

THE IMPORTANCE OF PRODUCT LIABILITY INSURANCE IN INDONESIA: A PRELIMINARY ANALYSIS

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ABSTRACT

This article discusses and analyzes the importance of product liability insurance in Indonesia. The discussion of this research is carried out using normative research methods that are analyzed qualitatively, that is to interpret primary and secondary data which are then described or described in systematic sentences so that they are easily understood. The results show that product liability insurance guarantees consumers who are disadvantaged by using defective and dangerous products. The mechanism must be regulated in accordance with the legal system in Indonesia. The product responsibility position needs to be considered. Every problem of consumer loss must be accompanied by a comprehensive analysis. Product liability insurance has not been specifically regulated in a separate law in Indonesia. Therefore consumers need regulations to regulate the implementation of product liability insurance in Indonesia. As foreign products become more diverse and national borders fade, it becomes important to discuss product liability insurance with a transnational dimension. This requires comprehensive legal reform and not only in the area of consumer protection law but also insurance law.

Keywords: Producer, Product, Consumer Protection Law, Product Liability Insurance.

INTRODUCTION

Product liability insurance is an important issue today. It needs to be practiced as a solution to consumer losses due to use of a product. Presence of product liability insurance has two benefits. First, provide guarantees to consumers for the compensation suffered. Second, product liability insurance helps producers in terms of reimbursing consumers, especially losses in large amounts. Product liability insurance benefits both consumers and producers (Hamzah, 2011).

The advantage of using product liability insurance for producers is that consumer compensation claims are paid by insurance companies. Meanwhile, the insurer will guarantee and pay for consumer losses. In this case there will be punitive damages according to consumer demands. It is a result of policyholder's demands or consumers who are harmed from consuming or using products that are defective, failing or imperfect through courts (Hamzah, 2017).

Consumers have an important position in free trade order (Sheeta & Aman, 2010). It is reflected in the implementation of consumer protection laws in most countries in the world. This protection is a public and civil sphere. The implementation of consumer protection law requires cooperation among institutions related to consumer protection law supervisors as controllers. In

the United States, for example, the authority to implement this protection rests with the FTC or Federal Trade Commission (Jillian, 2008).

The Federal Trade Commission is an independent federal agency with five Presidentially-appointed, Senate-confirmed commissioners who each serve seven-years terms. No more than three commissioners may be members of the President's political party. The FTC has three bureaus : the Bureau of Competition, the Bureau of Consumer protection law, and the Bureau of Economics. Initially authorized in 1914 by the passage of the Federal Trade Commission Act, the FTC is currently dedicated to achieving two goals : first, to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace. Second, to maintain competition by preventing anticompetitive business practice. Main concern of the FTC in implementing consumer protection law is related to a deception-free marketplace and provide the highest-quality products at competitive prices (Jillian, 2008).

United States, which has been seriously protecting consumer rights for more than 100 years, has encouraged developing countries to pay serious attention to this problem. Many countries such as Thailand, Malaysia, the Philippines, Indonesia, Sri Lanka, Korea, Mongolia, Mauritius, China, Taiwan and Nepal already have consumer protection laws (Sheeta & Aman, 2010). However, in many cases, consumer law does not provide as expected protection. That happens because of the weak position of consumers when they fall victim to a product. They did not get satisfactory compensation after submitting claims to the producers. In fact, in some cases, consumers fail to get punitive damages from the producers. Whereas they have suffered mental health losses and are threatened with life safety from using products that are not suitable for consumption.

Manufacturing industry plays an important role in efforts to boost investment and export value so that it becomes a mainstay sector to accelerate Indonesia national economic growth. Therefore, the government is committed to revitalizing the manufacturing industry through the implementation of the Making Indonesia 4.0 road map so that it is also ready to enter the era of the industrial revolution 4.0. Currently, the industrial sector contributes to GDP by 20 percent, then for taxation around 30 percent, and exports by 74 percent. This achievement was the largest donated from five manufacturing sectors in Making Indonesia 4.0 (Indonesia Economic Outlook, 2019).

The five sectors in question, namely the food and beverage industry, the textile and clothing industry, the automotive industry, the chemical industry, and the electronics industry. According to the Coordinating Minister for the Economy Darmin Nasution, in addition to these sectors, there are several other sectors that also have great potential in sustaining the national economy through its export performance such as the jewelry industry and the fish processing industry (Indonesia Economic Outlook, 2019).

PRODUCER TENDENCY

Producers or Manufacturers in the constellation of consumer protection laws are a “*manufacturer*” is defined to mean

“A person who is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part thereof in the stream of commerce.”

Under the definition of “*manufacturer*,” almost any entity involved in the design, fabrication or assembly of the product will be included within the statute of repose (Brent & Diana, 2005).

In the business world, producers as “*economic animals*” will seek maximum profits. Even to pursue huge profits, producers do ways that broke the law, i.e. gives incorrect information about the product; they sell low quality goods or sell defective products (Heidi, 2005). They do that with an aim of reducing production costs. Its means maximizing business profits illegally. Cause of producers doing illegal acts are consumers who are easily tempted by cheap goods in the market. Many buyers do not pay close attention to product quality, expiration, side effects and product defects.

Product defects are defined as items that cannot fulfill the purpose of manufacture either intentionally or unintentionally. First, a product is called a defect when a condition of goods below the level of consumer expectations. These defective products endanger consumers' property, health and life. Second, product design flaws that are not as they should be. Third, warning defects or lack of instructions. Product is not equipped with certain warnings regarding use of the product and side effects possibility of item (Nasution, 2001).

Consumer losses due to product defects or decreased quality of goods caused by tendency of producers to seek maximum profit. Some opinions regarding the purpose of a manufacturer. First, the manufacturer does not aim for maximum profit (non profit objective). Second, the maximum profit is necessary to support the company. This is to keep the company from experiencing losses. An assumption that every producer intend to seek maximum profit because the company operates under conditions of certainty (Hamzah, 2011).

Currently every company aims to get the highest profit with the smallest risk. It is according to Karl & Friederich (2008) opinion that capitalism always reproduces itself by accumulating capital and creating profits. An inevitability of the history of capitalism is a spirit for companies and corporations to pursue maximum profits. However, the spirit of increasing profits often neglects product quality and sacrifices consumers.

Poor product quality harms consumers and destroys a good names of producers, sellers and importers. All companies involved in distribution chain are jointly responsible for the losses suffered by consumers. Including forms of loss are injuries suffered by consumers due to improper use or storage of goods. Unsafe products are defined as products that cause loss, bodily injury due to production or design defects; unclear information or instructions regarding product use and storage; or failure to provide adequate warning (Hamzah, 2011).

CONSUMER PROTECTION LAW AND PUNITIVE DAMAGES

Doctrine of *caveat emptor* in consumer protection law is no longer appropriate to provide guaranteed harm to consumers in this century (Donna, 2003). There are a number of factors as causes, i.e. marketing of useless and dangerous products; unhygienic packaging for food products; and products that are promoted are effective for treating all diseases. Information about such products is not open, misleading and contains elements of fraud. Therefore, *caveat emptor* doctrine cannot be used because it fails to strengthen consumers to protect themselves.

Consumer protection laws are important in the era of free market. It is also an important legal issue in the free trade system. A logical consequence of the system is that products from

various countries will to enter the domestic market. This raises legal issues related to consumer protection law (Hamzah, 2011).

The Indonesian government is seriously inviting foreign investors to invest in that country. However, it has not been accompanied by a guarantee of consumer protection law that is comprehensive and guaranteed by law and carried out properly within the bureaucracy (World Trade Organization, 1994). One of solution to provide consumer protection law is to apply certification to all products circulating in that country. These products are both imported products and domestic products.

Cases involving standard-setting and testing/certification might be distinguished from accreditation disputes on the ground that accreditation is a service primarily designed to assist service providers or payors in making their resource allocation and payment decisions, with any consumer protection law effects being secondary, while the very purpose of product and service safety standards is to reduce the risks of injury to consumers. On this view, the traditional rule of no duty to third parties might be justified for accreditation even if it is not justified for standard-setting or testing/certification (Peter, 1994).

Certification implies certain standardization that is applied to a product. This standardization implies testing to those products. Thus, the government proactively provides protection to consumers. An item produced by a company also has a risk of harming consumers. By paying a number of insurance premiums for policyholders, the insurance payer receives an appointment from the insurance company to pay a certain party if consumer suffers a loss (Sinar, 2010).

Legal system in the United States requires that manufacturers of products be responsible for losses suffered by their consumers. Mitchell and Steven (2010) said that restatement (Third) of Torts : Products Liability § 1 (1998) [hereinafter Restatement (Third)] (“*One engaged in the business of selling or otherwise distributing products who sells or distributes a defective product is subject to liability for harm to persons or property caused by defect.*”); id. § 1 cmt.c (The rule stated in this section applies... to manufacturers and othe commercial sellers and distributions).

Consumer protection law and product liability are increasingly considered important in the United States (Mitchell and Steven, 2010). Every year tens of thousands of consumer loss cases and product liability claims are registered in state and federal courts. Among the claims are representative or mass lawsuits involving thousands or millions of individuals as plaintiffs (Mitchell and Steven, 2010).

Thailand has given serious attention to the issue of consumer protection law and punitive damages. The product liability act was passed in that country on February 20, 2009. It is call as Damages Caused by Unsafe Goods Act (B.E. 2551). The most important part of this law is to impose the responsibility for the production and sale of unsafe products (which cause loss or loss including death) to third parties (Siraprapha & Michael, 2008).

Various types of products are covered under Damages Caused by Unsafe Goods Act, including: consumer products (including products for babies and children); products used at work; food and food manufacturing plants (agricultural products, plantations, vegetables etc.); automotive components; building materials; health care products; and raw materials i.e. minerals, natural fibers etc (Siraprapha & Michael, 2008).

There has been an increase in the number of lawsuits after the implementation of this law; especially those involved in manufacturing, selling or importing goods and services must consider product liability insurance to reduce risk and transfer solutions. Product liability

insurance completes legal liability and pays loss for bodily injury or loss caused by using defective products (Hamzah, 2011).

Product liability insurance provides a solution to resolve financial claims related to goods produced, sold or distributed by the insured; defective goods or products; defective goods or products; loss for bodily injury, death and or damage to property caused by using defective products; court costs and lawyer fees; the plaintiff's legal fees the plaintiff's legal fees; and product withdrawal fees (Hamzah, 2011). Product liability insurance not only saves consumers from unforeseen losses but also helps producers reduce the risk of financial losses due to claims for compensation. Product liability insurance also guarantees equality between producers and consumers in a free trade system.

Concept of product liability is inherent in the product. The consumer sovereignty viewpoint denies any role to regulators in product markets, assuming instead that competition will ensure the satisfaction of consumer preferences or, at least, that it will do a better job than can be accomplished by government interlopers. In the products liability arena, this robust conception of consumer sovereignty appears in the work of scholars who advocate judicial enforcement of liability disclaimers and deference to market-derived product safety standards. Indeed, deep faith in the ability of consumers to maximize their welfare counsels a fairly wholesale abandonment of products liability law (Douglas, 2003).

Product Liability Insurance in Indonesia

35 people died in October 1989 in Indonesia after eating biscuits containing poison. Retail food vendors did not know and were not responsible for the fact that sodium nitrate has been accidentally replaced by ammonium bicarbonate. In this case the Indonesian government acted swiftly by accusing the biscuit manufacturer as a suspect of a poisoned biscuit case. Luckily the government officials have the initiative to resolve the case comprehensively.

DATA ANALYSIS

In Surabaya, East Java, Indonesia in 2009 found counterfeiting of several well-known product brands. Forged shampoos with brand Sunsilk, Organics, Dimension 2 in 1, Beauty shampoo 3 in 1, Rejoice Formula 2 in 1, Clear and Pantene Pro. Furthermore, there were also baby powder forged: Pigeon, Johnson and Johnson, Zwitsal Baby Powder, Caldine Powder, Cussen, Amami, Pixy and She, and perfumes of Ax, Tabach, Gatsby, Marlboro (Marianus, 2009).

These two events were detrimental to consumers. Consumers are threatened with physical and mental health due to use counterfeit products that do not follow health standard. Consumers who will insist the manufacturer that the product is counterfeit must do a laboratory check. The two cases proved that the position of consumers is weak when dealing with producers (Marianus, 2009).

The weak position of consumers and victims of defective products is a factual condition regarding an unequal relationship between producers and consumers in Indonesia. This situation requires mandatory product liability insurance to protect helpless consumers in Indonesia. Government policies that require product liability insurance for each product and service product are also useful to help producers pay punitive damages to consumers.

The number of insurance companies in Indonesia are 137 insurance companies, i.e. 76 general insurance companies; 50 life insurance companies; reinsurance company; 3 mandatory insurance companies; and 2 social insurance companies. With a large number of insurance companies, implementation of product liability insurance is very possible in Indonesia.

What must to be done is the Indonesian government have to immediately ratify product liability insurance as compulsory insurance for any goods and services sold within the jurisdiction of the Republic of Indonesia. These coercive obligations aim to protect every interest, right and obligation of producers and consumers. It is also in line with the vision of free trade which provides equal opportunity and equality for producers and consumers. By requiring product liability insurance for all goods and services in Indonesia, it has returned equality between the consumer and the producer. The obligation of each company to pay for product liability insurance also strengthens the position of consumers if they become victims of a defective product and helps the producer to pay punitive damages to consumer.

CONCLUSION

This article is a preliminary analysis of the possibility of implementing product liability insurance in Indonesia. After analyzing an unequal position of producers and consumers and the low level of public awareness of the product safety and service, this article has several conclusions. First, product liability insurance has an important role in protecting every consumer in Indonesia. Weak consumer position when dealing with producers will be helped by the existence of product liability insurance. Product liability insurance guarantees consumers who are harmed by the use of defective and dangerous products.

Second, product liability insurance mechanism in Indonesia must be regulated according to the law system. The position of product responsibility needs to be considered, because every problem of consumer loss must be accompanied by an analysis of who should be and to what extent the responsibility is imposed. Hereafter, product liability insurance has not been specifically regulated in a separate law in Indonesia. Therefore consumer need a regulation to regulate the implementation of product liability insurance in Indonesia.

Third, to realize product liability insurance requires legal renewal in Indonesia. As foreign products become more diverse and national borders fade, it becomes important to discuss product liability insurance with a transnational dimension. This requires comprehensive legal reform and not only in the realm of consumer protection law but also insurance law.

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