



Implementation of Strict Product Liability for Business Operators in Consumer Protection

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ABSTRACT

A business actor is an individual or a business entity, which can be either a legal entity or a non-legal entity, that conducts business activities. This includes involvement in the production, distribution, or sale of goods and services. In selling goods or services, they are always guided by the principles of prudence and honesty, and there are no indications of fraud that would ultimately harm consumers. Therefore, in the application of strict liability in consumer protection, a business actor is immediately liable if proven guilty, and is responsible for losses caused by their actions due to an element of error or negligence on the part of the party concerned. The research method in this paper is normative juridical, reviewing various literature and laws, as well as doctrines and theories related to the problem formulation. The results show that consumer protection is the responsibility of all parties, especially business actors, to provide legal certainty in protecting consumers in carrying out sales and purchase transactions of goods and services, so that consumers themselves do not suffer losses

INTRODUCTION

The needs of every human being are certainly inseparable from basic needs and are an integral part of their life. Therefore, in fulfilling these needs, they cannot be consumed by an individual alone but depend on others or involve individuals or business entities in achieving what is desired so that their needs are met, especially the need for goods and services that can be obtained and consumed by humans comfortably, safely, and healthily, without causing pain or loss, and even avoiding negative impacts on health. The goods and services obtained by consumers should certainly provide benefits or advantages, both economically, where purchasing goods and enjoying available services are proportional and in accordance with the existing transactions, and certainly should not cause significant losses or lead to illness or health disturbances. Even defects or potential fatal effects mean that it can truly provide comfort and safety for every consumer who has purchased goods and used services from business actors and distributors.

The importance of the protection provided for consumers can ensure safety as well as the required quality, with consumer protection in place, so that it can be assured that the goods or services we purchase meet the established standards of quality and safety. In other words, it helps avoid harmful and unfair transactions for consumers, maintaining a balanced position between business actors and consumers. Consumer protection is also regulated under the Consumer Protection Law, namely Law Number 8 of 1999. To address the need for consumers to receive protection, it is essential for buyers to have consumer protection laws in place. These laws are very important or fundamental in various transactional activities in buying and selling, as they also provide a form of security and prevent losses for the buyer as a consumer. With these laws, buyers also obtain the right to receive goods according to prior notice or goods as promised by the seller as the business actor, providing genuine and fundamental protection so that buyers do not suffer losses due to the actions of the business actor. Both buyers as consumers and sellers as business actors have the right to receive benefits that do not harm either party, making the availability of transparent information very necessary, which also serves as a key benchmark that business actors can adhere to for the benefit of consumers, to gain the trust and comfort of consumers as users or purchasers of goods, services, and products.

Regarding protection, if consumers feel aggrieved due to a sales transaction with a business actor, this is where the business actor is required to take full responsibility, where the principle of strict liability emphasizes not only aspects of fault/negligence and privity of contract, but is also based on product defects (objective liability) and the risks or losses suffered by consumers (risk-based liability). In the Consumer Protection Law (UUPK), the UUPK regulates the responsibility of business actors for consumer losses, which is specifically contained in one chapter, namely Chapter VI, from Article 19 to Article 28.

Out of the 10 (ten) articles, they can be classified as follows:

- a. Seven articles, namely Articles 19, 20, 21, 24, 25, 26, and 27, which regulate the responsibility of business actors
- b. Two articles that regulate proof, namely Articles 22 and 28

- c. One article that regulates dispute resolution if the business actor fails to fulfill their obligation to provide compensation.

LITERATURE REVIEW

Meanwhile, consumer dispute resolution is regulated in Article 45 of Chapter X, where parties can resolve it voluntarily either through the courts or outside the courts, where the elements contained in Article 45 are: the consumer suffers or experiences a loss, the business actor is sued, and it is carried out through the court. Based on the background above, the problem formulation examined in this study is the implementation of the Strict Product Liability of business actors in consumer protection.

METHODOLOGY

This research uses a normative juridical approach, where the legal research is conducted by examining the availability of library materials or secondary data as a basis for investigation. This is done by exploring regulations and literature related to the issues being studied, including various searches such as doctrines, expert opinions, and theories related to the problems being analyzed, in order to find answers to the issues under investigation or study.

RESULTS AND DISCUSSION

Consumers and Business Actors

The term consumer originates from the translation of the word or 'consument/konsument' (Dutch). The meaning of 'consument' depends on the position in which it is used. Literally, the meaning of 'consument' is (the opposite of producer) every person who uses goods. The purpose of using goods or services later determines which consumer group the user belongs to. Likewise, the English-Indonesian Dictionary defines 'consument' as a user or consumer. Law Number 8 of 1999 concerning Consumer Protection states that a consumer is every person who uses goods and/or services available in society, whether for the benefit of themselves, their family, other people, or other living beings, and not for trading.

The rights and obligations of consumers are regulated in Articles 4 and 5 of the Consumer Protection Law, while the four rights of consumers that must be protected, as stated by John F. Kennedy, are:

- a. The right to safety, which is intended to protect consumers from the marketing of goods and/or services that could endanger their safety.
- b. The right to choose, which is the right to make a choice. For consumers, the right to choose is a prerogative right, meaning whether to buy or not to buy the goods and/or services.
- c. The right to be informed, which is the right to receive information. Under this right, information about the goods to be purchased by the consumer must be complete and honest, so that the consumer is not misled.

The right to be heard, or the rights of consumers to be heard. These rights are intended to ensure that consumers are also taken into account in government policy, including being able to participate in the formation of such policies. In

addition, complaints and expectations of consumers must also be heard by producers.

Meanwhile, the rights and obligations of business actors are regulated in Articles 6 and 7 of the Consumer Protection Law. The obligations of consumers, which emphasize the responsibilities of consumers, are that consumers act in good faith and provide accurate and honest information regarding the condition and guarantees of goods and/or services, as well as provide compensation or restitution resulting from the use of goods and/or services being traded. In detailing the provisions of existing regulations, the obligations of business actors are absolutely essential to provide protection for consumers. Thus, business actors must act honestly and openly regarding the condition of the goods and/or services available, and therefore must have good intentions and be responsible for providing adequate information related to what is being traded and the transactions conducted by sellers and buyers. Business actors should at least have good intentions and always be responsible in giving serious attention to the goods and/or services they intend to sell, for example by explaining the quality and quantity of the goods, as well as their strengths and weaknesses, including spare parts available, as well as the existing warranty period, and if it is proven to be a fault either directly or indirectly, or intentionally or unintentionally, so that consumers are not burdened with the losses they experience.

Consumer Protection

Consumers, as parties who use and consume goods and/or services, have the right to receive adequate and genuine protection from business actors in order to avoid undesirable situations, where protection begins when consumers receive honest and transparent information about the goods to be enjoyed and purchased, as well as the services to be used.

And also, if there are any deficiencies in the goods or services being traded, then the business actors, including distributors, are ready to take responsibility in order to provide protection for the consumers themselves. Consumers are also informed that some understand the quality and standard of the goods and services they intend to purchase and are not easily deceived by business actors, while others do not understand the goods and services being sold and are often misled by the information provided and do not make statements regarding those goods and services.

The implementation of consumer protection as a joint effort has five basic principles, where these five principles are highly relevant to national development, namely:

- a) The principle of benefit means to mandate that all efforts in providing protection for consumers must be able to offer the greatest possible benefits for the interests of both consumers and business actors as a whole. The protection provided to consumers should be genuinely felt by all consumer parties, especially during bargaining and transactions, and is most urgent when consumers suffer losses or face disputes, which should be resolved as soon as possible without delays, significant losses, or unnecessary complications, in order to provide direct benefits to the consumers themselves.

- b) Principle of justice, aims to ensure that the participation of the entire population can be maximized and to provide opportunities for consumers and business actors to obtain their rights and fulfill their obligations fairly, where in its implementation it provides fairness to everyone, and fairness here is not biased or selective in granting and receiving rights. Its implementation also considers the interests of each individual and must provide satisfaction to every consumer and business actor.
- c) Principle of balance, means being able to provide a balance between the interests of consumers, business actors, and also the government, both in material and spiritual terms.
- d) The principle of consumer safety and security aims to provide guarantees for the safety and well-being of consumers. This ensures that when consumers purchase desired goods, there are no negative impacts, such as consuming expired food or drinks, or products made with harmful additives that can cause stomach ache or other adverse effects on consumers. This principle allows consumers to feel safe and comfortable in using and enjoying goods and services without compromising their health and safety.
- e) The principle of legal certainty, which aims for business actors and consumers to comply with the law and obtain justice in the implementation of consumer protection. Furthermore, the state, in this case, also ensures the existence of such legal certainty if consumers feel there is an element of fault in the form of intentional acts or negligence by business actors that can cause death or disability. In such cases, the state can provide protection by imposing criminal sanctions on the perpetrators, as it is not only related to compensation for material losses but also because it can result in the inability to carry out activities due to disability and even death.

Strict Liability of Business Actors (Strict Product Liability)

Responsibility is defined as an attitude or even actions that are ready to face the consequences and bear the risks arising from one's actions, including compensating for losses or, if necessary, dealing with the law, being prepared to account for one's actions with either small or large risks. When understood as responsibility, it is usually carried out voluntarily and willingly because one realizes or is aware that it is indeed a mistake that exists. This is also regulated in protection Consumer means that if it causes losses for consumers, it can of course be pursued through legal channels via court disputes to determine the extent of the losses suffered. Thus, to clarify, the Principle of Consumer Protection as stipulated in the Consumer Protection Act, one of which is the Principle of Strict Product Liability, is based on the idea that consumers cannot do much to protect themselves from the risk of losses caused by defective products. Therefore, the application of this principle to producers provides protection for consumers because they are not burdened with proving the producer's fault due to the use of a product. This means that under this principle, if a violation or crime is proven to have occurred, further evidence may be required to determine whether the business actor in question is guilty or not.

Absolute responsibility between business actors and consumers is also based on the principles of the validity of agreements in accordance with Article 1320 of the Civil Code regarding the conditions for the validity of agreements, so that consumers do not suffer losses due to the actions of business actors, including producers or distributors. In purchasing goods and services, there must be an agreement between the business actors and the producers that complies with the conditions of validity of agreements as stipulated in Article 1320 of the Civil Code, namely:

1. Agreement of the parties, where the agreement reflects the will and consent of both parties to make an agreement. As emphasized in Article 1321 of the Civil Code, there is no agreement that can have legal force if it arises from a mistake or is obtained through actions such as coercion or fraud.
2. The capacity of the parties, as regulated in Article 1330 of the Civil Code, stipulates that those considered incapable of making an agreement are minors or underage children, persons who are placed under guardianship or supervision, and also married women in matters determined by law, and generally all individuals whom the law prohibits from making certain agreements. However, in its development, a wife may also perform a legal act as regulated in SEMA 3/1963 in conjunction with Article 31 of the Marriage Law.
3. A specific matter/the main issue of a particular matter, where according to Article 1234 of the Civil Code, what is meant by a certain condition for the validity of an agreement is a subject of the agreement, namely a performance, for example, in giving something, being able to do something, or refraining from doing something.

Because what is lawful/not prohibited, based on Article 1337 of the Civil Code, a cause is unlawful if it is prohibited by law or if the cause is also contrary to morality or public order. In agreements implemented through contracts with valid conditions, parties such as businesses and consumers can bind themselves to fulfill their respective rights and obligations as outlined in the agreement. The contract here is not a unilateral agreement that disadvantages one party, as such an agreement could cause harm to the consumer. Therefore, it is not appropriate to enforce contract provisions that disadvantage one party, as it can be considered a violation of the validity of an existing agreement.

Implementation of Strict Liability in Consumer Protection

The application of strict liability in consumer protection often causes injustice for consumers, resulting in an imbalance in the position between business actors and consumer protection. In practice, consumers often face a reality where they do not receive their rights as agreed upon in an existing agreement or contract. The weak position of consumers is often disproportionate to what is expected; for example, losses are claimed not to be the responsibility of business actors. Often, if such cases are taken to court, the business actors may sometimes win due to insufficient evidence.

According to Chapter VI regarding the responsibilities of business actors, Article 19 of Law Number 8 of 1999 on Consumer Protection states:

1. Business actors are responsible for providing compensation for damage, pollution, and/or losses suffered by consumers as a result of consuming goods and/or services produced or traded.
2. Compensation as referred to in paragraph (1) may take the form of a refund of money or replacement of goods and/or services of the same or equivalent value, or health care, and/or provision of compensation in accordance with the applicable laws and regulations.
3. Compensation must be provided within 7 (seven) days after the date of the transaction.
4. The provision of compensation as referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal charges based on further evidence proving the existence of fault.

The provisions referred to in paragraphs (1) and (2) do not apply if the business actor can also prove that the mistake they made was due to the consumer. In the Consumer Protection Law related to advertising issues, as generally regulated in the provisions of Articles 8 to 16 and specifically in the provisions of Article 17 of the UUPK, it also regulates acts prohibited for business actors themselves, so they do not commit actions that harm consumers. In general, claims for compensation for losses suffered by consumers partially due to the use of a product, whether material, physical, or bodily harm, can be based on several provisions mentioned, which can generally be categorized into two main types: claims for compensation based on breach of contract and also There is also a demand for compensation which is also based on acts that violate the law. Secondly, the basis of the claim for compensation is also discussed specifically as follows:

- a. Claims based on the existence of a breach of contract, where if the claim for compensation is based on a breach of contract, it arises because the defendant and the plaintiff (producer and consumer) are bound in an agreement. A third party (not involved in the agreement) who feels harmed cannot also claim compensation on the grounds of the existing breach of contract.
- b. Claims based on unlawful acts are different from claims for compensation that are also based on obligations arising from a contract (due to a breach of contract). Claims for compensation based on unlawful acts do not necessarily have to be preceded by an agreement between the producer and the consumer, so compensation claims can be made by any party that is indeed harmed, even if there has never been a contractual relationship between the producer and the consumer. Absolute liability actually comes back to the awareness of the business actor themselves; if, due to their mistakes or actions, they cause harm to others, they should at least take the initiative and willingly take responsibility both legally and criminally and realize that Responsibility is one form of addressing existing problems.

CONCLUSION AND RECOMMENDATION

Conclusion

1. Absolute liability (strict product liability) is the obligation of business actors to provide protection for consumer rights related to the fulfillment of goods and/or services.
2. The implementation of the absolute liability of business actors as regulated in Article 19 of the Consumer Protection Law provides reasonable compensation in accordance with the principles of consumer protection.

Recommendation

1. Consumer protection is the responsibility of all parties without exception in providing protection because it relates to human rights in obtaining honest and transparent information about goods and services that will be consumed, utilized, and used.
2. Proof of a criminal act resulting from a violation of consumer rights can be demonstrated by providing appropriate compensation, given voluntarily and without discrimination, from the business actor to the consumer.

FUTHER STUDY

This research still has delays, so it is necessary to conduct further research related to the topic Implementation of Strict Product Liability for Business Operators in Consumer Protection in order to improve this research and add insight for readers.

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