

# *The Implementation of the Principles of Evidence in the Consumer Dispute Settlement*

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**Abstract-**According to Article 45 of Law Number 8 of 1999 concerning Consumer Protection, the settlement of consumer disputes can be carried out outside the court and in the court. Out-of-court dispute resolution is carried out by the Dispute Settlement Agency (BPSK). Settlement of consumer disputes in court is carried out with individual lawsuits, group lawsuits and non-governmental organizations. Settlement of consumer disputes falls within the realm of civil procedural law. According to Article 163 HIR / 283 RBG that the one who must prove it is whoever postulates something he must prove it. According to Article 19 Paragraph (5) the Consumer Protection Act states that a business actor is exempt from the responsibility of damage if it can be proven that the error is a consumer's fault, so the business actor sued by the consumer must prove that he is innocent (reversing the burden of proof). The principle of reversal of the burden of proof is adhered to by Law Number 8 of 1999 concerning Consumer Protection because consumers do not know the ingredients, the production process and the terms of distribution carried out by business actors.

**Keywords-***Inverse Proof, Consumer Protection, Consumer Disputes*

## I. INTRODUCTION

The economy, trade, and industry which are increasing day by day have benefited consumers because there are a variety of products and/or services that can be chosen to be consumed or enjoyed, because consumers have many choices. The development of globalization, technology, information and telecommunications that is increasingly advanced can provide convenience in every consumer transaction, so that the goods/services marketed can be easily consumed or enjoyed by consumers. The problem faced by consumers is not only in choosing goods, but concerns the awareness of all parties, both entrepreneurs, the government and consumers themselves about the importance of consumer protection.[1]

Consumer protection. is an effort to guarantee legal certainty to provide protection to consumers. The legal relationship between consumers and business actors is based on an agreement. The agreement between the consumer and the business actor can be done verbally or in writing unless stipulated in the law. From this agreement was born a legal relationship between consumers and business actors. The essence of the legal relationship is the existence of rights and obligations between the parties. The agreement sometimes does not proceed as promised by the parties, so that it can cause disputes between the two parties. Settlement of consumer

disputes in court is carried out with individual lawsuits, group lawsuits and non-governmental organizations. [2]

The process of resolving consumer disputes through the courts requires proof. Not all consumer dispute resolution through BPSK requires proof. Settlement of consumer disputes at BPSK that requires a verification process is arbitration. In carrying out the evidence, it is known that there is a burden of proof (bewijslast /burden of proof), namely who has the obligation to prove something before the trial. According to Article 163 HIR / 283 the RBg states that: "whoever claims to have a right, or mentions an event (event) to confirm that right or to dispute the rights of others, must prove the existence of that right or the existence of that event." [3]

This article states who argues something, it is he who has the obligation to prove it. In the Consumer Protection Act the burden of reversing the burden of proof is different from Article 163 HIR/283 Rbg. This is regulated in Article 19 paragraph (5) of the Consumer Protection Law stating: "the provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the error is the fault of the consumer". The purpose of this Article is that the responsibility of business actors to pay compensation to consumers can be lost if the business actor can prove that the loss suffered by consumers is not his fault. Based on the above background, the problem to be discussed is: how to apply the principle of reversing the burden of proof in the resolution of consumer disputes in order to provide legal protection to consumers?

## II. RESEARCH METHOD

The method uses normative juridical methods, while the data used include secondary data. The approach used is a statute approach and conceptual approach and the results of this study are presented in a qualitative form. [4]

## III. FINDINGS AND DISCUSSION

### 1. Legal Evidence

Understanding of the evidence can be seen from several opinions of experts, among others: Abdul Kadir Muhammad: proving in the legal sense is to present sufficient facts according to law to provide certainty to the

judges regarding the occurrence of an event or legal relationship.<sup>2</sup> Bachtiar Effendi, et al: proof is the presentation of legal evidences according to law by the litigant to the judge in a trial with the aim of strengthening the truth of the argument about the legal facts which are the subject of the dispute, so that the judge obtains certainty to be the basis for his decision. [5]

## 2. *Consumer Protection Law*

Based on Article 1 Item 1 of the Consumer Protection Law states that "consumer protection is any effort that guarantees legal certainty to provide protection to consumers". Legal certainty to protect the rights of consumers, which is strengthened through special laws, provides hope that businesses will no longer be arbitrary which always harms consumer rights. With the Consumer Protection Act along with other legal instruments, consumers have equal rights and positions, and they can also sue or sue if their rights have been impaired or violated by business actors. [6]

## 3. *Consumer Dispute Resolution*

The definition of consumer dispute is not found in the Consumer Protection Act but can be seen in Article 1 number 8 of the Minister of Industry and Trade No. 350 / MPP / Kep / 12/2001 which states that consumer disputes are disputes between business actors and consumers who demand compensation for damages, pollution and/or who suffer losses due to consuming goods and/or utilizing services.

Settlement of consumer disputes according to Article 45 to Article 48 of the Consumer Protection Act can be done in two ways, namely: dispute resolution through the court and settlement of disputes outside the court. Settlement of disputes through the court can be done by filing a civil suit with individual suit procedures, class action actions, claims of non-governmental organizations or lawsuits by the government or related institutions. Settlement of disputes outside the court can be carried out in a peaceful manner between the parties to the dispute without involving a third party and through the Consumer Dispute Resolution Agency (BPSK) by means of conciliation, mediation and arbitration.[7]

## 4. *Application of the Principle of Reversal of Proof Load in the Settlement of Consumer Disputes*

Provisions regarding the burden of proof in the settlement of civil disputes can be found in the HIR / RBg and the Civil Code, namely Article 163 HIR / 283RBg and Article 1865 Civil Code which states that each party who postulates something then he must prove the rights or events. In this case if the consumer feels disadvantaged by the consumer, the consumer must be able to prove that: 10 1) the consumer has actually suffered a loss; 2) the loss occurs as a result of the improper use, utilization, or use of certain goods and / or services which are the

responsibility of the business actor 3) consumers do not contribute either directly or indirectly for the losses they suffer.

This is different from Article 28 of the UUPK, where the obligation of proof is reversed to become the burden and responsibility of the business actor. In procedural law this is known as reverse proof. The provisions of Article 28 of the UUPK confirm that the proof of the existence of an element of error is the burden and responsibility of the business actor. This means that civil liability still requires an element of error, even though the burden of proof has been regulated in the provisions of Article 28. Reversal of the burden of proof is important to apply in the UUPK on the basis of considerations: 1) socioeconomic position of the consumer is weak compared to the position of the entrepreneur/company; 2) in dealing with consumer claims, it is easier for employers to get lawyers to defend their interests, including in proving their arguments through the expertise of experts from various fields in accordance with the products they produce; 3) for consumers it is difficult to prove whether there is an element of mistakes/omissions of entrepreneurs/producers in the production, distribution and sale of goods or services that have been consumed by consumers. [8]

In the burden of proof reversal system, business actors must prove the absence of an element of error, while consumers are still burdened with proof, the loss suffered by consumers due to consuming goods and / or services produced or traded. So, the burden and responsibility of business actors is to prove the absence of an element of error, not the absence of an element of loss to consumers. The application of the principle of reversing the burden of proof in the resolution of consumer disputes can use the principle of responsibility. The principle of responsibility is developing, the first stage: responsibility based on negligence is a principle of responsibility that is subjective, that is, an responsibility that is determined by the behavior of the producer.[9]

The nature of subjectivity appears in the category that someone who is careful to prevent losses to the consumer. Based on this theory, the negligence of producers which results in the emergence of consumer losses is a determining factor in the existence of consumer rights to file claims against producers. In addition to the factors of producer error and negligence, claims for compensation based on producer negligence are submitted with evidence, namely: a) the defendant is a producer who actually has an obligation to take action that can avoid the occurrence of consumer losses: b) the producer does not carry out the obligation to guarantee the quality of its products in accordance with standards that are safe for consumption or use; c) consumers suffering from loss; d) negligence of producers is a factor that results in losses to consumers (causal relationship between negligence and consumer losses). [10]

The pure theory of the principle of responsibility based on negligence is a responsibility based on the existence of an element of error and contractual relations. This theory is very detrimental to consumers because a lawsuit can only be filed if it meets two conditions, namely the element of error or negligence and the contractual relationship between producers and consumers. Product responsibility theory based on negligence does not provide maximum protection to consumers, because consumers are faced with two difficulties in filing a lawsuit to producers, namely, first, the demand for contractual relations between consumers as plaintiffs and producers as defendants. Second, the producer's argument that consumer losses are caused by damage to goods that are not known, the application of the principle of reverse proof in the resolution of consumer disputes has not provided maximum protection to consumers. This is because in the application of inverse proof requires that there is an element of error. So what is proven by business actors is whether the losses suffered / experienced by consumers occur because of the mistakes of business actors. [11] [12]

#### IV. CONCLUSION

The conclusions above, it can be suggested that to apply the principle of reverse proof in the resolution of consumer disputes to provide maximum legal protection is to use the principle of absolute liability and product liability because this principle holds that it does not require proof of error but if the consumer suffer losses then the business actor can be held accountable. Then it is necessary to revise the Consumer Protection Act and more detailed regulations on the principle of reverse proof in civil disputes.

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