

## Responsibilities of Automotive Manufacturers Regarding Hidden Defects in Cars That Have Been Produced (Case Study: BMW X5 xDrive35i Year 2015 Production)

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### ABSTRAK

Kendaraan merupakan bagian penting dari masyarakat sehingga produsen otomotif berlomba-lomba menciptakan dan menawarkan produk otomotif terbaiknya. Namun tidak jarang ditemukan disfungsi berwujud cacat tersembunyi pada produk yang dihasilkan oleh produsen otomotif sehingga menimbulkan kerugian bagi konsumen. Tujuan dari penelitian ini adalah untuk mengkaji perlindungan hukum terhadap konsumen terkait cacat tersembunyi pada mobil yang diproduksi oleh produsen otomotif dan tanggung jawab produsen otomotif atas cacat tersembunyi pada mobil yang telah diproduksi dan dipasarkan oleh masyarakat. Metode yang digunakan dalam penelitian ini berbentuk yuridis normatif, yaitu metode penelitian hukum yang dilakukan dengan cara mengkaji bahan pustaka dan data sekunder yang meliputi sumber hukum primer dan sumber sekunder. Hasil dari penelitian ini adalah terbukanya perlindungan hukum di Indonesia terhadap konsumen yang dirugikan dengan adanya temuan cacat tersembunyi pada kendaraan yang dibelinya dari dealer resmi yang umumnya bernaung di bawah perusahaan produsen yang sama. Oleh karena itu, tanggung jawab juga akan ditanggung oleh produsen otomotif atas kerugian yang diderita konsumen atas kesalahannya dalam produksi kendaraannya. Produsen otomotif diharapkan dapat mengganti kerugian yang dialami konsumen dan kedepannya memperhatikan detail standar kualitas produk dan desain produk yang akan dikeluarkan agar tidak terjadi cacat tersembunyi lainnya di kemudian hari.

**Kata Kunci:** Produsen Otomotif, Mobil, Perlindungan Konsumen, Cacat Tersembunyi, Tanggung Jawab.

### ABSTRACT

Vehicles are an important part of society so automotive manufacturers are competing to create and offer the most outstanding automotive products. However, it is not uncommon for dysfunctionality that can be found in the form of hidden defects in products produced by automotive manufacturers, which causes losses to consumers. The purpose of this study is to examine the legal protection of consumers related to hidden defects in cars produced by automotive manufacturers and the responsibility of automotive manufacturers for hidden defects in cars that have been produced and marketed by the public. The method used in this study is in the form of normative juridical, which is a legal research method carried out by examining library materials and secondary data including primary legal sources and secondary sources. The result of this study is the exposure of

legal protection in Indonesia to consumers who are harmed by the findings of the hidden defects in the vehicle they have bought from an authorized dealer that is commonly authorized under the same company of manufacturers. Therefore, the liability would also be taken by automotive manufacturers due to losses suffered by consumers for their mistakes during the production of the vehicle. Automotive manufacturers are expected to compensate for losses suffered by consumers and in the future pay attention to detailed product quality standards and product designs that will be issued so that there will be no other hidden defects in the future.

## I. INTRODUCTION

Human beings are inseparable from daily needs that are required to fulfill their well-beingness. Based on the intensity, needs are divided into three types, namely primary, secondary, and tertiary. Primary needs are the main needs to support daily activities and are considered the most urgent, followed by secondary needs which need that create happiness, and tertiary needs which are classified for luxury purposes. Luxury goods are known to be desired as they can raise the status of an individual (Zainur, 2020), which includes transportation. Transportation is defined as moving or transporting from one place to another, which highly relates to lifestyles, the range of locations of productive activities, interludes, and available goods and services consumption (Yuliawati & Pratomo, 2019).

In the current era of globalization, private cars have become an important part of activities to make it easier for society to transport. Consumers normally seek comfort safety, and satisfaction in the private cars they are purchasing, which are supplied and marketed from various automotive penny products. Due to the numerous varieties and specifications that are offered in the market, consumers are obliged to pay attention to the products that suit their preferences the most. However, it is not uncommon for consumers to suffer losses due to hidden defect that can be discovered only after the car product has been purchased or consumers can be considered to have a bought "Defective Product". "Defective Product" in Bahasa is defined as products that are intentional or negligent so they might not comply with the manufacturing and distribution standards (Muthiah, 2018). The possibility of circulating defective products in Indonesia can be caused by the negligence of supervising agency that allows the product to enter the market (Wahyudi et al., 2022).

The problem of discovery of hidden defects by consumers in the product usually occurs due to the absence of notification from automotive manufacturers to consumers. For example, the responsible supervisor in the manufacturing stage is obliged to deliver information related to product imperfection and choose to sell this product, yet they dismiss the rights that should be claimed by consumers by ignoring the proper quality standards of a product. The implementation of quality standards for a product is a major part that must be acknowledged by business actors, such as automotive business players, before marketing their products because of danger and fatality that could harm consumer's

safety and so consumers typically suffer because of the imbalanced situation between business actors and consumers that result from business actors' stronger and more dominating role in establishing standard clauses (Syafriada & Hartati, 2021)

A case reported Nugroho, (2021) was found in PT BMW Indonesia and PT Astra Internasional Tbk that got sued by PT Sinar Baru Permai regarding the discovery of damage or hidden defects to the BMW X5 xDrive35i with the body code F15 of the 2015 production year. The defective product that was driven by Dharma Prasetyo, the Director of PT Sinar Baru Permai, brought fatality to the death of the driver while traveling at low speed. The car was hauled to the official workshop of BMW Astra in Sunter, North Jakarta for further inspection. It was reported that there had been damage in the propeller shaft, generated by the design flaw in their propeller shaft or driver front shaft that led to the discharge of AC water to create corrosions. Because of this damage, PT Sinar Baru Permai felt the aggravation and sued the defendant at the Central Jakarta District Court.

Considering the fatality of the problem, responsibility needs to be carried out by automotive manufacturers and dealers as sellers of car products to consumers who have experienced losses. Suppliers and sellers must respect consumers' rights by producing high-quality goods and services and safe to use by following applicable standards as well as the corresponding price. Besides, the rules on consumer protection in Indonesia have been legally established as stated in Law No. 8 of 1999. The existence of consumer protection laws is constructed to regulate and protect relationships between consumers and business actors in society.

Sometimes, automotive manufacturers that do not pay attention to the details of the products they have manufactured at production time could cause the distribution of defective and dangerous products in the market, threatening the safety of its consumers. Moreover, the variety of losses incurred by consumers is not expected. Consumers must defend themselves to enforce justice because that is part of human rights, a value that ought to be protected is the needs of the entire society, and the necessity of the individual self (Sugiyono, Suyanto, & Suherman, 2020). Based on this background, the author is interested to study the legal protection for consumers related to hidden defects in cars produced by automotive manufacturers and the liability of automotive manufacturers for hidden defects in cars that have been produced and marketed to the public.

## II. METHOD

This research was conducted using the normative juridical method, which is a legal research method carried out by examining library materials and secondary data which include primary legal materials and secondary legal sources. The primary legal source used the regulations of Law No. 8 of 1999 on Consumer Protection and Indonesian Civil Code. Meanwhile, secondary legal sources in the form of scientific journals and the results of previous research and then will be analyzed descriptively qualitatively with the existence of research objects in case 579/Pdt.G/2021/PN Jkt.Pst.

### III. RESULT AND DISCUSSION

#### 3.1. Legal Protection of Consumers Regarding The Presence of Hidden Defects in Cars Produced by Automotive Manufactures

Automotive product manufacturers are business units that carry out economic activities in designing, developing, producing, marketing, and selling motor vehicles. Based on the Regulation of the Minister of Industry Number 5 of 2018 concerning Amendments to Regulation of The Minister of Industry Number 34/M-IND/PER/9/2017 concerning The Four-Wheeled Motor Vehicle or More And The Motorcycle Industry, a motor vehicle industry company that operates must have an Industrial Business License with KBLI 29100 for four-wheeled or more. There are six manufacturing processes for four-wheeled vehicles or more motorcycles, namely: (1) body printing; (2) body splicing; (3) body painting; (4) assembly of key components; (5) assembly of motor vehicles; and (6) quality testing and control.

In the process of testing and quality control, the company producing automotive products is required to examine in detail the quality of the products it creates. Quality Control is a system of verifying the quality of a product or a process carried out by planning, using appropriate equipment, continuous inspection, and actions to see a product that is created to conform to the desired corporate standards (Marpaung & Jauhari, 2021). If a product has passed the Quality Control stage and passed the test, then a vehicle has been considered to have the standardized quality to be distributed and sold in the market.

Meanwhile, sales of automotive products are carried out by car dealers. A car dealership is a company or an individual that distributes new vehicles from manufacturers for sale to consumers. At the time of offering, the automotive products it sells, the dealer is obliged to pay attention to the elements of satisfaction from the customer, because the interests of consumers have been prioritized at the time before the goods are produced, as long as they are produced, and reach the hands of consumers so that they can be utilized optimally and made a good impression on consumers (Kristiyanti, 2008). Consumer satisfaction is a feeling or attitude towards a product of goods or services that exists after consumers make a purchase transaction and then use the product and comparing between expectations and actual product performance. Consumer satisfaction is one of the important keys for a company to make a good profit in the long term as well as the short term. Not only the seller but there are also numerous details that consumers need to pay attention to, for example, the schedule of vehicle maintenance, provisions of vehicle warranties, explanations related to after-sales service in the form of workshops, locations of official parts stores, demonstrations of vehicle equipment, as well as vehicle cleanliness on the interior and exterior.

However, it is not uncommon for many cases to arise after vehicle purchase transactions. One of them is a defect that was discovered after the vehicle was used for some time by

consumers. It is even worse when sometimes consumers do not know about the existence of this defect while buying or it can be said there is a hidden defect in the vehicle they own. The presence of hidden defects in these automotive products is very dangerous and can cause losses. The problem of hidden defects turned out to be the befall of PT BMW Indonesia and PT Astra International Tbk as assemblers, distributors, and sellers of BMW vehicle products through BMW Astra dealers. These two companies were sued by PT Sinar Baru Permai for unlawful acts because they held hidden defects in the BMW xDrive25i 2015 car. Dharma Prasetyo, the Director of PT Sinar Baru Permai, and the driver of the car admitted that he did not know if there was a design defect in the installation of AC water discharge which refers to the propeller shaft so the car he drove died suddenly and caused losses. With that reason for the lawsuit, PT Sinar Baru Permai's lawsuit was granted in its entirety and stated Defendant had committed an unlawful act for causing harm to Plaintiff.

In Article 1491 of the Civil Code, it has been explained that the seller has an obligation among others, to provide guarantees for two things, namely first, the possession of objects that are safe and second, there are no hidden defects in the item or in such a way that could lead to a reason for cancellation of the purchase. Articles 1504 and 1506 of the Civil Code also state that the seller must be responsible for hidden defects in the goods being distributed or must provide a guarantee that there are no defects in the goods they are offering regardless of the unawareness of the seller about the defect except in their agreement the seller is not obliged to bear anything (Ajeng et al., 2021). Assurance of product quality is a guarantee that the goods purchased are following certain product quality standards. If the standard is not fulfilled, consumers are allowed to accept compensation from the producer/seller (Sutedi, 2008).

Moreover, the regulation of the law on consumers in Indonesia is very concerning after the creation of Law No. 8 of 1999 concerning Consumer Protection. On April 20th, 1999 a regulation Law No. 8 of 1999 (known as Undang-Undang No. 8 Tahun 1999 tentang Perlindungan konsumen or UUPK) was published due to the efforts of the Indonesian Consumers Foundation (known as Yayasan Lembaga Konsumen Indonesia or YLKI) eventually submitted the UUPK academic text to the House of Representatives (known as Dewan Perwakilan Rakyat or DPR) (Tjipto, 2021). This law is enacted as a form of legal certainty in either private law or public law (Asmara et al., 2019). In its enforcement, the UUPK is enforced for consumers and business actors who need legal regulation and as a form of threat to violators to provide legal protection to consumers, if the rights that should be obtained by consumers are violated by business actors (Yaurwarin, 2020).

The obligation of business actors to provide a detailed explanation of the products they sell is stated in Law No. 8 of 1999. Article 7 explains that business actors are required to provide true, clear, and honest information about the condition and guarantee of goods/or services and provide an explanation of the use, repair, and maintenance, business actors must also guarantee the quality of the goods they produce and trade under applicable for consumers

to test or try certain goods and provide warranty guarantees for goods made or traded. With the legal protection of these consumers, it must be able to provide a sense of comfort and security to consumers for goods or services that will be used by consumers. Law No. 8 of 1999 also clearly states that there is a ban on business actors from trading damaged, defective or used, and polluted goods without giving honest and correct information about the goods.

In addition, Law No. 8 of 1999 concerning Consumer Protection provides provisions on the rights that consumers have, namely: a. The right to comfort security, and safety in consuming goods and/or services; b. The right to choose goods and/or services and obtain such goods and/or services following the exchange rate and the conditions and guarantees promised; c. The right to true, clear, and honest information regarding the condition and guarantee of goods and /or services; d. The right to be heard for their opinions and complaints on the goods and/or services used; e. The right to advocacy, protection, and appropriate resolution of consumer protection disputes; f. The right to consumer coaching and education; g. The right to be treated or served properly and honestly and non-discriminatorily; h. The right to obtain compensation, compensation, and/or replacement, if the goods and/or services received are not under the agreement or not as they should be; i. The rights are stipulated in the provisions of other laws and regulations. These consumer rights are guided by United Nations Guidelines for Consumer Protection which defines the interests of consumers such as a. Access by consumers to essential goods and services; b. The protection of vulnerable and disadvantaged consumers; c. The protection of consumers from hazards to their health and safety; c. Access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs; d. Consumer education includes education on the environmental social and economic consequences of consumer choice; e. Availability of effective consumer dispute resolution and redress; et cetera.

Based on the description of the rights owned by consumers, it can be seen that the comfort, security, and safety of consumers are very concerned about using goods or automotive products they bought. With the primacy of this right, business actors should be able to enforce an honest and responsible attitude in carrying out business activities by improving the quality of goods that are produced and marketed to consumers. If consumers find irregularities, then consumers' complaints are required to be heard and advocated for consumer protection, fair treatment, and compensation indemnity (Widjaja, 2001).

### **3.2. The Responsibility of Automotive Manufacturers for Hidden Defects in Cars That Have Been Produced and Marketed to The Community**

Based on Article 1504 of the Civil Code, a hidden defective product means that the product is declared a hidden defect if the product sold by the seller has a defect so it cannot fulfill the expected purpose. A product is declared defective with the possibility of being known

by the seller, unknown to the seller, and unknown to the consumer (Sudikno, 2014). In addition, a product may be declared defective if there is a production error in the assembly of the product due to human negligence or human error or the insecurity of the product for general use and the absence of information that there is a defect in the product purchased.

There are several criteria for a product to be declared defective and the responsibility of the buyer, including: (1) the seller is aware of defects due to manufacturing defects and trying to hide consumers and still sell them, (2) the seller is not aware of any defects in the product due to manufacturing defects but continues to sell it; (3) the seller is aware of any defects due to design/shape defects but seeks to hide and sell them, (5) the product is defective in the event of a defect in warning (industrial defect), conceals it to the consumer, and continues to sell it (Ariyanto et al., 2021). The existence of hidden defects in automotive products in car vehicles can also be said as a default if there is negligence which can be in the form of three kinds of conditions: (1) it does not do what it is willing to do; (2) carry out what was promised, but not as promised; and (3) do something according to the agreement not to be done (Subekti, 2005).

If the seller violates any of these conditions, the consumers can also sue civilly because the car vehicle purchased is not as promised by the seller at the time of the product promotion. Default due to a hidden defect is a kind of special form default. Article 1507 of the Civil Code explains that if there is a hidden defect as described in Articles 1504 and 1506 then the buyer can choose to return the goods he bought and sue to return the purchase price or the consumers can still own the goods and request for the refund following the judge's provisions. In addition, the responsibility for sellers who sell goods with hidden defects has two obligations: (1) Article 1508 of the Civil Code states that if the seller knows of a defect in the goods he sells, the seller must return the purchase price has been accepted and reimbursed all costs of losses along with interest; and (2) in Article 1509 of the Civil Code if the seller does not know of any defects in the goods he sells, then the seller must refund the purchase price and reimburse the costs of organizing the purchase and delivery, only that it is paid for by the buyer.

If a person violates the law within the scope of civil affairs, then he is required to incur liability. Liability is the position of a legal entity or individual who is considered to have to pay damages after an action concerning the law. Meanwhile, based on coverage in consumer protection, there is the term liability be translated as product liability. Product liability in Law No. 8 of 1999 gives meaning, namely: "Business actors are responsible for providing compensation for damage, pollution, and/or consumers losses due to consumer goods and/or services produced or traded". Based on Black's Law Dictionary, product liability refers to the legal obligation of manufacturers and sellers to compensate the consumer for damages suffered by purchasers as a result of faults in goods (Wibowo, 2020). This means that business actors or sellers should hold themselves accountable by compensating consumers. This is also an obligation that must be carried out by business

actors on Article 7 letter f of Law No. 8 of 1999 concerning Consumer Protection. In the concept of product liability, consumers do not need to worry about the reference to the agreement clause because the concept of product liability can be done if there are elements of damage. This can be based on the existence of Article 1365 of the Civil Code which explains that any unlawful act that brings harm to another person, obliges people because it is wrong to publish those losses and indemnify them. The application of the product liability to business actors in Law No. 8 of 1999 is in the case if the products it produces cause damage, loss, and endanger life safety, can subject to sanctions.

As a form of carrying out the responsibility of automotive manufacturers as sellers to consumers, it can be done in several ways, namely: (1) business actors are obliged to provide after-sales service for the reimbursement of the goods and/or services which not following the terms of the contract and free replacements during the warranty period if the products are defective (Frederik, 2021); (2) business actors can replace cars following the warranty which has been provided by the seller at the same time of the sale and purchase transaction agreement; and (3) if the seller deliberately hides a hidden defect, the seller is required to compensate for the damage along with both material and immaterial losses and ready to accept any legal consequences. Moreover, if it is proven that a hidden defect in the car is not known to the consumers or seller, then the seller is obliged to replace it completely following the application process. If a consumer obtains a car with a hidden defect originating from a dealership that does not modify the vehicle's engine, the responsible party will shift to the factory and replacement should be claimed through the dealer to indemnify the loss. Meanwhile, if it is proven that the seller knows of a defect and deliberately hides it, the seller or the car dealer is required to compensate the consumers for losses because of his negligence.

Article 9 number 2 of Law No. 8 of 1999 concerning Consumer Protection also provides an affirmation that: "Business players are prohibited from trading damaged, defective, or used goods and tainted without providing complete and correct information on the goods in question". Thus, if someone violates the provisions in the article, one of them is by selling defective goods without providing clear information about the goods to a consumer may be subject to criminal sanctions following Article 62 number 1 of Law No. 8 of 1999 concerning Consumer Protection which explains if business players violate the provisions in Article 9 means that business actors can be sentenced to a maximum of 5 (five) years in prison or a maximum fine of Rp2,000,000,000.00,- (Two Billion Rupiah).

Every community has its method of resolving disputes, and the corporate world becoming global, therefore several dispute resolution methods have become recognized by the parties as security and justice systems (Sugiyono, Suyanto, & Agustanti, 2020). As for the resolution of disputes between consumers and business actors, in Law No. 8 of 1999, it is explained that every consumer who is harmed can file a lawsuit against business actors through institutions tasked with resolving disputes between consumers and business actors or through courts that are in the general juridical environment or can be carried out



outside the court based on the voluntary choice of the parties to the dispute. The court is a place to resolve cases that appear and then make a fair decision. Based on Article 45 paragraph 1 of the Law No. 8 of 1999 explains every aggrieved consumer is entitled to file a lawsuit against the business actors in a court or through an institution that handles consumer-business conflicts (Syam et al., 2021). If the consumer wants to resolve the dispute through the judiciary, it can be done if the parties to the dispute have not determined the dispute resolution efforts that will be conducted out-of-court or if both parties have conducted out-of-court dispute resolution but did not achieve the results expected by either party. However, if the disputing party wants to make an out-of-court settlement, the government has established a consumer dispute resolution body called Badan Penyelesaian Sengketa Konsumen (BPSK) in the level II area of the municipality. The establishment of the institution has the aim of helping consumers and business actors who experience disputes easily and without expensive costs (Sitepu & Muhamad, 2021).

Regarding the dispute between PT Sinar Baru Permai against PT BMW Indonesia and PT Astra Internasional Tbk, the two automotive companies had settled through a litigation process. PT Sinar Baru Permai as the Plaintiff filed its lawsuit on September 27th, 2021 with case number 579/Pdt.G/2021.PN Jkt.Pst. The lawsuit was filed because PT BWM Indonesia and PT Astra Internasional Tbk were deemed to have committed legal actions and provided damages a hidden defects in the vehicle which Plaintiff purchased through Defendant. For his claim, he asked for liability in the form of compensation against PT BMW Indonesia and PT Astra Internasional Tbk worth Rp4,502,000,000.00,- (Four Billion Five Hundred and Two Million Rupiah) which is based on car compensation worth Rp1,500,000,000.00,- (One Billion Five Hundred Million Rupiah) other material losses for the right to lose the use of the car worth more than IDR 2,900,000,000 (Two Billion Nine Hundred Million Rupiah) and other losses of IDR 10,000,000,000,- (Ten Billion Rupiah). With these charges, PT BMW Indonesia and PT Astra Internasional Tbk are subject to sanctions that require compensation in the form of refunds equivalent to the purchase price and other losses suffered by the consumer due to the defect. Although it is stated that there is a warranty in the form of replacement of parts on the car owned by Plaintiff, Plaintiff claims that he has often carried out control at an authorized repair shop of BMW. However, the defect was still unknown until a fatal incident caused the discovery of a hidden defect then endangered his life while driving. Following Article 1507 of the Civil Code that has been explained earlier, if there is a hidden defect committed by a business actor, the form of liability that can be carried out by business actors by returning the fee as much as the purchase price to consumer or consumer is allowed to keep the goods a refund is still provided in accordance to judge's provision in the trial.

#### IV. CONCLUSION

Automotive products can conceal several hidden defects that could be faced directly by a consumer who has purchased the vehicle, as an example from the case between PT Sinar Baru Permai with PT BMW Indonesia and PT Astra Internasional Tbk. Due to the hidden

defects in the car, consumers have the right to claim their rights following what is stated in Law No. 8 of 1999 concerning Consumer Protection and Civil Code. The form of liability that must be carried out by automotive manufacturers due to hidden defects is that business actors should provide compensation in the form of a new unit car with the same type and price as the consumer had before included the longer warranty if the hidden defects issue occurs and it was fair with all the losses suffered by the consumer due to products traded not following those offered to the consumer. The dispute settlement can be resolved in litigation as PT Sinar Baru Permai did with PT BMW Indonesia and PT Astra Internasional Tbk as well as non-litigation. The advice that the author can give related to the problems raised in this study is for automotive business players to pay more attention to detail during the quality control stage in every vehicle component. Not only business actors but consumers are also required to be more thorough before and after buying the purchased product by checking the goods purchased already following with what is offered by business actors. Automotive manufacturers as business actors are also expected to enforce the consumer right of valid, clear, and honest information regarding the condition and warranty of the product and fully responsible both materially and immaterially if there are similar cases of hidden disability later.

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**Authors' contributions and responsibilities** - The authors made substantial contributions to the conception and design of the study. The authors took responsibility for data analysis, interpretation, and discussion of results. The authors read and approved the final manuscript.

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