

Social Justice in Consumer Protection: The Indonesian Framework

(Keadilan Sosial dalam Perlindungan Pengguna: Rangka Kerja Indonesia)

JESSICA LOS BANOS
GWENDOLYN INGRID UTAMA¹

ABSTRACT

The legal system of Indonesia is underpinned by the Pancasila, a political philosophy introduced by President Sukarno when Indonesia obtained independence from the Dutch in 1945. Its fifth pillar, the 'Keadilan Sosial bagi Seluruh Rakyat Indonesia' which is literally translated as "social justice for the whole people of Indonesia", calls for the equitable allocation of resources while protecting the weaker sector of the Indonesian population. Adopting a substantive-procedural dichotomy approach, this paper examines how this indigenous conception of social justice has shaped and influenced consumer protection in Indonesia. It explores specific aspects of social justice in the formulation of consumer rights and obligations, representation, education and dispute settlement, particularly in the establishment of the National Consumer Protection Agency (NCPA) and the Consumer Dispute Settlement Board (CDSB). As expected, the paper finds evidence that the Pancasila notion of social justice advances a liberal consumer protection framework as embodied in Indonesia's Law on Consumer Protection (LCP), which while balancing substantive rights procedurally tilts the regime in favour of consumers to temper the stronger position of entrepreneurs. It also predictably confirms that consistent with social justice tenets, consumer protection in Indonesia is pro-consumer and encourages shared responsibility between the government and the private sector.

Keywords: Pancasila, social justice, consumer protection, dispute settlement, government-private sector partnership

ABSTRAK

Sistem undang-undang di Indonesia dilandasi oleh Pancasila, sebuah falsafah politik yang diperkenalkan oleh Presiden Soekarno pada saat Indonesia memperoleh kemerdekaan pada tahun 1945. Tiang kelima, 'Keadilan Sosial bagi Seluruh Rakyat Indonesia', menuntut pembahagian sumber secara adil sekaligus member perlindungan kepada sektor lemah di kalangan rakyat Indonesia. Dengan menggunakan pendekatan dikotomi substantif-prosedural, artikel ini meneliti bagaimana konsep keadilan sosial ini telah dibentuk dan mencorak perlindungan pengguna di Indonesia. Kupasan yang dibuat mengeksplorasi aspek khusus tentang keadilan sosial dalam membentuk hak dan kewajiban pengguna, representasi, pendidikan dan penyelesaian pertikaian; khususnya dalam pembentukan Badan Perlindungan Konsumen Nasional dan Badan Penyelesaian Sengketa Konsumen. Artikel ini membuktikan bahawa keadilan sosial menurut gagasan Pancasila telah mengenengahkan kerangka perlindungan pengguna liberal sepertimana yang kini terdapat dalam undang-undang perlindungan pengguna; dalam pada ia mengimbangi hak-hak substantif secara prosedural ia lebih cenderung kepada regim menyebelahi kepentingan pengguna apabila pengusaha berada dalam posisi yang lebih kuat. Hal ini juga dilihat sebagai berperaku bahawa sesuai dengan prinsip-prinsip keadilan sosial, perlindungan pengguna di Indonesia adalah pro-pengguna dan mendorong kepada perkongsian tanggungjawab antara pihak kerajaan dan sektor swasta.

Kata kunci: Pancasila, keadilan sosial, perlindungan pengguna, penyelesaian pertikaian, perkongsian kerajaan dan sektor swasta

INTRODUCTION

How has the Indonesian paradigm of social justice shaped the country's current consumer protection regime? This inquiry is timely as Indonesia, following the end of President Suharto's 31-year stranglehold on power in 1998, has become the world's 17th largest economy and the third fastest growing country among the G20 nations.² In May 2011, it launched the Master Plan for the Acceleration and Expansion of Indonesian

Economic Development (MP3EI) 2011-2025 to increase the competitiveness of businesses in all regions of the country and to encourage a shift into higher value-added activities.³ As of end of 2012, Indonesia ranks 50th out of 126 economies on the Global Competitiveness Index (GCI)⁴ and is currently working with other ASEAN members towards achieving an ASEAN Community by 2015 with the end goal of establishing a single market and production base in which there is freer flow of goods, services, investment and skilled labor within the region.⁵

Inevitably Indonesia's robust economic development trajectory will expand the range of products and services available in its domestic markets in the next few years. This momentum will in turn heighten the informational challenges of Indonesian consumers making consumer protection regulation and education increasingly demanding as it continues to ensure timely access to competitive goods and services unrestrained by unfair and deceptive practices. This is especially significant as it is common knowledge that the relationship between producers and consumers is inherently skewed in favor of the former who are easily able to manipulate the relationship and to impose unilateral terms and conditions on the latter. Moreover there is a common misapprehension that Indonesia's consumer protection regime may be both weak and flawed leading to a general reluctance to resort to existing mechanisms to seek legal redress for consumer rights violations.⁶

As social justice plays a major role in protecting consumers in view of its power redistribution and playing field leveling effects, this paper investigates whether the basic statutory framework as embodied in the Law on Consumer Protection (LCP) and other related laws lays down a socially just and enabling legal structure to support Indonesia's growth potential. Adopting a substantive-procedural dichotomy methodology as the primary approach to research and analysis, this paper examines how social justice has shaped and influenced consumer protection in Indonesia. The paper is organized as follows. We first provide brief overviews of the Indonesian conception of social justice and its consumer protection regime. We then present evidence of social justice in the formulation of consumer rights and obligations, representation, education and dispute settlement, particularly in the establishment of the National Consumer Protection Agency (NCPA) and the Consumer Dispute Settlement Board (CDSB). The paper concludes that true to social justice tenets, the consumer protection framework in Indonesia is fundamentally a liberal, flexible and pro-consumer regime, facilitated by the joint partnership between government and the private sector ensuring sufficient flexibility in consumer protection implementation and dispute settlement.

SOCIAL JUSTICE UNDER THE PANCASILA

The doctrinal foundations of the notion of social justice are well established in most countries and Indonesia is no exception. Indonesia's legal system is underpinned by the Pancasila, a political philosophy introduced by President Sukarno when Indonesia obtained independence from the Dutch in 1945.⁷ *Panca* means five, and *sila* means principle. The Pancasila consists of five pillars: (1) belief in one God (*Ketuhanan Yang Maha Esa*); (2) a just and civilized humanity (*Kemanusiaan Yang Adil dan Beradab*); (3) the unity of Indonesia (*Persatuan Indonesia*); (4)

democracy guided by inner wisdom in unanimity arising out of deliberations amongst representatives (*Kerakyatan Yang Dipimpin oleh Hikmat Kebijaksanaan, Dalam Permusyawaratan dan Perwakilan*); and (5) social justice for all people of Indonesia (*Keadilan Sosial bagi Seluruh Rakyat Indonesia*). In governing institutions, upholding rule of law, and promoting national development, this ideology is not only fundamentally imposed but its pillars are interpreted holistically so that the principles operate in a dynamic and reinforcing manner, and no pillar stands independent of the others. As a consequence, the fifth pillar of social justice differs from the customary and general understanding of the notion as it both shapes and is shaped by the *Pancasila* vision of creating a socially just, nationalistic and united democratic monotheistic society.⁸

The distinctions are marked at both the individual and the group levels. While there is no standard typology or definition of *social justice* in contemporary literature,⁹ the term coined by nineteenth century Catholic scholar Luigi Taparelli is ordinarily understood to mean the equal treatment of both the poor and wealthy,¹⁰ implying the creation of equal opportunities regardless of class status. From the perspective of the individual, traditional social justice advocates accountability for and freedom against oppression.¹¹ According to Rawls, in order to achieve social justice, individuals should have the same claim to equal basic liberties, and any inequalities must satisfy two conditions.¹² First, they are to be attached to positions open to everyone through parity of opportunity; and second, resulting differences must offer the greatest benefit to the least-advantaged members of society.¹³ For example, employment positions are open to all so that each person has a reasonable chance of acquiring them.¹⁴

In contrast, the Indonesian view of social justice is ideologically distinctive as it effectively eschews classical equality by giving primacy to collective society. While recognizing the same basic claim to freedoms, it acknowledges the reality of fundamental inequalities and the existence of a social obligation to promote a united Indonesia as dictated and enabled by the *Pancasila*. The end goal is however nonetheless similar to that of traditional social justice which is to create a common path of balance and order where every individual has the same opportunity to build a better life in society. At this group level, individual rights and responsibilities are subordinated but intricately linked to the population's capabilities and resources. This communal world view is patently attributable to the Indonesian value of harmony, where the individual and the state are always attached, forming two sides of the same coin, distinguishable but not separable.¹⁵ Social justice is constructed, so to speak, out of the various aspects of the Indonesian environment (social, cultural, political, regulatory, etc.) that fit together in their own particular ways.¹⁶ As unity is paramount, social justice obligates individuals,

society, and country as a whole, not to share burdens and blessing sequally but fairly and proportionally based on the individual’s capacity to contribute to achieve social solidarity¹⁷ in which there are “differences in unity and unity indifference”.¹⁸ Thus the first condition of traditional justice on access to equality of opportunity by the individual is to a certain extent downplayed while the burden of the second condition is impressed on everyone, irrespective of social and economic background, to offer the greatest advantage to Indonesian society as a whole. Consequently while job opportunities are in principle open to all, only individuals who possess there quisite competences and skills are encouraged to apply as it is generally perceived that only their performance will by and large result in greater good.

While this may be the case, the *Pancasila* social justice does not however entirely neglect the individual’s claim and right to equality. In fact, the contextualization and operation of social justice in Indonesia leads to the complementary protection of the weak or the *terbelakang* (left behind)¹⁹ through the equitable spread of welfare in which resources are allocated to support their survival so that in due course they are able to develop capabilities to catch up with those who are already ahead. At the individual level, contribution to society is encouraged through work performed according to their abilities and fields of activity. At the macro-level, social justice demands cooperation between Indonesian society and individuals through institutional arrangements that allow individuals based on their inherent skills and capabilities to contribute fully to social well-being. On the part of the state, as the second pillar of the Pancasila envisages a civilized humanity, Indonesia’s institutions and practices are required to be also just. This paradigm is consistent with Rawls’s articulation of the standard modern view that the duty of social justiceat the level of society is

“to support and to comply with just institutions” in so far as they exist, and “to further just arrangements not yet established.”²⁰ Social justice is thus seen as a critical catalyst that challenges not only individuals to participate in nation building but for Indonesian institutions and practices to be reformed in the name of greater fairness. Thus the *Pancasila* social justice creates a uniquely diverse societal structure that bears out the country’s environment, including its existing economy, resources, politics and culture.²¹ Indonesia’s resources and individual potentials across the broad cross-section of society from the economically disadvantaged to the wealthy are expected to be utilized for the greatest possible good and happiness of its people, to prevent repression and guarantee rule of law.²²

As Indonesia’s individuals and their behaviors, and public and private institutions and their practices have long been influenced by the *Pancasila*, it is predicted that the consumer protection regime in Indonesia, a brief overview of which is presented below, will most likely reflect *prima facie* the foregoing unique social justice paradigm in its structure, bargaining power, and information arrangements.²³

OVERVIEW OF CONSUMER PROTECTION IN INDONESIA

Consumer protection in Indonesia is regulated under the Law No. 8/999 on Consumer Protection (the “LCP”) enacted on April 20, 1999 (See Figure 1 below). The LCP describes consumer protection as encompassing all means that guarantee legal security to protect consumers.²⁴ While there is no working definition of the term, this description is sufficiently broad to cover a wide range of consumer-entrepreneur relationships including product

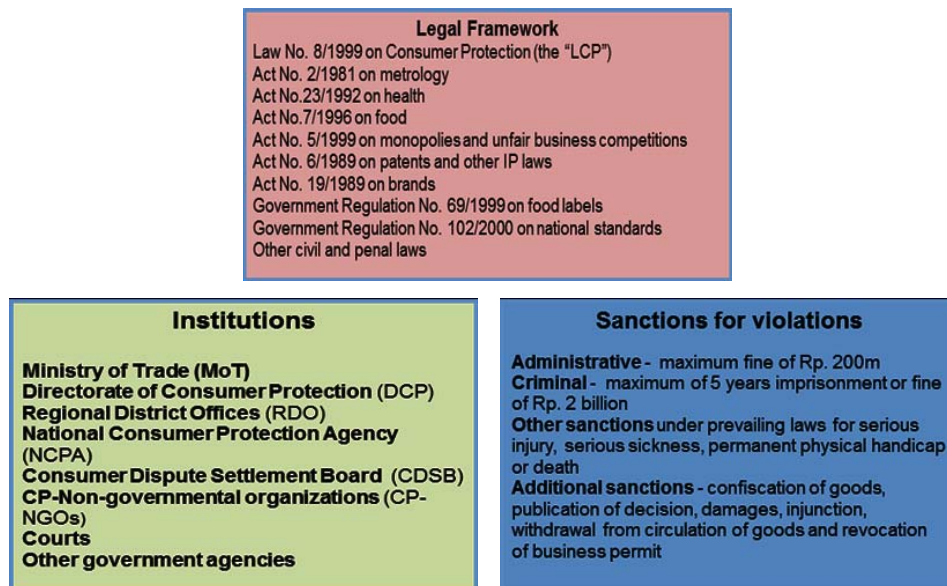


FIGURE 1. Indonesian Consumer Protection Framework

liability, privacy rights, unfair business practices, fraud, misrepresentation, and other consumer/business interactions. The law contains 15 chapters and 65 articles setting forth the guiding principles and objectives of consumer protection,²⁵ rights and obligations of business performers and consumers,²⁶ prohibited activities,²⁷ responsibility of entrepreneurs,²⁸ social enforcement and supervision,²⁹ organization,³⁰ and investigation and sanction.³¹

The LCP is buttressed by other consumer protection legislations that specify the procedural guidelines for the social enforcement, supervision, and conduct of consumer protection;³² the establishment of consumer protection advisory body, the National Consumer Protection Agency (NCPA)³³ the licensing of non-governmental organizations (NGOs) for consumer protection;³⁴ the setting up of regional offices of the Consumer Disputes Settlement Board (CDSB);³⁵ and the institutionalization of market surveillance mechanisms.³⁶

In regard to the scope of consumer protection, a number of regulations are also in place including those on metrology³⁷ or the regulation on measurements, dosage, and scales, health,³⁸ food,³⁹ monopolies and unfair business competition,⁴⁰ patents,⁴¹ brands,⁴² labels and food advertisement,⁴³ and national standards.⁴⁴

For violations of consumer protection laws, Indonesia has two types of sanctions, administrative and criminal. Article 60 of the LCP authorizes the consumer dispute settlement agency handling the dispute to impose an administrative sanction to entrepreneurs⁴⁵ consisting of the payment of a maximum fine of Rp. 200,000,000 (two hundred million rupiah). Criminal sanctions are in turn regulated under Article 61 which authorizes criminal charges to be filed against entrepreneurs and their administrators⁴⁶ who face a maximum penalty of 5 (five) years imprisonment or fine of Rp. 2,000,000,000 (two billion rupiah). Violations causing serious injury, serious sickness, permanent physical handicap or death are subject to prevailing laws. Apart from criminal penalty under Article 62, additional penalties may be imposed in the form confiscation of goods, publication of decision, damages, injunction, withdrawal from circulation of goods and revocation of business permit.

Indonesia's current approach to consumer protection is similar to models existing in most democratic jurisdictions including that of the United States from two perspectives:⁴⁷ (1) the perpetrator perspective via direct enforcement of consumer protection and fraud laws, and (2) the individual consumer perspective through the provision of tools for self-protection and consumer education. The first approach engages perpetrators through civil causes of action, criminal laws, and government enforcement tools to deter illegal opportunistic behavior while the second approach protects consumers through consumer rights mechanisms and general consumer education. Indonesia also employs a third approach through private-public partnership via NGOs that levels the playing field between consumers and entrepreneurs.

The LCP indeed provides a relatively straightforward regulatory framework for identifying whether a given situation is likely or unlikely to constitute a consumer protection problem of significance⁴⁸ and whose redress for violations is designed to be simple, accessible and ensure speedy relief appropriate to the specific nature of problem and compensation appropriate to the consumer's or entrepreneur's situation.

The next section presents our discussion on how the foregoing consumer protection regime has been mediated, shaped and influenced by social justice.

EVIDENCE OF SOCIAL JUSTICE IN CONSUMER PROTECTION

We return to the question "How then has the Indonesian paradigm of social justice shaped the country's current consumer protection regime?" By this query, we do not seek to show the efficiency and effectiveness of the LCP on account of its being anchored on social justice under the Pancasila. Instead, we examine preliminarily whether the statutory framework as embodied in the Law on Consumer Protection (LCP) and other related laws lays down a socially just and enabling legal structure to support Indonesia's growth potential. Employing a substantive-procedural dichotomy analysis of the legal consumer protection framework, we search for linkages between social justice and the important aspects of Indonesia's consumer protection regime under the LCP: (a) its basic structure as embodied in the consumer protection principles, consumer and entrepreneur rights and obligations and investigation powers (b) bargaining power of consumers as enshrined in consumer representation and dispute settlement, and (c) consumer education guaranteed by its present institutional and governance arrangements (see Figure 2 of summary below). We contend that these three areas effectively impact the level of protection accorded to consumers and consequently the share of resources available to different people as a necessary outcome of the influence of core social justice principles.

BASIC STRUCTURE: PRINCIPLES AND CONSUMER AND ENTREPRENEUR RIGHTS AND OBLIGATIONS AND INVESTIGATION POWER

The basic structure of any legal regime serves as the foundation to link both conduct and performance of its stakeholders and ensures its effective and efficient functioning. From the perspective of regulatory design which ensures purposeful implementation and enforcement, we find that the basic consumer protection framework under the LCP emphasizes social justice tenets that are grounded on the capabilities and resources of both consumers and entrepreneurs, clearly replicating

Areas	Evidence
Guiding principles	•Benefit, justice, parity, security and consumer safety (Art. 2, LCP)
Goals	•Self-protection, consumer integrity, consumer capability, consumer information, responsible entrepreneurial behavior and improvement of quality of goods and services (Art. 3, LCP)
Rights and obligations	•Complementarities and mirroring between rights and obligations of consumers and entrepreneurs. Ex. Right to choice and consumption with right to receive payment for goods; right to be informed and right to give information (Arts. 4-7)
Special provisions concerning entrepreneurs	•Prohibited activities and responsibilities of entrepreneurs in view of entrepreneurs' superior market knowledge and resources (Articles 8-27) •Limitations on unilateral stipulations (contracts of adhesion) (Art. 18)
Investigation powers	•Police officers and civil servants with broad with subpoena, visitation and seizure powers (Art. 51)
Consumer representation	•Magnifying voice of consumer through CP-non-governmental organizations which meet license requirements (GovReg 59/2001) •128 CP-NGOs in Indonesia including YLKI
Alternative dispute mechanisms	•Availability and accessibility of ADS mechanisms - Motu-proprio by the parties themselves - CP-NGO offices - DCP Regional offices - NCPA offices - Consumer Dispute Settlement Board offices
NCPA	•CP policy body established pursuant to the LCP and GovReg 57/2001 and mandated to disseminate information on CP and to socialize behavior of stakeholders: consumers, entrepreneurs and CP-NGOs
CP-NGOs	•Support the NCPA and CDSB by engaging consumers through information campaigns to improve awareness of rights and obligations

FIGURE 2. Aspects of Social Justice in Indonesia's Consumer Protection Regime

Indonesia's conception of social justice under the *Pansacila*. General guiding principles anchored on social justice goals are articulated in the LCP that support the consumer protection goals sought to be achieved.⁴⁹ Article 2 coherently enunciates five consumer principles which are benefit,⁵⁰ justice,⁵¹ parity,⁵² security and consumer's safety,⁵³ and law assertion.⁵⁴ Likewise, the LCP assures complementarities between the rights and obligations of both consumers and entrepreneurs so that they are expressed as closely as possible reflecting equality in opportunities in the promotion of social coherence.⁵⁵

Moreover, in view of the more superior market and product knowledge and resources of the entrepreneur, there are two special sections in the LCP dedicated to prohibited activities,⁵⁶ and responsibilities of entrepreneurs,⁵⁷ reflecting an acknowledgment of the weaker bargaining power of the consumer as a *terbelakang* (left behind) and likewise affirming the recognition of basic inequalities in Indonesian society which are utilized for the common

good. Article 18 of the LCP also adopts the customary bar on the general practice of imposing contracts of adhesion or standard clauses unilaterally enforced by entrepreneurs on consumers. Both substance⁵⁸ and form⁵⁹ prohibiting unilateral stipulations and any such standard clauses are declared invalid by operation of law and may give rise to a discretionary remedy for adjustment of the standard clause to conform to law, thus not only ex-ante leveling the playing field but also providing ex-post flexibility for curing the defect to achieve social harmony, another basic *Pancasila* tenet. Moreover, consumers may refer their problems for investigation pursuant to Article 51 either to police officers or civil servants who have broad subpoena, visitation, and seizure powers, and are obligated to notify their results to the public prosecutors for the filing of appropriate action before the appropriate judicial bodies or non-judicial consumer protection agencies for resolution, ensuring that systemic and institutional fairness is guaranteed.

BARGAINING POWER: CONSUMER REPRESENTATION AND ALTERNATIVE DISPUTE SETTLEMENT

Under a social justice framework, the implementation of consumer policy and the vindication of consumer rights are dependent on the existence of mechanisms to secure alignment of the conduct of businesses with the applicable legal norms.⁶⁰ We find that the LCP was designed to promote highly flexible and efficient solutions to consumer protection problems by tapping third party mechanisms⁶¹ for consumer representation and providing modes and styles of non-judicial dispute settlement that are highly accessible. The law clearly intended to create a legal configuration for balancing of strengths and weaknesses of the stakeholders leading to the optimal enforcement of the rule of law. We find this strategy to be generally consistent with the themes of equipping the *terbelakang* (left behind) and matching population capabilities and resources to find solutions to consumer protection problems and providing support to those who manifest bargaining problems and wish to seek it.

Consumer representation Effective representation ensures that consumer needs are taken into consideration in policy formulation that directly affects their transactions. By magnifying the voice of the individual thus increasing their bargaining power, representation contributes to the achievement of social justice.⁶² Under the LCP, the clearly marked effort to strengthen empowerment of consumer stakeholders as a special group is facilitated by non-governmental organizations which take a proactive role in consumer protection in Indonesia. Aside from their consumer education role, they also represent and file cases before the regular courts on behalf of consumers.⁶³ Currently, there are 128 CP NGOs located in Indonesia's provinces, districts and cities.

Accessibility of alternative dispute settlement mechanisms Accessibility of redress is also an important indicator of social justice. Under the LCP, a consumer dispute can be settled either through litigation or out of court. Extrajudicial settlement can be done through alternative dispute resolution (ADR) in the regional offices of Directorate of Consumer Protection (DCP), the Consumer Dispute Settlement Board (CDSB), in venues agreed upon by the parties or even before non-governmental consumer protection organizations. A complaint⁶⁴ filed before the DCP is one of the simplest ways to settle a dispute. A number of facilities are available to commence the complaint including via telephone, direct visit, through mass media, and the internet. We observe that there are no burdensome formal requirements and complaints may be made orally or in writing. Substantively, a distinction is simply made between a consumer-loss versus a non-consumer loss case. Moreover, the process of registration and

confirmation is also simple and undertaken for purposes of documenting cases and of checking the material veracity of the complaint and to obtain the proper chronology of events. Thereafter a clarification process is undertaken either *motu proprio* or through interviews in which the entrepreneur is given sufficient opportunity to rebut the allegations in the complaint. Once justiciability of the issue is established, the parties are thereafter referred to mediation and conciliation and if no decision is reached, the case may be further referred to the CDSB or to the courts. When recourse to non-litigation settlement has been made, consumers may only bring their claims judicially if the non-litigation settlement has failed.

The process before the CDSB,⁶⁵ while more formally structured than the DCP, retains the same basic social justice characteristics of flexibility and accessibility. The CDSB is a non-judicial institution under the DCP tasked to resolve consumer protection complaints expeditiously. There are currently 73 branches of the CDSB throughout Indonesia.⁶⁶ Upon receipt of a consumer complaint, the CDSB forms a council which acts as passive facilitator and simply lets the parties settle their dispute by themselves in regard to the form and amount of compensation. Once an agreement is reached, a reconciliation agreement is drawn and becomes the basis of a CDSB decision. In mediation, the council takes a more active role and provides directions, advices and suggestions to the interested parties. Arbitration is another method used in the CDSB and once the council is chosen as the arbitral body, the parties must comply with the CDSB's binding settlement of their dispute. If the parties are not satisfied with the decision, they may raise the case to the appropriate state court, whose decision can then be appealed to the Indonesian Supreme Court.⁶⁷

Interestingly, there are less than 10 consumer protection cases decided by the Indonesian Supreme Court as of 2011.⁶⁸ The Directorate of Consumer Protection (DCP) also reports the DCP regional offices docket an average of 15 consumer cases per day. In the Central Jakarta CDSB in particular, of the average of one case per day in the last five years, almost 99% are decided in favor of the consumer.⁶⁹ According to Trebilcock (2003), generally a large volume of consumer claims should raise a presumption that a state's consumer protection policy may not be working effectively. On the other hand, a paucity of such claims is consistent both with the effective operation of policies (the best-case scenario) or the failure of policies and denial of effective access to civil redress (the worst-case scenario). However as Morse (2010)⁷⁰ opined and we agree passing judgment on the regulatory effectiveness of a particular nation's legal system is precarious and without data for a more thorough investigation to confirm the appropriate scenario in Indonesia, this determination is reserved for future research in the area.

CONSUMER EDUCATION: NATIONAL CONSUMER
PROTECTION AGENCY (NCPA) AND CONSUMER
PROTECTION NGOS

As the scale and scope of markets expand in Indonesia, so too must the role of the state in providing assurances against market malfunction.⁷¹ Protecting consumer welfare means correcting market failures ex-ante through information dissemination in order to improve the consumer's position in market transactions.⁷² Information as a primary source of power is guaranteed to the consumer. In Indonesia, the National Consumer Protection Agency under the Directorate General of Domestic Trade of the Ministry of Trade is tasked with such function. The NCPA was established pursuant to the LCP and Government Regulation No. 57/2001. It is mandated to disseminate information through media on consumer protection and to socialize the behavior of consumers, entrepreneurs and consumer protection NGOs. They are supported in this role by the consumer protection NGOs engage consumers through information campaigns to improve awareness of their rights and obligations.

CONCLUSION

The entrenchment of social justice as a guiding principle in consumer protection in Indonesia guarantees equitable access to a participatory regime between government and the private sector that is true to social justice tenets. This is not surprising as the Pancasila requires the exercise of personal rights within the larger context of the population's social obligation to promote a unified and democratic Indonesia. Therefore, the influence of its fifth pillar, the *Keadilan Sosial bagi Seluruh Rakyat Indonesia* (social justice for all people of Indonesia), is *prima facie* reflected in the resulting arrangements comprising the governance regime under the LCP and its supporting rules and regulations. Consistent with the *Pancasila* conception of social justice, the consumer protection regime in Indonesia is fundamentally a liberal, flexible and pro-consumer regime, facilitated by the joint partnership between government and the private sector.

There is a broad range of modes for vindication of consumer rights available in Indonesia in recognition of the basic inequalities in Indonesian society and the need to promote Indonesian unity. Substantively, legal assurance under the LCP provides for a mirroring of rights and obligations of consumers and entrepreneurs and enhanced protection of the weaker party in the form of prohibited activities and responsibilities of entrepreneurs. Procedurally, close cooperation and coordination between the parties particularly on issues of compliance and settlement are encouraged. Administratively, structures, policies, education initiatives, and information dissemination mechanisms support a practicable system to inculcate social awareness of the function of consumer protection and to balance the competing interests of

relevant stakeholders to ensure sufficient flexibility in consumer protection implementation and dispute settlement as a means to promote social harmony.

There is strong evidence that social justice underpins the statutory framework statutory as embodied in the Law on Consumer Protection (LCP) and other related laws which lays down a socially just and enabling legal structure to support Indonesia's growth potential. The expected outcomes of consumer protection reflecting social justice principles under the LCP ensure the leveling of the playing field between entrepreneurs and consumers, equalizing the bargaining powers of the parties through government-private sector partnership, and assuring system robustness to minimize undesirable and illegal behaviors that threaten consumer rights. The present study is a preliminary assessment of the influence of social justice on the consumer protection regime under the LCP framework. The actual effectiveness of consumer protection in Indonesia and the role played by social justice therein may be the subject of future research in this area.

NOTE

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- ⁹ See generally Paul Graham, "John Rawls (1921–2002)" *Encyclopedia of Political Theory* [2010] SAGE Publications, <http://www.sage-ereference.com/view/politicaltheory/n379.xml>, (19 July 2011).
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- ¹⁵ R. Yusuf and M. Guntur, 'Menuju Kepemimpinan yang Berkeadilan Sosial', (2010) *Jurnal Keadilan Sosial 1st Edition*, p 63.
- ¹⁶ Frank Lovett, "Theories of Justice" *Encyclopedia of Political Theory* [2010] SAGE Publications, <http://www.sage-ereference.com/view/politicaltheory/n241.xml>, (19 July 2011), p 10.
- ¹⁷ Frank Lovett, "Theories of Justice."
- ¹⁸ Frank Lovett, "Theories of Justice.", p 37.

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- ²³ For this paper, we borrow from the industrial organization field and apply a modified structure-conduct-performance approach to assess the role and impact of social justice on Indonesia's consumer protection regime, which argues that public policy likely affect its structure, consequent conduct, and the performance of relevant stakeholders in that regime.
- ²⁴ Republic of Indonesia Law No. 8/1999.
- ²⁵ Republic of Indonesia Law No. 8/1999 Articles 1-3.
- ²⁶ Republic of Indonesia Law No. 8/1999 Article 4-7 state rights and obligations of business performers and consumers.
- ²⁷ Republic of Indonesia Law No. 8/1999 Articles 8-18 enumerate acceptable acts in the production and trading of goods, standard requirements, information, standard clause, selling techniques, and after sale facilities.
- ²⁸ Republic of Indonesia Law No. 8/1999 Articles 9-28 articulate entrepreneur responsibility for consumer redress.
- ²⁹ Republic of Indonesia Law No. 8/1999 Articles 29-30 detail government responsibility in enforcing consumer protection.
- ³⁰ Republic of Indonesia Law No. 8/1999 Articles 31-58 prescribe private and government partnership in developing consumer protection efforts.
- ³¹ Republic of Indonesia Law No. 8/1999 Articles 59-63 provide for law enforcement mechanisms and sanctions for violations of LCP.
- ³² Government Regulation No. 58/2001.
- ³³ Government Regulation No. 57/2001; President Decree No. 150/2004 on recruitment of NCPA's members; e-recruitment of members from government, private sector, NGOs for consumer protection, experts, and academics.
- ³⁴ Government Regulation No. 59/2001.
- ³⁵ President Decree No. 90/2001; President Decree No. 108/2004; Minister of Industry and Trade Decree No. 301/MPP/Kep/10/2001 on appointment of CDSB members and Secretariat; Minister of Industry and Trade Decree No. 350/MPP/Kep/12/2000 on tasks and authority of Consumer Disputes Settlement Board (CDSB); Minister of Industry and Trade Decree No. 302/MPP/Kep/10/2001 on registration of NGOs for Consumer Protection.
- ³⁶ Minister of Industry and Trade Decree No. 634/MPP/Kep/9/2002.
- ³⁷ Republic of Indonesia Law No. 2/1981.
- ³⁸ Republic of Indonesia Law No. 23/1992.
- ³⁹ Republic of Indonesia Law No. 7/1996.
- ⁴⁰ Republic of Indonesia Law No. 5/1999.
- ⁴¹ Republic of Indonesia Law No. 6/1989.
- ⁴² Republic of Indonesia Law No. 19/1989.
- ⁴³ Government Regulation No. 69/1999.
- ⁴⁴ Government Regulation No. 102/2000.
- ⁴⁵ This covers violations of entrepreneur's responsibilities in Articles 19, Sections 2 and Section 3, 20, 25 and 26 of Republic of Indonesia Law No. 5/1999.
- ⁴⁶ This covers violations of prohibited entrepreneur activities regulated under Articles 8, 9, 10, 13(2), 15, 17(1)(a),(b), and (c), 23(2) and 18. Entrepreneurs who violate Articles 11, 12, 13, 14, 16 and 17 (1)(d)(f) face a maximum criminal penalty of 2 (two) years imprisonment or a maximum fine of Rp 500,000,000 (five hundred million rupiah).
- ⁴⁷ See generally David Adam Friedman, "Reinventing Consumer Protection", *De Paul Review* (2007) 57, p 301-348.
- ⁴⁸ See generally Michael Trebilcock, *Rethinking consumer protection policy in International Perspectives on Consumers' Access to Justice*, ed. Rickett, C. and Telfer, T. (eds.), Cambridge University Press, New York, United States of America, 2003.
- ⁴⁹ Under Article 3 of LCP, the goals of consumer protection in Indonesia are: (a) development of self-protection through awareness, ability and independence, (b) restriction on excessive consumerism through consumer integrity, (c) improvement of consumer capability to select, determine and enforce rights, (d) creation of a consumer protection system that is secure, transparent and with readily available information, (e) development of responsible entrepreneurial behavior in conduct of business; and (f) improvement quality of goods and services.
- ⁵⁰ The *benefit principle* requires that efforts in consumer protection must realize maximum benefits for consumer and entrepreneur.
- ⁵¹ The *justice principle* calls for maximum participation and opportunity to enforce rights and perform duties fairly.
- ⁵² The *parity principle* ensures balancing of interests of consumer, business user, and government in the "material and spiritual senses."
- ⁵³ The *principles of security and consumer safety* guarantee security and safety in utilization of goods and services.
- ⁵⁴ The *principle of law assertion* mandates stakeholders to be subject to law and for the state to act as guarantor of gains from consumer protection.
- ⁵⁵ For example consumer's right to choose and obtain goods mirrors entrepreneur's right to receive payment for their value, which in turn complements consumer's obligation to pay agreed price and entrepreneur's obligation to treat consumers properly and in a non-discriminatory power ensuring that they are able to purchase the desired goods and services. In regard to redress for breach of consumer protection laws the consumer has a right to compensation while the entrepreneur can rehabilitate good reputation if consumer's damage is not caused by the goods and/or services purchase. For other rights and obligations, see Articles 4-7, LCP.
- ⁵⁶ Prohibited activities are governed by Article 8 on non-compliant goods and services; Article 9 on misleading offer, promotion and advertising; Article 10 on making incorrect or misleading statements regarding the goods or services; Article 11 on quality, warranty, fitness for use of products and services; Article 12 on special rates and sale periods; Article 13 on prizes; Article 14 on lotteries; Article 15 on goods and services causing physical or psychological annoyance to consumers; and Article 16 on breach of agreement or non-performance; and Article 17 on advertising businesses.
- ⁵⁷ Entrepreneur responsibilities include Article 19 on compensation; Article 20 for those in the advertising business; Article 21 on importers, Article 22 on burden and responsibility for proof; Article 23 on refusal to provide compensation; Article 24 on B2B transactions; Article 25 on provisioning of spare parts; and Article 26 on honoring agreements and warranties. Under Article 27 entrepreneurs are exempted from responsibility if the goods were not intended for circulation or defects occurring after use or due to non-adherence to specifications for use; consumer negligence; or when claim has been brought after the prescriptive period of 4 years from date of purchase.
- ⁵⁸ Substantive prohibitions include transfer of entrepreneur's responsibility to consumer, reservation on right to accept return of goods, refusal to refund goods and services, giving of authority to entrepreneurs to carry out directly or indirectly all unilateral actions with regard to goods, authentication to forfeit use of goods or benefits of services, reduction of benefits of services or properties of consumers as object of services trading, and those that state that consumers are subject to new, additional, continued regulation made unilaterally by entrepreneurs during the period of use, and authority to impose mortgage, pledge or guarantee against goods purchased on installment.
- ⁵⁹ Entrepreneurs are prohibited from including a standard clause at the place or in the form which is difficult to see or cannot be read clearly, or under the statement which is difficult to understand.
- ⁶⁰ Collin Scott, "Enforcing Consumer Protection Laws, Working Papers in Law", *Criminology & Socio-Legal Studies Research Paper No. 15/2009* [2009] p 63.

- ⁶¹ Collin Scott, "Enforcing Consumer Protection Laws, Working Papers in Law", p 63.
- ⁶² Collin Scott, "Enforcing Consumer Protection Laws, Working Papers in Law", p 63.
- ⁶³ Article 46 provides that non-governmental consumer protection organizations must meet license requirements and their articles of association must clearly state that the objective of their establishment is to protect consumers. Moreover, they must conduct activities pursuant to their articles of association.
- ⁶⁴ See generally <http://www.bpsksolo.com/2011/05/tata-cara-penyelesaian-sengketa.html> and http://ditjenspk.kemendag.go.id/index.php/public/home/info-ayo_jadi_konsumen_cerdas, (25 April 2013).
- ⁶⁵ Article 47 provides that settlement of disputes out of court shall be conducted in order to reach an agreement regarding type and amount of compensation and/or measures to ensure no damages occur again to consumers.
- ⁶⁶ See generally <http://www.hukumonline.com/berita/baca/lt5061a0f0e6676/jumlah-bpsk-hanya-12-46-persen>, (25 April 2013).
- ⁶⁷ See generally <http://www.bpsksolo.com/2011/05/tata-cara-penyelesaian-sengketa.html> and http://ditjenspk.kemendag.go.id/index.php/public/home/info-ayo_jadi_konsumen_cerdas, (25 April 2013).
- ⁶⁸ This figure is based on published cases from the Indonesian Supreme Court website, classified under consumer protection and may not account for other consumer protection cases categorized as breaches of contract and other civil cases. See <http://putusan.mahkamahagung.go.id/pengadilan/mahkamah-agung/direktori/perdata-khusus/merek>.
- ⁶⁹ Interview with Bambang Sumantri, Member of Central Jakarta Consumer Dispute Settlement Body (15 September 2011).
- ⁷⁰ Edward Morse [2010], Free Trade and Consumer Protection, Competing interests in the regulation of Internet Gambling, *European Journal of Consumer Law*, Vol. 2, p 289.
- ⁷¹ Samuel Issacharoff and Ian J. Samuel, "The Institutional Dimension of Consumer Protection"[2009], <http://ssrn.com/abstract=1369744>, (19 July 2011), p 73.
- ⁷² Collin Scott, "Enforcing Consumer Protection Laws, Working Papers in Law", Criminology & Socio-Legal Studies Research Paper No. 15/2009 [2009], http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1441256 (19 July 2011), p 63.
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Jessica Los Banos
Faculty of Law, Universitas Pelita Harapan
Lippo Karawaci, Tangerang
Banten, Indonesia 15811

Gwendolyn Ingrid Utama
Faculty of Law, Universitas Pelita Harapan
Lippo Karawaci, Tangerang
Banten, Indonesia 15811