

LEGAL PROTECTION FOR CONSUMERS DUE TO EXPIRED FOOD PRODUCTS BASED ON LAW NO. 8 OF 1999 CONCERNING CONSUMER PROTECTION

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Abstract : *This research is aimed at answering questions about the government's role in protecting consumers. to food products, and the responsibility of producers to consumers in handling consumer complaints related to food products that are not suitable. This is a qualitative research with a normative legal research approach, namely library law research. The procedure in this study was carried out by selecting themes, exploring information, determining research directions, collecting data sources, presenting data, and compiling research reports. Meanwhile, this study used qualitative data analysis techniques based on literature data about research variables. The results of this study indicate that the government's role in protecting consumers against food and beverage products that have expired is to develop consumer protection in Indonesia and to implement law enforcement on applicable laws and regulations. A form of consumer protection provided by the government as a protector of the consumer community and also as a coach for business actors. While the handling of consumer complaints related to the circulation of expired food products is carried out by the Food and Drug Monitoring Agency (BPOM) by opening a service unit that accommodates all consumer complaints.*

Keywords : *Legal Protection, Consumers, Expired Food Products*

Abstrak : Penelitian ini bertujuan untuk menjawab pertanyaan mengenai peran pemerintah dalam melindungi konsumen. terhadap produk pangan, dan tanggung jawab produsen terhadap konsumen dalam menangani keluhan konsumen terkait produk pangan yang tidak sesuai. Penelitian ini merupakan penelitian kualitatif dengan pendekatan penelitian hukum normatif yaitu penelitian hukum kepustakaan. Prosedur dalam penelitian ini dilakukan dengan memilih tema, menggali informasi, menentukan arah penelitian, mengumpulkan sumber data, menyajikan data, dan menyusun laporan penelitian. Sedangkan penelitian ini menggunakan teknik analisis data kualitatif berdasarkan data literatur tentang variabel penelitian. Hasil penelitian ini menunjukkan bahwa peran pemerintah dalam melindungi konsumen terhadap produk makanan dan minuman yang sudah kadaluarsa adalah dengan mengembangkan perlindungan konsumen di Indonesia dan melaksanakan penegakan hukum terhadap peraturan perundang-undangan yang berlaku. Suatu bentuk perlindungan konsumen yang diberikan oleh pemerintah sebagai pelindung masyarakat konsumen dan juga sebagai pembina bagi pelaku usaha. Sedangkan penanganan pengaduan konsumen terkait peredaran produk pangan kadaluarsa dilakukan oleh Badan Pengawasan Obat dan Makanan (BPOM) dengan membuka unit layanan yang menampung seluruh pengaduan konsumen.

Kata Kunci : *Perlindungan Hukum, Konsumen, Produk Pangan Kadaluarsa*

INTRODUCTION

Legal protection for consumers is a consequence and part of technological and industrial progress, because the development of industrial products requires consumer protection. Advances in technology and industry have strengthened the differences between the lifestyles of traditional societies and modern societies (Innocentius, 2000). Business people in the era of globalization and free trade, which are supported by advances in telecommunications and informatics technology, have widened the space for the flow of goods and or services transactions across national boundaries, so that the goods offered vary both from abroad and from within country (Rajagukguk, 2000).

If you don't want to get the anti-World Trade Organization (WTO) stigma, then the current era of free trade requires that all goods and services originating from other countries must be able to enter Indonesia. The entry of imported goods and services into Indonesia is not without problems. Problems arise if there are consumer complaints about these imported goods and services, for example the problem of how to solve the mechanism that is simple, fast and low cost. There is a lot of imported, or even local, food for which it is not clear who the distributors are in Indonesia. This lack of clarity makes it difficult for consumers to experience losses as a result of using these goods or services. Consumers are someone who makes purchases with or without the influence of other parties (Nugroho, 2002).

Juridically, there is also the problem of a clash of legal systems between Indonesia and other countries, that is, if Indonesian laws conflict with WTO provisions or agreements, it is necessary to harmonize national provisions against WTO provisions or agreements. Theoretically, this could be solved, but in practice and in reality it is not easy to do because of various reasons that are juridical-political-sociological. There are at least three causes that can be categorized as obstacles to free trade (Sofie, 2000), namely (a) Due to the inconsistency of the Indonesian judiciary in its decisions. There are often discrepancies in court decisions in similar cases, (b) Most Indonesian consumers are reluctant to go to court, even though they have been greatly harmed by entrepreneurs. This reluctance will be very different when compared to consumers in other free trade participant countries, such as the United States, Britain and others, (c) The norms of protection in Indonesia have not yet been implemented, in this case the Law Number 8 of 1999 concerning Consumer Protection, which is relatively still not understood by most people as consumers.

The position of consumers in Indonesia is inseparable from the history of consumer protection. The history of consumer protection in Indonesia was only really popularized about twenty years ago, namely with the establishment of a non-governmental organization called the Indonesian Consumers Foundation (abbreviated in Bahasa Indonesia as YLKI) (Shidarta, 2014). The establishment of the Indonesian Consumers Foundation (YLKI) was followed by several similar organizations including the Consumer Development and Protection Institute (LP2K) in Semarang which was established in February 1988 and in 1990 joined as a member of Consumers International (CI). Prior to the issuance of the Consumer Protection Act, law enforcement over problems with producers was very difficult, especially in relation to filing lawsuits for losses suffered by consumers.

In carrying out a lawsuit against a business actor, each plaintiff must be able to prove that the business actor as the defendant has made a mistake. Thus, every party that argues that there is an error, the party that postulates must be able to prove their mistake. This certainly makes it difficult for consumers to prove the fault of the producer as a party acting as a business actor. Various prohibitions have been imposed on business actors, both manufacturers and/or distributors, advertising businesses, as well as activities related to public relations (Shidarta, 2014). In principle, consumers are in a disadvantaged position economically. Consumers solely depend on the information provided and provided by business actors. However, the information provided without education will be less beneficial.

According to the Decree of the Director General of Drug and Food Control (POM) Number 02240/B/SK/VII/91 concerning Guidelines for Quality Requirements and Food Labeling and Advertising, part one point two states, the information that must be included on the label is: Food name/product name, Composition or ingredient list, Net content, Name and address of

manufacturer/importer, Registration number, Production code, Expiry date, Instructions or storage method, Instructions or method of use, Nutritional value, Special writing or statement. By focusing on expiration dates, consumer protection for food products that have expired must be of great concern. This is not only related to human health as consumers but more than that it can endanger safety or life. Thus the labeling of food products must be considered. In labeling, apart from the completeness of the information, another thing that is no less important is the problem of language. There are many food products with complete labeling, but the information messages do not reach consumers, because they use language that consumers do not understand.

Lately, it is easy to find imported products in the market with labels using the language of the product's country of origin, such as China or Japan. Even though according to Article 31 paragraph (2) of Law No. 7 of 1996 concerning Food, it states that label information on food products is written or printed using Indonesian, Arabic numerals and Latin letters. This provision applies to every business actor who produces or imports packaged food products for trade into the territory of Indonesia. Another case occurred in Jambi where Civil Servants (ASN) participating in pre-service positions at the Prov. Education and Training Center. Jambi and the Jambi City Hajj Dormitory who were poisoned by eating rice cake after breakfast. From this incident, 31 people had to be hospitalized.

Based on the problems above, this research is aimed at answering questions (1) What is the role of the government and the role of the Indonesian Consumers Foundation (YLKI) in protecting consumers against food products, and (2) What is the responsibility of producers towards consumers in handling consumer complaints related to unfit food products? The results of this research will contribute to stakeholders related to the production or distribution of food, as well as to policy makers and the general public to better understand the importance of knowing the expiration date of food production and understanding where to complain if you receive food that has expired.

RESEARCH METHODS

The type of research approach used by the author is normative legal research, namely library law research, because it makes library materials the main focus. In this normative legal research, the author conducts research on legal principles which have a starting point from certain fields of legal system, by first identifying the legal principles that have been formulated in certain laws. the empirical approach is to obtain accurate information by identifying the law and how the effectiveness of the law applies in society. Judging from the nature of this research, it is descriptive analysis in nature. In this study researchers used a qualitative approach. According to Denzin & Lincoln (1994) in (Anggito & Setiawan 2018:7) qualitative research is research that uses a natural setting with the intention of interpreting phenomena that occur and is carried out by involving various existing methods. The research method used in the preparation of this thesis is the Library Research method, in this case normative legal research, namely library law research, because it makes library materials the main focus. In this normative legal research, the author conducts research on legal principles starting from certain fields of legal system, by first identifying the legal principles that have been formulated in certain laws. As supporting material this research also uses an empirical approach, namely obtaining accurate information by identifying the law and how the effectiveness of the law applies in society. Judging from the nature of this research is descriptive analysis.

According to Rosyidhana (2014: 3) in (Rusmawan 2019: 104) literature study is a method of collecting data by searching and reading existing written sources such as books or literature that explains the theoretical basis. It's the same with collecting data and information by digging knowledge or knowledge from sources such as books, written works, and several other sources that have something to do with the research object (Dewi in Rusmawan, 2019: 104). Literature review is a comprehensive overview of the research that has been done on a specific topic to show readers what is already known about the topic and what is not known, to seek rationale for research that has been done or for further research ideas (Denney & Tewksbury, 2013).

Documentation according to Sugiyono (2015: 329) is a method used to obtain data and information in the form of books, archives, documents, written numbers and descriptions in the form of reports and information that can support research. Documentation is used to collect data and then reviewed. The documentation used in this research includes books, journals, regulations, laws and other sources related to the focus of this research.

The procedure in this study was carried out in the following steps (Kuhitthau, 2002): (1) Selecting a theme, (2) Exploring information, (3) Determining the direction of research, (4) Collecting data sources, (5) Presenting data, and (6) Preparation of research results reports. Data analysis is a series of activities to process previously collected data into a set of results, both in terms of new research findings and in the form of hypothesis truth (Sugiyono, 2012: 244). While the data analysis technique in this study is a qualitative data analysis technique based on the literature data about research variables. The data analysis technique used in this study uses the content analysis method which can be used to obtain valid inferences and can be re-examined according to the context (Krippendoff, 2004). In the analysis, selection, comparison, merging, and sorting will be carried out so that the relevant ones are found (Sabarguna, 2005).

RESULTS AND DISCUSSION

In Article 1 number 1 Law Number 8 of 1999, Consumer Protection is defined as follows: "All efforts that guarantee legal certainty to provide protection to consumers".

1. The consumer's right to honest and correct information

In relation to consumer rights to honest and correct information as contained in article 4 letter C of Law Number 8 of 1999 concerning Consumer Protection, one of the protections aims to create a consumer protection system that contains elements of legal certainty and information disclosure as well as access to obtain information. Thus, providing correct information about the product will help consumers make the right choice and be responsible in meeting their needs. In addition, it also provides an opportunity for consumers to exercise their other rights, namely the right to choose as stipulated in Article 4 letter b of Law Number 8 of 1999 concerning Consumer Protection which states: "The right to choose goods and/or services and obtain goods and/or services in accordance with the exchange rate and the conditions and guarantees promised. Through correct and complete information, consumers can determine or choose products for their needs. Therefore, legally, providing false, misleading and dishonest information through advertising is a violation of consumer rights. In other words, violating the rights of other people who in this case commit acts against the law (Beales, Craswell and Salop, 1981). Without correct information regarding price and product quality, it will weaken and reduce consumer profits.

2. Consumer rights to safety

If related to the consumer's right to safety, then every product that contains a risk to consumer safety must be accompanied by information in the form of clear usage instructions. For example, advertising, which is ideally interpreted as a means of providing information to consumers, should be free from data manipulation. If an advertisement contains incorrect information, then the act meets the criteria for a crime which is commonly called fraudulent misrepresentation (Shidarta, 2014). It is characterized by: (a) Use of false statements, (b) Misleading statements.

In relation to a breach of warranty due to wrong information in the advertisement of the product in question, the impact that arises is indirect economic loss, namely loss of expectations. This can also happen in the context of misleading advertisements and deceptive advertising, because warranty guarantees (Tilman, 1986), which are promises in these advertisements, are not kept. Therefore, the Consumer Protection Law provides consumers with the right to correct information, which also includes the right to information that is proportionate and provided in a non-discriminatory manner (Beales, Craswell and Salop, 1980). This right to information includes the right to obtain the facts necessary to make a choice of product or service and the right to be protected against dishonest and misleading advertising. This also agrees with Thomas E. Garman (1991) relating to the right to information.

The Government's Role as a Food Control Agency

Many people think that the only ones who are obligated to provide consumer protection are consumer organizations. This assumption is of course not true. Consumer protection is actually the responsibility of all parties, namely the government, business actors, consumer organizations and consumers themselves. Without the contribution of the four elements, in accordance with their respective functions it is not easy to realize consumer welfare. The government agencies tasked with overseeing food quality are (1) the Food and Drug Supervisory Agency (BPOM), (2) the Indonesian Ministry of Trade, (3) the National Consumer Protection Agency (BPKN), and the Consumer Dispute Settlement Agency (BPSK). One form of implementing consumer protection according to Law No. 8 of 1999 concerning Consumer Protection, which is regulated in Articles 48 to 58, is in the form of resolving disputes between consumers and business actors through the Consumer Dispute Settlement Agency (BPSK) whose dispute resolution process is carried out quickly, cheaply and simply.

However, there are still visible weaknesses in the provisions of the Consumer Protection Act, namely the National Consumer Protection Agency (BPKN) is only tasked with developing advisory consumer protection efforts (Article 33), not being the executing agency required for enforcing the Consumer Protection Law. This means that the BPKN is only authorized to give advice to the government, not to make decisions. Likewise, the composition and membership of the BPKN consisting of the government, business actors, NGOs, academics and experts were left open without any balance provisions (Article 35 paragraph (1)). This allows BPKN to be dominated by government elements, even producers.

In Indonesia, the responsibility of producers for products that cause illness, injury, or death of consumers who use these products can be applied to the provisions contained in Article 1367 paragraph (1) of the Civil Code, which states: "*A person is not only responsible for losses caused by his actions himself but also for losses caused by the actions of people who are his dependents, or caused by goods under his control*".

The liability specified in Article 1367 paragraph (1) of the Civil Code obliges the producer as the party that produces the product to bear any losses that may be caused by the condition of the goods it produces. Producers, according to law, are responsible and obliged to supervise the products they produce. This supervision must always be carried out carefully and according to expertise. If not, the producer as the party that produces the product can be considered negligent and if this negligence then causes illness, injury, or death/death of the consumer who uses the product it produces, then the producer must be held accountable. So, the responsibility of the seller is related to the responsibility for the non-functioning of the goods/services being traded itself (hidden defects). Meanwhile, the producer's responsibility relates to responsibility for other losses (property, physical health, or the soul of the user of the goods/services) that occurs as a result of using the product. In accordance with the title of consumer protection, the right to file a claim for compensation is the consumer.

If you look closely at the provisions of the Consumer Protection Act, you will find several weaknesses, including regarding the provisions for dispute resolution. Disputes that have been resolved by the Consumer Dispute Settlement Agency (BPSK) can be forwarded to the court level so that the settlement process will be protracted. Therefore, disputes that occur between consumers and business actors should be resolved at BPSK to shorten the dispute resolution time.

Until now, the issue of whether the existence of general justice institutions can still be fully trusted is a question mark for consumers. If there is a case in court, it is never resolved quickly. If the loss is only a shirt or bedding, then it takes years to be resolved in court, very odd. Supposedly, such cases are resolved briefly. Another weakness of the provisions of the Consumer Protection Act is that the National Consumer Protection Agency (BPKN) is only tasked with developing advisory consumer protection efforts (Article 33), not acting as an executing agency required for enforcing the Consumer Protection Act. This means, BPKN is only authorized to give advice to the government, not to make decisions (Garman, 1991).

The above also remembers that basically one of the meanings of advertisements is to contain manufacturers' promises or guarantees for the products they promote. From a legal point of view,

the promise is binding so it must be fulfilled. If the producer cannot fulfill his promise or in other words, the advertisement is not in accordance with reality, it means that the producer has broken his promise (advertisement) so that he can be sued for compensation. This opinion is based on the fact that product sellers work hard to create these expectations, that sellers produce high-quality goods and this is done through statements in sales advertisements that try to influence the buyer's point of view regarding the quality of the product (Galanter et al, 1999).

Therefore, the Consumer Protection Law provides consumers with the right to correct information, which also includes the right to information that is proportionate and provided in a non-discriminatory manner (Beales, Craswell and Salop, 1980). This right to information includes the right to obtain the facts necessary to make a choice of product or service and the right to be protected against dishonest and misleading advertising. This is also in line with the opinion of Thomas E. Gariklan regarding the right to information (Garman, 1991). This is of course related to the meaning of "consumer protection" itself, which in Article 1 number 1 of Law Number 8 of 1999 concerning Consumer Protection is defined as follows: "All efforts that guarantee legal certainty to provide protection to consumers".

Sanctions Issued by the Government and BPOM

Law Number 8 of 1999 concerning Consumer Protection (UUPK), regulations regarding sanctions that can be imposed on business actors who commit consumer violations can take the form of three things, namely:

1. Administrative Sanctions

This sanction is regulated in Article 60. This sanction is given by the Consumer Dispute Settlement Agency (BPSK) for the duties and or authorities granted by law. According to the provisions of Article 60 paragraphs 1 and 2 of the UUPK it is stated that administrative sanctions that can be imposed by the BPSK are in the form of determining compensation of up to Rp. 200,000,000,- (two hundred million rupiah).

2. Principal Criminal Sanctions

These sanctions are sanctions that can be imposed and imposed by the Court on the demands of the Public Prosecutor for violations committed by business actors. This sanction is regulated in Article 62 UUPK and can take the form of imprisonment or a fine.

3. Additional Criminal Sanctions

This sanction is regulated in Article 63 UUPK. The forms of additional criminal sanctions that can be imposed are in the form of: Confiscation of certain goods.

Announcement of Judge's Decision Payment of Compensation Order to stop certain activities that cause consumer losses Obligation to withdraw goods from circulation Revocation of business license.

Based on the types of sanctions, it can be seen that UUPK regulates several types of sanctions. The main thing that can be noted from the application of UUPK sanctions is that consumers have been criminalized against acts of violation.

CONCLUSION

The importance of legal protection for consumers is also based on the fact that every consumer always needs consumer products (goods and or services) that are safe for the safety and health of the human soul. To guarantee these things, it is necessary to have legal principles that guarantee the safe conditions for every consumer product for human consumption which must be equipped with correct, honest and responsible information. Consumer legal protection is a regulation that provides protection for consumers, given the weak position of consumers.

Regulation of food and beverage products in relation to consumer protection has been regulated technically and supports each other so as to create harmonization of laws and regulations, particularly the Law on Consumer Protection in the field of expired food products. Law Number 8 of 1999 concerning consumer protection (UUPK) has expressly stated a clause regarding the responsibilities that must be given by business actors to consumers. In Article 19 paragraph (1) it is stated that "business actors are responsible for providing compensation for damage, pollution and/or consumer losses as a result of consuming goods and/or services produced or traded.

The government's role in protecting consumers against expired food and beverage products is to develop consumer protection in Indonesia and to carry out law enforcement on the applicable laws and regulations. The form of consumer protection provided by the government as a protector of the consumer community and also as a coach for business actors is by issuing a Law, in the Regulation of the Minister of Health of the Republic of Indonesia Number 180/Men.Kes/Per/IV/185 concerning Expired Foods, April 10, 1985. In Article 1 point c states that what is meant by expired food is food that has passed its expiration date. Meanwhile, the expiry date is the deadline for a food whose quality is guaranteed as long as its storage follows the instructions given by the producer.

The handling of consumer complaints related to the distribution of expired food products is carried out by the Food and Drug Monitoring Agency (BPOM) by opening a service unit that accommodates all consumer complaints. In addition to product safety during the production process, a product's quality can also decrease due to the passage of time, so that for certain products, especially food products, expiration dates are determined. The expiration date of a product (date, month and main) is stated on the food label so that consumers get clear information about the product they buy or consume.

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