

Distribution of Proof Expenses in the Settlement of Consumer Compensation Disputes

Iga A Ari Krisnawati^a, ^aFaculty of Law, Universitas Udayana, Email: arilaw1980@gmail.com

The general arrangement for the distribution of the burden of proof of civil cases is regulated in Article 1865 BW article 163 HIR / 283 RBG, which states "whoever declares a right of another person, refers to an event, is required to prove the right or event". This general setting is not always appropriate for every case. As in the case of a consumer lawsuit for product losses, if guided by the provisions of the law, the consumer is always the plaintiff who is burdened with proof. The burden of proof is heavy for consumers because consumers generally do not know the ins and outs of production, the technology applied and the materials that are actually used by producers as business operators. Therefore, Law No.8 / 1999 adopts a system of the burden of proof reversed in the burden of proof as explained in its explanation without formulating the meaning of the burden of proof of reverse. This formulation is important to guide judges in sharing the burden of proof in resolving consumer and community dispute justice seekers. Based on the approach of the analysis of the legal concept of the burden of reverse evidence is the burden of proof on the presumption of the element of error in the defendant (business actor) and the plaintiff (consumer) is sufficient to provide the facts of the loss in the presence of a mistake that violates the law of the defendant. The defendant is acquitted of compensation if he can prove the error due to consumer error.

Key words: *Burden of Proof, Reverse Proof of Consumer Dispute.*

Introduction

Distribution of the burden of proof is important in civil procedural law, because with the distribution of the burden of proof, the parties will be burdened with a proof task for them to submit in accordance with the provisions of the applicable civil procedure law. The current civil procedural law is based on the Hetherziene Indonesisch Reglement (HIR) for Java and Madura and the Rechtsreglement Buitengewesten (RBG) for outside Java and Madura.

In the HIR / RBG the burden of proof distribution is stated in article 163 HIR / 283 RBG, which basically states that "whoever claims a right or, denies the rights of others, refers to an event obliged to prove the right or event".

The guidelines given in article 163 HIR / 283 RBG are not yet clear, because according to a teaching about events that give rise to a right, it must be proven by the party demanding that right. Likewise, there are those who deny the claimed rights and those parties who must prove their rebuttal.

Thus, based on these teachings, the plaintiff who submitted his arguments by the defendant then the plaintiff must prove these arguments. On the other hand, the defendant denies the plaintiff's claim by submitting his arguments who must also prove it.

The doctrine of the burden of proof is appropriate to be accepted, but some authors admit, the burden of proof is unclear and cannot solve the problem of distribution in concreto. One example is the case for a lawsuit for consumer compensation to business actors. Proof based on the general guidelines specified in article 163 HIR / 283 RBG feels heavy. This is due to the fact that the position of businesses and consumers prevails in a weak position. The object of business activities is to make maximum profits by business actors through tips on promotion, sales and application of standard agreements that harm consumers (general explanation of law number 8 of 1999 concerning consumer protection / hereinafter abbreviated to UUPK). In addition, consumers generally do not know the ins and outs of the production process, the technology applied and the actual ingredients used by producers as business actors.

Based on these conditions, the UUPK in proving consumer compensation disputes divides the burden of proof with the reverse proof burden system which is affirmed in the explanation of article 22 UUPK. The UUPK does not provide the formulation of the understanding of the burden of proof, as a result, for those who are litigants it is unclear, who has to prove it and who is proven. The latter thing is the Judge's duty to construct his event. Likewise, for law writers is the application of the burden of proof. This raises differences of opinion, especially for defective products.

Method

Based on the background, this paper requires the reversal of the proof to be formulated through a normative assessment using a legal concept analysis approach obtained from legal materials then analysed in a description and argumentation.

Results and Discussion

Understanding of Evidence and Evidence of Evidence

Proof in civil procedural law is a stage of proceeding after a process of answering answers from the parties to the dispute. This stage determines the arguments as to which of the disputing parties is true and not true. So, from the Judge's evaluation of the evidence presented by the parties based on the Law, it will determine who will be won and defeated determined by the judge in the decision of the decision.

From this verification process, it can be stated that a proof is needed if a dispute or case arises before the Judge. Thus, the meaning of proof is "proving", i.e. convincing the Judge of the truth of the arguments or arguments intended in the dispute.

Sudikno Mertokusumo stated that the meaning of the word proves that it contains logical, conventional and juridical meanings. In a logical sense it is to provide absolute certainty, because it applies to everyone and does not allow evidence of the opponent. In the conventional sense it proves to have the meaning of providing certainty; it is just not absolute certainty, but relative certainty. Proving in a juridical sense means giving an adequate basis to the Judge examining the case in question to provide certainty about the truth about the event proposed.

In connection with the definition of proving in this last meaning, namely in the juridical sense, what matters must be proven, referring to the position of a lawsuit, that is, the events or events experienced by the plaintiff which are the basis of the claim. These events must be proven in court using legal evidence according to the law. The evidence referred to as described in article 164 HIR / 284 RBG, article 1866 BW, in the form of:

- a. Letter
- b. Witness
- c. Allegation of allegation
- d. Recognition
- e. Oath

The evidence presented according to this law is the basis for the judge of the truth of the trial, and is bound by these evidences in giving consideration to the decision. Proving events that are the basis of the claim are by using legal evidence according to the law; even though it is binding on the Judge. However, according to the law and the opinion of scholars not all events must be proven.

The things that do not need to be proven, among others:

- a. In the case of a decision of verstek (25 paragraph (1) HIR / 145 RBG.

- b. In the case of the defendant acknowledging the arguments put forward by the plaintiff
- c. There is no denial of the arguments of the opposing party (article 163 HIR / 283 RBG).
- d. One of the parties has taken the Decissoir oath / break oath.
- e. The Judge, because the position, is considered to have known the facts.
- f. The vision of Judge in trial.

Evidence Expenses

If the evidence proves the arguments or events with evidence that is valid according to the law, then the next question is, who is obliged to prove these events with valid evidence.

Article 1865 BW, 163 HIR / 283 RBG in essence concludes that those who are required to prove are parties who have litigated in court with the provisions of who claims to have rights, to declare their rights and to deny the rights of others, where that person must prove the rights or events.

Article 1865 BW or article 163 HIR / 283 RBG, has the purpose of providing general guidance for those who are required to prove by law that are litigants and the implementation of the evidentiary part is carried out by a judge. Some legal writers state that article 1865 BW, article 163 HIR / 283 RBG is based on proposition. Whoever states something must prove it. This principle is not always appropriate in every case. So that the articles are considered unclear and cannot solve the problem of distribution of the burden of proof in concreto.

In several articles in the material law stipulates a division of burden of proof, such as:

1. Article 1977 paragraph 1 BW states: "Anyone who controls a movable object is considered as the owner". So here the plaintiff is burdened to prove that the defendant is not the owner and the defendant no longer needs to prove himself as the owner, because the law considers him as the owner; until the plaintiff can prove otherwise.
2. Article 1394 BW stipulates that whoever can show the last three consecutive receipts, is considered to have paid all instalments. In this provision, the plaintiff must prove that the instalments have not been paid. The Defendant does not need to be charged with proof to prove that he has paid off, because based on the above principle he has been considered to pay off until the plaintiff can prove otherwise.
3. Article 1244 BW, stipulates that a forced situation must be proven by the creditor. Here the defendant is charged with proving that an majority has occurred which has caused him to be unable to carry out an agreement

The determination of the distribution of burden of proof according to this law is the result of the alleged law because the law itself determines the burden of proof. So that for the Judge there is no difficulty in determining the burden of proof specifically for the cases designated. According to Subekti, the burden of proof like this is essentially a reversal of the burden of proof. For other concrete issues that are not specifically regulated, even though there are general principles as contained in article 163 HIR / 283 RBG, according to legal experts, it is not always appropriate to apply in every case. That is, which party must be burdened by the judge to prove and what matters must be proven depends on the case.

In writing the legal literature, it teaches that the formulation of article 163 HIR / 283 RBG is more complete by formulating; "If in a case the plaintiff's arguments are disputed by the defendant, the plaintiff is obliged to prove his arguments and the defendant must prove his rebuttal if the defendant denies the plaintiff's claim".

This formulation is intended so that the burden of proof is carried out fairly and impartially. For the plaintiff who cannot prove the event proposed, he must be defeated, while if the defendant cannot prove his objection he must also be defeated. Distribution of the burden of proof is in accordance with the principle of fair trial, which does not plunge those who accept if the burden is too heavy, in the brink of defeat. For example, in proving negative things, namely not paying or not receiving goods in a sale and purchase transaction. Judges should charge those who are more able to prove to positive things, that is to prove the existence of a sale and purchase event and the delivery of goods, not the absence of an event (negative things). Distributing this unfair, one-sided burden of proof by the Supreme Court is considered a violation of law and law, which is the reason for the Supreme Court Judge to overturn the lower Judge's decision.

To avoid the consequences and unfair distribution of evidentiary burden, in the development of the burden of proof the burden is no longer solely based on the law but also based on justice and the principle of propriety. In such a position the Judge gives an equal opportunity by carrying the burden of proof by referring to the weight of the proposition to be proven.

Evidence of Evidence in Consumer Disputes

Consumer disputes are disputes relating to violations of consumer rights, the scope of which covers all civil, criminal and state administrative laws. A.Z Nasution is of the opinion that consumer disputes are disputes between consumers and business actors (both in public and private law) regarding certain goods consumed by consumers, and / or services offered by producers / business actors.

From this understanding of consumer disputes, it can be seen that the disputing parties are consumers and business actors, whose object of dispute is in the form of goods or services offered by business actors. According to article 1 number 2 of law No. 8/1999, the consumer is every user of goods and / or services available in the community, for the benefit of themselves, their families, other people, and other living things and not for trading.

For clarity of understanding of this consumer can be listened to through explanation of the elements of the Definition as follows:

a. Each person

A subject called a consumer means any person who is a user of goods and / or services. The term of this person, according to Shidarta, although explicitly does not limit the understanding of consumers to the extent of individuals; consumers must also include business entities, with a broader meaning of legal entities. It also includes groups or groups of consumers who have the same interests (article 46 paragraph (1) and paragraph (2) of the PK Law).

b. User

In accordance with the explanation of article 1 number (2) of the Consumer Protection Act, the word "user" emphasises the consumer is the final consumer. In this UUPK explanation, it is explained that in the economic literature the terms end consumers and intermediate consumers are known. End consumers are the use or final use of a product, while intermediate consumers are consumers who use a product as part of the production process of another product. The term user in this case is appropriate to be used in the formulation of these provisions, while simultaneously indicating the goods and / or services used do not necessarily result from a sale and purchase transaction.

Consumers are indeed not just buyers (buyers or luggage) but all people (individuals or business entities) who consume services and or goods. So the most important thing is the occurrence of consumer transactions (consumer transactions) in the form of the transition of goods and or services, including the transition of pleasure in using it.

c. Goods and services

Consumer Protection Act defines goods as any tangible or intangible objects, both movable and immovable, both consumable and non-spent which can be traded, used, used for consumers. Whereas service is defined as any service in the form of work or achievement that is provided for the community to be utilised by consumers. The understanding provided to the community shows that the service must be offered to the community. That is, there must be more than one person. If this is the case, services that are special (closed) and individual are not included in this understanding.

d. Available in the community

In accordance with the article 9 paragraph (1) letter (e) of the Consumer Protection Act, the goods and / or services offered to the public must be available in the market.

e. For the benefit of oneself, family, other people, other living things

The elements laid out in that definition try to broaden the notion of importance. These interests are not only intended for themselves, families, but also the goods and / or services are intended for other people (outside themselves and their families), even for other living things, such as animals and plants and not for trade.

What is meant by business actors, is every individual or business entity, both in the form of legal entity or non-legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia. Both alone and together through agreements to conduct business activities in various economic fields (article 1 number 3 UUPK).

In the economic literature, it is stated that business actors include:

- a. Providers of funds for the needs of providers of goods or services (investors);
- b. Results or makers of goods / services (producers);
- c. Dealers of goods or services;
- d. Users or users (consumers) of goods or services with the aim of producing other goods or services or getting the goods or services for resale.

For the business actor mentioned in point d, why is it stated as a business actor too, because the goods or services they have acquired are intended to make other goods / services and / or to be traded (commercial). They get the goods or services they need from the industrial market (industrial market). Such business actors are also referred to by several terms including driven buyers, driven customers, consumers of industrial markets or intermediate consumers.

Further discussions why until there is a consumer dispute is motivated by the end consumer or a group of end consumers, who are generally always in a weak position. It said a weak position because as seen from the elements of the transaction, the consumer is an engagement. Namely civil engagement that does not just happen, but experiences the following stages:

- a. Pre-transaction stage.
- b. Transaction stage.
- c. The post transaction stage.

At these stages of consumer transactions, the reality of the issues that arise is that the consumer becomes the object of business activity of the business actor in making maximum

profit. Because at the stage before the transaction consumers are faced with information in the form of labels, advertisements, sales systems that may not contain the truth and cannot be accounted for (UUPK general explanation).

Then at the transaction stage, the issue at issue by consumers is the existence of agreements with standard conditions that are detrimental to consumers because they have been prepared in advance by business actors. So, the consumer has no other choice, except that he must accept the agreement as is or he must be willing to accept the goods or services he wants. In the post-consumer transaction phase, the issues at issue are as follows:

1. Service goods that have been used by consumers do not meet their expectations as previously imagined by the product.
2. Goods / services are not in accordance with the quality of the product, both according to the applicable standards and the entrepreneur's claim.
3. After-sales service promised by employers, is not suitable about product quality assurance, or the supply of spare parts / other equipment.

These conditions create consumer disappointment and expose consumers to the risk of material loss as well as to the safety of the body and the security of their lives / family or others. Circumstances that cause losses as mentioned herein, are related to UUPK is part of violation of consumer rights as determined in article 4 of UUPK as follows:

Consumer Rights are:

- a. rights to comfort, security and safety of consuming goods and / or services;
- b. the right to choose new goods and / or services and to obtain said goods and or services in accordance with the promised exchange rate and conditions of guarantee,
- c. the right to correct, clear and honest information about the conditions and guarantees of goods and / or services;
- d. the right to be heard and complain about the goods and / or services used;
- e. the right to obtain advocacy, protection and efforts to properly resolve consumer protection disputes;
- f. the right to consumer education and guidance
- g. the right to be treated or served properly and honestly and is not discriminatory;
- h. the right to receive compensation, compensation and / or replacement, if the goods and / or services received do not conform to the agreement or are not as intended;
- i. rights that are regulated in the provisions of other laws and regulations.

For violations of consumer rights, consumers can claim compensation as the responsibility of business actors as stipulated in article 19 of the UUPK as follows:

1. Business actors are responsible for providing compensation for damage, pollution and / or loss of consumers as a result of consuming goods and / or services produced or traded.

2. Compensation as referred to in paragraph (1) may be in the form of a refund or replacement of goods and / or services of a kind or equivalent value, or health care and / or compensation in accordance with the provisions of the applicable laws and regulations.
3. The compensation is given within 7 (seven) days after the transaction date.
4. Provision of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of criminal charges based on further evidence regarding the existence of an element of error.
5. The provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the mistake is the fault of the consumer.

On the basis of the provisions of article 4 and article 19 of the UUPK, consumers can protest directly to the entrepreneur concerned. If ignored, the UUPK provides consumer protection by regulating the resolution of consumer disputes in article 23 as follows: "business actors who refuse to not respond and / or do not meet compensation for consumer demands as referred to in article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the consumer dispute resolution body or submit to the judiciary in the consumer's place of residence".

From the formulation of Article 23 of the UUPK it can be said that for every violation committed by a business actor that harms the consumer, the consumer is given the right to hold the business actor to the disadvantage. To claim compensation for losses suffered, consumers are given the choice to choose voluntarily whether the path taken through the court or outside the court. The court is conducted through a body that resolves consumer disputes (BPSK). However, for the legal standing action class, and government lawsuits must be submitted through the general court. Thus, a contrary can be interpreted, that only a disadvantaged consumer or heir concerned can submit a claim for compensation through BPSK (article 46 UUPK).

Differences in dispute resolution between the two institutions that equally handle claims for compensation suffered by consumers to business actors, such as at BPSK where the settlement is carried out peacefully by the parties through conciliation, mediation and arbitration (explanation of article 45 paragraph (2) UUPK). Settlement solely to reach agreement on the form and amount of compensation and or equal to certain actions to guarantee that the loss will not be repeated to consumers (article 47 UUPK).

Seeing the provisions of article 47 this consumer dispute through BPSK is an effective choice for dispute resolution for simple cases and small scale. The case in court that uses formal procedural law (HIR & RBG) requires a long time, the cost of the case is quite large and it often does not provide justice or satisfaction for the parties to the dispute.

In article 45 paragraph (1) UUPK article 15 paragraph (1) Minister of Industry and Trade no. 250 / MPP / kep / 12/2001, regarding the implementation of the duties and authority of BPSK, it was stated that "every consumer who is disadvantaged, his attorney or heirs who come to complain to BPSK must submit a request for dispute resolution in both written and oral consumers, consumer complaints can be made at the place BPSK closest to the domicile of consumers".

Likewise, if a lawsuit is submitted to the general court, because the UUPK provides protection to consumers, the lawsuit is filed at the general court of residence of the consumer. The legal basis that can be used by consumers to sue business actors must contain legal arguments in favour of prosecutors. The arguments submitted must be proven by the parties, and the Judge in carrying out this proof, imposes the burden of proof on the parties based on the law. If the law is very rigid and its application is rationally inappropriate, the Judge can and may follow the principles and theories in the distribution of the burden of proof built by science.

The responsibility of business actors in the literature is also called accountability. The liability associated with the burden of proof has been accommodated in legislation that applies as positive law in Indonesia, including:

- a. Liability is based on default;
- b. Liability is based on mistakes;
- c. Liability is based on mistakes by reversing the burden of proof;
- d. Absolute liability.

A. Liability is based on default

In proving that there is a default, the consumer must prove several important elements in an agreement, namely the existence of a contractual relationship, there is good faith (with good faith), and notification to get a replacement to the seller of the defective products. Difficulties that may arise if the transaction evidence cannot be raised. Likewise, in the case of consumer contracts using standard clauses that eliminate the liability or responsibility of the business actor for product defects, it will encounter difficulties when the business actor insists on the *pacta sunt servanda* principle, namely the principle that the agreement applies as a law to the maker, will be utilised by business actors to maintain the standard clause. Whereas the proof from consumers in order to make the best efforts to produce and market their products is a difficult thing for consumers because producing and marketing products is the responsibility of the business actor while consumers are only the users of these products.

B. Liability is based on mistakes

The legal liability relating to Article 1365 BW. Regulations against the law according to Article 1365 BW is that any act that violates the law that brings harm to someone else, obliging people who because of their wrongness to issue losses compensate for these losses. Based on the provisions of Article 1365 of the BW, then the act against the law requires the fulfillment of four basic elements, namely:

- a. The act of causing loss is unlawful;
- b. The loss arises as a result of these actions;
- c. The offender is guilty; and
- d. Norms that are violated have the power to protect consumers from a loss.

Proof by consumers in a liability based on unlawful acts in BW follows the application of proof in article 1865 BW jo. Article 163 HIR. Therefore, consumers who demand compensation for business actors based on unlawful acts in 1365 BW are cumulatively including proof of error. Terms of error in article 1365 BW, the conditions are:

- a. The nature of misconduct (the nature of violating the law), the notion of law in this matter is not only limited to contrary to the law, but also decency and decency;
- b. The culprit can be regretted for violating these norms. This means that if the behaviour that violates the law cannot be regretted to the business actor, then he is innocent.

The principle of proof is burdening consumers to prove the four conditions against illegal acts in Article 1365 BW, so that in principle it is very heavy and difficult for consumers to arrive at the conclusion that the business actor has made a mistake so that it is proven to have committed an illegal act.

C. Liability is based on mistakes by returning the burden of proof

Liability for wrongdoing by reversing the burden of proof is a liability based on error as well. However, proof of whether there is an error, the compensation claim is the burden and responsibility of the party sued (business actors). As a consequence, the business actor fails to prove the absence of an element of error, then the claim for compensation demanded by the plaintiff will be granted. The plaintiff is still burdened with proof of the loss suffered due to the defendant's mistake (business actor). 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 the plaintiff (consumers).

D. Absolute liability

Absolute liability (strict liability) in the literature is also called strict accountability or also called liability without error. Called accountability without error, because it ignores the element of error in the proof. This absolute accountability is also stated in principle as the same as risk liability.

The mention of the term liability is reasonable, because it accentuates the loss suffered, the things that cause losses by ignoring the conditions of the nature of breaking the law and the mistakes of business actors who bear the risk or are responsible for the losses incurred.

The principles contained in this absolute accountability are aimed at manufacturing defective goods, among others, because claims for loss of victims are worthy of showing to manufacturers who control the manufacturing process which generally utilises product advertisements in marketing to increase and dominate market share.

Based on the principle of absolute accountability, science considers that the evidence is borne by the plaintiff (consumer). Proven things:

1. There is a loss;
2. The fact that the product consumed is in a defective state;
3. The causal relationship between the defect of a product and the loss.

This absolute liability policy is implemented in the United States based on the development of case cases and state court decisions. In Indonesia absolute responsibility is applied in law number 23 of 1997 concerning environmental management. In the United States, absolute responsibility applies to product liability for the following reasons:

1. Among groups / consumers on the one hand and producers on the other hand, the risk of loss should be borne by those who produce defective / dangerous goods on the market.
2. By circulating goods on the market, the manufacturer guarantees that the goods are safe and suitable for use, and if proven not so he must be held responsible.
3. The application of the principle of strict liability is intended to eliminate the long and continuous prosecution process. Namely, the demands of consumers to retailers, retailers to wholesalers, wholesalers to distributors, distributors to agents, and agents to producers.

Associated with an explanation of the types of burden of proof of compensation in consumer disputes according to this science, the Consumer Protection Act in Indonesia in the explanation of article 22 confirms: "the burden of proof system applied is the burden of proof reversed for proof of whether there is an element of error in the case criminal ", the burden of proof does not rule out the possibility for the Prosecutor to conduct evidence (Article 22 UUPK).

From the provisions of article 22, it seems that the UUPK only applies the responsibility for error by reversing the burden of proof on criminal charges only. However, when reading the provisions of article 19 paragraph (1), paragraph (2), paragraph (5) in article 28, suing an error with reversal of the burden of proof is also applied to the claim for compensation. The term reversal of the burden of proof is in principle the same as the principle of error with the reversal of the burden of proof and article 28.

Provisions of who is burdened to prove in the rule of law of article 19 paragraph 1, paragraph 2 and paragraph 5 of the UUPK in the form of error is a business actor, this provision is in accordance with the burden of proof according to the presumption of the law and the theory of loading based on the relevant rules. If according to the provisions of the rule of law in the article in question there is regulated who should be charged, then the party specified in that article is burdened.

Provisions in the UUPK which state the burden of proof with the reversal of the burden of proof system does not cause difficulties for the Judge to apply. However, because the notion of reversing the burden of proof is not formulated, law enforcement and justice seekers do not understand the verification system. For example, consumers who submit a claim for compensation to the court, if the basis of the lawsuit does not lead to the provisions of the principle of proof and the burden of proof referred to in the UUPK, will cause harm to those who are unsuccessful with the proof and they will be defeated (risk of proof). Whereas the Judge in examining civil cases is passive, meaning that the Judge does not determine the extent of the subject matter of the dispute. Judges may not add or subtract. Judges are bound by incidents that are disputes raised by the parties, the parties are required to prove that they are not Judges.

Thus, a formulation of the rule of law in the article of the rule of law is needed, because the statement of the rule of law is the view of the Law about how people should behave and behave according to the law. The formulation of this rule of law can be in the form of:

- a. Hypothesis / conditional, which shows the relationship between the condition (cause) with certain consequences (effect).
- b. Category, which is a condition which according to law does not indicate a relationship between condition (cause) with consequences (effect).

Formulation of the rules regarding the reversal of the burden of proof in the resolution of consumer disputes in the UUPK.

If you follow the approach of legal concept analysis and argumentation analysis, it can be described as follows: Reversal of the burden of proof of error with a reversal of the burden of

proof is: "The existence of consumer losses due to damage, pollution, and / or consuming goods and or services produced or traded, must be proven by business actors ". Consumers just need to show the facts that arise due to the loss. Business actors are exempt from compensation if they can prove otherwise.

The formulation of the notion of reversal of the burden of proof will clarify perceptions among legal science writers on the view of whether there is a weakness in the application of the reverse proof loading system in consumer protection in Indonesia.

The reason for the view that states "there is a weakness in the application of an inverse proof load system in the UUPK, because the UUPK equates the imposition of inverse evidence for all products produced that cause harm without looking at goods consumed due to defects or using material that is harmful to the physical and soul". In terms of regulation UUPK has reached the stage of modification of the principle of responsibility based on mistakes, namely the principle of the presumption of neglect and presumption of responsibility with the burden of proof reversed. Business actors can be freed from compensation, if they can prove otherwise.

In the United Kingdom and the United States, the government in improving the position of victims announced special regulations to compensate those who were harmed by defective drugs and suffered "personal injury" due to defective products. The size of the product defect here, is that which poses an unnatural danger to the user or consumer according to the size of public knowledge in general. In cases like this, strict liability is applied for these defective and dangerous products.

With comparative studies like this, to provide maximum consumer protection, it is time for the UUPK to apply strict liability proof of consumer compensation, especially for products that are defective and endanger physically and mentally. With the implementation of strict liability product responsibility does not mean the manufacturer does not get protection. The producers can also insure their responsibilities so that they do not experience significant economic losses.

Conclusion

The formulation of the principle of the reversal of the burden of proof in the system of consumer compensation disputes to business actors through an analysis of the concept of the law analysed in argumentation is described in the form of a hypothesis / conditional as follows:

"The existence of consumer losses due to damage, pollution, and / or consuming goods and or



services produced or traded, must be proven by business actors. Consumers just need to show the facts that arise due to the loss. Business actors are exempt from compensation if they can prove otherwise ".

There is a difference of opinion in the application of the reversal of the burden of proof system in the UUPK, because the protection of consumers is still considered weak, especially in the claim for compensation for defective products and products that use materials that endanger physical and mental health. Consumers do not get compensation if the business actor proves the loss is due to consumer error.

For clarity and legal certainty in consumer protection, it is recommended that the formulation of the rules of the burden of proof reversal system be formulated in the revised UUPK. Because of the possibility of the formation of a new law on consumer protection as affirmed in the general explanation of UUPK number 8 of 1999, it is recommended to apply the principle of proof of strict liability, especially for defective products and products that use materials that are harmful to physical and mental health.

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