

# Legal Protection for Customers Using Helmets Not Approved to The Indonesian National Standard

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## Abstract

Consumer protection aims to balance the position of consumers and business actors as interrelated and interdependent parties. Helmets are one of the head covering products made of impact resistant materials, which guarantee products that have been tested by the National Standardisation Agency (BSN), but in reality there are still many helmets that do not have the Indonesian National Standard (SNI) that are freely circulating. This study aims to examine the concept of implementation that can raise legal awareness for users of helmets that do not have SNI, and know the responsibility of business actors who sell helmets that do not have SNI to consumers. This research is conducted with descriptive analysis method, which is to provide the data studied about the state of the object under study. Based on the results of the research, it can be concluded that the implementation concept that can lead to legal awareness for helmet users who are not licensed with the Indonesian National Standard (SNI), are four (4) indicators of legal awareness, namely as follows: Legal Knowledge, Legal Understanding, Legal Attitudes and Legal Behaviour Patterns. Helmet Business Actors who do not have the Indonesian National Standard have violated Article 11 of the Regulation of the Minister of Industry Number: 79 / M-IND / PER / 9/2015 on the Enforcement of SNI Helmets for Motorised Two-Wheeled Vehicles and must be held accountable as Article 19 Paragraphs (1) and (2) of Law No. 8 of 1999. The obstacles faced are minimal understanding of the law, weak planning and lack of internal coordination, the efforts made are to provide legal advice and to divide supervision into 2 (two) parts, viz: Periodic Supervision and Special Supervision.

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## Keywords

Legal Protection, Consumer, BSN and Society

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The issue of the importance of consumer protection is actually a necessity, including in relation to the life of the nation and the state. The state has an important role in realising consumer protection in accordance with the development of today's consumer society, one of the alternatives is through the application of absolute responsibility of business actors from the responsibility of business actors' goods, especially from the existence of hidden defective products, to realise the implementation of the GCPL with nuances of justice and legal certainty for consumers.<sup>2</sup>

The benefit of the enforcement aspect of consumer protection law is to provide comfort to the community (consumers), because with the implementation of consumer protection law enforcement, the legal impact on corporations (business actors), as producers will be careful about legal risks, indirectly corporations will try to improve the quality of their production quality. The behaviour of people in society will be oriented towards various things and standards. It is difficult to accept that the behaviour of people in society is free, but disciplined by restrictions. Parsons argues that such behaviour is subject to a certain scheme called the relational scheme.<sup>3</sup>

Therefore, one of the efforts to improve the quality of national production is the enforcement of national standardisation, the responsibility of economic actors (producers) to maintain the quality of their production at all times, and the enforcement of consumer protection law in improving the quality of national production. Enforcement of consumer protection law must be understood holistically and comprehensively, starting from preventive legal efforts such as public education, through the implementation of national standardisation of production quality, to repressive enforcement in court and the imposition of sanctions on economic actors who violate the law.

The idea of absolute liability as a form of product liability is based on the development of the doctrine of tort in general, as in Article 1365 of the Civil Code, then in the current era of globalisation must pay more attention to provide legal protection to consumers, and by paying attention to the notion of product liability (product liability), which according to Hurs is "product liability is the liability of the manufacturer, processor or non-manufacturing seller for injury to the person, property or third party caused by the product sold", which means product liability is the responsibility of product manufacturers, processors or parties involved in the product process including, This means that product liability is the responsibility of product manufacturers, processors or parties involved in the product process, including sellers, for injuries to buyers and third parties caused by products sold.

Product liability with absolute responsibility of economic actors is a new thing, but in accordance with the current conditions in Indonesia, it should be applied in relation to the functions and objectives of the state to realise welfare. Product liability issues related to the responsibility of business actors are not only based on national law, but also deal with foreign legal systems. In the current unbalanced economic conditions of society, the law must pay attention to the "most disadvantaged" groups of society, in accordance with the principle of justice is to achieve socio-economic balance in society.

Corporations should implement consumer protection as a strategy to win the sympathy of consumers, and also so that the products produced can be accepted by consumers. What has happened so far in Indonesia is exactly the opposite of these ideals, every time we witness the actions of corporations that violate the law and harm the people, many corporations (entrepreneurs) are almost always untouched by the law, many cases have occurred, such as the toxic biscuit case, the

<sup>2</sup> Marianus Gaharpung, *Perlindungan Hukum Bagi Konsumen Kotban Atas Tindak Pelaku Usaha*, Jurnal Yustika, Vol.3 No.1 Juli 2000, hlm 44-45.

<sup>3</sup> Talkot Parsons, *The Social System*, The Free Press, New York 1951, hlm.4

Ajinomoto case, the drug poisoning case, and others that have clearly surfaced, but it seems that there are some cases that have not been addressed, There have been many cases such as the toxic biscuit case, the Ajinomoto case, the drug poisoning case and others that have come to light, but it seems that the government bureaucracy allows this in the sense that they do not take action against corporations that harm the community, even deny, do not clarify, cover up, lack evidence or act as if they are taking action but there is no follow-up.

Consumer issues are always topical and attract attention. Consumer issues are always hotly discussed, talked about, debated and debated. Consumer issues are human issues. It relates to human health and cannot be separated from elements other than health. The issue of religious values can indeed be related to consumer issues.<sup>4</sup> Consumer rights that are ignored by business actors need to be carefully examined. In the current era of globalisation and free trade, many types of goods/services are marketed to consumers in the country. If they are not careful in choosing the goods/services they want, consumers will only become objects of exploitation and irresponsible business actors. Without realising it, consumers take the goods/services they use for granted.

The development of the economy, trade and industry, which is increasing day by day, has provided consumers with an extraordinary indulgence because of the variety of goods and services that can be consumed. The development of globalisation and large-scale trade is supported by information and telecommunications technology, which provides a very free space for any commercial transaction, so that the goods/services marketed can be easily used. A helmet is a head covering made of impact-resistant material (worn by soldiers, firefighters, miners, divers as part of their clothing, and motorcyclists) that protects the head from

impact.

In the modern era, as today, helmets have evolved into several types, some of which are full-face (helmets that cover the entire head) and half-face (helmets that only cover the head), while the demands of an increasingly modern era have led manufacturers to create designs that follow the needs of consumers, forgetting the safety aspect. One of them is the existence of custom helmets (helmets that have been modified from their original form) on the market, which are freely sold and very easy to buy.<sup>5</sup>

A safe helmet should be directly proportional to the level of comfort, although almost no helmet is completely comfortable. Helmets should be light enough to allow the rider to see clearly in daylight, at night and in the rain. And if we look at the regulations in Indonesia, helmets should have an Indonesian National Standard Licence, known to the general public as SNI.

If we pay attention, the number of road accident victims in any city tends to increase every year. This is due to the fact that many road users do not comply with the regulations on driving safety standards, especially motorcyclists. Motorcycle accidents are caused by a lack of awareness of driving safety, both for the rider and the passengers. There are many safety devices that can be used by two-wheeled vehicles, and often when riding two-wheeled vehicles, riders do not pay attention to their equipment, starting from jackets, gloves and, most importantly, the helmet, because it serves to protect the head from impact in the event of a large or small accident. Indonesia adalah salah satu Negara yang memiliki angka berkendara bermotor yang cukup banyak khususnya kendaraan bermotor roda dua, Dari data statistik yang didapatkan penulis dari AISI (Asosiasi Industri Sepeda Motor Indonesia) pada tahun 2020 angka kendaraan bermotor di Indonesia terjual sebanyak

<sup>4</sup> N.H.T. Siahaan: Hukum Konsumen, *Perlindungan Konsumen Dan Tanggung Jawab Prodruk*, Panta Rei, Jakarta, 2005, hlm 1

<sup>5</sup> Definisi Helm Custom, Melalui <<http://Pabrikhelmcustom.Com/Apa-Sich-Definisi-Helm-Custom-Baca-Dulu-Sebelum-Bingung/>>.,\_Tanggal 26 Januari 2022 Pukul 03:16

5,886,103 unit (lima juta delapan ratus delapan puluh enam seratus tiga).<sup>6</sup>

The development of modern society is becoming increasingly dynamic in its lifestyle, so modern society often overlooks the safety aspect of the helmet itself, for example, there are many helmets on the market that do not prioritise SNI, and many helmets sold on the market are not impact resistant and some even crack due to falls. People only prioritise the latest models because there is no national standard in Indonesia and people only care about relatively low prices.

Based on quality control, the WTO has reached an agreement on technical barriers to trade. This agreement is binding on signatory countries, to ensure that a government or agency to establish a rule or technical for the purposes of public safety.<sup>7</sup> In addition, Government Regulation No. 15 of 1991 on Indonesian National Standards (SNI) and Presidential Decree No. 12 of 1991 on the Compilation, Implementation and Supervision of SNI in the Framework of Guidance and Development of National Standards have also been issued.<sup>8</sup>

Consumer expectations are usually similar to the UCC (Uniform Commercial Code) standard of merchantability, which requires goods sold to be fit for their intended use.<sup>9</sup> Then if we look at the Minister of Industry's Regulation No. 79/M-IND/Per/9/2015, in Articles 2 and 4, which reads as follows:

**Article 2;** "Enforcement of SNI helmets for riders of motorised two-wheeled vehicles for the type of product helmets for riders of motorised two-wheeled vehicles with SNI number 1811-2007 and Tariff Post/HS code 6506.10.10.00".

**Article 4;** "Companies producing and/or

importing helmets for two-wheeled motorised vehicles shall apply the SNI referred to in Article 2 with the following provisions:

1. Have an SPPT-SNI in accordance with the provisions; and
2. The SNI mark must be affixed to the product in a clearly legible position and by means of embossing.

This essentially means that any helmet traded in the country of Indonesia must meet the requirements of the SNI..

Products that meet the standards will get a certificate including helmets that will be traded in Indonesia will get a certificate if the helmet has a printed logo SNI itself is a mark of a helmet that has met the Indonesian national standard, this mark is issued after the goods or products that have received permission from the Minister of Industry in accordance with Article 6 paragraph (3) Decree of the Minister of Industry Number 210 of 1979. This certificate is a guarantee of the product because the certificate is given after being tested and meeting the specified requirements, therefore eating how important this standardisation is for helmet products traded in Indonesia.<sup>10</sup>

The guarantee of products that have been tested by the National Standardisation Agency (BSN) is also very important for the safety of helmet users while riding on the road, as Article 4 paragraph (1) of Law No. 8 of 1999 on Consumer Protection, namely: "The right to comfort, safety and security in the consumption of goods and/or services". The following data shows that the number of traffic accidents, especially for motorcyclists in the city of Bandung, which tends to increase from 2020 to 2022:

**Tabel I. Number of road accidents in the Bandung City Police jurisdiction.**

No.	Year	Number of Vehicles Involved in Traffic Accidents
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<sup>6</sup> Data Base, *Motorcycle Production Wholesales Domestic*, Aisi, Jakarta 2020

<sup>7</sup> Ahmadi Miru & Sutarman Yodo, *Hukum Perlindungan Konsumen*. Raja Grafindo, Jakarta, hlm.67

<sup>8</sup> Agung Putra, *Pengendalian Dan Pengawasan Mutu Produk*, Balai Penguji Dan Sertifikasi Mutu Barang, Jawa Timur, November 1995, hlm.1.

<sup>9</sup>Ahmadi Miru & Sutarman Yodo, *Hukum Perlindungan Konsumen*. Raja Grafindo, Jakarta, hlm.162

<sup>10</sup> Janus Sidabalok , *Hukum Perlindungan Konsumen Di Indonesia*, Citra Aditya Bakti, Bandung, 2014, hlm 18

		Motorbike	Passenger Cars	Bus	Total
1.	2020	487	183	9	679
2.	2021	589	170	8	767
3.	2022	625	166	5	796

Source; Bandung City Police.

The above data is the data of road accident victims in Bandung Police jurisdiction. The amount of data above is the number of cases from 2020 to 2022, the data above every year is always increasing, so it is necessary to enforce the law more strictly against helmet business actors who do not have the Indonesian National Standard (SNI) so that victims as a result of accidents can be minimised, starting from the case data above, it can be understood that the law should be a shield to protect the public from fraudulent acts committed by business actors so that the rights of the public as consumers can be protected, especially in terms of safety and security;

Based on the problems described above that arise in the legal protection of consumers who use helmets that are not approved by the Indonesian National Standard (SNI), the author is interested in investigating this in more detail. In addition, it is also necessary to know the concept of implementation that can raise the legal awareness of helmet users who are not licensed with the Indonesian National Standard (SNI). The number of people who are victims of the circulation of helmets that are not suitable for use raises issues that need to be discussed in more depth, especially the responsibility of business actors who sell helmets that do not have SNI to consumers in the community, especially in Bandung City.

In order to ensure the originality of the research or the credibility of this research, the author has made every effort to find out whether previous research has been conducted on similar or related topics or issues. Based on observations and literature searches conducted by the author in various references, research, internet (social

media) and other sources of information, several publications that discuss the legal protection of consumers who use helmets that are not approved by the Indonesian national standard have been identified: Articles and other forms of writing, namely as follows:

1. A journal written by Cut Putri Oktaviani with the title: "Consumer protection for helmet users who do not have Indonesian National Standards (SNI)". Cut Putri Oktaviani wrote in its summary as follows:

"Article 4(a) of Law No. 8 of 1999 on Consumer Protection regulates consumer rights where consumers are entitled to comfort, safety and security when consuming goods and/or services. Article 8(1)(a) prohibits economic operators from producing and/or trading in goods and/or services that do not meet or do not comply with the required standards and legal provisions. In reality, however, traders are still found in Banda Aceh City trading in helmets that do not have SNI. Based on the results of the research, it is known that the legal protection for consumers who use helmets without SNI in Banda Aceh City is not in accordance with the applicable provisions in Article 4 of the GCPL regarding consumer rights, because there are still helmet products that do not have SNI, so they can harm consumers. The form of legal protection for consumers is to urge economic operators to include SNI labels in every helmet product, to carry out socialisation, to carry out laboratory tests on helmet samples. The legal consequences for economic operators are administrative sanctions, withdrawal of business licences, compensation and criminal sanctions. The government's efforts to

overcome the problem are: preventive and repressive efforts, carrying out on-the-spot checks, inspecting a number of helmet sales outlets so that non-SNI helmet products are no longer in circulation. It is proposed that economic operators comply with socialisation so that there are no victims of non-SNI helmet products. To consumers to be more careful in choosing products and to be aware of their rights and obligations. To Disperindang, YaPKA, the Industrial Standardisation Research Centre, to conduct frequent field supervision and take stronger action against companies that violate consumer rights.<sup>11</sup>

2. The journal, written by Akbar Kharisma Tanjung, argues in his abstract entitled "Legal Aspects of Consumer Protection Against Helmet Users That Do Not Comply with SNI":

"To reduce the impact of head injuries suffered by two-wheeler riders during accidents, the government has issued regulations for industry players who produce helmets that must meet the Indonesian National Standard. The regulation is in the form of Regulation of the Minister of Industry of the Republic of Indonesia No. 86 of 2009, which was further amended to No. 24 of 2013 and another amendment to No. 55 of 2013 concerning the Indonesian National Standard. Of course, this is related to manufacturers who produce helmets that meet the Indonesian National Standard and related to consumer protection in accordance with Law Number 8 of 1999 on Consumer Protection".<sup>12</sup>

3. Mochamad Agus Maksum, in his thesis abstract entitled "Legal Protection for Consumers Against Non-Sni Helmet Products in Semarang City", states:

"Supervision, Responsibility Helmets are part of the two-wheeled motorised vehicle equipment in the form of head protection caps that function to protect the wearer's head in the event of an impact. Helmets themselves have been set standards by the Indonesian government through the Indonesian National Standard (SNI) through several regulations issued by the Minister of Industry. SNI helmets are very important for the safety of consumers. The government strongly maintains the standardisation so that consumers do not lose their rights and business actors continue to fulfil their obligations in accordance with applicable laws, namely Law No. 8 of 1999 on Consumer Protection. The problems in this study are (1) legal protection of consumers of helmets that are not Indonesian National Standardised and (2) product liability from the sale of non-SNI helmets by business actors. The purpose is to find out whether all these problems can be solved properly. The method used is qualitative legal research method with socio-legal approach. The research was conducted at the Department of Industry and Trade of Central Java Province. The result of the research shows that: 1) Business actors do not provide legal protection in the form of selling helmet products that are not Indonesian National Standards with the provision of embossed Indonesian National Standard marks and SPPT-SNI property marks. 2) Product liability in the form of withdrawal of goods does not work well because there are still many non-Indonesian National Standard helmet products being sold in the field.<sup>13</sup>

However, some of the examples of journals and

<sup>11</sup> Cut Putri Oktaviani, "Perlindungan Konsumen Pengguna Helm Yang Tidak Memiliki Standar Nasional Indonesia (Sni)", *Jurnal Ilmiah Mahasiswa*, Vol.02, No.02. Mei 2018, Bidang Hukum Keperdataan, Fakultas Hukum Universitas Syiah Kuala, Banda Aceh.

<sup>12</sup> Akbar Kharisma Tanjung, "Aspek Hukum Perlindungan Konsumen Terhadap Pengguna Helm Yang Tidak Sesuai SNI". *UNES Journal of Swara Justisia*, [S.l.], v. 6, n. 1, p. 56-63, apr. 2022. ISSN 2579-4914.

Available at: <https://www.swarajustisia.unespadang.ac.id/index.php/UJSJ/article/view/243>. Date accessed: 10 June 2023. doi: <https://doi.org/10.31933/ujsj.v6i1.243>.

<sup>13</sup> Mochamad Agus Maksum, "Perlindungan Hukum Bagi Konsumen Terhadap Produk Helm Yang Tidak Ber-Sni Di Kota Semarang", *Thesis*, Fakultas Hukum, Universitas Negeri Semarang, 2017.

theses mentioned above are very different from the author's journal, therefore the author's journal is original and contains some novelty.

## Research Methods

This research is normative legal research. Normative legal research is research that examines legal issues in more depth in relation to legal norms that have been determined from the point of view of legal science.<sup>14</sup> Normative legal research, or library legal research, is legal research conducted solely through the use of secondary sources of information.<sup>15</sup> In line with this type of research, this study is descriptive-analytical because its main purpose is to provide a description of society or certain groups of individuals, as well as disorders or other symptoms.<sup>16</sup>

The author uses a normative juridical approach method, which is research conducted by examining library materials that are secondary data as an analyst of the implementation of related laws. In this case, the aim is to examine the legal protection of consumers of helmets that are not licensed according to the Indonesian national standard in relation to the regulation of the Minister of Industry No. 79/M-IND/PER/9/2015.

## Results and Discussion

The law, which is considered to be one of the important aspects in society that aims to create a comfortable and just society, is sometimes ignored by a handful of people. It is not uncommon for the law to be broken, violated or even manipulated by people who have a real interest in it, or people who still consider the importance of a law in society. These are people who do not know the law and do not obey it.

The role of public legal awareness is that the purpose of the law itself is to provide certainty and justice. In the life of the community, there is always a difference between the patterns of behaviour or conduct that apply in society and the patterns of behaviour that are desired by legal norms (rules), this can cause a problem in the form of a social gap, so that at certain times there tends to be conflict and social tension, which of course can interfere with the course of community change as desired. This situation arises because the laws created are expected to be used as guidelines (norms) for action by people who have no legal awareness, so there tends to be no legal obedience. The definition of legal awareness according to Soerjono Soekanto is: "Legal awareness is actually an awareness or values contained in people about existing laws or about laws that are expected to exist", actually emphasising the values about the function of the law and not a legal assessment of concrete events in the society concerned.<sup>17</sup>

The idea of citizens' awareness as the basis for the validity of written positive law is found in the doctrine of *Rechtsgefühl* or *Rechtsbewusstzijn*, the essence of which is that there is no law that binds citizens except on the basis of their legal awareness. This is one aspect of legal consciousness; another aspect is that legal consciousness is often associated with legal compliance, legal education and legal effectiveness.

The issue of legal consciousness also falls within the scope of legal issues and social values. Looking at modern legal theories and jurists' opinions on the binding nature of law, various problems arise. One of the problems is that there is a gap between assumptions about the basis of the validity of written law and the reality of its observance. There is an opinion that the binding nature of the law depends mainly on a person's belief. This is called

<sup>14</sup> Hadin Muhjad dan Nunuk Nuswardani, *Penelitian Hukum Indonesia Kontemporer*, Yogyakarta: Genta Publishing, 2012, hlm 9.

<sup>15</sup> Soerjono Soekanto dan Sri Mamudji, Jakarta: *Pengantar Penelitian Hukum*, Universitas Indonesia, 2001, hlm 13.

<sup>16</sup> Soerjono Soekanto *Pengantar Penelitian Hukum*, Jakarta: Universitas Indonesia Press, 2006, hlm 10

<sup>17</sup> Soejono Soekanto, *Kesadaran Hukum Dan Kepatuhan Hukum*, Edisi Pertama, Rjawali, Jakarta, 1982, hlm 182



the theory of legal consciousness..

Kutchinsky suggests a picture of the relationship between legal rules and behavioural patterns in relation to the function of law in society.<sup>18</sup>

Traditional teaching generally assumes that the law clearly defines prohibited and/or permitted behaviour. That the law is automatically obeyed by the vast majority of citizens. This doctrine is known as co-variance theory, which assumes that there is a correspondence between the law and patterns of lawful behaviour. Another doctrine states that the law is only effective if it is based on the spirit of the people or legal consciousness (F.C. Van Savigny, follower of the cultural school).

One thing to note is that the doctrine or theory deals with legal consciousness, which is seen as a mediator between the law and patterns of human behaviour in society, both individually and collectively. In fact, legal consciousness involves many cognitive and emotional aspects that are often considered as factors that influence the relationship between law and patterns of human behaviour in society.

In legal scholarship, a distinction is sometimes made between legal consciousness and legal sentiments. Legal sentiments are defined as legal judgments that arise automatically in society in relation to questions of justice. Legal consciousness is rather a formulation of legal circles regarding these judgements, which have been made scientifically. Thus, legal consciousness is actually an awareness or a set of values that people have about existing laws or laws that are expected to exist. What is emphasised in this case are values about the function of law and not about concrete events in the society concerned. Thus, legal consciousness emphasises society's values about what function the law should have in society. On the basis of the above, it can be said that the issue here goes back to the basic

problem of the validity of the applicable law, which ultimately has to be traced back to the values of society.<sup>19</sup>

People live in society, in what is called a social situation and a natural situation. A social situation is a situation in which there is a mutual relationship between people. The existence of the social situation can be attributed to at least three factors, which are as follows:<sup>20</sup>

1. The human instinct to live with others,
2. The desire to fit in with other people or their social environment.
3. The desire to fit in with the natural environment.

Another concept that is closely related to legal consciousness, or that includes legal consciousness, is the concept of legal culture. This is a relatively recent concept and one of its uses is to be able to find out about the values of legal procedures and their substance. If we compare the doctrine of legal consciousness with the concept of legal culture, the concept of legal culture is broader in scope. This is because law exists in every human society, no matter how simple and small that society may be.

Because the law is part of the culture, the law cannot be separated from the soul and way of thinking of the people who support the culture. In fact, it can be said that the law is the embodiment of the soul and way of thinking of that society. In general, legal awareness is associated with legal compliance or legal effectiveness. In other words, legal awareness is concerned with whether or not certain legal provisions actually function in society. About the factors that lead people to obey the law, namely:

- a) *Compliance*, Compliance is defined as compliance based on an expectation of reward and an effort to avoid punishment or sanctions that may be imposed if someone violates the

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<sup>18</sup> R. Otje Salman, *Beberapa Aspek Sosiologi Hukum*, Alumni, Bandung, 1989, hlm.49

<sup>19</sup> Jurnal *Wawasan Hukum*, Vol.30 No.1 Februari 2014, hlm.34-35

<sup>20</sup> Soerjono Soekanto, *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum*, P.T. Citra Aditya Bahkti, Bandung, 1989, hlm 79



rules of the law. This compliance is not based on a belief in the purpose of the legal rules in question, but rather on control by those in power. As a result, there will be legal compliance if there is strict control over the implementation of these legal rules..

- b) *Identification*, This is the case when compliance with the rule of law is not for its intrinsic value, but to maintain group membership and good relations with those authorised to apply the rules of law. The attraction of compliance is the benefits derived from these relationships, so that compliance depends on whether the interaction is good or bad. Even if a person does not like law enforcers, the process of identification with them continues and positive feelings towards them begin to develop. This is because the person is trying to overcome his or her anxiety about certain frustrations by gaining control over the object of frustration through identification. The suffering that exists as a result of conflicting values is overcome by accepting the values of law enforcement.
- c) *Internalization*, At this stage, a person complies with legal rules because there is an intrinsic reward for doing so. The content of the rules is in line with the person's values, or because they change their original values. The result of this process is intrinsically motivated conformity. Central to the power of this process is the person's belief in the purpose of the rules, regardless of his or her influence or values towards the group or authority or control.

Some people obey the law because they fear the sanctions that will be imposed if they break the law. Or perhaps someone obeys the law because his interests are guaranteed by the law, or perhaps he even obeys the law because he feels that the applicable law is in accordance with the values that

exist in him. But these things are independent of whether a person agrees or disagrees with the content or procedures of the law. The issue of compliance or obedience to the law is only one element of a wider issue, that of legal consciousness. Of the various meanings of law, one is defined as a network of values that reflects a society. The question of values in law is closely related to legal consciousness.

This is because legal awareness is an assessment of the existing law and the law that is desired or should exist. In this paper, legal awareness is defined as the legal perception of individuals or communities in relation to the law. This perception may or may not be the same as the applicable law. Law in this sense refers to the law that is in force and the law that is desired. Thus, law here includes both written and unwritten law. There are four indicators of legal awareness, each of which is a step towards the next, as follows:<sup>21</sup>

- 1) Legal knowledge;
- 2) Legal understanding;
- 3) legal attitudes; and
- 4) Legal behaviour

Legal awareness is also related to legal effectiveness and legal authority. One aspect of the discussion on legal effectiveness is often related to the impact of the law on society. If the purpose of the law is achieved, i.e. if citizens behave in accordance with what is expected or desired by the law, this is called effective law. This may be because the law is not properly supported by non-legal social norms, such as the value system in society due to modernisation, or because legal officials are unaware of their noble duty to uphold the law, so that the law harms the state. It may also be because the government, which is supposed to support the law with its authority, betrays the law.<sup>22</sup>

Based on some of the above descriptions, the author argues that legal awareness in society will

<sup>21</sup> Soerjono Soekanto, *Kegunaan Sosiologi Hukum Bagi Kalangan Hukum*, P.T. Citra Aditya Bahkti, Bandung, 1989, hlm. 140.

<sup>22</sup> Jurnal *Wawasan Hukum*, Vol.30 No.1 Februari 2014, hlm.36-37

arise by itself if 4 (four) indicators of legal awareness are properly carried out, the four indicators are as follows:

1. Legal knowledge,
2. Legal understanding,
3. legal attitudes and
4. Legal behaviours,

These four indicators are things that need to be done to raise the legal awareness of the public, especially sellers or producers of helmets that do not have the Indonesian National Standard (SNI), which in the regulation should not be distributed or traded, as contained in Articles 2, 4 and 11 of the Minister of Industry Regulation No. 79/M-IND/PER/9/2015, which reads as follows: Article 2: "The application of the SNI for helmets for two-wheeled motorised vehicles is mandatory for the product type of helmets for two-wheeled motorised vehicles with SNI number 18811-2007 and Tariff Post Number/HS Code 6506.10.10.00". Article 4: "Companies manufacturing and/or importing helmets for two-wheeled motor vehicles shall apply the SNI referred to in Article 2 with the following provisions

- a. Have an SPPT-SNI in accordance with the provisions; and
- b. Affix the SNI mark on the product in a clearly legible position by means of embossing".

Article 11:

- 1) "Helmets for riders of domestically produced two-wheeled motorised vehicles which
  - a. Do not comply with the provisions of Article 2 and Article 4 shall be prohibited from being placed on the market in the territory of the Unitary State of the Republic of Indonesia; or
  - b. Has been in circulation and does not comply with the provisions referred to in Article 2 and Article 4 shall be withdrawn from circulation by the company manufacturing the two-wheeled motorised vehicle concerned".

And based on the author's interview with one of

the street helmet sellers, namely Mr Suhendra, who has been in the business for 5 years and resides in the city of Bandung, that Mr Suhendra does not understand or even know that it is prohibited to sell helmets that do not have the Indonesian National Standard (SNI label), which does not guarantee the safety of the helmet and may cause harm to consumers because they get helmets that do not comply with the applicable provisions in this case, which are contained in Articles 2, 4 and Article 11 of Ministerial Regulation of Industry No. 79/M-IND/PER/9/2015.<sup>23</sup>

In the author's interview above, it is explained that the four concepts of indicators of legal awareness in society have not been fully implemented, so that the circulation of helmets that do not meet the Indonesian National Standard (SNI) still exists, this is because sellers and consumers do not know and are not aware of the existing regulations. Legal responsibility is an action that must be performed as a result of a violation of laws and regulations committed by a legal subject. This means that legal subjects who violate laws and regulations can be held accountable for their actions by carrying out the sanctions imposed on them.

In any legal problem that occurs, any person who claims liability must have a basis, namely what causes the person to be responsible; the legal basis of civil liability is the existence of errors and risks that occur in any legal event that occurs in the community. Legal responsibility can be divided into 3 (three) areas of responsibility, namely:

- a. Civil
- b. Criminal; and
- c. Administrative.

Civil liability is the creation of a legal right for a person to sue another person and a legal obligation for another person to take responsibility. Civil liability arises as a result of damage caused by omissions and wrongful acts.<sup>24</sup> Civil damages must be compensated. Compensation in civil matters

<sup>23</sup> Hasil Wawancara pribadi penulis dengan Bapak Suhendra salah satu Penjual Helm jalanan yang berada di kota Bandung, tanggal 20 Desember 2022.

<sup>24</sup> Zaeni Asyhadie & Arief Rahman, *Pengantar Ilmu Hukum*, PT. RajaGrafindo Persada, Jakarta, 2016, hlm. 68-69

refers to Article 1243 of the Civil Code and is the reimbursement of costs, losses and interest.<sup>25</sup>

Civil damages for both default and tort are the same, namely costs, damages and interest. This applies by analogy.<sup>26</sup> The principle of responsibility is a very important issue in consumer protection law. The principles of consumer protection aim to make it easier to find the party responsible for the losses suffered by consumers, and these principles also limit the scope of action of economic operators in the conduct of their business.

Any errors or omissions by economic operators that may cause harm to consumers in particular or to society in general must be made good.<sup>27</sup> The Consumer Protection Act contains 2 (two) important principles of responsibility, namely

- 1) Product liability, and
- 2) Professional liability.

If product liability applies to goods, professional liability applies to services. Based on the above description of the liability of economic operators in the Consumer Protection Act No. 8 of 1999, it can be concluded that the principle of liability applied in consumer protection law is the principle of product liability. According to the principle of product liability, the producer-entrepreneur is directly at fault (presumption of fault) and is obliged to pay compensation to consumers in case of defective products. Based on the principle of presumption of fault, the burden of proof in consumer protection law is reversed, i.e. the defendant (economic operator) must prove that he was not at fault. However, the plaintiff (consumer) must first prove that:

- a. the existence of an unlawful act on the part of the defendant
- b. the existence of damage caused by the unlawful act
- c. the existence of a causal link between the

unlawful act committed by the defendant and the damage caused.

Many experts classify product liability in different legal systems. Some say that product liability is part of the law of torts, tort law, accident law (*ongevallenrecht, casualty law*) and some mention it as part of consumer law. The more advanced view is that product liability is a separate area of law.<sup>28</sup> An action for product liability may be brought on the basis of the existence of a defect:

- a. Breach of warranty
- b. Negligence
- c. Strict liability

With regard to the responsibility of economic operators in the conduct of their business, economic operators must dare to bear the risk of everything that becomes their responsibility as a result of the actions they take and that causes harm to consumers. The responsibilities of economic operators towards consumers who claim damages are regulated in Article 19(1), (2), (3), (4) and (5) of Act No. 8 of 1999 on Consumer Protection, namely

- a) Economic operators are responsible for providing compensation for damage, pollution and/or losses suffered by consumers as a result of the consumption of goods and/or services produced or traded;
- b) The compensation referred to in paragraph (1) may take the form of reimbursement or replacement of goods and/or services of similar or equivalent value, or health care and/or compensation in accordance with the provisions of applicable laws and regulations;
- c) The provision of compensation shall be made with a grace period of 7 (seven) days from the date of the transaction;
- d) The compensation referred to in paragraphs (1) and (2) shall not exclude the possibility of criminal prosecution based on

<sup>25</sup> Riduan Syahrani, *Seluk-Beluk Dan Asas-Asas Hukum Perdata*, PT. Alumni, Bandung, 2013, hlm. 222

<sup>26</sup> *Ibid*, hlm.266

<sup>27</sup> Zaeni Asyhadie, *Hukum Bisnis: Prinsip dan Pelaksanaannya di Indonesia*, Raja Grafindo Persada, Jakarta, 2016, hlm. 204-205

<sup>28</sup> Sidharta, *Hukum Perlindungan Konsumen Indonesia*, Grasindo, Jakarta, 2004, hlm.72-80

further proof of the existence of an element of fault;

e) the provisions of paragraphs 1 and 2 shall not apply if the professional can prove that the fault lies with the consumer.

Thus, on the basis of the legal content of the liability of economic operators, as provided for in Article 19 (1), producer-economic operators are liable for all forms of damage suffered by consumers. In general, claims for compensation for damage suffered by consumers as a result of the use of the product, whether in the form of material, physical or mental damage, can be based on several provisions mentioned above, of which there are only 2 (two) broad categories, namely

- 1) Claims for damages based on default
- 2) Claims for damages based on wrongful acts.

The birth of product liability is due to the imbalance of responsibility between economic actors and consumers. The application of product liability changes the marketing direction of business actors from product-oriented to consumer-oriented. This is because the application of product liability makes economic actors take care of their products because product liability adheres to strict liability.<sup>29</sup>

Product liability, in terms of its scope, is the legal responsibility of the person or entity that produces a product (*producer, manufacturer*), or of the person or entity that engages in a process to produce a product (*processor, assembler*), or of the person or entity that supplies or distributes the product (*seller, distributor*). However, product liability is not limited to the latter, but also includes persons/entities involved in the commercial circuit of the preparation or distribution of the product, including workshop and warehouse operators.<sup>30</sup> As such, product liability is the responsibility of companies.

Entrepreneurs who refuse to pay compensation to

consumers may be sued by the National Board for the Settlement of Disputes (BPSN) or by the court in the consumer's place of residence. This provision is regulated by Article 23 of Act No. 8 of 1999 on Consumer Protection, and economic operators may also be exempted from liability, which is regulated by Article 27 of Act No. 8 of 1999 on Consumer Protection.

The civil liability of economic operators for damage caused to consumers by products that do not comply with SNI obligations is governed by Article 19(1), (2), (3) and (4) of Act No. 8 of 1999 on Consumer Protection. Economic operators are responsible for providing compensation for damage, pollution and/or loss resulting from the consumption of goods and/or services produced or traded that do not meet the standards required by law, namely SNI. The form of compensation is in the form of reimbursement or replacement of goods and/or services of similar or equivalent value, or health care, and/or compensation in accordance with the provisions of laws and regulations. The compensation must be made within 7 (seven) days from the date of the transaction.

If there is a possibility of criminal prosecution based on further proof of the existence of an element of fault, the provision of the above compensation does not exclude the possibility of such criminal prosecution. If the trader refuses and/or fails to respond to the consumer's claim and/or fails to pay the above compensation, the trader may be sued through the consumer dispute resolution body or before the court of the consumer's domicile.

Businessmen who sell goods and/or services to other businessmen can still be held civilly liable in the form of compensation to consumers if:

1. Other economic operators sell to consumers without making any changes to the goods and/or services,

<sup>29</sup> Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, Sinar Grafika, Jakarta, 2009, hlm. 97-99

<sup>30</sup> *Ibid*, hlm.101

2. The other trader is not aware of any changes made by the trader to the goods and/or services that do not correspond to the sample, quality and composition.

Entrepreneurs may be exempted from civil liability if they

1. Can prove that the fault that occurred was the fault of the consumer. This is based on the reverse proof that must be provided by economic operators in relation to product liability.
2. Other economic operators who purchase goods and/or services from the economic operator resell them to consumers by making changes to the goods and/or services.

It is proven that the goods have not been put into circulation or were not intended for circulation; that defects in the goods appear at a later date; that defects appear as a result of failure to comply with the rules on the qualification of the goods; that the consumer has been negligent and that the limitation period of 4 (four) years since the purchase of the goods has expired or the agreed period has expired.

## Conclusion

The concept of implementation that can lead to legal awareness for helmet users who are not licensed with the Indonesian National Standard (SNI) are four (4) indicators of legal awareness, which if carried out and/or implemented step by step will lead to legal awareness, namely as follows 1) legal knowledge, 2) legal understanding, 3) legal attitude, and 4) legal behaviour patterns. In reality, however, legal awareness is still lacking among helmet users who do not have the Indonesian National Standard, so the above concept needs to be implemented as well as possible. In order to increase legal awareness in society, especially for helmet users who do not have the Indonesian National Standard (SNI).

The responsibility of business actors who sell

helmets that are not licensed with the Indonesian National Standard (SNI) to consumers is that business actors who sell helmets that are not licensed with the Indonesian National Standard (SNI) have violated Article 11 of the Regulation of the Minister of Industry Number: 79 / M-IND / PER / 9/2015 concerning the Enforcement of SNI Helmets for Motorised Two-Wheeled Vehicles, it has also violated Article 7d of Law Number 8 of 1999 on Consumer Protection, which states that the obligations of business actors are to To guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services, so that business operators who sell helmets that are not approved by the Indonesian National Standard (SNI) must be responsible to consumers as provided in Article 19(1) and (2) of Law No. 8 of 1999 on Consumer Protection.

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