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LEGAL ASPECTS OF CONSUMER PROTECTION IN ILLEGAL SALE OF TELECOMMUNICATION DEVICES IN INDONESIA

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Abstrak

Regulations regarding transaction of telecommunication devices have been clearly regulated. However, the circulation of illegal products is still rife, especially devices that International Mobile Equipment Identity (IMEI) is not officially registered. This can potentially be detrimental to consumers. This research is normative research with the legal research method of literature. The approach used is a statutory approach and a conceptual approach. It can be concluded that the protection that can be done against consumers is preventive protection that is preventive and repressive protection that is if the consumer has suffered a loss. Preventive preventive legal protection is contained in the provisions of Law No. 8 of 1999 on Consumer Protection and also contained in government efforts through Regulation of the Minister of Communication and Informatics No. 1 of 2020. Repressive legal protection can be resolved through litigation and non-litigation litigation. Violation of product requirements rules may result in businesses being subject to administrative sanctions.

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I. INTRODUCTION

Today, inter-community relations are increasingly dynamic. This is supported by various facilities that are able to megacommodating the relationship between the communities, namely the use of telecommunication devices. Telecommunication devices in the form of mobile phones, handheld computers and tablets (HKT) have been widely owned by some people in the world with various brands and specifications.

Telecommunication devices are not only a facility in helping to smooth interaction between humans but have also become part of the lifestyle. This makes HKT a necessity that cannot escape the daily life of society and become a very important part of the modern era as it is today. So that consumer demand for telecommunication devices is increasing year on year.¹

¹There are more than half of the population in Indonesia or 56.2% have used a smartphone in 2018. A year after that, as many as 63.3% of the people used a smartphone. Until 2025, at least 89.2% of the population in Indonesia has used smart phones. In the six years since 2019, the penetration of smart phones in the country has grown by 25.9% for consumers of electronic devices, Smartphone users are estimated to reach 89% of the population by 2025

The high interest of the public to use telecommunication devices makes the manufacturers compete to provide various types of products with various brands and specifications and sold at varying prices. The price of products sold is often directly proportional to the sophistication of the telecommunication devices offered so that the more sophisticated then the price pegged is quite high.

In some cases there are products offered to have the same brand but the price is quite different. This usually happens in transactions known as blackmarket² or illegal product buying and selling conducted by certain people. The price offered tends to be cheaper so many attract consumers who want to buy³. Consumers who are interested in blackmarket products usually do not understand the consequences of ownership of these illegal products. This occurs when the low level of consumer knowledge of electronic products makes it easier for business actors to convince consumers about the quality of goods and consumers' lack of concern for the long-term use of an item, and the prices offered are relatively cheap than normal prices so that it becomes the main attraction for consumers and ignores them. the quality of the goods to be purchased.⁴ The existence of Blackmarket that sells illegal products is certainly detrimental to consumers. Having an illegal product means that consumers do not have an official warranty and there is even the possibility that the product is a replica so the quality will be highly doubtful and may be at risk of damage to the product. And the most important thing is that there is no International Mobile Equipment Identity (IMEI) officially registered. Whereas IMEI indicates the authenticity of products that have various functions such as tracking products in the event of loss and can see the warranty period of the product.

The trade agreement is stipulated in the Civil Code (KUHPer⁵) which is in the third book on the alliance of article 1320 governing the terms of the legal agreement. There are four terms of agreement, namely agreement, hokum, certain objects and halal reasons. The transaction of products has illegally violated the legal terms of the agreement which is the cause or causa of halal, as referred

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<https://databoks.katadata.co.id/datapublish/2020/09/15/pengguna-smartphone-diperkirakan-mencapai-89-populasi-pada-2025> accessed 8 October 2020

²Black Market (BM) in accordance with the plural term used in positive law and contemporary trade means illegal trade, unofficial trade, trade carried out outside official channels by reason of violating the laws of a country. Trades that are allowed³⁰ apply in the jurisdiction of Indonesia are trades that are not against the law, morality or with public order, Tbahary, Abdul Rahman. "Kepastian Hukum Dalam Transaksi Jual - Beli Telepon Genggam (Handphone) Di Pasar Gelap (Black Market)." OSF Preprints, 25 Feb. 2019. Web., p. 3

³About 20 percent of smart phones circulating in Indonesia enter the country without going through registration and certification from the authorities or illegally through the black market channels. "If in a year there are 45 million units of smart phones sold in Indonesia, it means that around 9 million of them are illegal cellphones with International Mobile Equipment Identity (IMEI) numbers not registered with the¹⁵ authorized institutions here," said the Indonesian Cellphone Association (APSI).) in his press release, RR Ukirsari Manggalani dan Lintang Siltya Utami, 5 Hal Tentang Peraturan IMEI yang Harus Diketahui <https://www.suara.com/teknologi/2020/04/18/154143/5-hal-tentang-peraturan-imei-yang-harus-diketahui?page=all> , accessed 9 October 2020

⁴ Ni Putu Aprilia Surya Dewi and I Wayan Novy Purwanto, "Perlindungan Hukum Bagi Konsumen Smartphone Bermerek Iphone Dalam Kaitannya Dengan Peredaran Produk Iphone Rekondisi Di Indonesia", *Kertha Semaya : Journal Ilmu Hukum*, Vol 4 Number 3 (2016), p. 7.

⁵KUHPer stands for "Kitab Undang-Undang Hukum Perdata" in Indonesian language

²⁷ to in article 1337 of the civil code, a reason is prohibited, if prohibited by law, or if contrary to decency and public order.

Consumer Protection Law (UUPK⁶) No. 8/1999 has regulated various provisions regarding rights and obligations for businesses and consumers and there are also provisions on prohibited things for businesses. ⁶ Article 8 paragraph (1) letter j UUPK ⁵ states that a business person is prohibited from producing and/or trading goods that do not include information and/or instructions for the use of goods in Bahasa Indonesia in accordance with the prevailing laws and regulations.

Basically every telecommunication device traded in the domestic market must be equipped with instructions for use and Bahasa Indonesia guarantee card. Warranty cards are only available for telecommunication devices that have a formally registered IMEI or the product is not a counterfeit product and is officially traded.

In addition to the above provisions there is also the latest ¹ regulation of the Minister of Communication and Informatics Regulation No. 1 of 2020 on Control of Telecommunication Equipment and/or Devices Connected to Mobile Mobile Network through IMEI. This regulation aims to suppress the awareness of illegal products and the government has prepared a method of blocking such illegal products.

The regulations regarding the illegal transaction of telecommunication devices have been clearly regulated. However, the circulation of illegal products is still rife⁷ both offline and online (e-commerce). This can potentially harm consumers in making trade transactions of telecommunication devices that do not understand the authenticity and specifications of the product. This shows that the consumer protection system still has weaknesses because the UUPK, which is the basis of this consumer protection law, is deemed unable to accommodate developments, especially from the aspect of technological development. So it needs to be reviewed more deeply about the aspects of legal protection against consumers in the sale and sale of illegal telecommunication devices.

II. RESEARCH METHODS

This Research ³⁴ Method is normative research with legal research methods of literature. The approach used is a statutory approach and a conceptual approach. The legal materials used consist of ³² primary legal materials which include Law No. 8 of 1999 on Consumer Protection, Regulation of the Minister of Communication and Informatics No. 1 of 2020 on Control of Telecommunication Equipment and/or Devices Connected to Mobile Mobile Network through IMEI and other related regulations. Secondary legal materials include books, journal articles and research results. Legal

⁶UUPK stands for “Undang-Undang Perlindungan Konsumen” in Indonesian Language

⁷The government claims that illegal mobile phones account for 20 percent of the total mobile phones in circulation, and the state's losses reach more than Rp. 2 trillion per year, BM ³⁷ Mobile Phones Are Allegedly Still In Circulation, YLKI Asks to Focus on Consumer Protection <https://www.merdeka.com/teknologi/ponsel-bm-diduga-masih-beredar-ylki-minta-fokuskan-perlindungan-konsumen.html?page=2> accessed October 10, 2020

materials will be qualitatively analyzed. This study uses a theoretical framework used as an analytical knife that is the theory of legal protection.

III. RESEARCH AND DISCUSSION RESULTS

3.1. Protection Theory

Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and / or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.⁸

According to Hadjon, legal protection for the people includes two things:

- a. Preventive Legal Protection, a form of legal protection where the people are given the opportunity to submit objections or opinions before a government decision takes a definitive form;
- b. Repressive Legal Protection, a form of legal protection which is more aimed at resolving disputes.⁹

The theory of legal protection in this study is useful for finding out what forms of legal protection can be provided to consumers when there is an illegal buying and selling transaction of telecommunications equipment.

There are two types of legal protection, they are preventive legal protection and repressive legal protection. Preventive legal protection in this study is useful for knowing the form of legal protection that can be provided to consumers in order to avoid losses. Meanwhile, repressive legal protection is useful for knowing the form of consumer legal protection when losses have been experienced.

3.2. Telecommunication and Telecommunication Equipment

Telecommunication is a technique of sending or delivering information from one place to another. In relation to 'telecommunication' forms of long distance communication can be divided into three types:

1. One-way (simplex) communication. In one-way communication (simplex) the sender and receiver of information cannot establish continuous communication through the same media. Examples: Pagers, television and radio.
2. Two-way (duplex) communication. In two-way communication (duplex) the sender and receiver of information can establish continuous communication through the same media. Example: Telephone and VOIP.

⁸Soerjono Soekanto, Pengantar Penelitian Hukum, (Jakarta: UI Press, 1984), p. 133.

⁹Philipus M. Hadjon, Perlindungan Bagi Rakyat diIndonesia, (Surabaya: PT.Bina Ilmu, 1987), p. 4-5

3. Semi-bidirectional communication (half duplex). In semi-bidirectional communication (half duplex) the sender and receiver of information communicate alternately but still continuously. Example: Handy Talkie, FAX, and Chat Room.¹⁰

According to Sigit Kusmaryanto, telecommunication is the process of transmitting, sending and or receiving ¹³ any information in the form of signs, signals, writing, pictures, sounds and sounds through wire, optical, radio or other electromagnetic systems. Telecommunication system is all elements / elements both telecommunication infrastructure, telecommunication equipment, telecommunication facilities and infrastructure, as well as telecommunication operator, so that long-distance communication can be carried out.¹¹

Telecommunication Devices is a group of telecommunication tools that allow telecommunications communication. (Article 1 Number 3 law No. 36/1999 on Telecommunications). Telecommunication devices are tasked with connecting the wearer with other users. These two wearers can be close together but can be far away. If you look at the literal meaning of telecommunications (tele = far, communication = relationship with information exchange) indeed telecommunications techniques developed by humans to make up for the difference in distance that can be infinitely into the smallest time difference possible. The difference in distance can be traveled with the smallest possible time by converting all forms of information that humans want to convey to others into electromagnetic waveforms. Electromagnetic waves can move at a very high speed, i.e. in a vacuum is one hundred thousand km per second.¹²

Provisions regarding the trade of telecommunication devices are contained in Law No. 36/1999 on Telecommunication Article 32 (1):

"Telecommunication devices traded, made, assembled, incorporated and or used in the territory of the Republic of Indonesia shall pay attention to technical requirements and by permission in accordance with applicable laws and regulations."

This is in accordance with the formulation of ¹ Regulation of the Minister of Communication and Informatics No. 5 of 2013 on telecommunication Equipment and Equipment Group Article 2 (1) that: "Every telecommunication device and device made, assembled, entered for trade and/or use in the Territory of Indonesia shall meet the technical requirements of telecommunication tools and devices."

Then in Article 3 (1) telecommunication tools and devices as referred to in Article 2 consists of 3 (three) groups, namely: a. Network group; b. Access group; and c. Customer Premises Equipment (CPE).

¹⁰Muh. Rachmat LKP: *Studi Literature untuk Meminimalkan Tower dan BTS yang ada di Surabaya*. Undergraduate thesis, STIKOM Surabaya, 1993 p. 14

¹¹Sigit Kusmaryanto, *Telekomunikasi: Konsep Fundamental Telekomunikasi, Teknik Elektro, Modul Fakultas Teknik - Universitas Brawijaya*

¹²Muh. Rachmat , LKP : *Literature Study to Minimize Tower and BTS in Surabaya..... the thing*. 14

Based on the understanding of the Regulation of the Minister of Communication and Informatics No. 1 of 2020 concerning Control of Telecommunication Devices and/or Devices Connected to Mobile Mobile Mobile Network Through IMEI, mobile phone, handheld computer, and tablet computer telecommunication devices and/or devices are telecommunication devices of mobile phones, mobile computers, and tablet computers based on subscriber identification modules. (article 1 number 1) Furthermore, the International Mobile Equipment Identity (IMEI) is an international identity number consisting of 15 (fifteen) digits, resulting from the 8 (eight) digit Type Allocation Code allocated by the Global System for Mobile Association to uniquely identify hkt tools and/or devices connected to mobile networks. (Article 1 number 4).

3.3. Consumer Protection Law In General

Consumer protection under UUPK Article 1 number 1 is all efforts that guarantee legal certainty to provide protection to consumers. The formulation of the definition of consumer protection contained in Article 1 number 1 Consumer Protection Law (UUPK) has provided enough clarity. The sentence, which states "any effort that warrants legal certainty", is expected to be a bulwark against arbitrary actions that harm businesses only for the benefit of consumer protection.¹³

Law No. 8/1999 on Consumer Protection in Article 2 has determined 5 (five) principles of consumer protection that are expected to provide direction and implementation at a practical level. among them: Benefit Principles, Principles of Justice, Principles of Balance, Principles of Consumer Safety and Security, Principles of Legal Certainty.

3.4. Understanding Consumers

The United States defines the definition of "consumer" which comes from consumer which means "user", but it can also be interpreted more broadly as "victim of using a defective product", whether the victim is a buyer, not a buyer but a user, even a victim who is not a user, because of protection. the law can also be enjoyed by victims who are not users

Consumer restrictions provided by the Indonesian Consumers Institute, namely people who use goods or services in society for their own family or other interests, which are not for sale. This definition is the definition of consumers in Law no. 8 of 1999 concerning Consumer Protection in article 1 paragraph 2.

¹³Ahmadi Miru & Sutarman Yodo, *Hukum Perlindungan Konsumen*, (Jakarta : Raja Grafindo Persada, 2004), p. 1

3.5. Rights and Obligations of Consumers and Business Actors

1. Consumer Rights

There are basic rights inherent in consumers, including: ²⁹ the right to security, the ²³ right to information, the right to vote and the right to be heard.

The right to security means that consumers have the right to obtain security from ²³ goods and / or services that are the object of consumer transactions with business actors where the product must not have dangerous elements that can harm consumers.

The right to obtain information where products, both goods and / or services, ³ must be ⁵ accompanied by correct information or information so that the goods / and or services obtained are in accordance with what consumers expect. Information on goods and / or services to be provided to consumers can be in the form of advertising media, orally or additional information on the products provided.

This right to choose means that consumers have the right to determine ⁴ the products, both goods and / or services they will choose. This means that there is no coercion in the use of certain goods and / or services.

The consumer's right to be heard is closely related to the right to obtain correct information. The right to be heard has a broader scope where consumers have the right to get further information if the previous information they get is unclear or not satisfactory. ¹⁶

The obligations of consumers as regulated in Article 5 of the Consumer Protection Law are:

- 1) Read or follow information instructions and procedures for the use or utilization of goods and / or services, for security and safety. It cannot be denied that consumers often do not get maximum benefits, or even suffer losses from consuming a good / service. However, after being investigated, the loss occurred because consumers did not follow the information instructions and usage procedures that had been provided by the business actor. ¹³
- 2) Have good intentions in making transactions for the purchase of goods and / or services. Not infrequently consumers do not have good intentions in making transactions or consuming goods. This of course will harm the general public, and indirectly the consumer has taken away the rights of others.
- 3) Pay according to the agreed exchange rate. This provision is clear, there is money, there is goods.
- 4) Participating in proper legal settlement of consumer protection disputes. As previously described, it should be interpreted as being impartial and in accordance with applicable regulations.

2. Business People's Rights

As with consumers, businesses also have rights and obligations. The regulation of the rights and obligations of businesses can be sourced in general legislation as well as special agreements/contracts. The rights of businesses as stipulated in Article 6 of the Consumer Protection Law (UUPK) are: the right to receive payments in accordance with the agreement regarding the conditions and exchange rates of traded goods and/or services, the right to legal protection from badly contested consumer actions, the right to self-defense in the legal settlement of consumer disputes, the right to good name rehabilitation if it is legally proven that consumer losses are not caused by traded goods and/or services; rights set forth in the provisions of other laws and regulations.

The obligations of business actors under the provisions of Article 7 of Consumer Protection Law (UUPK) are:

1. good faith in conducting their business activities;
2. provide correct, clear and honest information about the conditions and warranties of goods and/or services and provide explanation of use, repair and maintenance;
3. treat or serve consumers properly and honestly and not discriminatoryly;
4. guarantee the quality of goods and/or services produced and/or traded based on the applicable quality standards of goods and/or services;
5. provide consumers with the opportunity to test, and/or try certain goods and/or services and provide guarantees and/or warranties for goods made and/or traded;
6. compensate, indemnify and/or indemnify for damages resulting from the use, use and utilization of traded goods and/or services;
7. compensate, indemnify and/or reimbursement if goods and/or services received or utilized are not in accordance with the agreement.

3.6. Legal Aspects of Consumer Protection in Buying and Selling Telecommunication Devices

Illegally

According to Johanes Gunawan, legal protection against consumers can be done in the time before the transaction (no conflict / pre purchase) and/or at the time after the transaction (conflict/post purchase)¹⁴. In general there are two types of consumer protection theories that can be used namely preventive theory (prevention) and repressive theory (settlement). Preventive legal protection is the protection of the law provided by the government to the community with the aim of preventing before the violation occurs. With preventive legal protection which is a form of legal protection directed to protect one's rights from possible violations by others or third parties due to the unlawful. Preventive legal protection is very important for governments based on freedom of action, because in

¹⁴Ronny Hanitijo Soemitro, *Metode Penelitian Hukum dan Jurimetri*, (Semarang: Ghalia Indonesia, 1988), p. 52

the absence of preventive legal protections the government is compelled to be careful to make decisions based on discretion.¹⁵

Preventive legal protection in order to provide protection to consumers is carried out by the formulation of Law No. 8 of 1999 on Consumer Protection or abbreviated as Consumer Protection Law (UUPK). With the establishment of Consumer Protection Law (UUPK) is expected to encourage a healthy business climate as well as the birth of a resilient company in the face of existing business competition by providing quality goods and or services. As well as being able to increase the dignity and dignity of consumers who will in time increase awareness, knowledge, care, ability, as well as foster the attitude of responsible businesses not to do deeds that can harm consumers.

Preventive legal protection in order to provide protection to consumers is carried out by the formulation of Law No. 8 of 1999 on Consumer Protection or abbreviated as Consumer Protection Law (UUPK). With the establishment of Consumer Protection Law (UUPK) is expected to encourage a healthy business climate as well as the birth of a resilient company in the face of existing business competition by providing quality goods and or services. As well as being able to increase the dignity and dignity of consumers who will in time increase awareness, knowledge, care, ability, as well as foster the attitude of responsible businesses not to do deeds that can harm consumers.

The articles related to preventive role namely in Article 7 letter a concerning good faith in conducting their business activities so that in the good faith of the business person will not do harm to consumers. Good faith that comes from telecommunication device businesses for example is to sell products that are authorized warranty so that the products in circulation are legal to trade.

Businesses should also be able to provide correct, clear and honest information about the conditions and guarantees of goods and/or services and explain the use, repair and maintenance in accordance with article 7 letter b. Providing such clear information can be an explanation of the actual condition of the goods without any hidden things and can result in consumer losses. Telecommunication device products traded must be accompanied by clear information by businesses such as by explaining product conditions, specifications and matters related to product information. Similarly, the prohibitions for businesses have been made clear in Law No. 8 of 1999 for example in Article 8 businesses are prohibited from producing and/or trading goods and/or services that do not comply with the promise stipulated in the label, etiquette, description, advertisement or promotion of the sale of such goods and/or services. So when the business person promotes the product then it must conform to the original state of the product. It is not permissible for businesses to promote telecommunication device products incompatible with what is listed on the packaging.

The prohibition on businesses from selling illegal products has been expressly regulated as set out in article 8 paragraph 1 letter a Consumer Protection Law (UUPK) Businesses are prohibited from

¹⁵Philipus M. Hadjon, *Pengantar Hukum Administrasi Negara*, (Yogyakarta: Gajah Mada University Press, 2011), p.76.

⁵ producing and/or trading goods and/or services that: a. Not meeting or not complying with the required standards and provisions of the legislation. thus, in ¹¹ article 62 paragraph 1 of the business person who ¹⁴ violates the provisions of Article 8 of the Consumer Protection Law (UUPK) can be convicted with a penalty of at least 5 (five) years or a penalty of at least Rp 2,000,000,000.00 (two billion rupiahs).

The government has officially enacted the illegal blocking of mobile phones or black markets. The Supreme Court in Decision Number: 527 k / Pdt / 2006 has used the term black market to describe an unofficial trade.¹⁶

Kominfo states that people who purchase telecommunication devices should ensure the IMEI is listed on hkt packaging and devices. Consumers also need to check the IMEI listed on ¹ <http://imei.kemenperin.go.id>.¹⁷ This government's efforts were strengthened by the ratification of Regulation of the Minister of Communication and Informatics No. 1 of 2020 on Control of Telecommunication Equipment and/Or Devices Connected to Mobile Mobile Networks through the Identification of International Mobile Equipment Identity. This regulation aims to improve protection to the public from the use of telecommunication tools and/or devices that do not meet the technical requirements and/or proceeds of crime and to support the prevention and reducing circulation of telecommunication devices and/or devices declared illegal in accordance with the provisions of the legislation, it is necessary to control the tools and/or telecommunication devices connected to the mobile mobile network through the identification of International Mobile Equipment Identity. This is one of the preventive measures so that consumers do not suffer losses in buying telecommunication devices.

In order to prevent and reduce the circulation of telecommunication tools and/or devices declared illegal, there is a supporting device called the Equipment Identity Register (EIR). The device serves to provide Mobile Mobile Network Access and restrict Mobile Mobile Network Access based on IMEI Identification on mobile mobile networks (article 1 Permen Kominfo No. 1 year 2020). So telecommunication devices such as ¹⁷ Mobile phones, handheld computers, and tablet computers whose IMEI is not registered in the system, will not get mobile mobile telecommunication network services.

Further legal protection can be done in a repressive way. The purpose of ²⁵ repressive legal protection is to resolve disputes. The handling of resolving such disputes is carried out by the

²¹
¹⁶ Gde Manik Yogiarta and I Ketut Wirta Griadhi, "Perlindungan Hukum Terhadap Konsumen Dalam Jual - Beli Telepon Seluler Tanpa Garansi Di Pasar Gelap (Black Market):, *Kertha Negara : Journal Ilmu Hukum*, Vol. 01, Numf 42 01, March 2013, p. 4

¹⁷<https://tirto.id/kemenkominfo-resmi-akan-blokir-ponsel-bm-tanpa-imei-yang-terdaftar-f4wW>. accessed October 10, 2020

authorized judicial body both in absolute and relative terms. Dispute resolution can be done by litigation and non litigation.¹⁸

Any consumer of communication services who feels harmed by the transaction of illegal telecommunication devices (black market) without the IMEI code and feels that his rights have been violated can resolve his dispute through litigation and also non litigation lines.

The case of trading telecommunication devices without IMEI code is a violation of consumer rights stipulated in Law No. 8 of 1999 with consumer protection precisely in article 4 paragraph (1) which states consumers are entitled to "the right to comfort, safety and security in consuming goods and/or services", and in paragraph (8) which states that consumers are entitled to "the right to compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as appropriate".

Repressive efforts can be made through dispute resolution with litigation paths. Consumer dispute resolution provisions through litigation paths refer to the provisions applicable to the general judicial provisions with regard to the provisions of the article on the Consumer Protection Law (UUPK). Court-by-court claims can only be pursued if out-of-court consumer dispute resolution efforts through the Consumer Dispute Resolution Agency (hereby referred to as BPSK) are unsuccessful. This means the settlement of disputes through the courts remains open after the parties fail to resolve their disputes out of court. (Article 45 Paragraph (4) of the Consumer Protection Law (UUPK)).¹⁹

The terms of dispute resolution through litigation are contained in Consumer Protection Act No. 8 of 1999 article 45 and article 46:

Article 45

- (1) Any aggrieved consumer may sue a business through an institution tasked with resolving disputes between consumers and businesses or through the judiciary located in the general judicial environment.
- (2) Settlement of consumer disputes may be pursued through the courts or out of court based on the voluntary choices of the parties to the dispute.
- (3) Settlement of disputes outside the courts as referred to in paragraph (2) does not eliminate criminal liability as stipulated in the Law.
- (4) If an out-of-court consumer dispute resolution effort has been selected, a lawsuit through the courts can only be pursued if the attempt is declared unsuccessful by either party or by the parties to the dispute.

¹⁸Munir Fuady, *Pengantar Hukum Bisnis Pranata Bisnis Modern di Era Global Cetakan ke-3*, (Bandung: PT Citra Aditya Bakti), 2008, p.237.

¹⁹Tami Rusli, "Penyelesaian Sengketa Antara Konsumen Dan Pelaku Usaha Menurut Peraturan Perundang-Undangan", *Keadilan Progresif*, Volume 3(1) in March 2012, p.89.

Article 46

- (1) A lawsuit for violations of business actors can be made by:
 - 1) an aggrieved consumer or the heir concerned;
 - 2) consumer groups that have similar interests;
 - 3) a qualified non-governmental consumer protection agency, namely a legal entity or foundation, which in its articles of association states unequivocally that the purpose of the establishment of the organization is for the benefit of consumer protection and has carried out activities in accordance with its articles of association;
 - 4) governments and/or related agencies if goods and/or services consumed or utilized result in significant material loss and/or fewer casualties.
- (2) The lawsuit filed by a group of consumers, consumer protection agencies or the government as referred to in paragraph (1) letter b, letter c, or letter d is filed with the general judiciary.
- (3) Further provisions regarding material loss and/or casualties not least as referred to in paragraph (1) letter d shall be governed by government regulations.

Then there are other alternatives in dispute resolution i.e. out-of-court lines. The provisions regarding non-litigation pathways are contained in Article 45 paragraph (4) which states:

"If an out-of-court consumer dispute resolution effort has been selected, a lawsuit through the courts can only be pursued if the attempt is declared unsuccessful by either party or by the parties to the dispute."

In paragraph (1) letter d shall be governed by government regulations. It is also found in Article 47:

"the settlement of consumer disputes outside the court is expected to achieve the appropriate impact regarding the form and amount of damages and/or concerning certain actions to guarantee that there will be no recurrence or will not be repeated losses suffered by consumers ."

The Consumer Protection Act establishes an institution related to consumer protection law, namely the Consumer Dispute Resolution Agency (BPSK²⁰). Settlement of disputes outside this court is pursued by means of Conciliation or Mediation, or Arbitration. Article 1 point (11) of Consumer Protection Law (UUPK) states that BPSK is the body in charge of handling and resolving disputes between businesses and consumers.

Provisions concerning the Consumer Settlement Agency are contained in the Consumer Protection Act article 49 to article 56. The duties and authorities of the consumer dispute resolution body contained in Article 52 include:

- a. carrying out the handling and resolution of consumer disputes,
- b. by means of mediation or arbitration or conciliation;

²⁰BPSK stands for "Badan Penyelesaian Sengketa Konsumen" in Indonesian Language

- c. provide consumer protection consulting; supervise the inclusion of standard clauses;
- d. report to the general investigator in the event of a violation of the provisions of this Act,
- e. receiving a complaint either written or unwritten, from the consumer about a violation of consumer protection;
- f. conduct research and examination of consumer protection disputes,
- g. call businesses suspected of violating consumer protection,
- h. call and present witnesses, expert witnesses and/or anyone deemed to be aware of violations of this Act;
- i. enlist the help of investigators to present businesses, witnesses, expert witnesses, or any person as referred to in the letter g and letter h, who is not willing to comply with the calls of consumer dispute resolution agencies;
- j. obtain, examine and/or assess letters, documents, or other evidence tools for investigation and/or examination;
- k. deciding and establishing the absence of harm on the consumer's side,
- l. notifying the decision to the business offender who committed a violation of consumer protection;
- m. imposing administrative sanctions on businesses that violate the provisions of this Law.

Article 60

- (1) The consumer dispute resolution agency is authorized to impose administrative sanctions against businesses in violation of Article 19 paragraph (2) and paragraph (3), Article 20, Article 25 and Article 26.
- (2) Administrative sanction stipulated at most Rp 200,000,000.00 (two-million rupiahs).

The provisions governing telecommunication devices are contained in Regulation of the Minister of Communication and Informatics No. 1 of 2020 concerning Control of Telecommunication Equipment and/or Devices Connected to Mobile Mobile Network through International Identification of Mobile Equipment Identity. This provision has to do with the actions of businesses prohibited in Article 8 paragraph (1) of Law No. 8 of 1999 on Consumer Protection.

In addition, there is Regulation of the Minister number 78 of 2019 on instructions for the use of After-Sales Warranty Services for Electronic And Telematics Products. The regulation stipulates that the traded product has been validated or registered so that manufacturers, importers, and businesses must ensure the IMEI is registered and validated in accordance with the provisions of the legislation.

Entrepreneurs are required to meet the standards stipulated in statutory regulations, including the Minister of Communication and Information Technology Regulation No. 1 of 2020 concerning

Control of Telecommunication Equipment and / or Equipment Connected to Cellular Mobile Networks through International Mobile Equipment Identity and Regulation of the Minister of Trade Number 38 of 2019 Provisions for the Use of Instructions and After-Sales Service Guarantee for Electronic Products and Telematic Products.

Regarding the legal sanctions given are in the provisions of the Minister of Trade Regulation Number 69 of 2018 concerning Control of Goods and / or Services. It states that Business Actors who violate the provisions are subject to administrative sanctions in the form of: a) revocation of trading licenses by the issuing official; or b) revocation of other technical licenses by the competent authority.

For every violation of Article 8 of the UUPK, business actors can be subject to imprisonment for a maximum of 5 (five) years or a maximum fine of 2 billion. Based on the provisions in Article 62 paragraph (1) jo. Article 8 paragraph (1) UUPK, a business actor selling illegal telecommunication equipment (black market) may be subject to criminal sanctions.

The proliferation of buying and selling activities of illegal telecommunication equipment (black market), causing losses to consumers. Because it is often found on telecommunications equipment that are sold without the International Mobile Equipment Identity (IMEI) code which is an identity code on the mobile device.

To guarantee legal protection for consumers for all losses caused by the actions of business actors selling telecommunications equipment illegally (black market) against telecommunications equipment without IMEI code, the consumer has the right to sue for any losses caused by the sale and purchase transaction. Consumers based on legal provisions have the right to ask for compensation if they know that the IMEI number of the cellphone they have purchased is invalid or has not been registered, this provision has been regulated in Article 19 of the Consumer Protection Law. Based on this law, business actors are responsible for providing compensation for consumer loss. The compensation can be in the form of a refund, replacement of goods, and / or in other forms.

The UUPK has not specifically regulated consumer protection regarding the illegal sale and purchase of electronic devices. Technological developments and transactions that are spread across various sectors require a rearrangement, especially regarding the issue of consumer protection. Because transactions involving business actors and consumers are currently growing. It is hoped that the UUPK in the future can accommodate the development of transactions between consumers and business actors. The existence of laws and regulations must guarantee legal certainty to consumers so that their rights can be fulfilled, and prevent business actors' actions that could potentially cause harm to consumers.²¹ The rules regarding electronic devices that are regulated in the Regulation of the Minister of Communication and Information Technology No.1 of 2020 are expected to run well and can protect consumers from buying and selling illegal electronic devices

²¹ Nurhafni and Sanusi Bintang, "Perlindungan Hukum Konsumen dalam Perjanjian Baku Elektronik", *Kanun Jurnal Ilmu Hukum*, Vol. 20, Number. 3, (Desember, 2018), P. 484

IV. CONCLUSION

Preventive preventive legal protection is found ²⁰ in the provisions of Law No. 8 of 1999 on Consumer Protection which contains ¹ the obligations of businesses and prohibitions of businesses. Preventive protection is also found in the government's efforts through ¹ Regulation of the Minister of Communication and Informatics No. 1 of 2020 on Control of Telecommunication Devices and/Or Devices Connected to Mobile Mobile Networks Through Identification of International Mobile Equipment Identity. This regulation aims to increase protection to the public from the use of telecommunication tools and/or devices that do not meet the provisions of the legislation, Legal protection can also be done by repressive means that can resolve disputes through litigation and non litigation ² lines. Litigation settlement refers to the provisions applicable to the general judicial provisions ² with regard to the provisions of the article on the Consumer Protection Law (UUPK). While non litigation pathways can be taken for example through the Consumer Dispute Resolution Agency. Violation of the rules that traded products have been validated or registered ¹¹ and the obligation to record indonesian labels may result in manufacturers, importers, or businesses ¹¹ may be subject to administrative sanctions in the form of the revocation of business license by the issuing official. To ensure legal protection against consumers for any losses caused by the actions of businesses, consumers have the right to sue. This provision is stipulated in consumer protection law Article 19.

BIBLIOGRAPHY

1. Books

- Fuady, Munir. (2008). Pengantar Hukum Bisnis Pranata Bisnis Modern di Era Global Cetakan ke-3. Bandung: PT Citra Aditya Bakti,
- Hadjon, Philipus M. (2011). Pengantar Hukum Administrasi Negara. Yogyakarta, Gajah Mada University Press,
- Kristiyanti, Celina Tri Siwi. (2009). Hukum Perlindungan Konsumen, Jakarta: Sinar Grafika.
- Kusmaryanto, Sigit. Telekomunikasi: Konsep Fundamental Telekomunikasi, Teknik Elektro, Modul Fakultas Teknik - Universitas Brawijaya.
- M. Hadjon, Philipus. (1987), Perlindungan Bagi Rakyat di Indonesia. Surabaya: PT. Bina Ilmu.
- Miru, Ahmadi dan Sutarman Yodo. (2004). Hukum Perlindungan Konsumen, Jakarta : RajaGrafindo Persada.
- Muh. Rachmat LKP : Studi Literature untuk Meminimalkan Tower dan BTS yang ada di Surabaya. Undergraduate thesis, STIKOM Surabaya.
- Shidarta. (2000). Hukum Perlindungan Konsumen, Jakarta: Grasindo.
- Soekanto, Soerjono. (1984). Pengantar Penelitian Hukum, UI Press. Jakarta,

Soemitro, Ronny Hanitijo. (1988). Metode Penelitian Hukum dan Jurimetri, Semarang: Ghalia Indonesia.

2. Journal Articles

Dewi, Ni Putu Aprilia Surya, et al. "Perlindungan Hukum Bagi Konsumen Smartphone Bermerek Iphone Dalam Kaitannya Dengan Peredaran Produk Iphone Rekondisi Di Indonesia", Kertha Semaya : Journal Ilmu Hukum, Vol 4 Number 3 (2016).

Yogiartha, Gde Mani, et al. "Perlindungan Hukum Terhadap Konsumen Dalam Jual - Beli Telepon Seluler Tanpa Garansi Di Pasar Gelap (Black Market):", Kertha Negara : Journal Ilmu Hukum. Vol. 01 Number 01, March 2013.

Nurhafni, et al. "Perlindungan Hukum Konsumen dalam Perjanjian Baku Elektronik", Kanun Jurnal Ilmu Hukum, Vol. 20, Number. 3. December 2018.

Rusli, Tami. "Penyelesaian Sengketa Antara Konsumen Dan Pelaku Usaha Menurut Peraturan Perundang-Undangan". Keadilan Progresif, Volume 3 Number 1 March 2012.

3. Websites

Tibahary, Abdul Rahman. "Kepastian Hukum Dalam Transaksi Jual - Beli Telepon Genggam (Handphone) Di Pasar Gelap (Black Market)." OSF Preprints, 25 Feb. 2019

<https://databoks.katadata.co.id/datapublish/2020/09/15/pengguna-smartphone-diperkirakan-mencapai-89-populasi-pada-2025>

RR Ukirsari Manggalani dan Lintang Siltya Utami, 5 Hal Tentang Peraturan IMEI yang Harus Diketahui <https://www.suara.com/teknologi/2020/04/18/154143/5-hal-tentang-peraturan-imei-yang-harus-diketahui?page=all> , accessed 9 Oktober 2020

<https://www.merdeka.com/teknologi/ponsel-bm-diduga-masih-beredar-ylki-minta-fokuskan-perlindungan-konsumen.html?page=2> accessed 10 Oktober 2020

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