

*The Implementation of Electronic Transactions Views From the Law of  
Consumer Protection Law*

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Abstract

The development of information technology and telecommunications today, has led into the various assorted services and also existing telecommunication facilities, as well as sophisticated information technology. Computer as a tool with supported technology development makes the trade to be smooth and easy to be accessed by any person or company. The problem in the study is how the implementation of the electronic transactions law of consumer protection Law in Indonesia. The methods that be used in this research are the juridical normative and descriptive analysis which are done with a qualitative approach to view and analyze the legal norms (normative analysis) in existing legislation. The results acquired that the conduct of electronic transactions in the development of online business in Indonesia is very rapidly. The development encompasses a wide range of businesses, not just those mentioned above but also to other businesses. Online business in Indonesia has been known and taken into account in the world. While in the legal protection of Consumers in electronic transactions in Indonesia at present is still a lot of consumers who just learned that the electronic transactions are limited to shopping on the internet, without trying to understand the conditions that made the trade, while consumers have always been on the wrong position so charged to indemnify on electronic transactions.

**Keywords:** electronic transactions, trade, consumer protection, online business

## **INTRODUCTION**

### **Background**

In the middle of a communication that is increasingly integrated global communication network with the growing of popularity of the Internet has made the world's shrinking and increasingly fades the boundaries of state sovereignty and the following order of the people. Dynamics community in Indonesia which are new to grow and develop as an industrial society and the information society, still seems premature to accompany the technological development (research group University of Indonesia 1999: 1)

It makes the trade with electronic transactions (electronic commerce) became the choice for the business actors to launch the trade deals because of the nature of a public network that is easy to access by any person or company.

Research has been done to electronic transactions According to commendation section 1367 KUH Perdata and ITE Act remain open opportunities for judges to apply the principle of strict liability for the sake of greater common interests (the law on line). While the research conducted by Edmon Makarim, Caretaker Law Minister expert staff communication and Informatics, concerning legal liability as the organizers in electronic systems, basically, an electronic system using the principle of presumption of innocence, or the principle of liability based on negligence. It called presumed liability that is concluding by an Act No. 11 of 2008 of the information and electronic transactions (ITE Act) reciprocity presumption of guilt. This summary can be pulled from the formulation of article 15: each organizer electronic systems must conduct electronic systems which is reliable and safe as well as responsible for the operation of the electronic system as it should be. Organizers are positioned in a State of guilt laid upon the duty to always take responsibility, except when it can be prove that the fault of the electronic system is not a discrepancy.

The problem in this study is how the principle of responsibility in the ITE Act can be applied in the law of consumer protection, as well as the attainment of legal dispute resolution in electronic transactions for business actors.

### **METHODOLOGY**

This research is using a juridical normative research (Mukti, 2010: 34), namely legal research that put the law as a system of norms; system of norms intended will explore legal principles as well as reviewing the harmonization of legislation in the field of information and electronic transactions. In addition, an application to find out the rules in a concrete situation will be carried out study of the problems associated with electronic transactions; especially buying and selling are done with the use of electronic transactions. This research is a descriptive analytical (adi Rianto. 2004: 130) that expose data observations without held testing hypotheses and exploratory (Rianto adi. 2004: 3)

### **ANALYSIS RESULTS**

There are four principles of liability that is known and can be applied into the implementation of consumer protection. The principles are the liability based on fault, the liability based on the presumption, the liability based on breach actions of contract, and absolute liability that are further described below (Raharjo 2006: 51). Statute No. 8 1999 embraced this theory based on article 19, paragraph (5) which States that: "business actors freed from the responsibility of damages if it can be

prove that the errors were the fault of consumers". Meanwhile, in criminal law, about the eradication of corruption according to law number 3 of 1971, this principle has been applied, and based on the new legislation, namely Act No. 31 of 1999 jo. Act No. 25 of 2001 concerning the eradication of criminal acts of corruption, this principle is emphasized. So the fundamental of this principle invites debate, especially if associated with the principle of presumption of innocence.

The theory of liability without having to prove any mistake or in other words, is a principle that looked into a mistake as an irrelevant question whether it is fact or not. Originally, the law regarding to the liability of tort law is not concerned about the responsibility of moral or elements of the offender's fault. Upon doing so, Ames suggested that with growing moral awareness from the community, then an ethical standard of one's deeds can have replaced standard that is not based on ethics. The formula of top risks of a man acts at his peril or someone is always liable even if not at fault (iability without fault) has been replaced with the dogma of no liability without fault. In modern society, the sole of liability are not based on any element of fault should be viewed from a social value considerations, that someone who undertake activities to gain advantage for himself must bear the risks resulting from its activities. According to Komar Kantaatmaja, professional responsibility is the legal liability in connection with the professional services provided to the client. This professional responsibility can arise, because the providers of professional services do not meet the agreed-upon agreement with the client or result of the service provider's negligence resulted in the occurrence of tort law.

The liability of new trade has a limit of harmful products such as poison, explosive devices, and weapons. In its development of the expanded responsibility on products that are not harmful but can cause death if there is a fault in the production process the acknowledgment, for example in the production of food, vehicles, and others. The Development of product liability for consumers in Indonesia is based on the provisions of the Consumer Protection Act, in this case using some type of liability law, that is product liability. As for the responsible party providing redress to consumers in all kinds of legal liability are business actors, i.e. when goods/services produced and/or traded result in losses on the part of consumers. Therefore, all types of legal liability are called subject liability, the legal liability of the legal subject (individual person or legal entity).

Product liability is the liability of civil liability of the perpetrators of the business goods (it can include other parties in the chain of distribution) to indemnify certain parties (buyers, users, or even a third party), for damage to objects, injury and/or death as a result of using the product produced by the perpetrators of such business. Product liability is a legal civil institution, which is a deviation from the law of tort. Therefore, the product liability which aims at protecting consumers consumer to prove liability eliminates mistakes, and instead trade business actors were obliged to prove that he did nothing wrong. A logical consequence of legal construction that business actors must prove that he is not guilty that trade is considered to have made a mistake immediately after consumers suffer losses due to use some type of liability law, that one is liability product. As for the responsible party providing redress to consumers in all kinds of legal liability are business actors, i.e. when goods/services produced and/or traded result in losses on the part of consumers. Therefore, all types of legal liability are called subject liability, the legal liability of the legal subject (individual person or legal entity).

Product liability is a legal institution, which is relatively new in Indonesia. Nevertheless, consumer protection laws have embraced product liability using the absolute liability as a deviation from the error liability accompanied by transfer of the burden of proof of error items consumer to business actors. This is in line with the objective of consumer protection, both nationally and regionally, in the area of free trade. Applied to product liability in law number 8 of 1999 against business actors who produces the goods and then it turns out the item is causing the damage, pollution and/or loss on physical, soul and goods belonging to the consumer, then the consequences applied to product liability business actors can be penalized as follows: Based on article 19 law number 8 in 1999, business actors (in this case trade) whose harm consumers with their products, must provide indemnification form: refunds, replacement of goods similar or equivalent value, health care, the granting of compensation in accordance with the provisions of the applicable legislation. The essence of product liability is the liability on the basis of tort; elements of tort law, element of error, Item loss., causal relationships between Elements in tort damages arising.

Historically, product liability arises because of an imbalance of responsibility between business actors and consumers, where the perpetrator attempts initially implement a strategy product oriented in marketing its products, should change his strategy to be consumer oriented. The historical development of the world and then noted the growing awareness of human dignity which the world will have to be respected the rights that should be championed and given a high profile in human civilization. An original relationship principle emphasize on consumer awareness on its own to protect itself, turning into the consciousness of the perpetrator's efforts to protect consumers. Product liability in General is the responsibility of the perpetrators of the attempt to products that have been brought into circulation that cause or result in losses due to defects inherent in the product. Furthermore, the definition of can be spelled out again that the responsibility in question here includes contractual liability or based on an agreement and statutory responsibilities on the basis of unlawful acts. Understanding the principals of these definitions is the attempt of business actors, wholesale, supplier and retailer. The products include things move or immovable that has been brought about by the perp effort into circulation, meaning that there has been in the trade because of the actions of the perpetrators of the attempt. The loss is the definition above is the loss incurred or caused by product and product damage or decimation, while understanding the inherent defects in the product's deficiency in the product that causes the incidence of loss.

According to Roszkowski, product liability is limited to the jurisdiction that imposes responsibility on criminals endeavor and a provider of other items of bodily harm and material losses caused by the product sold.

Furthermore, N.E. Algra & H.W.R. Gokkel providing a definition of product liability as follows: "the responsibility of the owner of the factory for the goods it produces, for example related to the health of purchasers, users (consumers) or security products". Agnes M. Toar argued that notions of product liability is actually referring to the responsibility of the perpetrators of the attempt can be defined as follows: "the responsibility of the perpetrators of the attempt to products that are brought into circulation which give rise or cause harm due to defects inherent in these products".

Based on the above, the visible emphasis on product that is generally defined as goods that are real tangible goods, whether moving or not moving. However in relation to the issue of the responsibility of business actors (product liability), products not only in the form of tangible goods, but also included the nature of intangible goods, such as

electricity, natural products (e.g. food pets with other types of animals), writing, or home real estate (e.g. a house). Including in terms of the product not merely of a product, which is already so overall, but also including components and spare parts. It is expressed also by Endang Saefullah that expands the scope of the above with the following understanding, "Product liability is a legal responsibility of the person or entity that produces a product (producer, manufacturer) or of persons or entities that process a product (assembler) or from the person or entity that sells or distributes (seller, distributor) such product".

According to The 1973 Hague Convention on the Law Applicable to Products Liability, also known as The Hague Convention, product liability apply to those persons/parties, namely: Entrepreneurs of goods/final product or component part, entrepreneurs from the stuff of nature (natural product), a Supplier of something the product. Others, including the entrepreneur workshop and warehousing in network provision/distribution or preparation of an item.

Since April 20, 1999, has started a new sheet in consumer protection efforts in Indonesia, because on that date passed Act No. 5 of 1999 on the protection of consumers. Consumer protection efforts, which previously only relied on the legislation, are not specifically aimed at protecting consumers, since then it has gained its own settings. Certainly it has the question, why the consumers never get attention since Indonesia proclaimed the independence of Indonesia? Specifically, that year get priority attention and legal protection. The questions will be more prominent, while put forward the fact that 18 (eighteen) years before, on June 22, 1981, the Consumer Agency Indonesia Foundation has finished composing and propose to the Government a draft law on consumer protection issues.

Indonesia's consumer protection law No. 8 in 1999 classifies several types of legal liability for civil, i.e. contractual liability, product liability, professional liability, criminal liability, and administrative liability. As for the parties who should be responsible for providing compensation to consumers in all kinds of legal liability of business actors, i.e. when the goods and/or services that are produced and/or diperdagangkannya cause any harm on the part of consumers. Therefore, all types of legal liability are called subject liability, the legal liability of the subject of law.

As has been stated above, a product to the consumer is usually through a variety of ways, such as agents, wholesalers, distributors, and retail traders, whereas its products on its own, particularly for products whose number of processed through what's called in the industry. Industrial activity is processing or producing goods on a large scale in which used factories and equipment in large quantities. From the definition of the industry can be concluded, that the product/goods produced in an industry's products en masse and using equipment that is multi-faceted and in great numbers. Especially with the development of the technology world is the equipment used in the production process in a major way is the high-tech equipment that is not easily understood by laypersons that are not trained specifically for the agility.

As a result of the industrialization process in processing such products arising legal issues in connection with the goods or the defective product to the detriment of the consumer, either financial, non financial sense, even the loss of the soul. The problem is that in order to prosecute the victim caused by the product or the defective goods. Based on the General provisions applicable to Civil Law, the consumers who suffer losses as a result of products or goods that are defective can sue the principal effort directly, or sue the merchant from which the item is purchased. Demands put forward based had the occurrence in tort (as set forth in Section 1365 KUH Perdata) by

business actors or others related to the process of production or distribution of products or goods are defective.

However if a consumer who suffered such losses would demand the perpetrator's efforts (including traders, wholesalers, distributors, agents) based on tort law, then the party will face a number of constraints that will be difficult to obtain compensation. Because of various difficulties encountered by the consumer, then the law of product liability imposed absolute liability principle. By implementing the principle of absolute responsibility, every person/consumers who feel aggrieved as a result of products or goods that are defective or unsafe can demand compensation without having to dispute the presence or absence of the error element in the trade.

In addition, there are other reasons which reinforce the application of absolute liability which is based on the Social Climate Theory Manufacturer is the party that is in a better financial position to bear the brunt of the losses, and in every case obliged him to replace the losses, they will forward such losses and share the risks to the parties by the way of closing the insurance premiums included in the calculation of the price of goods production results. The difficulties in proving the existence of the element of fault in a process manufacturing such complex at large companies (industry) for a customer/victim/plaintiff individually. But it also acknowledged publicly that the victim/consumer must show that at the time of the occurrence of the loss of these products is the principle in such circumstances the time submitted by trade, it is not held modifications. Although the system of liability in product liability applies the principle of absolute liability, the offender may attempt to break free from his responsibilities, both for the whole or for parts.

Another important thing that needs serious attention in the era of industrialization is the field of law, particularly about accountability for the product. Product liability problem is closely related to the issue of competition in the era of free trade and growing with the increasing attention to consumer protection. The core problem lies in the quality of the resulting product.

Currently, Indonesia has had legislation that specifically regulates the responsibility of business actors, in Act No. 4 of 1999 on the protection of consumers. Other legislation related to consumer interests, among others is KUHD, Act No. 10 Of 1961 concerning the goods, Act No. 37 of 2009 about health.

Therefore, when a consumer suffers losses due to product defect and wants to sue the perpetrator attempts before the enactment of Act No. 8 in 1999, then the law is merely based on tort law (article 1365 KUH Perdata). As stated on facing the difficulties for victims to obtain compensation through legal procedures. The business actors will be more cautious in producing goods before enter to the market so that consumers, both inside and outside the country, would not hesitate to buy products from Indonesia. Likewise, when the consciousness of the principals of business/industrialist against the law on the responsibility of business actors do not exist, it is feared will be no good to the existence of national and industrial world on the competitiveness of national products, particularly abroad.

Nevertheless, by enacting the principle of absolute liability in the law of product liability does not mean the business actors have not protection. The consumer is still given the chance to break free from his responsibilities in certain matters stated in the Act. In addition, the business actors can also insure their responsibilities, so that it is not economically meaningful loss. In Indonesia, the law No. 8 in 1999 that its essence regulate the behavior of business actors with the goal of keeping the consumer is

protected legally over the products that produced by the trade or known as product liability.

### **CONCLUSION**

The liability of business actors are involved in the formulation of article 19 of consumer protection legislation. The theory of liability product should be has preventive effort of business actors in carry out the liability of buyer, consumer and the security of products. The application of liability product such as industrial product violations committed by business actor. The consumers who feel harmed can sue perpetrators based on article 28 UUPK. It gives a legal ramification to the business actor who can demonstrate a loss is not a fault free.

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