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Reconstructing Consumer Protection through Product Liability Reform from a Tort Law Perspective

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Abstract. *This study aims to examine and reconstruct Indonesia's product liability regulations from a Tort Law Perspective in order to strengthen effective consumer protection in contemporary commerce. The research is grounded in the problem that existing regulatory frameworks, particularly those contained in the Civil Code and Law Number 8 of 1999 concerning Consumer Protection, remain general in character and predominantly fault-oriented, thereby limiting consumers' ability to obtain compensation for losses caused by defective products. Such a framework is increasingly inadequate in responding to complex distribution chains, digital transactions, and modern market risks. This study employs a normative juridical method using statutory and conceptual approaches. The statutory approach analyzes relevant legislative provisions through systematic and teleological interpretation, while the conceptual approach examines core tort doctrines such as strict liability, vicarious liability, and duty of care within comparative legal discourse. The novelty of this research lies in its systematic reconstruction model that integrates modern tort principles into Indonesia's product liability regime, moving beyond a purely fault-based paradigm toward a risk-allocation and consumer-oriented framework. The findings demonstrate that incorporating strict liability standards, expanding accountability through vicarious liability, and reinforcing duty of care obligations would create a more balanced, preventive, and justice-oriented liability system. Such reform is essential to enhance legal certainty, improve access to remedies for consumers, and harmonize national regulations with global developments in tort law.*

Keywords: *Consumer; Liability; Protection; Reform; Tort.*

1. INTRODUCTION

The rapid development of trade in goods and services in Indonesia over the past two decades has significantly transformed the structure of national commerce. Market liberalization, increased export–import activities, and the expansion of digital-based trading platforms have enabled producers to distribute products widely and efficiently

(Rusydiana, 2009). While this transformation contributes positively to economic growth, it simultaneously increases the circulation of diverse products with varying standards of safety and quality. The proliferation of domestic and imported goods has heightened the risk of defective products entering the market, thereby increasing potential harm to consumers (Prananda, 2023). Cases involving hazardous food and beverages, counterfeit medicines, and unsafe electronic products illustrate how product defects may result in both physical injury and material losses (Oktaviani, 2019). These developments place product liability at the center of contemporary legal discourse, particularly in ensuring that consumer protection keeps pace with market expansion.

Legal protection for consumers constitutes not only an economic necessity but also a manifestation of the state's responsibility to maintain a fair balance between business actors and consumers (Sulistianingsih et al., 2023). Effective consumer protection frameworks aim to provide legal certainty, promote responsible production practices, and ensure product safety standards (Fauzi & Koto, 2022). However, in practice, consumers often remain in a structurally weaker position due to informational asymmetry, limited evidentiary capacity, and restricted access to justice (Putra et al., 2023). This imbalance indicates that the existing regulatory regime has not yet functioned optimally in delivering substantive protection. The gap between normative guarantees and practical enforcement reveals the need for a more responsive and adaptive product liability system.

Conceptually, product liability forms part of tort law, which regulates civil responsibility arising from acts that cause harm to others (Abdurrahman & Agustina, 2024). Tort law is grounded in the principle that individuals or entities must bear responsibility for damage resulting from negligence or, in certain circumstances, strict liability without proof of fault (Adiyanta & Widyastuti, 2021). Within this framework, producers are bound by a duty of care to ensure product safety throughout the stages of production, distribution, and marketing (Putri et al., 2024). The application of tort principles offers a more structured allocation of risk and accountability, emphasizing not only compensation but also preventive responsibility. Therefore, adopting a Tort Law Perspective becomes increasingly relevant in reconstructing product liability regulations in Indonesia.

Comparative experiences further demonstrate the significance of tort-based product liability systems. In jurisdictions such as the United States, strict liability enables consumers to obtain compensation upon proving product defect and causation, without the burden of establishing producer fault. The United Kingdom has refined negligence doctrines to reinforce producers' duty to ensure product safety prior to distribution (Sodikin, 2022). Similarly, the European Union's Product Liability Directive establishes clear producer accountability for defective products that cause harm (Yeni et al., 2025). These comparative models illustrate that strong tort principles enhance consumer protection and create a more balanced relationship between economic actors. By contrast, Indonesia's regulatory framework remains predominantly fault-oriented.

In Indonesia, product liability is principally governed by Articles 1365–1367 of the Civil Code and Law Number 8 of 1999 concerning Consumer Protection. Article 1365 establishes liability based on unlawful acts requiring proof of fault, while Articles 1366 and 1367 extend responsibility to negligence and certain supervisory relationships (Eleanora & Ahmad, 2023). Although these provisions provide a general foundation for civil liability, they do not specifically address defective product regimes. The absence of explicit strict liability provisions creates a normative limitation, as product-related harm is treated under general tort principles without special allocation of risk (Ariyanto et al., 2021). Consequently, consumers bear the burden of proving fault, which is often technically complex and practically difficult.

The Consumer Protection Law attempts to strengthen consumer rights by imposing obligations on business actors, including the duty to compensate for losses resulting from goods or services (Pratama, 2025). Nevertheless, despite its progressive orientation, the law does not comprehensively regulate strict liability or multi-layered accountability across distribution chains. Empirical realities demonstrate that consumers frequently fail to obtain adequate remedies in cases involving defective electronic goods or pharmaceutical products due to evidentiary challenges (Setiawan & Afrita, 2025). Weak enforcement mechanisms, limited institutional authority of consumer protection bodies, and minimal sanctions further reduce regulatory effectiveness (Kuncoro & Syamsudin, 2024). Concrete cases, including hazardous consumer products and limited recall practices, reveal systemic deficiencies in ensuring accountability (Humayrah Tuanaya, 2022).

Based on these conditions, a clear research gap emerges between Indonesia's existing fault-based regulatory framework and the evolving demands of modern commerce that require risk-based and preventive liability mechanisms. Although tort law principles such as strict liability and vicarious liability have proven effective in comparative jurisdictions, their integration into Indonesia's product liability system remains incomplete. This normative gap weakens consumer protection and undermines legal certainty in an increasingly complex economic environment. Therefore, this research addresses the urgent need to reconstruct Indonesia's product liability regulations from a Tort Law Perspective to develop a more balanced, preventive, and justice-oriented framework capable of responding to contemporary consumer protection challenges.

2. RESEARCH METHODS

This study adopts a normative juridical research design with a qualitative doctrinal analysis framework, selected on the grounds that the primary objective is to evaluate, reconstruct, and conceptually realign Indonesia's product liability regulations within a tort law perspective rather than to measure empirical behavior. The normative method is justified because the research focuses on examining the coherence, adequacy, and systematic consistency of existing legal norms, identifying doctrinal gaps, and formulating prescriptive legal reform proposals. The approaches applied consist of a statutory approach and a conceptual approach. The statutory approach is conducted through a structured examination of primary legal materials, particularly Articles 1365–1367 of the Civil Code and Law Number 8 of 1999 concerning Consumer Protection, including relevant implementing regulations, using grammatical, systematic, and teleological interpretation techniques to assess their conformity with modern tort law principles. The conceptual approach analyzes key doctrines such as product liability, strict liability, fault-based liability, and vicarious liability within contemporary tort theory and comparative legal discourse. The research "sample" consists of legal materials selected through purposive sampling, namely materials chosen based on relevance, authority, and doctrinal significance, including primary legal sources (statutes and official legislative records), secondary sources (peer-reviewed journal articles, scholarly books, and expert commentaries), and tertiary materials (legal dictionaries and explanatory references). Data collection is conducted through systematic legal document study, while data analysis employs qualitative normative techniques involving doctrinal analysis, comparative reasoning, prescriptive evaluation, and logical legal argumentation. As this study does not utilize empirical numerical data, statistical analysis tools are not applied; instead, analytical rigor is ensured through triangulation of authoritative sources, consistency in legal interpretation, and structured normative reasoning to maintain validity and reliability of findings. Through this comprehensive methodological framework, the study seeks to produce a theoretically grounded and normatively robust reconstruction model of product liability regulation that is aligned with contemporary tort law developments and responsive to consumer protection challenges in the global and digital era.

3. RESULTS AND DISCUSSION

3.1. Analysis of Product Liability Regulations in Indonesian Positive Law

The provisions regarding civil liability in the Indonesian legal system are fundamentally derived from the Civil Code (KUHPerdata), specifically Articles 1365 to 1367, which regulate unlawful acts (*on rechtmatige daad*). Article 1365 of the Civil Code states that "Every unlawful act that causes harm to another person requires the person whose fault caused the loss to compensate for that loss." The provision forms the primary basis for the concept of fault-based liability, where a person can only be held legally accountable if proven to have committed an error that caused harm to another party. Furthermore, Article 1366 of the Civil Code expands on this concept by emphasizing that every person is also responsible for losses incurred due to their negligence. Article 1367 of the Civil Code adds another dimension by stipulating that a person is also responsible for losses caused by the actions of others under their supervision, or by objects for which they are responsible. This series of articles forms the general basis for resolving civil disputes involving losses resulting from unlawful acts, whether intentional or negligent, and has become a key pillar of civil law practice in Indonesia.

However, while the provisions of Articles 1365–1367 of the Civil Code provide a normative framework for resolving civil disputes, these provisions remain very general and do not explicitly address product liability as recognized in modern legal systems, particularly in tort law. In the context of product liability, the focus is not solely on the existence of error or negligence, but also on the product's defects that cause harm to consumers. The Civil Code does not yet accommodate the principle of strict liability, which stipulates that a producer can be held liable without needing to prove fault, as long as the product is proven to be defective and causes harm. It makes the application of the Civil Code less effective in resolving cases involving losses due to defective products, as the burden of proof rests entirely with the consumer, who is generally in a weaker position. Furthermore, the general nature of these articles makes them unresponsive to the complex legal relationships between producers, distributors, and consumers in the modern era of commerce. Therefore, it can be said that although the Civil Code serves as the historical basis for civil liability in Indonesia, existing provisions are inadequate to effectively address contemporary legal needs related to product liability and consumer protection.

Law Number 8 of 1999 concerning Consumer Protection (UUPK) is a legal instrument that specifically regulates the relationship between consumers and businesses, aiming to achieve a balance between the rights and obligations of both parties. In the context of product liability, the UUPK provides a more concrete legal basis than the Civil Code because it explicitly regulates consumer rights and business obligations. According to

Article 4 of the UUPK, consumers have several rights, including the right to comfort, security, and safety when consuming goods and/or services. This article emphasizes that every consumer has the right to a guarantee that the product they use will not cause harm to their health, safety, or property. This right provides the moral and legal basis for consumers to demand accountability in the event of losses resulting from defective products. Thus, Article 4 not only recognizes consumer rights but also implicitly places the responsibility on business actors to ensure that products circulating in the market meet appropriate safety and quality standards.

Furthermore, Article 7 of the Consumer Protection Law regulates the obligations of business actors directly related to product liability. This provision requires business actors to act in good faith in conducting their business activities, provide correct, clear, and honest information regarding the condition and guarantees of the goods and/or services being traded, and guarantee the quality of the goods and/or services produced and/or traded in accordance with applicable standards. The obligation embodies a strong principle of moral and legal responsibility, as business actors are not only required to avoid deceiving consumers but also to ensure the safety and quality of the products they produce. Violation of this obligation can result in legal liability for business actors if it is proven that the products being traded cause harm to consumers. However, in practice, many business actors still neglect this obligation, particularly in providing accurate information regarding product safety, which ultimately poses risks to consumers.

The provision that directly regulates business actors' liability for consumer losses is contained in Article 19 of the Consumer Protection Law, which states that business actors are responsible for providing compensation for damage, contamination, and/or consumer losses resulting from consuming the goods and/or services they produce or trade. Furthermore, Article 19 paragraph (2) explains that compensation can take the form of a refund, replacement of goods and/or services of the same or equivalent value, or health care and/or compensation. The provision provides concrete protection for consumers injured by defective products. However, the implementation of this responsibility in practice is often hampered by weak law enforcement mechanisms and the absence of an efficient evidentiary system for consumers. The Consumer Protection Law also provides an opportunity for consumers to assert their rights through dispute resolution institutions, both in and out of court. However, in many cases, the resolution of these disputes is slow, complicated, and often does not result in substantive justice for consumers due to their weak bargaining position compared to business actors.

Although the Consumer Protection Law represents a step forward in protecting consumers, this law still has several fundamental weaknesses from the perspective of modern tort law. One of the main weaknesses is the lack of explicit regulation of the principle of strict liability, which states that producers can be held liable without needing to prove fault. In Indonesia's legal system, which still adheres to the principle of fault-based liability, the burden of proof remains on the consumer, even though in many cases, consumers lack the ability or access to the evidence necessary to demonstrate manufacturer negligence. This weakness often leads to consumers failing to obtain justice, especially in cases involving complex products such as medicines, food, or electronic devices. Furthermore, the Consumer Protection Law (UUPK) does not yet regulate in detail the multiple layers of responsibility within the distribution chain, leaving only the producer liable, without considering the role of other parties such as distributors or sales agents.

In addition to the lack of strict liability provisions, the limited scope of liability in the Consumer Protection Law (UUPK) is also a serious issue. This law has not fully adopted the principle of vicarious liability, which is the responsibility of business actors for the actions of other parties under their supervision, such as distributors, agents, or subcontractors. In practice, many defective products are distributed due to negligence in the distribution, storage, or marketing processes, but manufacturers are often exempt from responsibility because this is not clearly regulated in the law. Another significant weakness is the lack of preventive mechanisms, such as product recalls or a mandatory warning duty to consumers. Without these mechanisms, businesses lack a strong legal obligation to withdraw hazardous products from the market, and consumers are left without adequate protection once the risks are known.

These weaknesses are increasingly apparent in various concrete cases in Indonesia. For example, the 2008 case of dangerous infant formula containing melamine demonstrated the weakness of Indonesia's product liability system. When the product was proven to be hazardous to infant health, the government took temporary recall measures, but there was no clear legal responsibility on the part of the manufacturer for consumer losses. Similarly, in cases of defective electronic products, such as flammable or explosive cell phones, manufacturers only offer replacements without compensating consumers for the material or immaterial losses they experience. These cases reflect the weak application of tort law principles in the Indonesian legal system, where manufacturers' liability remains limited and does not provide a sufficient deterrent.

The weakness of legal regulations regarding product liability in Indonesia has serious implications for consumers' position within the legal and economic systems. In practice, the liability system, which still relies on the principle of fault-based liability, places the burden of proof entirely on consumers. It places consumers in a very weak position, as they generally lack the technical skills, access to production evidence, or adequate legal resources to prove that their losses were caused by manufacturer error. As a result, many consumers choose not to pursue compensation due to the lengthy, expensive, and uncertain outcome of legal proceedings. The condition creates a significant gap between the normative consumer rights guaranteed by law and the actual legal protection they receive on the ground. On the other hand, businesses actually benefit from the lack of an obvious and automatic liability mechanism. They can avoid legal action even if their products are proven to have caused harm, as long as no concrete fault can be proven. This situation demonstrates that the Indonesian legal system has failed to create a fair balance between the interests of consumers and businesses, and has failed to guarantee consumer rights as mandated by Law Number 8 of 1999 concerning Consumer Protection.

Weaknesses in the product liability system also impact public trust in products circulating in the market and the effectiveness of the law itself. When consumers feel unprotected, their trust in producers and law enforcement agencies declines. This situation can lead to a weakening of the competitiveness of domestic products, as consumers prefer foreign products perceived as offering better safety and quality assurance. From a social perspective, weak consumer protection widens the inequality gap, as only those with substantial resources can pursue their rights through legal channels. This contradicts the principles of social justice and protection of the vulnerable as mandated by the Constitution. Moreover, from a macroeconomic perspective, a legal system that does not provide certainty and effective protection for consumers will create an unhealthy market, where negligent producers can continue to operate without significant legal consequences.

From a systematic legal interpretation, the fragmentation between the Civil Code regime and the Consumer Protection Law demonstrates a structural inconsistency in regulating product liability within Indonesian positive law. The Civil Code emphasizes individual fault as the central determinant of liability, while the Consumer Protection Law introduces compensatory obligations without fully transforming the underlying fault-based paradigm. This dualism creates normative ambiguity regarding the standard of liability, the distribution of the burden of proof, and the scope of accountable parties within complex commercial chains. Moreover, neither regulatory framework clearly distinguishes among manufacturing defects, design defects, and failure-to-warn defects, categories that are central in modern product liability doctrine. The absence of such doctrinal differentiation weakens judicial consistency and limits the development of coherent jurisprudence. As a result, courts often rely on general unlawful act provisions rather than applying a structured product liability analysis, which reduces predictability and legal certainty. This condition confirms that Indonesia’s positive law framework remains reactive and case-based rather than systemically risk-oriented, thereby reinforcing the urgency of doctrinal reconstruction to ensure clarity, consistency, and stronger consumer protection guarantees.

3.2. The Urgency of Implementing Tort Law Principles in Renewing Product Liability Regulations in Indonesia

Tort law is a branch of civil law that regulates an individual's liability for losses caused to others due to unlawful acts or neglect of their legal obligations. The primary principle of tort law is that everyone has a duty not to cause harm to others, and if this obligation is violated, the injured party is obligated to compensate for the resulting losses. In the context of product liability, tort law plays a crucial role because it regulates the legal relationship between producers, distributors, and consumers who suffer losses due to the use of defective products. Three key principles in tort law relevant to product liability are negligence, strict liability, and vicarious liability. The principle of negligence emphasizes the duty of care that producers must exercise in the production and distribution of products. If a producer fails to meet safety standards and causes harm to consumers, the producer is deemed to have committed legal negligence and is liable.

In addition to negligence, the principle of strict liability in tort law plays a crucial role in strengthening legal protection for consumers. This principle stipulates that producers can be held liable without needing to prove fault, as long as it is proven that the product produced is defective and causes harm. Thus, the focus of responsibility shifts from the subjective fault of the producer to the objective condition of the product circulating in the market. This principle provides convenience for consumers who have previously faced difficulties in the evidentiary process due to limited information and access to the production process. Meanwhile, the principle of vicarious liability broadens the scope of producer responsibility by emphasizing that business actors are also responsible for the actions of other parties under their supervision, such as distributors, agents, or subcontractors. With this principle, legal responsibility does not stop at the primary producer but extends throughout the product supply chain. These three principles are highly relevant to the Indonesian legal system, which still relies on fault-based liability, as they balance the legal relationship between producers, who possess significant economic power, and consumers, who are often in a vulnerable position.

The application of tort law principles does not conflict with the values and principles of Indonesian civil law. Indonesian law upholds the principles of justice, legal certainty, and protection of the vulnerable, as reflected in the objectives of national law and various applicable statutory provisions. According to Sudikno Mertokusumo, law must be dynamic and adaptable to social changes in society. Meanwhile, Satjipto Rahardjo emphasized that law should not only be seen as a set of rigid normative rules, but also as a means of social engineering that must be able to meet the needs of modern society. In this context, the application of tort law in Indonesia does not mean imitating foreign legal systems outright, but rather adapting it to the characteristics of national law (*rechtsverwerking*) to remain in line with the existing civil law system. By adopting tort law principles, the product liability system in Indonesia can be strengthened without eliminating Indonesian legal values that emphasize balance and social justice.

Furthermore, the application of tort law principles in national law is highly urgent given the increasingly complex developments in the economy and trade. In the era of globalization and digitalization of trade, products are no longer solely produced and consumed locally, but also involve long and complex international distribution chains. This presents new challenges in terms of legal liability for products circulating in the market. Therefore, regulatory reforms based on tort law principles are necessary to ensure that the Indonesian legal system can adapt to these developments. These reforms could include explicit provisions regarding strict liability in the law, affirmation of the principle of vicarious liability in the product distribution chain, and the establishment of product safety and product recall mechanisms that businesses must implement if product defects are discovered. Furthermore, strengthening the role of institutions such as the National Consumer Protection Agency (BPKN) and the Non-Governmental Consumer Protection Agency (LPKSM) is crucial to increase the effectiveness of supervision and law enforcement.

Tort law-based legal reforms will also have a significant impact on increasing the effectiveness of legal protection for consumers in Indonesia. With the implementation of strict liability, consumers no longer need to be burdened with complex proof to demonstrate manufacturer fault, as legal responsibility arises automatically when a product is proven defective and causes harm. This will expedite the dispute resolution process and improve access to justice for consumers. Furthermore, the implementation of vicarious liability will strengthen the principle of accountability in the business world, as every party involved in the product supply chain has clear legal responsibilities. As a preventative measure, a stricter liability system will also encourage businesses to be more careful in producing and marketing goods, thereby reducing the possibility of harm to consumers.

Another positive impact of implementing tort law principles is increased public trust in the national legal system and products. When consumers feel protected by fair and effective laws, their confidence in domestic products will increase, which in turn can strengthen the competitiveness of the national industry. In the long term, a legal system that strictly enforces product liability will create a healthy, transparent, and ethical business climate, where responsible businesses will gain a competitive advantage over those who neglect product safety. This aligns with M. Yahya Harahap's view that civil law serves not only to resolve disputes but also as a means to create balance and harmony in social and economic relations. Therefore, the application of tort law principles is not merely a normative reform but also a strategic step towards building a just legal system, protecting consumers, and promoting sustainable economic progress in Indonesia.

Beyond compensatory objectives, integrating tort law principles into Indonesia's product liability regime would also function as a regulatory instrument for risk distribution and market discipline. A strict liability framework reallocates the economic risks of defective products to producers, who are institutionally better positioned to control quality, insure against risks, and internalize safety costs within production processes. Simultaneously, vicarious liability ensures that responsibility extends throughout the supply chain, preventing fragmentation of accountability in increasingly digital and cross-border commercial transactions. The incorporation of a structured duty of care standard would further institutionalize preventive obligations, compelling business actors to adopt compliance systems, product testing mechanisms, and transparent warning procedures. Such reforms would transform product liability from a purely remedial mechanism into a preventive and governance-oriented legal regime. In the long term, embedding these tort principles into statutory reform would not only strengthen consumer access to justice but also align Indonesia's civil liability architecture with global regulatory trends, thereby enhancing competitiveness, investor confidence, and sustainable economic governance.

4. CONCLUSION

Indonesia's current product liability regime remains structurally inadequate to deliver effective consumer protection because it continues to rely predominantly on fault-based liability under Articles 1365–1367 of the Civil Code and lacks explicit incorporation of modern tort doctrines within Law Number 8 of 1999 concerning Consumer Protection. This doctrinal limitation places an excessive evidentiary burden on consumers, weakens access to compensation, and fails to address complex supply chains in contemporary commerce, thereby undermining legal certainty, market fairness, and public trust. From a Tort Law Perspective, regulatory reconstruction is urgently required through the explicit codification of strict liability to shift the burden from proving fault to proving product defect and harm, the affirmation of vicarious liability across the entire distribution chain to prevent accountability gaps, and the establishment of mandatory product safety standards and recall mechanisms as preventive instruments. Simultaneously, institutional reinforcement of consumer protection bodies and clearer procedural frameworks for dispute resolution must accompany substantive reform to ensure enforceability. Such integrated reform would rebalance the legal relationship between consumers and business actors, transform product liability into a risk-based and justice-oriented system, and align Indonesia's civil liability framework with contemporary global standards while advancing social justice and sustainable economic development.

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