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Reformulating Strict Liability and the Reversal of the Burden of Proof in Consumer Dispute Resolution

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Abstract: Consumer protection law seeks to correct the imbalance between consumers and business actors, yet Indonesian law remains ambiguous about the relationship between strict liability and the reversed burden of proof. This article examines how Articles 19, 22, and 28 of Law Number 8 of 1999 interact with Article 163 of the HIR and Article 1865 of the Civil Code, using East Jakarta District Court Decision Number 535/Pdt.G/2022/PN.Jkt-Tim. The study applies normative legal research with case analysis and comparative references to developments in the United States and European Union. It finds that Indonesian consumer law does not establish absolute liability; instead, it combines liability subject to statutory defences with a limited evidentiary shift concerning fault. Judicial practice, however, returns the entire burden to consumers or transfers it wholesale to businesses, producing inconsistent protection and procedural unfairness. The article proposes a proportional three-stage model: consumers first establish transaction, loss, and plausible causation; business actors then rebut fault, defect, or responsibility through evidence within their control; and adjudicators assess all evidence. This model constitutes the study's novelty because it separates substantive liability from evidentiary allocation while integrating consumer access to justice, business due process, and overall legal certainty.

Keywords: strict liability, reversed burden of proof, consumer protection, procedural justice, legal certainty.

INTRODUCTION

National legal development in the economic field cannot be separated from the state's effort to balance the interests of business actors and consumers. In an increasingly open market economy, the legal relationship between business actors and consumers no longer takes place on an equal footing. Business actors, with their command over product information, production technology, distribution networks, and capital strength, occupy a far stronger bargaining position than consumers, who stand at the very end of the consumption chain. It is this structural

imbalance that places consumers as the vulnerable party and therefore in need of special legal protection.

Consumer protection is part of the law that contains principles or rules of a regulatory character and also possesses a character that protects the interests of consumers. Consumer protection law is understood as the totality of legal principles and rules governing the relationships and problems among various parties in connection with consumer goods and/or services within social life. As regulated in Article 1 point 1 of Law Number 8 of 1999 on Consumer Protection, which reads as follows: This constitutional provision affirms that consumer protection is not merely a matter of private law, but also a matter of fulfilling the constitutional rights of citizens, which is the responsibility of the state.

It is here that the state is present for its citizens through legal politics, namely legal policy. Legal politics is the policy taken by the state through state institutions or authorised officials to determine which law needs to be replaced, amended, retained, or which law needs to be regulated, with the aim that such policy may operate well and in an orderly manner so that the goals of the state may be realised. In the context of consumer protection, the legal politics of the state is manifested in the choice to impose the burden of proof upon business actors through a mechanism that departs from the general principle of proof.

These two Articles essentially concern the reversal of the burden of proof in the resolution of consumer disputes, both civil and criminal, whereby the business actor bears strict liability to prove that the business actor did not cause loss to the consumer as a result of using/consuming the business actor's product goods and/or services. This principle is known by the adage *actori incumbit probatio*, namely that whoever asserts must prove.

It is here that the normative conflict (antinomy of norms) lies, which is the root of the problem in this study. Law Number 8 of 1999 on Consumer Protection places the burden of proof upon the business actor (defendant), whereas HIR/RBg and Civil Code place the burden of proof upon the plaintiff as the party asserting the claim. In litigation practice, the application of these two normative regimes gives rise to multiple interpretations. Both in dispute resolution through litigation before the courts and non-litigation before the Consumer Dispute Settlement Body (BPSK), the burden of proof is frequently imposed upon business actors in an overlapping manner without proportional procedure, thereby giving rise to the potential for injustice. To date, there has been no systematic approach bridging the normative protection of consumers with procedural justice for business actors.

The problem becomes increasingly complex because Law Number 8 of 1999 does not specifically and comprehensively regulate the procedural law that serves as the operational basis for applying the reversal of the burden of proof. The provisions of Article 22 and Article 28 merely state that proof is the burden of the business actor, but do not explain at which stage the reversal of the burden of proof occurs, to what extent the plaintiff remains obliged to prove the existence of loss and causal connection, and how the judge must assess the balance of proof among the parties. This legal vacuum in procedural regulation (*rechtsvacuum*) compels the judge to engage in legal discovery (*rechtsvinding*) on a case-by-case basis, which in turn gives rise to disparity of decisions and legal uncertainty.

One concrete manifestation of this problem is reflected in Decision Number 535/Pdt.G/2022/PN.Jkt-Tim. This decision becomes the principal object of study in this research because it contains the problem of applying the strict liability principle and the reversal of the burden of proof, which illustrates the tension between consumer protection and procedural justice for business actors. Through an analysis of the legal considerations (*ratio decidendi*) in that decision, this study seeks to demonstrate how the normative conflict between the Consumer Protection Law and general civil procedural law is manifested in judicial practice, and how such conflict ought to be resolved through a just reformulation.

However, in the practice of litigating under both pieces of legislation—Law Number 8 of 1999 on Consumer Protection and the Civil Code as well as HIR/RBg—this is precisely what forms the basis for the analysis to undertake a reformulation of the application of the strict liability principle of business actors in handling consumer dispute resolution, so that consumers may possess the right to protection and legal certainty in resolving disputes with business actors, without sacrificing the procedural justice that is the right of business actors, and ultimately in line with the role of the state towards its citizens. The reformulation intended is not merely an editorial refinement of the norm, but a conceptual and procedural restructuring of the proof mechanism in consumer disputes so as to achieve a balance among the values of justice, legal certainty, and utility.

METHODS

This study is a normative-empirical legal research. Predominantly, the research is normative in character (doctrinal research), examining legal materials to discover legal rules, legal principles, and legal doctrines in order to answer the legal issues at hand. The empirical dimension is presented in a limited manner to understand the practice of applying the norms in consumer dispute resolution, particularly through the analysis of court decisions. This study employs three approaches, namely: *First*, the statute approach, namely examining all legislation related to the legal issue under study. *Second*, the conceptual approach, namely departing from the views and doctrines developed within legal science in order to discover ideas giving rise to relevant legal understandings, legal concepts, and legal principles. *Third*, the comparative approach, namely comparing the regulation of product liability and the reversal of the burden of proof in several other legal frameworks.

The legal materials used comprise primary legal materials in the form of legislation, jurisprudence, and court decisions; secondary legal materials in the form of books, journals, and prior or earlier research findings; and tertiary legal materials in the form of legal dictionaries. The analysis is conducted in a descriptive-analytical and argumentative manner using a qualitative method, namely interpreting norms and doctrines and connecting them with the legal facts in the decision in order to answer the problems posed. A number of earlier studies have discussed strict liability and the reversal of the burden of proof in consumer protection. Such studies generally affirm that the reversal of the burden of proof constitutes a form of legal favouring of consumers as the weaker party, and highlight the difficulty of its application in judicial practice. Nevertheless, earlier studies have not specifically offered an operational model of the distribution of the burden of proof that balances consumer protection and the procedural justice of business actors on the basis of an analysis of concrete decisions. The position of this study among earlier studies is to fill that gap by presenting a formulation that is not only normative but also applicable and proportional.

RESULTS AND DISCUSSION

Strict Liability, Product Liability, and Evidentiary Allocation

The central conceptual distinction is between a rule governing the substantive basis of liability and a rule allocating evidentiary burdens. Strict liability removes the claimant's obligation to prove negligence, but it does not automatically prove defect, damage, or causation. A reversed burden of proof, by contrast, is procedural: it determines which party must establish or rebut a specified proposition. Treating the two concepts as synonyms obscures the elements of a consumer claim and has contributed to inconsistent Indonesian practice (Gunawan, 2018; Yunitasari et al., 2023).

The doctrine of strict liability first developed within the common law system, particularly through English and American jurisprudence. The historical milestone frequently referred to is the case of *Rylands v. Fletcher* (1868) in England, which gave rise to the principle

that a person who brings and keeps something dangerous on his land is liable for any loss that arises if that thing escapes, without any need to prove negligence. In the context of product liability (product liability), an important development occurred in the United States through the case of *MacPherson v. Buick Motor Co.* (1916) and subsequently *Greenman v. Yuba Power Products, Inc.* (1963). The *Greenman* case affirmed that a producer is strictly liable for a defective product that endangers consumers, without any need to prove the producer's negligence and without the need for a direct contractual relationship between producer and consumer. This doctrine was subsequently codified in the Restatement (Second) of Torts Section 402A.

The application of strict liability in consumer protection is grounded in several rationales. First, the existence of information asymmetry (information asymmetry) between business actors and consumers. Business actors command technical information regarding the production process, composition, and potential hazards of a product, whereas consumers have no access to such information. Under these conditions, imposing the burden of proving fault upon consumers is tantamount to closing off consumers' access to justice.

Second, the principle of the deep pocket theory, namely that business actors are deemed more economically capable of bearing risk and shifting it through insurance mechanisms or incorporating it into the price structure of the product. Third, the principle of risk distribution, namely that the party who obtains benefit from an economic activity ought also to bear the risk arising from that activity. The Regulation of Strict Liability in Law Number 8 of 1999 on Consumer Protection

The Statutory Construction of Business Liability

"A business actor shall be responsible for providing compensation for damage, contamination, and/or loss to consumers resulting from consuming goods and/or services produced or traded." This provision constitutes the principal basis for the liability of business actors for loss to consumers. It should be noted that Article 19 paragraph (5) provides an exception, namely that the compensation provision does not apply where the business actor can prove that the fault was the consumer's fault. This provision shows that the liability of business actors under the Consumer Protection Law is not absolute liability, but strict liability that still provides room for exoneration (exoneration).

Article 19 paragraph (2) determines the form of compensation, namely it may take the form of a refund of money or replacement of goods and/or services of similar kind or equivalent value, or health care and/or the provision of compensation in accordance with the applicable legislation. Article 19 paragraph (3) determines that the provision of compensation shall be carried out within a period of seven days after the date of the transaction. This seven-day limitation in practice gives rise to its own problem, because not all consumer losses can be identified within seven days, particularly latent losses such as health disorders resulting from the consumption of food or pharmaceutical products. This problem shows that the regulation of liability in Law Number 8 of 1999 still harbours a number of technical weaknesses requiring refinement.

It should also be noted that Article 19 paragraph (4) affirms that the provision of compensation does not eliminate the possibility of criminal prosecution based on further proof of the existence of an element of fault. This provision shows that civil liability and criminal liability in consumer protection may run in parallel. The relationship between civil liability and the reversal of the burden of proof in Article 28, and criminal liability and the reversal of the burden of proof in Article 22, demonstrates that the legislator deliberately placed the reversal of the burden of proof as a cross-cutting instrument across fields of law, both civil and criminal. This legal-policy decision reflects the state's determination to provide maximum protection to

consumers, but at the same time gives rise to a constitutional issue in the criminal sphere, particularly with respect to the presumption of innocence (presumption of innocence).

The core of the strict liability construction in this law lies in Articles 22 and 28. Article 28 expressly shifts the burden of proving the presence or absence of an element of fault from the plaintiff (consumer) to the defendant (business actor). Article 22 regulates the reversal of the burden of proof in the criminal context. What must be underlined is that the reversal of the burden of proof in Articles 22 and 28 concerns only the element of fault (*schuld*). That is, what is shifted to the business actor is the obligation to prove the absence of an element of fault on his part. Meanwhile, other elements—such as the existence of loss and the existence of a causal connection between the business actor's product and the consumer's loss—doctrinally remain the burden of the consumer as the party asserting the claim. Herein lies one source of multiple interpretations, because in practice the entire burden of proof is often regarded as shifting to the business actor in its entirety, without distinguishing which element is whose burden.

The provision of Article 27 reaffirms the character of liability in this law as strict liability that still recognises exoneration, and not absolute liability. A business actor may be released from liability where the goods were not circulated, where the defect arose later, where the defect arose from compliance with the qualification requirements of the goods, where there is consumer negligence, or where the period for prosecution has lapsed. Thus, doctrinally, the construction adopted by Law Number 8 of 1999 has in fact provided a certain balance. The problem lies at the level of implementation practice, where such balance is often not realised.

Litigation, BPSK Proceedings, and Interpretive Inconsistency

Consumer dispute resolution through the litigation channel is conducted within the general courts on the basis of the applicable civil procedural law, namely HIR/RBg. In litigation practice, the application of the reversal of the burden of proof faces obstacles because general civil procedural law adheres to the principle of *actori incumbit probatio* as regulated in Article 163 HIR and Article 1865 Civil Code. The judge is faced with a dilemma between applying the general principle of proof or applying the special provisions in the Consumer Protection Law. Based on the principle of *lex specialis derogat legi generali*, the special provisions in the Consumer Protection Law ought to set aside the general provisions in HIR/RBg and Civil Code. However, because the Consumer Protection Law does not comprehensively regulate the procedural law of proof, the judge must still refer to general civil procedural law for matters not specifically regulated. It is the combination of an incomplete special norm and a complementary general norm that gives rise to non-uniformity of application among judges.

The Consumer Dispute Settlement Body (BPSK) was established under Article 49 of Law Number 8 of 1999 as an out-of-court institution for consumer dispute resolution. The BPSK has the authority to resolve disputes through three means, namely conciliation, mediation, and arbitration, as regulated in Article 52. Resolution through the BPSK is intended to provide faster, cheaper, and simpler access to justice for consumers. In practice, the application of strict liability and the reversal of the burden of proof before the BPSK also faces problems. The members of the BPSK panel, comprising elements of government, consumers, and business actors, do not always possess an adequate legal background to apply the complex construction of proof. As a result, the application of the reversal of the burden of proof before the BPSK is often simplistic and tends to impose the entire burden of proof upon the business actor without regard to proportionality.

Another problem worth noting in dispute resolution through the BPSK concerns the nature of the decision and the objection mechanism. Under Article 54 paragraph (3) of Law Number 8 of 1999, the decision of the BPSK panel is final and binding. However, Article 56 paragraph (2) affords the parties an opportunity to file an objection with the district court within

fourteen working days. This seemingly contradictory provision between finality and the availability of an objection gives rise to its own problem in practice, as subsequently affirmed through Supreme Court Regulation (PERMA) Number 1 of 2006 concerning Procedures for Filing Objections to BPSK Decisions. In the context of proof, a problem arises when the district court, in examining the objection, applies a standard of proof different from that already applied by the BPSK panel. This difference of standard creates legal uncertainty and demonstrates the urgency of harmonising the standard of proof between the litigation and non-litigation channels.

In practice, there is a tendency for the district court to re-examine the merits of the case comprehensively when examining an objection, so that the standard of proof applied tends to follow general civil procedural law, including the principle of *actori incumbit probatio*. As a result, the evidentiary relief already obtained by the consumer at the BPSK level may be lost when the case is examined at the district court. This condition shows that the non-uniformity of the standard of proof is not merely a theoretical problem, but a practical problem that directly affects the fate of consumer protection. Therefore, the harmonisation of the standard of proof becomes one of the important agendas in the reformulation proposed in this study.

From the foregoing, several problems of multiple interpretations can be identified. First, uncertainty as to which element constitutes the business actor's burden of proof and which element remains the consumer's burden. Second, uncertainty as to the stage in the case-examination process at which the reversal of the burden of proof begins to apply. Third, the non-uniformity of the standard of proof between the BPSK and the courts. Fourth, uncertainty as to the extent to which the judge may actively apply the reversal of the burden of proof. This multiple interpretations in turn gives rise to disparity of decisions that creates legal uncertainty, both for consumers and for business actors.

Resolving the Normative Antinomy

The normative conflict between the Consumer Protection Law and general civil procedural law is a fundamental juridical problem. To resolve such conflict, legal science provides three principles for resolving normative conflict, namely *lex superior derogat legi inferiori*, *lex specialis derogat legi generali*, and *lex posterior derogat legi priori*. Based on the principle of *lex specialis derogat legi generali*, the Consumer Protection Law as the special provision ought to set aside HIR/RBg and Civil Code with respect to proof of the element of fault. Likewise, based on the principle of *lex posterior derogat legi priori*, the Consumer Protection Law as the newer provision ought to set aside HIR/RBg and Civil Code, which are far older.

However, this theoretical resolution of the normative conflict does not automatically resolve the problem in practice. This is because the reversal of the burden of proof in the Consumer Protection Law concerns only the element of fault, whereas the elements of loss and causal connection remain subject to the general principle of proof. As a result, within one and the same case two proof regimes may apply simultaneously: the special regime for the element of fault and the general regime for the elements of loss and causal connection. It is this complexity that is not uniformly understood by law enforcers, thereby giving rise to multiple interpretations. Thus, the answer to the first problem is that, normatively, the concept of strict liability has been formulated with a balanced construction, but its application in practice faces the problem of multiple interpretations stemming from the incompleteness of procedural law and the normative conflict.

The Welfare State and the Constitutional Duty to Protect Consumers

The concept of the state under the rule of law has developed from the classical concept towards the modern concept. The classical rule-of-law state places the state merely as a night-

watchman (*nachtwakerstaat*), whose function is limited to maintaining order and security without interfering in the economic and social life of its citizens. However, this concept proved unable to answer the problems of social and economic inequality arising from the free-market mechanism. Market failure (market failure) and the exploitation of weaker parties demanded a more active presence of the state. From this emerged the concept of the welfare state under the rule of law (*welfare rechtsstaat*), which places the state as an active actor responsible for realising the general welfare (*bestuurszorg*). Under this concept, the state may not remain passive in the face of the imbalance of bargaining position between business actors and consumers. Law Number 8 of 1999 is one concrete manifestation of the state's presence within the framework of the welfare state under the rule of law.

The state's responsibility to protect consumers is rooted in the constitutional mandate. The Preamble of the 1945 Constitution affirms the state's goal to protect the whole Indonesian nation and to advance the general welfare. Article 28D paragraph (1) guarantees every person's right to fair protection and legal certainty. In the context of consumer protection, the state's responsibility is manifested in three principal functions, namely the regulatory function (*regulatory function*), the administrative or supervisory function (*administrative function*), and the adjudicative function (*adjudicative function*). These three functions must be carried out synergistically so that consumer protection may be realised effectively.

Legal Policy and Legal Certainty

Legal politics becomes the instrument for the state to realise its role in protecting citizens. In the context of consumer protection, the legal politics of the state is reflected in the choice to adopt the principle of strict liability and the reversal of the burden of proof. This choice is a legal-policy decision that consciously departs from the general principle of proof in order to provide stronger protection to consumers. Thus, the application of strict liability is not merely a technical matter of procedural law, but a manifestation of the legal politics of the state in protecting the weaker party.

Gustav Radbruch taught that law must simultaneously realise three basic values, namely justice (*gerechtigheit*), legal certainty (*rechtssicherheit*), and utility (*zweckmässigkeit*). These three values are known as the idea of law (*idee des rechts*). In practice, tension (*spannungsverhältnis*) frequently occurs among these three values, so that law enforcers must undertake a weighing to determine which value should be given priority in a concrete case. Radbruch provided guidance in the form of a priority principle, namely that under normal circumstances legal certainty must be given priority, but where the application of positive law gives rise to intolerable injustice, justice must be given priority. In the context of the multiple interpretations of the norm of proof in consumer disputes, the Radbruch formula becomes an important guideline for the state and law enforcers to find the point of balance between legal certainty and justice.

The multiple interpretations in the application of the reversal of the burden of proof stems from several factors, namely the incompleteness of procedural-law regulation, the normative conflict with general civil procedural law, the limited understanding of law enforcers, and the absence of uniform technical guidelines. These sources of multiple interpretations are interrelated and reinforce one another. The incompleteness of the norm compels law enforcers to make their own interpretations, which, in the absence of technical guidelines, produce varied interpretations, thereby giving rise to disparity of decisions that impairs legal certainty. For consumers, multiple interpretations creates uncertainty as to how much protection they will obtain. For business actors, multiple interpretations creates the risk of procedural injustice, because a business actor may be ordered to pay compensation even though no causal connection has been proven, solely because he is unable to prove a negative (*negativa non sunt probanda*).

Legislative, Executive, and Judicial Responsibilities

The state's role in overcoming multiple interpretations must be carried out comprehensively through the three functions of state power. Through the legislative function, the state needs to undertake reform of the norm by adding procedural-law provisions that regulate in detail the mechanism of the reversal of the burden of proof. Such regulation needs to clarify which element constitutes the business actor's burden of proof and which element remains the consumer's burden, as well as the stage in the case-examination process at which the reversal of the burden of proof begins to apply. Reform of the norm may also be carried out through the formation of implementing regulations, such as Supreme Court Regulations (PERMA), which can provide direct guidance for judges.

Through the executive function, the state needs to carry out supervision and guidance. The government, through the ministry responsible for trade, needs to supervise the compliance of business actors and to provide guidance to the BPSK. Guidance to the BPSK is very important given the limited capacity of human resources in that institution. The government needs to organise training and to prepare technical guidelines for the members of the BPSK panel so that they are able to apply the construction of proof accurately and proportionally.

Through the judicial function, the state, through judges, needs to undertake legal discovery (*rechtsvinding*) and the formation of jurisprudence. In conditions where the norm is incomplete and gives rise to multiple interpretations, the judge has an important role to fill the legal vacuum. A judge may not refuse to examine and adjudicate a case on the ground that the law is incomplete or unclear, as regulated in Article 10 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. Through consistent legal discovery, judges can build jurisprudence that serves as a guideline for the resolution of similar cases. The settled jurisprudence of the Supreme Court (*vaste jurisprudentie*) can become an effective instrument for standardising the application of the reversal of the burden of proof and reducing disparity of decisions.

Critical Analysis of Decision Number 535/Pdt.G/2022/PN.Jkt-Tim

Decision Number 535/Pdt.G/2022/PN.Jkt-Tim is a decision of the East Jakarta District Court in a civil case concerning a consumer protection dispute. The analysis of this decision is focused on the application of the strict liability principle and the reversal of the burden of proof, which illustrates the tension between consumer protection and procedural justice for business actors. The position of the case is essentially a dispute between the Nusantara Indonesia Consumer Protection Institute (LPKNI), East Jakarta Regional Board, as Plaintiff and also as consumer, and the Alfamidi Taruna Modern Store (Brand ALFAMIDI) as Defendant and also as business actor, concerning a claim of unlawful act in a consumer dispute, in which the Defendant as business actor had sold goods/a product in the form of a modern oral nicotine product under the brand "VELO" that had expired to the Plaintiff as consumer.

In the consumer dispute as reflected in Decision Number 535/Pdt.G/2022/PN.Jkt-Tim, the operative part of the decision reads as follows: In Decision Number 535/Pdt.G/2022/PN.Jkt-Tim, the legal considerations of the Panel of Judges who examined, decided, and adjudicated the case are as follows: Considering that, since the Plaintiff's claim was contested by the Defendant, then based on the principle of proof "whoever asserts a right is obliged to prove it, and conversely the party who denies is likewise obliged to prove his denial (Article 1865 of the Civil Code in conjunction with Article 163 HIR);

Considering that, based on the facts above connected with the statutory provisions, in this case Law Number 8 of 1999 on Consumer Protection, Article 8 paragraph (2), which reads as follows: "A business actor is prohibited from trading goods that are damaged, defective, or used and contaminated without providing complete and correct information on the goods concerned."

From the legal considerations of the Panel of Judges in that decision, it is apparent that on the one hand the Panel of Judges applied the rules regulated in HIR, namely Article 163 HIR, and the Indonesian Civil Code, namely Article 1865, but on the other hand the Panel of Judges applied the provisions regulated in Law Number 8 of 1999 on Consumer Protection, yet the Panel of Judges did not apply the reversal of the burden of proof as regulated in Articles 22 and 28 of Law Number 8 of 1999 on Consumer Protection.

The first aspect, the accuracy of norm application, namely assessing whether the Panel of Judges applied the norm of the reversal of the burden of proof accurately in accordance with the intent of Articles 22 and 28 of Law Number 8 of 1999 on Consumer Protection (UUPK). As has been explained, the reversal of the burden of proof under the UUPK concerns only the element of fault, not all the elements of the claim. Therefore, this article argues that the Panel of Judges erred by shifting the entire burden of proof to the Plaintiff as consumer.

The second aspect, the balance of procedural justice, namely this article argues that the Panel of Judges did not maintain a balance between consumer protection and the procedural justice of business actors by not employing Rawls's theory of justice and the principle of due process of law. The third aspect, the realisation of the purpose of law, namely this article argues that the Panel of Judges did not realise the three values of the purpose of law according to Radbruch in a balanced manner. Through the analysis of these three aspects, this decision becomes a concrete reflection of the problem of multiple interpretations that has been described, and at the same time becomes the empirical basis for formulating an ideal model.

Weaknesses in Legal Substance, Structure, and Culture

The weaknesses in the application of strict liability can be examined through the three components of the legal system. At the level of legal substance (legal substance), the principal weakness lies in the incompleteness of the regulation of the procedural law of proof in Law Number 8 of 1999. Articles 22 and 28 merely state that proof is the burden of the business actor, but do not regulate its operational mechanism. This incompleteness creates a legal vacuum that compels law enforcers to make their own interpretations. Another weakness is the absence of harmonisation between the Consumer Protection Law and general civil procedural law.

At the level of legal structure (legal structure), the weakness lies in the limited institutional capacity, both at the courts and at the BPSK. Judges in the general courts do not always possess specialisation in consumer protection cases, so that the application of the complex construction of proof is not always consistent. At the BPSK, the limited capacity of panel members causes the application of the reversal of the burden of proof to tend to be simplistic and less proportional. At the level of legal culture (legal culture), the weakness lies in the low legal awareness of consumers and the not-yet-uniform understanding among law enforcers regarding the philosophy and construction of strict liability.

A Proportional Three-Stage Burden-of-Proof Model

Based on the principles of balance, proportionality, legal certainty, and effectiveness, this study formulates a proportional model of the distribution of the burden of proof through three stages. The first stage is the initial burden of proof on the consumer (*prima facie*). The consumer as plaintiff is burdened with proving three matters within the reach of his knowledge, namely the existence of a legal relationship or transaction with the business actor, the existence of the loss he has suffered, and the existence of an indication of a connection between that loss and the use or consumption of the business actor's product. Proof at this stage need only be *prima facie*, namely adequate preliminary evidence; perfect proof is not required.

The second stage is the reversal of the burden of proof to the business actor. After the consumer has succeeded in proving *prima facie*, the burden of proof shifts to the business actor

to prove matters within the command of his knowledge, namely that his product has met safety standards and contains no defect, or that the consumer's loss was caused by another factor beyond his responsibility, such as the consumer's own fault, force majeure, or the act of a third party, as regulated in Article 19 paragraph (5) and Article 27 of the UUPK. The third stage is the assessment of balance by the judge. The judge assesses the entire result of the proof in a balanced manner by considering the evidence of both parties. If the business actor succeeds in proving one of the grounds for exoneration, then the business actor is released from liability; if he fails, then the business actor is declared liable and obliged to provide compensation.

This three-stage model maintains a balance between consumer protection and procedural justice. The consumer still obtains relief through the *prima facie* standard of proof and the shifting of the burden of proving the element of fault to the business actor. The business actor still obtains procedural justice through the opportunity to prove grounds for exoneration and is not burdened with impossible proof (*probatio diabolica*). This model is in line with the practice in the United States and the European Union, which imposes upon the plaintiff the burden of proving defect, loss, and causal connection, while releasing the plaintiff from proving the element of negligence.

The application of this three-stage model of the distribution of the burden of proof carries a number of practical implications that must be observed. First, at the stage of *prima facie* proof by the consumer, the judge or BPSK panel needs to establish a minimum standard of preliminary evidence that the consumer must satisfy. This standard must not be so high as to close off the consumer's access to justice, but also not so low as to open the way for frivolous claims (frivolous claims). Adequate preliminary evidence may take the form of transaction evidence, evidence of loss such as medical records or damage to goods, and information demonstrating the connection between the loss and the use of the product.

Second, at the stage of shifting the burden of proof to the business actor, the judge needs to ensure that the business actor is given a proper opportunity to submit evidence demonstrating that his product is not defective or that the loss was caused by another factor. At this stage, the principle of *audi et alteram partem*, namely the obligation to hear both parties, must be upheld. Third, at the stage of the judge's assessment of balance, the judge needs to assess the evidence in a balanced manner by considering the quality and strength of the evidence of both parties, rather than merely counting the quantity of evidence. The judge also needs to provide clear and detailed reasoning in his decision as to how the burden of proof was applied, so that the decision may be understood and tested rationally.

The implementation of this model also demands a paradigm shift among law enforcers. Judges and BPSK panels need to understand that the reversal of the burden of proof is not the shifting of the entire burden of proof to the business actor, but a shifting limited to the element of fault. This paradigm shift requires socialisation, training, and the preparation of comprehensive technical guidelines. Without such a paradigm shift, the proportional model of the distribution of the burden of proof—however ideal conceptually—will not be able to be applied effectively in practice. Therefore, the reformulation proposed in this study touches not only the aspect of legal substance, but also the aspects of legal structure and legal culture in an integrated manner.

To realise that model, this study recommends a special procedural-law regulation for consumer disputes, which may be carried out through two channels. The first channel is through the revision of Law Number 8 of 1999 by adding a special chapter on the procedural law of proof in consumer disputes. The second channel is through the issuance of a Supreme Court Regulation providing technical guidelines for judges. Such regulation needs to contain, at the very least, an affirmation that what is shifted to the business actor is proof of the element of fault, whereas the elements of loss and causal connection remain the consumer's burden under a *prima facie* standard; regulation of the stage in the case-examination process at which

the reversal of the burden of proof begins to apply; detailed regulation of the grounds for the business actor's exoneration; and regulation of the standard of assessment of evidence by the judge.

The reformulation also needs to encompass the harmonisation of norms between dispute resolution through litigation and non-litigation. The standard of proof applied at the BPSK must be aligned with the standard applied at the courts, so that there is no difference of standard creating legal uncertainty. To that end, uniform technical guidelines need to be prepared for the BPSK panel and court judges, accompanied by the enhancement of human-resource capacity through continuous training. With such harmonisation, the consumer dispute resolution system, both litigation and non-litigation, can operate coherently and provide legal certainty for the parties. Thus, the answer to the third problem is that an ideal and just strict liability formulation is one that maintains a balance between consumer protection and procedural justice through a proportional three-stage distribution of the burden of proof, supported by special procedural-law regulation and the harmonisation of norms.

Comparative Direction and Doctrinal Synthesis

Comparative developments reinforce the need for calibrated evidentiary relief rather than an indiscriminate transfer of every burden. The European Union's revised Product Liability Directive preserves no-fault liability but introduces rebuttable presumptions of defectiveness and causation when evidence is inaccessible, mandatory safety requirements are breached, malfunction is obvious, or scientific complexity makes proof excessively difficult. The claimant must still present facts supporting the plausibility of the claim. This architecture demonstrates that consumer protection and procedural fairness can be pursued together through staged proof, disclosure duties, and rebuttable presumptions rather than through an undifferentiated label of strict liability (European Parliament and Council, 2024; Rott, 2025).

The reformulation of strict liability proposed in this study carries broad policy implications. At the level of legislative policy, the reformulation demands a revision of Law Number 8 of 1999, which is now more than two decades old and is deemed not yet fully able to answer the dynamics of consumer protection in the era of the digital economy. Such revision needs to integrate the regulation of the procedural law of proof, which has all along been the weak point of the law. With clear regulation, the normative conflict between the Consumer Protection Law and general civil procedural law can be resolved conclusively, so that it no longer gives rise to multiple interpretations in practice.

At the level of judicial policy, the reformulation demands an active role of the Supreme Court in building consistent jurisprudence and issuing technical guidelines for judges. Experience shows that Supreme Court Regulations have on several occasions successfully filled procedural-law vacuums, as occurred in the regulation of small-claims suits, court-annexed mediation, and class-action suits. With a similar approach, the Supreme Court can issue guidelines on the application of the reversal of the burden of proof in consumer disputes, providing certainty for judges as well as the parties. Such guidelines can serve as an effective short-term solution while awaiting the revision of the law, which requires a longer time.

At the level of institutional policy, the reformulation demands the strengthening of the capacity of the BPSK as the front line of out-of-court consumer dispute resolution. Such strengthening encompasses the enhancement of the competence of panel members, the provision of technical guidelines, and the harmonisation of the standard of proof with the courts. Without institutional strengthening, the BPSK will not be able to perform its function optimally, and consumers will continue to face uncertainty in obtaining justice. Thus, the proposed reformulation is comprehensive, touching the aspects of legal substance, structure, and culture in an integrated manner, in line with the legal-system theory that views the effectiveness of law as the result of the interaction of these three components.

The prospect for applying this reformulation model is quite promising given that its normative foundation is already available in Law Number 8 of 1999. The three-stage model of the distribution of the burden of proof does not demand a change in the philosophy of the law, but only an affirmation and elaboration of what has implicitly already been adopted. Thus, this model can be applied without giving rise to systemic upheaval, whether through judicial interpretation in the short term or through reform of the norm in the medium and long term. The success of applying this model will ultimately depend on the commitment of all stakeholders to realise a consumer dispute resolution system that is just, balanced, and legally certain.

The whole of the foregoing discussion converges on a single common thread, namely the need for a balance between consumer protection and the procedural justice of business actors within the proof mechanism of consumer disputes. This balance is not merely a theoretical demand, but a pressing practical demand, given that the imbalance that has occurred all along has caused harm to both parties. Consumers are harmed by uncertainty as to the protection they will obtain, while business actors are harmed by the risk of procedural injustice resulting from the disproportionate imposition of the burden of proof. Finding that point of balance is a shared task of the state, law enforcers, and all stakeholders.

The synthesis of Radbruch's theory of the purpose of law, the theory of the welfare state under the rule of law, the theory of legal protection, the theory of liability, and Rawls's theory of justice produces a normative framework that demands that the proof mechanism in consumer disputes satisfy four criteria simultaneously. First, the criterion of legal certainty, namely that the proof mechanism must be regulated clearly and firmly so that it can be applied uniformly. Second, the criterion of substantive justice, namely that the proof mechanism must provide adequate protection to consumers as the weaker party. Third, the criterion of procedural justice, namely that the proof mechanism must respect the business actor's right of defence and must not burden any party with impossible proof. Fourth, the criterion of utility, namely that the proof mechanism must be able to provide fast, inexpensive, and effective dispute resolution.

The three-stage model of the distribution of the burden of proof proposed in this study is an effort to satisfy these four criteria simultaneously. Through *prima facie* proof by the consumer, the criterion of substantive justice is satisfied because the consumer obtains evidentiary relief. Through the reversal of the burden of proof limited to the element of fault, the criterion of procedural justice is satisfied because the business actor is not burdened with impossible proof. Through clear regulation of the stages and standard of proof, the criterion of legal certainty is satisfied. And through the simplification of the proof process, the criterion of utility is satisfied. Thus, this model is a concrete manifestation of the theoretical synthesis that serves as the foundation of this study. The model remains operational coherent transparent proportionate and judicially practicable.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

With respect to the practice of applying the concept of strict liability of business actors under Law Number 8 of 1999 on Consumer Protection, normatively this law adopts a construction of strict liability that still recognises grounds for exoneration (exoneration), and not absolute liability. This construction is accompanied by the reversal of the burden of proof (shifting the burden of proof) as regulated in Articles 22 and 28. What must be affirmed is that the reversal of the burden of proof doctrinally concerns only the element of fault (*schuld*), whereas the elements of loss and causal connection remain the burden of the consumer as the party asserting the claim. However, in its application in practice—both through the litigation channel before the courts and non-litigation before the Consumer Dispute Settlement Body (BPSK)—that concept faces the problem of multiple interpretations. This multiple

interpretations stems from the incompleteness of the regulation of the procedural law of proof in the Consumer Protection Law and the normative conflict (antinomy) with the principle of *actori incumbit probatio* in Article 163 HIR/RBg and Article 1865 Civil Code. As a result, there occurs an overlapping imposition of the burden of proof upon business actors without proportionality, which risks giving rise to procedural injustice.

With respect to the role of the state in addressing the multiple interpretations of the norm, the state as a welfare state under the rule of law (welfare rechtsstaat) is obliged to be actively present to protect consumers as the party in the weaker bargaining position. That role of the state must be carried out comprehensively through the three functions of state power. Through the legislative function, the state needs to undertake reform of the norm by adding detailed regulation of the procedural law of proof. Through the executive function, the state needs to carry out supervision and guidance, particularly of the institutional capacity of the BPSK. Through the judicial function, the state, through judges, needs to undertake legal discovery (*rechtsvinding*) and build consistent jurisprudence to standardise the application of the reversal of the burden of proof. This role of the state must be carried out while maintaining a balance between consumer protection and procedural justice for business actors, in line with the values of the purpose of law according to Gustav Radbruch, namely justice, legal certainty, and utility.

With respect to the formulation of an ideal and just strict liability, this study formulates a proportional model of the distribution of the burden of proof through three stages. In the first stage, the consumer as plaintiff is burdened with proving *prima facie* the existence of a legal relationship, the existence of loss, and the existence of an indication of a causal connection between the loss and the business actor's product. In the second stage, after *prima facie* proof is satisfied, the burden of proof shifts to the business actor to prove that his product is not defective or that the loss was caused by another factor beyond his responsibility. In the third stage, the judge assesses the entire result of the proof in a balanced manner. This model maintains a balance between consumer protection and the procedural justice of business actors, so that consumers obtain evidentiary relief while business actors are not burdened with impossible proof (*probatio diabolica*). This formulation needs to be supported by special procedural-law regulation, whether through the revision of Law Number 8 of 1999 or through the issuance of a Supreme Court Regulation, as well as the harmonisation of the standard of proof between the litigation and non-litigation channels. The analysis of Decision Number 535/Pdt.G/2022/PN.Jkt-Tim becomes a concrete reflection of that problem of multiple interpretations and at the same time the empirical basis for the urgency of the proposed reformulation.

Limitations

This study is limited to a doctrinal examination of the Consumer Protection Law and a focused analysis of one district-court decision. It does not claim that the selected judgment represents every pattern adopted by Indonesian courts or BPSK panels. The absence of a systematic dataset of consumer decisions also limits empirical generalisation. Further research should code a broader series of court and BPSK decisions, distinguish product categories and types of loss, and test whether the proposed *prima facie* threshold produces consistent outcomes across litigation and non-litigation forums.

Recommendations

A revision of Law Number 8 of 1999 on Consumer Protection needs to be undertaken by adding a special chapter on the procedural law of proof in consumer disputes. Such regulation needs to affirm a proportional distribution of the burden of proof, namely that the reversal of the burden of proof concerns only the element of fault, whereas the elements of loss

and causal connection remain the consumer's burden under a prima facie standard, and to regulate in detail the grounds for the business actor's exoneration. A Supreme Court Regulation (PERMA) or a Supreme Court Circular Letter (SEMA) needs to be issued providing technical guidelines for judges in applying the reversal of the burden of proof in consumer disputes. Such guidelines are important to standardise the application of the norm and to reduce disparity of decisions. The Supreme Court also needs to build consistent jurisprudence through cassation decisions in consumer protection cases.

The institutional capacity of the BPSK needs to be enhanced through continuous training for panel members, particularly with respect to the construction of proof in consumer disputes. Uniform technical guidelines also need to be prepared for the BPSK panel so that the application of the reversal of the burden of proof may be carried out accurately and proportionally. In examining and adjudicating consumer disputes, judges and BPSK panels need to apply the reversal of the burden of proof proportionally by distinguishing accurately which element constitutes the business actor's burden and which element remains the consumer's burden. Such proportional application is important to maintain a balance between consumer protection and the procedural justice of business actors.

Author Contributions

All authors contributed to the conceptualisation, legal analysis, interpretation of the decision, preparation of the manuscript, scholarly revision, and approval of the final version.

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