

Consumer Legal Protection for Mobile Phone Sales Based on Law Number 8 Year 1999 Concerning Consumer Protection

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ABSTRACT

As a result of the lack of supervision and application of standards and the quality and quality of cellular telephone products, consumers sometimes do not get legal protection so that more and more cases occur in low economic communities buying reconditioned cellular phones at very cheap prices without obtaining instructions for the use of Indonesian if a when the cell phone is damaged. Implementation of standards and quality and product quality are regulated in UUPK. The Consumer Protection Act was formed with the aim of protecting consumers as written in Article 1 paragraph (1) of the Consumer Protection Act. The main issues are: 1. How is the legal protection for consumers for the purchase of cellular phones that do not include instructions for use in the Indonesian language based on Law Number 8 of 1999 concerning Consumer Protection? 2. What is the responsibility of the business actor for the sale of cellular phones that do not include instructions for use in Indonesian according to Law Number 8 of 1999 concerning Consumer Protection? The author examines these problems using normative legal research methods, legislation approaches, and case approaches. In the discussion, discussing the importance of using Indonesian in cellular telephone products in order to protect consumers and educate consumers of goods that have been purchased. The conclusion of this paper shows that the Judge's Decision caused legal uncertainty because Article 32 of the Telecommunications Law does not regulate the obligations of business operators to include instructions for use in Indonesian on cellular phones. The Judge should have sentenced him with Article 62 of the UUPK for the sake of creating legal certainty which is one of the principles and objectives of the establishment of the UUPK in an effort to protect consumers.

Keywords : *legal certainty, consumer protection, instructions for use in Indonesian*

1. INTRODUCTION

Indonesia is a country consisting of thousands of islands and a population of around 264 million people who saw a survey from a statistical agency, namely the statistical center agency in the 2017 period. which is used to communicate directly without doing face to face. This tool is a cell phone or what is commonly called a cell phone which is a two-way interaction tool that is easy to carry anywhere and has a number of uses, one of which is to send messages and voice calls to someone who is far away.¹ There are very many cellular telephones circulating in the Indonesian market, such as cell phones with new or used conditions. New cell phones certainly have a very high price compared to used cell phones. However, it is not uncommon for some people to buy cellular phones in a used condition (second), this is because

the price difference is quite far from the price of a new cellular phone. Many people also think that the features and uses of used and new cellular phones are not different, the only difference is the condition of the cellular phone. Not all used cellular phone products on the market are genuine and not all function properly, but there are also used reconditioned cellular phones where the cell phone is damaged and repaired by someone who has expertise in the field of cellular telephony. In addition, most reconditioned cellular phones are sold not with boxes from the factory, which contains a manual on how to use cell phones, accessories that support cellular phones and there is no official guarantee from the manufacturer that made the cell phone. The result of weak supervision and implementation of standards and quality and quality of reconditioned cellular phone products is that consumers do not get legal protection so that there are more cases where people with low economic levels buy reconditioned cellular phones at very cheap prices without receiving

instructions for use if one day the cell phone was damaged.

Based on Article 4 of the UUPK, it is stated that consumers have a right to obtain correct, clear, and honest information from business actors regarding the conditions of the guaranteed goods to be purchased. In addition, in Law Number 8 of 1999 concerning Consumer Protection regarding the widespread distribution of reconditioned cellular phones that have not met the regulatory standards that have been set, it is contrary to Article 2 which states that consumer protection is based on the principle of benefit, the principle of justice for the parties, the principle of balance. against existing parties, the principle of security for consumers and a safety for consumers, as well as the principle of legal certainty that is guaranteed.²

In decision No. 265 / Pid.Sus / 2017 / PN.Smg, the basis of the author's argument for researching, is that there are violations that have also been committed by entrepreneurs selling various types and types of cellular phones that do not use the mandatory domestic language usage instructions, namely Indonesian. This clearly violates the rights of consumers, entrepreneurs are proven to have violated the provisions stipulated in Article 8 paragraph (1) letter J of the Consumer Protection Act or UUPK, so that researchers are interesting to examine how consumers can be legally protected so that their rights are not violated. by business actors. In practice, there are quite a lot of business actors who circulate goods for cellular telephones that do not include instructions for use in the mandatory domestic language, namely the Indonesian language which is traded and circulated in the territory of the Republic of Indonesia.

2. METHODS

This type of research is a normative flow research, which examines written law (statutes). Normative research is research that is required with various studies of library materials or secondary data to be researched. This research is studied normatively by studying and examining the scope and material in the provisions of the UUPK on Judges' Decisions to be studied.³

3. DISCUSSIONS

3.1 Forms of Legal Protection Against Consumers for Sales of Cellular Phones without including Instructions for Use in Indonesian.

According to law professor Sudikno Mertokusumo, protection of human interests is not only a legal goal, but also a legal function and legal protection. Sudikno Mertokusumo argued that: in its function as protection of human interests, law has a goal, law has objectives to be achieved. The main objective of law is to create an orderly society and achieve balance. By achieving

order in society, it is hoped that human interests will also be protected. In achieving this goal, the law has the function of dividing rights and obligations between individuals within the scope of society, dividing authority and regulating how to solve legal problems and maintaining legal certainty.⁴ In this case the Government has formed a regulation that seeks to protect consumers from the actions of business actors that often harm consumers, this can be seen from the existence of Law Number 8 of 1999 concerning Consumer Protection which has been established by the government in an effort to protect consumers or a form of legal protection for consumers, but in practice the Consumer Protection Law is often ignored by law enforcement officials in ensnaring business actors who violate the provisions of the UUPK.⁵

As citizens of Indonesia, we must not lose our identity as a nation, we must not lose our identity as a nation. As a symbol of national identity, Indonesian must continue to be developed so that it can still fulfill its function as a modern means of communication in various fields of life. In addition, the quality of its use must be continuously improved so that Indonesian can be an effective and efficient means of communication for various purposes. Efforts in this direction have now obtained a strong legal basis, namely the passing of Law Number 24 of 2009 concerning the Flag, Language and National Emblem, as well as the National Anthem. This law is a mandate of Article 36 of the 1945 Constitution of the Republic of Indonesia and is also a realization of the determination of the Indonesian youth as pledged in the Youth Pledge, October 28, 1928, namely upholding the unified language of the Indonesian language.

Article 8 paragraph (1) letter J Law Number 8 Year 1999 concerning Consumer Protection, regulates that Business Actors are prohibited from selling or circulating goods that do not include instructions for use in Indonesian, this is also supported by Regulation of the Minister of Trade of the Republic of Indonesia Number 19 / M-DAG / PER / 5/2009 concerning Registration of manuals and guarantee cards for full-sale warranty in Indonesian for Telematics and Electronics products. These two rules are proof of the government's seriousness in maintaining the existence of one of the Indonesians, namely Indonesian in the context of protecting consumers and so that consumers who later buy electronic goods can understand how to use the goods they will buy.⁶

Based on the chronology of the case that the author has described in the previous chapter, there were actions by business actors, namely Widi Widiyanto, the owner of Dragon Cell, who traded goods in the form of reconditioned cellular phones, where these items were previously damaged cellular phones and some even completely dead. However, because the business actor who owned the Dragon Cell Store had expertise in the field of cell phone service, the

defendant reconditioned the cell phone and made it look like new goods and sold it with goods that were below the market price for this type of cell phone, so many consumers come to the shop to buy it.

Business actors in trading their goods, do not provide correct information regarding the actual condition of the goods to consumers who buy phones at the Dragon Cell Store, and the goods they sell are also several cell phones that do not have instructions for use in Indonesian and after-sales guarantee cards, this can be seen after a complaint from the public to the Central Java Regional Police to conduct an investigation into the shop.

Law number 8 of 1999 concerning Consumer Protection has regulated Consumer Rights which must be protected from fraudulent acts that are often committed by business actors. One of the consumer rights that must be protected is contained in Article 4 letter c of the UUPK, namely: The right to correct, clear, and honest information regarding the condition and guarantee of goods and / or services. So that in this case, the business actor should provide correct information on the condition of the goods, so that consumers who are going to buy the cell phone will be wise and careful about the goods they are going to buy.⁷

Article 8 of the Consumer Protection Law has also regulated Actions that are prohibited for business actors, and those that have been violated by business actors in this case are Article 8 paragraph (1) letter j, namely: Not including information and / or instructions for use in Indonesian language in accordance with the provisions of the legislation in force. This can be seen in the results of the evidence found by the Central Java Regional Police, that the cell phones being traded do not have instructions for use in Indonesian.

Including instructions for use in Indonesian on electronic goods is an obligation that must be carried out by every business actor who wishes to trade his electronic goods in the territory of the Republic of Indonesia, this can be seen from the existence of Regulation of the Minister of Trade of the Republic of Indonesia Number 19 / M-DAG / PER / 5/2009 concerning Registration of manuals and guarantee cards for full-sale guarantees in Indonesian for Telematics and Electronics products.

In the above-mentioned regulation of the minister of trade, there is a written regulation which is obliged to include instructions for use in Indonesian if the business actor wishes to trade these electronic goods in the territory of the Republic of Indonesia. This is contained in Article 2 paragraph (1) Regulation of the Minister of Trade of the Republic of Indonesia Number 19 / M-DAG / PER / 5/2009 concerning Registration of manuals and guarantee cards for full selling guarantee in Indonesian for Telematics and Electronics products that regulate that: Every telematic and electronic product produced and / or imported to be traded in the domestic market must be

equipped with a manual and guarantee card in Indonesian.

Attachment I of the PERMENDAG-RI also requires business actors wishing to trade electrical goods for the type of mobile phone, this can be seen in the attachment section which regulates 45 types of Telematics and Electronics goods which require instructions for use in Indonesian, and number 40 in it. there are cellular phones or cell phones that are also required to use Indonesian language instructions. The two written rules that have been explained above are evidence of an obligation of a business actor and prohibition of a business actor from a mobile phone that will be traded on the domestic market of the Republic of Indonesia.

However, in practice, namely in the judge's decision on the case on behalf of the Defendant Widi Widiyanto as the owner of the Dragon Cell Store. The panel of judges did not use Article 8 paragraph (1) letter J of the UUPK and RI Minister of Trade Regulation Number 19 / M-Dag / Per / 5/2009, so that these two legal bases which aim to safeguard one of the Indonesian national identities, namely Indonesian are not respected. by the decision of the panel of judges. Because judges should apply these two legal bases to business actors, so that in the future the existence of the Indonesian language is maintained in trading activities, one of which is the circulation of cellular phone sales, and the principle of efforts to educate consumers about the goods they buy is maintained.

3.2 Forms of Responsibilities of Business Actors

Prof. Sudikno Mertokusumo said that the existence of legal certainty is a guarantee that the existence of law must be carried out in a good way. According to him, legal certainty requires a written legal arrangement that is formed by the competent authority. These rules have a juridical aspect that guarantees legal certainty, and has a function as rules that must be obeyed.⁸

When observing the statement from Prof. Sudikno Mertokusumo. It can be concluded that to guarantee legal certainty, it must be written in the form of a written regulation so that the rule has a juridical element that must be obeyed and obeyed. In this case, the government has established Law Number 8 of 1999 concerning Consumer Protection which regulates all efforts to protect the interests of consumers. However, in practice this Law is often ignored by law enforcement officials so that legal certainty in consumer protection cases does not use the UUPK in its enforcement.

In this section, the author will explain the actions committed by business actors, then analyze in terms of the judge's decision which the author deems inappropriate for imposing sanctions in an effort to take responsibility for the actions of the business actor. As previously explained, business actors are proven to be trading cellular telephones that do not include instructions for use in Indonesian as regulated

in Article 8 letter J concerning Consumer Protection and Article 2 paragraph (1) Regulation of the Minister of Trade of the Republic of Indonesia Number 19 / M-DAG / PER / 5/2009 regarding registration of manuals and guarantee cards for full-sale guarantee in Indonesian for Telematics and Electronics products. In Decision number 265 / Pid.Sus / 2017 / Semarang District Court, the panel of judges sentenced the defendant to 4 (four) months imprisonment and a fine of Rp. 1,000,000 (one million rupiah) for the business actor's actions violating Article 32 paragraph (1) Law Number 36 of 1999 concerning Telecommunications which regulates that: Telecommunication equipment traded, manufactured, assembled, imported and or used in the territory of the Republic of Indonesia is obliged to observe technical requirements and is based on a license in accordance with the prevailing laws and regulations. Then he was charged with a criminal sanction based on the Telecommunications Law Article 52 paragraph (1) which stipulates that: Anyone who trades, manufactures, assembles, imports or uses telecommunications equipment in the territory of the Republic of Indonesia which does not comply with the technical requirements as referred to in Article 32 paragraph (1), shall be punished with imprisonment of a maximum of 1 (one) year and or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). However, according to the author regarding the imposition of criminal sanctions on business actors in an effort to protect consumers contained in the decision, there is a violation of legal certainty, because the business actor's actions do not concern the elements contained in Article 32 paragraph (1) of Law Number 36 of 1999 concerning Telecommunications. This can also be examined by the author from the existence of regulations regarding technical requirements on cell phones, not regulating the obligation of business actors to include instructions for use in Indonesian, but rather technical requirements on the specifications of radio frequency spectrum and satellite orbit in such mobile phones before being circulated or traded. Seeing other provisions that also regulate technical requirements on mobile phones, can be seen in Article 1 paragraph (11) of the Regulation of the Minister of Communication and Information Technology of the Republic of Indonesia number 18 of 2014 concerning Certification of Telecommunication Tools and Equipment which states that: Technical Requirements are stipulated requirements by the Minister for telecommunication tools and equipment by taking into account the electrical / electronic, environment / safety, and health aspects.⁹

The act committed by the defendant, namely Widi Widiyanto, as a business actor who owns a Dragon Cell Store who sells mobile phones without including instructions for use in Indonesian, constitutes a consumer criminal offense as regulated in Article 8 paragraph (1) letter J of Law Number 8 Year 1999 concerning Consumer Protection, and is an act that is prohibited for any business actor who intends to trade

his merchandise on the domestic market. Then in Article 62 paragraph (1) Law Number 8 of 1999 concerning Consumer Protection also regulates: Business actors who violate the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). Then in the written rules made by the Ministry of Trade as a State or Government agency that regulates goods to be traded in the territory of the Republic of Indonesia, also regulates the obligation of business actors to include instructions for use in Indonesian, this is aimed at protecting consumers and as an effort from the Ministry of Trade of the Republic of Indonesia to educate consumers about the goods they will buy. Article 22 of the Regulation of the Minister of Trade of the Republic of Indonesia Number 19 / M-DAG / PER / 5/2009 concerning Registration of manuals and full-sale guarantee cards in Indonesian for Telematics and Electronic products also regulates: Business actors who violate the provisions as referred to in Article 2 paragraph (1), namely the obligation to include instructions for use in Indonesian on electronic and telematic goods, may be subject to sanctions on business actors as regulated in Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.¹⁰

So in this case, according to the author, the form of implementing criminal sanctions imposed on business actors using Article 32 of the Telecommunications Law is inappropriate and creates legal uncertainty. This is because the actions carried out by business actors are not selling cellular phones that do not meet the technical requirements in accordance with the Regulation of the Minister of Communication and Information Technology of the Republic of Indonesia number 18 of 2014 concerning Certification of Telecommunication Tools and Equipment, but regarding the sale of cellular phones which do not include instructions for use in Indonesian. In this case, it means that the business actor fulfills the elements contained in Article 8 paragraph (1) letter J UUPK and Article 2 paragraph (1) RI Minister of Trade Regulation number 19 / M-Dag / Per / 5/2009 and may be subject to criminal sanctions based on Article 62 paragraph (1) UUPK in order to guarantee legal certainty according to the mandate in Article 2 UUPK. Actions carried out by business actors that do not include instructions for use in Indonesian on their cell phones constitute a form of criminal act in the Consumer Protection Law. Because Indonesian is a mandatory language and a form of identity for the Indonesian nation, all business actors who are going to distribute their electronic goods, including cellular phones, must include instructions for use in Indonesian, and actions committed by business actors constitute a form of general violation or violate the public interest. , so that the State must exist to ensure

consumer protection from fraudulent practices of business actors.

According to Moeljatno's legal expert, there are several stages or processes in the decision making by the panel of judges, including three stages:

The stages of analyzing the criminal act¹¹ In this stage, the judge will judge whether the act committed by the defendant constitutes a violation of criminal rules. The stages of analyzing their criminal responsibility If the defendant's act has been proven to be a criminal act or has been proven to have violated a certain article, then the judge will analyze whether the defendant can be found responsible for his criminal act or not. The stages of determining the penalty

Then at this stage, the panel of judges will impose criminal sanctions. This must be seen whether the act committed by the defendant has fulfilled the elements of a criminal regulation or has not fulfilled the elements.

In this case the panel of judges should have been more careful before imposing sanctions on business actors, with the stages described by Prof. Moeljatno, it is possible to create a fair decision, so that in the future the judge's decision can guarantee legal certainty.

4. CONCLUSION

In principle, the State or government has guaranteed legal protection for consumers who will buy cellular phones and get instructions for use in Indonesian, this can be seen from the existence of Article 8 paragraph (1) letter J of Law number 8 of 1999 concerning Consumer Protection and Article 2 paragraph (1) Regulation of the Minister of Trade of the Republic of Indonesia Number 19 / M-DAG / PER / 5/2009 concerning Registration of manuals and full-sale guarantee cards in Indonesian for Telematics and Electronic products which explicitly regulates the prohibition of business actors not to sell cellular telephones without including instructions for use in Indonesian. However, in Decision number 265 / Pid.Sus / 2017 / PN.Semarang does not heed this in the government's efforts to maintain the existence of Indonesian in the field of mobile phone trade in the territory of the Republic of Indonesia and the two regulations also aim to ensure that consumers can understand how to use cell phones purchased because not all consumers in Indonesia can understand foreign languages.

In the second conclusion, the authors assume that Decision number 265 / Pid.Sus / 2017 / PN.Semarang creates legal uncertainty. Because the actions carried out by business actors, namely the sale of cellular phones without including instructions for use in Indonesian, meet the elements of Article 8 paragraph (1) letter J UUPK and Article 2 paragraph (1) Regulation of the Minister of Trade of the Republic of Indonesia Number 19 / M-Dag / Per / 5 / 2009, and business actors should be subject to criminal sanctions according to Article 62 paragraph (1) of the UUPK

which is supported by Article 22 of the Indonesian Minister of Trade Regulation number 19 / M-Dag / Per / 5/2009 which regulates that every business actor who sells cellphones without including instructions use of the Indonesian language may be subject to sanctions based on Law Number 8 of 1999 concerning Consumer Protection. However, the judge uses Article 32 of the Telecommunications Law which considers that the actions of business actors violate technical requirements, so in this case the author concludes that the judge's decision creates legal uncertainty, where legal certainty is something that is upheld in consumer protection efforts (Article 2 UUPK).¹²

SUGGESTION

The government must closely examine the circulation of cellular phones in the market in order to ensure the satisfaction of consumers who will buy cell phones so that consumer satisfaction is achieved. In this case, the Directorate General of Consumer Protection and Trade Order should not only check electronic goods (including cellular phones) that are new, but also examine cellular phones that can be reconditioned in the future and circulated to the public.

The Panel of Judges in this case should be more careful in imposing criminal sanctions on business actors. Where should Article 62 paragraph (1) UUPK can be applied in order to create legal certainty, according to the mandate of Article 2 UUPK, namely the existence of legal certainty in the effort to protect consumers. The panel of judges should have, before imposing criminal sanctions on business actors, fully understand what elements have been violated by the business actor and should consider as well as possible regarding what legal basis will be the basis for the decision by the panel of judges so as to create legal certainty, in this case legal certainty. in legal protection efforts against consumers. Law Number 36 Year 1999 regarding Telecommunication as a specific regulation on cellular telephones, should regulate the obligation for business actors to include usage in Indonesian. Because not all consumers can understand foreign languages.

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