The Application of Caveat Emptor and Caveat Venditor Doctrines from Civil and Islamic Perspectives

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ABSTRACT

Since a long time ago, consumers have never been completely safe from exposure to the risk of purchasing defective products, which may cause an adverse effect on them. The introduction of the doctrines of caveat emptor and caveat venditor became a part of the common law to resolve disputes between manufacturers, sellers, and consumers. This study therefore aims to analyze the application of the caveat emptor and caveat venditor doctrines according to civil and Islamic perspectives to see how far the application of both doctrines can provide justice to consumers. Utilizing doctrinal approach based on the methodology of qualitative legal research, this study involves in-depth analysis of statutory provisions, court cases, Quranic texts, hadiths, and the opinions of Muslim scholars. The research findings were analyzed through content analysis and critical analysis methods. This study has proven that there are legal problems with regards to the application of the caveat emptor doctrine and its resulting negative impact on consumers, thus leading to the formation of the caveat venditor doctrine. Although the term “caveat venditor” and its definition are not expressly mentioned in the Qur’an and the hadiths, the application of the doctrine is seen to have a strong foundation in Islam. The results of this study are expected to contribute significant new knowledge in the field of consumer law since a comparative analysis of the application of both doctrines according to civil and Islamic perspectives is still lacking, especially in cases involving the selling of defective products.

Keywords: Caveat emptor; caveat venditor; civil; consumer protection; khiyar

INTRODUCTION

Section 3 of Consumer Protection Act 1999 (CPA 1999) interprets the term “consumer” as a person who acquires or uses goods or services for personal or household purposes. However, this provision has placed a limit on the type of goods or services obtained. As such, a person is a “consumer” according to the CPA 1999 if he obtains goods or services for individual or household purposes. Over the years, the existence of consumers is considered as one of the important elements of a business entity as it is a key factor in determining the ups and downs of a business. However, in reality, consumers are exposed to the risk of misconduct by manufacturers such as the production of defective products and the provision of unsatisfactory services which adversely affect consumers. In fact, most consumers, including children, do not usually know or do not clearly understand the types of chemicals used to produce a product and its impact on human life in the long run. For example, in 2007, a children’s toy called “Aqua Dots” was found to have a coating that could react by producing a dangerous drug if swallowed by a child. Aqua Dots was eventually withdrawn from the market after a few children fell ill and were hospitalized due to their swallowing of the toy while playing. The results of the doctor’s examination proved that there was a direct relationship, namely the causation element connecting the side effects experienced by the child, and the dangerous drugs resulting from the reaction to the Aqua Dots layer.

Accordingly, comprehensive protection of consumers from a legal point of view is essential to control the sale of unsafe products and balance the position of consumers in business activities. Indirectly, these are among the goals of consumer law formulation, which are to provide platform to protect consumers and remedies to those who suffer losses because of defective products or irresponsible acts committed by the manufacturer or seller. The absence of a clear legal principle to resolve the issue of the seller’s responsibility with