

Product Responsibility Lawsuit and Act No.8 of 1999 Concerning Consumer Protection

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Abstract— The principle of product responsibility is a legal instrument that is intended to provide assurance of the guarantee of consumer rights, especially for the right to safety, health, and the right to compensation. This regulation is indispensable due to regulation of production control (quality control techniques) and trade in goods, is currently felt to be inadequate to prevent or avoid and protect consumers who suffer losses, both losses in the form of defects or damage to the consumer's personal injury to the loss of life, property damages, and damage related to the product itself (pure economic loss), considering the importance of product responsibility principles, especially for consumers, the problem in this paper is whether Consumer Protection Laws can be used in a lawsuit responsibility of consumer products for business actors. Finding facts to these problems, normative legal research methods are used. Thus, the conclusion of the Consumer Protection Laws is purely unenforceable for claims of consumer product responsibility to business actors.

Keywords— *Lawsuit, Product Responsibility, Consumer Protection*

I. INTRODUCTION

The law of product responsibility is a legal instrument that is intended to provide assurance of the guarantee of consumer rights which are regulated in legislation, more specifically the right to safety, health and the right to compensation. This form of regulation is very necessary because regulation of production control (quality control techniques) and trade in goods, is currently felt to be inadequate to prevent or avoid and protect consumers who suffer losses, both losses in the form of defects or damage to the consumer's body to the loss of life (bodily/personal injury), damage to other property (property damages), and damage related to the product itself (pure economic loss). So that in addition to the regulations on how to produce, there is still a need for a form of legal regulation that specifically guarantees compensation for consuming and using a product, better known as the product liability law. In terms of product liability it is undeniable that the state has a very significant role in protecting consumers who in fact as citizens (communities) who are in a weak position when dealing with business people are very necessary in this era of globalization and free markets. The role of the State in consumer protection, especially in Indonesia, can be seen from the existence of Law No. 8 of 1999 concerning Consumer Protection (hereinafter abbreviated as UUPK) and other related laws and regulations. Through the hands of the state, it is expected to be able to support the growth of the business world so that it can produce a variety of goods and / or services without having to harm consumers (the wider community). The presence of the state in consumer protection is expected to guarantee consumer welfare and certainty about the quality, quantity, quality and safety of goods and/or services obtained by consumers.

From the explanation above, it can be seen that in order to realize consumer protection, there is a need for

interdependent relationships between consumers, business actors and the government.¹ In other words, to create consumer protection, synergy between 3 (three) parties is needed, namely the government, business actors and consumers. In Article 1 point 1 of the Company Law states that "consumer protection is any effort that guarantees legal certainty to provide protection to consumers." It means "the law of protection is nothing but law which regulates efforts to guarantee the realization of legal protection against interests consumers whose rights have been violated by business actors."² Legal certainty to provide protection to consumers can be done through education or socialization regarding the rights and obligations of consumers and business actors. By knowing the rights and obligations of both consumers and business actors, it can minimize problems or disputes between consumers and business actors.

According to Philipus M Hadjon, "there are 2 (two) theories of legal protection in consumer protection, namely repressive legal protection and preventive legal protection."³ As for protection "repressive law is legal protection carried out by applying sanctions to the perpetrators in order to restore the law to the actual situation, while preventive legal protection is legal protection that aims to prevent the occurrence of a dispute".⁴ Based on the UUPK, consumer disputes can be resolved in 2 (two) ways, either through the court or outside the court. Consumer dispute resolution outside the court can be taken by the parties namely consumers and business actors with or without third party assistance and can

¹ Nurmadjito, *Kesiapan Perangkat Peraturan Perundang-Undangan Tentang Perlindungan Konsumen Dalam Menghadapi Era Perdagangan Bebas, dalam Hukum Perlindungan Konsumen*, (Bandung: Mandar Maju, 2000), p.7

² Eli Wuria Dewi, *Hukum Perlindungan Konsumen*, (Yogyakarta: Graha Ilmu, 2015), p.6

³ *Ibid*, pp.6-7

⁴ *Ibid*

also be resolved through the Consumer Dispute Settlement Agency (hereinafter abbreviated to become BPSK) where 3 (three) ways can be reached in BPSK : conciliation, mediation and/or arbitration. From those of 3 (three) BPSK dispute resolution methods, arbitration is the only option if the parties are not satisfied with the BPSK decision, an objection can be submitted to the district court (hereinafter abbreviated to PN) at the consumer's place and if the PN decision is dissatisfied, it can be taken appeal to the Supreme Court (hereinafter abbreviated as MA). If the parties choose to resolve the dispute to the PN is not a problem because the UUPK provides it as a voluntary choice of the parties. By knowing the various types or ways of resolving disputes between the consumer and the business actor then when consumers use, use or utilize a product received from a business actor but are not in accordance with the things promised by the business actor regarding the product, can the consumer sue the business actor with a product responsibility lawsuit using the basis of the lawsuit UUPK or the basic foundation of the UUPK.

Based on the background above, this article is intended for further examining on the above issues entitled Product Responsibility Lawsuit and Act No. 8 of 1999 of Consumer Protection Law (UUPK).

The problems raised in this writing are whether the UUPK can be used in a consumer product responsibility claim against a business actor.

II. RESEARCH METHOD

To answer the problems in this study by using normative legal research methods that prioritize secondary data and use primary, secondary and tertiary legal materials. The secondary data are:

- a. Primary legal material, namely legal material consisting of binding laws and regulations with this research such as Law No. 8 of 1999 concerning Consumer Protection, Decree of the Minister of Industry and Trade of the Republic of Indonesia No.350/ MPP/Kep/12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency.
- b. Secondary legal materials are all reference books used in this study such as books on consumer protection and consumer dispute resolution, books on air transportation, books on product responsibility.
- c. Tertiary legal materials are legal materials that support primary and secondary legal materials, such as encyclopedia dictionaries and so on, in this study tertiary legal materials are not used.

Within secondary data, it will be analyzed qualitatively and will be outlined in this study in descriptive form so that the conclusion of this research problem is obtained.

III. RESULT AND DISCUSSION

In order to actualize a fair and prosperous Indonesian society as the nation's ideals contained in the 1945 Constitution (hereinafter abbreviated as the UUD 1945), the role of the state to regulate all community needs is one of which is legal certainty, especially legal certainty of consumer protection. In

the era of revolution 4.0 or also called the digital era, where the opening up of the national market, the role of the state is very much needed to protect its citizens who in fact are consumers. The protection needed by consumers in this case is the warranty of consumer welfare enhancement as citizens and the certainty of the quality, quantity and quality of goods and/or services received by consumers from the market. To enhance consumer welfare as citizens, the State is expected to be able to support the growth of the business world so that it can produce a variety of goods and/or services to meet consumer needs without harming the consumers themselves.

The presence of UUPK is substantiation of warranty of legal certainty to provide protection to consumers in Indonesia. This has an impact on the strong bargaining position of consumers to uphold their rights and create a healthy economic climate. This meaning can also be seen in the explanation of the UUPK, which states that legal instruments that protect consumers are not intended to shut down business actors, but on the contrary with consumer protection will encourage a healthy business climate and the inception of strong companies encountering business competition through supply of goods and/or services quality.

Consumer protections are part of industry and technology, because of the higher number of industrial products, the higher number of consumer vulnerable to defect products that needed a legal certainty of consumer protection in Indonesia.

Justice Minister Mudjono in his remarks at the opening of the symposium 'legal aspects of consumer protection issues' organized by the National Legal Development Agency (BPHN) on 16-18 October 1980, stated 2 (two) reasons why the issue of consumer protection is one of the important issues in the world today. First, that all members of the community are consumers who need to be protected from the quality of objects or services provided by producers to the public. Second, it turns out that consumers are the most decisive party in building capital to drive the economy.⁵

Before knowing the rights and obligations of consumers, it is necessary to define the substance of consumers in advance. Consumers according to Article 1 number 2 UUPK "every person who uses goods and/or services available in the community, both for the sake of themselves, family, other people and other living beings and not for trading". From this understanding it can be seen that what the consumer means is the end user, user and user of an item and/or service. "The term consumer is derived from language conversion from the word consumer (English-American) or *consument / konsument* (Dutch). The definition of consumer and *consument* depends only on where he is. Literally, the meaning of the word consumer is (the opposite of the manufacturer), everyone who uses goods and/or services ".⁶ A person who uses goods and/or services for the needs of his personal, family and other people and is not traded, he belongs to the final consumer category. Means, he uses and utilizes consumer products for personal, family, other

⁵ Janus Sidabalok, *Hukum Perlindungan Konsumen di Indoensia*, (Bandung: Citra Aditya Bakti,2006), p.29

⁶ Rosmawati, *Pokok-Pokok Hukum Perlindungan Konsumen*, (Depok: Prenadamedia, 2018), p.2

people's needs and not to be traded again. It is specific use to meet the personal needs of each individual consumer. By considering at the consumer limits above, it can be seen that the consumers referred to as UUPK are end consumers, which are not limited to contracts made between end consumers and business actors. This can be seen from the meaning of the word "user" contained in the definition/understanding of consumers according to Article 1 point 2 UUPK. That is, the basis of legal relations among consumers and business actors does not always have to be in contractual relationship.

The consumer rights are regulated in Article 4 UUPK, namely:

1. Right of comfortness, security and safety in consuming goods and/or services;
2. Right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and conditions and guarantees promised;
3. Right for correct, clear and honest information regarding the condition and guarantee of goods and/or services;
4. Right to be heard opinions and complaints about the goods and / or services used;
5. Right to get advocacy, protection and efforts to properly resolve consumer protection disputes;
6. Right to get consumer guidance and education;
7. Right to be treated or served correctly and honestly and not discriminatory;
8. Right to obtain compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as appropriate;
9. Rights stipulated in the provisions of other laws and regulations.

The presence of UUPK is not solely to protect consumers but also encourages businesses to be honest and responsible in carrying out their business and ensure that their products are safe, comfortable for consumers. Antinomi consumer rights with the obligations of business actors means that the obligations of business actors are also read as consumer rights, and vice versa, consumer obligations become the rights of business actors.

Business actors according to Article 1 point 3 of UUPK are "every individual or business entity, whether in the form of a legal entity or not a legal entity established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, both individually and jointly through agreements to conduct activities business in various economic fields".

Business actors also have obligations that are regulated in Article 7 UUPK, namely:

1. Having a goodwill in carrying out their business activities;
2. Providing clear, truth and honest information about the conditions and guarantees of goods and/or services and providing an explanation of usage, repair, and maintenance;
3. Treating or serving consumers correctly and honestly and not discriminatory;
4. 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;

5. Providing tester to consumers to test and/or try certain goods and/or services and provide guarantees and/or guarantees for goods made and/or traded.

In addition to consumer rights and obligations of business actors, what also needs to be known is related to consumer products consisting of goods and/or services. Goods according to Article 1 item 4 of the UUPK "every object both tangible and intangible, both movable and immovable, can be spent or not spent, which can be traded, used or utilized by consumers", while what is meant by services according to Article 1 point 5 of UUPK is "every service in the form of work or achievement provided for the community to be used by consumers".

Transactions between consumers and business actors do not always run smoothly or well. In practice, it is often seen that what was initially promised by business actor before the transaction was different after the goods and/or services were received by consumers. In practice conflict or dispute is often interpreted as violence so that disputes are always seen as something bad. Dispute is considered as something bad, it must be eliminated or at least prevented from causing a dispute. Conflict arises because of differences in interests that cannot be communicated properly. Conflict cannot be separated from each individual both himself and others."⁷ Resolving disputes appropriately is the expectation of all parties, but in practice there are many improper dispute resolutions due to the unequal position between the parties to the dispute, for example between consumers and business actors. The inception of UUPK apart from providing protection to consumers, UUPK also indirectly seeks to eliminate the imbalance of the position of consumers with business actors. Given the opportunity for consumer dispute resolution in UUPK as a form of empowerment in resolving disputes between consumers and business actors, the dispute can be resolved both outside the court and through the court, depending on the sincere choice by the parties.

According to Hendarmin Djarab and Rudi M. Rizki the products are not only tangible goods, but also include those that are intangible, such as electricity, natural products (food, pets), writing (maps of mass-produced flights), or home appliances. Included in the meaning of the product are not only finished products overall, but also components and parts.⁸ Speaking about product responsibility, means it will not be separated from speaking of strict liability since this principle is not based on the aspects of errors and contractual relationships, but based on product defects and risks or losses suffered by consumers. According to Inosentius Samsul "overall UUPK adheres to the principle of responsibility based on errors with 2 (two) modifications, namely first, the principle of responsibility based on presumption of guilt/negligence or the manufacturer considered as a guilty, so it is not necessary to be proven wrong, and second is the principle of always being responsible with the reversed proof

⁷ Intan Nur Rahmayanti dan Rukiyah Lubis, *Win-Win Solution Sengketa Konsumen*, (Yogyakarta: Pustaka Yustisia, 2014), p.33

⁸ Tamli Rusli, *Tanggung Jawab Produk Dalam Hukum Perlindungan Konsumen*, <http://jurnal.ubl.ac.id/index.php/PH/article/view/172/171> accessed on 9 July 2019.

burden”⁹ (see Article 19 jo 23 jo 28 UUPK). In other words, UUPK has not adhere the principle of strict liability. Meanwhile, to sue a business actor with product responsibility we need to focus onto 3 (three) basic things : guarantee violation, negligence, and the implementation of strict liability or absolute responsibility principles. The focus of the fundamental thing is related to the application of the principle of absolute liability which according to Inosentius Samsul UUPK has not adhered to this principle.

IV. CONCLUSION

Based on the discussion in the previous chapter, the conclusion is that the UUPK cannot be used purely in consumer product liability claims against business actors. This is based on the fact that the UUPK has not been explicitly adopted the purely absolute responsibility regarding the products produced by business actors.

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⁹ Inosentius Samsul, *Prinsip Tanggung Jawab Mutlak Dalam Hukum Perlindungan Konsumen (Ringkasan Disertasi)*, (Jakarta: FHUI, 2003), p.39.