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The Application of The Shifting Burden of Proof Principles as an Alternative Consumer Protection Effort Due to Unfair Property Advertising

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Abstract:

In the business world, advertising becomes an important factor in marketing a product. Advertising is identified as a promotional media and introduction to products to be produced or sold to the public. The people must be careful in buying and selling transactions for housing or property. The problem in this study is how is the legal politics of the shifting burden of proof principle in an effort to provide fair consumer protection due to fair property advertising? Research Methods, normative research is research by directing research into positive law and written norms, thus the analysis in this study refers to the applicable laws and regulations namely the Consumer Protection Act No.8 of 1999. The typology includes descriptive research, this study uses literature study, the type of data used is secondary data obtained from literature, primary data through interviews. Conclusion of consumer protection against misleading property advertisements can be preventive by establishing a legal rule that will ensure that consumers can receive legal protection by conducting shifting burden of proof.

Keywords: Shifting Burden of Proof, Consumer Protection, Property Advertising.

I. Introduction

The globalization era is characterized by the existence of free trade between countries. Multinational companies expand the marketing of products produced to other countries by advertising these products to be known by consumers. In the business world and business, advertising is very important for marketing products. Advertising is identified as a promotional media and introduction to products to be produced or sold to the public. Law Number 8 of 1999 Concerning Consumer Protection in general provisions Article 1 paragraph (6) states: "Promotion is the introduction or dissemination of information on goods and / or services that will and are being traded". Advertising is one of marketing tools that is very widely used by businessmen to introduce various produced products to consumers, as well as to increase consumer awareness of their rights. There are many cases caused by improper advertising or promotion occur, for example, cases of large fraud under the guise of property investment sticking out in Yogyakarta in 2016, the people must be careful in making buying and selling housing or property transactions. [1]

Legislation in positive Indonesian law governing advertising in the Consumer Protection Act, namely article 9, article 10, article 13, article 17, and article 20. Good advertising must contain true and honest information because getting true and honest information is the right of consumers who must be considered by businessmen. Law Number 8 of 1999 concerning Consumer Protection (CPA) holds the shifting burden of proof in the process of proof in the court. This is regulated in Article 28 of the CPA. This provision states that the burden of proof is transferred to the businessmen and according to this provision, as long as the businessmen cannot confirm that the error is not an error that lays with his party, then by law the businessmen is responsible and must compensate the loss suffered. In advertising can also be applied shifting burden of proof, as long as the businessmen cannot prove that the misinformation occurs is not due to the actions of the businessmen, then the businessmen is obliged to compensate the consumers. In this case the formulation of the problem is

How does the legal politic of the shifting burden of proof principle provides protection to consumers which is justly due to unfair property advertisements. Why there is injustice in the application of the shifting burden of proof principle in efforts to protect consumers.[2]

II. Research Method

The method used normative juridical methods, the data used secondary data, the approach using the statute approach and conceptual approach, and the results are presented in a qualitative form.[3]

III. Result and Discussion

Law No. 8 of 1999 concerning Consumer Protection (CPA) holds the shifting burden of proof assessment in the process of proof in court. This has been regulated in Article 28 CPA. This provision states that the burden of proof is transferred to the businessmen and according to this provision, as long as the businessmen cannot confirm that the error is not an error that lies with his party, then the businessmen is legally liable and must compensate the loss suffered. And according to Article 28 of the CPA that Proof of whether there is an element of error in the claim for restitution as referred to in Article 19, Article 22 and Article 23 is the burden and responsibility of the businessmen. According to Law Number 8 of 1999 concerning Consumer Protection mentioned in Article 1 section (1) that consumer protection is any effort that guarantees legal certainty to provide protection to consumers. The scope of consumer protection can be distinguished in two aspects, namely protection against the possibility of goods delivered to consumers does not match what has been agreed and protection against the imposition of conditions that are unfair to consumers.[4]

Article 29 of the CPA states that the government is the most responsible party for fostering consumer protection, the implementation of which is submitted to the relevant Minister. Besides to coaching, an important government role is supervision of the implementation of consumer protection. Article 30 of the CPA states that the government, together with the community and non-governmental consumer protection institutions (LPKSM) are the parties that have been given the task of supervising. Government supervision is carried out on the implementation of consumer protection. The legal politics of the shifting burden of proof principle is carried out by issuing policies by the government that support consumers.[5]

The regulation on consumer protection before the passage of the Consumer Protection Act has not been optimally able to protect consumers, so consumers cannot protect themselves from violations committed by businessmen. After the Consumer Protection Act, which among others regulates consumer protection that is more integrative and comprehensive, also has an impact on growing consumer awareness of their rights and eliminates the reluctance of consumers to pursue resolution through legal channels. Any disadvantaged consumer can sue a businessmen or producer through a court within the scope of the general court according to what is stipulated in the Consumer Protection Act. The Consumer Protection Act imposes a burden of proof on whether businessmen is guilty or not on his own, so that the burden of proof governed and adhered to by the Consumer Protection Act is a shifting burden of proof system.[6] The justice theory is the idea that everyone wants to be treated fairly, there are many kinds of theories of justice:

1. The theory of natural law, since Socrates still maintained justice as the crown of law, natural law theory prioritizes "The Search For Justice" Aristotle's Justice Theory. At the time of Aristotle stated that justice is a political policy whose rules form the basis of state regulations. Aristotle distinguishes justice into 2 namely distributive justice applies in public law and corrective justice applies in civil and criminal law.

2. John Rawls' Justice Theory, in his book "A Theory of Justice" that social justice is a social and economic problem must be regulated so that it provides the greatest benefit for those who are less fortunate.

IV. Conclusion

The law is not merely a regulation of legal actions, but also contains values. The law is an indication of what actions are considered good and which are considered bad. On the other hand, for adherents of sociological jurisprudence, law is constructed from the needs, desires, demands, and expectations of the community. So, the priority of the benefit of the law itself is for the people so that the law will come alive. In this connection, the application of shifting burden of proof in the Indonesian legal system cannot be justified as a form of legal intervention on individual basic rights or a form of violation of the International Covenant on Civil and Political Rights, moreover it is related to the principle of the presumption of innocence. The purpose of applying shifting burden of proof is not to reduce the content and provisions of the law that governs it, but it exists and stands on the interests of the state and the law acting on the interests and hopes of the nation, demanding accountability from the apparatus for the authority that is in it, proving that it has carried out its duties and responsibility in accordance with legal provisions. So what is proven reverse is not what was charged, but the inherent authority

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