

RESEARCH ARTICLE

HOW ARE BUSINESS ACTORS RESPONSIBLE FOR CONSUMER LOSSES IN DEFAULT CASES?

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ABSTRACT

Consumer protection is an integral part of healthy business activities. Default is one of the parties to the agreement which constitutes negligence to meet the conditions set forth in an agreement. This research aims to find out the form of responsibility of businesses for consumer losses due to default and a form of consumer protection for consumer losses due to default. The method of this research is empirical legal research method or empirical juridical, which is where this empirical law research discusses how the law can operate in society (*ius operatum*). The results of the study explained that the Consumer Protection Act No. 8 of 1999 already has provided good protection to consumers. This is evident from its wide material coverage and provides maximum protection for consumers. One of them is by regulating the responsibility of businesses to losses experienced by consumers from the sale or transaction. The conclusion of this study shows that the responsibility of businesses for consumer losses due to default under Law No. 8 of 1999 on Consumer Protection can be done by continuing/canceling the agreement and indemnifying losses incurred as a result of the default. It is in accordance with the positive law that applies in Indonesia,

namely that a consumer if harmed in consuming goods or services, can sue the party that caused the loss. With the qualification of a default lawsuit or an act against the law.

Keywords: *Responsibility; Consumer Losses; Default*

INTRODUCTION

Consumer protection is an integral part of healthy business activities. The absence of balanced protections leads consumers to be in a weak position. Moreover, if the product produced by the manufacturer is a limited type of product, the manufacturer may abuse its monopolistic position. This of course will be detrimental to consumers. In performing a legal agreement, of course, the binding parties must pay attention to Article 1320 of the Civil Code. If the agreement that has been made is not carried out with the agreement agreed by one of the parties, the act can be said to be a default. Defaults can occur intentionally or unintentionally. Parties who accidentally commit this default, can occur because they are unable to fulfill the achievement or also because they are forced not to perform the achievement ([Miru, 2007: 74](#)).

Many cases have occurred especially in terms of default. For example, in the transaction of buying and selling electronic goods that are damaged after the goods are received by the buyer or victim. Such electronic items cannot be used or damaged and there are hidden defects. The sale and purchase transaction originated from an agreement made by the seller orally through the existing communication media, in order for the agreement that has been done by the seller and the buyer can be carried out properly, both parties must fulfill their respective obligations.

The seller is obliged to deliver the goods that have been purchased by the buyer and the buyer is obliged to pay the amount of money that has been previously promised to the seller, if in the agreement agreed by the seller and the buyer, the seller is not obliged to perform his obligations in full, then the seller has committed a default of the sale and purchase agreement. So that the problem, businesses have been able to be said to meet the elements of default which among others are hard to implement the promised, but not as promised ([Kilikily, 2017: 129-30](#)).

Legal protection is to give protection to the human rights of others who are harmed and those protections are given to the community so that they can enjoy all the rights afforded by the law. Legal responsibility is intended as an attachment to the provisions of the law ([Nurmansyah, 2020: 1231-1239](#)). Therefore, this research is intended to analyze (1) the form of responsibility of businesses for consumer losses due to default and (2) the form of consumer protection for consumer losses due to default. This research aims to find out the

form of responsibility of businesses for consumer losses due to default and a form of consumer protection for consumer losses due to default.

METHOD

This type of research in this journal, the author uses the method of empirical legal research method or empirical juridical, which is where this empirical law research discusses how the law can operate in society (*ius operatum*). This empirical research examines the law in its legal process in its interactions, the law in its application and the influence of the law in people's lives (Sunggono, 2015: 42).

FORM OF RESPONSIBILITY FOR CONSUMER LOSSES DUE TO DEFAULT

Agreements on trade secrets are vital. This is demonstrated by how important trade secrets are which are also very expensive corporate assets, because it can be a powerful tool to compete with competitors (Gerungan, 2016). Article 1 of Law No. 8 of the Consumer Protection states that consumers are every user of goods and/or services available in the community, whether for the benefit of themselves, family, others or other living beings and not for trading. While in the legal dictionary, the understanding of consumers is the party that uses or utilizes both goods or services, for the benefit of themselves or the interests of others.

The understanding of business actors in Article 1 number (3) of Law No. 8 of 1999 on Consumer Protection explains that business actors are every individual or business entity, whether in the form of legal entities or non-legal entities established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements to conduct business activities in various economic fields (Erlinawati & Nugrahaningsih, 2017: 27-40). In general, the principles of liability in law can be distinguished as follows:

1. Liability based on fault

The principle of *liability based on fault* is a fairly common principle in both criminal law and civil law. This principle states a new person can be held legally liable if there is an element of wrongdoing he or she committed.

2. Presumption of liability

This principle says the defendant is always held accountable until he can prove his innocence. Therefore, the burden of proof is on the defendant.

3. Presumption of nonliability

The scope of consumer transactions in this principle is very limited and such restrictions are usually in common sense justifiable.

4. Strict liability

This principle states mis-action as a determining factor. However, there are exceptions that allow to be exempt from this principle. For example, force majeure. This forceful situation is a situation that occurs outside the control of the parties concerned, as happened in natural disasters. In general, the principle of absolute responsibility in consumer protection law is used to ensnare businesses (manufacturers) who market products that harm consumers.

5. Limitation of liability

This principle is strongly favored by manufacturers to be listed as an exclusion clause of liability in the standard agreements it makes. This principle of responsibility is very detrimental to consumers if determined unilaterally by businesses ([Kristiyanti, 2011: 92-97](#)).

In the Consumer Protection Law itself, regulates the accountability of businesses in general, as stated in Article 19, namely:

- (1) Businesses are responsible for indemnifying consumers for damage, pollution, and/or losses resulting from consuming goods and/or services produced or traded.
- (2) Indemnification as referred to in Paragraph (1) may be in the form of money or replacement of goods and/or services of similar or equivalent value, or health care and/or compensation in accordance with the provisions of applicable laws and regulations.
- (3) Indemnification is carried out within 7 (seven) days after the date of the transaction.
- (4) The award of compensation as referred to in Paragraphs (1) and (2) does not eliminate the possibility of criminal charges based on further evidence of an element of wrong doing.
- (5) The provisions as referred to in Paragraphs (1) and (2) shall not apply if the business person can prove that the error is the fault of the consumer ([Riung, 2015](#)).

Based on the content of article 19 Paragraph (1) above, it can be known that the responsibilities of business actors include:

1. Indemnification liability for damages.
2. Indemnification liability for pollution.
3. Indemnification liability for consumer losses ([Miru & Yodo, 2007: 17](#)).

This period of reimbursement is carried out within a maximum of 7 (seven) days after the date of the transaction. In the default of trade transactions, the principle of absolute responsibility (strict liability) plays an important role and applies because this businesses principle must be responsible for consumer losses without having to prove the validity of it. Provisions on indemnification have been stipulated in Article 1243 and Article 1246 of the Civil Code, while in Article 24 of the Consumer Protection Law states that businesses that sell goods or services to other businesses are liable for claims for damages or consumer

claims if other businesses do not make changes to the goods of the business actors and Article 24 Paragraph (2) states that businesses can be free from responsibility if other businesses make changes to the goods of the business actors (Afrilia & Sulistyaningrum, 2017: 78).

Liability obtained by consumers should be charged by businesses because the business actors who cause a loss due to errors or negligence caused by the business actors. Violations committed by businesses, giving the fact that the actual implementation of the law obtained through the Consumer Protection Act. In Article 4 which is one of the articles governing the comfort rights of consumers. Irregularities in the implementation of the law *pa da* Consumer Protection Law is also contained in Article 7 which is explained that businesses require to provide information description of goods or services offered correctly, honestly, and also in accordance with the condition of a goods or services sold by the businessman (Pande, 2019: 19).

Sanctions against businesses that commit default are regulated in the Civil Code as well as in consumer protection law No. 8 of 1999. In the Civil Code, parties who do not carry out the contents of the agreement will be penalized. As a result of negligence or negligence by the debtor, threatened with several sanctions or penalties, there are 4 (four) kinds of sanctions, namely:

- a. Pay the losses suffered by creditors or called compensation.
- b. Cancellation of the agreement or also called the breaking of the agreement.
- c. Risk switching.
- d. Pay the costs of the case if it comes to being litigated in front of a judge (Sudjana, 2019: 387).

FORM OF CONSUMER PROTECTION FOR CONSUMER LOSSES DUE TO DEFAULT

Basically, legal protection of consumers in a trade transaction is manifested in 2 (two) forms of regulation, namely legal protection in the form of certain laws (laws, government regulations) of a general nature and legal protection based on agreements specifically made by the parties, manifested in the form of substance or the contents of agreements between consumers and businesses such as provisions on indemnity, the period of claim submission, dispute resolution and so on (Sukarmi, 2007: 170).

In the Consumer Protection Law, consumer rights are stipulated in Article 4 which states that the rights of consumers, on the other hand the obligations of businesses are stipulated in Article 7, related to the act of default in the above cases in Article 7 letter g of the Consumer Protection Law which states that the obligations of businesses to provide compensation, compensation, and/or services received or utilized are not in accordance with the agreement. Some cases of default that occur are more dominated by the non-conformance of goods

ordered with the goods received, it is expressly prohibited by the Consumer Protection Act Article 8 Paragraph (1) letter f which states that businesses are prohibited from producing or trading not in accordance with the promise stated in the label, ticket, description, advertising or promotion of the sale of such goods and /or services. The provisions of legal protection obtained by consumers are stipulated in Article 49 Paragraph (3) PP 82 of 2012 which states that businesses must give a deadline to consumers to return goods sent if they do not comply with the agreement or there are hidden defects (Putri, 2019: 4).

In principle, the provisions governing the protection of the law against consumers in aspects of civil law, stipulated in Article 1320 of the Civil Code, Article 1320 of the Civil Code stipulate that for the validity of the agreement is required four conditions, namely:

- a. The agreed word of those who bind themselves (*toestemming van dengenen die zich verbiden*).
- b. Ability to make an alliance (*de bekwaamheid om een verbintes aan te gaan*).
- c. A certain thing (*een bepaald onderwerp*).
- d. A halal reason (*een geloofde oorzaak*).

Article 1234 of the Civil Code distinguishes achievements over:

- a. Give something.
- b. Do something.
- c. Not doing anything (Badruzaman, 2011: 37).

There are various parties that do not fulfill their achievements even though they have previously agreed to be implemented. The various defaults are as follows:

- a. Defaults are not fulfilling.
- b. Default is a late fulfillment of achievements.
- c. Defaults are imperfect in fulfilling achievements.
- d. Default to do something that by agreement should not be done.

Default is the debtor's failure to fulfill its obligations in accordance with the agreed agreement. To determine when a person should perform his obligations from the content of the agreement he has made. In agreements it is usually stipulated when a person must carry out his obligations, such as handing over an item or doing something. If the debtor does not do what he promised, then he has committed a default. Defaults that are often done by businesses are many businesses to override the rights of consumers.

Consumer rights are stipulated in Article 4 of the Consumer Protection Act which states that:

- a. The right to comfort, security and safety in consuming goods and/or services.
- b. The right to choose goods and/or services and obtain such goods and/or services in accordance with the exchange rate and conditions and guarantees promised.

- c. Right to correct, clear and honest information regarding the conditions and warranties of goods and/or services.
- d. The right to be heard his opinions and complaints over the goods and/or services used.
- e. The right to appropriate advocacy, protection and efforts to resolve consumer protection disputes.
- f. The right to coaching and consumer education.
- g. Right to be treated or served properly and honestly and non-discriminatoryly.
- h. The right to compensation, indemnification/ reimbursement, if the goods and/or services received are not in accordance with the agreement or not as appropriate.
- i. Rights stipulated in other statutory provisions.

Of the nine consumer rights above there are some rights that are often waived by businesses such as the right to obtain complete information about the goods ordered and the right to obtain compensation for goods ordered whether the goods are damaged, defective or goods are not received by consumers ([Purba & Silalahi, 2019: 1072-1081](#)).

Consumers have been guaranteed rights, obligations and restrictions from both consumers and businesses. But in practice there is no denying that there are still many violations and usually the victims are consumers and this is an unwise act committed by the perpetrator. For such acts that are classified as defaults must be sanctioned so that businesses no longer do so ([Hartono, 2016: 140](#)).

Consumer Protection Law Article 16 Paragraph (2) explains that businesses in offering goods and/or services through orders, prohibited not to keep the promise of a service and/or achievements, it can be concluded that the non-fulfillment of consumer rights by these businesses is already an act that violates Article 16 of Law No. 8 of 1999 on Consumer Protection. Violation of Article 16 Paragraph (2) actually originated from an agreement arising from an agreement between businesses and consumers. The agreement that occurs comes from the agreement of the parties so that by not complying with the existing agreement by one of the parties in this case by the business actors, then the business actors can be asked for a settlement both within the scope of civil law and according to the Consumer Protection Law because businesses are considered to have committed criminal acts of consumer protection.

In the Consumer Protection Law No. 8 of 1999, especially Article 62 Paragraph (1) mentioned about criminal sanctions that can be given to businesses that violate Article 16 Paragraph (2). Provision of Article 62 Paragraph (1) of Law No. 8 of 1999 in the form of a maximum prison sentence of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiahs) ([Lestari, 2019: 56](#)).

From the results of the description, the buyer as a consumer is entitled to get legal protection for the act of default from the business actor, because the

buyer (consumer) with the seller has been bound in the letter of the binding agreement, but the fact that the seller did not do the contents of the agreement, so that the actions of these businesses, who resent the promise or do not keep the promise can be categorized as a default. According to Article 19 of the Consumer Protection Act if the consumer suffers losses as a result of consuming goods and or services produced by businesses, has the right to claim civil liability to the businessman for the losses incurred (Sidabalok, 2006: 80).

CONCLUSION

This research concluded and highlighted that the responsibility of businesses for consumer losses due to default under Law No. 8 of 1999 concerning Consumer Protection can be done by continuing/canceling the agreement and indemnifying losses incurred as a result of the default. It is in accordance with the positive law that applies in Indonesia, namely that a consumer if harmed in consuming goods or services, can sue the party that caused the loss. With the qualification of a default lawsuit or an act against the law. Because of the losses suffered by consumers, it is nothing but the implementation of achievements by entrepreneurs. Legal protection of consumers for consumer losses due to default that can be done by compensating, indemnifying and/or services received or utilized is not in accordance with the agreement. Therefore, it is suggested that in the Consumer Protection Law, there is no more specific Article discussing the system of responsibility of business actors because the type of responsibility of business actors consists of various types, so it is necessary to reform the law in protecting consumers. For consumers are advised to be more careful in buying and selling and transacting because the agreement of the parties is only based on trust and consumers are expected to better understand their rights as consumers so that there is a default, consumers can take advantage of their rights in accordance with the laws and regulations.

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