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CORPORATE LIABILITY FOR DEFECTIVE PRODUCT

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ABSTRACT

This research revolves around the accountability of producers to consumers for products that are not suitable for use. The purpose of this study is to determine and analyze the forms of producer accountability towards their consumers in regards to products that are not qualified for sale. This study also seeks to analyze the legal remedies of consumers against producers on products that cause them losses. The researcher applied normative research method. This research shows that the rights and obligations of producers are often infringed and the victims are consumers. Consumers sometimes do not get the goods they have bought as advertised through the commercials; as an example, the products might not be suitable for use, and in some cases, consumers might be harmed. This study concludes that the responsibility of producers to consumers on defective products is to compensate the losses suffered by consumers due to their unqualified products.

INTRODUCTION

In marketing its products, producers are doing a massive expansion, competing for the consumer market. The struggle did not only occur in the local or national sphere, but it has become a global competition between one producer and another. Using one of the sophisticated telecommunications technology such as the internet (interconnection networking), which is a connection between computer networks, the marketing process carried out by producers can cover all regions of the world, aiming various countries, ethnicity, and various other trade targets.

This has both positive and negative impacts for consumers. On the positive side, consumers have many choices before deciding which products to buy. While the negative sides cause consumers to become parties who are in a weak position as objects of marketing between producers who aim to gain as much profit as possible

through various promotional efforts, sales through advertising in print and online media, as well as certain agreements that sometimes harm consumers (Muryati and Heryanti, 2011). According to Happy Susanto, consumers as users of goods or services are indeed the most disadvantaged parties in the producer-consumer relationship (Susanto, 2008).

Referring to these provisions, Indonesian consumers get legal protection and equality of relations with producers. According to Debora, producer-consumer relations are about rights and obligations, namely: a). Different packaging makes it difficult for consumers to compare the price of a product; b). Packaging makes consumers do not know the contents of a product so there must be a comprehensive explanation of the content contained in the product; c). Promotion as the most important ethical disorder d. Provision of services and guarantees as part of post-journal services (Debora, 2015).

Producer and consumer relations is a reciprocal relationship, where there are obligations and rights for both parties. Producer rights are include the rights to payment, protection, defense, and rehabilitation. While producer obligations are good intention in carrying out business activities, provide accurate information about all products, serve consumers properly, guarantee product quality, provide trial opportunities, and giving compensation (Ma'arif and Tanjung, 2003).

Consumer rights are the rights towards basic necessities, vote, information, to be heard, protection, education, to be served, and compensation. The consumer's obligation is to read the instructions related to the product correctly, make a good intention in making a purchase transaction, pay according to the agreement and follow the dispute of the consumer's legal protection dispute appropriately. However, these rights and obligations are often infringed in which consumers become the victim. Consumers sometimes do not get the goods they have bought as advertised through the commercials; as an example, the products might not be suitable for use, and in some cases, consumers might be harmed.

One of the most striking case is of Mr. Edy who sued Nikko Hotel International because the food he ordered contained chemicals that are dangerous for consumption on July 30, 2009 in Central Jakarta. Mr. Edy as a consumer also suffered losses over the incident. This is very detrimental to consumers and the producer must be responsible of it. Related to the case as mentioned earlier, in the context of this study there is a set of laws aimed at providing consumer protection.

⁶ The purpose of this study is to determine and analyze the forms of producer accountability to consumers as a result of products that are not yet worth selling, and to seek and analyze the legal remedies of consumers against producers.

¹⁶ This study is expected to be able to contribute in the development of legal science, especially in the field of consumer protection and producer responsibility, in particular towards products that are not yet suitable for use, and can be used by

interested parties, both consumers and law enforcement agencies who are taking legal action on loss due to defective goods.

RESEARCH METHODS

This study² is a normative research, which is also known as dogmatic research. Dogmatic research is a type of research that is used to study a statutory regulation, from the aspect of its relationship to other legislation, weaknesses in a statutory regulation or known as legal weaknesses, evaluating legislation, and providing recommendations related to the legal weaknesses of a statutory regulation based on the findings of the research (Marzuki, 2007).

Definition of Liability

Many people do not know the difference between responsibility or accountability¹⁵. Responsibility is the state of being obliged to bear everything (if anything happens, the party may be prosecuted, blamed, sued, etc.). The Indonesia dictionary only listed the term responsibility, while the definition of liability can not be found. Hence, the difference between responsibility and liability is only known among the legal terms in which the term is the result of the adoption of legal workers.

The distinction between the terms responsibility and liability is greatly influenced by the difference in meaning between *responsibility* and *liability*. Broadly speaking, responsibility is applied for criminal law, while liability is for civil law. In criminal law there is criminal responsibility and civil liability in civil law. Thus, in criminal law there is no lawsuit, but a claim by the public prosecutor. Whereas in civil law there is a lawsuit by the plaintiff against the defendant, causing liability to exist in civil law (Yusuf, 2008).

Liability of Producers against Consumers

Producers, in Law Number 8 of 1999 Concerning Consumer Protection, are business actors, each individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or carrying out activities within the jurisdiction of the Republic of Indonesia, both individually and through agreements to hold business activities⁹ in various fields of economics.

That understanding is explained in article¹⁰ number 3 of the Consumer Protection Act, meanwhile, the rights of producers according to Article 6 of the Consumer Protection Act are as follow:

Defective products are goods that are not in accordance with product specifications, product designs that do not guarantee consumers' comfort and security or because there is no adequate information about defects in a product. Further understanding can be found in the Consumer Protection Act. The definition is included in article 8 paragraph (1) of the Consumer Protection Act (Lumantow, 2013). Defective products are goods which may not be sold by any means and method, thus producers who sell defective goods must be held accountable for their actions.

Based on these provisions, one of the prohibitions in the Consumer Protection act is selling defective goods. However, according to Carter H. Lumantow, Indonesia does not yet have a clear formulation of defective products compared to other countries such as the United States who are familiar with 3 (three) categories of product defects, namely the manufacturing defect, *the deign defect* and *The warning and the instruction defect*. *The manufacturing defect* include products that were made not in accordance with the requirements, in which as a result the product is not safe for consumers. Whereas a product is considered to be having design defect if the risk and threat of the product design are greater than the expected benefit (Lubis, 2016).

Economic relations will always confront producers as those who create and consumers as those who utilize the end products. The relationship is based on the needs of each party, so that in its development the relationship between consumers and producers has shifted.

According to Siahaan, initially consumers and producers were in a balanced position. The implication of the application of this theory is that there is no protection for consumers nor producers. The rationale that equates the position of consumers and producers is the principle of letting the buyer to be aware, which means buyers must be careful.

However, the equation of the position of consumers with producers has shifted, this is due to the consumers being in a weaker position due to the absence of product information. This shift causes imbalance in the relationship between consumers and producers. The implication of this theory is that there must be protection for consumers and demands for producers to always be careful in every production (Susanto, 2008).

Legal Measures for Consumer Protection

¹⁴ According to the Law of the Republic of Indonesia ⁴ no. 39/1999 concerning Indonesians' human rights, protection is a defense towards human rights. Every human being has the same rights and obligations, every human being also has the same right to protection (Prakoso and Setyaningati, 2018). Therefore if a crime occurs, the consumer has the rights and opportunity to get legal protection. Consumers' legal remedies regarding products that cause losses can be achieved by choosing one of two forms of legal remedies namely through a ¹²urt mechanism or an outside court mechanism. These provisions are contained in Article 45 of the Consumer Protection Act. Based on these provisions, the consumer's legal remedy against the producer of the product that causes them loss can be an out-of-court effort or legal remedy through a court mechanism. Remedies outside the court are referred to as non-litigation remedies, while legal remedies through a judicial mechanism are called litigation efforts.

Non-litigation legal remedies can be carried out in consumer disputes, namely disputes between business actors and consumers who aim to claim compensation for damage, those who suffer losses due to consuming defective goods and/or utilizing services. The description is explained in Article 1 number 8 of the Decree of the Minister of Industry and Trade of the Republic of Indonesia Number 350/MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Resolution Board (hereinafter abbreviated to Decree of the Minister of Industry and Trade No: 350/MPP/Kep/12/2001). Efforts to resolve disputes that can be taken outside the court can basically be taken through various measures, including mediation, arbitration, conciliation, counseling, negotiation, facilitation, case appraisal, min-trial, and private-judging (Sutiarso, 2011).

In the context of consumer protection law, the settlement efforts that can be taken by consumers are through mediation, arbitration or conciliation which at the implementation stage is carried out by an institution established by the government, in this case the Consumer Dispute Resolution Board (BPSK). The implementation of non-litigation efforts that can be taken by the consumer against the manufacturer of the adverse product is done through a predetermined standard mechanism. Consumers can submit applications to Consumer Dispute Resolution Agency, both in written and verbal form. The report that is received will be decided whether it will be handled or rejected by the agency (Zen and Hutagalung, 2007).

The agency's decisions in disputes involving consumers can be sued through litigation, especially if no agreement has been reached in mediation, arbitration or reconciliation. The deadline for a lawsuit is no later than 14 days from the notice issued by the agency to the disputed consumers and producers, as explained in Article 7 and Article 41 of the Decree of the Minister of Industry and Trade No: 350/MPP/Kep/12/2001. The legal remedies against the agency's decisions can be submitted by consumers or producers to the district court in the consumer's legal position, as stipulated in Article 3 paragraph (1) of the Republic of Indonesia Supreme Court Regulation Number 01 of 2006 concerning the Decisions of the Consumer Dispute Settlement Body (hereinafter abbreviated PERMA No 1/2006).

Litigation can be taken by consumers over decisions issued by the Consumer Dispute Resolution Agency. As for the form, if it refers to the provisions in Article 1 number 3 PERMA No. 1/2013 then it is objectionable. When a legal action has been taken in the form of an objection to the agency's decision submitted to the District Court, the applicable procedural law is the civil procedural law, because this case is considered as a civil case.

As explained in the previous sub-chapter, the agency authorized to handle consumer disputes, including consumer losses caused by products, is the Consumer Dispute Resolution Agency which consists of chairman and member concurrently, vice chairman and member, as explained in Article 50 Consumer Protection Act. Furthermore, Article 52 of the Consumer Protection Act mentions several points related to the duties and authorities of the consumer dispute resolution body.

CONCLUSION

This study concludes that the responsibility of producers to consumers on defective products is to compensate the losses suffered by consumers due to their unqualified products. In addition, producers must be held criminally responsible for products that endanger consumers, namely by imprisonment and fines. Efforts that can be taken by consumers if they are harmed the producers due to defective products include reporting them to the Consumer Dispute Resolution Agency. There needs to be an agreement between the consumer and the producer in regards to the solution of such cases, namely through mediation, arbitration and conciliation. Furthermore, consumers can take legal action by making a claim for compensation by submitting an application addressed to the District Court.

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