK's duty is to handle and decide consumer disputes through arbitration, mediation, and conciliation, not criminal. The decision imposing criminal sanctions exceeds the authority of BPSK, and violates the applicable positive legal principles (the principle *of ultra vires*, must not act beyond its authority). As also stipulated in the Regulation of the Minister of Trade Number 17/M-DAG/PER/4/2007 concerning the Duties of BPSK Authority and Procedures for Resolution of Consumer Disputes, which in article 4 letter (m) emphasizes that one of the duties and authorities of BPSK is to impose administrative sanctions on business actors who violate the provisions of the UUPK, so that they are not criminal sanctions. Thus, the Supreme Court corrected part of the Bekasi District Court's decision which originally upheld the criminal sanction of a fine of Rp150,000,000.00 imposed by BPSK Bekasi as invalid (null and void).

This decision strengthens the existence of a non-litigation mechanism (BPSK) and the effectiveness of the reverse evidentiary system regulated in the UUPK. In addition to being an important example for consumers, this ruling also sends a strong signal to business actors that internal negligence remains an external liability legally. With this system, the burden of proof does not become a burden on consumers, as is customary in ordinary civil procedure law. This is in line with the principle of consumer protection Article 2 of

the UUPK, which is to create a balance between business actors and consumers.

In line with the principle of balance as contained in Article 2 of the UUPK, the reverse proof system needs to be reviewed proportionately to see the extent to which this mechanism benefits consumers without causing an excessive burden for business actors. The following are the advantages and disadvantages of the Consumer Protection Law's reverse proof system for consumers and business actors.

- Advantages for Consumers:
  1. Protecting Consumers as Weak Parties:
     - Consumers often do not have adequate access to evidence or technical data related to products/services. With the reversal of the burden of proof, business actors who have control over information are required to prove that they did not violate the rules.
  2. Increase Consumer Security:
     - Consumers feel more protected because business actors have a legal obligation to maintain safety standards and the quality of products/services.
  3. Efficiency in Proving Lawsuits:
     - Consumers do not need to present complicated technical evidence, it is enough to show indications of losses or violations to shift the burden of proof to business actors.[63]
- Disadvantages for Consumers:
  1. Reliance on the Integrity of the Legal System:
     - If business actors are not compliant or the court system is ineffective in forcing business actors to provide evidence, consumers can still be harmed.
  2. Limited Possibility of Initial Supporting Evidence:

63 This is in accordance with the principle of reverse burden of proof as stipulated in Article 22 jo. Article 28 of the UUPK. Consumers only need to show a reasonable suspicion of losses, and then business actors are obliged to prove their innocence. This is a form of pro-consumer legal protection.

- Even if there is a reversal of the burden of proof, consumers still need to show an initial loss. In some cases, this is difficult to do without technical evidence.

- Advantages for Business Actors:
  1. Driving Compliance with Standards:
     - Business actors are encouraged to maintain the quality of goods/services and good technical documentation as a form of anticipation of potential disputes.
  2. Strengthening Market Confidence:
     - Adherence to the burden of proof reversal principle demonstrates the business actor's commitment to responsibility, which increases consumer trust in their brand.
- Disadvantages for Business Actors:
  1. Burdensome Burden of Proof:
     - In the case of a dispute, the business actor must prove their innocence, which requires additional time, cost, and resources to provide technical evidence or supporting documents.
  2. Risk of Unfounded Claims:
     - Business actors can face unreasonable demands from consumers, so they must still prove that there is no violation, even if the demands are weak.
  3. Administrative Complexity:
     Business actors must maintain complete records and comply with standards to defend themselves in the event of a dispute, which can increase the administrative burden.

IV. Consumer Dispute Resolution Mechanism based on The Civil Procedure Law and The Consumer Protection Law

Consumer Dispute Resolution Mechanism based on Civil Procedure Law

1). Dispute resolution outside the court (Non-Litigation)

Out-of-court civil dispute resolution (non-litigation) is pursued using Alternative Dispute Resolution (APS) or *Alternative Dispute Resolution* (ADS). Currently, APS is increasingly used by business people because it is considered more efficient and effective than settlement through litigation (court).[64]

The Alternative Dispute Resolution Mechanism (APS) in Indonesia is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.[65] Legal subjects can use several APS models such as Negotiation, Consultation, Binding Opinion, Mediation, Conciliation, Adjudication, and Arbitration. APS can also be done offline (off-network) or online (in-network). Online APS is also called Online Dispute Resolution (PSD) used to resolve business disputes via the internet (online business, e-commerce, and fintech business). Here are the models from APS itself:[66]

a) Negotiation

Negotiation (negotiation/deliberation) is one of the most widely used forms of APS to resolve business disputes. Negotiation is the most ideal APS model because the process is easier, cheaper, and does not need to involve a third party. Negotiation or deliberation has long been rooted in the culture of the community, so this method should be prioritized.

Negotiations are formal and informal. The formal form is generally carried out through an official mechanism in a company, for

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64 Iswi Hariyani, Cita Yustisia Serliani, and R. Serfianto D. Purnomo, *Business Dispute Resolution Litigation, Negotiation, Consultation, Binding Opinion, Mediation, Conciliation, Adjudication, Arbitration, and Online Dispute Resolution* (Jakarta: PT. Gramedia Pustaka Utama, 2018).

65 State of the Republic of Indonesia, "Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution," Pub. L. No. 30, Peraturan.bpk.go.id 41 (1999), https://doi.org/10.56874/islamiccircle.v2i1.472.

66 Hariyani, Serliani, and Purnomo, *Business Dispute Resolution Litigation, Negotiation, Consultation, Binding Opinion, Mediation, Conciliation, Adjudication, Arbitration, and Online Dispute Resolution*. Pages 45-56.

example customer complaints through the customer service department formed in each company. Informal negotiations or commonly called "lobbying" are conducted through informal channels or personal approaches.

b) Consultation

If the negotiation method is unsuccessful, the parties can seek the help of a third party to resolve the dispute. The parties may seek advice from a competent legal expert or legal consultant in the disputed area. The advice given by legal experts in the consultation is non-binding. This is different from the binding way in Binding Opinions. The legal *binding opinion* must be submitted through the APS institution and must begin with the creation of a Binding Opinion Agreement.

APS in the form of consultation has been applied in resolving consumer disputes with business actors. Consumers who are aggrieved by business actors can request free consultation services from the Consumer Dispute Resolution Agency (BPSK). From the results of the consultation, the Consumer Dispute Resolution Agency can advise consumers to continue to negotiate or take the way of Conciliation, Mediation, or Arbitration.

c) Binding Opinion

In the Binding Opinion model, it must begin with making a Binding Opinion Agreement first. A Binding Opinion Agreement is required so that the parties do not break their promise at the time the Binding Opinion has been issued. The agreement must stipulate the rights and obligations of the disputing parties as well as the sanctions that can be imposed if the parties do not want to accept the results of the Binding Opinion. The legal experts chosen by the APS institution must be people who not only understand the rule of law, but also have experience in the disputed business field. Because a good understanding of the business context and the legal context is a mandatory requirement for legal experts or business experts who will be appointed by the APS institution to make Binding Opinion suggestions. If the parties are unsuccessful in resolving the dispute through Negotiations or Binding Opinions, then they can go to Mediation.

d) Mediation

Mediation is a form of APS that is chosen by many business actors because it is considered easier than Conciliation, Adjudication, or Arbitration. Mediation can be taken through the APS institution or the Judicial Institution. In the litigation process in the Court, the judge must first offer Mediation to the parties.

Mediators are tasked with mediating the parties to the dispute until they find a solution to the problem. The mediator actively encourages the parties to find solutions to problems independently. The Mediator is not authorized to make decisions, so the outcome of the Mediation is entirely the result of agreement between the parties. Mediators must have a certificate of expertise from an APS Institution accredited by the Supreme Court. Prior to Mediation, the parties are required to enter into a Mediation Agreement in order for them to comply with the outcome of the Mediation.

e) Conciliation

It has similarities with Mediation, but Conciliation is more formal and has a wider scope of disputes. Conciliators play more of a passive role as a negotiation facilitator who allows the parties to negotiate independently. Conciliation is more suitable to be applied to resolve major business disputes, so in the process it is necessary to establish special commissions that discuss each aspect of the dispute. The results of the negotiations of the special commissions were then brought to the main forum to make conclusions.

The Conciliator is in charge of facilitating the Conciliation process including the establishment of special commissions, but the Conciliator may not make decisions. The result of the agreement is entirely the result of negotiations between the parties. Before starting the Conciliation, the APS Institution requires the parties to make a Conciliation Agreement so that the parties are committed to implementing the outcome of the Conciliation. The Conciliation Agreement must also contain civil sanctions for those who do not implement the results of the Conciliation.

Conciliation is widely applied in the settlement of consumer protection and employment disputes (industrial relations). Conciliation has not been widely used in business dispute resolution

in Indonesia because business people and APS institutions prefer to implement Mediation which is easier and simpler.

f) Adjudication

Adjudication is a form of OJK legal protection for small customers who have disputes with financial service institutions. With adjudication, the position of a small client will be on par with that of a financial services institution. Adjudication is only specifically for small customers with a dispute value below Rp.500 million. Large customers should not take advantage of Adjudication and are encouraged to take Arbitration because large customers are considered to have the financial ability to deal with financial service institutions. Although adjudication has not been listed in Law 30/1999, this method has been regulated in OJK Regulation Number 1/POJK.07/2014 concerning Alternative Dispute Resolution Institutions in the Financial Services Sector.

Adjudication is similar to Arbitration, but the process is much simpler and faster. In the adjudication process, there is an option right for the applicant (small customer) to approve or reject the outcome of the adjudication decision, while the respondent (financial services institution) is not given the right of option, so they must accept whatever the outcome of the decision. This right of option is not found in the Arbitration proceedings.

The parties must make an Adjudication Agreement before starting the Adjudication process so that there is legal certainty for the parties to comply with the outcome of the Adjudicator's decision. The adjudicator leads the "trial" until a verdict is produced.

g) Arbitrase

Arbitration (refereeing) is a type of APS whose process is similar to that of the Court so that it is classified as *quasi-judicial* (semi-court). In general, it is taken by large companies/multinationals that have large capital because the cost is relatively expensive compared to other APS methods. The arbitrator plays an active role as the judge who presides over the trial and makes the decision.

The arbitration award is final and has legal force that can still be binding on the parties. This is different from the District Court's decision which can still be appealed, cassated to reviewed. If the

parties do not want to implement the Arbitration award voluntarily, then the Arbitration award will be carried out based on the order of the Chief Justice (PN) at the request of one of the parties to the dispute. The order of the Chairman of the District Court is given within a maximum of 30 days after the application for execution is registered with the clerk of the District Court.

The losing party can still apply for the cancellation of the Arbitration award at the District Court (PN). The application must be submitted in writing no later than 30 days from the day of submission and registration of the Arbitration award to the PN Registrar.

The parties may apply for annulment of the Arbitration award if the award is suspected to contain the following elements:

- A letter or document submitted in an examination, after the verdict has been rendered, is admitted to be false or declared false.
- After the verdict is taken, a decisive document is found hidden by the opposing party, or
- The decision was taken from the results of a ruse carried out by one of the parties in the dispute examination

Large employers who want to resolve disputes in Arbitration can seek the help of national and international APS institutions. The trial process is led by an arbitrator or three arbitrators. The arbitrator can be chosen by both parties to the dispute. This is different from the District Court judge appointed by the chairman of the District Court. Prior to the Arbitration proceedings, the parties are required to enter into an Arbitration Agreement to ensure that the parties comply with the outcome of the Arbitration award.

Arbitration has the principle of legal certainty because the Court does not have the authority to examine cases in which there is an Arbitration Agreement. The court is even obliged to dismiss the case and must not interfere if there is an Arbitration Clause in the case (see Article 3 of Law 30/1999 on Arbitration and APS).

The APS institution is obliged to ensure neutrality and independence. No one is allowed by the APS Institution to act as an Arbitrator/Mediator if the person concerned has an affiliation or

conflict of interest with the case being handled or with one of the parties to the dispute.

In the early stages of the dispute, the parties are encouraged to go through the Negotiation method without involving a third party. If Negotiations fail, the parties may invite a third party to help resolve the dispute. Third parties can be legal experts, mediators, conciliators, adjudicators, or arbitrators. In the APS Arbitration model, the parties can choose their own law and arbitrator. Meanwhile, if using the APS model of Negotiation, Mediation, and Conciliation, the parties can determine their own dispute resolution procedures based on the agreement of both parties.

Broadly speaking, APS has several advantages as follows:

a. APS guarantees the confidentiality of the parties because the dispute resolution process is carried out behind closed doors (not open to the public)
b. The process of proceedings in APS is simpler compared to the Court.
c. APS guarantees the dignity of the parties because it is a win-win solution.
d. Dispute resolution via APS is faster, cheaper, and more effective than through the Court (litigation)
e. APS further guarantees that the parties will remain on good terms in the future.
f. APS is more effective in protecting the interests of consumers or small entrepreneurs

If the settlement through the non-litigation route does not yield results or is not agreed, the parties can take the litigation route through the court. This path provides strong legitimacy but has very different procedural characteristics, particularly in terms of proof.

2). Dispute Resolution Through the Court (Litigation)

The author refers to a book entitled "Business Dispute Resolution" compiled by Iswi Hariyani, Cita Yustisia, and R. Sertifianto

(2018).[67] Dispute resolution through litigation is the settlement of cases before the court by involving judges as a third party who is authorized to examine and decide the case. In general, the litigation process involves the role of a lawyer or legal advisor.

Dispute resolution through the courts is regulated in the Law on Judicial Power (Law 48/2009), and the General Judiciary Law (Law 2/1986 jo Law 8/2004 jo Law 49/2009). The General Court includes the District Court (PN), the High Court (PT), and the Supreme Court (MA). The District Court has the duty and authority to examine, adjudicate, decide, and resolve civil and criminal cases of the first degree. Parties who are dissatisfied with the PN's decision can appeal to the High Court until cassation and review to the Supreme Court.

The stages of the Litigation process through the District Court are as follows:

a. The plaintiff or through the Legal Attorney files a lawsuit addressed to the Chief of the District Court by submitting:
   i. Letter of Application/Lawsuit, and
   ii. Legalized Power of Attorney (if using an advocate)
b. The lawsuit and the original Power of Attorney must be approved by the Chief Justice of the District Court. After obtaining approval, the Plaintiff/Attorney pays the lawsuit/SKUM fee at the Cashier. The plaintiff will receive proof of receipt of the Letter of Claim and only need to wait for the Court Letter of the Trial Court from the PN submitted by the Substitute Bailiff.
c. Attend the session according to the predetermined schedule.
d. The first hearing with the agenda of reading the lawsuit. After the lawsuit was read, the judge offered the parties whether they wanted to settle it through mediation efforts. If it is agreed, the two parties will hold mediation by a mediator. If the mediation mediated by the mediator has reached an agreement, the results are brought back to the trial and the panel of judges confirms the peace between the two parties as the final decision of the case.
e. Reading the Answers. If the mediation attempt fails, the trial will proceed to the next agenda, namely the reading of the answer from

67 Hariyani, Serliani, and Purnomo.

the Defendant and so on according to the procedure of the civil procedure trial.

f. Replica, which is the Plaintiff's reply response to the Defendant's answer.
g. Duplicate, which is the Defendant's answer to the Replica submitted by the Plaintiff.
h. Prove
i. Conclusion of the Plaintiff and the Defendant
j. Decision by the Panel of Judges
k. Appeal (14 days from the issuance of the decision)
l. Cassation legal remedies (period of 14 days from the issuance of the appeal decision).

The following are the advantages and disadvantages of using dispute resolution in Litigation:

The advantages of resolving business disputes with the litigation system (court) are as follows:

a) The scope of the examination is wider because the judicial system in Indonesia is divided into several parts, namely the general court, the religious court, and the commercial court so that almost all types of business disputes can be examined through this channel.
b) Litigation costs are cheaper than non-litigation. This refers to one of the principles of justice in Indonesia that must be implemented simply, quickly, and at a low cost.

Disadvantages of using the litigation system (court) include the following:

a) The judicial process takes a long time because of the open opportunity to file legal remedies against the judge's decision through appeal, cassation, and review.
b) The ability of judges to solve problems is constrained because judges have to handle a lot of legal cases.
c) In general, the litigation process is open to the public so that it cannot maintain the confidentiality of the parties.

d) The decision is win-lose so that it can damage a relationship in the future.

One example of resolving consumer disputes through the civil procedure law mechanism (litigation) can be seen in Decision 681/Pdt.G/2019/PN.Jkt.Sel. In this case, the plaintiff is a consumer who sues the business actor for alleged unlawful acts (PMH) that harm him in the transaction of goods and/or services. However, in the trial process, the panel of judges stated that the lawsuit postulate did not meet the elements of a consumer dispute, and was more appropriately categorized as an ordinary civil dispute. The judge affirmed that:

> *"Since it turns out that the Plaintiffs' lawsuit is an unlawful act, not a dispute about consumers, it is not a condition to delay the Plaintiffs filing a quo lawsuit, therefore the Defendant's exclusion must be declared rejected."*

The lawsuit was rejected because it could not be proven sufficiently, so the plaintiff (consumer) was declared defeated.

This decision reflects the limitations of the evidentiary system in the Civil Procedure Law (Article 163 HIR, Article 1865 of the Civil Code), which applies the principle *of actori incumbit probatio*, namely the postulating party (the plaintiff) must prove his own evidence. Judges in civil procedure law are passive and only examine based on the evidence submitted (Article 178 paragraph (3) HIR). If the plaintiff fails to prove the elements of legal events and losses in detail, then the lawsuit will be rejected even though the consumer is substantially harmed.

This case shows that the evidentiary system that places all the burden on the plaintiff (in this case the consumer), has the potential to be detrimental if the consumer is unable to present strong evidence. This is one of the important reasons for the need for a fairer proof mechanism, as stipulated in the Consumer Protection Law.

Consumer Dispute Resolution Mechanism based on The Consumer Protection Law

Consumer dispute resolution can be pursued by the Parties (Consumers/Business Actors) through the general judiciary or outside the general judiciary based on the voluntary choice of the parties to the dispute.[68] In the settlement of consumer disputes outside the general judicial body, it will be carried out by the Consumer Dispute Settlement Agency (BPSK) in accordance with the provisions of the governing laws and regulations.

1). Consumer dispute resolution outside the General Judiciary.

Dispute resolution outside the General Judiciary is also known as the non-litigation route, which is the process of making a complaint or lawsuit for losses made by business actors to the Consumer Dispute Resolution Agency (BPSK) or the Non-Governmental Consumer Protection Agency (LPKSM). The Consumer Dispute Resolution Agency, hereinafter abbreviated as BPSK, is the body in charge of handling and resolving Consumer Disputes, while the Non-Governmental Consumer Protection Agency, hereinafter abbreviated as LPKSM, is a non-governmental institution registered and recognized by the government that has activities to handle Consumer Protection. BPSK was formed based on the Governor's Decree in accordance with the province's working area. The provincial working area as referred to consists of the district/city area. Especially for DKI Jakarta Province, BPSK was formed in the province based on the Governor's Decree.

Consumer dispute resolution through the Consumer Dispute Resolution Agency is regulated in Law Number 8 of 1999 concerning Consumer Protection and its derivative regulations such as the Regulation of the Minister of Trade of the Republic of Indonesia No. 72 of 2020 concerning the Consumer Dispute Resolution Agency in[69] conjunction with the Regulation of the Minister of Trade of the Republic of Indonesia No. 17/M-DAG/PER/4/2007 concerning the Duties and Authorities of the Consumer Dispute Resolution Agency and Consumer Dispute Resolution Procedures.[70] Settlement by the

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68 Article 45 Indonesia, Law Number 8 of 1999 on Consumer Protection.

69 Ministry of Trade, Regulation of the Minister of Trade of the Republic of Indonesia Number 72 of 2020 concerning the Consumer Dispute Resolution Agency.

70 Ministry of Trade, "Regulation of the Minister of Trade No. 17/M-DAG/PER/4/2007 concerning the Duties and Authorities of BPSK and

Consumer Dispute Resolution Agency is carried out based on the principle of simple, fast, and cheap. The process of submitting a dispute settlement is submitted by the disputing party himself accompanied by the Panel as a conciliator, mediator, or arbitrator. The task of resolving consumer disputes by the Consumer Dispute Resolution Agency is to seek agreement on the form and amount of compensation and/or regarding certain actions to ensure that there will be no recurrence or will not recur the losses suffered by consumers.

The Consumer Dispute Resolution Agency in handling consumer dispute resolution is carried out by conciliation, mediation or arbitration. The Regulation of the Minister of Trade of the Republic of Indonesia No. 17/M-DAG/PER/4/2007 explains the duties and authorities of BPSK as regulated in article 4 with 13 points of duties and authorities. Among the 13 points, there is the duty and authority of BPSK to obtain, examine and/or assess letters, documents, or other evidence to investigate investigations and/or examinations. Then the evidence that can be used in settling the lawsuit includes (*see article 26 of the Permendag a quo*):

a. Goods and or services
b. Letters and or documents
c. Statements of the parties to the dispute
d. Witness and or expert witness statements
e. Other supporting evidence.

Regulation of the Minister of Trade of the Republic of Indonesia No. 17/M-DAG/PER/4/2007 explains the procedures for submitting and resolving consumer disputes *(see articles 11 to 24)* divided into three parts, namely:

1. Filing of a Lawsuit, contained in article 11, article 12, article 13, and article 14)

   The requirements for filing a lawsuit consist of:

   a. There has been material loss suffered by the plaintiff.
   b. Submitted by the End Consumer

Procedures for Consumer Dispute Resolution," Pub. L. No. 17, 1 (2007), https://jdih.kemendag.go.id/peraturan/stream/2460/2.

c. the lawsuit is not in the process of being settled by other BPSK and/or the court, which is stated in the statement by the plaintiff.
d. The lawsuit has never been decided by another BPSK and/or the court as stated in the statement by the plaintiff.

2. Trial Procedures, regulated in article 15.
3. Consumer Dispute Resolution Options through conciliation, mediation, and arbitration. It is regulated in article 16 for conciliation, continuing articles 17-18 for mediation, while articles 19 to 24 for arbitration.

The Consumer Dispute Settlement Agency (BPSK) is required to give a decision no later than 21 (twenty-one) days from the date the lawsuit is received by the Panel for each conciliation, mediation, or arbitration settlement. The decision of the Assembly is signed by the Chairman and Members of the Assembly. The decision of the BPSK Assembly is final and binding for conciliatory and mediation examination, while for arbitration awards, objections can be raised. The BPSK decision itself can be in the form of peace, lawsuit rejected, or lawsuit granted. Then if the lawsuit is granted, the verdict stipulates the obligations that must be carried out by the defendant. The obligation in question can be in the form of fulfilling compensation as in article 19 paragraph (2) of the Consumer Protection Law.

The BPSK decision must be implemented no later than 7 (seven) days after the decision is received by the defendant, unless the plaintiff or defendant files an objection. Regarding objections to the BPSK decision, it is requested to determine the execution/objection by the Consumer/Business Actor to the District Court where the consumer resides, as stipulated in Pasla 57 of the UUPK. If the Business Actor does not implement the BPSK decision as referred to above, or the plaintiff and/or the defendant does not file an objection, then BPSK submits the decision to the investigator for investigation in accordance with the applicable laws and regulations. Objections can only be filed against the arbitration award issued by BPSK.[71] The application for

[71] Article 31 paragraph (3) jo Article 33 Ministry of Trade.

execution of the BPSK decision that has been examined through the objection procedure by the District Court which decides the objection case concerned.

2). Consumer dispute resolution through the General Judicial Agency (Litigation).

This litigation process can be taken by parties (consumers/business actors) who feel aggrieved by the non-fulfillment/implementation of the content of the BPSK decision and/or object to the BPSK decision. Efforts through the General Judicial Agency can be taken by the parties directly without going through a non-litigation process such as through BPSK or it can also be after going through the settlement process at the BPSK institution and then submitting an objection to the BPSK decision.

When the parties directly choose the option of resolving consumer disputes through the general judicial institution, they will face a settlement process based on the civil procedure law system. This legal system will also apply proof based on article 1865 of the Civil Code jo article 163 of the Civil Code, namely the postulating party (the plaintiff) must prove the postulates first, and the judge only examines based on the postulates and evidence submitted (Article 178 paragraph (3) of the HIR). In addition, settlement through this route refers to the provisions on the general judiciary applicable in Indonesia by taking into account the provisions in Article 45 (*see article 48 of the Consumer Protection Law).*

On the other hand, law number 8 of 1999 concerning consumer protection, also provides a solution for parties who feel dissatisfied or object to the settlement they have taken through non-litigation, namely the Consumer Dispute Resolution Agency. Juridically, the UUPK does direct the parties to consumer disputes to first resolve their conflicts through the BPSK institution which is in nature to reach an agreement on the form and amount of compensation and/or regarding certain actions to ensure that there will be no recurrence or will not repeat the losses suffered by consumers (see article 47 of the UUPK). Although the BPSK decision is final and binding for conciliatory or mediation examinations, for arbitration examinations through BPSK, objections

can be submitted to the District Court in the place where the consumer is located. [72]

It can be observed from the case in Decision Number 681/Pdt.G/2019/PN.Jkt.Sel. The Plaintiff, namely the Consumer, decided to immediately take the civil dispute resolution route to the District Court. Although the plaintiff is a consumer of the defendant, the Judge considers that the lawsuit postulated by the Plaintiff is an ordinary civil lawsuit, namely an Unlawful Act (PMH), so the Judge considers that the disputed case is an ordinary civil case, not a consumer dispute. In this case, the burden of proof system is based on the Civil Procedure Law where *"the postulating party must prove the truth of what is postulated"*. The enactment *of Actori incumbit probatio*, is neutral, but often burdensome to consumers.

Unlike the above case which was resolved through the usual litigation route, the next case shows how the reverse evidentiary system in the UUPK works effectively through the BPSK mechanism and the submission of objections to the Court.

In Supreme Court Decision No. 175 K/Pdt.Sus-BPSK/2021, the Plaintiff (Consumer) has first submitted a non-litigation dispute resolution through the Consumer Dispute Resolution Agency (BPSK). Initially, the case submitted by the Consumer was carried out through mediation at BPSK, but the result was not reached by the [73] Kamudian peace agreement, the Consumer filed a lawsuit back to BPSK and the settlement effort was carried out through arbitration. From these settlement efforts, BPSK Decision Number 011/REG/BPSK/BKS/2020 was produced, which stated that the Business Actor was guilty and imposed administrative sanctions and criminal penalties.

Upon BPSK's a quo decision, Business Actors file an objection to the District Court as stipulated in the Consumer Protection Law and Trade Regulation Number 17/M-DAG/PER/4/2007 concerning the

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72 Article 34 Ministry of Trade.

73 Ganesti Gebryella Manullang, Dedi Harianto, and Aflah., "Consumer Dispute Settlement Between Alvarendra Ataya Anas and PT Citra Van Titipan Kilat (TIKI) (Analysis of Supreme Court Decision No. 175K/Pdt.Sus-BPSK/2021)" 2, no. 9 (2023): 29–41, https://doi.org/https://doi.org/10.32734/alj.v2i1.15473.

Duties and Authorities of BPSK and Consumer Dispute Resolution Procedures where only BPSK arbitration awards can be objected to to the District Court. Even after an examination by the Panel of Judges of the District Court, it was decided to strengthen the BPSK Decision a quo. Seeing the results of the PN decision, business actors submitted an Application for Cassation to the Supreme Court. The Supreme Court determined that business actors are guilty of losses that occur/are suffered by Consumers. Then the Supreme Court Panel of Judges corrected the District Court's decision and the BPSK Decision by changing the nominal administrative sanction to 1 million rupiah while eliminating the criminal sanction of fines as decided in the BPSK Decision a quo.

In contrast to the evidentiary system in civil procedure law which places the burden entirely on consumers as plaintiffs, the Consumer Protection Act applies a reverse evidentiary system that provides greater justice to consumers. This is reflected in the Supreme Court Decision No. 175 K/Pdt.Sus-BPSK/2021, where consumers are not burdened with the obligation to prove losses in detail, even when the case continues to the District Court and Supreme Court levels. The burden of proof is still charged to business actors as parties who are suspected of being harmful.

V. Conclusion

The Civil Procedure Law adheres to the principle *of actori incumbit probatio* which requires the plaintiff (consumer) to prove its evidence, thus causing potential inequality if consumers do not have adequate resources or access to evidence. In contrast, the Consumer Protection Law adheres to a reverse evidentiary system (vide Articles 22 and 28 of the UUPK), in which business actors are burdened with the burden of proof. This system strengthens the position of consumers in the dispute process and is a manifestation of the principle of strict *liability*, the presumption of always responsibility, and the principle *of due care* as the basis for consumer protection. The application of this system is reflected in Supreme Court Decision No.175 K/Pdt.Sus-BPSK/2021

which emphasizes that the burden of proof remains on the business actors up to the cassation level.

The litigation route based on civil law provides formal legitimacy, but procedures and evidence that burden consumers often lead to failure to prove, as seen in Decision No. 681/Pdt.G/2019/PN.Jkt.Sel. On the other hand, settlement through BPSK is simpler, faster, and more efficient, and supports the position of consumers through a reverse proof mechanism. Although BPSK's decision can be objected to, as stipulated in Articles 45-48 of the UUPK, this mechanism is still important in creating a balance between business actors and consumers. Therefore, understanding the choice of mechanisms and systems of proof is a strategic key for consumers in effectively defending their rights.

VI. Recommendations

1. Harmonization of the Proof System
   It is necessary to harmonize the rules regarding the evidentiary system between the Civil Procedure Law and the Consumer Protection Law, because the difference between the two has an impact on the legal position of consumers when choosing a dispute resolution forum. This harmonization aims to create equal treatment and legal protection for consumers.
2. Strengthening Institutional and Legal Certainty of BPS
   It is necessary to strengthen the institutional position of BPSK, including increasing public literacy about the authority, limits, and procedures for objecting to BPSK's decisions. Legal certainty regarding the final nature and enforceability of BPSK decisions must also be put forward so that the decision does not become a mere formality.
3. Expansion of Reverse Proof Load Implementation
   The principle of reverse burden of proof regulated in the UUPK should not only be limited to BPSK disputes, but can be used as an approach in civil cases related to consumers, especially in the position of consumers who are weak in information and evidence.

4. Capacity Building of Judges and Practitioners
   The need for special training and briefing for judges and legal practitioners on the characteristics of consumer disputes and the principles of substantial justice, so that case handling is not trapped in a purely formalistic approach.
5. Increasing Consumer Legal Literacy
   The government and LPKSM need to actively educate the public about consumer rights, the choice of dispute forums, and the applicable evidentiary system, so that consumers are able to determine the right legal strategy when facing disputes.

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