

THE SELLER'S LIABILITY DUE HIDDEN DEFECTIVE PRODUCTS IN THE ONLINE SELLING AND BUYING TRANSACTION BASE ON CUSTOMERS PROTECTION LAW (UUPK)

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Abstract

The seller offers goods with online media by relying on the description of the goods in the form of videos or photos so that consumers cannot directly check the goods to be purchased. This article aims to analyze the seller's liability due to hidden defects in online buying and selling transactions. This study used a normative juridical approach. Results of the study show that hidden defective products sold by sellers in online transactions are the absolute responsibility of the seller as regulated in Article 19 of the UUPK, as well as the provisions of Articles 1365 and 1865 of the Civil Code, namely the seller is responsible for the goods sold. However, this responsibility must be proven that the seller did make a mistake, and the result of the mistake has been detrimental to the consumer. Besides the obligation of consumers to be careful, consumers also need to get protection.

Keywords: *Defective; Online; Products; Seller; Transaction.*

A. INTRODUCTION

The process of buying and selling online is no different from buying and selling in general. The main medium for buying and selling online is the internet. Currently, many *online* shops have sprung up and as an implication, many people have switched to buying and selling online.¹ Through online stores, entrepreneurs or sellers who offer goods rely on descriptions of goods with videos or photos, and consumers cannot directly check the goods to be purchased. This makes many consumers often

1 Nurhizam Safie Mohd Satar, Omkar Dastane, and Muhamad Yusnorizam Ma'arif, Customer Value Proposition for E-Commerce: A Case Study Approach, *International Journal of Advanced Computer Science and Applications*, Vol. 10, No. 2, 2019.

disadvantaged because the goods purchased do not match the description with the real condition of the goods.²

According to data from the *Indonesian Consumer Institute Foundation* (YLKI) from 2016 to 2018, there was an increase in the number of complaints related to online buying and selling. From this data, many consumers are often harmed by the seller. From data in 2016, there were 33 complaints, in 2017 there were 101 complaints and in 2018 there were 130 complaints related to online shopping cases.³ While the data obtained from the Directorate of Cybercrime, Bareskrim Polri, the number of *online fraud reports* from 2015 to 2019 fluctuated and always there are, which is not small. In detail, in 2015 there were 1,494 cases, in 2016 there were 1,570 cases, in 2017 there were 1,430 cases, in 2018 there were 1,781 cases and in 2019 there were 1,430 cases, expected because there are hidden defects.⁴

Based on research by Resna Pratiwi Maharani, the principle of responsibility will provide more protection for consumers in online buying and selling in this era of globalization because the seller is an extension of the producer,⁵ and Abdul Halim Barkatullah said that consumers need to get protection because, according to Edmon Makarim, consumers are more at risk than sellers.⁶

While the research conducted by Putu Dina Marta Sari and I Made Dedy Priyanto said that consumer rights are very vulnerable because the bargaining position of consumers is weak and very risky to be violated by the seller so the seller's absolute responsibility is required.⁷

Likewise, research conducted by Dharu Triasih, B. Rini Heryanti, and Endah Pujiastuti added that although legal protection for consumers in online buying and selling agreements is regulated in the Act No. 8 of 1999 concerning Consumer Protection (UUPK), Act No. 11 of 2008 concerning Information and Electronic Transactions (UUITE), and the Civil Code (*KUH Perdata*) as the parent of the contract law, these arrangements have not

2 Taly Reich and Sam J. Maglio, *Featuring Mistakes: The Persuasive Impact of Purchase Mistakes in Online Reviews*, *Journal of Marketing*, Vol. 84, No. 1, 2020.

3 Pramdia Arhando Julianto, *Toko Online Paling Banyak Diadukan Konsumen Ke YLKI*, Ini Daftarnya, Kompas.com, 2018, <https://ekonomi.kompas.com/read/2018/01/19/171756726/toko-online-paling-banyak-diadukan-konsumen-ke-ylki-ini-daftarnya?page=all>.

4 Iskandar Iskandar, *Headline: Marak Penipuan Online Shop Di Medsos, Hati-Hati Modusnya Makin Canggih*, Liputan6, 2020, <https://www.liputan6.com/tekno/read/4157301/headline-marak-penipuan-online-shop-di-medsos-hati-hati-modusnya-makin-canggih>.

5 Resna Pratiwi Maharani, *Tanggung Jawab Penyelenggara Transaksi Elektronik Dalam Melindungi Hak Konsumen*, *Supremasi Jurnal Hukum*, Vol. 1, No. 1, 2018,

6 Abdul Halim Barkatullah, *Urgensi Perlindungan Hak-Hak Konsumen Dalam Transaksi Di E-Commerce*, *Jurnal Hukum Ius Quia Iustum*, Vol. 14, No. 2, 2007,

7 Putu Dina Marta Ratna Sari and I Made Dedy Priyanto, *Perlindungan Hukum Kepada Konsumen Terhadap Penggunaan Klausula Baku Yang Tercatum Pada Toko Online*, *Kertha Semaya : Journal Ilmu Hukum*, Vol. 7, No. 1, 2019, page. 1.

been able to provide optimal legal protection in the event of fraud from the seller.⁸

The main focus of this article is consumer (buyer) protection in online buying and selling, where the central issue is legal protection for products with hidden defects in which the seller must be responsible for the losses suffered by consumers. This responsibility relates to product liability. In product responsibility, the principle or principle that wants to be discussed is the absolute responsibility (strict liability) of the seller to the buyer, whether it is about product defects, dishonest information or delays in delivery of goods.

B. RESEARCH METHODS

This study used a normative juridical approach. On that basis, the systematic discussion of this article could be explained as follows. First, the characteristics of online trading will be discussed to provide an initial understanding of its specificity. Furthermore, there would be a discussion on the principles of responsibility in protecting consumers (buyers) in online buying and selling; and finally regarding the absolute responsibility of the seller in buying and selling online related to the issue of products containing hidden defects.

C. RESULT AND DISCUSSION

1. Characteristics of Buying and Selling Online

Electronic commerce is a transaction model with different characteristics from conventional trading. Its reach is not only local but also global so that in electronic transactions or e-commerce if there are problems, it can use the instruments of the law on information and electronic transactions and the Presidential Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions.⁹ Implementation of e-transactions, rapidly growing commerce must be balanced with strict supervision in each of its implementations. Supervision of e-commerce transactions is indeed not as easy as supervising conventional trade transactions. Ministry of Trade (Kemendag) as the supervisor of the trade sector, requires that all products or goods traded through online stores (e-commerce) must meet *Indonesian National Standard (SNI)* and the obligation to embed labels in Indonesian. The supervisory function of legislators and the public as smart consumers is because of the characteristics of e-commerce trading that are different from conventional trade.¹⁰

In online buying and selling, the buyer observes the goods to be

8 Dharu Triasih, B Rini Heryanti, and Endah Pujiastuti, Optimalisasi Perlindungan Hukum Bagi Konsumen Dalam Perjanjian Jual Beli On Line, *Humani (Hukum Dan Masyarakat Madani)*, Vol. 9, No. 2, 2019, page. 195–201.

9 Ratna Sari and Priyanto, Perlindungan Hukum Kepada Konsumen Terhadap Penggunaan Klausula Baku Yang Tercatun Pada Toko Online.

10 Dey Paryadi, Pengawasan E Commerce Dalam Undang-Undang Perdagangan Dan Undang-Undang Perlindungan Konsumen, *Jurnal Hukum & Pembangunan*, Vol. 48, No. 3, 2018, page 1750

purchased through the images posted and described by the seller. For this reason, the seller must carefully describe the item and ensure with his five senses that the item is not defective, and does not cover or hide the defect in an item being sold. In essence, guarantees that as far as the seller is aware that the goods have no visible defects or hidden defects (not visible to the five senses). After the goods are ordered by the buyer, the seller will package and submit the goods to be sent via an expedition service. So, if the goods are damaged or defective due to the shipping process, it is not the responsibility of the seller.

In connection with the absolute responsibility of the seller, the seller is prohibited from selling hidden defective products. In online buying and selling transactions, the buyer's position is weak. This is because when purchasing goods, the buyer cannot first check the goods he wants to buy directly through the five senses, but the buyer can only observe based on the pictures posted by the seller. Referring to the Civil Code Article 1505. "The Seller is not obliged to bear the visible defects, which the Buyer can know for himself." In this condition, the buyer is responsible and does not get legal protection. However, if the purchased item has hidden defects, the seller must be responsible. This is following Article 1504 of the Civil Code, which stipulates that "the seller is always required to be responsible for hidden defects in such cases".

Referring to Articles 1505 and 1504 of the Civil Code above, there are several possibilities, namely: (1) the seller knows that the goods being sold have hidden defects and does not notify the prospective buyer; (2) the seller knows that the goods being sold have hidden defects and notifies the prospective buyer; (3) the seller does not know that the goods sold have hidden defects. In connection with these various possibilities, the form of responsibility that must be borne by the seller must also be different.¹¹

2. The Seller's Liability

The principle of absolute responsibility is stated as a form of responsibility for a product based on the development of the doctrine of unlawful acts as stated in Article 1365 of the Civil Code. Therefore, in the current era of globalization, more attention should be paid to consumer protection. According to Hurs, *product liability is "product liability is the liability of manufacturer, processor or non-manufacturing seller for injury to the personal property of a buyer and third party, caused by-product which has been sold"*,¹² which means Product liability is the responsibility of the product manufacturer, processor or parties involved in the production process, including the seller, for injuries suffered by buyers and third parties, caused by-products that have been sold.

11 Puteri Asyifa Octavia Apandy, Melawati, and Panji Adam, Pentingnya Hukum Perlindungan Konsumen Dalam Jual Beli, *Jurnal Manajemen & Bisnis Jayakarta*, Vol. 3, No. 1, 2021, page.85

12 Rusniati Rusniati and Warmiyana Zairi Absi, Tanggung Jawab Penjual Pada Cacat Tersembunyi Dalam Perjanjian Jual Beli Mobil Bekas, *Jurnal Hukum Tri Pantang*, Vol. 6, No. 2, 2020, page.265.

According to Nurmadjito, product liability is a free translation of the term *product liability*, which is a legal concept that protects consumers by proving that consumer losses arise as a result of errors in the production process and are entitled to compensation, different from the concept of responsibility as regulated in Article 1365 and Article 1865 of the Civil Code.¹³ The difference is that the responsibility of the manufacturer to provide compensation is obtained after the aggrieved party can prove that the product defect and loss were caused by the fault of the manufacturer. In addition, these provisions do not explicitly regulate the provision of compensation or the burden of proof to consumers, but to parties who have legal relations with producers, such as consumers, fellow producers or distributors, traders, or other agencies, so that the material for product liability is a legal doctrine.¹⁴ Therefore, product liability is the legal responsibility of the person or entity that produces a product, or of the person or entity that sells or distributes the product. This Convention extends to persons or entities involved in the commercial preparation and distribution of products, including workshop and warehousing operators, as well as agents and workers of these enterprises.¹⁵

Absolute responsibility must be fulfilled by the producer or seller if it has resulted in consumer losses. Sellers or producers should participate in creating a healthy business climate to support national economic progress. For this reason, sellers have a responsibility to be able to protect their consumers, by complying with and upholding the prevailing customs in the business world. Business ethics must be firmly held by producers or sellers to play an important role in enhancing Indonesia's national development.¹⁶

The seller must always have good intentions in conducting business as regulated in Article 7 letter of the UUPK. The seller must be responsible for creating a healthy business climate for the advancement of national development. Several provisions in the UUPK aim to direct sellers to behave healthily to the success of national economic development, especially for business midwives. For this reason, any violation committed by the seller can be subject to legal sanctions for the violation committed. Efforts to create a healthy business climate require seriousness and firmness. Therefore, any violation committed by the

13 Diskhamarzeweny Diskhamarzeweny and Zul Ammar., E-Commerce Ditinjau Dari Perspektif Manajemen Pemasaran Dan Hukum Perlindungan Konsumen, *Kodifikasi*, Vol. 4, No. 1, 2022, page.116–33.

14 Rima Elya Dasuki and Ardiyani Lestari., Implementation Of Good Corporate Governance To The Value Of Cooperative Company, *Journal of Economic Empowerment Strategy (JEES)*, Vol. 2, No. 1, 2019, page.33

15 Roida Nababan, Martono Anggusti, and Sonya Lorensa Sirait, Perlindungan Hukum Terhadap Konsumen Yang Mengalami Kerugian Akibat Pengiriman Barang Oleh Perusahaan Ekspedisi Laut Menurut Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, *Nommensen Journal Of Legal Opinion*, Vol. 2, No. 1, 2021, page.206

16 Destiya Wati, Suyudi Arif, and Abrista Devi, Analisis Penerapan Prinsip-Prinsip Etika Bisnis Islam Dalam Transaksi Jual Beli Online Di Humaira Shop, *El-Mal: Jurnal Kajian Ekonomi & Bisnis Islam*, Vol. 3, No. 1, 2021, page. 654.

seller must be penalized. The provision of these sanctions is important to create a healthy business climate. Sanctions are a tool to enforce discipline as well as a preventive tool for other entrepreneurs from committing the same act.

Claims or claims for product liability from the seller are based on matters such as breach of warranty, strict liability, and negligence.¹⁷ The seller's absolute responsibility for the product due to hidden defects is the responsibility for hidden defective products that have been sold to consumers and caused a loss. This responsibility is the principle of absolute responsibility of the seller, namely responsibility that is not based on an error as an element that determines the seller's reverse burden of proof, which asks the seller to be morally and legally responsible for the products he has sold. However, this responsibility is related because it has harmed the consumer.¹⁸ The absolute responsibility of the seller relates to hidden defective products that have caused consumers to be harmed. This has become a consequence of the seller's risk of the products he sells.

Regarding responsibility, this cannot be separated from the principles of responsibility themselves. The principle of responsibility is very important in consumer protection. The principle of responsibility in law can be divided into¹⁹

- a. *Liability based on fault* (principle of responsibility based on error), namely the principle that states that a person can only be asked to be responsible before the law if there is an element of error that has been committed.
- b. *Presumption of liability* (the principle of presumption to always be responsible), namely the principle which states that the defendant is considered responsible until he can prove that he has not done anything wrong. The burden of proof is on the plaintiff or known as the reverse proof system.
- c. *Presumption of non-liability* (the principle of presumption of not always being responsible), namely this principle is the opposite of the statement of the principle of the presumption of always being responsible, and the defendant is always considered irresponsible until there is evidence that he made a mistake.
- d. *Strict liability* (the principle of absolute responsibility), namely the principle that equates to *absolute liability*.
- e. *Limitation of liability* (principle of responsibility with limitations), namely the principle of responsibility as stated in the exoneration

17 Muhammad Ridwan Lubis, Panca Sarjana Putra, and Yasmirah Mandasari Saragih, Corporate Criminal Liability for Criminal Acts of Corruption, *Jurnal Pembaharuan Hukum*, Vol. 8, No. 1, 2021, page.15234.

18 Fransiska Novita Eleanora, Prinsip Tanggung Jawab Mutlak Pelaku Usaha Terhadap Ketentuan Pasal 27 Uu No. 8 Tahun 1999 Tentang Perlindungan Konsumen, *Krtha Bhayangkara*, Vol. 12, No. 2, 2018, page.26

19 Hafrida Hafrida, Helmi Helmi, and Bunga Permatasari, The Implementation of the Strict-Liability Principle to the Perpetrators of Forest and Land Burning, *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, Vol. 7, No. 3, 2021, page.2

clause in the standard agreement made by the producer or seller. However, this principle of responsibility can harm consumers if it is unilaterally determined by the producer or seller. Whereas in UUPK, sellers are not justified unilaterally to determine clauses related to their responsibilities.

3. Principle of Liability *Based on Fault*

The principle of liability is based on fault, this principle of responsibility generally applies under criminal and civil law. Article 1365, Article 1366, and Article 1367 of the Civil Code states that a person can only be asked to be legally responsible if he has made a mistake.²⁰ Liability based on *negligence* is a subjective principle of responsibility, which is a form of responsibility determined by the seller or manufacturer. This form of the subjective nature advises sellers to be careful in selling products so as not to harm consumers:²¹

- a. The principle of the *presumption of liability*, namely the principle that the defendant is considered responsible until he can prove that he has not done anything wrong.²²
- b. The principle of the *presumption of non-liability*, namely the principle is the opposite of the statement of the principle of the presumption of always being responsible, and the defendant is always considered irresponsible until there is evidence that he made a mistake. So the responsibility is only within the scope of a limited consumer transaction, as long as the limitation is commendably justified.²³
- c. The principle of Absolute Responsibility (*strict liability*), namely the principle that states that error is not a determining factor. However, some exceptions allow being released from responsibility due to *force majeure circumstances*.²⁴

Absolute liability (strict liability) relates to the clause between the subjects who are responsible for the mistakes that have been made. This responsibility in the perspective of consumer protection law is used to ensnare sellers who are considered detrimental to consumers, and this principle is known as product liability.

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- 20 Muhammad Fadli Asri, Uswatul Fajar Nurfatimah, and Musdalifah asiyatum syafaat, Studi Normatif Terhadap Konsep Perlindungan Hukum Konsumen Dalam Transaksi E-Commerce Di Indonesia, *JIH: Jurnal Ilmu Hukum (Equality Before The Law)*, Vol. 1, No. 1, 2021.
 - 21 Jamilah Jamilah and Firmansyah Firmansyah, Tinjauan Fikih Muamalah Terhadap Penerapan Khiyar Dalam Transaksi E-Commerce, *Jurnal Ekonomi Dan Perbankan Syariah*, Vol. 6, No. 1, 2019, page.87
 - 22 Indri Hadi Siswati and Reni Dwi Puspitasari, Pemenuhan Hak Dan Tanggung Jawab Konsumen Dan Pelaku Usaha Sebagai Upaya Perlindungan Hukum Melalui Konsep Pemberdayaan, *Ahkam: Jurnal Hukum Islam*, Vol. 8, No. 2, 2020, page.333-350.
 - 23 Alice Guerra, Barbara Luppi, and Francesco Parisi, Presumption of Negligence and the Robustness of Liability Incentives, *SSRN Electronic Journal*, 2019
 - 24 Dian Mahardikha, Penerapan Prinsip Tanggung Jawab Mutlak (Absolut Liability) Berkaitan Dengan Kerugian Konsumen Atas Penggunaan Produk Internet Banking, *Indonesian Private Law Review*, Vol. 1, No. 2, 2020, page.2057.

This principle asserts that the producer or seller is responsible for the loss suffered by the consumer due to the use of the product. A product liability lawsuit can be made based on 3 (three) things, namely: (a) there is an element of negligence; (b) breach of warranty (breach of warranty); and (c) strict liability (absolute responsibility). If there is an agreement relationship between the consumer and the seller, and the performance of the service provider cannot be measured and is an endeavor agreement, then the seller's responsibility will be based on professional responsibility, namely a form of direct civil liability or strict liability of the seller who has caused harm to the consumer.

However, if there is an agreement relationship between the seller and the consumer, and the performance of the service provider is not measurable and is a result of the agreement, then the seller's responsibility is based on professional responsibility, namely a form of civil liability for the contract agreement that has been made.

4. Principle of Limitation of Liability

The principle of limitation of liability is usually included in the seller as a form of an exoneration clause in standard agreements, to limit the value of compensation. In practice, the principle of responsibility with this limitation is combined with the principle of general responsibility. In consumer protection law, the principle of absolute responsibility (product liability) is used to ensnare sellers or producers who sell goods that can harm consumers.

Product liability has been regulated in the Civil Code in Article 1322, Article 1473, Article 1474, Article 1491, Article 1504, and Article 1511. However, the Civil Code does not regulate in more detail and specifically like the UUPK. The Civil Code regulates actions or acts that violate the law, namely if someone commits an act that violates the law, then that person is required to provide compensation to the person who has been harmed. In Article 1365 of the Civil Code, it is stated that there are four conditions if an act can be included in the qualification of an unlawful act, namely:²⁵

- a. There is an actor act that violates the law, in the form of an actor act that violates the rights of others, commits an act that is contrary to legal obligations, violates decency, and lacks caution that should be carried out in social interactions with oneself or other people's property. ²⁶
- b. There is an element of error, such as (a) the act committed can be declared regrettable; (b) the consequences of the action can be predicted, namely: Objectively, as a normal human being he can predict the consequences that will arise, subjectively that as an

25 Eleanora, Prinsip Tanggung Jawab Mutlak Pelaku Usaha Terhadap Ketentuan Pasal 27 UU No. 8 Tahun 1999 Tentang Perlindungan Konsumen.

26 Tauratiya Tauratiya, Perbuatan Catcalling Dalam Perspektif Hukum Positif, *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan*, Vol. 19, No. 1, 2020, page.690.

expert can predict the consequences that will arise; (c) the act can be accounted for, that is, he is in a capable state.²⁷

- c. There are losses incurred. Nieuwenhuis defines loss as a decrease in one's wealth caused by the actions or actions of others (doing or allowing) that are considered to violate the norm.²⁸ Broadly speaking, the losses experienced by a person can be classified into two, namely the losses that have befallen them, and losses related to one's property. This property loss can be in the form of real loss and less than expected.²⁹
- d. Regarding the causal relationship (causality) between the error and the losses incurred. This principle prioritizes justice, namely, someone who has made a mistake that has been stated with strong enough evidence must compensate the victim. However, if the evidence is declared not strong enough, then he does not have to compensate.

The four elements above must be fulfilled because these elements are comprehensive and interrelated with one another. That is, if there is one element that is not fulfilled, the person suspected of doing wrong can be released from the bondage of legal responsibility. For that, consumers must have strong evidence that the seller has made a mistake and harmed him. This proof sometimes makes consumers find it difficult to be able to prove the mistakes that have been made by the seller. Therefore, although the UUPK has regulated strict liability, in this case, product liability, in reality, in its application in society, the principles of product liability and strict liability are still less effective in providing legal protection to consumers. This is because of the principle of absolute responsibility on the seller to be responsible for the losses suffered by the consumer, the consumer should not have to prove that the seller has made a mistake, and this responsibility should be attached to the seller.³⁰

5. Seller's Liability for Hidden Defective Products

Advances in computer and internet technology have provided a fairly rapid development of online buying and selling so that consumers can shop from home without having to leave the house. In addition, the various choices of products (goods and services) offered by sellers are quite diverse at relatively low prices. This raises challenges that are both positive and negative. The positive challenge is related to the convenience of consumers to choose the desired product without having to come to the seller's place, but only with internet facilities, while the

27 Tauratiya.

28 Muhammad Arifin, *Itikat Baik' Sebagai Asas Pokok Dalam Hukum Perikatan Nasional*, *Jurnal Hukum & Pembangunan*, Vol. 14, No. 4, 2017, page.1047.

29 Ari Purwadi, *Prinsip Moral Pada Pengaturan Perikatan Alam*, *Mimbar Keadilan*, Vol. 13, No. 2, 2020, page.3296.

30 M. Zaki Attirmidzi and Rizka., *Perlindungan Hukum Terhadap Konsumen Dalam Sistem Transaksi Online Perspektif Undang-Undang Informasi Dan Transaksi Elektronik*, *Jurnal Supremasi*, 2022, page.1679

negative challenge is to cause the consumer's position to be weaker in front of the seller because the product to be purchased by consumers cannot be checked beforehand directly, so that if there is a hidden defect this can be detrimental to consumers.³¹

In the current UUPK, definitively, there is no article containing defective goods, especially hidden defects. Although it can be implicitly interpreted from Article 19 paragraph (1) that business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consumer goods and/or services produced or traded. In Article 19 paragraph (1) of the UUPK, the word "damage" contains the possibility of legal interpretation that is argumentative, which can be equated with the meaning of hidden defects as part of a defective product.³²

A hidden defect product according to Article 1504 of the Civil Code means that a product is said to be a hidden defect if the product sold by the seller has a defect so that its use is no longer suitable for its intended purpose. This hidden defect product has the possibility that it can be known by the seller, unknown to the seller, and may also be unknown to the consumer.³³ A product is said to be defective or declared unable to fulfill the purpose for which it was made, because:³⁴

- a. Product defects (manufacturing defects), namely the condition of the product does not meet the quality of the product, the product is below consumer expectations, the product can endanger themselves and consumers' property.
- b. Design defects (shape defects), namely the shape or design of the product do not meet the proper standards so that it can harm consumers.
- c. Warning defects (industrial defects), namely the product is not equipped with information containing certain warnings or instructions in terms of its use and storage so that it can harm and endanger consumers.

Based on the limitations of the provisions above, the seller's responsibility for hidden defective products has a different meaning from the usual responsibilities. The location of the seller's responsibility for hidden defective products lies in the element that the product can harm

31 Banu Ariyanto, Hari Purwadi, and Emmy Latifah, Tanggung Jawab Mutlak Penjual Akibat Produk Cacat Tersembunyi Dalam Transaksi Jual Beli Daring, *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol. 6, No. 1, 2021, page.107–26.

32 Nofiardi Nofiardi, Iriansyah Iriansyah, and Yetti Yetti, Tanggung Jawab Pelaku Usaha Terhadap Standar Mutu Kosmetik Bagi Konsumen Berdasarkan Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen, *Jurnal Selat*, Vol. 8, No. 2, 2021, page.3832.

33 Antonius Dwicki Cahyadi, Yurisdiksi Transaksi Elektronik Internasional Menurut Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi Dan Transaksi Elektronik, *Jurnal Wawasan Yuridika*, Vol. 3, No. 1, 2019, page. 203.

34 Putu Rido Widiya Widnyana, Anak Agung Istri Agung, and Ni Gusti Ketut Sri Astiti, Tinjauan Yuridis Pertanggungjawaban Mutlak (Strict Liability) Dalam Hukum Perlindungan Konsumen, *Jurnal Konstruksi Hukum*, Vol. 2, No. 2, 2021, page.244-249.

or harm consumers or the liability caused due to damage or non-functioning of the product itself. The criteria for hidden defective products are the responsibility of the seller, namely:

- a. The seller knows the product is defective due to a manufacturing defect, tries to hide it from consumers, and continues to sell it to consumers.
- b. The seller does not know that the product is defective due to a manufacturing defect, and continues to sell it to consumers.
- c. The seller knows the product is defective due to a design/shape defect, tries to hide it from the consumer, and continues to sell it to the consumer.
- d. The seller does not know that the product is defective due to a design/shape defect, and continues to sell it to consumers.
- e. The seller knows the product is defective due to a warning defect (industrial defect), tries to hide it from consumers, and continues to sell it to consumers.
- f. The seller does not know that the product is defective due to a warning defect (industrial defect), and continues to sell it to consumers. However, *online sellers* are not responsible for product damage or defects caused by the process of sending goods from the seller to the consumer due to the expedition's fault.

On a note, the seller is not included in the six criteria above. That is, the seller before sending the goods has checked and ensured that the goods to be sent are not defective products due to manufacturing defects, design/shape defects, and warning defects (industrial defects).³⁵

6. Principle of *Presumption of Liability* for Hidden Defects

The existence of hidden defective products sold by the seller in online buying and selling is the responsibility of the seller. This is based on the principle of *presumption of liability*, namely the principle that the defendant is considered responsible until he can prove that he has not done anything wrong.³⁶ So, as long as the seller can't prove that he didn't do anything wrong, he still has to be responsible for the product being sold. This liability principle is based on a reverse proof system. The UUPK adopts this reverse proof, as emphasized in Articles 19, 22, and 23 of the UUPK.

Based on Article 49 of the Presidential Regulation No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, it is stated that business actors (sellers) have obligations, namely:

35 Ariyanto, Purwadi, and Latifah, *Tanggung Jawab Mutlak Penjual Akibat Produk Cacat Tersembunyi Dalam Transaksi Jual Beli Daring*.

36 Ari Purwadi, Umi Enggarsasi, and Suhandi, From Liability Based on Fault Principle towards Presumption of Liability Principle in Medical Disputes, *Journal of Advanced Research in Law and Economics*, Vol. 10, No. 5, 2019, page.22.

- a. Business actors who offer products through an electronic system are required to provide complete and correct information relating to contract terms, producers, and products offered.
- b. Business actors are required to provide clear information about contract offers or advertisements.
- c. Business actors are obliged to give consumers a time limit to return the goods sent if they are not under the agreement or there are hidden defects.
- d. Business actors are required to submit information regarding the goods that have been sent.
- e. Business actors cannot burden consumers with the obligation to pay for goods sent without a contract basis.

Based on the above provisions, consumers need to be given legal protection for hidden defective products purchased online, by providing complete and correct information on the products sold, the terms of purchase, whether or not there is a guarantee (warranty) provided, procedures, and limits the time of returning the goods if the goods received by the consumer are not under the agreement, notifying the process of sending the goods, and completing the delivery of goods with an invoice as the basis for payment for the purchase of goods to the consumer.³⁷

After the promulgation of the UUPK, this has specifically provided a form of legal certainty for consumer protection, because consumer problems have been regulated by the law. Although the UUPK still has many weaknesses or shortcomings, this law can at least be the basis for providing legal protection for consumers. Concerning the doctrines of *product liability* and *strict liability*, in general, several legal protection routes can be taken by consumers.³⁸

7. Application of the Product Liability Doctrine

World Trade Organization (WTO) was established on January 1, 1995, the position has replaced the *General Agreement of Tariffs and Trade* (GATT). Therefore, the WTO is an intergovernmental organization in the world that functions to oversee world trade, both trade in goods and services, and everything related to protection or protection that is considered anti-WTO or anti-trade liberalization. For this reason, in dealing with these conditions, countries around the world have prepared various sets of consumer protection laws.³⁹

Product liability doctrine in making consumer protection laws, such as the United States, the European Union, and Japan as well as other

37 Niniek Wahyuni, Consumer Protection in Indonesia on Selling Buy Transaction Through E-Commerce, *Journal of International Trade, Logistics and Law*, Vol. 4, No. 1, 2018

38 I Ketut Pradnyaswari, Ida Ayu, Westra, Upaya Perlindungan Hukum Bagi Konsumen Dalam Transaksi Jual Beli Menggunakan Jasa E-Commerce, *Kertha Semaya*, Vol. 8, No. 5, 2020;

39 Judith L. Goldstein, Douglas Rivers, and Michael Tomz, Institutions in International Relations: Understanding the Effects of the GATT and the WTO on World Trade, *International Organization*, Cambridge University Press, Cambridge, 2007

countries that are accustomed to making consumer protection laws. Law as the basis for ensuring legal certainty with social justice. In Indonesia, the term product liability is interpreted as the term product liability.⁴⁰

In UUPK, the responsibility of business actors (sellers) for losses suffered by consumers is specifically regulated in Chapter VI, starting from Article 19 to Article 28, which can be classified into:

- 1) There are seven articles, namely Articles 9, 20, 21, 24, 25, and 26 which regulate the responsibilities of business actors.
- 2) There are two articles, namely Articles 22 and 28 which regulate the challenge of proof
- 3) There is one article, namely Article 23 which regulates the settlement of disputes if business actors do not fulfill their obligations and provide compensation to consumers.

In connection with the provisions of the articles of the UUPK mentioned above, the seller who does not act by these provisions, and with the fulfillment of the elements of the principle of product liability, the seller can be processed through legal channels to account for his actions.

8. Implementation of the Strict Product Liability Doctrine

Regarding the issue of the absolute responsibility doctrine, the seller can be asked to be responsible for his actions by government intervention in providing legal guarantees for consumer rights, especially those related to safety and health, as well as the consumer's right to obtain compensation, both losses involving the consumer's self (personal/*body* injury), or damage related to the product itself (pure economic loss).⁴¹

Related to the doctrine of absolute liability (strict product liability), this relates to liability that is not based on the aspect of fault (full/negligence), and the existence of a contractual relationship (privacy of contract), but this responsibility is based on defective products (object-based liability) and the existence of risks that can cause harm to consumers (risk-based liability). This is because the purpose of the principle of absolute responsibility is to provide guarantees relating to the legal consequences of the existence of products that can cause consumers to feel disadvantaged.⁴²

The application of absolute responsibility is motivated by the idea that no one can guarantee that every product sold is 100% safe for consumption. However, in Indonesia, the strict liability principle is still not fully implemented. But in the future, this opportunity is still open to be implemented, because sellers and consumers have the same ethics to

40 G. Howells, Protecting Consumer Protection Values in the Fourth Industrial Revolution, *Journal of Consumer Policy*, Vol. 43, No. 1, 2020;

41 Hui Qiang, Research on Compensation for Pure Economic Losses in Marine Oil Pollution Cases, *Journal of Coastal Research*, Vol. 115, No. 15, 2020, page.1.

42 Mahardikha, Penerapan Prinsip Tanggung Jawab Mutlak (Absolut Liability) Berkaitan Dengan Kerugian Konsumen Atas Penggunaan Produk Internet Banking.

get their rights in a balanced way in legal protection.

As stated in the UUPK, dispute resolution has been regulated, which can be done through the courts (litigation) or out of court (non-litigation). Chapter X Article 45 of the UUPK it is stated that consumer disputes can be resolved through court or out of court based on the voluntary choice of the parties. The provisions contained in Article 45 include: (a) there is a loss that has been suffered by the consumer; (b) there is a lawsuit made by the consumer against the business actor; (c) the claim is made through a court or out of court.

Article 48 of the UUPK states that dispute resolution through the courts must refer to the provisions applicable in the general court by taking into account the contents of Article 45 of the UUPK. Furthermore, Article 48 paragraph (1) states that the settlement of consumer disputes can be carried out through out-of-court (non-litigation) channels. Settlement of non-litigation channels can be carried out through *Consumer Dispute Resolution Agency* (BPSK) following the directions of Article 49 to Article 58 of the UUPK peace based on deliberation and consensus of the parties.⁴³ However, dispute resolution outside the court does not necessarily eliminate criminal responsibility, as has been regulated in Article 45 paragraph (3) of the UUPK. As stated in Article 62 paragraph (3) that criminal responsibility must still be accounted for by business actors. Therefore, the seller can still be investigated and the problem can be resolved according to the provisions of criminal law.

The government form through the Presidential Decree and Decree of the Minister of Industry and Trade has made it easy for consumers to obtain their rights if they have been harmed by the seller. For example, the Presidential Decree No. 90 of 2001 concerning the Establishment of a Consumer Dispute Resolution Agency, Decree of the Minister of Industry and Trade No. 301/MPP/Kep/10/2001 concerning appointment, dismissal of members and secretariat of consumer dispute resolution bodies, and decrees of the Minister of Industry and Trade Nor 350/MPP/Kep/12/2001 concerning the Implementation of duties and authorities of consumer dispute resolution agencies.

At this time, Indonesia can apply the doctrine of absolute responsibility (strict liability) in the consumer dispute resolution process, including in buying and selling online, because, in online buying and selling, consumers are most likely to be harmed by the seller. Therefore, it is appropriate for consumers (the public) to get maximum legal protection due to their increasingly weak position in front of the seller. For this reason, it takes courage for consumers to make complaints or lawsuits against sellers if consumers have been harmed when buying and selling online. If the consumer wants to settle through an out-of-court route, the consumer can contact BPSK. If the consumer wants to settle through the courts, the consumer can rely on the UUPK.

43 Lalu Sultan Alifin, Zainal Asikin, and Kurniawan Kurniawan, Kedudukan Hukum Badan Penyelesaian Sengketa Konsumen (Bpsk) Dalam Sistem Peradilan Di Indonesia, *Media Bina Ilmiah*, Vol. 13, No. 10, 2019, page.252.

Considering that in online buying and selling, the consumer's position is weaker than that of the seller, so the UUPK should be able to become a legal umbrella that can protect consumer rights. But unfortunately, the current UUPK has not been able to provide maximum legal protection to consumers, because it has not explained in detail the principle of absolute responsibility that can satisfactorily resolve consumer disputes, especially from the consumers who are harmed. Therefore, the government is expected to be willing to revise the UUPK, which includes the absolute responsibility of the seller, so that sellers have good ethics in selling their products, and this can encourage healthy competition in business.⁴⁴

Regarding the principle of absolute responsibility, Afrilia and Primadianti explained that in Indonesia the application of the principle of absolute responsibility (strict liability) cannot be applied to all business fields or all products, but can only be applied to certain groups of sellers or products. Certain business groups or products are (a) products that have risks related to the use of the product; (b) the degree of negligence committed by the seller; (c) the product is used en masse. In addition, the seller group which is included in the conglomerate group is a group that absolutely must be charged with the principle of absolute responsibility, because this group is a large seller and already has a good system for running its business. This exception is not a form of discrimination, but it is a form of appreciation and respect that must be shown by big sellers to their consumers. In addition, the seller can be used as a good example or role model for medium and small sellers in terms of obeying the law, product standardization, customer service, product responsibility, and so on. In the future, it is hoped that this will encourage healthy industrial development.⁴⁵

Damayanti G.A.R in his writings concludes that:⁴⁶

- a. Consumers and producers as well as government agencies, and law enforcers do not yet have the same and adequate understanding of *product liability* and *strict liability*.
- b. The condition of not having an adequate understanding of *product liability* and *strict liability* is supported by the ineffective application of consumer protection law provisions among the Indonesian people, and there are still many irresponsible people who take advantage of this unfavorable situation solely for their benefit.

44 Ayup Suran Ningsih, Implikasi Undang-Undang Nomor 5 Tahun 1999 Tentang Larangan Praktek Monopoli Dan Persaingan Usaha Tidak Sehat Pada Pelaku Usaha Mikro Kecil Dan Menengah (UMKM), *Jurnal Penelitian Hukum De Jure*, Vol. 19, No. 2, 2019, page.207-215.

45 J Asril, Etika Bisnis Dan Konsep Good Corporate Governance Dalam Menciptakan Perusahaan Berbasis Nilai, *Jurnal Ilmiah MEA (Manajemen, Ekonomi, & Akuntansi)*, Vol. 3, No. 1, 2019

46 Gusti Ayu Ratih Damayanti, Urgensi Jaminan Kepastian Hukum Dalam Rancangan Undang-Undang Perlindungan Data Pribadi Di Indonesia, *Prosiding Seminar Nasional Fakultas Hukum Universitas Mahasaraswati Denpasar 2020*, Vol. 1, No. 1, 2021

- c. Even though the UUPK has been in effect, often cases brought to court still use the provisions contained in the Civil Code. This indicates that law enforcement officials do not yet have adequate knowledge of the arguments contained in the UUPK to be used as the basis for a lawsuit in consumer dispute cases.
- d. Indonesia does not have a legal umbrella that applies at the regional level and is still a developing country with various complex social problems. On the one hand, it wants changes for the better, but resistance to these changes is also very large which has an impact on hampering progress aspired to.

Although in Indonesia the UUPK has been enacted, the reality on the ground is that there are still many consumer dispute resolutions that often arise which are submitted using the articles contained in the Civil Code. This may indicate that there are still law enforcers who do not understand the UUPK as the basis for resolving consumer disputes. In addition, there is also no common perception among law enforcement officers regarding the arguments contained in the UUPK. In Indonesia, it is also still difficult to find consumer cases related to product liability or strict liability, because the disputing parties generally use the general civil court route, and not through *Consumer Dispute Resolution Agency (LPSK)*.⁴⁷

Settlement of disputes that occur in the sale and purchase agreement electronically if there are parties who are harmed, namely first by peaceful means. However, if it cannot be reached by peaceful means, the consumer can sue the seller as stated in Article 45 of the UUPK stating that the settlement of disputes over defaults can be resolved by litigation and non-litigation.⁴⁸

Institutions that are expected to play an important role in protecting the public/consumers are not only litigation judicial institutions that are in the general court, but non-litigation institutions such as *Consumer Dispute Resolution Agency (BPSK)* and other arbitration institutions. Through ODR, one of the alternatives for resolving e-commerce transaction disputes, ODR was born from the synergy between *Alternative Disputes Resolution (ADR)* and *Information of Computer Technology (ICT)* as a method or step to resolve disputes that arise in the online process where litigation resolution is very difficult to allow. If the case of e-commerce is more cross-border in ASEAN, then you can use ACCP because it is following the mandate developed in the

47 Riris Nisantika and Ni Luh Putu Egi Santika Maharani, *Penyelesaian Sengketa Konsumen Oleh Badan Penyelesaian Sengketa Konsumen (BPSK)*, *Jurnal Locus Delicti*, Vol. 2, No. 1, 2021, page.458.

48 M Shidqon Prabowo and Reni Yuli Astuti, *Perlindungan Konsumen Terhadap Wanprestasi Pelaku Usaha Kredit Kendaraan Bermotor Di Lembaga Pembinaan Dan Perlindungan Konsumen Jawa Tengah*, *QISTIE*, Vol. 14, No. 2, 2021, page.1–12.

MEA roadmap regarding consumer protection.⁴⁹

In Indonesia, the principle of strict liability if it is included in the legislation has implications and consequences that are still considered burdensome for the seller. For this reason, if this principle is to be applied in Indonesia, several aspects need to be considered, namely: (1) the application of the strict liability principle is only intended for large groups of sellers (conglomerates); (2) products containing hazardous materials; (3) the intensity of negligence committed by the seller is already high about product quality standards; (4) the product is used en masse by the public; (5) products that are in direct contact with consumers.

E-commerce arrangements that are expected in the future, namely the law on e-commerce must regulate the obligation for sellers to provide their identities, when including product specifications on the website page must be clear in detail, the payment mechanism is clear and definite to avoid payment errors and delivery mechanisms have clear delivery methods to provide certainty when and how the goods are received by consumers.⁵⁰

D. CONCLUSION

The products with hidden defects, sold by sellers through online buying and selling are the absolute responsibility of the seller to provide legal protection to consumers. This is because in buying and selling online, the consumer's position is weaker than that of the seller. In addition, products with hidden defects can endanger the consumer's self as well as the consumer's property. The absolute responsibility of the seller has been regulated in Article 19 of the UUPK. However, the provisions contained in the UUPK have not elaborated in detail on the absolute responsibility. The UUPK states that for consumers who can prove that the business actor (seller) has made negligence on the product being sold, then the seller can be blamed and held responsible for the product sold. Furthermore, Article 1365 and Article 1865 of the Civil Code (*KUH Perdata*) also state that it is the responsibility of the producer (seller) to provide compensation to the injured party, after the party suffering the loss can prove that the loss was caused by a hidden defective product that was carried out by the seller's negligence.

49 Arfian Setiantoro et al., Urgensi Perlindungan Hukum Konsumen Dan Penyelesaian Sengketa E-Commerce Di Era Masyarakat Ekonomi Asean, *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol. 7, No. 1, 2018, page.220.

50 I Dewa Ayu Dwi Mayasari and Dewa Gde Rudy, Urgensi Rekonstruksi Pengaturan Praktek Perjanjian Perdagangan Melalui E-Commerce, *Jurnal Komunikasi Hukum (JKH)*, Vol. 7, No. 1, 2021.

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