

Exploring the Relationship between Consumer Protection and Product Liability: Civil and Islamic Perspectives

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Abstract

Consumer protection is an aspect which aims to ensure that consumers are always given adequate protection from a legal perspective and also to increase the level of consumers' trust in the quality of goods and services, which will, in turn, contribute to the economic growth of a nation. However, today, issues surrounding product liability cases are no longer uncommon, where consumers or third parties face the risk of suffering injury or property damage due to the existence of defects in a particular product. Thus, the main objective of this study is to analyze the relationship between consumer protection and product liability from both civil and Islamic perspectives. The type of research being carried out is doctrinal legal research. The data sources, including case law and statutory provision, are analyzed using content and critical analysis methods. The results show that according to civil and Islamic perspectives, consumer protection in the context of product liability plays a crucial role in conferring legal protection to consumers who are adversely affected by the use of particular products that pose a risk to health and safety. Further, the authors expect that the results of this study shall contribute new and significant knowledge by proving that the aspect of consumer protection is not only related to product liability issues from a civil perspective, but it is also can be evaluated from the Islamic perspective, which the earlier researchers have rarely discussed.

Keywords: Civil, Consumer protection, Islamic, product liability

1.0 Introduction

In Malaysia, Section 3 of the Consumer Protection Act 1999 defines the term 'consumer' as someone who acquires or uses goods or services for personal or household purposes. Based on the above provision, individuals who use goods or services for trade or



manufacturing purposes do not fall within the definition of 'consumer'. Consumers are an essential factor for a business entity to focus on. A business entity must ensure that the consumers feel safe when they use specific products they buy (Ryngelblum & Vianna, 2017).

Generally, product liability refers to the civil liability of those involved in the manufacturing and supplying products for any damage or injury caused by a defect in the product (Amin, 2007). The current researchers opined that consumer protection should be analyzed to identify its importance and how it relates to product liability. Without such analysis, it is challenging for future researchers to interpret the adequacy of the product liability legal framework in giving protection to the victim of defective products accordingly.

In the context of contemporary society nowadays, consumers are no longer fully protected from being exposed to misconduct committed by a handful of manufacturers, such as the production of imitation or defective goods (Marlyna & Sardjono, 2019) and the provision of unsatisfactory services (Zeija, 2018) that can have adverse effects on consumers (Kishtwaria, Sharma, Vyas & Sharma, 2004). Most products are found to be packaged with such care that consumers need help to check whether or not the product is free from defects before purchasing it. In contrast, manufacturers and sellers possess detailed knowledge of the level of safety and the actual quality of a particular product from the start. Thus, this unbalanced, one-sided situation (Resolution of the UN General Assembly, 1985) will expose consumers to the risk of purchasing products with certain defects (Stebek, 2018). A defect is one of the crucial elements that need to be proven in a product liability case besides the existence of physical injury or damage, as well as the causal link between damage and defect in the product as stipulated under Part X of the Consumer Protection Act 1999.

Meanwhile, Section 67(1) of the Consumer Protection Act 1999 provides that a product can be regarded as defective if the safety of the product is not what a person would expect. In the case of (*Foster v Biosil*, 2001), the court believed that the claimant had failed to prove the causation element to show that the rupture of the silicone implant inserted into the breast was caused by the defective implant. Although the court agreed that a ruptured silicone structure could increase the risk of personal injury, it is perplexing that the court accepted the defendant's argument that this case was an isolated case based on the

