

# CHAPTER 1

## INTRODUCTION

### 1.1 Background

As globalization continues to spread throughout the world, its people demands arises and the need of products will continue to surface. Indonesia's Gross Domestic Product (GDP) has continued to maintain a steady growth and will continue to grow in a steady pace in the 2019-2020 transitional year.<sup>1</sup> Indonesia's economy is growing rapidly, and a large portion of the population is entering the middle-class and affluent consumer (MAC) socioeconomic category. As those in this group begin to ramp up their spending in key segments—such as home goods, vehicles, consumer durables, and financial services.<sup>2</sup> With the steady growth of Indonesia's GDP and the rise of Indonesia's highly consumptive middle class, the need to protect these consumers is more than ever.

Consumer protection helps consumers against improperly described damaged, faulty, and dangerous goods and services as well as from unfair trade and credit practices. This is derived from the meaning of each words of the statement which is: Consumer, The legal person who has purchased a product, good or service<sup>3</sup> and Protection: The act of protecting or being in a protected state.<sup>4</sup> Under

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<sup>1</sup> Asian Development Bank, <https://www.adb.org/news/robust-consumption-help-maintain-indonesia-s-growth-2019-and-2020-adb>, Robust Consumption to Help Maintain Indonesia's Growth in 2019-2020 (Accessed in February 11 2021)

<sup>2</sup> BCG Henderson Institute, <https://www.bcg.com/publications/2013/center-consumer-customer-insight-consumer-products-indonesias-rising-middle-class-affluent-consumers.aspx>, Indonesia's rising middle class and affluent consumers (Accessed in February 11 2021)

<sup>3</sup> Webster's Dictionary, Definition of Consumer

<sup>4</sup> Webster's Dictionary, Definition of Protection

Barron's Law's dictionary, consumer protection refers to laws designed to aid retail consumers of goods and services that have been improperly manufactured, delivered, performed, handles or described. Such laws provide the retail consumer with additional protections to merchants and other business performers.<sup>5</sup>

The function of consumer protection is to help protect these consumers from malicious practices from producers and to protect them from any irresponsibility that the producers may practice after the consumers have purchased their goods and services.

Throughout the world, many developed countries have established some form of consumer protection law. Over 120 countries have established some form of this type of law that aims to protect consumers.<sup>6</sup> This is led by its leading body the Consumer's International (CI) which set out to assess the state of consumer protection around the world through a global survey of its member organisations.<sup>7</sup> CI has been established since the 1960s and aims to provide consumers proper protection towards malicious practices of producers spanning over 120 countries with around 240 members.<sup>8</sup> The Indonesian Consumer Institution or *Yayasan Lembaga Konsumen Indonesian (YLKI)* has been a part of the CI since 1974 and is an active member.<sup>9</sup> The YLKI aims to protect Indonesian consumers and educate Indonesia on malpractices of producers. However, according to the CI, the YLKI is

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<sup>5</sup>Barron's Law Dictionary, Definition of Consumer Protection, 1984, Page 91

<sup>6</sup> The State of Consumer Protection Around the World (Revised 2013), Consumer's International, (Accessed in February 11 2021) Page 1

<sup>7</sup> *Ibid*, p. 2

<sup>8</sup> *Ibid*, p.1

<sup>9</sup> Yayasan Lembaga Konsumen, Sejarah, <http://ylki.or.id/profil/sejarah/> (Accessed in February 11 2021)

a low income institution, such as many of these consumer protection associations from developing countries such as the Philippines, Vietnam and India.<sup>10</sup>

Indonesia has established its consumer protection law starting from the year of 1999 with the establishment of Law No.8 Year 1999 on consumer protection (henceforth Law 8/1999). The law has not been updated since then. The governing body for assisting the consumers' rights, from gaining compensation for losses to going for dispute settlement was created after Law 8/1999 on consumer protection. The formation of the Badan Penyelesaian Sengketa Konsumen (**BPSK**) or the Indonesian consumer dispute body is the body which holds complaints and resolves the issues between customer and provider of service and or goods. In Law 8/1999, it is stated that, BPSK is a consumer court institution in Level II Regions throughout Indonesia. Its main task is to provide protection to consumers as well as to handle dispute resolution outside the general judiciary. The role of the BPSK is provided in Article 52 of Law 8/1999 which states that the BPSK must provide consultation of protection to the consumers, must carry out dispute settlements consumers and business entity by way of some methods like mediation, arbitration, and conciliation, receive consumer complaints both written and unwritten, report any wrong doing of business entities and their violations, summoning of business entities of their wrong doing, investigating any consumer protection cases that are presented to them, making a final decision and notifying the business people that they are proven to be guilty as the parties did the violation on the protection of

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<sup>10</sup> The State of Consumer Protection Around the World (Revised 2013), Consumer's International, (Accesed in February 11 2021) Page 40

consumers and imposing a range of administrative sanctions to the business people who break the common law on the protection of consumers amongst other responsibilities.<sup>11</sup> The BPSK continues to become the court to settle disputes on consumer protection to this day.

The need of consumer protection towards the MAC socioeconomic categories is now needed more than ever. The need stems from the buying power of the MAC category, with now 25 locations in Indonesia (both cities and regencies) with MAC populations in excess of 500,000, and there will be 54 by 2020. Due to the buying power and raw protentional of these MAC consumers, with most of these users buying and spending in key segments—such as home goods, vehicles, consumer durables, and financial services as aforementioned before, producers must find a way to advertise to these consumers.

Consumers need protection because of their poor bargaining position. There are fast developing industrial technologies have resulted in mass production of new and innovative consumer goods that consumers desire. This leads to the consumer confronted with a huge amount and constantly changing array of goods. Many of these goods are finished products ready to be used and many of them are packaged so that consumers cannot see them until they are used or purchased by the consumer themselves. Many goods are such the purposes and benefits of which cannot be ascertained by average consumers.

Products are often sold by traders using:<sup>12</sup>

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<sup>11</sup> *Ibid*

<sup>12</sup> Dr. Fajar Sugianto, KEKHUSUSAN PERDATA, April 2020, Jakarta Indonesia

1. misrepresentation, high pressure salesmanship,
2. deceptive packaging, inadequate warranties,
3. false credit terms to attract buyers

Sales personnel are not well trained the consumer remains in a weaker position. In many consumer transactions (credit sale, hire purchase, insurance, etc), the supplier of services is in a far stronger bargaining position. Many agreements incorporate unfair terms (i.e. Exemption clauses) There is no negotiating power or extremely limited Consumers agree to the terms as dictated.

Advertising is an important part of modern marketing system to sell goods and services also need to:<sup>13</sup>

1. Securing acceptance of a product
2. Educate prospective consumers (benefits/merits, brand/model)
3. Inform new products
4. Establish trade name, product image, and goodwill

Exposure to advertisement is now as easy as ever, with media outlets such as billboards, television and home media, newspapers, magazines to name a few. To add to that, due to globalization, anyone has access to the internet to their media consuming devices such as phones, computers, tablets and etc. Producers now have a direct-to-consumer reach with this aspect, such as ads on their favorite website, applications, media streaming sites to name a few. Applications and websites uses cookies to tailor ads to your own specifications.<sup>14</sup>

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<sup>13</sup> *Ibid*

<sup>14</sup> Dr. Fajar Sugianto, KEKHUSUSAN PERDATA, April 2020, Jakarta Indonesia

Misleading or deceptive advertising may take place in places where things are advertised. Sometimes, a claim about the quality or performance of a product may be completely false or exaggerated by the producer of the product. Consumers are then exposed daily to a variety of advertisements in newspapers, magazines, radio, television, billboards. Research suggests that people perceive advertised products to be of higher value and show more willingness to buy them than unadvertised products. The choice of a product is determined not by its actual characteristics but its images as perceived by the consumer. Advertisers mix reality and fantasy by creating a false image about a product.

As per Article 4 (a) of Law 8/1999 on Consumer Protection, the consumer has right to be informed. What it means is that there is a certain requirement set by Law 8/1999 on consumer protection that requires producers/business entrepreneurs who advertise their product to meet, which is stated under Article 9. Law 8/1999 states that Entrepreneurs are prohibited from misleadingly offering, promoting advertising certain goods and/or services if the goods have been discounted, have special prices and/or have not met certain quality standard, certain style or mode, certain characteristic, certain historical or use, the goods are not in good and/or new condition, the goods and/or services have obtained and/or had a sponsor, approval, certain features, certain advantages, certain working characteristics or accession, the goods and/or services are made by the company which has a sponsor, approval or affiliation, the goods and/or services are not available, the goods and/or services have hidden defect, the goods and/or services are features of a certain goods, the goods come from a certain area, directly or indirectly disparaging other goods

and/or services, using exaggerated words, such as safe, not harmful, not risky, no side effect without complete information, offering something containing unsecured promise. Entrepreneurs who violate this are not allowed to continue offering, promoting and advertising the said goods and/or services.

Although the regulations of advertising are clear, there are several business entities that find loopholes that find a way to go over these laws. Sometimes these business entities do not even confide with the rules first before making these advertisements. This can lead to misinformation being spread to the public itself, and create false advertising of the product.

A case that arises from the buying/selling of goods that stem from false advertisement is the case between *PT. Nissan Motor Indonesia Vs. Ludmilla Arif*. PT. Nissan Motor Indonesia released an advertisement that states that their new Nissan *March* has an advantage towards other models as it has better fuel consumption. The advertisement was found in online media at such sites such as Detik Online and Kompas and boasted that their new *March* model can perform at 18,5 km/liter.<sup>15</sup>

After seeing that advertisement, Ludmilla Arif was sure about purchasing the car and bought a Nissan *March* at an authorized dealer of PT. Nissan Motor Indonesia in their branch at Warung Buncit Jakarta Selatan. After 2 months of use of the vehicle, she found that the benefits mentioned were not up to par. Upon her determination, she calculated the distance travelled in each liter.

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<sup>15</sup> Liputan 6, MA tolak kasasi nissal soal gugatan march boros, <https://www.liputan6.com/news/read/707701/ma-tolak-kasasi-nissan-soal-gugatan-march-boros> (Accessed on March 10 2021)

After her investigation, he found that her vehicle travels 7,9-8.2 km/liter. Feeling like her purchase was not warranted and she was taken advantage of, Ludmilla Arif, she directly complained to PT. Nissan March Indonesia to seek compensation. After a disappointing response by PT. Nissan March Indonesia, Ludmilla Arif reported her case to the BPSK in Jakarta.

On February 16 2012, the BPSK released Court Decision No.099/Pts.A/BPSK DKI/II/2012, that states that PT Nissan Motor Indonesia has violated Article 9 Paragraph 1 (k) and Article 10 (c) of Law 8/1999, the BPSK asked PT. Nissan Motor Indonesia to cancel the transaction and to refund Ludmilla Arif of the price of the new *March* for the cost of Rp 150.000.000 (one hundred fifty million rupiah). PT Nissan Motor Indonesia did not want to compensate the cost and states that it was too much for the company. The company took the case to the Indonesia Supreme Court and the hearing was held in 17 April 2012.

The Indonesian Supreme Court judge ruled under Case Number 659 K/PDT.SUS/2012 that there was not enough evidence that Ludmilla Arif committed fraud to show the flaws of PT Nissan Motor Indonesia's vehicle. Therefore, the compensation from the decision by the BPSK was not retracted and enforced and PT Nissan Motor had to pay the court fee of Rp.500,000,00 (Five Hundred Thousand Rupiah).

Henceforth, as the issues that are presented and the need of understanding of consumer protection laws and the state it is in at this moment, the title of this thesis of **Consumer Protection on Disputes That Stem From False Advertisements Under Contract of Sales.**

## **1.2 Formulation of Issues**

Upon the previous description, this thesis will discuss and analyse the following formulation of issues:

1. How is the legal protection on consumers from disputes that stem from false advertisement?
2. How is the *ratio decidendi* Case Number 659 K/PDT.SUS/2012 in protecting consumer toward dispute of sale arisen from false advertisement?

## **1.3 Research Purpose**

The purpose of writing this thesis is to answer the aforementioned formulation of issues which entails:

1. Finding a resolution to legally protect the consumers over the loss they have suffered due to buying products from false advertisement. By doing so, there must be an analytical study of the Consumer Protection Law, and how consumers can be compensated over the damages that they have suffered and how their rights are protected. Furthermore, an analysis on the requirements of advertisement would help consumer's awareness on malpractices of advertising from the producers.
2. Analyse Case Number 659 K/PDT.SUS/2012 on disputes that stem from sales from false advertisement and how the Indonesian government found a solution. Consumer protection rights is essential for Indonesian's to understand as more producers and business entities enter the market, it is important for consumers

to know their rights and privileges so that they can protect themselves from malicious practices.

## **1.4 Research Benefits**

### **1.4.1 Theoretical Benefits**

The aim of this thesis is to give a theoretical understanding of the legal certainty regarding the concept of disputes upon the buying/selling of goods that stem from false advertisement, in which the consumers are entitled for, based on Law 8/1999 concerning Consumer Protection. Therefore, the Author would determine the various regulations and laws that allow consumers to be able to secure their rights for compensation, as well as legal protection against false advertising that occur in. As such, readers can obtain knowledge of the Indonesian legal system and what aspects does the law thereof lack. Moreover, disputes concerning consumer protection will be analysed in order to implement the standards of rights that consumers are entitled to receive.

### **1.4.2 Practical Benefits**

For practical benefits, the Author hopes that this thesis and the formulated issues will become an advantage for the consumers. Hence, this thesis will provide solutions for the consumers and help revitalize the laws, specifically their Consumer Protection Law of Law 8/1999. Moreover, the author suggests that the Indonesian government establishes a coherent regulation that can be feasible for consumers to attain their legality regarding the rights to be protected and compensated over purchases that stem from false advertisements. As a result,

consumer's rights will be enforced by the Indonesian Legal system, with equality, justice and fairness. Society will not take the consumer protection law for granted and ensures the consumers that the business entities will not commit any false advertising or any other malpractices. There will also be a clearer legal remedy towards disputes that arises from false advertising and will compensate consumers of the wrong doings of malicious practices from business entities.

### **1.5 Framework of Writing**

This thesis will contain a total of 5 (five) chapters that will help aid the reader gain an understanding of the issue that is given within this topic.

### **CHAPTER I: INTRODUCTION**

In this section of the thesis, it will mainly contain the introduction of the topic, which is divided into five subtopics, such as:

1. Background
2. Research of Question
3. Research Purpose
4. Research Benefits
5. Structure of Writing

### **CHAPTER II: LITERATURE REVIEW**

In this chapter, the Author will categorize this chapter into 2 topics, in which the first part consists of 2 subtopics incorporating:

1. Theory of Contracts
2. Theory of Consumer Protection

The second part of this chapter, will further provide a detailed description of concepts concerning Consumer Protection, such as:

1. Disputes on Consumer Protection
2. Contract of Sales
3. False Advertisement

### **CHAPTER III: RESEARCH METHODS**

This chapter discusses the variety of research methods that are utilized to formulate this thesis. The methods of which are but not limited to; the type of data, data analysis technique, and the type of approach to research this thesis.

### **CHAPTER IV: DISCUSSION AND ANALYSIS**

The fourth chapter will discuss the research issues as well as the solutions to such matters. Therefore, this chapter will answer the respective research question that has been affirmed in chapter two of this thesis. Hence, chapter four will be divided into two sub-chapters to analyze and elaborate on the issues stipulated in this thesis. Subsequently, the first chapter will examine regulations and policies established by the Indonesian government regarding consumer protection, specifically the disputes that stem from false advertising. The second chapter will show the analysis of a case that stem from a dispute that stem from false advertising.

### **CHAPTER V: CLOSING**

In this last chapter, the author will conclude this thesis by answering the issues stipulated in the previous chapters. The author will explain the conclusion in depth by formulating solutions and recommendations regarding the complications that are faced within the law. Therefore, such constructive insights can be implemented for

the legal certainty of consumers that experience any sale which stem from false advertising.

