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After Sale Service to Imported Goods in Realizing Law Enforcement of Consumer Protection

Wulanmas A. P. G. Frederik^{*}

The prominent issue in globalization era is the emergence of great attention to the issues of the law enforcement of consumer protection and the distribution of the incoming imported goods freely to Indonesia. The impact of open economic embraced by Indonesia causes the swift flow of goods and service into Indonesian territory. The effect of Indonesia in international economy is insignificant, but in contrary, the effect of International economy to Indonesian economy is highly significant. Consequently, the insignificant Indonesian effect on international economy causes Indonesia is having difficulty to compete in international trade. Therefore, Consumer Protection Act becomes public needs for protection and promotion of human interest as the consequence of the selling and purchase transaction of imported goods. The After Sale Service for imported goods is one of aspects covered by consumer protection as sellers have obligations to deliver the goods and is responsible for losses incurred by consumers due to use of the goods. This article would examine how law enforcement of consumer protection can be against after-sales service issues.

Keywords: *Law Enforcement, Consumer, Businessmen, Imported Goods*

I. Introduction

The issue of "after sale service" is the consumer protection issue inseparable from the stages of consumer's transaction because it frequently occurs that as the after sale service is over, the obligation of businessmen to the defect product is also over. Therefore, it results in loss borne by consumers because of the difficulty to get the parts of the product after the warranty period expires.

Imported good trading passes transaction stages, that is: Consumer's Pre-Transaction, Consumer's Transaction, and Consumer's Post-Transaction Stage.

Between one stage with each other is not explicitly separated from each other, or in one moment, it can include the three stages at once. In pre-transaction stage, consumer is still in the process of searching information on a product; borrowing, buying, renting, or leasing. Here, consumers need accurate information on the characteristics of

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a good and or service. Right to be informed of consumers really plays an important role and should be respected, both by businessmen and consumers. Consumers do transaction with businessmen in an agreement (selling-buying, renting, or others). The parties should have good will in accordance with their capacity respectively. In developed countries, consumers are given opportunity to consider whether to decide buying/using a product or service in certain range of time or to cancel it. After sale service is the stage when seller promises several free services in certain period of time.

Indonesia adheres to an open economy, so it frequently carries out flow of goods, services and capitals to foreign countries. The influence of Indonesia in international economy is insignificant, but in contrary, the influence of International economy to Indonesian economy is highly significant. Consequently, the insignificant Indonesian effect on international economy causes Indonesia having difficulty to compete in international trade. It can be seen from producing goods for export to foreign countries until the legal policies relating to the circulation of goods in and out as though it is difficult to reach. Moreover, there is no attempt to consider or assess the appropriateness of the goods imported into Indonesia so that imported goods freely enter Indonesia. Even if the imported goods are allowed to enter after going through an assessment of the feasibility of such goods, consumer still experiences losses due to the lack of the officers' thoroughness in assessing the appropriateness of the goods.

Consumer protection is a prominent issue in the globalization era that concerns all parties. Actual consumer protection issues are not only due to the frequent issue of consumer protection as a political tool to fulfill the economic will of developed countries in international trade, but due to the increasing demand of the protection and promotion of the humanity interests as a result of buying and selling goods, particularly imported goods.

In the sale and purchase transactions, there are the rights and obligations of the parties bound to the transaction. Instead of the obligations as a buyer or a consumer to give some money, there are also obligations of the seller or business to deliver the goods and is responsible for losses incurred by consumers due to use of the goods.

The effect of an open economy on imported goods trade circulated

in Indonesia provides a broad impact on economic development so that the existence of the principles and objectives of consumer protection, consumer protection standards, consumer rights and consumer dispute resolution contained in the Consumer Protection Act still have to prove its existence in practice to protect consumers in order to create a fair and prosperous society. In line with global economic developments, the law must be able to accommodate after-sale service issues as part of product responsibility. Therefore, the question is: How can law enforcement of consumer protection be against after-sales service?

II. Consumer Protection and After Sale Service to Imported Goods

The word "consumer" is derived from the Consumer (British-American) or Consument/Konsument (Dutch). Consumer or consument definition can be seen by its position. Literally, the word consumer is (as opposed to the manufacturer says) every person using the goods. As for determining which groups of consumers are included, it can be seen from the intended use of goods and services. The English-Indonesian dictionary gives the meaning of the word consumer as a user or consumer.

Consumer definition in Indonesian positive law includes:

1. Act No. 10, 1962 (LN 1961 No. 215) on the Goods. In this Act, it is mentioned about the people who want to be kept by the Act to guarantee their health and safety. The explanation of this law declared on the people jeopardized their health and harmful others due to poor quality or not good goods. Thus the law is intended to regulate the quality, composition and packaging materials. Quality settings, the composition of materials, and packaging of goods are aimed at those whose activities concerning the manufacture or packing of goods, namely the businessmen or entrepreneurs. The sanctions contained in section 9 which says that the act violates the provisions in the economic field that includes economic crimes to those who run businesses or business activities. This includes protecting the people's health and safety from inferior goods or poor quality goods for the people as users of the goods. From the description, it is known that there are people as the users of goods and/or services, as well as entrepreneurs or business as goods and/

or services maker with their respective obligations.

2. Act No. 23, 1992 (LN No. 100, 1992) on Health; this Act does not use the term consumer, but using the term "everyone" (in Article 1 paragraph 1, Article 3, 4, 5, and 56), and also use the term "community" (Article 9, 10, and 21). In explanation of the law, society, or people are individuals, families of community groups, and community as a whole (Explanation of Article 10 Act No. 23, 1992). This may imply that individual interests may be equal or not equal to group interest. Interest here is to meet his/her own needs, family, or household that becomes his/her responsibility so that the protection is required in order that the products used give benefit for the safety or security of body and soul, instead of causing illness, death, and loss materially. The necessary protection is to stay in business, they are not competed unfairly, dishonestly, and other fraudulent business practices that may disturb their business. The confusion of the term or use of terms and various definitions cause more doubt than legal assurance.
3. Act No. 14, 1992 (LN No. 49, 1992) of the Traffic and Road Transportation; this Act uses the term Service User (Article 1, point 10) and is defined as any person or legal entity that uses the transport services, both for the transport of persons and goods. Transport users can be individual (human nature) or company both appointed as the creation of law (legal entity) and not. Unfortunately, the formulation in this legislation, that has approached the needs, is not followed by further details related to the existence of different interests.
4. The Civil Law Code (Civil Code); In the Civil Law Code, the term used is "buyer" (Article 1460, 1513, and so on jo. Article 1666), "tenant" (Article 1550 and so on Article 1548), "grantee" (Article 1670 and so on jo. Article 1666), "the borrower to use" (Article 1743 jo. Article 1740), and "borrower" (Article 1744). Whereas in the Commercial Law Code (The Commercial Code), the term "insured" (Article 246 and so on), "passenger" (Article 393 and so on jo. Article 341). Buyers, Renters, Grant Recipients, Borrowers to Use, Borrower, insured, or passenger on one side is the end user, but on the other hand they can also be interpreted as entrepreneurs. In the development of the new law, the term consumers has been used in the court decision: Supreme Court Decision, dated March

- 4, 1987 No. 34 PK/Pdt/1986 in the case of the brand Ratu Ayu, between PT. Rama Pharmaceuticall Industri against Martha Tilaar and the Government of Republic of Indonesia cq Ministry of Justice of Republic of Indonesia cq Directorate of Patents and Copyrights. In its legal considerations, the Supreme Court stated: "Act No 21, 1961 has the objective to protect consumers (the public) as well as the first user ...".
5. Act No. 8, 1999 on Consumer Protection, Article 1, point 2 states: The consumer is "any person as users of goods and/or services available for public, whether for themselves, family, other people and other living beings and not for trading". Meanwhile, in the explanation, it is stated that the definition of consumers in this law is the end user, that is the end user or beneficiary of a product, and usually distinguished by a "intermediary user" the consumer who uses a product as part of a production process of other products. In Article 1, point 3 of Act No. 8, 1999, stated: "The businessman is any individual or business entity, whether a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or jointly through agreement to carry on business in various economic fields".
 6. The definition according to the laws of other countries: as a comparison, we can see the definition given by other countries especially those included in the legislation. In other countries, it is usually distinguished between "intermediary user" and "end user". The formulations are clearly defined in the general provisions of the legislation, and some others are contained in articles that form a legal relationship, such as:
 - a. Common Wealth of Australia in Trade Practices Act 1974/1977; Article 4B paragraph (1) defines consumer, that: "every person who gets the goods or services with a maximum price of A \$ 15,000 or if the price exceeds that amount. Goods or services are generally used for personal, family, or household".
 - b. (US) Magnusson-Moss Warranty, Federal Trade Commission Improvement Act 1975 PL 93-637, Sec: 101 (1), provides the limitation on consumers: "every buyer of products which are not for resale and generally used for personal, family or household."

- c. BW (new) Netherland (NBW) Book 6 Article 236; "Consumer is defined as the natural person (in an agreement), not acting as a profession or the people who run the company".
- d. Hire-Purchase Act 1964 (Britain); In the jurisprudence of the case *Stevanson Vs Buver*; *eu Burtick Ltd* in 1976, end user is "any private purchaser at the time of purchase that particular item, do not run a trade business or finance either partially or fully of certain goods bought."
- e. Consumer Protection Act 1986 (India); Article 7 of the letter C (1) states that the consumer is "any person as the buyer of agreed goods, related to the price and method of payment, but excluding those who received the goods for resale or other commercial purposes.

The provisions of the five countries suggest that consumers are defined in the legislation of each country as "end user". The classification of consumer types of; Intermediary User and End User is necessary in order to determine the nature of the legislation. If the legislation is intended to parties whose position is balanced, then it is to regulate, and if the legislation is aimed at the weak ones who have to deal with the stronger party, it is to protect. This has become one of the considerations of the issuance of Resolution BB Bo. 39/248 of 1985 on Consumer Protection, which states that consumers are generally weaker in education, economic, and bargaining power.

The activity of providing and using goods and services produced involves producer parties (private companies or public authorities). Public authority which is run by the state under the law is to harmonize their legal relations and problems between businessmen and consumers.

Regarding what law applies, it can be seen in Article 64 of Act No. 8, 1999, which states:

"All the laws aimed to protect consumers which are not available when this law was enacted are stated to still apply as long as it is not regulated in particular and/or not in contrary with this law."

Thus, legal principles still apply in legal relation and the problems related to consumers.

In terms of the limitation in the definition of Consumer Protection

Act according to A.Z. Nasution is "the whole principles and rules of law regulating and protecting based on the relation and problems of providing and using consumer's products between the providing and the using in people's life."

The principles and rules of general law that can be applied in Consumer Protection Act are included in civil law both written and unwritten (such as transparency principle), Penal law is included in KUHP and out of KUHP (Penal Code) (Presumption of Innocence), Administration and International Law (International Civil Law).

"After Sale Service" is defined by Kamus Besar Bahasa Indonesia as: further service after transaction including warranty.² Ordinary After Sale is usually called After Transaction or after sale service, in which sellers promise several free services in certain period of time.³

The definition of "goods" is anything both tangible and intangible, moving and non-moving, can be spent and not spent, can be traded, used, or utilized by consumers (Article 1, section 4, Consumer Protection Act).⁴

Meanwhile, "Import" according to Kamus Besar Bahasa Indonesia, that is: the incoming trading goods from abroad.⁵ Furthermore, "Importing Goods" is the activity to get goods into custom area.⁶

The term "Consumer Law" and "Consumer Protection Act" are familiar. A. Z. Nasution stated that "Consumer Protection Act" is the part of consumer law including the principles and rules having the properties to regulate and to protect consumers' interests.⁷ In addition, "Consumer Law" is defined as the whole principles and rules of law regulating the relationship and problems among parties each other related to consumers' goods and or services in life socialization.

Consumer's transaction is an engagement, that is: civil engagement. In civil law viewpoint, consumer transaction engagement is not just happened.

Consumer engagement is the implementation of previous engage-

² Kamus Besar Bahasa Indonesia, Third Edition, Balai Pustaka, 2000; p. 910.

³ Ade M. Suherman, *Aspek Hukum Ekonomi Global*, Ghalia Indonesia, Bogor, 2004; p. 102.

⁴ Consumer Protection Act No. 8, 1999.

⁵ *Op cit.* p. 427.

⁶ Shidarta, *Hukum Perlindungan Konsumen*, Grasindo, Jakarta, 2000; p. 168.

⁷ *Ibid.*

ment that can be called consumers' pre-transaction. After consumer's transaction is performed, there are still other engagements to fulfill by both parties that can be called consumer's post-transaction or after sale transaction.

Concerning the points of rights and obligation of consumers and producers, there are several stages of transaction between consumer and producer. The stages can be classified into three stages:⁸

1. The Stage of Consumer's Pre-Transaction

Between one and another stage, they are not strictly separated one each other or one moment can cover the three stages at once. In this Pre-Transaction stage, consumer is still in the process of finding information for a good; borrowing, purchasing, renting, or leasing. Here, consumer needs accurate information on a good or service. Right to be informed really play an important role and must be respected both for businessmen and consumers.

2. The Stage of Consumer's Transaction

Consumers do transaction with businessmen in an agreement (selling and buying, renting, or other forms). Between the two parties, they must have a good will in accordance with their each capacity. In developed countries, consumers are given opportunity to consider whether to decide buying/using a good and or service in certain period of time or cancel it.

3. The Stage of Consumer's Post-Transaction

This stage can be called after sale service in which sellers promise several free services in certain period of time.

III. Juridical, Social, and Economic Basis of Consumer Protection Act

Act No. 8, 1999 on Consumer Protection had been legalized through a long struggle of consumer's movement for almost three decades. The presence of the Consumer Protection Act (UUPK) was worried by producers and businessmen who feared that their businesses would be out of business because it is affected by the terms contained in the Consumer Protection Act. However, the Act No. 8, 1999 has a provision stating that "all existing laws relating to consumer protection and

⁸ A.Z. Nasution, *Hukum dan Konsumen*, 1995, p. 38-39.

remains effective, to the extent not in conflict or have been specially regulated by the Law" (Article 64 of Act No. 8, 1999).

Act No. 8 year 1999 is based the law contained in Indonesian Constitution (UUD 1945), and the opening of the fourth paragraph that reads: "... then to form a Government of Indonesia which shall protect all the Indonesian people ...". The sentence contains the principle of legal protection for all Indonesian without exception, whether male or female, rich or poor, urban or rural people, and businessmen or consumers.

The other legal basis is in Article 27 paragraph (2) of Indonesian Constitution (UUD 1945) which reads: "Every citizen is entitled to a decent livelihood for humanity". A decent living is a fundamental right for people as a whole so that if someone is bothered or harassed by the other party, the state will protect against or prevent the occurrence of the disturbance either solicited or unsolicited.

In realizing this, the Indonesian government through the Constitution (UUD 1945) protects Indonesian people, especially to protect consumers. The House of Representative (MPR) also has issued a variety of statutes. As an embodiment of the implementation of the above mentioned, MPR established a variety of laws that aim to increase production and protect consumers, such as:

- a. Legal Metrology Act (Act No. 2, 1981)
- b. Environmental Act (Act No. 4, 1989)
- c. Press Provision Act (Act No. 21, 1982).
- d. Industrial Act (Act No. 5, 1984)
- e. Apartment Act (Act No. 16, 1985)
- f. Traffic and Road Transportation Act (Act No. 14, 1992).
- g. Health Act (Act No. 23, 1992)
- h. Patent Act (Act No. 7, 1996)
- i. Consumer Protection Act (Act No. 8, 1999)

The struggle of those who are in favor of the consumer care over the movement of consumers in other countries had succeeded in bringing the rights and interests of consumers judicially recognized. This is evident with the inclusion of the rights and interests of consumers in the various regulations of the country concerned. It has been a worldwide movement so that the United Nations responded with Resolution No. 29/248, 1985. It is a challenge for society and the government of

Indonesia in terms of implementation and law enforcement of consumer protection. In Indonesia, the consumer protection movement that was driven by the Indonesian Consumers Foundation (YLKI) since 1973 has paid off by legalization of Act No. 8, 1999 on Consumers Protection that is expected to protect the rights and interests of consumers. In reality, until the issuance of Act No. 8, 1999, consumers do not get an equal proportion in the interaction (trade relations) with producer. Their powerlessness in an unfavorable trading system has put consumer as a community group that must be defended. In terms of positive law, namely Decree No. MR. II/MPR/1983 about GBHN in Chapter IV (the Sixth Five-Year Development), the letter F (the wisdom of the Sixth Five-Year Development), which is indicated as the interests of consumers such as:

- a. Producing quality goods;
- b. Improving the quality and even distribution of education;
- c. Improving the quality and even distribution of health care coverage;
- d. Improving people's nutrition;
- e. Improving the quality of forests and the environment;
- f. Minimum requirements for residential housing and a decent, healthy, safe, and environmentally friendly;
- g. Reasonable price and affordable by the community;
- h. Transport system which is orderly, smooth, safe, and comfortable
- i. Foster healthy competition;
- j. Increasing the awareness of law, legal security, legal protection and legal services.

The ten points of instructions outlined above, is actually the general conditions for achieving well-being of families highly relevant to the interests of consumers. In the Civil Law Code (Civil Code), legal remedy is available for consumers to hold a legal relationship with the providers of goods or services they need. The broader interests of consumer as defined in UN Resolution 39/248, 1985. Guidelines for Consumer Protection In part II (General Principles), number 3, states that the interests of consumers (Legitimate Needs) are:

- a. Consumer Protection from dangers to their health and security;
- b. Promotion and protection from consumer's social and economic interests;
- c. The availability of adequate information for consumers to provide

their ability to make appropriate choices in accordance with personal needs and desire;

- d. Consumer's education
- e. The availability of effective compensation;
- f. The freedom to establish consumer organization or other relevant organizations giving the chance to the organization to convey their opinion in the process of decision making related to their interests.

Indonesia is one of the countries that gave consent to the ratification of the resolution and put it into the national law. The Resolution, then, underlie the issuance of national legislation (mentioned above) which aims to protect the user (consumer) of goods and services.

From the formulation in the various regulations, then it was refined in a single statute, which is more specific, the Act No. 8, 1999 on Consumer Protection. One of its provisions is to regulate the rights and obligations of consumers.

Article 4 of Act No. 8, 1999 regulates the rights that should be obtained by consumers, such as:

- a. The right to comfort, security, and safety in the consumption of goods and/or services.
- b. The right to choose the goods and/or services and obtain goods and/or services in accordance with the value and condition, and guarantee promised;
- c. The right to correct, clear and honest information about the condition and security of goods and/or services.
- d. The right to be heard the opinions and complaints on goods and/or services used;
- e. The right to advocacy, protection, dispute resolution and consumer protection efforts are worthy;
- f. The right to obtain guidance and consumer education;
- g. The right to be treated or served properly and honestly and not discriminatory;
- h. Right to any compensation, damages, and/or replacement if the goods and/or services received are not in accordance with the agreement or not as it should;
- i. The rights stipulated in other legislations.

IV. The Concept of Ethical Values in Business

Veronika Komalawati stated that Ethics is the guidance, standard, and measurement to assess human's behavior both good and bad applied in general in social life⁹

Ethics has in-depth value and influences the whole aspects of human's life, and control the most fundamental human's life. Ethics comes from consensus and the effect applies from generation to generation

When a violation occurs, the psychological-moral sanction is isolation from society.

Then, according to I. Gede A.B. Wiranata, Ethic is always related to ideal consumers including ethical arrangement in socialization underlying the behavior to realize human's social relationship structure based on standardized, ideal, and harmonious principles when performed.¹⁰

As stated by Magnis Suseno, ethics is a science and not a teaching, whereas Morality is a concrete guidance which is ready to use on how we should live. In addition, ethics is the criticized and rational manifestation of moral teaching we can use.¹¹ However, both of them have the same function to provide orientation on how we should step forward in this life. Concerning the importance of ethic, there are a few reasons to recognize;¹²

- a. In making decision, we must concern ethics related to noble values in doing in somebody's life and various principles underlying the realization of those values in all kinds of interaction and interpersonal relationship;
- b. Every kinds of cooperation by a group of people is based on convention, habit, and mutual agreement so that the application of ethics in all aspects of living and life experience are the subjects to concern;
- c. Ethics can be a behavior guidance and controller;

⁹ Veronika Komalawati, *Hukum dan Etika dalam Praktek Dokter*, Sinar Harapan, Jakarta, 1989; p. 39

¹⁰ I. Gede A.B. Wiranata, *Etika, Bisnis, dan Hukum Bisnis (Sebuah Pemikiran Awal)*, Lampung University, Bandar Lampung, 2007; p. 7

¹¹ Franz M. Suseno, *Etika Dasar, Masalah-Masalah Pokok Filsafat Moral*, Yogyakarta, 1987; p. 14.

¹² A. Sonny Keraaf, *Etika Bisnis (Membangun Citra Bisnis sebagai Profesi Luhur)*, Yogyakarta, 1993; p.47-48

d. Ethics indicates the fundamental value of human life.

The attention to business ethics has existed since the development of the business itself, and since the business has emerged as human's efforts to fulfill their needs. Since then, ethics always accompany business activities.

A contradiction frequently occurs that ethics and business are two different things and separated one and each other. Therefore, business cannot be valued from the viewpoint of ethics. However, there is a reasonable argument stating that basically in running business, ethics is required, namely:

- a. Business is not only for profit, but it needs to consider humanity values, otherwise it will sacrifice people's life. Therefore, people have interest in order that business is run ethically.
- b. Business is conducted between one and another human so that it requires ethics as the guidance and orientation for decision, activities, and human's behavior in having business relationship one and each other.
- c. Today, business is performed in a very tight competition, so businessmen competing by considering ethical norms in a more professional business atmosphere will be the winner;
- d. Legality and morality are related, but different one and each other because an activity received legally is not always accepted ethically;
- e. Ethics must be distinguished from empirical science based on repeated symptoms or facts occurring everywhere will result in a scientific law applied universally;
- f. Special situation causing exception to ethics cannot be the reason to assess that business has nothing to do with ethics;
- g. Protest action everywhere indicates that there are still many people and groups of people who require business to do well and consider ethical norms.

V. The Relevance of Consumer Protection Principles in After Sale Service

The regulation of the principles adopted in the consumer protection law is formulated in Article 2 which reads: Consumer protection is based on the benefit principles of justice, balance, security, and safety

of consumers and legal assurance. When looking at these principles, it is based on the explanation Act No. 8, 1999, the five principles relevant to national development are as follows:¹³

- a. Benefit Principle is referred to mandate that all efforts in the implementation of consumer protection should provide maximum benefit to the interests of consumers and businesses as a whole;
- b. The principle of justice is that participation of all people can be realized to its full potential and provide opportunities for consumers and businesses to obtain their rights and to perform their obligations equally;
- c. The principle of balance is intended to provide a balance between the interests of consumers, businesses, and governments in the sense of material or spiritual;
- d. The principle of consumer security and safety is intended to provide assurance on the security and safety to consumers in using, wearing, and taking advantage of goods or services consumed or used;
- e. The principle of legal assurance is intended for businesses and consumers to obey the law and obtain justice in the administration of consumer protection and the State ensure legal assurance.

VI. Consumer Protection Law Enforcement to After Sale Service of Imported Goods

After sales service is consumer's vital interest recently. Rapid technological developments, for example on a computer device technologies or in the fields of electronics such as televisions, often make the manufacturers have to change the types of products to follow the tastes and needs of consumers who continue to change in a short time. Consequently, if there is damage of a type of product, customers often face problems in repairing the goods because of the unavailability of spare parts.

In addition, related to after sale services, it is a matter of warranty within the specified time given by manufacturer/distributor (the seller) of the product or creditor to their customers. Similarly, the responsibility of the manufacturer/supplier (the seller) of the product in fulfilling

¹³ Ade M. Suherman, *Aspek Hukum Ekonomi Global*, Ghalia Indonesia, Bogor, 2004; p. 103-104

the rights of consumers, especially the right to obtain goods/services in accordance with a given exchange rate. Consumers should not be deceived by the quality of goods when they are not. For example, orange juice sold is genuine orange juice, but only the essence of the chemicals. Tissue paper packed in boxes is said weighing 10 ounces, whereas only 9 ounces.

Obviously, this problem requires the role of Business Ethics principles in running a business, such as:¹⁴

- a. Autonomy principle: human's attitude and ability to act based on their own awareness on what they think is good to do
- b. Honesty principle;
- c. The principle of not doing bad and doing good;
- d. Justice principle;
- e. Mutual respect principle.

Business does not merely deal with the increase of sales and significant profit, but also moral aspects. Therefore, it can be said that good business has moral meaning. Business must be ethical based on:¹⁵

- a. God is our judge;
- b. Social contract; living in society means binding ourselves to hold moral values applied in society and dealt collectively. Morality is an absolute requirement that must be admitted by everyone if they want to be in business;
- c. Virtue; it is the highest refinement of human's destiny. Businessmen with modern terminology must have integrity.

Therefore, there was a slogan saying that: Ethics pay, Good business is ethical Business, Corporate Ethics: a prime business asset.

Referring to virtue in ethics, so the Consumer Protection Act No. 8, 1999, divides the norms of consumer protection into two groups;¹⁶

- a. Conduct proscribed for businessmen (Chapter IV of Consumer Protection Act).
- b. Provisions of the inclusion of standard clauses (Chapter V of Consumer Protection Act).

In general, this grouping has not described the relationship chain

¹⁴ Johannes Ibrahim, *Hukum Bisnis Dalam Persepsi Manusia Modern*, Aditama, 2004; p. 35

¹⁵ Bertens, *Pengantar Etika Bisnis*, Kanisius, Jogjakarta, 1969; p. 378-379

¹⁶ Yusuf Sofie, *Perlindungan Konsumen dan Instrumen-Instrumen Hukumnya*, Citra Aditya Bakti, Bandung, 2003; p. 26

between businessmen and consumer, from the production process of goods and services to the consumer's hands, both through transaction and other transfer justified by law. The norms are called businessmen's activities and as a whole, they should be divided into:

- a. Production activities and/or trading of goods and/or services. Article 8 of Consumer Protection Act states that businessmen must not produce and/or trade goods and/or services which:
 - 1) Section (1); do not meet or not in accordance with the required standard and the law; not in accordance with the net weight, net content, and number in calculation as stated in table or label of the goods; not in accordance with the condition, warranty, specialty or efficacy as stated in the label, tag, or the information of the goods and/or services;
 - 2) Section (2); Businessmen must not trade damage, defect, used, and polluted goods with no information completely and correctly on the goods;
 - 3) Businessmen must not trade damage, defect, used, and polluted foods with or without any information completely and correctly.
- b. Offering, promotion, and advertising activities of goods and/or services as stated in Article 9, 10, 13, 15, until 17 of Consumer Protection Act.
- c. Selling transaction activities of goods and/or services (article 11, 14, and 18 of Consumer Protection Act).
- d. Post-transaction activities or after sales of goods and/or services as regulated in Article 25 of Consumer Protection Act;
 - 1) Section (1); businessmen producing the goods with continuous utilization in the period of time at least 1 (one) year shall provide the parts and/or after sale facilities and shall fulfill the warranty in accordance with the promise.
 - 2) Businessmen as stated in Section (1) are responsible for compensation claim and/or consumer's lawsuit if the businessmen cannot provide the parts and/or repair facilities, cannot fulfill or fail to meet the warranty promised.

The responsibilities of producer's and the parties who distribute their products are called product responsibilities.

Article 3 of the European Community Guidance, product responsi-

bility is the responsibility of:¹⁷

- a. The manufacturer of the defective product;
- b. The producer of the raw materials or components of the product;
- c. Anyone who put the name, trade mark, or provide special signs to his/her products with others' products;
- d. Anyone who imports the product to sell, to rent, or to market (without reducing the responsibility of the manufacturer).
- e. Any product supplier, if the manufacturer is unknown, or the manufacturer is known but the importer is unknown.

There is no such regulation on the product responsibility in Indonesia, but the Academic Script Task Team of National Law Building Agency ever suggested developing a new system of legal responsibility on product, but it is just for pharmaceutical products.

The purpose of the development is to:

- a. Provide protection to public on the use of defective pharmaceutical product;
- b. Return public balance because of the use and distribution of defect products;
- c. Facilitate the verification process due to the use of defective pharmaceutical products;
- d. Improve the quality of pharmaceutical products in circulation so as to achieve the purpose of the designation and use.

The responsibility of this product should not be limited to responsibility for defective products. Product responsibility is a part of consumer transactions, which is consumer's post transactions/after sales. Limiting the responsibility of the product, only at the replacement of the defective product, means not to give much progress for protection.

Since from the past, producer has been obliged to ensure the goods they sell are free from hidden defects. This guarantee is an engagement that automatically charged to producers/suppliers of products (the seller) or a creditor. This legislation guarantees in the practice are tried to be minimized with a unilateral declaration (exoneration clause) such as: "The goods have been purchased cannot be returned!"

According to the Consumer Protection Act, the exoneration clause will be removed, although it seems, likely, it is sociologically still widely

¹⁷ Gunawan Widjaja, Ahmad Yani, *Hukum tentang Perlindungan Konsumen*, PT. Gramedia Pustaka Utama, Jakarta, 2000; p. 125-126

used by manufacturers. This is where the need for socialization of the Consumer Protection Act and vigorous consumer education efforts.

In article 19 of the Consumer Protection Act (UUPK), is expressly provided that the business must replace for damage, contamination, and/or losses suffered by consumers from consuming the goods and/or services. The compensation is immediate, and given a period of seven days after the date of the transaction.

Actually, after sales service covers the broader issues and in particular includes the problem of certainty to:

- b. Compensation if the goods/services provided do not correspond to the initial agreement.
- c. The goods used; if damaged, can be repaired free of charge during the warranty period;
- d. Spare parts are always available in sufficient quantities and widely distributed in a relatively long period of time after the consumer transaction is conducted.

In the Consumer Protection Act, after sales service is also accommodated, although only in a few general formulations.

Article 25 Consumer Protection Act states that:

Businessmen who produce goods with sustained utilization within the time of at least one year is required to provide spare parts and/or after sales facilities and shall comply with the guarantee or warranty in accordance with the agreement. Businessmen shall be responsible for compensation claims and/or consumer lawsuit if the businessmen do not provide or fail to provide spare parts and/or repair facilities, and also if they do not fulfill or fail to meet the agreed guarantee or warranty.

It is clear that solving the case of after sales as stated in Article 25 of the Consumer Protection Act still requires effort to prosecution for damages and/or consumer lawsuit.

Article 27 (e) of Consumer Protection Act provides an expired time limit for the prosecution or a lawsuit over the four years since the goods purchased or after the warranty period.

The problem is that businessmen often unilaterally include the warranty period disproportionately. For example, for the warranty to repair electronic devices, it is determined the duration for a month since the

goods be returned. In such a short time, it is very unlikely sufficient for consumers to re-examine the results of repairs as a whole. Therefore, the warranty period also need to set the minimum limits by legislators which depend on the classification (type) of goods or services provided by the businessmen.

Especially for electronics products, after sales service regulations included in Decree of the Minister of Industry and Trade No. 608/MPP/KEP/10/1999 on User Guide (Manual) and Warranty Card in Indonesian for electronic products. The decision stated that the manual and warranty card for certain electronic products needs to be registered. The procedure for registration is set out in the Minister of Industry and Trade Decree No. 7/MPP/Kep/1/2000. The Application for the registration is submitted to the Directorate General of Metal, Machine, Electronic, and Miscellaneous with a copy to the Director of Market Building (for imported products).

The regulation mentioned above, only eleven kinds of electronics which are required to be registered, such as: (1) Radio cassette/mini compo, (2) tape recorder or images reproduction device, (3) television, (4) printer, (5) computer monitor, (6) refrigerator, (7) AC, (8) washing machine (9) gas stove, (10) electric water pump for household, and (11) microwave oven.

In that decision, the reason is not clear why the electronics products required to register only limited to the eleven kinds.

The eleven types of products circulating in Indonesia must also be completed with warranty card in the Indonesian language. The warranty card is valid for at least one year, which shall contain such as information about the free cost of repair during the warranty period and the guarantee for the availability of spare parts.

In the circulation, the electronic products which get the registration mark shall state the registration number on the registration certificate to all manual and warranty card issued by the manufacturer or importer. This obligation applies during the concerned businessmen run their business activities in Indonesia. If there are changes to the content of the manual and/or warranty card as a result of changes or additions to the model (type) of the products, then it shall submit a registration for the change to the same institution.

Businessmen can make application for the registration mark of the

manual or the warranty card, individually and through the associations related to the businesses. The requests can also be done by mail.

The juridical consequences against violations of consumer protection act are as follows:¹⁸

- a. The obligations of businessmen/importer/seller to stop their activities or withdraw the goods from the market, and or;
- b. Providing compensation to the consumer within seven days after the transaction with the burden of proof on the businessmen/importer/seller, and/or;
- c. Criminal charges to the businessmen/importer/seller, with the burden of proof on the businessmen/importer/seller.

In the interest of consumer protection, the Government established the inspection team consisting of police, prosecutors, customs, tax offices, directorate general of industry, metals, machinery, electronics, and miscellaneous, and the directorate general of domestic trade. This team will cooperate with relevant associations of businessmen and Consumer Protection Institution of Non Government Organizations, and the consumer society in general. Businessmen, according to the inspection team, who are in violation, may be the subject to administrative sanction in form of the cancellation of industrial license (IUI) or a list of the industry (TDI). For importers which violate, the penalty is the deprivation of importer identification number (API).

VII. Closing

1. Legal protection for consumer to after sale service is the compensation if the goods/services are not in accordance with the agreement, free repairs during the warranty period if there is damage to the goods and the availability of spare parts in sufficient quantities and in a relatively long period of time.
2. All product responsibility is the responsibility of Manufacturer, Producer, Importer, and Supplier.
3. The purpose of the arrangement of product responsibility is to provide protection to the public about defective products, to restore balance to society due to the use and circulation of defective

¹⁸ Munir Fuadi, *Pengantar Hukum Bisnis dalam Menata Bisnis Modern di Era Global*, Citra Additya Bakti, Bandung; p. 237.

- products, facilitate the verification process due to the use of defective products.
4. The juridical consequences for businessmen who commit violations are administrative sanction in the form of deprivation of industrial license (IUI) and the Industrial Registration (TDI). And the importers in violation shall be sanctioned with the deprivation of Importer Identity Number (API);
 5. It is expected that the court will be better to express the sense of justice for consumer society so that the courts are no longer simply wait for the law as the legal basis in adjudicating disputes/lawsuits filed by the searcher for justice because it is not the time for the court to simply as a "funnel" of law, but the court have to make new breakthroughs for possible misuse of the Monetary crisis as a reason of force majeure for producer/businessmen.

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