



## **Legal Protection for Consumers as Victims of Swab/PCR Tests Based on Regulation No. 8/1999 Regarding Consumer Protection**

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### **ABSTRACT**

*In the pandemic era, it is clear that compliance with procedures is essential and has a significant impact on ending the pandemic. Besides wearing masks and maintaining social distancing, routine testing to detect the virus—such as antigen tests—is also necessary. This requirement is based on the Minister of Health’s Decree No. 234/2020, issued on April 7, 2020, which mandates all laboratories in Indonesia to implement early identification and report results to the local Health Office. However, this situation has led to a new form of crime that indirectly violates consumer rights through the falsification of test results by service providers. In similar cases, legal discussions often focus on criminal liability, while consumer rights and protections are also at stake. This study examines the legal protection available to consumers affected by fake SWAB/PCR tests, as well as the government’s responsibilities and efforts in ensuring legal protection for those harmed. The research employs a Juridical-Normative approach, utilizing secondary legal materials with statutory and case-based analysis. A descriptive-analytical specification is used to address the research problem as defined by the researchers.*

**Keywords:** *Consumer, Legal Protection, Swab/PCR Test*

## INTRODUCTION

In the current pandemic era, adherence to health protocols is crucial and significantly impacts the resolution of the pandemic. Besides wearing masks and maintaining social distancing, another essential protocol is conducting routine tests to detect viruses that infect the body, one of which is the antigen test.

The antigen test is performed for early detection of viruses that may be present in the body. It is commonly used to identify respiratory pathogens such as influenza and RCV. Additionally, the antigen test can also detect SARS-CoV-2.

Following an antigen test, if the result is positive, the next step taken by the medical team is to conduct a PCR test, in accordance with the Minister of Health's Decree No. 234/2020, issued on April 7, 2020. This decree mandates that all laboratories in Indonesia perform early identification and report the results to the local Health Office. This measure is implemented solely to help manage and reduce the spread of the virus.

However, a new form of crime has emerged, indirectly violating consumer rights—namely, the falsification of test results by service providers. In similar cases, legal actions are typically discussed in a criminal context, while consumer rights and protections regarding the accuracy of information on services or products used are often overlooked.

This research aims to examine legal protections for consumers who have been harmed by fake SWAB/PCR tests, as well as the government's responsibilities and efforts in ensuring legal protection for affected consumers.

## RESEARCH METHODOLOGY

The researchers employ a juridical-normative research method. This approach focuses on studying the law as an object while excluding any non-legal material.<sup>1</sup> The analysis of legal materials is conducted qualitatively, presenting discussions and research findings in descriptive form based on the obtained legal materials. These materials are then analyzed by identifying and establishing relationships between the collected legal materials and the research problems.

## RESULT AND DISCUSSION

### **Legal Consequences for Fake Swab/PCR Letter Makers**

The rule of law has various concepts across different countries, including terms such as the rule of law, *rechstaat*, *etat de droit*, and others. In European countries, the concept is known as *rechstaat*, while in Anglo-Saxon countries, it is

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<sup>1</sup> Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *GATR Global Journal of Business Social Sciences Review* 3, no. 4 (October 22, 2015): 16–22, [http://gatrenterprise.com/GATRJournals/normative\\_and\\_empirical\\_research\\_methods.html](http://gatrenterprise.com/GATRJournals/normative_and_empirical_research_methods.html).

referred to as the rule of law. Although there may not seem to be a significant difference, upon closer examination, there are several distinguishing elements. The primary difference lies in their focus. The concept of *rechstaat* is based on continental law principles, which tend to have an administrative character, whereas the rule of law is rooted in a legal system with a judicial character.

AV Dicey proposed three meanings regarding the rule of law:

1. Absolute supremacy of the law itself.
2. The application of the principle of legal equality.
3. The constitution as the foundation for the implementation of laws.<sup>2</sup>

Tahir Azhary also stated that, based on several values of Pancasila, the core characteristics of a legal state based on Pancasila are:

1. A close relationship between the state and religion.
2. God as the main focus in all actions and policies.
3. Absolute freedom as long as it remains positive.
4. Rejection of atheism and communism.
5. Harmony and kinship as moral principles.
6. Pancasila as the core element of the rule of law.
7. A people's consultative assembly as a forum for community aspirations.
8. Adherence to a constitutional system.
9. Upholding equality and an independent judiciary.<sup>3</sup>

Indonesia is a democratic country where transactions, including buying and selling, occur daily. Consumers have the right to feel safe and comfortable when using goods or services. This right is regulated in Regulation 4 Letter (a), which ensures consumers receive accurate data and information on the products they purchase or use. This is also in line with Regulation 4 Letter (c) of the Consumer Protection Law (PK Law).<sup>4</sup>

In Indonesia, two institutions are considered fully responsible for addressing the issue of false Swab test service providers: the Health Service and the Food and Drug Supervisory Institution. Both institutions share similar tasks, including overseeing health-related activities and drug circulation in the market. Besides supervision, these institutions also provide training in the health sector, including food and drug safety.

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<sup>2</sup> Janpatar Simamora, "Tafsir Makna Negara Hukum Dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Dinamika Hukum* 14, no. 3 (2014).

<sup>3</sup> Made Hendra Wijaya, "Karakteristik Konsep Negara Hukum Pancasila," *Jurnal Advokasi* 5, no. 2 (2015).

<sup>4</sup> Desak Nyoman Oxsi Selina and I Made Wiryana Darma, "Legal Protection for Online Transportation Service Providers in Transporting Passengers," *Jurnal Hukum Prasada* 8, no. 2 (October 11, 2021): 70–77, <https://www.ejournal.warmadewa.ac.id/index.php/prasada/article/view/3697>.

The Consumer Protection Law, under Regulation 1 Number 2, states: “Every person who uses goods and services available in society, whether for personal, family, or other living beings’ benefit and not for trade.”<sup>5</sup> Several legal measures can be taken by consumers who feel their rights have been violated, including:

Non-Litigation Efforts (settlements outside the court):

1. Peaceful Resolution-When parties choose to resolve the issue amicably through deliberation to reach a mutually agreeable solution.
2. Consumer Dispute Settlement Agency (BPSK)-Similar to peaceful resolution but mediated by BPSK, which determines the rights and obligations of each party. If no consensus is reached, the case proceeds to litigation.<sup>6</sup>

Legal Efforts Through Court (Litigation):

1. Article 45 paragraph (1) of the UUPK states: “Every consumer who is harmed can sue business actors through institutions tasked with resolving consumer-business disputes or through general courts.”
2. If the case involves significant consumer losses, it may proceed as a class action or through an NGO’s legal standing mechanism to reduce litigation costs.<sup>7</sup>

For legal remedies, consumers may seek assistance from the Consumer Protection and Development Agency (LP2K). If non-litigation efforts fail, litigation can be pursued through a lawsuit in the local District Court. In this case, the consumer initially sought a Swab test service, not a falsified document. The consumer underwent an offline Swab test in Jakarta at a clinic recommended by the service provider. This constitutes a breach of contract, where one party fails to fulfill their contractual obligations, as outlined in Article 1267 of the Civil Code. The aggrieved party may seek reimbursement for costs, losses, and interest.

According to Article 19 Paragraph (2) of Law No. 8/1999, compensation may include a refund of IDR 300,000 paid to the service provider. Violations of consumer rights not only result in material losses but also immaterial damages, such as psychological distress during trial proceedings.

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<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005).

<sup>6</sup> Martono, *Kamus Hukum Dan Regulasi Penerbangan* (Jakarta: Raja Grafindo Persada, 2007).

<sup>7</sup> Maximo Langer, “Participation and Accountability to the International Community as Legitimacy Requirements of Universal Jurisdiction: Illustrations from the German Code,” *SSRN Electronic Journal* (2012), <http://www.ssrn.com/abstract=2170494>.

### **The Government's Responsibility to Provide Legal Protection to Consumers**

Consumer protection involves awareness from all parties, including businesses, the government, and consumers themselves. The PK Law was established to address consumer protection issues.<sup>8</sup> Consumers should have the option to file complaints with business actors or relevant authorities through out-of-court settlements or litigation. However, in Indonesia, consumer complaints remain low due to a lack of awareness regarding their rights and responsible institutions.

The UUPK encourages the development of consumer protection institutions, both government and non-governmental. Article 29 of the UUPK states that the government has the most significant role in fostering consumer protection, with relevant ministers in charge, including:

1. Minister of Industry and Trade
2. Minister of Health
3. Minister of the Environment

Government supervision is crucial in ensuring consumer protection. According to Article 30 of the UUPK, government supervision covers the implementation of consumer protection laws and market surveillance. Community and non-governmental consumer protection institutions also play a role in conducting research, testing, and surveys. If any legal deviations are found, the government must impose administrative or legal sanctions.

Strict enforcement aims to enhance consumer confidence in the legal system, encourage public participation in consumer protection, and ensure business actors comply with regulations.<sup>9</sup> The Indonesian Consumers Foundation (YLKI) identifies key consumer rights, including:

1. The right to safety and security,
2. The right to information,
3. The right to choose,
4. The right to be heard, and
5. The right to a good environment.<sup>10</sup>

Consumer protection is also linked to free market economics, where mass-produced goods and advanced technology have increased consumer dependency on businesses. Many consumers lack knowledge about the products they use, making them vulnerable to exploitation. The UUPK states in Article 1 that "Consumer protection ensures legal certainty and safeguards consumers."

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<sup>8</sup> R Arifin, "Protecting the Consumer Rights in the Digital Economic Era: Future Challenges in Indonesia," *JALREV 3 Special Issue* (2021): 135–160.

<sup>9</sup> Langer, "Participation and Accountability to the International Community as Legitimacy Requirements of Universal Jurisdiction: Illustrations from the German Code."

<sup>10</sup> Misnar Syam et al., "Consumer Protection Enforcement Law Characteristics on Civil Law Aspects in Indonesia," *Linguistics and Culture Review* 5, no. S2 (December 13, 2021): 1471–1481, <https://lingcure.org/index.php/journal/article/view/1976>.

Business actors depend on consumer support, but some exploit consumers by withholding accurate product information.

Consumer losses can include property damage, health issues, or mental distress. Weak consumer protection laws in Indonesia often leave consumers without recourse. According to Law No. 8/1999, business actors who fail to fulfill their responsibilities may face administrative sanctions, including:

1. The Consumer Dispute Settlement Agency's authority to impose sanctions on violations of Articles 19(2), 19(3), 20, 25, and 26.
2. Administrative fines up to IDR 200,000,000.<sup>11</sup>

The regulation on administrative sanctions, however, remains unclear. Some interpretations suggest BPSK has the authority to impose such sanctions, while others argue these are civil penalties. Article 60 paragraph (2) states that if a business actor fails to meet obligations, they can be fined up to IDR 200,000,000.

Consumer protection is also implied in Article 27 Paragraph 1 of the 1945 Constitution, which states: "All citizens are equal before the law and must uphold it without exception."<sup>12</sup> Strengthening consumer protection laws is crucial to ensuring consumers can claim compensation and uphold their rights effectively.

## CONCLUSION

Legal remedies outside the court include peace efforts and settlements facilitated by the Consumer Dispute Settlement Body. Meanwhile, legal efforts through the court are governed by Article 45, paragraph (1) of the UUPK. In accordance with Article 1267 of the Civil Code, the aggrieved party may pursue litigation to enforce their rights, compelling the service provider to fulfill its obligations under the agreement, including reimbursement of costs, losses, and interest.

The government is expected to collaborate with the community to ensure consumer protection through its supervisory function, as outlined in Regulation 30 of the PK Law. Government oversight focuses on enforcing consumer protection practices and applicable laws and regulations. Meanwhile, community-driven supervision involves establishing consumer protection initiatives through non-governmental organizations. In addition to ensuring compliance with consumer protection laws, these efforts also extend to monitoring goods circulating in the market. This supervision is carried out through research, testing, and surveys.

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<sup>11</sup> D Karyono, Rohadin, & Indriyani, "Penanganan Dan Pencegahan Pandemi Wabah Virus Corona (Covid-19) Kabupaten Indramayu," *Jurnal Kolaborasi Resolusi Konflik* (2020).

<sup>12</sup> Dra. Dyah Lestiyarini, "Implementation of Consumer Protection Act and Business Ethics towards Batik Craft Entrepreneurs in Kampung Batik Semarang," *Indonesian Law Journal* 12 (2019): 91–104.

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