

Legal Liability of Business Actors Who Advertise Defective Products to Consumers

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Abstract

This research aims to discuss consumer protection in the relationship between business actors and consumers, specifically focusing on the legal liability of businesses that advertise defective products to consumers. The research method used is the normative doctrinal method with an analytical descriptive approach. Primary and secondary data are obtained through literature study and analysis of applicable laws and regulations. The results show that consumers have an important role as end users of products and services offered by businesses. However, consumers' negotiating power is limited due to product complexity, false information, and power imbalances. Legal protection is needed to safeguard consumers who are in a vulnerable position. Consumer protection laws in Indonesia, such as the Consumer Protection Law (UUPK), aim to increase consumers' understanding and awareness of their rights. Therefore, consumer protection needs to be strengthened through education, training, and the implementation of clear regulations.

Keywords: Business Actors; Consumer Protection; Defective Products; Legal liability.

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INTRODUCTION

The advancement of the economy, particularly in the field of national industry and trade, has led to the creation of a wide variety of products available for the general public to consume. In addition, universality and free trade, aided by advances in technology and informatics, have expanded the scope of action of domestic companion product business flows. As a direct result of this expansion, the products available to citizens, both domestic and international, are diverse. On one hand, this kind of scenario is beneficial to customers as it allows them to fulfill their demands for the products they desire. On the other hand, it provides significant freedom for customers to choose among a wide variety of product types and qualities based on their preferences and level of expertise.

The number of consumers' explanations of their rights is still small, which can be seen as a weakness in consumer protection. This is mainly due to the fact that consumers have not updated their systems. Therefore, it is crucial for self-reliant individuals to have access to consumer protection and make efforts to empower consumers through consumer education and training.

Consumer protection provisions are aimed not only at citizens in their capacity as customers but also at individuals participating in the market. As consumers, citizens should exercise intelligence and prudence when selecting and using a product to meet their needs and requirements. The objective is to ensure that the product can fulfill the consumer's specific needs and requirements. Consumers have a vulnerable desire for something that will serve their best interests. Given the strong interaction between customers and the growing number of business actors, it is expected that there will be clauses defining the responsibilities, rights, and roles of each party in transactions (Redjeki, 2000). Consumer protection measures have been increasingly implemented worldwide for centuries, and Indonesia is a country that has successfully enacted regulations to address consumer needs.

It is challenging to expect insight from business actors as their fundamental economic strategy is to maximize profit with minimal capital investment. This difficulty arises from the business actors' perspective. Empowerment for businesses may not easily align with their interests. However, such design has the potential to counter both direct and indirect pressures from consumers. Therefore, efforts are needed to empower consumers through well-designed laws that can effectively meet their needs on a global scale and be successfully implemented in society. These laws must be enforceable.

Today, marketing and purchasing of goods can be conducted through electronic communication elements and internet technology. This has become a common practice in daily life. Business people have an obligation and duty to exercise great care in manufacturing their merchandise. Additionally, they are responsible for ensuring careful delivery of their products to customers to prevent any potential future losses for these customers.

Given the current global situation, electronic devices play a crucial role in people's lives everywhere. Despite the widespread impact of Covid-19, online business transactions, especially in the buying and selling realm, are still widely practiced. During such transactions, customers are unable to physically inspect the product they wish to acquire or physically examine it before making a purchase decision. Consequently, customers often receive damaged or defective products when buying from online merchants.

The majority of the population is interested in purchasing electronic goods, which are often prone to quality issues. Consequently, conflicts arise between customers and businesses in the market. In this scenario, customers find themselves in a precarious position compared to businesses.

As a result, businesses see this as an opportunity to maximize their profits. The issues faced by consumers are real and garner public attention. Concerns regarding customers are constantly questioned, discussed, and debated. Consumer problems are essentially human problems. The relationship between business actors and customers is intertwined with various external factors, such as religious beliefs, employment, social responsibility, and other related topics.

Article 1504 of the Civil Code stipulates that traders are obligated to address hidden defects in the goods they sell. This means that the product is either unfit for its intended purpose or significantly hinders its use to the extent that consumers are reluctant to purchase it, unless it is offered at a more affordable price. Based on this case exposition, the author develops an essay



thesis entitled "Legal Liability of Business Actors Who Advertise Defective Products to Consumers."

RESEARCH METHOD

This paper utilizes the normative doctrinal method, which involves examining legal norms or applying positive legal methods from a normative standpoint to discover the truth based on scientific logic (Ibrahim, 2005). The research is specifically conducted in a descriptive analytical manner. The analysis in this study is limited to the description stage, wherein facts are systematically analyzed and presented for easier comprehension and conclusion. This research seeks to establish a harmonious relationship among concepts derived from primary and secondary legal materials, employing legal theories or doctrines pertinent to producer responsibility for defective products. The research is characterized as descriptive analytical in nature, endeavoring to elucidate legal issues, systems, and subsequently analyze them in alignment with the research's objectives.

This research relies on secondary data sources, specifically data that reinforces information or enhances the comprehensiveness of Primary Data (Soekanto & Mamudji, 2011), sourced from the library and the author's personal collection. The collection comprises: (a) Primary legal materials, namely: (1) the Civil Code; (2) Law Number 8 of 1999 on Consumer Protection; (b) Secondary legal materials, encompassing materials that offer elucidations concerning primary legal sources, such as outputs from seminars or other scholarly gatherings, as well as personal documents or viewpoints from legal experts pertinent to the research subject. This category includes literature relating to consumer protection, as well as Papers and Articles, encompassing works on consumer protection; and (c) Tertiary legal materials, encompassing supplementary legal materials that provide guidance and explanations for both primary and secondary legal sources. This category encompasses general dictionaries, magazines, scientific journals, and internet-based articles. The latter can be included as additional materials for this research as long as they contain pertinent information.

The data collection technique employed in this research is library research, designed to investigate, study, and trace secondary data, encompassing primary materials such as authoritative legal documents; secondary materials that elucidate primary legal materials; and tertiary legal materials that offer guidance and explanations for both primary and secondary legal sources.

Upon the collection of comprehensive data, the subsequent phase involves data processing and analysis. The chosen method for data analysis is qualitative analysis. Once all the data has been gathered, it is meticulously and systematically processed, analyzed, and synthesized. This process entails elucidating the interrelationships between diverse data types. Subsequently, the entirety of the data is carefully selected, processed, and subjected to descriptive analysis. This approach not only facilitates the depiction and revelation of insights but also aims to offer potential resolutions to the issues under scrutiny in this study.

RESULT AND DISCUSSION

Consumer Protection in the Relationship Between Business Actors and Consumers

Litterally, the term "consumer" can refer to both users and consumers. This interpretation is provided in the Dictionary of Indonesian English (Echols & Shadily, 1983). Legal professionals generally agree that this is the correct interpretation of the term "*ondernemer*" (Koeswadji, 1984). The categorization of individuals as consumers is based on their motivation to use the product or service in question.

While legal professionals commonly understand consumer intentions as referring to end users of goods and services offered by entrepreneurs, the ordinary interpretation of consumers relates to users who utilize products for specific purposes (A. Nasution, 2001).

Regarding the production of consumer products and the relationship structure between customers and corporate actors, societal development has widened the gap between traditional and contemporary lifestyles. In more traditional societies, consumer products were crafted using manual methods (Bays, 1981). In contemporary societies, these goods are mass-produced, resulting in a society characterized by extensive consumption of goods and services (mass consumer consumption).



The current economic development has spurred the expansion of the production and trade sectors, which indirectly benefits businesses on one hand and consumers on the other. However, some corporate actors often disregard the interests of customers in their operations. Consequently, consumers are frequently compelled to accept unwanted products or services (Sinaga, 2001).

Consumer negotiating power is generally weak for several reasons, including (Oughton et al., 1997):

1. Technological and managerial advancements have led to businesses offering a wide array of new products produced on a large scale (mass production and consumption).
2. There has been a fundamental shift in the consumer market, where customers often lack the ability to accurately evaluate the goods and services they acquire. Consumers cannot be expected to fully comprehend the functionality of complex modern devices.
3. Contemporary advertising techniques often disseminate false information instead of providing objective facts to customers.
4. Customers are inherently in an unequal negotiating position due to the challenges in gathering sufficient information.
5. The concept of paternalism has driven the creation of consumer protection laws, reflecting a lack of trust in customers' ability to defend themselves against significant financial or physical losses (risk of physical injury).

Granting legal protection to consumers is significant due to their vulnerable position. On April 20, 1999, the Consumer Protection Law (UUP) was enacted as a form of legal protection for Indonesian consumers. The General Consumer Protection Law (UUPK) in Indonesia aims to enhance consumer awareness, knowledge, attention, and independence, particularly in recognizing, asserting, and explaining their rights as consumers.

Moreover, the UUPK improves the consumer protection system by providing legal clarity and reliable data. It also enhances business actors' understanding of the importance of consumer protection, thereby encouraging the adoption of honest and responsible business practices that ensure the provision of quality products/services and the sustainability of their operations. This encompasses not only health but also comfort, safety, and consumer protection (Article 3 of the UUPK).

Article 1, point 1 of the GCPL provides the following definition of consumer protection: "Consumer protection encompasses all efforts that provide legal certainty to safeguard consumers." In the pursuit of consumer protection, the term "every effort to enforce legal clarity" is envisioned as a barrier to prevent arbitrary activities that harm businesses (Miru, 2004). Consumer protection in the financial services sector is more precisely defined as the protection of consumers within the realm of business actors operating in the financial services industry.

In this context, corporate actors can exploit their position to establish monopolies, which undoubtedly harms consumers (Miru, 2013). Consumers, who often find themselves in a weak bargaining position and experience numerous losses, deserve legal protection to ensure the preservation of their rights. However, it is crucial to strike a balance that does not discourage business actors from providing consumer protection.

Consumers have become increasingly vigilant in their efforts to prevent themselves from purchasing low-quality goods, driven by the widespread desire to protect themselves (Gunawan & Yani, 2008). Consequently, the rights and roles of business actors are inversely proportional to those of consumers. This dynamic demonstrates that the customer's role is the right that the business actor aims to fulfill, whereas the consumer's right is the role that the business actor must fulfill. Comparing the findings in the Civil Code Law Book, it appears that the Consumer Protection Law (UUPK) rules are more explicit because they are part of the UUPK. This is due to the fact that the regulations of the UUPK are within the Consumer Protection Law (UUPK). Business actors are not only expected to conduct their operations in good faith but also required to create a favorable business environment without engaging in unfair competition. This is a prerequisite that business actors must fulfill.

Legal Liability of Companies Advertising Defective Products to Consumers

In the Indonesian legal system, the perspective on consumer protection establishes the position of consumer protection law as part of public law, particularly criminal law and state administrative law (Sidharta, 2000). In the past, the concept of consumer protection law was primarily associated with certain components of civil law (in a broad sense) (A. Z. Nasution, 1995). The contractual nature of the relationship between customers and businesses has a significant impact on this matter.

Business actors utilize various means to sell, promote, inform, and present their goods. This includes employing different advertising methods through various media channels, such as print and digital platforms. As consumers have rights, particularly the right to access information and freedom of choice, promotion serves as a means for consumers to discover the goods and/or services offered by business actors, with advertising being a prominent tool in this regard (Hutabarat et al., 2022).

In the context of the commercial sector, promotion is a fundamental component of product sales activities. Promotion is considered effective when it results in an increase in the number of customers purchasing the promoted products. It involves non-personal communication that aims to persuade and inform. These communications revolve around products, services, and ideas, and are disseminated through various techniques (Noviani, 2002).

Business actors have a responsibility for their advertisements, as stipulated in Article 20 of the Consumer Protection Law (UUPK), which states that advertising business actors are accountable for the promotion they carry out and its overall impact. Advertising is defined as the activity of providing information or disseminating data about a product.

There are prohibitions in place to prevent deceptive advertisements by business actors, such as:

- i. Presenting the promoted product as meeting certain quality standards, having special pricing, a particular style or shape, special characteristics, special origin, or being intended for a specific purpose to make it more enticing.
- ii. Claiming that the product is in acceptable condition and/or has been refurbished.
- iii. Indicating that the product has achieved certain patterns, approvals, special features, unique advantages, activity identities, or special equipment.
- iv. Implying that the product is produced by a sector of the economy supported by a patron, or through an agreement or partnership.
- v. Falsely stating the existence of the product.
- vi. Concealing any hidden flaws in the product.
- vii. Falsely asserting that the product is a combination of specific goods or originates from a specific geographical location.
- viii. Making exaggerated claims such as "convenient," "harmless," "no danger," or "no side effects" without providing a full explanation, while reducing the production of other goods either directly or indirectly.

In addition, Business Actors are prohibited from making false or misleading statements about the price or payment of a product, product benefits, terms, trust, collateral, rights, or changes in product quality that could cause harm. They are also prohibited from making deceptive claims about price sharing or offering attractive prizes, or using threats related to the use of the product. Furthermore, business actors are not allowed to offer their products in violation of the law.

In consumer protection law, the concept of personal liability holds great significance. When investigating cases of alleged violations of consumer rights, it is crucial to exercise extreme vigilance in determining who is responsible and to what extent they can be held liable for the violation. In the field of civil law, legal provisions and standard agreements often establish limitations on the duties of parties that violate consumer rights.

The principles of liability in consumer protection law can be categorized as follows: the Principle of Responsibility Based on Fault Factors, the Principle of Presumption of Liability, the Principle of Prejudice Against Liability, the Principle of Full Liability, and the Principle of Separate Liability. Among these categories, the Principle of Responsibility Based on Fault Factors is considered the most important (Sidharta, 2000).

In accordance with the Consumer Protection Law and the principles of liability discussed earlier, manufacturers of defective products may be subject to the principle of total liability.



According to this principle, the burden of responsibility for the problem is shifted to the business actor because it is the consumer who suffers the negative consequences. Under this concept, the customer is required to provide evidence of the product defects obtained from the Business Actor. If proven true, the Business Actor is obligated to provide compensation to the consumer.

This principle is known as two-sided proof, where the Business Actor is required to confirm the fault factor. If it is proven false, the Business Actor is not obligated to provide any compensation for the loss. Due to the relationship between defective products and the losses suffered by customers, customers have the primary responsibility to ensure that there are no defects in the product or in the relationship between the product and the customer (Samsul, 2004).

Consumers often miss out on the benefits of the goods they purchase because they are preoccupied with the flaws associated with seemingly low-quality products. There are three schools of thought when it comes to addressing consumer defects in consumed products: the breach of warranty school, the negligence school, and the strict liability school. In cases involving losses related to consumed goods, customers can make claims based on the responsibility of merchants and manufacturers in ensuring product quality. This pressure can be exerted in two ways: either by returning the goods and requesting a refund of the purchase price, or by switching to a higher quality product.

Warranties can be expressed or implied, and there are two forms of warranties for product quality: express warranties and implied warranties (as stated by Kimberly Jade Tillman in Samsul, 2004). Liability is assigned to the retailer based on the existence of a contract, which narrows the scope of the issue. Specifically, it is limited to the obligations between the parties who entered into the contract and other parties who are also affected by defective products or unsafe defects arising from the contractual relationship. On the other hand, implied warranties are derived from legislation or other forms of law. For example, it is the responsibility of the merchant to accept liability for hidden defects in the products they sell, even if they were unaware of the existence of such defects.

However, if the merchant explicitly excludes any liability through an agreement, they are relieved of that responsibility (Article 1506 of the Civil Code). According to Article 1504 of the Civil Code, the merchant is obligated to bear the hidden defects in the goods they sell. This means that the product is unfit for its intended purpose or significantly reduces its utility to the point where the consumer does not wish to purchase the product at all, or would only do so at a reduced price.

If the retailer has explicitly stated in an agreement that they will not be liable for any hidden defects in the products they sell, it indicates that the consumer assumes their own risk in case of hidden defects. The implied warranties include warranties of title, merchantability, and fitness for advertisement, addressing whether the goods sold are suitable for their intended purpose. However, the application of these warranties ultimately creates problems for the customer, as it is inevitable that businesses may make mistakes.

However, it is important to note that Article 1493 of the Civil Code allows both parties to enter into exclusive agreements that extend or reduce the obligations provided for by the law. If the agreement allows the trader to be exempt from certain responsibilities, it must be duly recognized. This is important information because it highlights that both parties have the freedom to enter into exclusive agreements. Business actors play a crucial role in today's world, particularly in the online trade of goods and services.

When someone engages in an unlawful act that causes financial hardship to another person, the law requires that person to compensate for the resulting losses. The compensation should be adjusted to restore the affected party either monetarily or to the state that existed prior to the incident, along with any necessary statements or notifications. When promoting their products for use in stamps or electronic devices, businesses are obligated to act in good faith and ensure the satisfactory fulfillment of their intended purpose.

If a consumer purchases a product marketed by a business actor and finds that it does not align with the information provided in the promotion, it indicates that the business actor has failed to fulfill its obligations properly. In such cases, the consumer can take legal action against the business actor based on Article 1365 of the Civil Code and Paragraph X of Article 45 and Article 46 of the Consumer Protection Law, which are stipulated in the Consumer Protection Law (UUPK). It is not necessary for there to be a direct relationship between the victim and the business actor to



file a lawsuit based on tortious conduct. However, consumers, as victims, must ensure that the business actor will be held accountable in the legal proceedings.

In general, all parties involved in the production of a promotion can be held responsible for any deceptive advertising that results from the campaign. This includes marketers, those involved in the promotion business, and creators of advertising tools. Promotion serves not only the needs of businesses to sell products but also the needs of customers to obtain honest, fair, and non-misleading information. This allows customers to make the most of their limited financial resources. When there is a possibility of customers experiencing losses due to promotions, it is important to consider the potential avenues for holding businesses accountable. This is particularly relevant in cases involving violations of provisions in the Consumer Protection Law, various administrative regulations, and other regulatory frameworks (Harianto & Handono, 2011).

The requirement for liability is stipulated in Article 20 of the Consumer Protection Law (UUPK), which states that advertising businesses are responsible for the promotions they produce and the resulting impacts. This responsibility applies to both advertisers and promotional tools. Holding various parties accountable for their actions related to advertising operations is not an easy task. Consequently, responsibility is determined through two different assessments, as follows (Harianto & Handono, 2011):

- a. Advertising activities involve a wide range of economic actors, including entrepreneurs in advertising (manufacturers, agents, suppliers, and retailers), advertising agencies, employment agencies, and advertising tools. On the other hand, it also connects with customers who receive information through marketing and government entities.
- b. The location of advertising itself in the legal field in Indonesia is most often associated with the legal features of public administration, in particular with the legal group of the press.

To determine the liability of business actors, it can be understood through the following description: (Endrawati, 2006)

- a) The responsibility lies with the business actor if the promotion for the applicant is both in form and content directly related to their business. The promotional services and tools involved are merely intermediaries, fully complying with the business actor's instructions. Therefore, the relevant business actor bears full responsibility.
- b) In this scenario, the responsibility rests with the promotion agency, which refers to the business and promotional tools involved. The agency is responsible for the design and creation of the promotional content. Thus, the promotion agency associated with the business assumes responsibility.
- c) If, during the product introduction process, the business actor and the promotion agency have agreed on the form and content of the promotion, but there are subsequent changes that differ from the actual promotion after airing or distribution, then the responsible party is the specific promotion tool. The active role of each party as a database in the promotion creation process is used to identify where the responsibility for the promotion lies, and it is determined accordingly. If the database is created by the business as the product manufacturer, then the business will be held liable for any deceptive promotional data generated. Conversely, if the database originates from the advertising industry and was developed without the knowledge or consent of the business actor, then the responsibility for the promotional data shifts to the advertising-related industry. Furthermore, if the published database, as part of the promotion, deviates from the originally collected data due to an error on the part of the promotion tool, then the promotion tool is responsible for the inaccurate data submitted.

Criminal penalties can be utilized, in addition to civil liability, to have a punitive effect on those responsible for violating advertising regulations. While the provision of compensation is interpreted in paragraphs (1) and (2) of Article 19 of the Consumer Protection Law (UUPK), it does not exclude the possibility of criminal charges based on further evidence of fault. This is explicitly stated in paragraph three of Article 19 of the Consumer Protection Law (UUPK). Even though there is civil damage compensation in the context of criminal prosecution, such compensation can still facilitate the punishment of offenders in terms of criminal investigations. Therefore, compensation



for civil damages is considered a factor that can aid in punishing promotional offenders. Additionally, the application of criminal law norms in conjunction with administrative law, civil law, and activity legislation within the EAW Law can be seen as a reasonable effort to combat various types of offenses. This is because the Consumer Protection Law (UUPK) incorporates the norms of all four types of laws.

One weakness of the formulation of criminal penalties in Article 62 of the Consumer Protection Law (UUPK) is that they can still have a substitutive character. Specifically, the "or" conjunction between the threat of imprisonment and the compensatory penalty allows for the imposition of only one of the criminal penalties on the offending entrepreneur. Due to this weakness, it is possible to impose only one of the criminal penalties on the offending entrepreneur (Endrawati, 2006).

When the existing legal tools are no longer effective in preventing customers from engaging in illegal activities, the latest criminal law measures are employed (*ultimum remedium*). On the other hand, the Consumer Protection Law (UUPK) is credited with initiating a paradigm shift, advocating for the combined use of criminal law and other legal tools (*primum remedium*) (Harianto & Handono, 2011).

CONCLUSION

When it comes to defective products advertised by business actors, they must take responsibility for compensating the losses suffered by consumers. It is important to note that consumers are often in a relatively weak position compared to business actors. Business actors have an obligation to ensure the quality of their goods based on the relevant quality standards. Furthermore, they are prohibited from producing goods that contain hidden defects or misleading information. If business actors fail to provide clear, accurate, and honest information about electronic goods that have hidden defects in online transactions, consumers have the right to seek compensation as the business actors have violated their obligations.

For business actors, it is crucial to provide truthful and honest information about the products they advertise. This allows consumers to make informed decisions before purchasing a product. Electronic products, in particular, are susceptible to damage and require careful consideration before buying and using them. Consumers should exercise caution when absorbing information from advertisements presented by business actors. It is advisable to verify or seek input from other consumers who have used the same product to validate the accuracy of the advertisement or promotion, or to read product reviews.

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