



Kajian Yuridis Penanggung Jawab Pelaku Usaha jika Konsumen Mengalami Kerugian


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Hukum perlindungan konsumen


Hukum perlindungan konsumen adalah segala asas dan kaidah hukum konsumen yang bertujuan untuk mengatur dan melindungi konsumen dalam hubungan dan permasalahannya dengan penyedia barang dan jasa atau produsen.





1. Prinsip tanggung jawab didasarkan pada unsur kesalahan/kelalaian.

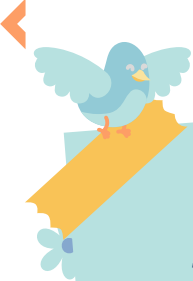
Tanggung jawab berdasarkan kesalahan (kelalaian) adalah tanggung jawab pribadi, suatu tanggung jawab yang ditentukan oleh pelaku usaha .




2. Asas Praduga Selalu Bertanggung Jawab (Presumption of Liability)

Undang-undang Perlindungan Konsumen menganut sistem pembuktian ini bahwa terdakwa selalu dimintai pertanggungjawaban sampai terdakwa dapat membuktikan tidak bersalahnya, beban pembuktian pada terdakwa.






3. Asas praduga tidak selalu bertanggung jawab (Presumption of Non-Liability)



Prinsip ini merupakan kebalikan dari praduga tanggung jawab. Terdakwa tetap dalam kedudukan tidak bertanggung jawab sampai terbukti bahwa terdakwa bersalah.



4. Prinsip Tanggung Jawab Mutlak (Strict Liability)

Strict Liability adalah bentuk tort (perbuatan melawan hukum), yang merupakan asas pertanggungjawaban terhadap hukum perbuatan salah. Namun prinsip ini menuntut pelaku usaha untuk bertanggung jawab secara langsung atas kerugian yang timbul akibat perbuatan melawan hukum tersebut.



5. Pembatasan Tanggung jawab

Fokus tanggung jawab dengan pembatasan ini sangat merugikan konsumen jika ditentukan secara sepihak oleh pelaku usaha.



Reference :

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Juridical Study of Responsible of Business Actors if Consumers Experience Losses

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Abstract

Consumer protection law is all principles and rules of consumer law that aim to regulate and protect consumers in their relationships and problems with providers of goods and services or producers. Protection of consumers is increasingly important, given the increasing speed and pace of science and technology, which are the driving forces for producers' productivity and efficiency and the services they produce to achieve business targets the formulation of the problem in this research is how is the business actor's responsibility if the product in the form of goods and or services causes harm to the consumer? This paper uses the normative legal research method because it examines the principles of law, legal systematics, and their application. The data source refers to primary legal materials and secondary legal materials that are processed descriptively, analyzed, and argumentative using the statute approach, namely, the legal rules governing consumer protection through a literature search. The result of this study show, the Government's legal housing to protect consumers is Law Number 8 of 1999 concerning consumer protection, ideally fully applies the principle of Strict Liability. Businesses must be responsible for consumer losses without proving whether there is a mistake in him or them. The focus of strict liability is a responsibility that is not based on aspects of fault (fault) and the contractual relationship but is based on product defects (objective liability) and the risk or loss suffered by consumers (risk-based liability).



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1 Introduction

The development of technology in the current era is very rapid; the internet media is one example of evidence that technological sophistication dramatically affects human life development. The development of technology from time to time is a form of utilization that business people or entrepreneurs can use to offer consumers products or services (Yustiani & Yunanto, 2017). Today's internet service users are increasing; this is because it is cheap and easy without having to create a business concept consisting of a place and building as well

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as large capital in promoting or selling business products, then the commercial business carried out through online media is growing (Widiana et al., 2012). The development and progress of the online business world are also supported by increased productivity from the industry as a provider of products to be marketed through the internet or online media, which has triggered the rise of buying and selling businesses through online media because it is easy to run, does not require large capital, only small capital and does not have to need it. The management system is complicated to manage—only enough with product photos and internet access to do marketing into online buying and selling media. The ease of buying and selling goods through online media in Indonesian society causes the level of vigilance in buying and selling transactions to be reduced or even ignored, given the comfortable facilities presented in shopping through online media. It is proven by the number of reports of fraud cases using online mode. Consumers and buyers do not carry out face-to-face buying and selling activities directly with the seller. The belief system becomes the principal capital or the essential thing in every transaction or buying and selling online (Andhini & Khuzaini, 2017). There need to be regulations and rules governing the purchase of goods through the Online Buying and Selling Media, the many impacts of losses, or the fraud mode that will ensnare or befall consumers through online media (Rahmanto, 2019). In this case, the government plays a role in supervising, regulating, imposing sanctions, and providing a legal basis to protect consumers and business actors in transacting through online buying and selling media (Lukito, 2017). Consumer protection is an essential matter for society, which incidentally cannot be separated from consumption activities. Consumer protection is needed by organizations wherever it is. Therefore, consumer protection is required for an economic activity related to consumer interests (Mira Erlinawati, 2017).

Realizing consumer protection is realizing a multi-dimensional relationship with links and dependencies between consumers, entrepreneurs, and the government (Simanullang, 2013). Nowadays, we often hear about the many violations of consumer rights that producers often ignore or not responded to. Consumer protection is all rules and laws that contain the rules and obligations of consumers and producers in buying and selling or commercial activities and regulating all efforts to realize legal protection to ensure consumers' interests. This can be in the character of all buying and selling transactions, both in-person and online, as is currently happening. Even though the transaction does not occur face-to-face, consumers are still entitled to get the goods as promised. Producers are often more concerned with the benefits that will be obtained than their consumers' rights (Sidik, 2009). Especially in online shopping, where consumers can only see products in the form of images. Some of the fraud committed by producers to get a large profit varies significantly, between sending goods of lower quality than promised or reducing the number of goods shipped. We need a law or regulation governing consumer protection wherever they are (Palinggi & Limbongan, 2020).

Consumer protection guaranteed by Law Number 8 of 1999 concerning Consumer Protection is legal certainty for all consumer needs. Legal certainty includes all efforts based on the law to empower consumers to obtain or determine their choice of goods and services needed and defend or defend their rights if business actors' behavior harms them as providers of consumer needs. (Setiantoro et al., 2018) has an argument or opinion that consumer law contains principles or rules that regulate and protect consumers' interests. Meanwhile, consumer law has meaning as a whole of legal regulations and codes governing relationships and problems between one party and another related to consumer goods and services. Meanwhile, consumer protection law is all principles and rules of consumer law that aim to regulate and protect consumers in their relationships and problems with providers of goods and services or producers. Protection of consumers is increasingly important, given the increasing speed and pace of science and technology, which are the driving forces for producers' productivity and efficiency and the services they produce to achieve business targets (Putra, 2013). To pursue and complete these two things, ultimately, either directly or indirectly, consumers will generally feel the impact. Based on the above background, the formulation of the problem in this research is how is the business actor's responsibility if the product in the form of goods and or services causes harm to the consumer?

2 Research Method

This paper uses the normative legal research method because it examines the principles of law, legal systematics, and their application. The data source refers to primary legal materials and secondary legal materials that are

processed descriptively, analyzed, and argumentative using the statute approach, namely, the legal rules governing consumer protection through a literature search.

3 Result and Discussion

The principle of responsibility is a crucial issue in consumer protection law (Nur & Prabowo, 2011). In cases of violations of consumer rights, care is needed in analyzing who is responsible and to what extent the responsibility can be borne by the parties involved. These consumer protection principles aim to make it easier to find those held accountable for losses suffered by consumers. These principles can be used to set limits on a business actor's activities in carrying out his business. It should be noted that there are still business actors who only think about getting as much profit as possible without thinking about being responsible for the risks of the products they produce.

1. The principle of responsibility is based on the element of error/negligence.

Responsibility based on error (negligence) is personal responsibility, a responsibility determined by the business actor (Milamarta, 2012). Based on the previous, the element of mistake (oversight) can be used as a basis for consumers to file a lawsuit with the fulfillment of the following conditions: a) A behavior that causes loss, not following usual caution. b) It must be proven that the defendant was negligent in his duty to be careful with the plaintiff. c) This behavior is the real cause of the losses incurred. In articles 1365, 1366, 1367, the Civil Code states that a person can be held accountable legally if the element of the wrongdoing is committed. Article 1365 is commonly referred to as an act against the law which requires the fulfillment of the following elements: a) The existence of an act, the act of doing (active) or not doing (passive) so that the act is against the law, either in the form of a violation of the rights of others, of their obligations, of decency, or fairness. b) There is an error in the form of intentional or carelessness. The deliberate action here shows that there is an intention from the perpetrator to cause an inevitable result. The consequences if predictable and known consciously. The element of carelessness here results in negligence so that unintended consequences arise. c) The loss suffered is a loss in the form of segments of loss, cost, and interest as described in connection with the agreement and losses against the law. d) The existence of a causal relationship between the error and the failure in question is the loss suffered by the victim of an illegal act. There must be proof between the losses and the wrongs of the perpetrator in unlawful acts. According to this principle, the burden of the proof follows Article 163 HIR or article 283 RBg and article 1865 of the Criminal Code, which states that whoever claims to have rights must prove such things or events (actor proof lies). Every consumer who feels aggrieved, if he wants to sue for this loss, then consumer is burdened with proving the business actor's mistakes.

2. The Principle of Presumption to Always be Responsible (Presumption of liability)

The Consumer Protection Law adopts this system of proof that the defendant is always held responsible until the defendant can prove his innocence, the burden of proof on the defendant. The UUPK proof system, as emphasized in Articles 19, 22, 23, and 28, which underlies this theory of reverse proof, is that a person is considered guilty until one can prove the opposite. This principle contradicts the presumption of innocence which is often used in law. This principle is relevant to consumer disputes, so the obligation to prove mistakes lies with the business actor being sued by the consumer. The defendant must be able to show evidence that the defendant is not guilty. This concept aims to provide convenience for consumers as plaintiffs do not need to prove the mistakes of business actors who are defendants.

3. The presumption principle is not always responsible (Presumption of Non-Liability)

This principle is the opposite of the presumption of responsibility. The defendant is still in the position of not being liable until proven that the defendant is guilty. However, this principle can no longer be applied absolutely and leads to responsibility by limiting compensation money.

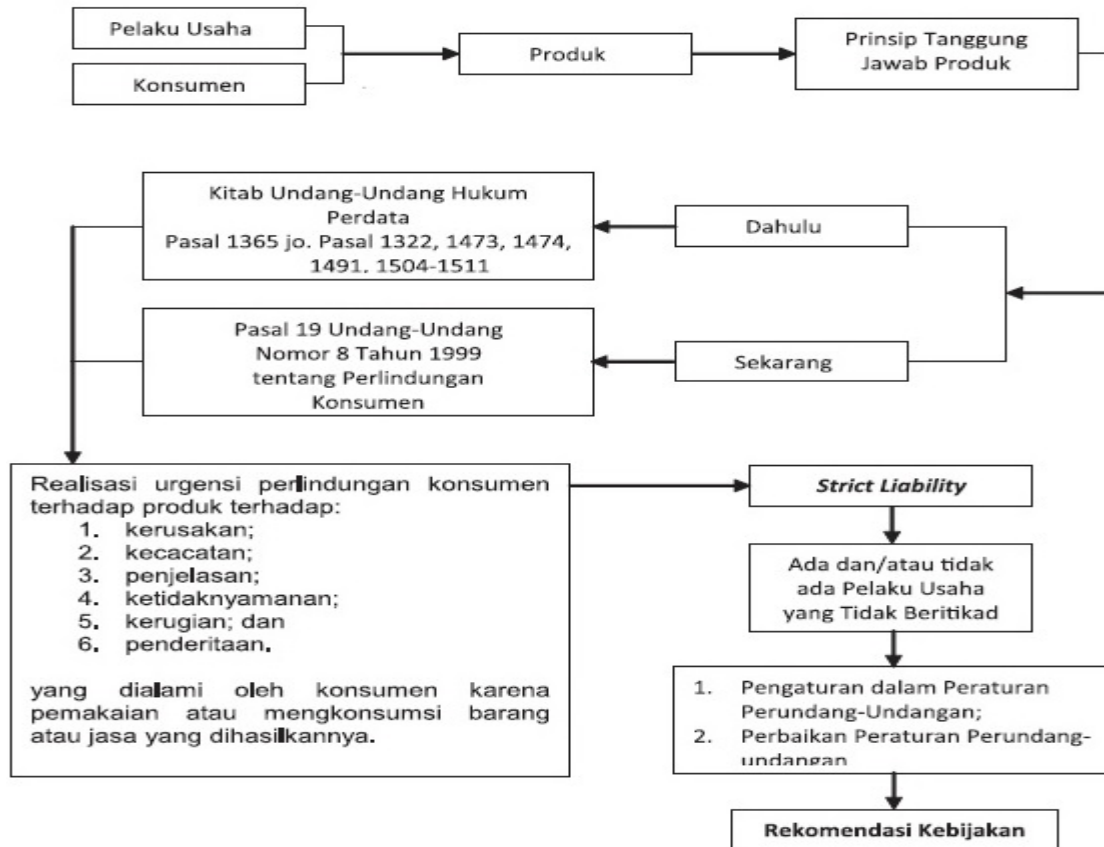
4. Principles of Absolute Responsibility (Strict Liability)

Strict Liability is a form of tort (an act against the law), which is the principle of accountability against the

law of wrongdoing. Still, this principle requires business actors to be directly responsible for losses arising from the action against the law. Strict liability is implicitly found in the Criminal Code in article 1367. This article regulates the responsibility of a person for losses caused by goods under his control. Placing the principle of strict liability in consumer protection concerning product responsibility will make it easier in terms of proof. Another reason that can be used as another basis that can be used as a basis for imposing or using the concept of Strict Liability in consumer protection, especially product responsibility is by looking at the purpose of protecting itself; the word protection means to make it easy for consumers to defend their rights so with the concept of strict liability business actors must be responsible for losses suffered by consumers, there are some exceptions to be exempted from liability, namely the condition of Force majeure. Nining Latianingsih (2012), the principle of absolute responsibility is usually applied because consumers are not in an advantageous position to prove errors in a complex production and distribution process; it is assumed that producers can better anticipate if at any time. -When there is a lawsuit for wrongdoing, for example, with insurance or adding a certain fee to the product's price, this principle can force the business actor to be more careful. The focus of absolute responsibility is used to trap business actors, especially business actors who market products that are detrimental to consumers. This consumer protection law accommodates two critical principles, namely product responsibility and professional responsibility. products that business actors circulate. In contrast, professional responsibility relates to services; this responsibility is the relationship between business actors and clients if we exemplify a doctor who provides professional services to his patients. Historically, product liability was born because there was an imbalance in responsibility between business actors and consumers. Business actors who initially only implemented a product-oriented strategy in marketing their products had to change their approach to be consumer-oriented (Windari, 2017). Although the system of responsibility for product liability applies the principle of strict liability, the producer can free himself from burden either for all or part of the things that can release the producer's responsibility: a) If the manufacturer does not circulate the product. This defect causes the loss not to exist when the manufacturer distributes the product, or the fault only occurs later. b) That the product is not made by the producer either to be sold or circulated for economic purposes or made or distributed for business purposes. c) That the occurrence of defects in the product is due to the obligation to fulfill the obligations stipulated in the government's regulations. d) That scientifically and technically, the State of scientific Technique, Knowledge state or art Defense, could not possibly be defective at the time the product was distributed. e) in the manufacturer of a component that the defect is caused by the product's design itself where the pieces have been matched or caused by errors in the manufacturer's instructions. f) if the party who suffers a loss or a third party also causes the loss, the loss that occurs is caused by the Force major. However, with the application of the principle of strict liability in the law regarding product liability, it means that the producer does not get protection from the producer and can insure his responsibility so that economically he does not experience a loss which suggests the importance of the law regarding the responsibility of product liability producers which adheres to the principle of absolute liability in anticipating the current world tendency to pay more attention to Consumer Protection from losses suffered due to defective products. This is because the current legal system is too siding and profitable for producers while producers have a more strong economic position. With the strict liability principle, business actors must be responsible for consumer losses without having to prove whether or not there is a fault in them.

5.limitation of liability

This principle is very much liked by business actors to be included as an exoneration clause in the standard agreement. The focus of responsibility with this limitation is very detrimental to consumers if it is determined unilaterally by business actors in Law Number 8 of 1999 concerning consumer protection; business actors should not unilaterally determine clauses that are detrimental to consumers, including limiting the maximum of their responsibilities. If there are absolute restrictions, it must be based on statutory regulations.



4. Conclusions

The Government's legal housing to protect consumers is Law Number 8 of 1999 concerning consumer protection, ideally fully applies the principle of Strict Liability. Businesses must be responsible for consumer losses without proving whether there is a mistake in him or them. The focus of strict liability is a responsibility that is not based on aspects of fault (fault) and the contractual relationship but is based on product defects (objective liability) and the risk or loss suffered by consumers (risk-based liability).

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