

Consumer Protection Towards The Spread Of Hiv By Tattoo Business Actors In Indonesia

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ABSTRACT

HIV is a virus that targets the body's white blood cells, or lymphocytes, weakening the immune system in people. The use of syringes and needles in tattooing is one of the many ways that HIV can spread. This is assumed to be the result of non-sterile syringes used by tattoo parlors that don't adhere to standard operating procedures before providing tattoo services. Business actors must uphold their customer rights under the Consumer Protection Law Number 8 of 1999 concerning Consumer Protection when customers get HIV as a result of using tattoo needles that don't follow SOP. This research aims to analyze the legal responsibility of tattoo business actors towards the spread of HIV to customers by unsterilized needles. The method used in this research is doctrinal legal research and analyzed with descriptive qualitative technique. The result of this study shows that negligence committed by tattoo service businesses can occur because they do not apply Standard Operating Procedures (SOP) before practicing tattooing consumer conditions. The occurrence of errors and omissions by tattoo service businesses can also be due to a lack of attention to the needles used. If there is a loss to the consumer, it is entirely the responsibility of the tattoo business. As reported in the Provision of Unlawful Acts (PMH) which is reflected in Article 1365 of the Civil Code. if the consumer gets a loss, there will be a Consumer Protection Law. Consumer Protection Law includes civil liability (compensation) and criminal liability.

Keywords	Consumer Protection; HIV; Tattoo
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PRELIMINARY

The development of globalization is very influential on lifestyle, especially in the current era. In Indonesia, teenagers have also followed the flow of globalization, especially teenagers who live in urban areas, where appearance is an important aspect that is very concerning.¹ The influence of globalization on the lifestyle of adolescents in Indonesia has made consumptive behavior towards various trendy items that must be purchased to

¹ Stephen J. Kobrin. (2020). How globalization became a thing that goes bump in the night. Journal of International Business Policy. 3 (1), 280-286

support appearance, one of which is tattooing as a lifestyle and a growing trend due to globalization.²

Tattoos are a product of body decorating by depicting the body's skin with sharp tools in the form of needles, bones, and so on then the drawn body parts are given colorful dyes or pigments. People like tattoos because tattoos are considered an art form of expression while tattoos are also used as group identity. Tattoos are still considered taboo in some circles, but on the other hand tattoo art is still a popular thing around the world. Side effects that can arise from tattooing are the risk of infection such as the use of unsterilized needles or the content of harmful substances in the ink used. Some victims have been exposed to the Human Immunodeficiency Virus (HIV).³

HIV is a virus that attacks the body's white blood cells (lymphocytes), causing a decline in the human immune system. Acquired Immunodeficiency Syndrome (AIDS) is a group of immunological and clinical abnormalities caused by HIV.⁴ AIDS is caused by HIV infection, which results in decreased immunity in a person so that the person is very susceptible to diseases such as tuberculosis, candidiasis, various inflammations of the skin, lungs, digestive tract, brain and cancer. HIV Virus until now there is no way to cure it. The incidence of HIV has been increasing from year to year. HIV prevalence among people who inject drugs is always at the highest level compared to other key groups which found that The Indonesian Ministry of Health highlighted HIV cases that began to be dominated by young people.⁵

According to recent data, adolescents account for about 51% of newly diagnosed HIV cases. Based on data from AEM modeling, it is projected that in 2023, there will be approximately 526,841 HIV-positive individuals worldwide, with an estimated 27,000 new cases.⁶ Statistics from the Ministry of Health also indicate that 12,533 HIV cases involve youngsters under the age of twelve. The Ministry of Health claims that sharing a syringe among injection users is the primary source of HIV infection. Annually, an estimated 49,000 deaths are attributed to new infections.

Recently, DKI Jakarta had a case of HIV transmission with more than 30 victims. HIV transmission occurs through tattoo syringe users who are not replaced and used interchangeably, this violates the obligations of tattoo service businesses. Standard Operating Procedure (SOP) without paying attention to the problem of sterilization of the tools to be used, cleanliness, and health of the place used to observe. Business actors in carrying out their business are regulated in the GCPL in article 7 point (d) which states that business actors must guarantee the quality of goods or services produced or traded based on the provisions of the applicable quality standards for goods or services.

Business Actors must fulfill the quality of goods or services produced or traded, these consumer rights must be fulfilled as stipulated in the GCPL in Article 4 point (3) which states the Right to correct, clear, and honest information regarding the condition and guarantee of goods and/or services. Based on this background, researchers know that there is a problem that harms consumers which results in consumers contracting HIV, especially in the use of needles. Therefore, researchers are interested in conducting in-depth research and submitting legal research entitled "Analysis of consumer protection against the spread of HIV by tattoo business actors in Indonesia"

² Umar Sholahudin and Hotman Siahaan. (2020). Globalisasi: Antara Peluang dan Ancaman Bagi Masyarakat Multikultural. *Jurnal Sosiologi Pendidikan Humanis* 4(2), 103-115

³ Anita Gebeska, et.al. (2020). Assessing Infection Risks among Clients and Staff Who Use Tattooing Services in Poland: An Observational Study. *International Journal of Environmental Public Health*. 17 (18), 20-46

⁴ Afif Nurul Hidayati. (2020). *Manajemen HIV/AIDS: Terkini, Komprehensif, dan Multidisiplin*. Surabaya: Airlangga University Press, 16

⁵ Kemenkes. 2022. Peringati Hari AIDS Sedunia, Ini Penyebab, Kendala dan Upaya Kemenkes Tangani HIV di Indonesia. Cited April, 26, 2024, From <https://kesmas.kemkes.go.id/konten/133/0/peringati-hari-aids-sedunia-ini-penyebab-kendala-dan-upaya-kemenkes-tangani-hiv-di-indonesia>

⁶ Brown, et.al. (2024). The AIDS Epidemic Model 2023 for Estimating HIV Trends and Transmission Dynamics in Asian Epidemic Settings. *Journal of Acquired Immune Deficiency Syndromes*. 95 (1), 13-23

METHOD

This study employed doctrinal legal research as its methodology. The author's approach method is a qualitative methodology, which is a type of data analysis technique that uses verbal descriptions of data to evaluate written or spoken data from specific individuals and observed behavior.⁷ The author's research specification uses a descriptive-analytical strategy to describe phenomena that already exist. The purpose of this analytical descriptive specification is to give a summary and examine the accountability of business actors in the tattoo service industry regarding needles.

The research conducted by the author is the library research stage, namely research on secondary data including primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal material used in this research is Law Number 8 of 1999 concerning Consumer Protection. Secondary legal materials used in this research are obtained from literature studies by studying books, scientific journals, articles, and others.

Tertiary legal materials such as dictionaries and encyclopedias. The data collection technique used in this research is a literature study. The method of analysis used by the author in this writing is qualitative juridical which is done by compiling data, regulations, or principles that apply as positive law that has been obtained cumulatively to achieve clarity of the problem without using formulas or data.⁸

RESULT AND DISCUSSION

Legal responsibility of Tattoo Service Business Actors Towards Consumers Who Exposed to HIV through Tattoo Needles

According to the Indonesian dictionary, a Tattoo is a drawing (painting) on the skin of the body. While tattooing is painting on the skin of the body by piercing the skin with a fine needle and then inserting a dye into the puncture with black dye, blue dye, or green ink and so on, until the color becomes variegated. Some tattoo inks are toxic, some even contain carcinogenic (cancer-inducing) substances.⁹

The Food and Drug Administration (FDA) also mentions that the pigments used in tattoo ink are materials used in industry, such as printer ink or car paint. Another negative impact of using tattoos is infection. Infection is already the most obvious risk experienced by tattoo users.¹⁰ The most common type of infection associated with tattoos is staphylococcus aureus or pseudomonas bacteria due to the lack of sterilization of tattoo equipment. Skin disorders can also arise from the side effects of tattoos, such as itching and lupus-like reactions on the skin.

The most dangerous types of infections are of course hepatitis and HIV which can be transmitted through unsterilized needles. The lack of sterilization of tattoo equipment, especially the needles used, is becoming quite an issue among tattoo artist services in Indonesia. Not a few tattoo artists often ignore or pay less attention to the implementation of SOPs in the tattooing process.

An example of a case reported by the Merdeka website is that as many as 37 people in Jakarta were Exposed to HIV due to unsterilized tattoo syringes and not implementing SOPs. Based on this phenomenon, there needs to be legal liability for tattoo artists as business actors to consumers. This is caused by consumers who have been harmed due to the non-sterile tools used to tattoo the tattoo service business. In this case the consumer found himself infected with HIV disease which can not be cured until today.

⁷ Mahmud Marzuki. (2017). *Penelitian Hukum: Edisi Revisi*. Jakarta: Prenada Media, 21

⁸ Suyanto. (2023). *Metode Penelitian Hukum Pengantar Penelitian Normatif, Empiris dan Gabungan*. Gresik: Unigres Press, 151.

⁹ Alessandro Sindoni, et.al. (2021). Adverse effects related to tattoos in the community setting: a systematic review. *Journal of Epidemiol Community Health*, 75, 1023-1028

¹⁰ Lambok Hermanto Sihombing. (2021). Rethinking the Art of Tattoo: A Perspective of Indonesian Women Tattoo Community. *Lingua Cultura*, 15(2), 155-165

Every tattoo service business must have a tattoo certification from the Bandung Tattoo Association first before opening a business where the tattoo practice. If someone have received this certification, the tattoo service business actor is certainly very familiar with the Standard Operating Procedures (SOP) that must be applied to consumers. Because of the agreement between consumers and tattoo service businesses, if consumers suffer losses, there will be a Consumer Protection Law which includes civil and criminal liability.¹¹ When there is an agreement in force between the consumer and the tattoo service business actor, it means that if there is a loss to the consumer, it is entirely the responsibility of the tattoo business actor.

As reported in the provisions of Unlawful Acts (PMH) which are reflected in Article 1365 of the Civil Code. Unlawful acts in civil law are acts against the law, acts that are contrary to the rights of others, acts that result in the loss of other parties, and the party who commits PMH must compensate the party who has been harmed.¹² When reviewing the cases that have occurred in Jakarta, it is concluded that the actions of tattoo business actors who do not comply with SOPs result in consumers being infected with HIV.

Through one of the pieces of evidence, the agreement between the consumer and the tattoo business is not implemented in good faith. Tattoo service business actors have committed Unlawful Acts (PMH) due to losses to consumers. In relation to the consumers interest, it means that the law protects consumer rights from something that results in the non-fulfillment of these rights.

According to the GCPL, consumer protection encompasses all measures taken to guarantee legal certainty to safeguard consumers. The terms of Article 19 of the Consumer Protection Law (UUPK), which stipulates that business actors are accountable for paying damages, pollution, and/or losses to consumers as a result of consuming goods produced or traded, govern the provisions of product liability. As to Article 1243 BW, compensation may be claimed in the form of "kosten, schaden en interessen" and other similar forms.

Customers who are injured should be compensated by the tattoo business actor for both the cost of the tattoo and medical expenses.¹³ Article 19 paragraph (1) of the GCPL is followed in this case, and Article 19 paragraph (2) of the GCPL explains the compensation mentioned. Criminal law also defines unlawful acts as those that are explicitly declared to be against the law, carried out without authorization or power, and that go against fundamental legal principles.¹⁴

Based on the example of a case that occurred in DKI Jakarta, it can be concluded that the tattoo service business has committed a Wrongful Act in Criminal Law because it has caused harm to consumers who eventually contracted HIV because they did not comply with the SOP. In this case, the consumer who is harmed is not only one, so it can be concluded that tattoo service businesses that do not comply with SOPs can threaten and harm the public. This loss (harm) to consumers is included in crimes against persons and goods, to be precise, it can be seen in the Criminal Code (Kitab Undang-Undang Hukum Pidana) Chapter VII Crimes that pose a Danger to Public Security Humans or goods have been generally explained about the sanctions given to business actors, which are contained in article 204.

Legal Remedies for Consumers Infected with HIV through Tattoo Needles Based on Consumer Protection Law

¹¹ Jacobus Jopie Gilalo. (2023). Penerapan Sanksi Tindak Pidana Konsumen dalam Kasus Kejahatan Bisnis. Jurnal Ilmiah Living Law. 15 (2), 119-128

¹² Gita Anggreina Kamagi. (2018). Perbuatan Melawan Hukum (Onrechtmatige Daad) Menurut Pasal 1365 Kitab Undang-Undang Hukum Perdata dan Perkembangannya. Lex Privatum. 6 (5), 57-65

¹³ Mahrus Ali. (2022). Compensation and restitution for victims of crime in indonesia: Regulatory flaws, judicial response, and proposed solution. Cogent Social Sciences, 8(1), 206-219

¹⁴ Renata Christha Auli. 2023. Perbedaan Perbuatan Melawan Hukum dalam Hukum Perdata dan Pidana, Cited April, 26 2024, From <https://www.hukumonline.com/klinik/a/perbedaan-perbuatan-melawan-hukum-dalam-hukum-perdata-dan-pidana-lt5142a15699512/>

Viewed from the example of a case that occurred in DKI Jakarta, there needs to be a legal effort against the consumer as a party who has been harmed due to the non-sterile tools used for tattooing by the tattoo service business. In this case, the consumer found himself infected with HIV disease. Legal efforts are efforts or efforts given by law to a person to pursue his dissatisfaction with a matter relating to legal relations.¹⁵ In this case, it is related to the rights of consumers who should get consumer protection rights from business actors.

Consumer disputes contain business actors and consumers who have problems regarding tattoo services, based on this incident, there is a need to create justice that should be obtained by consumers in transaction activities, this justice can be pursued with certain legal efforts. Juridically, the process of resolving consumer disputes based on Article 45 paragraph (4) of the GCPL can divide dispute resolution using litigation (through the court) and non-litigation channels. Litigation means that the settlement of legal issues is carried out in court. In this case, the injured party can file a lawsuit to the court individually.¹⁶ Conversely, the non-litigation path is resolving legal disputes out of court using processes including mediation, conciliation, and arbitration administered by the Consumer Dispute Resolution Agency (BPSK).¹⁷

The court-based conflict resolution procedure, sometimes known as "litigation," is a method of resolving disputes through a court process in which judges have the authority to rule and make decisions. Article 48 of the Consumer Protection Law states that the general court's rules apply when resolving consumer disputes through litigation. "Every consumer who is harmed can resolve disputes between consumers and business actors through the courts within the general judicial environment," reads the first paragraph of Article 45 of the GCPL.

The next section indicates, "Settlement of consumer disputes can be pursued through the court or outside the court based on the voluntary choice of the parties to the dispute". Customers who have suffered material harm as a result of the goods not being as promised, along with the time, effort, expenses, and mental strain of going through the trial, must bear the loss once more by not receiving reimbursement, replacement, or compensation under Article 4 letter H of the GCPL Law. This is because the consumer as the plaintiff after obtaining the judge's decision, namely the acceptance of the lawsuit, that is when it is declared to have won the case, but the victory of the consumer in the dispute case with the business actor does not necessarily result in the consumer being reimbursed for his losses.

Representative lawsuit refers to PERMA NO.1 of 2002 is a lawsuit whose procedure is that one or more people can become representatives of a group in expressing a lawsuit containing similar facts or legal basis. In essence, the class action lawsuit is a civil lawsuit that is usually related to a request or compensation where this lawsuit is carried out by several people acting as class representatives and also represents hundreds to thousands of victims who have an interest.¹⁸

Similar facts or a substantial similarity in the facts and legal grounds used in the case is one of the official prerequisites for launching a class action lawsuit under PERMA Number 1 of 2002. Legal actions concerning matters of consumer protection are frequently initiated by non-governmental organizations. In this instance, non-governmental groups are ineligible to serve as class representatives in class action litigation due to the necessity of identical facts or legal grounds. This is due to the fact that non-governmental groups do not see themselves as merely community representatives with legal authority.

¹⁵ Celina Tri S. Kristiyani. (2020). Consumer Legal Efforts Due to Abuse of Circumstances (Misbruik Van Omstandigheden) in Standardized Agreements. *Jurnal Notariil*. 5 (1), 1-7

¹⁶ Abd. Haris Hamid. (2017). *Hukum Perlindungan Konsumen Indonesia*. Jakarta: Sah Media, 29

¹⁷ Susilowati Suparto, et.al. (2020). Consumer Dispute Settlements through the Consumer Dispute Settlement Body (BPSK) in Relation to Trade Transactions in Indonesia. *International Journal of Innovation, Creativity and Change*, 13 (3), 913-922

¹⁸ Nafiatul Munawaroh. 2022. Gugatan Kelompok atau Class Action: Syarat dan Prosedurnya. Cited April, 26 2024, From <https://www.hukumonline.com/klinik/a/gugatan-kelompok-atau-iclass-action-i--syarat-dan-prosedurnya-cl2436/>

In Non-Litigation Case Settlement, this out-of-court dispute resolution is contained in Article 47 of GCPL. Alternative Dispute Resolution (APS) is an institution for resolving disputes or differences of opinion through procedures agreed by the parties, namely out-of-court settlements utilizing consultation, negotiation, mediation, conciliation, or expert judgment based on Article 1 point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

Conciliation is possible as an alternative to consumer dispute resolution under GCPL. This dispute resolution has much in common with arbitration and also leaves it to a third party to give its opinion on the dispute submitted by the parties. Mediation is a process to reconcile the parties to a dispute. Mediation is one of the alternatives and ways of resolving a dispute in which the parties to the dispute submit their settlement to a mediator to obtain a fair result that is accepted by the parties to the dispute.¹⁹

The next out-of-court settlement of consumer disputes is arbitration. The legal basis for arbitration institutions is Presidential Decree No. 31 of 1981, Law No. 14 of 1970 which has been replaced by Law No. 14 of 1980 and renewed again with Law No. 14 of 2004. Arbitration is a method of dispute resolution in civil matters that can be agreed upon by both parties which can be binding and enforceable.²⁰ If the business does not want to settle the compensation claim or there is no settlement between them, the consumer can submit the case to BPSK or to the court.

Following the provisions of Article 23 of the Consumer Protection Law, dispute resolution through BPSK can be pursued, namely if an amicable settlement outside the court process cannot be successful, either because the producer refuses or does not respond or if no agreement is reached, if the settlement is chosen through BPSK and if BPSK is not successful in resolving the dispute, then the dispute can still be submitted to the court.

Dispute settlement through BPSK begins with a request or complaint from the victim, either written or unwritten, about an event that causes loss to the consumer.²¹ Only a consumer or his/her heirs can file a lawsuit or request for compensation through BPSK. Meanwhile, other parties that may file a lawsuit as referred to in Article 46 of the Consumer Protection Law, such as consumer groups, non-governmental organizations, and the government, can only file a lawsuit to the court (general), not to BPSK. The decision of the BPSK panel is then given to the district court so that it can be implemented.

However, if the parties to the dispute are not satisfied with the decision of the panel, they may file an objection to the local district court within fourteen working days at the latest from the time the decision is received by Article 56 paragraph (2) of the Consumer Protection Law. The decision of the BPSK panel is then given to the district court so that it can be implemented. However, if the parties to the dispute are not satisfied with the decision of the panel, they may file an objection to the local district court within no later than fourteen working days after the decision is received by Article 56 paragraph (2) of the Consumer Protection Law.

CLOSING

Based on the results of the research and discussion that has been carried out, it can be concluded that negligence committed by tattoo service businesses can occur because they do not apply Standard Operating Procedures (SOP) before practicing tattooing consumer conditions. The occurrence of errors and omissions by tattoo service businesses can also be due to a lack of attention to the needles used. This can be avoided by tattoo service business actors running their business according to what is regulated in GCPL in Article 7 point (d)

¹⁹ Teguh Hariyono. (2021). Mediasi Penal sebagai Alternatif Upaya Penyelesaian Perkara Pidana di Luar Pengadilan. *Jurnal Penegakan Hukum dan Keadilan* 2(1), 1-18

²⁰ Frans Hendra Winarta. (2012). *Hukum penyelesaian sengketa: arbitrase nasional Indonesia dan internasional*. Jakarta: Sinar Grafika, 44

²¹ Fredrik J. Pinakunary. 2024. Prosedur Permohonan Penyelesaian Sengketa di BPSK. Cited April, 26 2024, From <https://fjp-law.com/id/prosedur-permohonan-penyelesaian-sengketa-di-bpsk/>

which states that business actors must guarantee the quality of goods or services produced or traded based on the provisions of the applicable quality standards for goods or services. Business actors must fulfill the quality of goods or services produced or traded, these consumer rights must be fulfilled as stipulated in the GCPL in Article 4 point (3) which states the right to correct, clear, and honest information regarding the conditions and guarantees of goods and/or services. Tattoo service business actors and consumers have a transactional relationship, namely in the form of an agreement.

Business actors who have gained knowledge about what SOPs must be applied before practice must first communicate with consumers and convey the applicable SOPs. After consumers agree to all SOPs and risks that have been communicated by tattoo service businesses, it means that there is an agreement between consumers and tattoo service businesses. According to Article 1320 of the Civil Code an agreement must fulfill the conditions for the validity of the agreement, namely agreement, capacity, certain things and halal causes. If there is a loss to the consumer, it is entirely the responsibility of the tattoo business. As reported in the Provision of Unlawful Acts (PMH) which is reflected in Article 1365 of the Civil Code. if the consumer gets a loss, there will be a Consumer Protection Law. Consumer Protection Law includes civil liability (compensation) and criminal liability (litigation and non-litigation).

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