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Accelerating Business Law Dynamization through Proposed Amendments to Indonesian Consumer Protection Law

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Abstract

Introduction to The Problem: The Consumer Protection Law No. 8 of 1999 which was enacted in 2000 has been in force for over 20 years. The current circumstance in the realm of business law requires more progressive regulations on digital business activities, more efficient dispute resolution, and effective consumer protection due to the rapid technological developments. Hence, the need of an amendment to the current consumer protection law must be examined thoroughly and analyzed deeply.
Purpose/Objective Study: This research aims to examine and to present the arguments on several issues in relating to the urgency of amending the Consumer Protection Law No. 8 of 1999 in order to accelerate the dynamization of business law.
Design/Methodology/Approach: This is a doctrinal legal research that uses a qualitative approach. In this research, the authors utilized secondary data sourced from literature study on the primary, secondary, and tertiary legal materials. The authors analyzed the data by using Systematic Content Analysis which is frequently used by social scientists to analyze the inteview tranrscripts, literatures, and field notes, among other sources.
Findings: The results indicate that there are six noteworthy points regarding the extent of the business entity, standard clauses, data protection, and some issues on a dispute settlement institution. These are sufficient to support in proposing an amendment to the recent Consumer Protection Law.
Paper Type: Research Article
Keywords: Amendment; Consumer Protection Law; Law No. 9 of 1999; Business Law

Introduction

The dynamization of national industry and trade has produced a wide variety of goods and services, supported by advances in information technology in the global era. Free trade has also expanded the space for the flow of transactions of goods and services. Such circumstances, on one hand, benefit the consumers in meeting their needs; but on the other hand, they can result in the unbalanced position of business actors and consumers which the latter is in a weaker stance. In facing their problems, consumers tend to rely on the Civil Code by positioning themselves only as buyers or tenants, not as users in a broader sense. After a long history and a number phenomenal cases such as the poisonous biscuits and the flooded mansions, the Government of the Republic

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of Indonesia issued Law Number 8 of 1999 on Consumer Protection as an integrative consumer protection measure. Stipulated in Jakarta in April 1999, the law became effective one year later, in 2000. Known as the umbrella Act, the law integrates and strengthens the law enforcement in the field of consumer protection.

The birth of the consumer protection law was based on the following considerations: (i) The national development goal in the era of economic democracy which based on Pancasila and the 1945 Constitution, is to create a just and prosperous society for equal sharing of resources and spiritual well-being; (ii) In the global age, a nation's economic development must be able to support the growth of the corporate sector and produce all kinds of goods and services, including technical content, in order to serve the common good, while the safety of commercial goods and services must be improved and maintained, and at the same time causing no harm to the consumers; (iii) The increased opening of domestic markets as a result of the process of economic globalization must ensure the improvement of common goods and the security of the quality, quantity and safety of goods and services offered; (iv) To enhance dignity and value, consumers must develop awareness, knowledge, interest, competence and independence to protect themselves and to create and develop responsible behavior on the entrepreneurs part; (v) Legal provisions are not yet sufficient to protect consumer interests in Indonesia; (vi) Hence, based on the foregoing considerations, law must strike a balance between the interests of consumers and the interests of entrepreneurs in order to create a healthy economy.

In terms of e-commerce, there are still several improvements and additional regulatory substances that need to be added to protect various parties (Khotimah & Chairunnisa, 2016). With the continuous digital growth and the emergence of new concerns relating to the retail and service markets, consumer rights and their protection require effective regulation and enforcement (Bukowski & Kaczor, 2019). It is the vital role of the Consumer Protection Law to maintain the dynamization of fair relationship between consumer and business entities. The current Consumer Protection Law is insufficient to address the issues that arise, hence the Indonesian Consumer Protection Law must be updated immediately (Mazli, 2021). Eventually, matters relating to dispute resolution must also to be adjusted to technological developments (Novita & Santoso, 2021).

Methodology

This research used the normative legal research method which is the process of placing the legal rules, legal principles, and legal doctrines to address the legal issues at hand. Doctrinal or theoretical legal research can be easily defined as research which inquires what the law is on a particular matter. Researchers attempt to collect and analyze a set of case law and all relevant legislation (as the primary sources). This is often done from a historical perspective and may also include secondary sources such as journal articles and other written commentary on case law or law. The researchers' primary purpose is to describe the legal works and their application. In doing so,

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researchers can also provide an analysis of the law to show how the law has evolved in terms of jurisprudence and law enforcement (McConville & Chui, 2007). In this respect, this research can be viewed as normative or purely theoretical. In this research, the authors used secondary data sourced from literature study of primary, secondary, and tertiary legal materials. However, secondary data has its own shortcomings as there is no perfect data. It may be outdated, inaccurate or have validity issues (Oluwaseun et al., 2019).

To obtain the secondary data, the authors studied the primary legal materials such as the 1945 Constitution of The Republic Indonesia (Fourth Amendment), Law Number 8 of 1999 on Consumer Protection (The Republic Indonesia, 1999), Law Number 19 of 2016 on Electronic Information and Transactions, and Law Number 27 of 2022 on Protection of Personal Data. This data were selected by their relevant contents, on which are the most connected regulations to each other, in order to examine the research question presented.

The other secondary data come from the secondary legal materials. They are the materials that complement and further describe the primary legal materials, such as books, journals, research reports, articles, and the other related documents. Additionally, the authors studied the tertiary legal materials, which are materials complementing the primary and secondary legal materials, such as dictionaries. Finally, the authors analyzed all secondary data using a Systematic Content Analysis (SCA), whcih is a research method commonly used by social scientists. It is a reproducible technique that can be used to analyze a wide range of texts, from interview transcripts to legal texts such as case law, legislation, and contracts (Salehijam, 2018).

Results and Discussion

Arguments on the Shortcomings of Consumer Protection Law No. 8 of 1999

The definition of a state based on the rule of law according to Muhammad Yamin is the existing state is based on the rule of law and guarantees justice for all its citizens, protecting the human rights of every citizen. A rule of law is a state of conformity to the principle of "the laws and not men shall govern" which can be interpreted as state based on legal written rules formed by representative body of the people, and not based on the will of the person who have and wield the power (Djafar, 2016).

Provisions of the 1945 Constitution which are stated in Article 1 Paragraph (3) explain that the state Indonesia is a constitutional state; and based on Article 27 Paragraph (2), the right to obtain a decent life for humanity is vested on every society and citizen, they have a right to obtain a decent life as a form of the realization of welfare and collective intelligence of the citizens, with thus, it is necessary to provide goods and services with good quality, providing sufficient quantities of goods and services as well as providing economic value of goods that are more affordable for the citizens (Sidabalok, 2014).

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Consumer rights are divided into three categories which are the basic principles, as follow (Barkatullah, 2015):

1. The rights that are intended to prevent consumers from losses, both personal losses and property losses;
2. The right to obtain goods and/or services at a fair price; and
3. The right to obtain an appropriate solution to the problem at hand.

Issues in the Consumer Protection Law

The authors identify 6 issues in the Consumer Protection Law as follow:

1. The Scope of Business Entity

Based on the Company Law, entrepreneurs are natural persons or enterprises in both legal (incorporated) form or unincorporated form, reside in or engaged in activities in the statutory territory of the Republic of Indonesia, carrying out various types of business activities in the economic sector through contracts both individually and collectively. This regulation however, is facing the rapid emergence of e-commerce. While the people might think that the interpretation is merely based on this Law and have no relation with other regulations, the authors are able to identify that legal Protection for Consumers in Electronic Information and Transaction Law, based on Article 2, applies to anyone who commits legal acts as stipulated in the Law, both within the jurisdiction of Indonesia and outside the jurisdiction of Indonesia as long as the legal consequences thereof is detrimental to the interests of Indonesia. Business actors who offer products through the electronic system must provide complete and correct information regarding the terms of the contract, manufacturers and products offered (Rusmawati, 2013). The issue is, it is crucial to state clearly the definition of entrepreneur that is not merely in the form of a legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia. Instead, it has to be put as "having legal consequences in Indonesia or outside the jurisdiction of Indonesia as long as it is detrimental to the interests of Indonesia". It would be the most logical thinking for the "umbrella law".

2. Supervision of standard clauses

Essentially, in a business relationship, the parties are given freedom. Even though the parties are entitled to freedom to make a contract, basically the contract law in the Civil Code contains mandatory and optional provisions. With the existence of coercive provisions in the rule of law, certainly the parties who will make a contract cannot immediately ignore the existing laws and regulations, but must still refer to the rules that have been promulgated in the law. Contract law provides space for the parties to form and determine the contents of the agreement to be carried out, however, in its application there are several problems that are often experienced in carrying out the contract, one of which is the existence of a standard clause which unilaterally negates responsibility and harms the other party.

Regulation about standard clauses that aim to achieve contractual justice is not only rely on the parties, but also requires the participation of the government in terms of

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making regulations or policies. The government must participate in providing guidance and carrying out supervision measures. These efforts will provide a significant role in the implementation of standard clauses that exist in the society and the business realm. Thus, it is expected to be able to create a balanced business climate both on the part of the community (consumers) and on the part of the entrepreneur (Muazzis & Busro, 2015).

Provisions regarding standard clauses in the Consumer Protection Law are listed in Article 18. The essence of the prohibition on the manufacture or inclusion of standard clauses (on documents and/or agreements) lies in Article 18 paragraph (1) letter a. It is stated that business actors are prohibited from making or including standard clauses whose contents contain the transfer of responsibility of business actors (to be transferred to consumers). But what are the forms of transfer of responsibility? The answer is found in letter b to letter h. Clauses that contain the transfer of responsibility are usually called exoneration clauses. Thus, business actors are not at all prohibited from making and including standard clauses, but the contents must not contain exoneration clauses.

Consumer Disputes Settlement Agency originally based on District/City area. Its authority basically only covers each region. Therefore, it is almost impossible for a BPSK in an area tasked to supervise the inclusion of standard clauses for business actors operating across regions. Another institution is needed that has a much broader scope of duties and authority. While there is hope that the National Consumer Protection Agency would be able to undergo the specific task, the problem remains in the institutional capacity of the National Consumer Protection Agency which is deemed as not being sufficiently reliable. This means that currently, Indonesia has no single institution that is in charge of addressing the matter as a whole. Another question posed is on the online transaction. Who will cover the exemption clauses in online transactions? In the society, it is found that a clause stating "goods purchased cannot be returned" still exists and easily found everywhere, especially in online transaction. Even Article 18 paragraph (3) Law No. 8 of 1999 states that "Any standard clause that has been determined by business actors in documents or agreements that fulfill the provisions referred to in paragraph (1) and paragraph (2) is declared null and void.

3. Consumer Data Protection

Legal protection for consumers regarding personal data in this exoneration clause is preventive in nature. In Law No. 8 of 1999, with the supervision and responsibility of the government through the relevant ministers to fulfill clauses in an agreement, especially with the current technological advancement, tighter supervision is needed so as not to cause harm to consumers. Meanwhile, in a repressive manner, the exoneration clause in civil terms in Law No. 8 of 1999 became null and void, hence business actors must revise and compensate consumers for losses. Apart from that, it can also be achieved by renegotiating, adjusting so that if an agreement is not

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achieved, it can be canceled. As for criminal matters relating to the exoneration clause in the consumer's personal data, sanctions can be imposed in the form of imprisonment for a maximum of 5 years or a fine of 2 billion rupiah (Rizal et al., 2019).

In 2022, a new regulation, Law No. 27 of 2022 on Personal data Protection was enacted. Some key points of the regulation are:

a. Category of personal data Article 1 describes that personal data is individual data that is identified or can be identified separately or combined with other information, either directly or indirectly through electronic or non-electronic systems.
b. Rights of subject's personal data or the owner of personal data has the right to obtain information regarding clarity, identity, basis of legal interest, purpose of request and use, and accountability of the party requesting personal data, according to Article 5. Meanwhile Article 10 states that personal data subjects have the right to submit objections to decision-making actions based solely on automated processing, including profiling which creates legal consequences or has a significant impact on the personal data subject. Personal data subjects also have the right to sue and receive compensation for violations of personal data processing about themselves in accordance with statutory provisions.
c. Obligations of personal data controllers. Personal data controllers and personal data processors include every person, legal entity and organization international. There are a number of obligations that must be performed by the personal data controller.
d. If a leak occurs. If data protection fails or leaks, then the controller of personal data must submit a written notification no later than 3x24 hours, reads Article 46.
e. The supervisory agency for personal data protection. This Law also regulates institutions that play a role in realizing the implementation of personal data protection. Article 58 states that the administration of personal data is determined by the president and is responsible to the president. Later, the agency will formulate and establish a personal data protection policy which will serve as a guide for personal data subjects, personal data controllers and personal data processors.
f. Prohibition on the use of personal data. Article 65 explains that everyone is prohibited from unlawfully obtaining or collecting personal data that is not theirs with the intention of benefiting themselves or others which can result in loss of personal data subjects. Everyone is also prohibited from unlawfully disclosing and using personal data that is not his. If this prohibition is violated, they can be sentenced to a maximum of five years in prison or a maximum fine of 5 billion rupiah. Meanwhile, for anyone who deliberately creates false personal data or falsifies personal data to make a profit, they can be sentenced to a maximum of 6 years in prison and a maximum fine of 6 billion rupiah.

This regulation must be explicitly in the Consumer Protection Law, in order for the integration of the provisions in this regulation is mandated by the Consumer

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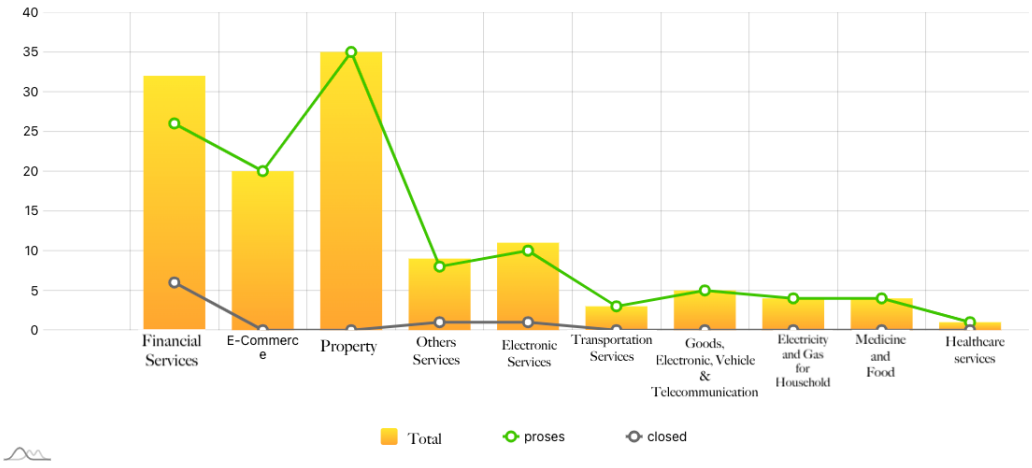
Protection Law, even though there is already a provision in the general explanation section that "…. in the future there is still the possibility of forming a new law which basically about the provisions protecting consumers". Several articles related to the obligations of business actors must also be amended so that they clearly state the obligations and consequences related to the protection of consumers' personal data.

4. Integration of Dispute Resolution Institutions

Consumer protection is an obvious goal of market regulation, but it is a heterogeneous one. Therefore, it is difficult to provide adequate protection. Consumers will sometimes be so vulnerable that they are incompetent and it is important that such circumstances are covered by the law (Cartwright, 2015).

Currently, the body that is mandated to hear consumer disputes is not only one but instead are spread across various institutions. To the very least, the authors noted that there is a National Consumer Protection Agency, a Consumer Dispute Settlement Agency, and an Alternative Dispute Resolution Institution under the Financial Services Authority. On one hand, this condition is an advantage for disadvantaged consumers to access consumer complaints and dispute resolution through various channels and means. On the other hand, it is necessary to evaluate the effectiveness of these institutions. The National Consumer Protection Agency, for example, has the functions and duties of one of which is to receive complaints about consumer protection from the public, non-governmental consumer protection organizations or business actors; and Conduct surveys concerning consumer needs. Complaint data currently processed by the BPKN is as shown in the Figure 1.

Figure 1. Number of BPKN Consumer Complain until 24 February 2023



Source: BPKN (Badan Perlindungan Konsumen Nasional, 2023)

The above graphic displays the total of the National Consumer Protection National Agency complaints up to February 24, 2020. Out of a total of 8,286 complaints over past 6 years, there are no data on what percentage of complaints that have been

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completely handled. Synergy needs to be carried out over 171 Consumer Dispute Settlement Agency spread across all the provinces throughout Indonesia. Consumer Dispute Settlement Agency itself as a dispute resolution institution is yet have comprehensive data that can be referred to how many disputes were entered, successfully handled, and successfully executed, considering that this institution is under the Ministry of Trade, not the Ministry of Law and Human Rights.

Furthermore, the provisions of Article 45 Paragraph (4) which states that if an out-of-court consumer dispute settlement effort has been chosen, a lawsuit through a court can only be pursued if the said attempt is declared unsuccessful by one of the parties or by the parties to the dispute. This provision will make decisions that have been declared final and binding to still be possible to be challenged before the court if one of the parties is dissatisfied. In this regard, the legal certainty principle is being questioned.

5. Qualification of Consumer Dispute and Its Authority

With the presently weaker consumer position, producers or business actors will easily market any goods and or services without paying attention to consumer rights. Many consumers suffer losses, because the goods needed are not as expected, damage due to installation of goods, provision of services that are not based on procedures, and so on, all that may lead to consumer disputes.

Definition of consumer disputes by Minister of Trade Regulation Number 72 of 2020 on Consumer Dispute Settlement Agencies, consumer disputes are disputes between Business Actors and Consumers who demand compensation for damage, pollution, and/or suffer losses as a result of consuming goods and/or utilizing services produced or traded. This kind of dispute should fall under authority of Consumer Dispute Settlement Agencies.

While According to the Supreme Court, disputes arising from the implementation of credit financing agreements with fiduciary guarantees and mortgage rights is not dispute about the losses of consumer. The authority to adjudicate and decide on disputes arising from the implementation of credit financing contracts with fiduciary guarantees or mortgages is authorized by the District Court.

Sidharta defines that consumer disputes are disputes regarding violations of consumer rights (Purnado et al., 2017). In case of a loss by the consumer resulting from goods or services traded by the business actor, then it is the obligation of the business actor to provide compensation, compensation and/or reimbursement.

6. The Position and Authority of Consumer Dispute Settlement Agencies

Dispute resolution by means of non-litigation is considered very profitable because the costs incurred are not expensive, it saves effort and saves time and the process is faster (Diyatmika, Widiati, & Karma, 2020). Analyzed from a juridical perspective, it can be said that the regulation regarding Consumer Dispute Settlement Agencies is

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lacking, resulting in a less effective role for Consumer Dispute Settlement Agencies in resolving consumer disputes in Indonesia.

Consumer Dispute Settlement Agencies authority is very limited, the scope of disputes that are entitled to be handled only includes violations of Article 19 Paragraph (2), Article 20, Article 25, and Article 26. The sanctions imposed are only in the form of administrative ones. The definition of administrative sanction here has been influenced by the common law system, so that it can be in the form of determining compensation in accordance with the provisions of Article 60 Consumer Protection Law. Violations of other articles with criminal nuances are entirely the authority of the Court. Included in this category are violations of the inclusion of standard clauses, even though supervision of the inclusion of standard clauses is part of Consumer Dispute Settlement Agencies' duties.

In the Consumer Protection Law, Consumer Dispute Settlement Agencies decisions are declared to have final and binding legal force, but in the Minister of Trade Regulation Number 06/MDAG/PER/2017 on the Implementation of Consumer Dispute Settlement Agencies Duties and Authorities, it is stated that it decisions can be pursued through courts of first instance, this certainly raises legal uncertainty. Therefore, the Legislature must immediately make improvements to regulations regarding the Consumer Dispute Settlement Agencies institution, since this rule is considered no longer effective in resolving disputes of the consumers.

7. Internal Dispute Resolution

The emergence of various complaints and dispute resolution institutions in Indonesia has encouraged third parties to help resolve problems between consumers and business actors. The authors argue that it is time to come up with novel ideas for the dispute resolution system. Additionally, it is encouraged for the dispute resolution system to originate from the parties themselves. On the positive side, this will encourage both parties to anticipate the emergence of disputes. On the other side, business actors will also be more responsible to deal with the complaints from the consumers directly, instead of waiting for a third party to "remind" them of a complaint that needs to be resolved. Ian Ramsai describes the settlement model of the settlement from internal mechanism.

Internal Dispute Resolution (IDR) is an essential part of the dispute resolution framework for resolving consumer complaints about products or services offered by Australian financial companies. Consumers must first file a claim with a financial company before they can ask the Australian Financial Complaints Authority (AFCA) to resolve their dispute. However, there are issues related to current IDR procedures and practices. Financial firms consistently failed to meet the IDR requirements of the Australian Securities and Investments Commission (ASIC), and several unidentified financial firms and registered complaints. Reporting of IDR claims by financial firms is also inconsistent, making it difficult to assess the effectiveness of IDR processes.

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Financial firms' IDR processes for handling consumer complaints need to be improved and that transparency and oversight of these processes need to be improved. The mandatory IDR data reporting regime provides an opportunity to improve the transparency of IDR practices and procedures of the financial firms by requiring companies to provide complete, consistent and reproducible data. comparable data, and by making this data public. By requiring all financial companies to submit data for ASICs on IDR processes, ASICs will also find it easier to keep track of transactions trends, identify emerging issues, and define regulatory priorities. to measure company performance. Given the "critical role" of IDR, these changes, if properly implemented, will improve the IDR experience for consumers (Ramsai & Webster, 2019).

Conclusion

Consumer protection law plays a crucial role in safeguarding the rights of consumers by preventing losses, ensuring fair prices, and providing appropriate solutions to problems. However, there may be shortcomings in the current Consumer Protection Law No. 8 of 1999 that need to be addressed to ensure its effectiveness in protecting consumers. The author has identified at least six issues that underline the importance of amending the Consumer Protection Law No. 8 of 1999 to accelerate the dynamization of business law. There are (i) the scope of business entity; (ii) supervision of standard clauses; (iii) consumer data protection; (vi) integration of dispute resolution institutions; (v) qualification of consumer dispute and its authority; (vi) the position and authority of consumer dispute settlement agencies. These arguments are adequate to support in proposing amendment to the existing Consumer Protection Law.

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