

Protecting Consumers Against Defamation Claims: The Role of Common Interest in Product Reviews

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ABSTRACT

Consumers who post negative reviews of products on social media often face defamation claims by business entities. Such lawsuits have had a chilling effect on the right to freedom of expression, which is protected by law. In adjudicating consumer cases, judges have generally failed to apply the concept of common interest as a consideration, despite the potential benefits and awareness such reviews provide to prospective consumers. The common interest concept, as stipulated in defamation laws, can serve as a form of legal protection for consumers who post reviews on social media, provided the reviews are truthful, reflect actual conditions, and are made in good faith. By implementing the common interest concept and conducting its proper assessment, legal protection can be ensured for both consumers and businesses. Consumers would be shielded from unwarranted defamation claims, while businesses would be protected from malicious reviews by bad-faith consumers that result in financial or reputational harm. This study aims to dissect the legal safeguard afforded to consumers through the prism of common interest when confronting social media-based complaints or reviews ensnared in defamation litigations instigated by corporate entities. Employing a normative juridical methodology, the research amalgamates legislative analysis with conceptual frameworks. The research findings accentuate the significance of invoking the public interest doctrine in consumer-related litigation, thereby fortifying legal defenses against defamation allegations.

Keywords: Defamation of Character, Public Interest, Social Media, Video Review

ABSTRAK

Konsumen dalam melakukan review negatif di media sosial atau suatu produk harus berhadapan dengan tuntutan pencemaran nama baik oleh pelaku usaha. Tuntutan pencemaran nama baik atas review konsumen telah membungkam hak atas kebebasan untuk menyatakan pendapat yang dilindungi oleh undang-undang. Ketika menghadapi kasus konsumen di pengadilan, hakim tidak pernah menggunakan konsep kepentingan umum sebagai bahan pertimbangan bahwa review yang dilakukan memberikan manfaat dan kewaspadaan bagi calon konsumen yang hendak membeli produk tersebut. Konsep kepentingan umum yang diatur pada pasal pencemaran nama baik dapat menjadi bentuk perlindungan hukum bagi konsumen yang melakukan review di media sosial dengan terlebih dahulu dilakukan pengujian apakah review tersebut telag sesuai dengan keadaan atau kenyataan yang sebenarnya serta didasari dengan itikad baik. Dengan menerapkan konsep kepentingan umum dan pengujiannya maka dapat memberikan perlindungan baik kepada konsumen dan pelaku usaha, yaitu konsumen mendapatkan perlindungan hukum dari tuntutan pencemaran nama baik dan pelaku usaha mendapatkan perlindungan hukum dari konsumen yang beritikad buruk yang telah mendatangkan kerugian baginya atas review di media sosial. Tujuan penelitian ini adalah untuk menganalisis mengenai perlindungan hukum melalui konsep kepentingan umum kepada konsumen atas review di media sosial yang dijerat dengan pasal pencemaran nama baik oleh pelaku usaha. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan konseptual. Hasil dari penelitian ini adalah

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penerapan konsep kepentingan umum dalam kasus-kasus konsumen sehingga dapat memberikan perlindungan hukum dari tuntutan pencemaran nama baik oleh pelaku usaha.

Kata kunci: Kepentingan Umum, Media Sosial, Pencemaran Nama Baik, Video Review

INTRODUCTION

In recent times, there has been a proliferation of cases wherein businesses report consumers or service users to law enforcement agencies on allegations of defamation due to their online reviews or complaints. One such case currently under the spotlight involves a video review conducted by a TikTok user known by the handle @ompolosbanget, also identified as Deedi Tjhandra. This particular instance revolves around a critique of an apartment unit located in Tokyo Riverside PIK 2, which Deedi Tjhandra had purchased. Through the platform @ompolosbanget, Deedi Tjhandra voiced concerns regarding structural integrity issues within the apartment unit, cautioning that the mere installation of an air conditioner (AC) could potentially compromise the building's stability. In likening the apartment to a "Barbie house", Deedi Tjhandra underscored the perceived fragility of the structure. Moreover, @ompolosbanget delved into various other aspects during the review, highlighting additional concerns. For instance, attention was drawn to the apartment balcony, which was deemed excessively narrow, making it impractical for the placement of chairs or other furnishing. Furthermore, despite expressing a preference for a balcony with a scenic sea view, the assigned apartment unit overlooked another residential unit instead. In addition to these spatial considerations, the review shed light on disparities between the advertised amenities and the actual offerings. While the brochure boasted of four swimming pool facilities, only one was accessible to residents. Moreover, there was a notable absence of security personnel within the premises, raising apprehensions regarding safety and surveillance measures.

Subsequently, Deedi Tjhandra uploaded the video onto TikTok leveraging his substantial following of 1.1 million followers. The video swiftly gained traction, becoming viral across various online platforms. As a consequence of its widespread dissemination, Deedi Tjhandra found himself at the receiving end of a defamation complaint, Deedi Tjhandra found himself at the receiving end of a defamation complaint lodged by the property developer, PT.Mandiri Bangun Makmur (MBM), on May 4, 2023. PT.MBM contended that the virality of the video had a detrimental impact on the sales of apartment units, citing a notable surge in cancellations after its circulation. The trial unfolded in February 2024, during which the Public Prosecutor leveled charges against Deedi Tjhandra under Paragraph 28 of Law No.19/2016 jo Law No.11/2008. However, diverging from the prosecution's recommendation, the judge invoked Paragraph 27 subsection (3), imposing a penalty of 4 years' imprisonment. Ultimately, the judge delivered a verdict sentencing Deedi Tjhandra to 2 years' imprisonment.

Deedi Tjhandra's legal saga reached its conclusion in court as he stood firm in his decision not to apologize to PT.MBM. He maintained that his statements in the video review accurately reflected the factual circumstances, substantiated by evidence presented during the trial proceedings. Moreover, well before the case reached the courtroom, attempts at mediation were made by investigators on multiple occasions, yet PT.MBM refrained from engaging in these discussions. This reluctance to participate in mediation underscores PT.MBM's inclination towards legal confrontation rather than resolution outside the courtroom. The proclivity of businesses to adopt a defensive stance when confronted with consumer criticism or review is a well-documented phenomenon. This defensive posture stems from the imperative to preserve and uphold the company's image, reputation, credibility, and brand, all of which are intricately tied to its profitability. Consequently, in response to consumer complaints or negative reviews, businesses often resort to litigation, such as defamation lawsuits, as a means of safeguarding their interest.

Any products and services offered by the seller should satisfy or meet the standards and expectations of the buyers. This also includes the business of buying and selling property, which needs to be done with extra caution as it very vulnerable to problems. Although it has been around for a long time in the last two decades, this consumer-oriented legal umbrella has not been much realized by consumer themselves. Many consumers think this act is really needed when they are involved in criminal or civil cases only (Arifin, Kambuno, Waspiah, & Latifiani, 2021). Consumers will tend to obey and not protest because it is caused by fear and inferiority (Fibrianti, Santoso, Setyowati, & Rindyawati, 2023). In general, the protection of Indonesian consumers is widely known to be at no level. It is rare to find successful consumer cases in court. Most Indonesian consumers are reluctant to bring their cases to courts due to their distrust of the effectiveness of the consumer protection law, skepticism about the legal system, and also because it is costly. There is a common perception among Indonesians that if you bring the case to court, it is like buying a chicken but having to pay for a cow (Rotinsulu, 2021). Consumer protection is a legal safeguard that acknowledges the rights of consumers and the corresponding duties of business entities. In instances when business entities fail to fulfill their obligations regarding consumer rights, customers possess the legal recourse to initiate legal proceedings against these entities (Subagyono, Astutik, Chumaida, Romadhona, & Usanti, 2023). Consumer protection law not only provides legal protection for consumers but also establishes a healthy foundation for sustainable and mutually beneficial business relationships between sellers and buyers in society (Widiarty et al., 2024). Consumer protection has received more attention in line with the increasing protection of human rights (Anand, Yudhantaka, & Lingkar Katulistiwa, 2020). Legal protection is a protection given to legal subjects in the form of tools, both preventive and repressive, in which is both verbal and written. The function of legal protection is to fulfill justice, order, certainty, benefit, and peace (Rahma, Hasiana, Cantika, & Octaviona, 2022).

Deedi Tjhandra's case serves as a poignant illustration of PT.MBM's failure to uphold its obligations regarding the apartment unit and its amenities. However, when consumer grievances are left unaddressed or inadequately responded to, individuals often turn to the now-popular refrain circulating among social media users: "No Viral No Justice". Typically, consumers refrain from pursuing breach of contract lawsuits due to various factors including high costs, protracted litigation processes, and other considerations. Consequently, social media emerges as the preferred platform for venting their frustrations. Moreover, consumers of properties such as houses or apartments frequently do not engage with Consumer Dispute Resolution Bodies (CDRB). This may be attributed to either a lack of awareness regarding the existence of CDRB as a mechanism for resolving disputes related to consumer rights violations outlined in Law No.8/1999, or a deliberate choice to eschew such avenues. Instead, they opt to leverage the potency of social media, even if doing so exposes them to potential criminal charges.

In addition to the CDRB, another institution that plays a significant role in resolving issues between consumers and businesses is the YLKI. YLKI provides a platform for addressing consumer grievances and disputes. Specifically, on the YLKI website, there is a delineation of specific commodities eligible for reporting, one of which pertains to housing-related matters. Grievances within this domain encompass a range of issues, including (YLKI, 2017).

1. The subject matter under discussion pertains to consumer disputes, particularly those arising between end consumers and businesses;
2. The aggrieved consumer belongs to the final consumer category, denoting individuals who procure goods or services for personal consumption, distinct from acquisition for resale, leasing, or business purposes;

3. The consumer has fulfilled their obligation by statutory regulations and/or contractual agreements;
4. A violation of consumer rights as stipulated in Law No.8/1999 has occurred;
5. The maximum claim for material damages amounts to Rp 300 million;
6. The received claim value does not pertain to material damages;
7. The reported case is not currently under legal counsel's jurisdiction;
8. The reported case is not currently being pursued or handled by other institutions, such as CDRB, courts, and others;
9. The consumer has submitted a written complaint to the business entity and has not received a response;
10. The goods and/or services being complained about are not illegal.

Legal research indicates that consumers face several challenges in seeking justice, namely: (Jucevicius, 2022).

1. Consumers frequently lack awareness of their rights, resulting in a misconception that they are not entitled to recourse or redress. Additionally, even when they are aware, the perceived cost and effort required to obtain a remedy may outweigh the potential benefits, causing consumers to accept their losses. Moreover, when consumers attempt when seeking to prosecute their rights through legal action, consumers often encounter formal proceedings and complex language that prove challenging for laypersons to comprehend.
2. Communication challenges between parties also pose significant obstacles. Consumers may require written evidence of their complaint or need to notify the business within a specified or reasonable timeframe after its discovery.
3. Consumers must demonstrate perseverance, as court procedures often entail lengthy timelines, particularly when hearings involve witness testimonies or require expert opinions.
4. The financial value of the consumer's claim is often relatively low, which may not justify pursuing the claim initially. Costs associated with travel, legal assistance, or expenses incurred during the hearing of witnesses and expert opinions can often exceed the value of the claim itself.

Negative responses or reactions from businesses regarding reports of defamation can be deemed acceptable if the complaints or review contains derogatory, mocking, inappropriate, or defamatory language. However, **if the complaint is conducted with honesty, business ethics, and goodwill, and reflects factual or actual circumstances, it should be responded to positively** (bold by the author), as complaints fundamentally contribute to the progress and development of the company. In the case of Deedi Tjhandra's video review, the phrase 'Barbie house' is used to liken the sturdiness or quality of the building to that of a Barbie house. This phrase is satirical phrase falls under sentences containing insults, mockery, inappropriate statements, and defamation. This should be addressed by interpreting the language by experts to determine whether the component of defamation has been met or not, considering that Deedi Tjhandra believes that the apartment units have numerous issues that have harmed him as a consumer.

In the current digital era, complaints or reviews expressed by consumers are increasingly perceived as a threat to businesses' image, reputation, credibility, and brand, especially when voiced by influencers, celebrities, YouTubers, and TikTokers with a large following on social media platforms. The implementation of Law No.19/2016 and Law No.11/2008 further facilitates the entrapment of consumers under defamation charges for their complaints or reviews. Law enforcement authorities, particularly judges, also readily invoke Paragraph 27 subsection (3) on defamation, thus serving as a tool to silence

consumer opinions or complaints and to advocate for the interest of business. In delivering the verdict in Deedi Tjhandra's case, the judge who invoked Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 did not adhere to the guidelines outlined in Constitutional Court (CC) Decision No.50/PUU-VI/2008, the Criminal Code, the Joint Ministerial Decree of the Ministry of Telecommunications and Informatics of the Republic of Indonesia, the Attorney general of the Republic of Indonesia, and the Chief of the Indonesian National Police No.229 of 2021, No.154 of 2021, and No.KB/2/VI/2021 (SKB), and Law No.1/2024. This lack of adherence can be elaborated as follows:

1. Paragraph 310 subsection (1) of the Criminal Code establishes that individuals deliberately impugning the honor or reputation of others through accusations aimed at public disclosure are liable for defamation, punishable by imprisonment for a max. of nine months or a fine not exceeding four thousand five hundred Indonesian rupiahs. Conversely, subsection (2) specifies that if such actions occur through written or visual mediums disseminated, displayed, or affixed in public, the perpetrator is chargeable with written defamation, punishable by imprisonment for a maximum of one year and four months or a fine not surpassing four thousand five hundred Indonesian rupiahs.
2. The CC Decision No.50/PUU-VI/2008 affirms that Paragraph 27 subsection (3) cannot be dissociated from the criminal legal norms delineated in Paragraphs 310 and 311 of the Criminal Code.
3. The elucidation of Paragraph 27 subsection (3) of Law No.19/2016 asserts that the provision therein pertains to the regulations on defamation and/or slander as stipulated in the Criminal Code.
4. SKB mandates that consistent with the rationale outlined in CC Decisions No.50/PUU-VI/2008 and the clarification provided in Paragraph 27 subsection (3), the definition of defamation and/or character defamation is inherently linked to and inseparable from the stipulations delineated in Paragraph 310 and 311 of the Criminal Code. Paragraph 310 of the Criminal Code addresses the offense of impugning someone's honor through accusations intended for public disclosure, whereas Paragraph 311 of the Criminal Code pertains to the act of accusing someone with knowledge of the falsity of the accusation by the perpetrator.
5. Paragraph 27 subsection (3) has been omitted in Law No.1/2024 and substituted with Paragraph 27A, which states, "Anyone deliberately impugning the honor or reputation of others by making accusations with the intention of public dissemination, in the form of Electronic Information and/or Electronic Documents conducted through Electronic Systems".

Upon scrutinizing the provisions of defamation aforementioned, it is evident that the judge erred in applying the legal framework in the case of Deedi Tjhandra and failed to employ grammatical interpretation regarding the phrase 'assail the honor and reputation of someone' in the defamation article of the Criminal Code. Additionally, the judge overlooked the rights of consumers stipulated in Paragraph 4 of Law No.8/1999. In light of CC Decision No.50/PUU-VI/2008, the judge ought to have interpreted the enforcement of Paragraph 27 subsection (3) in alignment with Paragraph 310 of the Criminal Code, thereby ensuring consistent interpretation. However, law enforcement officers do not fully grasp the elements encompassed in the entirety of Paragraph 310 of the Criminal Code, including phrases such as 'the honor or reputation of someone' and 'accusing something'. Consequently, CC Decision No.50/PUU-VI/2008 and the Explanation of Paragraph 27 subsection (3) of Law No.19/2016 prove ineffective in effecting any alterations to the implementation of defamation provisions.

The application of Paragraph 27 subsection (3) and Paragraph 310 subsection (1) and (2) of the Criminal Code in addressing consumer complaints or reviews is paramount, necessitating adherence to Paragraph 310 subsection (3) of the Criminal Code, which specifies that defamation or written defamation is not deemed as such if undertaken in **the common interest (as emphasized by the author)** or in self-defense. Paragraph 310 subsection (3) of the Criminal Code aligns with Paragraph 1376 of the Civil Code, which stipulates that civil claims about defamation cannot be upheld in cases where there exists an intent to insult. **The absence of intent to insult is affirmed if the perpetrator has acted in the common interest (as emphasized by the author)** or in urgent self-defense. The notion of common interest as delineated in Paragraph 310 subsection (3) of the Criminal Code and Paragraph 1376 of the Civil Code necessitates application in consumer complaint or review scenarios after the presentation of substantial evidence indicating that the expression in question does not encompass insults, vulgar or inappropriate language, ridicule, or defamation, but rather serves the genuine circumstances conducive to the common interest. By integrating the concept of common interest, consumers are less susceptible to defamation charges when voicing complaints or reviews, particularly in cases where Law No.8/1999 fails to safeguard their rights against defamation claims brought forth by business entities under Law No.19/2016 jo Law No.11/2008.

Previous research relevant to the author's topic includes a study conducted by Zulham, titled "A Critical Review of Consumer Protection Online Shopping, False Advertising, and Legal Protection" (Zulham, 2023). This research addresses consumer protection concerning fraudulent advertising on e-commerce platforms, which detrimentally affects consumers, conversely, the author's study delves into the application of the public interest concept in case of alleged defamation arising from consumer reviews of apartment units purchased, which does not align with the brochure and agreement. Subsequently, a study conducted by Kezia Ezekiel, titled "Our Right to Share, Their Right to Know: An Analysis of Public Interest Defense to Defamation" (Ezekiel, 2021). This study addresses defamation in relation to public interest, which is considered a criminal offense, examined from a human rights perspective, conversely, the author's research explores the concept of public interest in the realm of consumer protection law concerning product and/or service reviews on social media. Additionally, a study conducted by Dewi Bunga, titled "Product Reviews by YouTubers: Education or Defamation?" (Bunga, 2021). This research examines product reviews by YouTubers facing defamation lawsuits, despite providing educational content to the public about a product, conversely, the author's study explores product reviews in video format by TikTokers and the application of the concept of public interest to counter defamation claims from business entities.

The author's research introduces a novel approach by advocating for the application of the concept of common interest, traditionally confined to public law, to the realm of consumer protection. While typically associated with matters involving the press and specific criminal offenses, the author contends that the concept of common interest should extend to consumer protection, with a focus on establishing whether consumer complaints or reviews serve a common interest. If such an interest is demonstrated, then the corresponding claim should be deemed invalid. Consequently, the concept of common interest emerges as a viable solution to cases where consumer complaints or reviews on social media, which adhere to ethical standards and are based on genuine circumstances, face defamation claims from business entities.

The legal inquiry undertaken in this study revolves around the utilization of the concept of common interest as delineated in Paragraph 310 subsection (3) of the Criminal Code and Paragraph 1376 of the Civil Code concerning claims and legal actions for defamation stemming from consumer complaints or

reviews of goods and/or services. The objective of this research is to analyze the legal safeguard provided by the concept of common interest under Paragraph 310 subsection (3) of the Criminal Code to consumers regarding complaints or reviews on social media encountering defamation claims by business entities. Essentially, consumer complaints or reviews should not be subject to criminalization unless they incorporate insults, derogatory statements, ridicule, defamation, or inappropriate language. Nonetheless, in practice, judges frequently convict consumers of defamation without conducting a thorough examination to ascertain whether the elements of defamation have been satisfied and without considering the entirety of Paragraph 310 of the Criminal Code, notably subsection (3). This disparity has piqued the author's interest in exploring the application of the concept of common interest in product reviews by consumers as a means to defend against defamation claims by business entities.

RESEARCH METHOD

The research methodology employed is normative legal research, utilizing a legislative and conceptual approach. The statutory approach is based on Paragraphs 4 to 7 of Law No.8/1999, which regulate the rights and obligations of consumers and business actors, as well as Paragraph 310 of the Criminal Code, Paragraph 27A, and Paragraph 45 of Law No.1/2024. Additionally, the conceptual approach employs the common interest concept of consumer protection, particularly in the context of conducting reviews on social media. This study adopts qualitative analysis techniques to examine consumer cases involving reviews on social media that result in defamation claims. The research incorporates both primary and secondary legal sources. By analyzing these cases, the study aims to enhance understanding of the common interest concept and its implications for consumer protection. The main legal foundation stems from Law No.1/2024 jo Law No.19/2016 jo UU No.11/2008, Criminal Code, and Law No.8/1999. Supplementary legal sources comprise pertinent journals and literature addressing legal certainty within the domain of consumer protection law. The utilization of primary legal materials enhances the analysis in this study, particularly regarding the concept of common interest as regulated in the Criminal Code, Law No.1/2024 jo Law No.19/2016 jo Law No.11/2008, as well as Law No.8/1999, which protect consumers' rights to express their opinions. Additionally, secondary legal materials, including journals and literature are employed to support the analysis of primary legal materials, specifically in the context of common interest and consumer review cases on social media.

RESULTS AND DISCUSSION

Consumer Rights in Lodging Complaints or Posting Product Reviews

Walter Brenner stated that digital economy is an aggressive use of data by transforming business model, facilitating new products and services, creating new processes, generating greater utility, and ushering in a new culture of management (Rosadi & Tahira, 2018). Consumer education and awareness are essential to protect themselves, recognize their rights, understand the risks of online transactions, and know how to deal with problem that may arise in the digital environment (Widiarty & Tehupeiori, 2024). In today's digital age, it is increasingly common for consumers to leverage social media platforms to express complaints, concerns, or reviews regarding products and services they have utilized or experienced. Within e-commerce platforms, there often exists a dedicated review section complete with ratings, enabling consumers or buyers to share feedback or evaluate products they have purchased. This review feature on e-commerce platforms proves immensely valuable for prospective consumers or

buyers. Through the examination of product reviews or assessments, often supplemented with unboxing videos or images, individuals can make informed decisions about whether to proceed with purchasing the product or not.

The function of product reviews encompasses the evaluation of the condition, quality, strengths, and weaknesses of a product or service. In this reviewing process, not only do potential consumers benefit, but business operators also gain valuable insights. Business operators receive candid feedback from consumers, wherein positive reviews highlighting the excellence of the product can stimulate market demand for the goods and/or services. Conversely, if the product exhibits shortcomings that necessitate improvement, it undergoes further scrutiny through quality control mechanisms, including criticism, complaints, and suggestions provided by consumers. These inputs serve as constructive feedback for business operators, enabling them to enhance the utility of their products, services, and facilities, ultimately aiming to foster consumer satisfaction (Imelda, 2023).

Consumer reviews are undeniably a fundamental right of consumers, as stipulated in Paragraph 4 letter d of Law No.8/1999, which guarantees the right to express opinions and grievances regarding the goods and/or services they have utilized. However, it is imperative to acknowledge that there are limitations inherent in conducting reviews. While consumers have the right to express their opinions, it is equally essential to respect the rights of others, as each individual's right to express their opinions, it is equally essential to respect the rights of others, as each individual's rights are protected by law.

The limitations that must be observed, in consideration of the rights and interests of other parties that warrant respect, encompass honesty, common sense, good intentions, and full responsibility. When providing reviews, it is imperative to present factual information that is substantiated, ensuring that statements made for public knowledge are supported by robust evidence. This approach safeguards against the risk of defamation or slander, as the information conveyed is grounded in verifiable proof rather than unsubstantiated claims. Constraints on the consumer's right to express opinions, grievances, criticisms, suggestions, and share information with other members of society can only be imposed by laws, business ethics, and taking into account various factors, including (a) Respect for human rights and the freedom of others; (b) Prevailing societal norms; (c) Public safety and order; (d) Common interest; (e) national integrity (Ferdinal & Astuti, 2024). Consumers are also obliged to utilize language or expressions that are reasonable and adhere to societal norms of decency (Mar'Ali & Putri, 2021). Consumers are not prohibited from expressing opinions or comments about a product or service in any media, provided that it is conducted in a manner consistent with prevailing norms and positive laws (Devi & Putrawan, 2018). In the video review by @ompolosbanget, also known as Deedi Tjhandra, the phrase "Barbie house" was used in a moment of frustration regarding the quality of the apartment unit's construction, likening its sturdiness to that of a "Barbie house" that could collapse at any moment. Deedi Tjhandra's statement is satirical, aimed at criticizing PT.MBM. It is important to note that this statement was not intended to defame, insult, or disparage, but rather was based on factual circumstances regarding the quality or stability of the apartment unit's construction. However, it is prudent to seek an expert interpretation of the language before pursuing defamation charges. Moreover, it is noteworthy that consumer rights are regulated in Paragraph 4 Letter A of Law No.8/1999, which stipulates that consumers have the right to comfort, safety, and security in consuming goods and/or services, as well as in Letter B, which states that consumers have the right to choose goods and/or services and receive them according to the agreed exchange value, conditions, and guarantees promised. Before complaining about the form of a video, Deedi Tjhandra had notified PT.MBM management but did not receive a response, thereby constituting a violation of consumer rights and entitling them to compensation, damages, and/or replacement if the

goods and/or services received do not conform to the agreement or as expected (Paragraph 4 letter b and h of Law No.8/1999).

Allegation of Defamation by Business Entities

In addressing consumer complaints or reviews, business operators are protected by Paragraph 6 letters b and d of Law No.8/1999, which stipulate that business operators have the right to legal protection against malicious actions by consumers and have the right to rehabilitate their reputation if it is legally proven that the consumer's loss was not caused by the traded goods and/or services. While Law No.8/1999 has established mechanisms for resolving consumer disputes, cases of consumer complaints or reviews often escalate to criminal charges when made in public, particularly on social media platforms. In such instances, business operators/manufacturers may invoke a defamation clause in Law No.19/2016 and Law No.11/2008. Consequently, consumer reviews of a product or service may not be resolved through civil proceedings but instead may lead to criminal proceedings.

The rights accorded to business operators under Paragraph 6 of Law No.8/1999 cannot be invoked if their obligations are not fully fulfilled. Instead, business operators must confront legal repercussions and be held accountable for their obligations as outlined in Paragraph 7. Consequently, business operators are precluded from exercising their rights to seek legal protection or retaliate against consumers who report their losses or complaints through mass media if they have not adequately fulfilled their obligations (Zuhairi, 2015). Paragraph 27 subsection (3) is frequently wielded by business operators as a tool against consumer complaints, grievances, or reviews perceived to tarnish their reputation, credibility, and brand. However, when employing defamation clauses, it is imperative to initially reference its foundational articles, specifically Paragraph 310 subsection (1) and (2) of the Criminal Code. Paragraph 310 subsection (1) and (2) of the Criminal Code contains the phrase: "...attacking the honor or reputation of someone by accusing something...". consequently, defamation hinges on a critical element wherein one falsely accuses someone of something that adversely impacts their honor and reputation. For instance, if individual A consumes a food product labeled for consumption within 3 days but consumes it after 3 days, resulting in a stomachache, and subsequently complaints or voices grievances on social media alleging that the stomachache was caused by the food product, this would constitute clear defamation.

R.Soesilo contends that defamation constitutes a criminal offense due to its deliberate nature involving an intentional attack on someone's honor and reputation, motivated by malicious intent to harm. In cases where criticism is coupled with or followed by an act of defamation that is subject to punishment, not the criticism itself. In the current digital era, consumers who offer honest and well-intentioned complaints or reviews based on factual circumstances can find themselves facing prosecution under defamation laws, particularly when explicitly naming the brand or business entity that disputes the complaints or reviews expressed on social media platforms. (Supiyati, 2020). In the contemporary digital landscape, consumers who voice complaints or reviews with honesty, good intentions, and grounded in actual circumstances or facts may still find themselves subject to defamation laws, particularly when explicitly mentioning the brand name or business entity that contests the complaints or reviews expressed on social media platforms.

The subsequent clause in Paragraph 310 subsection (1) of the Criminal Code, which warrants examination, is the phrase "...the honor or reputation of someone...". Here, the term "someone" pertains specifically to individuals or natural persons, rather than institutions or corporations. Consequently, it is apparent that business operators, functioning as legal entities or corporations, cannot invoke this paragraph. However, in practice, this paragraph is frequently applied indiscriminately, disregarding the

subject or victim (the complaint). Moreover, CC Decision No.50/PUU-VI/2008 concerning defamation clauses in Law No.8/1999 does not necessarily ensure that law enforcement officials adhere to or comprehend the enforcement of Paragraph 27 subsection (3), which must be harmonized with Paragraph 310 of the Criminal Code. This lack of comprehension primarily stems from difficulties in interpreting the language contained in Paragraph 310 of the Criminal Code. The Elucidation of Paragraph 27A of Law No.1/2024 defines defamation, stating that “attacking honor or good name” refers to actions that degrade or damage an individual’s reputation or dignity, causing harm to that person, including defamation and/or slander. Consequently, it appears that a victim can file a lawsuit for defamation as long as there is harm, even if the information conveyed or stated aligns with the facts.

The integration of CC Decision No.50/PUU-VI/2008 into the elucidation of Paragraph 27 subsection (3) of Law No.19/2016 has not been duly considered and implemented in defamation cases. Consequently, an SKB was issued, explicitly stating in letter b that if the content transmitted, distributed, and/or made accessible comprises insults categorized as ridicule, mockery, and/or inappropriate language (as emphasized by the author), then such actions may be deemed as a mild defamation offense as referenced in Paragraph 315 Criminal Code. However, according to the Explanation of Law No.19/2016 and the CC Decision, this provision is not encompassed within the purview of Paragraph 27 subsection (3) of Law No.11/2008.

Additionally, in letter c, it is specified that offenses about insult and/or defamation of character are not encompassed by Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008. Instead, **if the transmitted, distributed, and/or made accessible content comprises assessments, opinions, evaluations, or statements (as emphasized by the author)**. In letter f, it is stipulated that the victim, acting as the complaint, **must be an individual with a specific identity, not an institution, corporation, profession, or position (as emphasized by the author)**. Moreover, in letter g, it is mandated that the focus of prosecution under Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 does not center on the victim’s feelings but rather on the perpetrator’s deliberate (*dolus*) actions **aimed at disseminating/transmitting/making accessible information that impugns someone’s honor by making accusations intended for public dissemination (emphasized by the author)**.

The SKB issued by the Minister of Telecommunications and Information, the Prosecutor’s Office, and the Police have not been adhered to or enforced by law enforcement authorities. This lack of compliance has perpetuated the misuse of Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008, ultimately prompting the enactment of Law No.1/2024. It is noteworthy that in addition to criminal prosecution, civil law also governs lawsuits based on defamation, as outlined in Paragraph 1376 of the Civil Code, which falls under the purview of unlawful acts. Paragraph 1376 of the Civil Code stipulates that a person who makes a statement objectively insulting another person may absolve themselves from liability if the publication was intended to alert the public to events detrimental to them or to warn the public of dangers threatening their interest (Heriyana, Dewi, & Ujianti, 2020).

Paragraph 310 subsection (3) of the Criminal Code and Paragraph 1376 of the Civil Code emphasize the concept of common interest, stipulating that an act cannot be penalized if it is carried out in the common interest. This principle underscores that, in both criminal and civil law, common interest take precedence over personal interests. In consumer cases, common interests must be prioritized over business interests. Consequently, if a consumer’s review on social media is deemed harmful to a business but serves the broader common interest, the consumer should not be prosecuted under defamation laws. This principle is particularly relevant in cases such as Deedi Tjhandra’s and Stella Monica’s, where consumer reviews led to legal trials with differing judicial outcomes. In the Stella Monica case, the court

ruled that she was not guilty of defamation, whereas in the Deedi Tjhandra case, the court found him guilty of defamation. Notably, in both instances, the judges did not reference Paragraph 310 subsection (3) of the Criminal Code, which provides for the common interest defense. The Stella Monica case originated from a social media review she posted about facial treatments at the L'Viors clinic. Stella Monica shared her conversation with a doctor at the clinic via an Instagram Story, highlighting that her facial condition had not improved after using the clinic's products or undergoing its treatments. Her post elicited responses from her friends, many of whom reported similar experiences. Following this, L'Viors issued a formal demand to Stella Monica, requiring her to delete the post and issue a public apology on her social media accounts, as well as in a national newspaper with half-page advertisements published on three different days. Due to financial constraints, Stella Monica was unable to meet these demands, which led to her being reported to the police on charges of defamation. In handling consumer cases such as this, judges have consistently refrained from applying the concept of common interest as outlined in Paragraph 310 subsection (3) of the Criminal Code. Instead, they focus solely on whether the elements of Paragraph 27 subsection (3) of Law No.19/2016 and Law No.11/2008 are met.

The utilization of Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008 to incriminate consumers who provide complaints or reviews has generated a negative perception in society, particularly when the complaints or reviews do not transgress ethical and decency standards and are devoid of insults, mockery, or inappropriate language, as stipulated in the SKB. This was exemplified in the EIGER case, wherein a consumer purchased EIGER cycling glasses and subsequently provided a review based on their experience. The review was uploaded to their YouTube channel, and five months following the video review, the consumer received a letter of objection from EIGER, urging them to either remake the review video or delete it. EIGER's response drew criticism from social media users, prompting an apology from EIGER. The application of defamation clauses should be accompanied by evidence verifying the satisfaction of all its elements to mitigate the risk of abuse. Likewise, consumer complaints or reviews, constituting their rights, should be substantiated to have been carried out with honesty, ethics, and decency, and in alignment with the actual circumstances experienced by them.

Definition and Legal Basis of Common Interest

A.P.Parlindungan delineates the concept of common interest as encompassing the interest spanning all strata of society, thereby influencing the broader welfare of the community and transcending the exclusive domain of governmental concerns. Theo Huijbers posits that common interest denotes the collective welfare of society, delineated by various facets, including safeguarding individual rights as citizens and ensuring the establishment and sustenance of public amenities and services. Schenk defines common interest as an interest yielding net benefits exceeding incurred losses, wherein societal gains, albeit potentially entailing losses for certain individuals, are realized (Asmorowati, 2020). The notion of common interest aims to advance the welfare of the populace collectively, rather than focusing solely on individual concerns. Although individual consumers may harbor private interests seeking maximal protection, it is imperative to recognize that the interests at hand transcend the realm of private matters (Schmitz, 2022).

Under Paragraph 1 Number 6 of Law No.2/2012, common interest is defined as benefiting the common welfare. These principles apply to consumer complaints when they aim to protect broader societal interests, such as product safety or transparency. This provision defines common interest as comprising the welfare of the nation, state, and society, a mandate to be pursued vigorously by the government for the betterment of the populace. Moreover, Paragraph 35 letter c of Law No.16/2004

stipulates that prosecutors possess the discretion to dismiss cases in the common interest, wherein the term is elucidated to encompass the welfare of the nation and state, as well as the general public. However, the discretionary authority vested in prosecutors to dismiss cases is contingent upon certain conditions, specifically requiring the approval of the attorney general after due consideration of advice and opinions from relevant state authorities. This regulatory framework renders the application of the concept of common interest, as outlined in Law No.16/2014, challenging in scenarios involving consumer grievances or evaluations of goods and/or services, as obtaining approval from the attorney general for cases deemed “insignificant” and unrelated to state authorities may prove impracticable. Law No.1/2024 defines the public interest, specifically articulated in the Explanation of Paragraph 45 subsection (7). This provision clarifies that “carried out in the public interest” encompasses activities aimed at safeguarding public interest as manifested through the right to expression and the right to democracy, such as demonstration or criticism. In a democratic society, criticism is essential as a facet of freedom of expression and should be constructive, even when it entails disapproval of others' actions or behaviors. Fundamentally, the criticism referred to in this article serves as a form of oversight, correction, and advice on matters pertinent to societal interests.

According to Black's Law Dictionary, common interest is defined as the welfare of the public juxtaposed with that of private individuals or entities. It encompasses the concerns of society as a whole, with governments' acknowledgment of the imperative of promoting and safeguarding the welfare of the general populace. The author contends that common interest pertains to the welfare of the general public, which merits prioritization and protection owing to its fundamental link to collective welfare and utility. It is incumbent upon the government to ensure such protection, particularly in instances where the public interest clashes with private or corporate interest. Various theories delineate the concept of common interest, including: (Agustalita & Yuherawan, 2023)

1. The security theory asserts that the establishment of a safe and secure environment is of utmost significance to the well-being and sustenance of any society.
2. The prosperity theory maintains that the foremost interest of any society lies in achieving prosperity, which encompasses the fulfillment of all essential needs of the community, such as healthcare, clothing, nutrition, and employment opportunities.
3. The efficiency of life theory contends that the central interest in societal existence revolves around living efficiently.
4. The theory of collective prosperity asserts that the paramount consideration in the life of any society is the collective prosperity and happiness of its members. Accordingly, all societal issues should be addressed comprehensively and effectively.

The theory that embodies the essence of the public interest is the theory of well-being and shared prosperity. Within this framework, the common interest is often denoted as public welfare, general welfare, or common welfare. It is imperative to conceptualize common interests at a broader and more enduring level. The undue influence exerted by political activists or interest groups on a common interest in the short term could undermine its essence prematurely. Hence, common interest should be perceived as the embodiment of principles and normative values within modern democratic market economies, providing a solid foundation for societal coexistence. According to Hans Kelsen, “the public interest emerges from society, evolves within society, and is mediated by state institutions”. Following Kelsen's assertion, if consumer protection can be established at all three levels- society, policy, and state institutions can be affirmed that consumer protection indeed embodies a standalone common interest. To affirm the

inclusion of consumer protection within the domain of self-standing common interest, it is crucial to subject it to examination across the three levels outlined by Hans Kelsen, namely: (Simon, 2021)

1. Consumer protection at the societal level encompasses various rights bestowed upon consumers, aimed at rectifying imbalances in their bargaining power during contractual engagements. Examples include the right to information, the right to education, and the right to judicial protection. Moreover, consumer protection can be conceptualized as a fundamental human right. In this inquiry, it is imperative to initially ascertain whether consumer protection, in its entirety, can indeed be construed as a human right. Subsequently, a secondary investigation is warranted to determine whether any of the aforementioned rights can be categorized as a human right.
2. Consumer protection serves as a legislative objective, yet frequently proves challenging to delineate as the primary aim due to its implicit and intricate integration within specific domains, such as commerce, healthcare, or social services.
3. Consumer protection, mediated by state institutions, necessitates an examination not only of judicial decisions safeguarding consumers but also of the roles played by state agencies.

Business entities perceiving consumer complaints or reviews on social media as detrimental to their company are likely to utilize Paragraph 27 subsection (3) of Law No.19/2016 and Law No.11/2008 as coercive measures to compel compliance from consumers. These measures may involve pressuring consumers to remove tweets or videos posted on social media platforms, issuing public apologies, and providing clarifications, among other actions. Such tactics represent a form of negotiation from the business entities to consumers, aimed at averting potential criminal charges from escalating to court proceedings, while simultaneously seeking to restore the company's reputation, credibility, or brand image by portraying consumers or users as responsible or mistaken in their complaints or reviews. However, pursuing criminal charges through legal channels carries risks for business entities. This approach may lead to a negative public perception, with the company being viewed as arrogant and resistant to criticism, thereby damaging its reputation and brand image. The most severe consequence could entail consumer boycotts against the company's products or services.

Essentially, businesses aggrieved by consumer complaints or reviews may choose to pursue civil recourse by invoking Paragraph 1376 of the Civil Code, specifically concerning defamation lawsuits, rather than resorting to Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008. Similarly, consumers have the option to counter such lawsuits by demonstrating that their actions were motivated by common interest, with the judge tasked to assess the presence of public interest in the matter. The provision outlined in Paragraph 1376 of the Civil Code regarding common interest finds its parallel in Paragraph 310 subsection (3) of the Criminal Code, which stipulates that actions conducted in the common interest are not considered defamation if carried out for such purposes.

Enactment of the Concept of Common Interest in Consumer Cases: Case Analysis of Deedi Tjhandra

In the case of Deedi Tjhandra, a breach of contract has been committed by PT.MBM concerning the apartment facilities, which do not correspond to what was promised in the brochure and fail to meet the expected quality or structural integrity of the building. This constitutes a violation of the obligations of the business entity as delineated in Paragraph 7 letter d-g of Law No.8/1999, specifically : (i) Ensuring the quality of goods and/or services produced and/or traded based on the applicable standards of quality; (ii) allowing consumers to test and/or try specific goods and/or services and providing guarantees and/or warranties for manufactured and/or traded goods; (iii) Providing compensation, indemnification, and/or

replacement for losses resulting from the use, application, and utilization of traded goods and/or services; (iv) Providing compensation, indemnification, and/or replacement if the received or utilized goods and/or services do not conform to the agreement.

Allowing crimes against consumers to persist undoubtedly jeopardizes the broader consumer community, making the reporting of businesses engaged in fraudulent practices detrimental to consumers an action in the common interest. According to Adam Chazawi, the criterion for public interest extends beyond mere objectivity and personal gain, serving instead the common good as a preventive measure to avert harm to the public. Hence, individuals reporting or whistleblowing crimes in the consumer sector fulfill the criteria for specific criminal exemption as stipulated in Paragraph 310 subsection (3) (Zuhairi, 2015). Hence, considering that Deedi Tjhandra's video review proves beneficial for the public interest or the wider community, particularly concerning the safety and security of goods, the judge should aptly apply Paragraph 310 subsection (3) of the Criminal Code. When Deedi Tjhandra, in his video review, raises concerns about the structural integrity of the building after conducting his test by installing an air conditioner, he should not face defamation charges but instead be entitled to compensation or damages. The judge who issued a guilty verdict for defamation disregarded consumer rights, as ample evidence was presented to substantiate that Deedi Tjhandra's statements were in alignment with the facts or circumstances.

In delivering his verdict, the judge referred only to Paragraph 27 subsection (3) of Law No.19/2016 Jo Law No.11/2008, and Paragraph 310 subsection (1) of the Criminal Code. However, the judge overlooked Paragraph 310 subsection (3), which addresses the concept of common interest provision that could have potentially absolved Deedi Tjhandra of conviction. The omission of this critical concept of common interest with proper examination, could have resulted in balanced legal protection for both consumers and business actors. This approach would ensure that consumers are not subjected to defamation charges if their reviews are proven to serve the common interest. Conversely, if it is demonstrated that the consumer acted in bad faith, they could be held liable under defamation laws. This balanced framework provides legal protection for business actors against unjustified losses caused by malicious consumer reviews. The judge overlooked Paragraph 310 subsection (3) of the Criminal Code, which exempts actions taken in the common interest from defamation. Additionally, the failure to consult construction and language experts led to a flawed decision that disregarded the evidence of structural deficiencies provided by Deedi Tjhandra. In addition, the judge was unaware of the repeal of Paragraph 27 subsection (3) of Law No.19/2016 jo Law No.11/2008, which was replaced by Paragraph 27A of Law No.1/20204 at the time of delivering the verdict, violated the legal fiction principle. This principle assumes that a regulation has been promulgated and, therefore, everyone is presumed to be aware of it (*presumption iures de iure*), as stipulated in the Explanation of Paragraph 81 of Law No.12/2011. Consequently, this renders the decision legally flawed. Additionally, the judge failed to grasp the elements outlined in Paragraph 310 of the Criminal Code. Notably, one of these elements specifies that the term "attacking the honor and reputation of someone" is directed towards individuals, as specified in the SKB, rather than institutions or companies. However, this aspect was also not adhered to.

Therefore, if a business entity opts to invoke Law No.19/2016 jo Law No.11/2008 to report consumers for complaints or product reviews instead of utilizing Law No.8/1999 to resolve disputes with consumers, then the judge, in their considerations, must apply Paragraph 310 subsection (3), which mandates the presentation of evidence. In the case of Deedi Tjhandra, the judge may summon language and building construction experts to examine two aspects : (i) Whether the phrase "Barbie house" constitutes insult, mockery, derogation, and indecency, or merely a satirical remark used as criticism

towards the developer regarding the visibly fragile quality of the building; (ii) To assess the construction or structural integrity of the building to determine whether it is indeed fragile or prone to collapse at any moment, or if the building meets the standards of fitness. By conducting these evaluations, the judge allows the consumer to demonstrate that their complaint or review reflects their experience or circumstances, thereby ensuring balanced evidence presentation and delivering justice to both disputing parties.

In reality, the transition from Paragraph 27 subsection (3) to Paragraph 27A does not introduce significant alterations, as it essentially substitutes the phrase “distributing and/or transmitting and/or making accessible” with “attacking the honor or reputation of others by accusing them of something to make it known to the public”. The content of Paragraph 27A is identically worded to Paragraph 310 subsection (1) of the Criminal Code, aimed at preventing easy misuse for trapping others with defamation charges. However, despite the connection between the use of Paragraph 27 subsection (3) and Paragraph 310, as stipulated in CC Decision No.50/PUU-VI/2008, and emphasized in the Explanation of Paragraph 27 subsection (3) of Law No.19/2016 and in the SKB, law enforcement agencies often fail to adhere to these guidelines, primarily due to a lack of understanding of the component contained in Paragraph 310 of the Criminal Code. This has led to Paragraph 27 subsection (3) being perceived as a provision that restricts freedom of expression, including in consumer cases. By applying the concept of common interest inherent in defamation laws, on one hand, the provision is used to prosecute consumers, but on the other hand, it can also be used to defend them following the enactment of Law No.1/2024, which elucidates the concept of public interest, judges should have applied this understanding in the Deedi Tjhandra case, considering the law was in force before the verdict was delivered. The failure of judges to incorporate the public interest concept leaves consumers perpetually disadvantaged in disputes with business actors. The implementation of Paragraph 27A of Law No.1/2024, which like its predecessor (Paragraph 27 subsection (3)) allows for defamation charges, must be counterbalanced by Paragraph 45 subsection (7). This latter provision clarifies the public interest to ensure it is not misinterpreted as a means to suppress freedom of expression, particularly when opinions are expressed ethically, based on factual circumstances, and with due politeness. Additionally, Paragraph 45 subsection (5) of Law No.1/2024 stipulates that defamation claims can only be initiated by individuals who are direct victims and not by legal entities. This provision serves as a form of legal protection for consumers, ensuring that they are not unduly subjected to defamation claims by business actors.

CONCLUSION

The application of the concept of common interest becomes essential in cases of consumer complaints or reviews of goods and/or services, provided it is demonstrated that the content conveyed or uploaded on social media contributes to the benefits or welfare of the general public and aligns with actual experiences and circumstances without breaching ethical and decency boundaries. Thus, consumers can defend themselves against defamation claims by invoking the concept of common interest as outlined in Paragraph 310 subsection (3) of the Criminal Code. The application of the concept of common interest necessitates proof through a thorough examination to establish whether there is indeed public interest in the complaint or review. This examination involves expert testimony and supporting evidence. As a result, the judge ensures the protection of the right to freedom of expression and the right to security, safety, and comfort of consumers concerning goods and/or services, conducted with honesty, integrity, and by actual circumstances.

The enactment of Law No.1/2024, which annuls Paragraph 27 subsection (3), reflects the failure to adhere to the appropriate application of this provision, which should align with Paragraph 310 of the

Criminal Code. Consequently, the content of Paragraph 27A closely resembles that of Paragraph 310 of the Criminal Code. The regulation of Paragraph 27A, reinforced by Paragraph 45 subsection (5), explicitly prohibits legal entities from utilizing the defamation paragraph, thereby providing tangible legal protection for consumers. Furthermore, Paragraph 45 subsection (7) incorporates the principles of Paragraph 310 subsection (3) of the Criminal Code, ensuring that the concept of common interest is upheld. This adoption prevents the defamation paragraph from being arbitrarily used to suppress consumers' right to express their opinions, particularly in cases involving reviews on social media. The verdict in the case of Deedi Tjhandra is legally flawed because it relied on Paragraph 27 subsection (3), which is no longer valid, thereby underscoring the formidable legal position of business compared to the fulfillment and protection of consumer rights. The judge's decision to convict Deedi Tjhandra of defamation, using a paragraph that has been effectively abolished, sets a negative precedent. This ruling creates a chilling effect, deterring consumers from posting honest reviews on social media for fear of legal repercussions. As a result, potential buyers may not have sufficient information to make informed decisions about purchasing products. Moreover, the judge's disregard for the evidence presented by Deedi Tjhandra, which demonstrated that his review accurately reflected his personal experience, highlights the failure to apply the concept of common interest. This omission deprives consumers of legal protection, silencing their right to express opinions when confronted with the interests of business actors. Such decisions undermine the government's efforts to ensure robust legal protection for consumers and have broader negative implications for consumer rights.

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