



## Theoretical View on The Position of The Consumer in Acceptance of Product Advertising

I.B. Gede Agustya Mahaputra\* and I Made Aditya Mantara Putra

Faculty of Law, Universitas Warmadewa, Denpasar-Bali, Indonesia

\*Email: [agustyamahaputra@gmail.com](mailto:agustyamahaputra@gmail.com)

Published: 12/09/2022

### How to cite (in APA style):

Mahaputra, I, B, G, A., Putra, I, M, A, M. (2022). Theoretical View on The Position of The Consumer in Acceptance of Product Advertising. *Jurnal Hukum Prasada*, 9(2), 73-79. doi: <https://doi.org/10.22225/jhp.9.2.2022.73-79>

### Abstract

Commercial players have greater and more comprehensive resources, marketing and relationships than consumers. It can even be said that consumers have relatively limited legal awareness and their rights as consumers, so that perpetrators are often treated unfairly against companies. The injustice in question can be observed in one of the advertisements. Entrepreneurs are not clear in the legislation on consumer protection, the structure of legal responsibility for advertising that harms consumers. This study aims to examine the philosophical nature of consumer legal protection in relation to harmful advertising. The method used in this study is a type of legal normative research method. Based on the results of the study, this study indicated that consumer protection arrangements in Indonesia are still not optimal considering that contracts do not cover the legal responsibilities of economic actors who broadcast products advertised by advertising companies. Of course, the philosophical aspects involved in looking at the Pancasila perspective are Precepts 2 and 5 which contain elements of human rights. The principle of fairness regarding the rights and obligations of entrepreneurs is therefore not balanced. More appropriate action is needed to strictly control the advertisements on broadcasters. This can become legal knowledge for consumers, law enforcement officers, businesses or broadcasters to pay attention to the advertisements that are broadcast so as not to cause consumers to lose right.

**Keywords:** advertising; consumer; legal; protection

### INTRODUCTION

One of Indonesia's national development goals is to achieve a material, spiritual, equitable and prosperous society in the era of economic democracy, based on *Pancasila* and the Constitution of the Republic of Indonesia year 1945 after this referred to as the 1945 Constitution. The national in the era of globalization must be able to support the growth of businesses, improve the well-being of many people, and create a variety of products and services with technological content that can achieve certainties. Goods and services obtained from trade without causing losses to consumers. Article 27 of the 1945 Constitution states that all citizens have the right to a dignified life for humanity. As a consumer, society must provide a sufficient amount of goods and services at an affordable price to achieve a dignified life for humanity and achieve prosperity and intelligence (Sidabalok, 2006).

Consumers' lack of awareness and understanding of goods and services does not indicate whether the goods they have purchased are of poor quality and contain elements such as fraud, counterfeiting and misleading advertising. Commercial competition also often creates fraudulent activities that generally harm consumers. Therefore, consumers need to get legal protection. Philosophically, the issue of consumer protection is related to

general and national issues, as basically everyone is a consumer, not just individuals. Therefore, protecting consumers means supporting everyone. Therefore, the issue of legal protection of consumers also falls under national law. Therefore, the purpose of consumer protection is to ensure the safety, protection and health of citizens as a government goal. Indonesian Government's Goal in 1945 Constitution, Paragraph IV: Instead, form the Indonesian Government to protect and educate all over Indonesia and promote public welfare. Country life and participation in the implementation of a world order based on independence, lasting peace and social justice.

The position of consumers as a weak party is also recognized internationally and, as can be seen from the resolution of the United Nations General Assembly NO. A/RES/39/248 of 1985, consumer protection guidelines are mandatory for consumers wherever they are in all countries. Regardless of social status, they have some basic rights. These fundamental rights are the right to clear, accurate and honest information, the right to safety and protection, the right to vote, the right to hear, the right to be rewarded, the right to basic human needs and the right to do something about it, well clean environment and the right to maintain it, and the right to primary education. The United Nations requires all member states to enforce these consumer rights in their respective countries. Consumer protection is essential because consumers are generally in a vulnerable position in the presence of businesses (Nugroho, 2008). Thus, protecting consumers as a whole is building the Indonesian people according to the state philosophy of Pancasila and the 1945 Constitution.

Legally, the participation of consumers, who are wealth and the subject of national development, in economic activities must be protected by law. Which state in Indonesia is called the rule of law? As stated in Article 1(3) of the 1945 Constitution, as a state beyond the law, the state must protect the rights of its citizens. All citizens have the right to legal protection in order to improve their dignity and dignity. Laws use institutions to provide justice to society. According to Aristotle, justice is a political policy that becomes the basis of state systems and other laws and regulations. It is a measure of rights. One must control oneself in pursuit of one's own gain by appropriating what belongs to others or rejecting what should be given to others (Armia, 2008).

The regulations of the consumer protection itself, are not only contained in the Consumer Protection Act but also in several other laws and regulations, such as Food Law No. 7 of 1996. (LN.1996-99, TLN. 3656) Law No. 32 of 2002 on Broadcasting (LN. 2002.139, TLN.4252), Law No. II 2008 on Electronic Information and Transactions, (LN. 2008-58, TLN. 4843), hereinafter referred to as the ITE method. Government Regulation No. 69 of the Republic of Indonesia in 1999 on Food Labelling and Advertising, Government Regulation No. 57 of 2001 on Consumer Dispute Resolution Organizations, Government Regulation No. 58 of 2001 on Enhancing and Supervising the Implementation of Consumer Protection, Non-Governmental Organizations Protective Tools for Consumer Regulation No. 58 of 2001.

Indeed (sociologically) it can be seen that commercial actors do not want to be responsible to consumers for their products at a loss. Commercial actors often struggle with consumers and look for weaknesses in victims to cover up and abdicate their responsibilities. Social facts that harm society are a form of lack of ethics and morality of corporate actors. This cannot simply ignore the legal facts, which the consumer community often complains about.

Accountability is the result of an act and when a person performs an action, it will have an impact on others. The impact or consequence must be borne by the person who committed the act. Accountability is required because there is an error that can harm the rights and interests of others. Regarding consumer protection advertising, commercial actors should be held accountable for advertisements that cause harm to consumers. Law No. 8 of 1999 regulated the liability of corporate actors, as established by article 19 of the law on consumer protection.

Many advertisements violate consumer rights but consumers cannot claim their rights due to their lack of knowledge of their rights as consumers; this situation leads to an

imbalance in the position of advertising companies and consumers, whereby commercial actors dare to advertise their products despite, in reality, what they say in the ad is not valid, which can result in damage to consumers or even endanger the life and safety of consumers.

Previous studies have conducted research related to the consumer legal protection in relation to harmful advertising that the results of their study showed in different perspectives. Prastyanti et al. (2021) in their research about 'The Legal Aspect of Consumers' Protection from Pop-Up Advertisements in Indonesia' showed that the ITE Law prohibits anyone from spreading online information with content that violates immorality and gambling, as it often contains in pop-up advertisements. Through the lens of business ethics, pop-up advertisements are new media and they should not be installed in such a way as to interfere with the freedom of internet users, given that pop-up advertisements do not reflect the ethics of honesty, trust, and advice in business. Meanwhile, the results study conducted by Mahaputra et al. (2021) by examining 'Consumer Protection Law for Advertising Damage Based on the Value of Justice in Indonesia' showed that the existence of Pancasila principles which are conceptualized into legal principles is a condition sine qua non, because they contain moral and ethical values that direct the formation of laws that meet philosophical, sociological values. and juridical. Based on the background and the previous studies above, this present study aims to examine the philosophical nature of consumer legal protection in relation to harmful advertising.

## **METHOD**

The method used in this study is normative legal research. According to Marzuki (2014), legal research, rule of law, legal foundations and law is a doctrine to answer the legal questions. Normative legal research is the normative interpretation of law as an ideal value system and law as a conceptual system Law is a positive legal system. Forensic investigations are underway to identify new ones Arguments, theories, or concepts as prescriptions for problem solving (Qamar, 2017). The research data from the approach were analyzed by explaining the data in the form of sentences that were arranged logically and structured to facilitate data transfer and understanding of the data from the analysis or what is commonly called qualitative. The data that has been collected is then sorted to be analyzed problem by problem based on the research topic and linked to the opinions of legal experts. This data sorting is intended to determine the data that already has certainty of its validity. Furthermore, the data from the analysis were compared with existing valid data from previous research results in the same domain to determine the level of validity, logicalness, and continuity of the data from the analysis with the research topic. In the final stage, the research data are presented in a structured manner in a scientific article

## **DISCUSSION**

### **Legal Protection of Consumers in Advertising Activities Based on Indonesian Laws and Regulations**

According to Hadjon (2011), legal consumer protection can be preventive or repressive. With regard to consumer protection in advertising, a legal representative must be present in existing laws and regulations. However, the provisions of this law do not protect consumers from advertising activities, as the provisions of the Consumer Protection Act refer to products and not to advertising information. Advertising activities must represent the interests of consumers and therefore deserve special attention from the government. Therefore, this section aims to outline consumer protection with respect to advertising activity in existing consumer protection laws and regulations Law No. 8 of 1999 contains consumer protection laws. It is an umbrella for other consumer laws while standardizing legislation to enhance enforcement of consumer protection law. The Consumer Protection Act is a special law for the requirements of the former Consumer Protection Act (Sidabalok, 2006). In accordance with the legal principle *lex specialis derogat legi generali*, provisions other than consumer protection laws are in effect unless they are expressly regulated by consumer protection laws or contrary to consumer protection laws. It is included in Article 64 Chapter XIV of the Transitional Clause, which

identifies all the provisions of consumer protection laws and regulations that existed at the time this law was passed. It is contrary to the provisions of this law.

The ban on entrepreneurs in connection with this advertising activity begins with Article 8, which prohibits entrepreneurs from producing goods or services that do not comply with the promises expressed in the advertising or promotion of goods and/or benefits. It requires companies to be honest with consumers about what is being advertised so that they do not offend consumers. Given the content of the provisions of Article 9, this is a form of prohibition aimed at maintaining and operating businesses that misappropriate, promote, promote goods and/or services and as such have achieved specific quality standards, discounts on excellent and new goods. terms, purchased and had sponsors, no hidden defects, assembly of certain items or how it is from a specific place.

As regards the prohibition of offering, promoting, advertising good and bad services, and because they are objects in a specific area, it regulates "Designations of Origin and Geographical Indications" in the field of intellectual property rights within the meaning of Act No 2001, which means that In addition to violating the provisions of the Consumer Protection Act, entrepreneurs may be prosecuted in accordance with Act no. 15 of 2001 on brands, as it was considered to mislead consumers about the origin of the brand. Beware of the content of Article 20 of the Consumer Protection Act which can be qualified as limiting advertising companies, i.e. companies that produce an advertisement, for which advertising companies must be liable if advertising harms consumers.

The burden of such a responsibility does not have to be borne by the advertising company simply because the company that has the goods and services is the most responsible. The information provided by the advertising company comes from business entities, unless the advertising company advertises the information it provides. However, until the advertising company changes the information material, the advertising company cannot, of course, be held liable. However, this form of liability is not regulated by the Consumer Protection Act.

Advertising companies are certainly creative, but the invention is endorsed by the business owners who own the product, because an interested company that knows the benefits of an advertising company is not an advertising company. So, for the most reliable advertising information, it's not the company's request, but the company that owns the product, unless the advertising company has the data. Therefore, the law must provide for the responsibility of the company that owns the product to protect the interests of consumers in its advertising activities.

Like with the provisions in article 9, article 10 Consumer Protection Act also concerns prohibitions that focus on the behaviour of business actors whose purpose is to strive for orderly trade and a healthy business climate to preserve products traded in the community in a way that does not violate the law. Additionally, since the arrangements of article 10 contain a preclusion on offering, advancing, publicizing, or offering false or misdirecting expressions against specific labor and products, it naturally forbids in this article concerning the issue of portrayal as framed in article 9. Article 11 actually concerns the instance of the inappropriate show done by business entertainers, as in the arrangements of the past articles. Along these lines, article 11 examines denials that, as well as being aimed at the way of behaving of business entertainers, are additionally disallowances focused on methods of offer made by business actors.

As can be seen from researchers, in Article 19 suggest that the commitment of business operators does not reveal aids in the small fact that the obligation defined in Article 19 is limited by business operators' liability to incomplete. things. As at the moment of routing, customers have bad intentions. This course of action does not hide the obligation of entrepreneurs to inform about facts that are harmful to buyers. As such, this text certainly limits the obligation of business operators shortly after the exchange, as this text is necessary to guide the addition of normal transactions with the help of buyers. The provisions of Article 19 cannot be used as a basis for consumers to be held liable to traders infringed by advertising information. In his conception of justice, John Rawls shows that justice is the highest virtue of social institutions, as is the case with the system of thought.

However elegant and economic the theory may be, it must be rejected or changed if it is not true; For more laws and institutions, both effective and proper, they should be amended or repealed if they are unreasonable (Rawls, 1999).

### **Consumer Protection in the Philosophical of Pancasila Prespective**

As a product of the Consumer Protection Act, the passing of the Consumer Protection Act should provide a philosophical basis for the values enshrined in Pancasila and the 1945 Constitution of the Republic of Indonesia. The Consumer Protection Act is reflected in the considerations, particularly in sections A and D. A) The goal of national development is the realization of a just and prosperous society that is materially and spiritually just in the era of economic democracy based on Pancasila and the Constitution of the Republic of Indonesia in 1945; Increase the concern, capacity and independence of consumers to protect themselves and develop the attitude of responsible businesses.

However, the description of the provisions in this Consumer Protection Act does not optimally protect the consumer by the principles and values contained in Pancasila and the Basic Law of the Republic of Indonesia of 1945, especially the second and fifth measure. The second commandment had human values such as (a) recognition of human dignity and (b) fair treatment of people (Hamidi & Lutfi, 2010). Moreover, the values contained in the fifth system are (a) to illuminate the attitude of justice towards others, (b) to illuminate the noble deeds which reflect the attitude and atmosphere of being aligned with the family, and (c) development and development is love for. Further, with respect to the rule of law itself, the second commandment: A just and civilized humanity becomes the foundation of a rule of law that respects and protects human rights without discrimination, and the fifth commandment: Social justice for all Indonesians becomes the political foundation of law. In the life of a socially just society, so that the socially and economically weak are not arbitrarily oppressed by the strong (Safa'at, 2013).

From the above two principles, human rights including consumer rights related to consumer advertising activities have been recognized. If the information contained in advertising is harmful to consumers, consumers have the right to receive accurate information and to receive compensation from businesses. Therefore, consumers must receive legal protection so that they are not treated arbitrarily by commercial actors, socially and economically, above the consumer. The values contained in Pancasila should be reflected in the provisions of consumer protection laws. When it comes to consumer protection, which Pancasila contains, it has to be about the values of justice. The question of justice is essential for Pancasila to have two principles that pay attention to justice. The focus on consumer protection provisions in the Consumer Protection Act does not justify consumers, particularly in the case of advertising.

As a legal spirit, Pancasila can have a constructive and regulatory function. Pancasila, through its constructive role, determines the basis of the legal system, which gives meaning and meaning to the law itself. Without the basis provided by Pancasila, the law loses its purpose and meaning as law. Pancasila has its regulatory function and determines whether the law is fair or unfair as a product. Pancasila, like the basic norm that makes up the Constitution, determines the content and form of the various underlying statutes, which are perfectly organized hierarchically. In a hierarchical arrangement, Pancasila ensures compatibility or non-conflict between multiple rules and regulations, both vertically and horizontally. Consequently, there is no conflict between the norm and the higher hierarchical legal norms, especially in the case of Pancasila (Istislam, 2012). If it is not horizontally harmonized with relevant laws or other laws, the law will not work properly (Amrullah, 2007). In addition, to the unclear penalties and inconsistencies of the Consumer Protection Act itself, Article 54 of the Consumer Protection Act and Article 56 of the Consumer Dispute Resolution Agency's decision, the liability provisions of commercial actors are limited to only 7 days. It has been. Is considered final and binding, but in the next article you can challenge the conclusions of the consumer dispute resolution body in court. Pursuant to the provisions of Article 56 of the Consumer Protection Act, Law No. 1 of the Supreme Court of the Republic of Indonesia in 2006 discusses the process of bringing a legal action to reconsider the decision of the Dispute Settlement Body Affects unprotected

protection of consumers in advertising activities.

These provisions contradict the values of Pancasila, which strongly support the values of justice, even the contradictions of the Consumer Protection Law both in the law itself and between the Consumer Protection Law and Circular No. 1 of the Court of Cassation of 2006. Position It is clear that the circular of the Court of Cassation No. 1 of 2006 Subject to law so that it can be invalidated for legal reasons.

Based on the Congress of Pancasila, held from 30 May to 1 June 2009, it was concluded that Pancasila is a national legal policy and guideline, which requires the development of federal legislation resulting in:

Preserving the integrity of the nation, both ideological and territorial.

based on efforts to establish democracy and democracy at the same time;

based on efforts to bring justice to all Indonesians;

That is, based on the principle of acceptable religious tolerance.

Therefore, the formation of law should focus on the various principles of legislation, as well as the type and content of the hierarchy. Therefore, the constitution of Indonesian law should be based on the Basic Law of the Republic of Indonesia in 1945 and reflect the character of the Indonesian state based on Pancasila.

Pancasila is the primary source of content in legal education and serves as a philosophical reference in the constitutional examination of legal norms. Therefore, consumer protection laws need to be evaluated and investigated. The spirit and content are based on Pancasila's values of consumer protection in advertising. According to [Siahaan \(2012\)](#), this is not appropriate for the promulgation of the Basic Law of the Republic of Indonesia from 1945. The reasons are as follows:

lack commitment of the law.

Limitations of learning legal skills.

The root of the problem to be solved and the solution to it cannot be formulated.

Indonesia as a rule of law means that no decision is taken solely on the basis of power, consumer protection in basic and philosophical advertising activities that can be used as a source of the right to rebuild the consumer protection law, Pancasila is the legal norm and constitution of the Republic of Indonesia in 1945 as a source of national law.

## **CONCLUSION**

Consumer protection regulation in Indonesia is relatively weak. Take a look at the current regulation that advertising companies that do not have legal liability for businesses that publish products advertised by advertising companies are solely responsible for the loss of consumers through advertising. Of course, the philosophical aspect that is present when looking at Pancasila's perspective is principle 2 and principle 5, which have human rights elements. What the aggrieved consumer has is partly adjusted to pay by the advertising company, while those involved cover the business of the advertised products/services. The principle of justice concerning the rights and obligations of entrepreneurs is therefore not balanced. More precise measures are needed to strictly control of companies that harm consumers by advertising to broadcasters. In practice, this may be legal knowledge for consumers, law enforcement authorities, businesses or broadcasters to pay attention to the advertising that is broadcast so as not to cause consumers to lose consumption right products and services produced by businesses.

## **REFERENCES**

- Amrullah, M. A. (2007). *Politik Hukum Pidana dalam Perlindungan Korban Kejahatan Ekonomi di Bidang Perbankan*. Malang: Bayu Media Publishing.
- Armia, M. S. T. (2008). *Perkembangan Pemikiran Teori Ilmu Hukum*. Hoboken, NJ: Pradnya Paramita Jakarta.
- Hadjon, P. M. (2011). *Pengantar Hukum Administrasi Negara*. Yogyakarta: Gajah Mada University Press.

- Hamidi, J., & Lutfi, M. (2010). *Civic Education : antara Realitas Politik dan Implementasi Hukumnya*. Jakarta: Gramedia Pustaka Utama.
- Istislam. (2012). *Sanksi Paksaan Pemerintah dalam Perlindungan dan Pengelolaan Lingkungan Hidup*. Universitas Airlangga.
- Mahaputra, I. G. A., Warka, M., Prasetyawati, E., & Mahendrawati, N. L. M. (2021). Consumer Protection Law for Advertising Damage Based on the Value of Justice in Indonesia. *International Journal of Multidisciplinary Research and Analysis*, 04(09), 1230–1235. doi:10.47191/ijmra/v4-i9-06
- Marzuki, P. M. (2014). *Penelitian Hukum*. Jakarta: Kencana.
- Nugroho, S. A. (2008). *Proses Penyelesaian Sengketa Konsumen Ditinjau Dari Hukum Acara Kendala Implementasinya*. Jakarta: Kencana Prenada Media Group.
- Prastyanti, R. A., Yafi, E., Wardiono, K., & Budiono, A. (2021). The Legal Aspect of Consumers' Protection from Pop-Up Advertisements in Indonesia. *Lentera Hukum*, 8(1), 73. doi:10.19184/ejlh.v8i1.23479
- Qamar, N. (2017). *Metode Penelitian Hukum*. Makassar: Cv. Sosial Politic Genius (SIGn).
- Rawls, J. (1999). *A Theory of Justice*. United States of America: Harvard University Press.
- Safa'at, R. (2013). *Rekonstruksi Politik Hukum Pangan : dari Ketahanan Pangan ke Kedaulatan Pangan*. Malang: Universitas Brawijaya Press.
- Siahaan, P. (2012). *Politik Hukum Pembentukan Undang-Undang pasca Amandemen UUD 1945*. Jakarta: Konstitusi Press.
- Sidabalok, J. (2006). *Hukum Perlindungan Konsumen di Indonesia*. Bandung: PT. Citra Aditya Bakti.
- UUD Negara Republik Indonesia Tahun 1945
- Kode Kriminal
- Kode Sipil
- Undang-Undang Republik Indonesia Nomor 7 Tahun 1996 tentang Pangan
- Undang-Undang Republik Indonesia Nomor 8 Tahun 1999 tentang Perlindungan Konsumen
- Undang-Undang Republik Indonesia Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik