

Regulation and Application of the Doctrine of Res Ipsa Loquitur in the Settlement of Consumer Disputes in Indonesia

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Abstract

Consumer disputes may be resolved by non-litigation or litigation, with the latter being reserved for extreme cases. Companies are obligated to pay customers' compensation claims. The parties to a dispute should not be unfairly treated when the burden of evidence is not evenly

distributed. In order to avoid an unfair burden of evidence mistakes that hurt other parties, the burden of proof has to be examined case by case. Law No. 8 of 1999 on Consumer Protection specifies the burden of evidence in Article 28. When it comes to enforcing the law in Indonesia, doctrines are accepted sources of law from outside the country. An interesting topic for debate is the regulation and use of the *res ipsa loquitur* doctrine in consumer dispute resolution in Indonesia. This method has a normative legal bent. The Consumer Protection Law does not explicitly govern the *res ipsa loquitur* notion, even though it is acknowledged in Indonesian consumer dispute settlement. Applying *res ipsa loquitur* to consumer disputes may help ensure fairness, which is in line with the Consumer Protection Law's established reverse burden of proof.

Keywords

Dispute settlement, res ipsa loquitur, consumer protection

Introduction

In the current consumptive era, people are very immensely eased to get the necessary goods or services. It is supported by the development of information technology, which makes it easier for producers to market their products more widely at a relatively low cost. The convenience is felt in terms of information and the ease of transactions. Furthermore, globalization's impact on all facets of society, including the social, economic, and cultural spheres, is inseparable from the rate of economic progress. Trade in products and services has expanded at a dizzying rate, thanks to the proliferation of both communication and transportation technologies. As the national economy continues to expand, there will be a corresponding trend toward more commerce in products and services¹

In this age of technology and globalization, businesses are growing and diversifying to meet the requirements of their customers and the society at large, which in turn improves people's quality of life. In order

¹ Sudjana, *Hukum Kekayaan Intelektual* (Bandung: Kenni Media, 2016), p. 12.

for businesses to continue operating, the people who buy their products and services must take an active role as customers. When it comes to the expansion and improvement of the corporate sector, consumers are among the crucial factors. Making ensuring the community's products and services aren't hurting the consumer community is essential. Achieving the aims of honest corporate operations and accommodating legal protection for consumers cannot be achieved without consumer protection as an inherent aspect.²

The right to safety and security is paramount for consumers³ Consumers need legal protections against damages caused by businesses' illegal actions, and legal instruments help make that possible. In order to conduct their commercial operations responsibly and with knowledge of the law, business actors also need legal protection⁴ Also, for businesses to make sure their wares don't put customers in risk, they need to be very precise while making and delivering them. Protecting consumer rights is important, thus this is definitely something to think about. The term "product liability" describes the legal obligation of any and all stakeholders in the manufacturing process to compensate victims of harm produced by a product. At the very top of the chain are the makers of the components, and at the very bottom are the wholesalers and retailers.⁵

In addition, as a regulator through its policies, the government⁶ must always protect the Indonesian people, because consumer problems are a problem of the whole community, so the government needs to pay attention to and supervise consumer rights.

² Jefferson Hakim, "Exoneration Clause on Law of Consumer Protection: Effects and Legal Efforts," *Jurnal Hukum dan Peradilan* 8, no. 2 (July 31, 2019): 297.

³ Deviana Yuanitasari, "Implikasi Prinsip Caveat Venditor Terhadap Perkembangan Hukum Perlindungan Konsumen di Indonesia," *Arena Hukum* 10, no. 3 (December 29, 2017): 425–40.

⁴ Anita Afriana, *Hukum Perlindungan Konsumen Dimensi Penyelesaian Sengketa* (Bandung: Global Sinergi Indonesia, 2006). p.4.

⁵ Ayup Suran Ningsih, "The Doctrine of Product Liability and Negligence Cannot Be Applied to Malware-Embedded Software," *JILS (Journal of Indonesian Legal Studies)* 4, no. 1 (April 18, 2019): 7–20.

⁶ Deviana Yuanitasari, Agus Sardjono, and Heru Susetyo, "The Government's Role in Indonesian Halal Industry to Protect Muslim Consumer," *Proceedings of the 4th International Conference on Indonesian Legal Studies, ICILS 2021*, January 1, 2022.

Ensuring the quality and safety of food products is a matter worldwide, with profound implications for the health and well being of consumers⁷ However, in reality, business actors and consumers are often involved in disputes that demand responsibility from business actors. For example the case of consumers who are victims of expired food poisoning is raised in this paper. Also, disputes occur due to an unbalanced position between business actors and consumers which causes harm to consumers. In addition, there are obligations that business actors do not carry out, so various consumer rights cannot be fulfilled. Consumers are entitled to accurate and truthful information about the state and guarantee of goods or services, as well as fair treatment and non-discriminatory treatment, according to Article 4 of the Consumer Protection Law (hereinafter referred to as the Consumer Protection Law).

A consumer has the right to sue for the enforcement of their rights in the event that such rights are infringed upon. According to paragraph 1 of Article 45 of the customer Protection Law, every aggrieved customer has the right to sue the company in a court that deals with cases involving the general public or via a special entity that mediates conflicts between consumers and businesses. According to Article 45 of the Consumer Protection Law, all sides have the option to settle a consumer issue outside of court or in court.⁸ It is believed that customers will have more equal rights and recourse, including the ability to sue, as a result of government policies and the Consumer Protection Law.⁹ can seek redress in the event that their rights are infringed upon and resulting in financial harm¹⁰ business players. Legal resolution is a last

⁷ Nurul Fibrianti, Budi Santoso, and Yuli Rindyawati. "Legal Culture and Legal Consciousness of Consumers: The Influence on Regulation and Enforcement of Consumer Protection Laws." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 1267-1310.

⁸ Deviana Yuanitasari and Hazar Kusmayanti, *Implementasi Prinsip Pembuktian Terbalik Dalam Hukum Perlindungan Konsumen di Indonesia* (Bandung: Logoz Publisher, 2017), p.61.

⁹ Ruth Srininta Tarigan, "The Effect Of Celebrity Endorsement On Purchase Intention," 2023, <https://www.semanticscholar.org/paper/THE-EFFECT-OF-CELEBRITY-ENDORSEMENT-ON-PURCHASE-Tarigan-Tandung/6c6a71348ea6963833e623723528a3fdb05b4cd8>.

¹⁰ Steven Shavell, "The Mistaken Restriction of Strict Liability to Uncommon Activities," *Journal of Legal Analysis* 10 (January 1, 2018): 1–45.

option because, in the past, consumers had faith that businesses would create high-quality goods and services in accordance with government regulations establishing minimum standards.

Problems abound in most conflicts, and satisfying resolutions are uncommon¹¹. Customers have the last say in consumer disputes¹² really occupy a precarious position when it comes to handling civil cases. When a disagreement arises, the burden of proof is on the plaintiff under general-applicable civil procedural law.¹³ An important aspect of traditional civil dispute resolution is the burden of evidence, often known as the *bewijstlast*.¹⁴ Due to the fact that the burden of proof in a civil dispute is governed by the *Rechtlement voor de Buitengewesten* (RBg), a source of civil procedural law, and the *Herziene Indonesisch Reglement* (HIR) in Article 163, it will be extremely challenging for consumers who have been wronged to establish that business actors were at fault. Consumers have a hard time demonstrating their innocence in consumer disputes, claims Sudaryanto.¹⁵

The disputing parties are wronged when the burden of evidence is unevenly distributed. Applying the burden of evidence correctly requires familiarity with the relevant concepts and practices as well as a case-by-case approach based on specific facts in order to prevent the erroneous assumption of an undue burden of proof.¹⁶ When the burden of proof is determined by the provisions of the material law, the guidelines for its distribution will no longer be based on Article 1865 of the Civil Code or Article 163 of the HIR. Instead, they will fully refer to the article of the law that specifies the mandatory evidence that must be applied in a given case.¹⁷ The provisions of the Consumer Protection

¹¹ Ridwan Arifin, et al. "Protecting the Consumer Rights in the Digital Economic Era: Future Challenges in Indonesia." *Jambura Law Review* 3, no. 1 (2021): 135-160.

¹² Chuanyi Tang, Lin Guo, and Mahesh Gopinath, "A Social-Cognitive Model of Consumer Well-Being," *Journal of Service Research* 19, no. 3 (March 9, 2016): 307-21.

¹³ Subekti, *Hukum Pembuktian*, p. 20.

¹⁴ A.Z. Nasution, *Hukum Perlindungan Konsumen: Suatu Pengantar* (Jakarta: Daya Widya, 1999), p. 38.

¹⁵ Sudaryatmo, *Hukum & Advokasi Konsumen* (Citra Aditya Bakti, 1999), p. 91.

¹⁶ M. Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2004), p. 558.

¹⁷ Teguh Samudra, *Hukum Pembuktian dalam Acara Perdata* (Bandung: Alumni, 1992), p. 36.

Law that govern consumer protection policies, including those pertaining to the reverse burden of proof and its application in compensation claims (as mentioned in Articles 19, 22, and 23 of the said law), as well as those cited in Article 28 of the said law in conjunction with Article 22 of Minister of Trade Decree No. 350/MPP/Kep/12/2001, have come into effect.

Furthermore, it is acknowledged that courts regard doctrine as one of the sources of law when considering disputes, particularly consumer disputes, in order to accomplish justice for consumers. situations where the plaintiff will have a hard time proving the defendant's guilt due to the fact that only the defendant has access to the evidence, such as situations involving malpractice or forest fires, sometimes involve the use of the *Res Ipsa Loquitur* concept. In the situation of poisoning from spoiled food, judgment number 18/Pdt.Sus-BPSK/2020/PN. Grt. serves as an example of a consumer protection case. When making his decision, the judge here took the Doctrine of *Res Ipsa Loquitur* into account. Products are considered to have expired when they are no longer suitable for consumption and so cannot be exchanged by business actors. Ingesting perishable products might lead to food illness. According to the Consumer Protection Law, Article 8, Paragraph 1, Letter (a), no business may produce or sell products or services that do not adhere to the relevant norms and rules. The victim, Fitri, lost money since her family became ill after consuming food from Asia Toserba, including cheese wafers and other vegetable items in 350 gram cans. In order to ensure their own safety and the safety of others, customers are required by law to read and adhere to all product and service documentation, including but not limited to use instructions. Decision Number 18/Pdt.Sus-BPSK/2020/PN was considered by the judge. Fortunately, the cheese wafer vegetable product comes with an expiration date that customers can see before eating it. However, the judge ruled that the principle of *Res Ipsa Loquitur*, which means "the thing speaks for itself," applies when consumer protection law is applied to evidence. Thus, Asia Toserba is obligated to establish that its goods are not expired, but Fitri, as a victim of poisoning, merely needs to prove that certain repercussions have happened. Fitri, the sufferer of the food poisoning due to expired ingredients, was ordered by the court to receive compensation from Asia Toserba.

Considering that Article 28 of the Consumer Protection Law regulates proof, and that judges often state that the Res Ipsa Loquitur doctrine applies in consumer protection law, this paper examines and discusses how the Res Ipsa Loquitur doctrine is regulated in the Consumer Protection Law and how judges use it in dispute resolution when deciding consumer disputes.

Specifically, the research methodology employed is normative legal research, focusing on the analysis of secondary legal documents or library materials.¹⁸ Normative legal research aims to address legal issues by identifying pertinent legal principles, doctrines, and norms, with the objective of offering solutions within the legal framework.¹⁹

Legal Concept of Consumer Protection

Law, as outlined by Mochtar Kusumaatmadja, is the set of rules and principles that govern human behavior in society. It also encompasses the institutions and procedures that make these rules and principles a reality. Society relies on law as a means to preserve order²⁰ Society needs law enforcement to ensure that laws are enforced in order to enhance order and legal certainty. One way to enforce the law is to limit the power, responsibilities, and operations of the agencies tasked with doing so to their proper limits.²¹ Jimly Assidique argues that the purpose of law enforcement is to ensure that the rule of law is consistently applied to all societal and state-level legal transactions, including traffic regulations. The Latin adage "*fiat justitia et paret mundus*" states, "the law must be enforced even if the world collapses." Efforts to protect legal standards rely heavily on law enforcement in this regard. After the law-making process is complete, the laws must be put

¹⁸ Soerjono Soekanto and Sri Mamuji, *Penerlitian Hukum Normatif: Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2013), p.10.

¹⁹ Peter Mahmud Mrazuki, *Penelitian Hukum*, (Jakarta:Kencana Prenada Group, 2007), p.255.

²⁰ Mochtar Kusumaatmadja, *Konsep-konsep Hukum Dalam Pembangunan (Kumpulan Karya Tulis)*, (Bandung:Penerbit Alumni, 2002), p.10.

²¹ Sanyoto Sanyoto. "Penegakan Hukum di Indonesia", *Jurnal Dinamika Hukum* 8 no. 3, (2008): 199.

into practice in the everyday lives of the community. This is how the police are defined.²²

The three primary components of law enforcement are justice (*Gerechtigkeith*), legal certainty (*rechtssicherheit*), and expediency, according to Gustav Radbrunch. When we talk about law enforcement, we're talking about the values of justice that permeate society as well as the legal procedures.²³ In law enforcement, justice is an expectation that needs to be fulfilled. Justice is individualistic, subjective, and non-generalizable based on these traits. The purpose of law is to keep people's lives in order. In addition to maintaining order and achieving justice, the law must also provide protection for the community.²⁴

The existence of the Consumer Protection Law is one way in which the citizens of Indonesia are protected. The idea of weaker parties often provides an explanation and justification for consumer protection.²⁵ The current level of consumer education is indicative of the poor degree of consumer knowledge about their rights²⁶ that is why safeguarding consumers is crucial.²⁷ The terms make the meaning of consumer protection very clear; it includes everything done to provide legal clarity for the benefit of consumers. Consumers are comparable to this description in that they all use community-provided goods and services for the benefit of themselves, their families, other people, and all living things, rather than exchanging them for something else.²⁸ The Consumer Protection Law specifies in Article 1, point 1 that:

²² Satjipto Rahardjo, *Ilmu Hukum*, Cetakan kesembilan (Bandung: PT. Citra Aditya Bakti, 2021), p.179.

²³ Hasaziduhu Moho, "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan", *Jurnal Warta* 13, no.1 (2019).

²⁴ Rizqi Baktiara Amrullah, "Internationalization of Consumer Law: A Game Changer, Hans W. Micklitz and Mateja Durovic, Springer Nature Switzerland, 2017, 89 Pages, ISBN 978-3-319-45312-5," *JILS (Journal of Indonesian Legal Studies)* 4, no. 2 (2019): 339–42.

²⁵ Ika Atikah, "Consumer Protection and Fintech Companies in Indonesia: Innovations and Challenges of the Financial Services Authority," *Jurnal Hukum dan Peradilan* 9, no. 1 (March 31, 2020): 132.

²⁶ Sayan Basu, and Anusree Bose. "Celebrity Endorsements – An Empirical Insight Into Consumer's Perception". *International Journal of Innovative Research in Computer And Communication Engineering* 10, no. 7 (2020): 8–13.

²⁷ Luke Garrod et al., "Competition Remedies in Consumer Markets," *Loyola Consumer Law Review* 21, no. 4 (December 31, 2009): 439.

²⁸ Shidarta, *Hukum Perlindungan Konsumen* (Jakarta: Gramedia, 2004), p. 72.

“Consumer Protection is all efforts that ensure legal certainty to provide protection to consumers.”

In order to ensure that customers are safe while they are trying to meet their requirements, the Consumer Protection Law prohibits a number of practices. A customer's rights and responsibilities, as well as the means by which they might be preserved, are governed by consumer protection legislation.²⁹ Additional protection for vulnerable populations and those unable to care for themselves may be provided by consumer rights, which aim to guarantee honest free flow of information on the market and fair commercial competition.³⁰ The goal of consumer protection in Indonesia is to ensure that the products sold to the public are free of harmful substances. The whole country, not just the government, must work together to ensure safety. Put another way, manufacturers should provide safe produced items, and consumers should use caution and diligence when selecting the things, they put into their bodies. The essential idea behind consumer protection, according to Purba, is that businesses (whether producers or dealers of goods) and consumers rely on one another. Everything you make is for nothing if no one buys it, and business owners will reap the benefits of satisfied customers and safe goods in the form of free advertising.³¹

The legal safeguards provided to consumers in their pursuit of self-sufficiency against circumstances that jeopardise their own interests are collectively referred to as consumer protection. Because of the disparity in power between consumers and corporate entities, consumer protection exists. It is anticipated that consumer protection laws will advance justice, offer legal clarity, and benefit consumers.

Legal protections for consumers do not need a formal contract or "*non-conditional agreement*" in order to be established.³² Justice, balance,

²⁹ Janus Sidabalok, *Hukum Perlindungan Konsumen di Indonesia* (Bandung: PT Citra Aditya Bakti, 2004), p.54.

³⁰ V. Darling Selvi, and A. Anusuya. "Critical Evaluation of Awareness of Consumer Rights and Protection." *Primax International Journal of Commerce and Management Research* 9, no. 1 (2021): 68-75.

³¹ Happy Susanto, *Hak-Hak Konsumen Jika Dirugikan* (Jakarta: Visi Media, 2015).

³² Musa Taklima, Adi Sulistiyono, and M. Syamsudin, "Consumer protection as an instrument for fulfilling human rights in the economic sector and its constitutionalizing efforts in the 1945 constitution," *Jurisdictie: Jurnal Hukum dan Syariah* 14, no. 1 (July 22, 2023): 75–105.

security, consumer safety, and legal clarity should form the basis of consumer protection in Indonesia. According to the IOCU (International Organization of customers Union), customers have the following four rights:

- a. The right to the necessities of life;
- b. Right to compensation;
- c. The right to consumer education;
- d. The right to a clean and healthy environment.³³

Alternative dispute resolution processes are available to consumers via the Consumer Protection Law³⁴. The goal of resolving disputes outside of court is to reach an agreement on the nature and number of damages, as well as concrete steps to ensure that the same or similar losses do not occur again (Article 47). Customers and business participants are expected to be able to resolve their problems immediately in this manner. Yet, that's not the purpose of this legislation was to establish the Consumer Dispute Settlement Agency (BPSK) to help resolve consumer issues outside of court. The capital of the regency or city level II area is home to the headquarters of this government-established organization, as specified by Article 49 paragraph (1). The current model for consumer dispute resolution, as shown by BPSK's Small Claims Tribunal, has the potential to become the norm.³⁵ Similar to how mediation, arbitration, or conciliation may resolve conflicts, out-of-court settlements of consumer issues can as well.³⁶ As a means of conflict settlement, the BPSK panel should do its best to facilitate an agreement amongst the disputing parties. Therefore, there are components of peace in BPSK conflict settlement.

But keep in mind that the law's requirements must still be followed, therefore resolving consumer problems peacefully is not

³³ Inosentius Samsul, *Perlindungan Konsumen, Kemungkinan Penerapan Tanggung Jawab Mutlak*. (Jakarta: Universitas Indonesia, 2004),7.

³⁴ Fenny Bintarawati, "Juridical Analysis of Consumer Protection against Buying and Selling Fraud in the Market Place," *Walisono Law Review* 4, no. 1 (May 24, 2022): 49–68.

³⁵ A. Bagus Kuncoro et al., "Consumer Protection Based on Justice in Order to Advance State Administration Systems in Indonesia," *Atlantis Press*, January 1, 2019, <https://doi.org/10.2991/icglow-19.2019.22>. pp. 332.

³⁶ Anna Maria Tri Anggraini and Maya Indrasti Notoprayitno, "Protection of Consumers with Disabilities in The Public Services Sector (Legal Comparative with Australia)," *Journal of Consumer Sciences* 8, no. 1 (January 31, 2023): 1–14.

enough. Instead of resolving customer complaints amicably, BPSK investigates and renders decisions in accordance with the law. This indicates that BPSK continues to abide by the provisions of the relevant law when performing its function in dispute settlement. Nonetheless, BPSK offers an out-of-court dispute resolution process for consumer disputes.

Doctrine as a Source of Law

In addition to the law, doctrine is often the solution to a specific legal issue. Doctrine as a source of law has a binding role for jurists, and it can also be interpreted that doctrine provides a rational description and can convince others.³⁷ The application of rules and regulations is directly tied to doctrine. When judges are deciding how to handle a case, there are times when they require more information. The rationale for the employment of doctrine is the fact that it may codify abstract legal ideas, making them easier to grasp.

When it comes to civil evidence, there are a few different doctrines that may be used, such as *Res Ipsa Loquitur*, Reverse evidence, and Absolute Liability.³⁸ There are three distinct theories that attempt to help victims with civil evidence, but they are not identical. One thing that sets them apart is:³⁹

- (1) According to the Doctrine of Reverse Proof, whomever is accused of a crime has the responsibility to provide evidence of their guilt.
- (2) Although the accused has the right to establish his innocence, the burden of proof is on the victim, according to the *Res Ipsa Loquitur* concept. We frequently hear this concept called the doctrine that favors the victim because of this.

³⁷ Ahmad Sofian, "Makna 'Doktrin' Dan 'Teori' Dalam Ilmu Hukum," *Business Law*, May 30, 2016, <https://business-law.binus.ac.id/2016/05/30/makna-doktrin-dan-teori-dalam-ilmu-hukum>. [07/02/2023]

³⁸ Deviana Yuanitasari, Hazar Kusmayanti, and Agus Suwandono, "A Comparison Study of Strict Liability Principles Implementation for the Product Liability within Indonesian Consumer Protection Law between Indonesia and United States of America Law," *Cogent Social Sciences* 9, no. 2 (August 17, 2023).

³⁹ Titin Apriani, "Kedudukan Doktrin *Res Ipsa Loquitur* (Doktrin yang Memihak pada Korban) Dalam Tata Hukum Indonesia", *Ganec Swara Journal* Vol. 14, No. 1, 2020, pp. 403, <https://doi.org/10.35327/gara.v14i1.11>.

- (3) The Doctrine of Absolute Liability emphasizes the victim's designation of facts and the perpetrator's responsibility. This doctrine does not give the perpetrator the right to prove his innocence.

The Tort Law notion of Res Ipsa Loquitur is often used in cases where a plaintiff suffers harm as a result of a defendant's carelessness. The plaintiff is not required to prove that the defendant was careless in order for the court to infer negligence against them⁴⁰

In relation to consumer lawsuits,⁴¹ Anyone who feels wronged by a company may take legal action by suing them. Everything that happens when a customer sues a company in Indonesia's district court is governed by and follows the rules set forth by Indonesia's civil procedural legislation.⁴² In civil procedure law in general, the initiative, i.e. the existence or non-existence of a case, must be taken by a person or persons who feel that their rights or rights have been violated, namely by the plaintiff or plaintiffs.⁴³ If there is a lawsuit, the plaintiff must also prove the arguments in a dispute.⁴⁴

Sudikno Mertokusumo states that a lawsuit or claim for rights is an action aimed at obtaining protection aimed at securing the protection of rights granted by the court to prevent eigenrichting. The party who files a claim for rights needs or has an interest in legal protection and therefore the party concerned files a claim for rights with the court. A claim or lawsuit must also have sufficient legal interest as the primary condition for the acceptance of the rights claim to be examined: point d'interet, point d'action.⁴⁵

⁴⁰ Beatrice Nkechi Okpalaobi and Precious Nduburuoke Egbule, "The Rights of Nigerian Health Consumers in Cosmetic Surgery", *International Review of Law and Jurisprudence (IRLJ)* 3, no.3 (2021): 150.

⁴¹ Nicole J. Olynk, Christopher A. Wolf, and Glynn T. Tonsor, "Labeling of Credence Attributes in Livestock Production: Verifying Attributes Which Are More Than 'Meet the Eye,'" *Journal of Food Law & Policy* 5, no. 2 (January 1, 2009): 181-200.

⁴² Afriana, *Hukum Perlindungan Konsumen, Dimensi Penyelesaian Sengketa.*, p.5.

⁴³ Retnowulan Sutantio and Iskandar Oeripkartawinata, *Hukum Acara Perdata: dalam Teori dan Praktek* (Bandung: Mandar Maju, 2019), p.60.

⁴⁴ R.Subekti, *Hukum Pembuktian* (Jakarta: Balai Pustaka, 2015), p.20.

⁴⁵ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Liberty, 1998).

Burden of Proof Arrangements in Consumer Protection Law

When a plaintiff fails to provide evidence that the defendant denies, the court may step in to prevent the plaintiff's defeat, according to Subekti.⁴⁶ The core rule controlling the burden of evidence is Article 163 HIR, which states: "Whoever says he has a right, or says an act to confirm his right or to refute the rights of others, must prove the right or the existence of the act." The notion that "whoever postulates something he must prove it" is given in Article 163 of the H.I.R. Looking at the concept in theory makes it seem simple, but in fact, it's rather tough to pinpoint who should be responsible for providing proof. The standard here is that the burden of proof shouldn't fall on the side that is least inconvenienced; rather, it should be determined case by case, based on specific facts, and the party that is least burdened should be the one to submit evidence.⁴⁷

The business actor (the person being sued) is obligated to prove the existence or lack of fault in a claim for compensation under the Consumer Protection Law, namely in Articles 19 and 22. This process is known as the reverse proof procedure. Therefore, the consumer or plaintiff will be able to get the compensation they want if the company actor can't show that they weren't at fault and has good legal grounds to do so. The customer Protection Law should implement this reversal of the burden of evidence because it is unjust to put the onus of proof on the customer. This is based on the following fundamental considerations:⁴⁸

- a. Consumers' socioeconomic standing is inferior to that of business owners' or corporations'.
- b. It is simpler for business owners to hire attorneys to protect their interests in the event of consumer disputes. This includes using the knowledge of specialists from a variety of sectors to support their claims and demonstrate their products' calibre.

⁴⁶ Subekti, *Hukum Pembuktian*

⁴⁷ Sutantio and Oeripkartawinata, *Hukum Acara Perdata: dalam Teori dan Praktek*.

⁴⁸ Hendra Muchlis, "Upaya Hukum Konsumen Melalui Pengadilan dalam Memperoleh Ganti Rugi Menurut Undang-Undang No.8 Tahun 1999 Tentang Perlindungan Konsumen", *Thesis Universitas Indonesia*, 2008.

- c. It may be difficult for consumers to prove that a business owner or manufacturer was careless while making, selling, or delivering the products or services they purchased.

In the reverse proof system, the business actor must prove the absence of an element of fault⁴⁹, customers still have the onus of evidence for any damages they may have incurred because⁵⁰ of buying and selling commodities and services. The onus is on the company to show that the customer did not suffer any kind of loss.

Although the legal instruments in this case, the Consumer Protection Law have provided adequate legal protection, in practice, consumers are often faced with conditions that are disadvantaged both materially and non-materially.⁵¹ Violations of the law committed by business actors are often detrimental to consumers, which in the end consumers are always in a disadvantaged position. In anticipation of this, the law provides facilities for consumers as parties who feel their interests or rights have been violated and harmed, to claim back their interests or rights by filing a lawsuit for dispute resolution.

Reverse Evidentiary Arrangements

In the traditional methods of resolving civil disputes, the burden of evidence is a crucial component.⁵² To avoid the error of disproportionate burden of proof, thus harming the interests of other parties, in applying the burden of proof must be seen case by case, according to concrete circumstances, and it is necessary to understand

⁴⁹ Smith Sharma., "District Consumer Forum-: Social -Economic Protection to Consumer", *Journal of Emerging Technologies and Innovative Research (JETIR)* 7, no. 5 (2020): 297–311.

⁵⁰ A. Bagus Kuncoro et al., "Consumer Protection Based on Justice in Order to Advance State Administration Systems in Indonesia," *Atlantis Press*, January 1, 2019, <https://doi.org/10.2991/icglow-19.2019.22>.

⁵¹ Justin Melbon, *Application of Australian Consumer Law to Overseas Internet Purchases* (2013) Monash University Faculty of Law <<http://www.monash.edu/law/about-us/news/expert-legal-commentary-application-of-australian-consumer-law-to-overseas-internet-purchases>> accessed 8 September 2023

⁵² A.Z. Nasution, *Hukum Perlindungan Konsumen : Suatu Pengantar* (Jakarta: Daya Widya, 1999).

the principles and practices relating to its application.⁵³ Care must be used in admitting only the most highly persuasive and probative evidence in order to establish guilt beyond a reasonable doubt before the court.⁵⁴ The guidelines for the distribution of the burden of proof no longer refer to Article 1865 of the Civil Code or Article 163 of the HIR, but fully refer to the Article of the law that determines the mandatory evidence that must be applied in a particular case if the provisions of the material law determine themselves to which party is required to provide it.⁵⁵ Following the passage of the Consumer Protection Law, which governs consumer protection policies, there are a number of formal legal considerations, such as the establishment of consumer dispute resolution institutions, the recognition of claims through class actions, and legal standing, as stated in Article 46 of the Consumer Protection Law. Additionally, there is a material law that applies the reverse burden of proof.

In the compensation claim mentioned in Articles 19, 22, and 23 of the GCPL, the reverse proof method is used. This system was established by Minister of Industry Decree No. 350/MPP/Kep/12/2001 in conjunction with Article 22 of the GCPL. The business actor (the person being sued) is obligated to prove, in accordance with Articles 19 and 22 of GCPL, whether there is fault in the compensation claim or not. Therefore, the consumer or plaintiff will be able to get the compensation they want if the company actor cannot show that they weren't at fault and has good legal grounds to do so.

It is crucial to apply the reverse burden of proof in GCPL; it is unjust to lay the burden of proof on the customer based on the following factors:

1. Consumers' socioeconomic standing is inferior to that of business owners' or corporations'.

⁵³ Yahya M Harahap. *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, dan Putusan Pengadilan* (Jakarta: Sinar Grafika, 2017).

⁵⁴ Md Nurullah, "Rule of Circumstantial Evidence Under Common and Civil Law: A Comparative Analysis from Islamic Law." *Journal of Asian and African Social Science and Humanities* 5, no. 4 (2019): 36-47.

⁵⁵ Teguh Samudra, *Hukum Pembuktian Dalam Acara Perdata*. (Bandung: Alumni, 1992).

2. It is simpler for business owners to hire attorneys to protect their interests in the event of consumer disputes. This includes using the knowledge of specialists from a variety of sectors to support their claims and demonstrate their products' calibre.
3. Proving that a business owner or producer was careless while making, delivering, or selling a product or service may be a difficult task for consumers.

In the reverse proof system⁵⁶, The burden of evidence is with the customer to demonstrate the presence of losses endured, while the business actor is obligated to justify the lack of any element of wrongdoing⁵⁷ because of the consumption of products and services that are created or transferred.⁵⁸ The onus is on the company to show that the customer did not suffer any kind of loss.

According to Article 22 of the GCPL, "Proof of the existence or absence of elements of guilt in criminal cases as referred to in Article 19 paragraph (4), Article 20 and Article 21 of the GCPL is the burden and responsibility of the business actor without closing the possibility for the prosecutor to carry out the proof," which explains how the burden of proof is reversed in criminal cases involving consumer disputes. Reversal of evidence appears to be used in criminal cases involving consumer harm, based on the language used in Article 22 of the GCPL. The author argues that the use of reverse proof in criminal trials goes against the presumption of innocence as outlined in Article 18 of Law No. 39/1999 on Human Rights and Article 8 of Law No. 4/2004 on Judicial Power. Therefore, in the author's opinion, reverse proof should never be used in a criminal trial.

The reverse burden of proof as described above, (for civil cases and criminal cases) adopted in the GCPL Law is a form of consumer empowerment, because consumers generally do not understand what

⁵⁶ Chao Zhao and Haiying Wei, "The Highest Hierarchy of Consumption: A Literature Review of Consumer Well-Being," *Open Journal of Social Sciences* 07, no. 04 (January 1, 2019): 135–49.

⁵⁷ Juniati Gunawan, Paulina Permatasari, and Carol Tilt, "Sustainable Development Goal Disclosures: Do They Support Responsible Consumption and Production?," *Journal of Cleaner Production* 246 (February 1, 2020): 118989

⁵⁸ Guo-Jun Xie and David M. Boush, "How Susceptible Are Consumers to Deceptive Advertising Claims? A Retrospective Look at the Experimental Research Literature," *The Marketing Review* 11, no. 3 (October 31, 2011): 293–314.

the goods are made of, how the process is like how the manufacturing process and marketing. The settlement of consumer disputes⁵⁹ One step toward a legal breakthrough that will help gather evidence in consumer protection lawsuits is the practice of reverse proof, which shifts the burden of proof back onto the corporate actor. Reverse proof in the context of consumer protection is very appropriate and can raise awareness from business actors of defects in the products they produce that have harmed consumers.

While the Consumer Protection Law does protect businesses, it does not generally protect the public's right to know or access to know. For instance, having access to data from studies conducted, say, by the National Consumer Protection Agency, on products or services that relate to consumer safety. This regulation severely restricts the right to information to that which pertains to the guarantee and condition of goods and services (Article 4).

The GCPL's Article 28 emphasises that it is the business actor's burden and responsibility to prove whether or not there is a fault element. This means that even while Article 28's regulations govern the best evidence, the element of responsibility is still necessary for civil liability.

Additionally, reverse proof is only applicable to fault element proof. In actuality, the element of causal relationship is also a part of civil legal culpability. In addition to proving the element of fault, it is important to demonstrate the loss suffered by the customer as a result of the products or services provided by the business actor. The GCPL's Article 22 regulates reverse proof rather effectively; however, the customer bears the burden of proof as stated in the article's explanation. Parties with malicious intent will have the opportunity to take advantage of this. Accurate information regarding the goods and services being sold is one of the many challenges that consumers encounter. The most fundamental right is actually the one that allows consumers to know themselves or to seek information. When it comes to protecting consumers, the current definition is spot on: "all efforts that ensure legal certainty to provide protection to consumers."

⁵⁹ Debra Harker and Michael Harker, "Dealing with Complaints about Advertising in Australia: The Importance of Regulatory Self-Discipline," *International Journal of Advertising* 21, no. 1 (January 1, 2002): 23–45.

An example of a case related to reverse proof that was resolved through the courts in consumer protection is the case of bacterial infant formula.⁶⁰ In February 2008, the findings of the study were released by the Bogor Agricultural Institute, which commenced the lawsuit. Baby food and formula had a total of 22.73 percent *Enterobacter sakazaki*. Babies are especially vulnerable because this bacterium may damage their blood vessels, brain membranes, spinal neurons, spleen, and intestines. The experiment lasted three years and used 22 milk samples collected between 2003 and 2006 that tested positive for *Enterobacter sakazaki*. Rats infected with enterobacter were the subjects of the investigation. Inflammation of the digestive tract (enteritis), infection of the circulatory system (septic shock), and infection of the lining of the spinal cord and brain (meningitis) were all seen in the rats. Then, many groups pressured the Health Ministry, BPOM, and IPB to reveal the contaminated recipe. Nevertheless, all three of them declined, citing ethical concerns, the fact that the study had only included rats and not people, and the lack of evidence of enterobacter infection in babies who had consumed the milk as reasons. March 2008 saw the filing of a lawsuit by lawyer David M.L. Tobing in the Central District Court seeking public disclosure of the study by the Bogor Agricultural Institute, BPOM, and the Minister of Health. In August 2008, the court agreed with David that the defendants should reveal the contaminated milk. Nevertheless, the three accused filed an appeal. The DKI Jakarta High Court affirmed the District Court's verdict, and the defendants lost again. The Ministry of Health, BPOM, and IPB all filed an appeal. The three groups were ordered by the Supreme Court to publicly declare all baby formula brands on April 26, 2010, using media outlets that provide clear and comprehensive information.

Application of the Doctrine of *Res Ipsa Loquitur* in Dispute Resolution that Assists Judges in Deciding Consumer Cases

The legal system of Indonesia is based on civil law. When compared to the common law systems used by Anglo-Saxon nations,

⁶⁰ Adipati Sucipto, “*Telaah Perlindungan Konsumen*”, Retrieved from <http://adipatisucipto.blogspot.com/2012/01/telaah-uu-perlindungan-konsumen.html>

Indonesia's legal system is quite distinct. By establishing a variety of rules, common law nations safeguard and guarantee consumers' rights, with legislation based on renowned judgments and jurisprudence.⁶¹ Where the laws of each system originate is one area where they diverge from one another. In common law nations, judicial rulings serve as the primary source of law, but in civil law countries, the statute itself serves as the primary source of law.⁶² Common law nations have embraced a concept⁶³, specifically, the principle of *stare decisis*, which states that a judge must follow the precedent set by a prior judge's ruling in a like case while rendering a judgment in a court of law. The laws that serve as the basis for formal law's structure include⁶⁴, practices, conventions, laws, and principles.⁶⁵ In this context, judges might draw on formal law from a variety of sources, including doctrine, when making a decision. The views of prominent legal experts, whose opinions significantly impact judges' decision-making processes, constitute doctrine.⁶⁶ In order to make a more equitable ruling, judges might consult with legal experts for their thoughts. A judge's use of doctrine in reaching a ruling qualifies it as a formal source of law. It is not possible to refer to previously unapplied theory as a foundation of formal law.

The goal of the civil evidence theory known as *res ipsa loquitur* is to ensure that the victim of a negligent illegal conduct receives justice.

⁶¹ Felix Pratama Tjipto, "Comparative Law Analysis of Consumer Protection Law in E Commerce between Indonesia and United States", *UIR Law Review* 5, no. 2 (2021)

⁶² Mega Waty, "Perlindungan Hukum Terhadap Konsumen Penerbangan Di Indonesia," *Jurnal Gagasan Hukum* 2, no. 1 (2020): 34–51.

⁶³ Fadi El-Jardali, Nour Ataya, and Racha Fadlallah, "Changing Roles of Universities in the Era of SDGs: Rising up to the Global Challenge through Institutionalising Partnerships with Governments and Communities," *Health Research Policy and Systems* 16, no. 1 (2018): 1-5.

⁶⁴ G María Teresa García-Nieto, Juan Enrique González Vallés, and Mónica Viñarás Abad, "Social Responsibility and Misleading Advertising of Health Products on the Radio. the Opinion of the Professionals," *International Journal of Environmental Research and Public Health* 18, no. 13 (June 28, 2021): 6912.

⁶⁵ Theresia Ngutra, "Hukum Dan Sumber-Sumber Hukum," *Jurnal Supremasi* 11, no. 2 (2017).

⁶⁶ R. Soeroso, *Pengantar Ilmu Hukum* (Jakarta: Sinar Grafika, 1993), p. 179.

Any side might ask for a *res ipsa* charge, but plaintiffs do it nearly always and rightfully so.⁶⁷

In some situations, the burden of proof lies with the victim to establish that the offender was negligent; in others, the victim need only demonstrate that the offender committed an illegal act based on the facts presented, rather than demonstrating the specific actions taken by the offender. In civil evidence, the *res ipsa loquitur* doctrine replaces the presumption of carelessness and the presumption of culpability with reverse proof. Evidence based on indirection formed the basis of the concept. Although direct evidence establishes the presence of a material element of a legal action, circumstantial evidence establishes additional facts from which the existence of material components might be inferred.⁶⁸

It is not possible to apply *res ipsa loquitur* to every tort case. In situations involving victims of illegal conduct that have aspects of carelessness, the theory of *res ipsa loquitur* is used. The victim of a negligently conducted illegal act might nonetheless determine that he has lost money because of the unlawful act, even if he doesn't know who did it or how. The assumption that the offender benefits from is the basis for the *res ipsa loquitur* doctrine's applicability. There are a number of prerequisites for using the *res ipsa loquitur* doctrine, such as:

- a) The loss is not partly caused by the actions of the victim or a third party;
- b) An event will not occur without the negligence of the perpetrator;
- c) The instrument or element causing the harm is entirely within the control of the alleged perpetrator;
- d) The negligence caused is within the responsibility or obligation of the perpetrator;
- e) e) The victim did not contribute to the wrongdoing.

In addition to these five requirements, it is also necessary to consider how access to the evidence.⁶⁹ If the evidence of the crime is in

⁶⁷ Jeffrey H. Kahn and John E. Lopatka, "Res Ipsa Loquitur: Reducing Confusion of Creating Bias?," *Kentucky Law Journal* 108, no. 2 (January 1, 2019): 239.

⁶⁸ Binyamin Blum, "Evidence law: Convictions based on circumstantial evidence." *The Judges' Book* 3, no. 1 (2019): 63-90.

⁶⁹ Fenny Bintarawati, "Juridical Analysis of Consumer Protection against Buying and Selling Fraud in the Market Place," *Walisono Law Review* 4, no. 1 (May 24, 2022): 49–68.

the possession of the offender or is otherwise more readily available to them, making it harder for the victim to get it, the theory of *res ipsa loquitur* may be used. The offender's habitual carelessness in carrying out his obligations may also give rise to the need to use this notion.

Giving a judge with evidence that is legitimate in a legal sense allows them to have a firm belief in the veracity of the events recounted.⁷⁰ According to Subekti, proving involves persuading the judge that the reasons made in a disagreement are true. Both petition cases that end in a decision (*juridicto voluntair*) and cases that decide a dispute before the court (*juridicto contentiosa*) require proof. One of the judge's responsibilities in a civil action is to determine whether the legal relationship at the centre of the litigation is real or not. If the plaintiff want to prevail in court, they must demonstrate the existence of this formal tie. The plaintiff's complaint will be dismissed if the arguments supporting it are not proven, but it will be granted if the opposite is true.⁷¹

An example of a case related to the settlement of a consumer dispute where the judge applied the doctrine of *res ipsa loquitur* as his legal consideration relating to the safety and comfort of consumers because of a product they consumed. The plaintiff (victim) argued that her family members suffered poisoning as a result of consuming richeese wafer products purchased from Asia Toserba. In this consumer protection case, the court used the *res ipsa loquitur* theory. If this example of food poisoning is related to the need to apply the theory of *res ipsa loquitur*, then it may be explored in the following way:

1. An event will not occur without the negligence of the perpetrator.
In this case, it was explained that Fitri's family suffered food poisoning as a result of consuming products purchased through Asia Toserba. In this case, Asia Toserba was negligent in checking the products it sold. The negligence of the business in this case is also shown from the discrepancy in the bookkeeping on the day Fitri purchased the richeese cheese wafers. The food poisoning experienced by Fitri and her family would not have occurred if PT Asia Toserba had not sold expired products to Fitri.

⁷⁰ Riduan Syahrani, *Buku Materi Dasar Hukum Acara Perdata* (Bandung: Citra Aditya Bakti, 2002), p. 121.

⁷¹ R.Subekti, *Hukum Pembuktian*

2. The loss is not partly caused by the actions of the victim or a third party.

The loss suffered by Fitri and her family was caused by the expired product she consumed. In this case, Fitri and her family consumed the purchased goods as if they were consuming food in general. Therefore, here, neither the victim's nor any third party's conduct were to blame for the victim's loss.

3. The instruments or elements that cause a loss are entirely within the control of the party accused of being the perpetrator.

Business actors are obliged to be thorough in selling products. In this case, PT Asia Toserba has the control to check every feasibility of the products it sells, so that consumers are safe in buying them. The expired product that caused harm to Fitri and her family was an instrument or element that was entirely within the control of PT Asia Toserba, the alleged perpetrator.

4. The negligence caused is within the responsibility or obligation of the perpetrator.

It is the responsibility of business actors to safeguard customer rights. Products that have passed their expiration date should not be exchanged since their continued use poses a danger to consumers' health. According to Article 4 letter (a) of the GCPL, PT Asia Toserba has infringed against the right of consumers to feel safe, secure, and comfortable when using the products they have bought. In order to uphold consumer rights, PT Asia Department Store must offer only acceptable items. With the use of the purchase receipts and the cans of expired Richeese cheese wafers, it has been established that PT Asia Toserba sold items with an expiration date.

5. The victim did not contribute to the wrongdoing.

The fault committed by PT Asia Toserba in this case is that PT Asia Toserba has sold expired products so that its consumers, namely Fitri and her family, have experienced food poisoning. In this case, the mistake made by Asia Toserba was entirely the fault of Asia Toserba. Fitri and her family did not contribute to the sale of expired products at Asia Toserba.

The inaccessibility of evidence to the victim is another crucial factor in determining whether the *res ipsa loquitur* concept applies, in addition to the aforementioned five factors. Evidence including CCTV

video, corporate records, and inventory lists can only be accessible by Asia Toserba as a business actor in the event of food illness caused by expired items. That is to say, the offender (PT Asia Toserba) has total control over who can see the evidence. Cases involving consumer protection and the *res ipsa loquitur* doctrine that meet the criteria for its application, such as the one involving food poisoning from expired items, may be considered in this study.

Conclusion

As the party with the most to gain and the least to lose from the product that consumers ingest, the business actor is the one who must provide evidence in consumer protection proceedings in accordance with the concept of *res ipsa loquitur*. At the moment of proof, the findings might be utilized to establish suspicion for the judge as evidence, according to the theory of *res ipsa loquitur*. In consumer protection situations, the *res ipsa loquitur* doctrine may be used if it meets the necessary criteria for its applicability. The burden of evidence in consumer protection lawsuits often falls on the corporate actor, as they are in a more powerful position than the consumer.

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*Communi observantia
non est recedendum*

Common observance must not be
departed from.

This phrase emphasizes the importance of adhering to common practices, traditions, or norms. It suggests that one should not deviate from established customs or standards unless there is a compelling reason to do so. It underscores the value of conformity to shared expectations or agreements within a community or society.

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