
Comparison of Product Liability in Indonesian and Spanish Consumer Protection Law

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Abstract: *This article examines a comparative study of the concept of product liability in the consumer protection laws of Indonesia and Spain. This research aims to describe the regulation and implementation of product liability in Indonesian and Spanish legislation particularly. Both countries already have consumer protection laws that regulate liability for defective products. The concept of product liability has long been applicable in consumer protection law in Spain, unlike in Indonesia. The research results show that protection against defective furniture products in Indonesia's consumer protection law is still limited to users, although it could harm other non-users. Using doctrinal research methods and a comparative approach.. The result of the comparative legal analysis can be an input in the development of national law of Indonesia.*

Keywords: *Furniture, Consumer Protection Law, Product Liability, Spain.*

1. INTRODUCTION

“Het leven zit achter vol risico en de mens beseft dat, houdt daar ook mee account”, according to Schut (1). Life is full of risks, and of course they are taken into account by everyone and by the law; because no one in this world consciously wants that risk to come to him. That's why laws are made to provide goodness and prevent things that harm other people. As Thomas Aquinas said, law is a rule of action aimed at the common good (bonum commune, common good) (2).

The common good can be understood as goodness aimed at all members of a community (3); or in the life of a nation and state, for the whole of a nation. The common good in Indonesia is in Pancasila which is also a point of agreement for all elements of the nation, namely: Indonesian nationalism, internationalism or humanity, consensus or democracy, social welfare and cultural divinit (4). That is why the goal of national development is to create a just and prosperous society in accordance with Pancasila and the 1945 Constitution.

With the increasingly diverse national needs of a country, fulfilling them cannot be carried

out independently by the country concerned. That is why international trade is needed so that one country can carry out import-export activities to meet their respective national needs (5). The definition of trade according to Article 1 of Law Number 7 of 2014 concerning Trade is the order of activities related to transactions of goods and/or services within the country and beyond national borders with the aim of transferring rights to goods and/or services to obtain rewards or compensation (6). The term international trade is considered the same as the term foreign trade (7).

The Covid 19 pandemic has caused changes in consumer behavior such as panic buying, shopping for goods based on more basic needs, as well as the strong influence of social media. This resulted in an increase in purchases of certain goods, even though in general there was a decline in sales, especially retail sales, which caused many shops to close (8). The existence of highly selective consumer behavior accompanied by reduced income during the crisis has resulted in an increase in the number of consumer complaints regarding the products they receive. One of the products that also received complaints was furniture. The word furniture comes from the French word "fourniture" which means equipment. Meanwhile, the word furniture comes from the Latin "mobilis" which means an object whose position can change. One of the reasons for calling furniture furniture is because it is easy to move.

The furniture industry in Indonesia is a labor-intensive industry which absorbs labor from both large and medium industrial scales, micro and small scales as well as independent household businesses, it also creates a wide multiplier effect for other industries. Furniture in Indonesia has good acceptance in the European Union and America as the largest export destinations for Indonesian furniture. One of the countries that is part of 26 other European countries in the European Union organization is Spain. Currently, the Spanish market is Indonesia's 16th largest export destination in the world and 4th in the European Union after the Netherlands, Germany and Italy. Meanwhile, the trade balance between the two countries reached USD 3.03 billion in 2021 (9).

Before the crisis caused by the Covid-19 pandemic, the furniture business was mostly carried out conventionally through sales in shops. The advantage of the conventional method is that the buyer can immediately see and check the goods themselves, so lawsuits rarely occur from the buyer. However, since the pandemic, buyers and sellers have started to turn to online markets. Online sales are very effective in reaching buyers from anywhere, without the need for face-to-face meetings. The prices offered can also be very competitive because competition is very open. The consequence is that buyers only see photos of the goods and do not see the goods in person, so they are often disappointed with the actual appearance of the goods after the goods arrive at their home. A defective product is generally understood as a condition where the product is below the level of consumer expectations or the product cannot be used according to its intended purpose so that it can endanger the consumer's property, physical health or soul (10).

For damaged and defective products, buyers ask for responsibility for the goods from the seller (in this case the Indonesian furniture importer); Concretely, they ask for compensation for the losses they experience from purchasing defective goods. Other business actors who import (11) of course they are responsible for products distributed in a country, because the actual producer is not domiciled in that country (Article 24 of the Consumer Protection Law). A number of importers who have long-term contracts with exporters in Indonesia have higher bargaining power, so they can demand a reduction in payments for the amount of compensation and compensation they provide to consumers in their country due to damage to a number of goods.

The responsibility of the producer for the goods is often referred to as product liability. Black's Law Dictionary (11th ed. 2019) defines products liability as: 1. The manufacturer's or

seller's liability for any damage or injury suffered by the buyer, user or people around them as a result of a defective product. Product liability may be based on theories of negligence, strict liability, or breach of warranty. 2. Legal theories that impose liability on manufacturers or sellers of defective products. 3. The field of law that discusses this theory. — Also called product liability; (special) manufacturer's responsibility (12). The provisions of Article 21 paragraph (1) of the Consumer Protection Law state that the importer of goods is responsible as the manufacturer of the imported goods if the import of the goods is not carried out by an agent or representative of a foreign producer. This provision is in line with the provisions in the Spanish Consumer Protection Law, namely Real Decreto Legislativo 1/2007, de 16 de Noviembre, Ley General para la Defensa de los Consumidores y Usuarios y otras leyes complementarias (hereinafter abbreviated as LGDCU), Article 138 (13). In the LGDCU provisions from Spain it is emphasized that if the producer is not domiciled in the European Union then the burden of responsibility is borne by the importer.

The transfer of responsibility from the exporter (producer) to the importer certainly results in losses for the importer. Loss is generally defined as an unfavorable aspect that a person suffers as a result of a certain event, in this case the result of an unlawful act. These losses can be compensated as long as the losses arise from an interference with interests protected by law (14).

For Indonesian exporters, withholding payments is considered arbitrary and can even be categorized as a violation of Article 6 of the Consumer Protection Law. In fact, Article 1507 of the Civil Code already states that for goods that have hidden defects (Article 1504) and defects that are visible and can be known by the buyer himself (Article 1505), the buyer can choose to carry out *actio redhibitoria* or *actio quanti minoris* (15). However, considering that the product is already in the buyer's country, the option to return the object (*actio redhibitoria*) becomes an uneconomical option. The application of the *actio quanti minoris* cannot be determined by one party (the buyer), but rather by a judge after hearing experts about the object. If you want to refer to the Consumer Protection Law, then Article 7 letter g of the Consumer Protection Law does regulate the provision of compensation, compensation and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement, but Indonesian law also provides an opportunity for producers to defend themselves against accusations made against them by other parties. The Consumer Protection Law provides an opportunity for business actors to prove that the consumer is at fault in the event of the loss; and if the producer succeeds in proving this then he is free from the obligation to pay compensation (16).

A furniture trade abroad is an international trade agreement. An international trade agreement is a commercial agreement made between parties where the parties come from different countries, so that based on the world legal system in force it is also possible for there to be legal differences that can be applied to the legal actions they carry out (17). International trade agreements must be made well, clearly and in writing in order to guarantee a sense of justice, equal standing and certainty for the parties. In particular, determining choice of law and choice of forum is something that must be included in the agreement. The behavior of furniture exporters in Indonesia often does not consider the importance of having written agreements, especially with clear explanations regarding the choice of law and forum. Furthermore, legal determination presupposes an understanding of the laws of both countries before both parties can determine their legal choice. Currently, it is still very rare to find any writing regarding Spanish Consumer Protection Law, especially regarding product liability.

However, this information is very useful for those who do business with importers from Spain. Therefore, it is hoped that this article can provide information on consumer protection law in Spain, as well as provide input in the development of consumer protection law in Indonesia. That is why we intend to conduct research on *Comparison Of Product Liability In Indonesian And Spanish Consumer Protection Laws*. Our problem formulation is as follows how is product liability regulated according to Indonesian law? and how is product liability regulated according to Spanish law? and also how does product liability compare in consumer protection law in Indonesia and Spain.

2. RELATED WORKS

A. Comparison of Product Liability Regulations in Indonesian and Spanish Consumer Protection Laws

The term comparative law in English is called Comparative Law, and in Spanish it is called Ley Comparativa. Comparative law as a research method according to Guttridge is intended not only to examine whether there are similarities and differences, but also to investigate the causes behind these similarities and differences.

Comparative Table of Product Liability in Indonesian and Spanish Law

	INDONESIAN Law	SPANYOL Law
Legal System	Civil Law	Civil Law
Rule	UU no. 8/1999 Consumer Protection (65 Articles), Civil Code	Ley General para la Defensa de Consumidores y Usuarios/LGDCU (161 Articles)
Year Ratified	1999 and April 10, 1838	1984, 1994 and 2007 (Two changes)
Protected subject	Final consumers and other business actors	Consumers (consumidor) and observers (bystander)
Responsible subject	Business actors and/or importers (Articles 19, 21)	Manufacturers and/or importers, suppliers
Protection Object	Defective goods (Articles 8, 19)	Defective goods (Article 137)
How to Settle Disputes	<p>(1) Every consumer who suffers losses can sue a business actor through an institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment.</p> <p>(2) Consumer dispute resolution can be pursued through court or outside court based on the voluntary choice of the parties to the dispute.</p> <p>(3) Settlement of disputes outside the court as intended in paragraph (2) does not eliminate criminal responsibility as regulated in the Law.</p> <p>(4) If an effort to resolve a consumer dispute outside of court has been chosen, a lawsuit</p>	<p>Consumers can contact sellers to obtain repairs and replacements for defective products; Apart from that, consumers can request a price reduction for products that do not comply with what was agreed (Article 121).</p> <p>Consumers can also complain to court, and will not pay court costs (Article 120).</p> <p>Complaints can be made by consumers alone or jointly through consumer representatives.</p>

	through court can only be pursued if the effort is declared unsuccessful by one of the parties or by the parties to the dispute. (Article 45)	
Compensation	Article 19 paragraph (2): Compensation as referred to in paragraph (1) can be in the form of a refund or replacement of goods and/or services of the same or equivalent value, or health care and/or provision of compensation in accordance with the provisions of the applicable laws and regulations. applies.	Article 128: all injured parties have the right to receive compensation as regulated in law. Article 119: consumers can also request a price reduction for products that do not comply with what was agreed.
Principle of responsibility	<i>Tort liability</i>	Objective but not absolute.

The thing that is similar in Indonesian and Spanish law is the legal system, namely civil law. The civil law system is a legal system that developed in Europe. Furthermore, these two laws already have a Consumer Protection Law which regulates product responsibility. In Indonesia, the Consumer Protection Law was passed in 1999, this is different from the tradition of consumer protection regulations in Spain which began in 1984 and has been revised twice (in 1994 and 2007). The Indonesian Consumer Protection Law states that business actors must provide responsibility for defective products (Article 19) but does not provide a clear definition regarding this; This is different from LGDCU which provides clear boundaries and definitions of defective products. Unsafe product is a keyword to describe defective products in the LGDCU (Article 137 paragraph 1).

The last thing regarding the product liability exclusion clause of the Consumer Protection Law and LGDCU is that there are several similarities: firstly, the Consumer Protection Law talks about defective products that should not be distributed; LGDCU also regulates the same thing. Then regarding defects that arise as a result of compliance with the provisions regarding the qualification of goods; This is in line with LGDCU which talks about defects that arise because goods are made in accordance with existing mandatory regulations/standards. Then there are differences regarding defects that arise due to consumer negligence in the Consumer Protection Law; Meanwhile, LGDCU does not discuss this, and focuses on business actors who do not distribute defective goods.

3. METHODOLOGY

This article uses a doctrinal research methodology which includes normative legal research with a comparative legal approach. Peter de Cruz stated that comparative law is a science that describes the systematic study of various legal traditions and certain legal rules using a comparative basis (18)

The traditions and legal rules that will be carried out a legal comparative analysis in this article are the Consumer Protection Law between Indonesia and Spain, especially in the

section on consumer protection for defective furniture products. In this case, the basis for legal comparison includes Protected subject, Responsible subject, Protection Object, How to Settle Disputes, Compensation, Principle of responsibility. So it is known that the data used is secondary data, in the form of primary legal materials and secondary legal materials in the form of Indonesian and Spanish consumer protection laws and regulations.

This comparative legal approach is used to provide a comparative description of the law between Indonesia and Spain to find laws that better guarantee consumer protection in the event of defective furniture products. Apart from that, this legal comparison also aims to improve the law or interpretation which requires in-depth attention (19), especially on consumer protection law in Indonesia. So this study uses a normative comparative legal method that is exploratory-analytical in nature to find answers to the discussion in this article.

4. RESULTS AND DISCUSSION

B. Product Liability Regulations in Indonesian Consumer Protection Law

i. History of Product Liability in Indonesian Law

Discussion of the concept of product liability has only recently been clearly discussed in consumer protection law. In the Civil Code, the discussion about product liability is discussed in general terms, for example Article 1365 concerning acts that violate the law and cause harm to other people, which requires the person who caused the loss through his fault to compensate for the loss.

Legal Basis for Product Liability

Since 1999 there has been a Consumer Protection Law (UU No. 8 of 1999 concerning Consumer Protection) which provides legal protection to consumers of goods and services in Indonesia. Article 19 of the Consumer Protection Law clearly states the responsibility of business actors towards consumers for damage to goods which results in losses to consumers. Therefore, the legal basis for imposing product liability in Indonesia is in the Consumer Protection Law (UU No. 8/1999). In practice, complaints about losses caused by a product in Indonesia are not only based on the Consumer Protection Law, but also in the Civil Code regulations.

ii. Legal Subjects of Product Liability

In the concept of product responsibility, there are two types of legal subjects, namely the legal subjects who are harmed, namely consumers; and the responsible legal subjects are business actors. According to the provisions of the Consumer Protection Law, a consumer is every user of goods and/or services available in society, whether for the benefit of themselves, their family, other people or other living creatures and not for trading (Article 1 Number (2)). From the meaning consumers above, we can put forward the elements of consumer definition

a. Each Person

consumer means every person who has the status of a user of goods and/or services. The term person here does not differentiate between individuals or legal entities. User (What is meant here is the final consumer).

b. Goods and or Services

The Consumer Protection Law defines goods as objects, whether tangible or intangible, movable or immovable, consumable or non-expendable objects, which can be traded, used, employed or utilized by consumers. Services are defined as any service in the form of work or achievement that is provided to the community for use by consumers.

c. What is available in society

Goods or services offered to the public must be available on the market.

d. For the Benefit of Oneself, Family, Other People, Other Living Creatures

Consumer transactions are intended for the benefit of themselves, their families, other people and other living creatures such as animals and plants.

e. The Goods and/or Services are not for Trading

Article 24 of the Consumer Protection Law states that other business actors are exempt from claims for compensation and consumer lawsuits if they sell products without making changes.

iii. Objects of Product Liability Protection

Based on Article 8 paragraph (2) "Business actors are prohibited from trading damaged, defective, used or contaminated goods without providing complete and correct information about the goods in question".

iv. How to Settle Disputes

Provisions for resolving consumer disputes according to the Consumer Protection Law are regulated in Chapter Article 19 paragraph (3) states "Provision of compensation is carried out within a period of 7 (seven) days after the date of the transaction." Then Article 23 states "Business actors who refuse and/or do not respond and/or do not fulfill compensation for consumer demands as intended in Article 19 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), can be sued through the Consumer Dispute Resolution Agency or submitted to a judicial body in the consumer's domicile".

vii. Exclusion of Liability Clause

Article 27 states the liability exclusion clause, namely if:

- a. it is proven that the goods should not be circulated or are not intended to be circulated;
- b. defects in goods arise at a later date;
- c. defects arise as a result of compliance with provisions regarding the qualification of goods;
- d. negligence caused by consumers;
- e. the expiry of the prosecution period of 4 (four) years since the goods were purchased or the agreed period of time has elapsed

vi. Principles of Responsibility in Indonesian Law

In Indonesian Consumer Protection law, the principle of responsibility based on fault is adhered to (tort liability), where consumers who feel disadvantaged must prove that there is an error in the product used (20). In fact, in the Civil Code there is also a concept of strict liability, although it is implicit in Articles 1367 and 1368. Article 1367 of the Civil Code regulates a person's responsibility for losses caused by goods under his control.

C. Product Liability Regulations in Spanish Consumer Protection Law

a. History of Product Liability in Spanish Law

Before the emergence of specific consumer and user protection laws, civil liability for defective products in Spanish law used the principle of liability based on fault or negligence

regulated in Article 1902 of the Spanish Civil Code. (21) Acceptance of objective responsibility in the event of damage caused by defective products began to be accepted since the enactment of Law 26/1984 dated 19 July Consumer and User Protection Law (LGDCU), which recognizes certain cases of objective responsibility in Article 28. (22)

The Spanish legislator explained that the adoption of Directive 85/374/EEC was intended to achieve a common legal regime within the European Union community for a very sensitive issue, both in scope and in the objectives contemplated by the Directive.

b. Legal Basis for Liability

LGDCU or Consumer and User Protection Law (Spain) was first enacted in 1984, named Law Number 2 of 1984 (19 July) concerning Consumer and User Protection. Prior to this law, general civil law rules were used for contractual responsibilities and non-contractual responsibilities. LGDCU underwent two changes, namely i) Law Number 22 of 1994 (July 6) due to Transposition and ii) Law Number 1 of 2007 (November 16) which combines LGDCU 1984 and Transposition. LGDCU or Ley General para la Defensa de Consumidores y Usuarios (Consolidated Text of The General Consumer and User Protection Act) is a consolidated text of the law which means that this law is a combination of all regulations relating to consumer protection.

c. Legal Subject of Liability

LGDCU distinguishes between legal subjects who are harmed and legal subjects who are responsible. According to LGDCU, there are 2 legal subjects who suffer losses, namely consumers (consumidor) and observers (bystander). Article 3 states that consumers or users are individuals who act for purposes that are not related to commercial or business activities, trade or profession (23). Furthermore, based on Book III, LGDCU provides protection to "every person who is injured" (all injured parties), so that it includes those who are not consumers or parties bound by a contract, but are equally harmed by defective products (24). Then the legal subjects responsible are two parties, first, the producer, maker and importer; and second, suppliers. Article 135 LGDCU states that manufacturers are responsible for losses caused by defects in the products they produce or import. So there are two possible parties responsible, namely first the producer or importer; and secondly from suppliers. Article 138 paragraph (2) LGDCU places responsibility on the supplier if the manufacturer cannot be identified." Apart from that, LGDCU also recognizes the concept of solidarity in accountability according to Article 132.

d. Object of Liability Protection

Article 8 paragraph (1) LGDCU states that consumers have basic and general rights to be protected from risks to their health and safety, as well as risks to their legitimate social and economic interests. There is substantive testing for the suitability of goods and digital content and services. Then in Article 117 letter (a) LGDCU it is stated that traders are responsible for all non-conformities that occur when the goods are supplied to consumers.

e. How to Settle Disputes

The general principle in dispute resolution is in Article 118: "Consumers and users have the right to have the product repaired or replaced, to a reduction in price, or to the termination of the contract, in accordance with the provisions of this title" and Article 128, namely that all injured parties have the right to receive compensation based on the provisions stipulated in this Law for losses caused by goods or services. Consumers can also make complaints through consumer representatives, or consumer associations who have also experienced the same loss due to a product.

f. Exclusion of Liability Clause

Article 140 explains the reasons for exemption from responsibility.

g. Principles of Liability in Spanish Law

We can find the general principle of responsibility in the LGDCU in Article 135: "The

manufacturer will be responsible for losses caused by damage to the products which, respectively, are manufactured or imported." Based on this article, the resulting responsibility is extracontractual, objective, and based on product errors/defects. What is meant by extra-contractual means that liability for defective products does not require a previous contractual agreement. Consumers who feel aggrieved can immediately ask for compensation for the injuries they have experienced and their material losses.

5. CONCLUSION

1. Product Responsibility has been regulated in the Consumer Protection Law (UU No.8/1999) especially in Article 19. The regulations in the Law include legal subjects and objects of protection, methods for resolving disputes, compensation, and liability exclusion clauses. However, there is no explanation regarding the concept of defective products which are actually the main cause of losses caused by a product.
2. In comparing product liability according to law in Indonesia and Spain, The difference between the two concepts of product liability lies in the subject being protected, which in Indonesian law only protects final consumers, but in LGDCU it provides protection to anyone who suffers losses due to the existence of the product. Then there is the concept of solidarity and joint responsibility of all business actors involved in making the product until it reaches the hands of consumers. The product liability regulations in the LGDCU are more comprehensive than in the Consumer Protection Law which does not even provide a definition of defective products.

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 23. A product shall not be considered defective solely due to the fact that an improved version of the product is put onto the market.
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