

REVIEW ARTICLE

CRITICAL STUDY OF CRIMINAL ASPECTS OF LAW NUMBER 8 OF 1999 CONCERNING CONSUMER PROTECTION

Edy Budianto^{1✉}, Diah Ayu Wulandari²

^{1, 2} Public Prosecutors Office Semarang, Indonesia

✉ akhtarfn2014@gmail.com

CITED AS

Budianto, E., & Wulandari, D.A. (2020). Critical Study of Criminal Aspects of Law Number 8 of 1999 Concerning Consumer Protection. *Journal of Law and Legal Reform*, 1(2), 333-352. DOI: <https://doi.org/10.15294/jllr.v1i1.35451>

ABSTRACT

Globalization and free trade supported by advances in telecommunications and information technology have expanded the space for the flow of transactions of goods and /or services across national borders, so that the goods and / or services offered vary both in foreign production and production domestic. Such conditions on the one hand have benefits for consumers because consumers' needs for the desired goods and /or services can be met as well as increasingly wide-open freedom to choose various types and quality of goods and / or services in accordance with the wishes and abilities of consumers. The conditions and phenomena can cause the position of businesses and consumers to become unbalanced and consumers are in a weak position. In our daily lives we hear, read and even witness various business practices that are detrimental to consumers. Business practices that are detrimental to consumers are not only carried out by large-scale business actors, but also by medium-sized businesses and small business actors. Violations of consumer rights committed by business actors constitute a potential threat to the welfare of society, due to increased activity of business actors in the production and trade of goods and / or services to meet consumer needs if not monitored and weak law enforcement, consumers will be severely disadvantaged. For this reason, we need to understand the subject of legal protection to consumers through the explanation of Law No. 8 of 1999 concerning Consumer Protection (Consumer Protection Law), including a study of criminal aspects.

Keywords: *Critical Study, Criminal Aspects, Consumer Protection Act*

TABLE OF CONTENTS

ABSTRACT	333
TABLE OF CONTENTS	334
INTRODUCTION	334
ANALYSIS OF CUNSUMER PROTECTION IN INDONESIA:	
NORMATIVE REGULATIONS AND CHALLENGES	337
I. CRIMINAL ASPECTS OF THE CONSUMER PROTECTION ACT	337
II. THE NEED TO STRENGTHEN CONSUMER PROTECTION LAW ...	342
III. LEGAL PROTECTION OF CONSUMERS IN CYBERCRIME	345
CONCLUSION	349
REFERENCES	350

INTRODUCTION

The state of Indonesia which is based on law (*recht staat*) has the objective as contained in the opening of the 1945 Constitution, which is to protect the entire nation of Indonesia and all of Indonesia's blood spill, and to advance public welfare, educate the nation's life and participate in carrying out world order based on peace eternal and social justice. This is the national goal of the Republic of Indonesia and at the same time becomes the foundation, the basis of steps and steps in the national ideology, politics, economy, social culture, defense and security.

One of the national development philosophies of the Indonesian state is the development of Indonesian people as a whole which is based on the philosophy of the Republic of Indonesia. The formation of a society that is just and materially and spiritually equal, needs to be carried out in a fair and equitable development for the whole nation which is not only felt by some people, but can also be enjoyed by all levels of society without exception.

The Indonesian state guarantees the protection of all its citizens to be able to live prosperously and prosperously, which means that each citizen has the right to a decent life by fulfilling the needs of his entire life. Therefore, the government provides facilities and infrastructure in order to meet the needs of the people who are constantly changing from time to time. The rapid development of the times is often not matched by the fulfillment of the needs of human life which also develops. This is in line with the ideals of the Indonesian people, namely, to advance public welfare and educate the nation's life.

The government must be dynamic and must see all the movements of people's lives, for example by creating employment for unemployed people. The community can use their skills to earn income, and to balance this out, it must be balanced with a consumptive lifestyle. The interesting relationship between business actors and the community is the main target of these business actors who are often called consumers.

Rapid economic development has resulted in various types and variations of each type of goods and / or services that can be consumed. Such conditions, on the one hand, provide benefits for consumers because the needs for the desired goods and services can be met, and the wider freedom of choice to choose various types and quality of goods and or services in accordance with the desires and abilities of consumers. However, on the other hand such conditions can result in the position of businesses and consumers becoming unbalanced.

Relationships between business actors and consumers do not always show a positive relationship. Disputes that characterize the relationship between businesses and consumers often occur. One of the factors that triggered the dispute was due to the imbalance in the position between the business actor and the consumer, which was also not followed by the readiness of the government in forming a regulation that addressed the problem. Consumers become potential victims in the midst of the free trade process because of the condition of the people who are not fully ready to face these developments. Business actors are required to always improve their products and still maintain responsibility for each commodity produced (*product liability*) (Siahaan, 2005).

Business actors hold economic principles which of course increasingly corners the position of consumers. With the smallest capital as a business actor wants to get the maximum profit. While the economic situation of the community as consumers is not possible to follow it. Business actors often do not think about the condition of the quality of goods and services produced in order to enrich themselves and let consumers continue to deteriorate by continuing to receive anything from business actors. Consumers become the object of business activities to reap maximum profits by business actors through promotional tips, how to sell, and the application of standard agreements that harm consumers.

Consumer protection is a matter of human interest and therefore it is hope for the whole community to be able to enjoy it. Realizing consumer protection is to realize the relationship of various dimensions between one and the other having interrelationship and interdependence between consumers, businesses and the government.

The results of a study conducted by the Directorate of Consumer Empowerment in 2015 showed that the level of consumer empowerment in Indonesia, as measured through the Consumer Empowerment Index, was still low at 34.17%. While the results of a survey conducted by Puska Dagri in 2016 showed the results of almost 5,000 consumers throughout Indonesia, on average more than 80% of them did not know and did not participate in smart consumer socialization activities (Ministry of Trades, 2016).

The complaint data that entered the Indonesian Consumers Foundation (YLKI) throughout 2014 there were 1,192 reports, 2015 there were 1,030 reports and 2016 there were 781 reports. Furthermore 2017 there are 642 and the last 2018 there are 564 reports. The Chairperson of YLKI Daily Tulus Abadi explained, the number was dominated by the financial services sector with a portion of 50 percent. Followed by the housing sector 21 percent, telecommunications 14 percent, e-commerce 9 percent, and electricity 6 percent. Even out of a total of 234 complaints in the financial services

sector, there are 103 complaints from consumers in the banking sector. Online loans totaling 81 complaints, 21 complaints insurance, 21 complaints leasing and electronic money with 8 complaints. Another part comes from banking, housing, online loans, telecommunications, online shopping, electricity, insurance, leasing, Umrah and Hajj, and transportation. The number of problems that most consumers complained about defaults of 36 complaints, then related to the administration of 23 complaints and complaints about the loss of 18 complaints. Then around the agreement that is not appropriate there are 7 complaints, rejection of the auction 4 complaints, ATM problematic 3 complaints, appraisal information 2 complaints, information data 2 complaints, remittance 1 complaint and take over 1 complaint and the other 5 complaints (Ministry of Trades, 2016).

Complaints from the public towards law enforcement officers become a bright spot for consumers. But there are also businesses caught red-handed who open business practices that produce counterfeit goods. In fact, there is also a service that intentionally or because of lack of mastery in their fields who perform actions that are detrimental to the public as consumers, for example a doctor who performs malpractice. This will be very dangerous, considering the actions of doctors like that concerning the survival of patients until there is an end in death. If left unchecked, this will become a polemic in a society that will continue to develop.

At present, in accordance with business development, issues and studies of consumer protection law, receive special attention, especially because there are many things that can and need to be questioned about promotions and advertisements related to consumer protection efforts. The principles in advertising and promotion of goods and services are also important and need to be socialized and must be understood by consumers. Honesty as one of the principles in the promotion of travel also needs further study to find benchmarks, especially its limitations and its application in the field of buying and selling (Rukmini, 2006).

The need for a law to provide protection for Indonesian consumers is something that cannot be avoided, in line with the national development goals, namely the full development of Indonesian people. Law No. 8 of 1999 was present as an effort to prevent and repressive anticipation from the government to protect the public and provide legal order for businesses in the era of free trade.

Law Number 8 of 1999 concerning Consumer Protection, is expected to have a positive influence on business actors and consumers as well as consumer protection is actually not only beneficial for the interests of consumers, but also for the interests of business actors in order to create a healthy business competition climate.

The behavior of business actors who do not heed the legal rules that have been made by the government, to a certain degree can lead to criminal acts or crimes and must be resolved through the application of criminal law. The threat of criminal punishment is often not heeded by business actors who continue to look for loopholes as a justification for them not to be punished. Criminal sanctions given to these business actors also have not been able to have a positive effect, namely deterrence for business actors as well as for victims, criminal sanctions imposed on these business actors cannot restore the situation of those who have suffered losses due to the actions of the non-compliant business actors.

Law enforcement that contains consumer protection is indeed being coveted by the public, especially the public (consumers) who are victims of entrepreneurs (companies) who violate consumer rights. The tendency of more and more companies that violate consumer rights, is a real challenge that tests the apparatus or parties who are competent in carrying out and realizing law enforcement. Crimes that occur in the field of consumer protection are resolved through a crime prevention policy by applying criminal law rules, namely by imposing strict sanctions on anyone who violates the existing provisions. Crime prevention can also be done through other approaches, namely preventive efforts that can be carried out by anyone involved in it, such as the government, institutions engaged in consumer protection, business actors themselves and the public as consumers (Muhibbin, 2019).

Crime in the field of consumer protection can be carried out through criminal law policies with firmer legal sanctions. Business actors who have been legally and convincingly proven to have committed criminal offenses in the field of consumer protection in any form as stated in Law No.8 of 1999 concerning Consumer Protection will be subject to criminal sanctions such as imprisonment and fines as well as other additional crimes. For these various problems, the author will review the article entitled "Critical Study of the Criminal Aspects of the Law of the Republic of Indonesia Number 8 of 1999 Concerning Consumer Protection". in general and the economy of the community as consumers in particular to create a conducive economic climate so that it does not harm other aspects of the state order.

This paper examines and analyzes three main points, *first*, how is the regulation of criminal acts in the field of consumer protection according to Law Number 8 of 1999 concerning Consumer Protection? *Second*, what is the legal strengthening of Law Number 8 Year 1999 concerning Consumer Protection? and *third*, how is consumer legal protection due to the development of cybercrime?

ANALYSIS OF CUNSUMER PROTECTION IN INDONESIA: NORMATIVE REGULATIONS AND CHALLENGES

I. CRIMINAL ASPECTS OF THE CONSUMER PROTECTION ACT

In the context of language, criminal means punishment. The connotation of the meaning of punishment in the context of criminal law is a punishment that contains misery and brings suffering to a person / legal entity subject to the sentence. Because in the conception of punishment, the most minimal punishment is a fine, the rest is a corporal punishment such as deprivation of liberty (prison) and deprivation of the right to live based on the law (capital punishment) (Hasanuddin, 2004). Therefore, in its narrow meaning, the criminal law is also called the sanction law, which is the result of violating norms that have a criminal dimension that causes suffering, misery, or anything that is physically unpleasant. Another limitation is law (Chazawi, 2008).

In the criminal conceptualized as sanctions (*bijzonder santierecht*). The nature of this sanction places the criminal law as a means to guarantee security, order and justice, for which the criminal law can limit human freedom by imposing/imprisoning (imprisonment) and even more than that, the criminal law can deplete human life with the death penalty (Utrecht, 1960).

More detailed criminal law formulations were put forward by Moeljatno. According to him, criminal law is, "Part of all applicable law in a country, which establishes the basics and rules which function into several formulations, as emphasized by Moeljatno (2008), as follows:

- a. To determine which actions should not be carried out, which are prohibited, accompanied by threats or sanctions in the form of certain penalties for those who violate the prohibition.
- b. Determine when and in what ways those who have violated the restrictions can be imposed or convicted as threatened.
- c. Determine in what way the imposition of criminal acts can be carried out if there are people who are suspected of violating the prohibition.

Basically, it is in both the material and formal context that the understanding of criminal law must begin, namely; first, understanding criminal law as a set of normative regulations through the study of written law (law in the book) contained in the Criminal Code as well as other criminal dimension laws that formulate criminal provisions in its articles. Second, understanding the ways in which the norms of criminal law can be functioned at the practical level of resolution in order to answer and various (law in action) reality legal issues through the penal system available by referring to procedural law (procedural law). It is explained above, describing criminal law is always distinguished between material criminal law and formal criminal law (Marpaung, 2008).

However diverse the limits of meaning and understanding of Criminal law have been formulated, the common thread is all that the law was made and held only for the maximum function of creating order, achieving justice and means of community reformer (Mansur & Gultom, 2008). This is at the same time as manifestation / realization of one of the functions and objectives of the country's presence according to the oldest version, namely through the legal media which according to Lipson is to provide protection to all its citizens (Mansur & Gultom, 2008).

All provisions of laws and regulations aimed at protecting consumers that existed at the time this law was enacted, are declared to remain valid as long as they are not specifically regulated and / or do not conflict with the provisions in this law (Sembiring, 2006). Legislation products that fall into the main legal categories, namely civil law, criminal law, commercial law, civil procedural law, criminal procedural law and international law. Whereas sectoral law, namely the laws needed in the economic, financial and industrial fields (*ekuin*). Legal products in the field of people's welfare (*Kesra*) as well as law in the fields of politics and security (*polkam*) (Sembiring, 2006).

One of the main categories of legal instruments is criminal law. As an applied law, criminal law is theoretically normative and refers to and originates in the Criminal Code and is practically guided by the Criminal Procedure Code.

Theoretically, the Criminal Code is the main legal instrument that provides the most portion of the regulation of consumer protection issues. Although the Criminal Code does not find the term consumer, but implicitly there are several articles intended for the benefit of consumer protection, such as Articles 204, 205, 359, 360, 382, 386, 383 and 390 of the Criminal Code. More explicitly will be described as follows:

Article 204

- 1) Anyone who sells, offers, hands over or shares items that he knows are dangerous to the life or health of people, even though their nature; the danger was not notified, he was threatened with a maximum prison sentence of fifteen years.
- 2) If the act shows a dead person, the guilty person is threatened with life imprisonment or imprisonment for a certain period of time of maximum twenty years.

Article 205

- 1) Anyone who due to his mistake (negligence) causes goods which are dangerous to the life or health of a person, are sold, delivered or distributed without being known of the dangerous nature by the purchaser or the recipient, threatened with a maximum of nine months imprisonment or criminal maximum confinement of six months or a maximum fine of four thousand five hundred rupiah.
- 2) If the act results in death, the guilty person is threatened with a maximum imprisonment of one year and four months or a year of imprisonment.
- 3) The goods can be confiscated.

Article 359

Anyone who due to his mistake (negligence) caused another person to die, was threatened with a maximum of five years imprisonment or one year imprisonment.

Article 360

- 1) Anyone who due to his mistake (negligence) causes another person to be seriously injured, threatened with a maximum imprisonment of five years or a maximum imprisonment of one year.
- 2) Anyone who, due to his / her negligence, causes another person injury so that a disease or obstacle arises from carrying out a job or a search for a certain period of time, is threatened with imprisonment for a maximum of nine months or a maximum

sentence of six months or a maximum fine four thousand five hundred rupiah high.

Article 382

Whoever intends to benefit themselves or others unlawfully for the loss of the insurance guarantor or the legal body of the letter holder who legitimately causes a fire or explosion on an item insured against the danger of fire, or ignores, strikes, destroys, destroys, or makes it unable to used the insured ship or the cargo and wages to be received for the transportation of the insured cargo, or for which the body money has been received with a maximum imprisonment of five years.

Article 382 Bus

Anyone to obtain, carry out or expand the results of trade or companies owned by themselves or others, committing fraudulent actions to mislead the general public or a certain person, is threatened, if the act can cause harm to his concurrent or other people's concurrent, because of competition cheating, with a maximum imprisonment of one year and four months or a maximum fine of thirteen thousand five hundred rupiah.

Article 383

Threatened with a maximum imprisonment of one year and four months, a seller cheating on a buyer:

- a. For intentionally surrendering items other than those designated for purchase;
- b. Regarding the type, condition or amount of goods delivered, using deception.

Article 383 Bus

A concession holder who deliberately used several copies of the letter with a title that was burdensome, and for some recipients, was threatened with a maximum imprisonment of two years and eight months.

Article 386

- 1) Anyone who sells, offers or delivers food, drink or medicines which he knows is forged, and hides that, is subject to a maximum imprisonment of four years.
- 2) Food ingredients, drinks or medicines are forged if the value or benefits become less because they have been mixed with something else.

Article 390

Anyone with the intention to benefit themselves or others unlawfully, by broadcasting false news which causes the price of merchandise, funds or securities to go down or up, is threatened with imprisonment for a maximum of two years and eight months.

As for the elaboration of witnesses as stipulated in the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection stated in Chapter XIII, the first part is administrative sanction and the second part is criminal sanction, stated in Article 60,61,62 and 63. With the description as following:

Article 60

- 1) Consumers resolution bodies have the authority to impose administrative sanctions on business actors violating Article 49 paragraph (2) and paragraph (3), Article 20, Article 25, and Article 26.
- 2) Administrative sanctions in the form of determining compensation at a maximum of Rp 200,000,000.00 (two hundred million rupiah).
- 3) The procedure for determining administrative sanctions as referred to in paragraph (1) shall be further regulated in statutory regulations.

Article 61

Criminal prosecution can be carried out against business actors and / or their managers.

Article 62

- 1) Business actors violating the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17, paragraph (1) letter a, letter b, letter c, letter e ,, paragraph (2), and Article 18 shall be liable to a maximum imprisonment of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah).
- 2) Business actors who violate the provisions referred to in Article 11, Article 12, Article 13 paragraph (1), Article 14, Article 16, and Article 17 paragraph (1) letter d and letter f shall be sentenced to a maximum imprisonment of 2 (two)) year or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).
- 3) Violations that result in serious injury, serious illness, permanent disability or death are subject to applicable criminal provisions.

Article 63

Against criminal sanctions as referred to in article 62, additional penalties may be imposed, in the form of:

- a. Seizure of certain goods;
- b. Announcement of the judge's decision;
- c. Payment of compensation;
- d. Orders to stop certain activities that cause consumer losses;
- e. Obligation to withdraw goods from circulation; or
- f. Revocation of business license.

II. THE NEED TO STRENGTHEN CONSUMER PROTECTION LAW

As is known, the Consumer Protection Act in Indonesia was made to deal with the impact of the monetary crisis, so that it can become one of the requirements to apply for the International Monetary Fund (IMF) so that Indonesia is given assistance. But until now it has not been revised. Even though many have weaknesses, deficiencies or mistakes that can be seen from the grammatical, systematic aspects, the responsibilities of business actors, consumer dispute resolution, and institutional. There are at least four changes in substance in the Consumer Protection Law including (HukumOnline, 2019):

- a. Rights and obligations of consumers and business operators / service providers. In the academic paper, there is a clause that the state has an obligation to protect consumers, the replacement of the term service provider to be a service provider / supplier, details of goods / services divided into movable and immovable, as well as tangible for goods, and professional or commercial for services Academic text also includes the separation of the rights and obligations of consumers and business actors / service providers, especially the rights and obligations of consumers and service providers. Professional services are required to have a code of conduct, while commercial services that aim for profit are not required to have a code of ethics.
- b. Amendments to the Consumer Protection Law must explain in detail the responsibilities of the businesses of goods and services.
- c. Standard agreement and standard clause. According to Johanes, as time develops, the form of contracts also develops. Currently there are three known contracts namely negotiated contract, standardized contract, and digital contract. However, contracts made in e-commerce have not yet protected consumers. He agreed to form cross border resolution in the Consumer Protection Law, especially for transactions conducted online.
- d. Regarding the settlement of consumer disputes or consumer protection institutions. Article 23 of the Consumer Protection Law explains that consumer disputes can be resolved in two ways namely the court and outside the court. The Consumer Protection Law states that decisions made through non-litigation or

BPSK are final and binding. Then with the decision, there are parties who filed objections through the court. John calls such a solution flow wrong.

Consumer protection in Indonesia is intended to provide legal protection for consumers in carrying out various activities to purchase goods / services. This legal protection is needed in order to avoid fraudulent practices carried out by business actors who want to reap maximum profits by providing the smallest possible facilities.

Provision of protection to consumers occurs when there is an imbalance between business people and consumers. This imbalance occurs when the community is in a weaker position than the business actor's position. Consumer protection in Indonesia is absolutely necessary, in addition to be a resolution at the United Nations, Consumer Protection has become a necessity, where businesses in Indonesia sometimes commit fraud against consumers.

One form of consumer protection in Indonesia is the enactment of the Consumer Protection Law. One of the regulations concerning consumer protection in the Consumer Protection Law is the regulation on standard agreements. The provisions regarding this standard agreement are regulated in Article 18 of the Consumer Protection Law. Article 18 Consumer Protection Law is born from the desire to protect the public from fraud by business actors in making agreements. This is because people in Indonesia are often in a weak position, which must be under the interests of entrepreneurs. Laws are made for the people. The formation of a statutory regulation is of course to protect the interests of the community and not for the benefit of certain groups.

According to Sutan Remy Sjahdeini, what is meant by a standard agreement is an agreement that almost all of the clauses have been standardized by the user and the other party basically has no chance to negotiate or ask for changes. Among the clauses which are considered to be burdensome clauses and which appear in many standard agreements are what are called exclusion clauses (Sjahdeini, 1993).

Standard clauses are one of the things that are prohibited in Indonesia. This is because it is not in accordance with the principles of the agreement in Indonesia. Article 1313 of the Civil Code, Article 1320 of the Civil Code, and Article 1338 of the Civil Code are principles that must be possessed in making an agreement. However, at present the principles of the agreement are often ignored by business actors. Article 1313 of the Civil Code states that an agreement is an act by which one or more people commit themselves to one or more people. Article 1313 This Civil Code is the initial principle of an agreement. A treaty exists if there are two or more people binding themselves together. As for the other principle, namely regarding the legality requirements of an agreement is in Article 1320 of the Civil Code which says that for an agreement to be valid, four conditions must be fulfilled, namely:

- a. Their agreement is binding;
- b. The ability to make an engagement;
- c. A certain subject matter;
- d. A reason that is not forbidden.

The first and second conditions are subjective conditions because they involve the people or parties who made the agreement. These people or parties are the

subjects of the agreement, while the third and fourth conditions are called objective conditions because it involves the object promised by the people or subjects who made the agreement.

An agreement that has been made by two or more people has the full power as the law for the parties that made it. This is one of the principles in an agreement and is known as *pacta sunt servanda* (Budiono, 2010). This principle is contained in Article 1338 of the Civil Code which states that everything that is made in accordance with the law applies as a law for those who make it.

Standard agreements that are often done by business actors usually do not meet the principles that already exist in the legislation in Indonesia. The basic principles of this agreement must absolutely exist and be applied in every agreement in Indonesia. This is to protect consumers from fraud perpetrated by business actors.

Consumer protection in Indonesia has not been fully implemented properly. This can be seen by the many cases concerning consumer protection in Indonesia. There are still many business actors who commit various frauds on goods / services that are bought and sold to consumers. In addition to business actors who commit fraud, the public as consumers are still not fully aware of their rights and obligations as consumers. The weak understanding of society regarding the rights and obligations of a consumer in Indonesia is one of the reasons for the weak consumer protection in Indonesia.

As for strengthening the regulation on consumer protection in Indonesia, an important commitment from the government together with the Indonesian Parliament is needed, where consumer rights must be protected. At present the DPR RI and the government have compiled a national legislation program for 2009-2014, one of which is the Credit Agreement Bill. It is expected that this Credit Agreement Bill can provide legal protection for the parties who will enter into an agreement. The Credit Agreement Bill is also expected to strengthen consumer protection in Indonesia.

The formation of laws and regulations must also be for the welfare of the community. One form of providing welfare to the community is to protect the rights of the community as consumers. Protected community rights can provide peace for consumers themselves in buying or using goods / services. Therefore, the formation of a statutory regulation must still pay attention to the rights of consumers.

Consumer protection can have a significant impact. This is because the public will feel quite valued by the existence of consumer protection. Consumers feel protected their rights as consumers by the protection of the goods / services they buy. The state acts as a protector of the community, therefore the government and the House of Representatives of the Republic of Indonesia must be able to provide interventions to business actors in order to pay attention to consumer rights. Interventions carried out by the Government and the Indonesian Parliament can be carried out by forming legislation that takes into account the interests of the community.

Efforts to improve consumer protection in Indonesia need to be done in various ways. One way to protect consumers in Indonesia is to change the Consumer Protection Law as the basis for consumer protection in Indonesia. The other way is by

conducting various education simultaneously in Indonesia regarding consumer rights. This can be useful for increasing knowledge about the rights and obligations of the community as a consumer. Strengthening of consumer protection institutions, where the consumer protection institutions can impose strict sanctions on business actors who deliberately harm consumers.

III. LEGAL PROTECTION OF CONSUMERS IN CYBERCRIME

Progress in the field of science makes technology always new, with no exception in the field of telecommunications, especially the internet media. The existence of these developments makes the space for transactions of goods and / or services to cross the borders of a country freely. Such conditions support the effects of broader economic growth in the world. Indonesia also feels this effect so that the development of the flow of goods and / services becomes easy to obtain, especially the consumers who benefit.

In the era of globalization, when the boundaries of a country will become blurred, on the one hand the link between the national economy and the international economy will be even tighter. On the other hand, the current condition of globalization can cause the position of business actors and consumers to become unbalanced. Consumers can be the object of business activities of business actors through advertising, promotions, ways of selling, and the application of standard agreements that harm consumers (Fukuyama, 2004).

With the understanding that all people are consumers, protecting consumers means protecting all people. In accordance with the mandate of the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, consumer protection is important. Moreover, if it is realized that consumers or the public are the executors of development which are at the same time a source of capital accumulation for development, then for the continuation of national development it is absolutely necessary to protect these consumers (Fukuyama, 2004). However, in reality, education for consumers is still relatively minimal and consumer awareness of their rights and obligations is still low. To guarantee the implementation of Consumer Protection, the government enacted Law No. 8 of 1999 on Consumer Protection which compels business actors to obey it, accompanied by strict sanctions for violators.

Settlement of disputes over disputes faced by the community, including in the case of consumer disputes, can be resolved through litigation (through court) and non-litigation (not through court). In addition, according to Supreme Court Regulation No. 2/2015, consumers now have several alternatives to settle their dispute. The settlement of the lawsuit makes a fresh breeze in alternative dispute resolution which can usually only be resolved in the realm of litigation. For this reason, non-litigation institutions have emerged, for example through the Consumer Dispute Resolution Agency (BPSK) and other institutions / forums that can resolve these disputes. In this discussion, more detail will be covered regarding consumer protection due to cybercrime crimes. There are so many definitions of cybercrimes,

both according to experts and based on statutory regulations. These definitions can be used as the basis for the regulation of cyber criminal material. For example, Sussan Brenner (2011) divides cybercrimes into three categories: Crimes in which the computer is the target of the criminal activity, crimes in which the computer is a tool used to commit the crime, and crimes in which the use of the computer is an incidental aspect of the commission of the crime. Meanwhile, Nicholson used the terminology of computer crimes and categorized computer crimes (cybercrimes) into objects and subjects of criminal acts and instrument of criminal acts.

first, a computer may be the 'object' of a crime: the offender targets the computer itself. This encompasses theft of computer processor time and computerized services. Second, a computer may be the 'subject' of a crime: a computer is the physical site of the crime, or the source of, or reason for, unique forms of asset loss. This includes the use of 'viruses', 'worms', 'Trojan horses', 'logic bombs', and 'sniffers.' Third, a computer may be an 'instrument' used to commit traditional crimes in a more complex manner. For example, a computer might be used to collect credit card information to make fraudulent purchases (HukumOnline, 2019).

According to the United Nations (UN) instrument in the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Vienna, 10-17 April 2000, the category of cyber-crime can be seen narrowly or broadly, namely:

- a. Cyber crime in a narrow sense ("*computer crime*"): any illegal behavior directed by means of electronic operations that targets the security of computer systems and the data processed by them;
- b. Cyber crime in a broader sense ("*computer-related crime*"): any illegal behaviour committed by means of, or in relation to, a computer system or network, including such crimes as illegal possession, offering or distributing information by means of a computer system or network.

Convention on Cybercrime (*Budapest, 23.XI.2001*) does not provide a definition of cybercrimes, but instead provides provisions that can be classified into:

- 1) Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems
- 2) Title 2 – Computer-related offences
- 3) Title 3 – Content-related offences
- 4) Title 4 – Offences related to infringements of copyright and related rights
- 5) Title 5 – Ancillary liability and sanctions Corporate Liability

Based on data from Trend Micro Business Manager Aulia Huriadi, the modes used by cyber crime are currently increasing more sophisticated than in previous years. The cyber crime can break down the security of data of internet users from anywhere in the world. Several methods are used by creating fake applications. Through a fake application spread by cyber crime, anyone who finally downloads will

certainly be infected with a virus or often referred to as the zombie. Viruses or zombies will later help cybercriminals track user's personal data and use the personal data to do things that harm users. As for one of the targets of cybercriminals to commit crimes is a country where many residents use broadband data to transact. Even though the government has issued regulations on Information and Electronic Transactions (ITE) namely Law No. 11 of 2008, but not enough to overcome the problem of cyber crime (HukumOnline, 2019).

While legal protection is created because of the existence of a group of people called the community in a particular community. Every individual in the community has different interests and all try to fulfill their interests. The law has a major role, namely as a rule to regulate human behavior in fulfilling their interests, with the existence of the law, it is hoped that there will be no conflict of interests between one individual and another. Wignojodiputro (1974) believes that:

“The law has a role in regulating and maintaining public order, which among others is regulating the relationship between fellow citizens of one community to another. The relationship must be carried out according to the norms or legal norms that apply. The existence of the rule of law is aimed at cultivating the interests that are in society so that chaos can be avoided in society”

Utrecht provides legal restrictions namely the set of regulations (orders and prohibitions) that take care of the order of a society and therefore must be obeyed by the community (Kansil, 1999).

According to Fitzgerald that: Salmond's theory of legal protection that the law aims at integrating and coordinating various interests in society because in a traffic of interests, protection of certain interests can be done by assasinating various interests 15 on the other hand (Raharjo, 2000).

The interest of law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected. Legal protection must look at the stages, namely legal protection born of a legal provision and all legal regulations provided by the community, which basically constitutes the community's agreement to regulate the behavioral relationship between members of the community and between individuals and the government that is considered to represent the interests of the community. According to Satijipto Raharjo, legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights provided by law (Raharjo, 2000).

In legal protection, there are several characteristics as mentioned by Pjillipus M. Hadjon that: legal protection for the people as a preventive and preventive government action. Preventative legal protection aims to prevent disputes, which direct government actions to be careful in making decisions based on discretion and responsive protection aims to prevent disputes, including handling in judicial institutions (Nasution, 1990).

Based on the provisions of the People's Consultative Assembly of 1993 there are directives regarding consumer protection, namely protecting the interests of producers and consumers. Based on these directives, there are 2 (two) things that need to be considered, namely the existence of producer community groups and consumer community groups and the interests of each group that needs to be protected (Nasution, 1990).

With the direction of the MPR Stipulation, there is an understanding of consumer law, namely the overall principles of rules governing the relationship and issues of supply and use of goods and / or services between suppliers and users in public life (Nasution, 1990) According to Az Nasution that: Consumer protection is part of the law that contains the principles or rules that are governing and also contain properties that protect the interests of Consumers. The Consumer law is defined as the overall principles and legal norms that govern the relationships and problems between various parties with each other relating to Consumer goods and / or services in life relationships. Based on the provisions of Article 1 number 1 Consumer Protection Law, it is stated that Consumer Protection, which is all efforts that guarantee legal certainty to provide protection to consumers. With the existence of legal certainty to protect consumers who are strengthened by the Consumer Protection Law, at least it provides a hope that business actors no longer act arbitrarily which can harm consumers' rights. Then with the Consumer Protection Law and laws and regulations governing consumer protection, the consumer has a balanced position. In the event of a violation or adverse action against consumer rights, the consumer can sue or sue business actors.

Consumer or consumer, literally in the dictionaries is defined as "someone or something a company that buys a certain item and / or uses a certain service", or "something or someone who uses an inventory or a number of goods", there is also a mean "every person using goods and / or services".

Based on the provisions of Article 1 number 2 Consumer Protection Law, which defines consumers as: "Every user of goods and / or services available in the community, both for the benefit of themselves, families, other people, and other living creatures and not for trading". The law is expected to be able to educate the Indonesian people to be more aware of all the rights and obligations held by business actors. To increase the dignity of consumers, consumers should need to increase awareness, knowledge, care, ability, and independence to protect themselves, and foster the attitude of responsible business actors. As a comparison with the definition of consumer protection regulated in the Consumer Protection Law, the following will be discussed definitions of consumer law and law.

Consumer protection, consumer law and consumer protection law are 2 (two) areas of law that are difficult to separate and draw from. In essence, consumer protection law is part of consumer law that is unified and inseparable. Consumer protection law is part of consumer law. The definition of consumer law, which is the whole of the principles and rules governing the relationship and problems of providing and using products and /or services between providers and their use in social life. Therefore, consumer protection law is the whole of the principles and rules

that govern and protect consumers in relation to the problem of providing and using products and/ or services between providers and their use in social life.

Based on the provisions of Article 1 number 1 of the Consumer Protection Law, an understanding of consumer protection is formulated as: "All efforts that guarantee legal certainty to provide protection to consumers". The formulation is expected to be a place for protection to eliminate arbitrary actions which are detrimental to consumers and can also result in legal uncertainty just for the sake of responsible business actors (Widjaja & Yani, 2003). Therefore, so that all efforts can guarantee legal certainty, then the size is qualitatively determined in the Consumer Protection Law and other laws that are also intended and still apply to provide consumer protection, both in Private Law (Civil) and the field of Public Law (Miru & Yodo, 2005).

Before the enactment of Consumer Protection Law there were various laws and regulations relating to consumer protection. These laws and regulations are not directly about consumer protection, but indirectly they are also intended to protect consumers. With the enactment of the Consumer Protection Law, the Law is a positive provision specifically regulating consumer protection.

CONCLUSION

This paper highlights and concludes that consumer protection is a counterweight to the existence of business actors with consumers. This is intended so that there is no injustice or imbalance between business people and consumers. Standard agreements are one thing that is prohibited in the Consumer Protection Act. The need to increase consumer protection by changing the Consumer Protection Law, consumer education, strengthening consumer protection institutions. Another thing is to strengthen consumer protection in Indonesia, namely by providing a reference in the formation of legislation for the protection of consumer rights. Legal protection for consumers to resolve consumer disputes that are repressive in nature, namely by protection when consumers have suffered losses or suffered illness due to consuming goods and or services. Institutions that are expected to play an important role in protecting the public /consumers are not only litigation judicial institutions that are in the general court but non-litigation institutions such as the Consumer Dispute Resolution Board (BPSK) and other arbitration institutions. Ideally, consumer protection provided to the community must be preventive, for example, the socialization of consumer protection policies to consumers and business actors in various regions as an effort to minimize the use of goods that are not in accordance with the standards of goods in force in each country. Providing education to consumers through integrated consumer clinics. Training of motivators for consumer protection in the regions as an effort to develop consumers to have a critical, intelligent, and careful nature in consuming or utilizing goods and / or services. As well as the need for synergy between each policy or regulation made by the government so that it does not overlap and always provides flexibility for dispute resolution outside the court.

REFERENCES

- Barkatullah, A. H. (2007). Urgensi Perlindungan Hak-Hak Konsumen Dalam Transaksi di E-Commerce, *Jurnal Hukum*, 14(2), 247-270.
- Budiono, H. (2010). *Ajaran Umum Hukum Perjanjian dan Penerapannya di Bidang Kenotariatan*, Bandung: PT Citra Aditya Bakti.
- Chazawi, A. (2008). *Pelajaran Hukum Pidana*, Jakarta: PT RajaGrafindo Persada.
- Doly, D. (2012). Upaya Penguatan Perlindungan Konsumen di Indonesia Terkait Dengan Klausula Baku, *Negara Hukum*, 3(1), 41-56
DOI: <https://doi.org/10.22212/jnh.v3i1.223>
- Fukuyama. F. (2004). *The End of History and The Last of Man, Kemenangan Kapitalisme dan Demokrasi Liberal*, trans Amrullah. Yogyakarta: Qalam.
- Government Regulation Number 82 of 2012 regarding the Implementation of Electronic Transactions and Systems, *Peraturan Pemerintah Nomor 82 Tahun 2012 tentang Penyelenggaraan Sistem dan Transaksi Elektronik*.
- Hasanuddin, H. (2004). *Pengantar Ilmu Hukum*, Jakarta: Pustaka Al-Husna Baru dan UIN Jakarta Press.
<https://www.hukumonline.com/klinik/detail/ulasan/cl5960/landasan-hukum-penanganan-icybercrime-i-di-indonesia/>, accessed on 15 October 2019.
- <https://m.hukumonline.com/berita/baca/lt50dc5f604d378/konsumen-perlu-waspada-ancaman-cyber-crime/>, accessed on 15 October 2019.
- <https://beritagar.id/artikel/berita/sektor-jasa-keuangan-paling-banyak-diadukan-konsumen>, accessed on 14 October 2019.
- <https://www.hukumonline.com/berita/baca/lt56542070106f4/inilah-poin-poin-perubahan-uu-perlindungan-konsumen/>, accessed on 15 October 2019.
- Imaniati, N.S. (2001). Perlindungan Konsumen Salah Satu Upaya Penegakan Etika Bisnis Pada Masyarakat Islam Dalam Era Globalisasi, 17(4), 467-486,
DOI: <https://doi.org/10.29313/mimbar.v17i4.59>
- Indonesian Penal Code, *Kitab Undang-Undang Hukum Pidana*.
- Indonesian Civil Code, *Kitab Undang-Undang Hukum Perdata*.
- Isjwara, F. (1980). *Pengantar Ilmu Politik*, Bandung: Bina Cipta.
- Kansil, CST. (1999). *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*. Jakarta: Balai Pustaka.
- Law Number 8 of 1999 concerning Consumer Protection, *Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen*.

- Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Act Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions, *Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik sebagaimana telah diubah oleh Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*
- Mansur, D.M.A., & Gultom, E. (2008). *Urgensi Perlindungan Korban Kejahatan, Antara Norma dan Realita*, Jakarta: PT Raja Grafindo Persada.
- Marpaung, L. (2008). *Asas Teori Praktik Hukum Pidana*, Jakarta: Sinar Grafika.
- Ministry of Trades. (2016). *Laporan Akhir Analisis Kelompok Konsumen (Consumer Group) Dalam Upaya Peningkatan Keberdayaan Konsumen*, Jakarta: Pusat Pengkajian Perdagangan Dalam Negeri Badan Pengkajian dan Pengembangan Kebijakan Perdagangan.
- Miru, A., & Yodo, S. (2005). *Hukum Perlindungan Konsumen*. Jakarta: PT Raja Grafindo Persada.
- Muhibbin, M. (2019). *Penegakan Hukum Perlindungan Konsumen Sebagai Wujud Pelayanan Pencari Keadilan*, diposting pada: <http://fh.unisma.ac.id>, accessed on 12 October 2019.
- Moeljatno, M. (2008). *Asas-Asas Hukum Pidana*, Jakarta: Renika Cipta.
- Nasution, A.Z. (1990). *Laporan Perjalanan ke Daerah-daerah dalam Rangka Perkembangan Perlindungan Konsumen*, Jakarta: FHUI.
- Paat, M.M. (2013). Penyidikan Terhadap Pelaku Usaha Dalam Perkara Tindak Pidana Di Bidang Perlindungan Konsumen, *Lex Crimen*, 2(4), 81-91.
- Raharjo, S. (2000). *Ilmu Hukum*. Bandung: PT Citra Aditya Bhakti.
- Rukmini. (2006). *Aspek Hukum Pidana dan Kriminologi (Sebuah Bunga Rampai)*, Bandung: Alumni.
- Sembiring, S. (2006). *Himpunan Undang-Undang Tentang Perlindungan Konsumen dan Peraturan Perundang-Undangan Yang Terkait*. Bandung: Nuansa Aulia.
- Setiantoro, A., Putri, F.D., Novitarani, A., & Njatrijani, R. (2018). Urgensi Perlindungan Hukum Konsumen dan Penyelesaian Sengketa E-Commerce di Era Masyarakat Ekonomi ASEAN, *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 7(1), 1-17. Retrieved from <https://rechtsvinding.bphn.go.id/ejournal/index.php/jrv/article/view/220>
- Siahaan, NHT. (2005). *Hukum Konsumen Perlindungan Konsumen dan Pertanggungjawaban Produk*. Jakarta: Panta Rei.
- Sjahdeini, S.R. (1993). *Kebebasan Berkontrak dan Perlindungan yang Seimbang bagi Para Pihak dalam Perjanjian Kredit Bank di Indonesia*. Jakarta: Institut Bankir Indonesia.
- Shofie, Y. (2008). *Kapita Selekta Hukum Perlindungan Konsumen di Indonesia*. Bandung: Citra Aditya Bhakti.
- Tobing, D., & Siregar, T. (2012). Perlindungan Hukum Pidana Terhadap Konsumen Bidang Pangan, *Mercatoria*, 5(2), 92-105. DOI: <http://dx.doi.org/10.31289/mercatoria.v5i2.678>

- Utrecht, E. (1960). *Hukuman dalam Pidana*. Bandung: Universitas.
- Widjaja, G., & Yani, A. (2003). *Hukum Tentang Perlindungan Konsumen*. Jakarta: Gramedia Pustaka Utama.
- Wignojodiputro, S. (1974). *Pengantar Ilmu Hukum*. Bandung: Alumni.
- Yulita, B.P. (2016). Penegakan Hukum Pidana Dalam Perlindungan Konsumen Muslim Dari Produk Makanan Yang Tidak Halal di Kota Pekanbaru, *JOM Fakultas Hukum*, 3(2), 1-16