

Responsibilities of Food Products Businessmen for Using of Food Additives to The Customer Who Experience Losses on His Health

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Abstract

Basically, the human need of food is something which is very basic, this is caused by consuming food is one of the main life support. The fulfillment of the food is a part of human rights. Every human being is positioned as consumers who need food that is safe and healthy for the body. The diversity of food products that are circulated in the community led to a position in which the consumers can not be equated with the businessmen, this is due to ignorance about the existence of those food products, especially the addition of Food Additives (BTP), for example: sweeteners, preservative, dyes, and so forth.

Businessmen accidentally put Food Additives (BTP) for specific purposes, for example: to give flavor, to be more durable or to provide a color display to make it more attractive, but if it is excessive, it can cause health problems of the consumers who consume them. The right to be healthy is a right of every person. Position of consumers who do not have the bargaining position against food products that are circulated in the community, thus it is necessary to have a legal protection of the rights of consumers in the form of the right of security and comfort when consuming food products using the BTP.

Losses on health experienced by consumers as a result of consuming food products using the BTP continuously, it needs the responsibility of businessmen as producer for food products made that are unsafe for the body and the health of consumers.

Keywords: Food Additives, health and legal protection.

1. Introduction

Every human being at a time will be positioned as a consumer. Generally, the condition of consumers are in a position not to have bargaining power, thus requiring effort to protect these conditions, in order the rights of consumers can be established as instructed in the Law of the Republic of Indonesia Number 8 of 1999 on Consumer Protection (hereinafter referred to as Law of Consumer Protection) on General Explanation of fourth Alinea states as follows:

The main factor of consumer's weakness is the level of consumer's awareness of their rights that is still low. This is mainly caused by poor education of consumers. Therefore, the Consumer Protection Law is intended to be a strong legal foundation for the Government and Governmental Consumer Protection Organization to undertake efforts of empowering the consumers through guidance and consumer education.

Talking about consumer protection issues, said that: "Consumer protection issues are not solely a matter of the individual, but it is actually a joint problem and a national problem, because basically everyone is a consumer. Therefore, protecting the consumer is protecting everyone."¹

Legal protection for consumer is a form of an important effort in order to ensure a balance between the position of consumers and manufacturers as businessmen. The balance is due two parties that there is actually mutual dependence and mutual need that means without the consumer businessmen will not be able to develop their business activities to get benefit as expected. And vice versa without businessmen, the customer cannot meet daily needs.

Consumers need to be protected in the review from the economic, social, political, cultural, and legal aspect. There are various reasons why consumers need to be protected from the studies mentioned above, for example: because there is no equality of bargaining power, the position of the consumer is very weak because of the limitations of knowledge, education and awareness of their rights is low, or the position and bargaining power of consumers against businessmen is low and unbalanced.²

According to Retno Murni, conditions of the consumers in Indonesia are:

Generally, the conditions of the consumers in Indonesia are in apprehensive compared with developed countries. Each infraction is considered as normal, unresolved and only a few consumers who are aggrieved that can sue. With many cases of violations of the rights of consumers in Indonesia it showed that the issue of consumer protection is a very serious issue not only include the basic needs such as clothing, food, and safe and qualified shelter, but also about human dignity of Indonesian people.³

Regarding the basic needs of consumers such as food in order to meet the needs of daily life, in the more advanced technology era, in general, consumers will buy the food products from results of production because it is more practical and easier to process, and without thinking about the quality, meaning that consumers will not bring any food product that they consume to be tested prior to laboratory regarding the safety of those products for health. In broad definition, the product is "all goods and services produced by a process, so that the product is closely related to the

¹ Janus Sidabalok, *Hukum Perlindungan Konsumen Di Indonesia*, PT. Citra Aditya Bakti, Bandung, 2006, hlm. 5

² Retno Murni, *Perlindungan Konsumen Menuju Konsumen Cerdas*, Udayana University Press, Denpasar – Bali, 2012, hlm. 198

³ *Ibid.*, hlm. 209

technology".¹ However, the definition of food according to Article 1 paragraph 1 of the Act of the Republic of Indonesia Number 18 Year 2012 (hereinafter referred to as Food Law) is:

Everything that comes from biological sources of agricultural products, agriculture, forestry, fisheries, livestock, water, and water, either treated or untreated designated as a food or beverage for human consumption, including food additives, food raw materials and other ingredients that are used in the preparation, processing, and / or manufacture of food or drink.

Food is a basic human need that is most important. Fulfillment of basic needs is a part of human rights namely the right to live. Every human have rights that are inherent naturally as a gift of God the Almighty, so that this right is undeniable. The denial of such basic rights means that it denies humanity dignity, therefore it is an obligation for anyone either country, including communities or individuals as part of a human being to recognize, respect and protect right to live of every human being without exception.

Human rights are inherent to every human being, therefore, it is universal. On December 10, 1948 General Assembly Resolution of United Nations have produced the Universal Declaration of Human Rights, which contains 30 (thirty) articles. This declaration is the first public statement from the world community about the human rights that should be protected internationally. This declaration then inspire the establishment of various international agreements, human rights instruments at the regional level, the constitution of each country and the laws related to the issues of human rights.

Indonesia as a member of the United Nations takes the responsibility of moral and law to uphold high and do Universal Declaration on human rights that is set by the United Nations. As a follow-up, it established Law of the Republic of Indonesia Number 39 Year 1999 on Human Rights (hereinafter referred to as the Human Rights Act), in which the material is adjusted to the needs of law of community and development national law based on Pancasila and the Constitution of the Republic of Indonesia in 1945. According to Article 1 (1) Human Rights Act, the notion of human rights is as follows:

A set of rights that attaches to nature and human existence as a creature of God Almighty and it is His grace that must be respected, upheld and protected by the state, law, government, and everyone for the respect and protection of human dignity.

As a consumer in everyday life, the most important requirement is the need for food. Talking about the food problem, it is a source of life and basic human needs, so by fulfilling the need for food then it involves the fulfillment of human rights in which the rights should be guaranteed by the state, meaning that every consumer as a citizen has the right to get food that is safe for consumption and the unsafe food that harm health is in violation of human rights of individuals to live.

The term "Konsumen" is derived from the consumer. The literal meaning of the word "consumer" is (opponent of Manufacturers) any person who use the goods".² According to *Black's Law Dictionary*, the definition of *consumer* is: "*The one who consumes. Individuals who purchase, use, maintain, and dispose of products and services*".³ Consumers as stated in the provision of Article 1 paragraph 2 of Consumer Protection Law is: "Every user of goods and/ or services available in the community, for the benefit of themselves, their families, other people, and other creatures and not for sale".

Related to the need of consumer to get protection, Retno Murni said:

The reasons for protection consumers are various, and there are many debates on the need of consumer to get protection, such as in economic, social and legal contexts. Consumer protection should be based on the principles of benefit, justice, harmony, security and safety, as well as on legal certainty. In business, whether in simple or complex transaction of goods and services, consumers or users need to be protected.⁴

For consumers in order to fulfill their rights as defined in the Consumer Protection Law, it requires the existence of a guarantee and certainty to be safe when making a choice and when consuming a food product that can affect their health later. Considering that food is included in the need that has greatest percentage that enters the human's body for the needs of daily life.

Related to the raised issues, the discussion is more focused on processed food, the explanation is set out in Article 1 point 19 of the Food Act as follows: "the food or beverage of process results in a certain way or method with or without additives". The food product that is produced by a particular company is also included in this case.

Diversity condition of circulation of food products in society, on one side has benefits for consumers, because the need for food products can easily be obtained and consumers have the freedom to choose the food products in accordance with the wishes and abilities. On the other hand, this condition subconsciously positions the consumers on the situation that can be detrimental to consumers; it is because the consumers do not know the matters related to the products they consume, especially regarding the safety of the body and health. The existence of the product is known by the businessmen as Manufacturer.

Every food product in order to reach a particular purpose, certainly using various food additives (hereinafter abbreviated as BTP), and the explanation is in chapter 73 of the Food Act as follows: "a substance that is added to food to influence the characteristic and / or shape of food ". Usefulness of BTP usage are: to prevent or inhibits in order not to be damaged, to add flavor or give a specific color. At any food product, manufacturers will use BTP at least two (2) types of BTP, for example: sweeteners and dyes, peng durable and sweeteners, and so forth.

¹ Janus Sidabalok, *op.cit.*, hlm. 18

² AZ. Nasution, *Hukum Perlindungan Konsumen*, Daya Widya, Jakarta, hlm. 3

³ Henry Campbell Black, *Black's Law Dictionary*, St. Paul, Minn West Publishing Co, Sixth Edition, 1990, hlm. 316

⁴ Retno Murni, *Towards A Consumer Protection For Low-Cost Housing In Indonesia*, Thesis, Faculty Of Humanities And Social Sciences University Of Newcastle Upon Tyne United Kingdom, 2008, hlm. 26

Generally, BTP can be divided into two (2) major categories, which are:

1. BTP is deliberately added to the diet, by knowing the material composition and purpose of adding it can maintain the freshness, flavor, and help processing, for example preservatives, dyes, and hardener.
2. BTP is not intentionally added, a material that does not have a function in the food, existed inadvertently, either a little or quite a lot because of mistreatment during production, processing, and packaging. This material can also be a residue or contaminants from the material that is intentionally added for the purpose of production of raw material or the treatment that is still carried over into the food that will be consumed. Example: residues of pesticides (including insecticides, herbicides, fungicides, and rodenticides), antibiotics, and polycyclic aromatic hydrocarbons.¹

Related to the issues raised in this paper, class of BTP that is meant is BTP that is deliberately added by the manufacturer into products that are made with the purpose that is to influence the characteristics and shape of the food products that will be circulated. BTP that is meant is made of chemicals, is easier and more practical than BTP that is made from natural ingredients.

Special arrangements regarding BTP contained in the Regulation of the Minister of Health of the Republic of Indonesia Number 033 Year 2012 on BTP) in lieu of the Regulation of the Minister of Health of the Republic of Indonesia Number 722 / Menkes / Per / IX / 88 about Food Additives as amended by the Decree of the Minister of Health of the Republic of Indonesia No. 1168 / Menkes / Per / X / 1999. In Appendix I PERMENKES Number 033 Year 2012 on BTP explained about the kinds of BTP such as: antifoam, antisolid, sweetener, acidity regulator, preservative, baking powder, thickener, hardener, MSG, volume enhancers, colorings and la in forth.

Related to the maximum limit of the use of BTP that can be harmful for health as a result of continuous use in PERMENKES Number 033 Year 2012 there was no regulation. This situation can position the Customer of Food in a weak position, due to ignorance about the impact from BTP content that is in the product of food consumed, and it could be detrimental to his health especially, when the BTP accumulately enters the body within a certain time.

Impact of use of BTP that exist in a food product is often just felt some time after consuming the food product. So it will be difficult to find food product using the BTP, which has actually led to a health problem of the consumer, considering that in fulfilling the needs of daily life it cannot be ensured how many types of food products which already enter the human body. In the end it will complicate businessmen liability for damages suffered by that consumer.

Related to the protection of consumers in the use of BTP in a food product, essentially Consumers have rights as stipulated in Article 4 letter a Consumer Protection Law which determines: "Consumer's Rights is the right of the comfort, security, and safety in consuming the goods and/ or services", means that in that provision it shows the existence of a guarantee that the consumer gets protection of the food product that is consumed is safe for his body and health. Then the businessmen have an obligation contained in Article 7 letter b of the Consumer Protection Law, which is: "to provide information that is correct, clear and honest about the condition and guarantee of the goods and/ or services and explain the use, repair, and maintenance", and the acts prohibited is set in the Article 8 paragraph 1 letter i on Consumer Protection Law that determines as follows:

The businessmen are prohibited to produce and/ or trade goods and/ or services:

do not attach a label or to make an explanation of goods bearing the names of goods, size, weight/ volume net or net, composition, rules of use, date of production, the side effects, the name and address of company, as well as other information for use in accordance with the provisions should be stated/ created.

Related to the description as mentioned above, the formulation of the problem in this paper is: "How is the regulation on the responsibility of businessmen to the consumer for the use of Food Additives (BTP) on food products which continually harm in order to achieve the development of the health of society in the future"?

2. Research Method

The type of research used in this paper is "normative legal research. According to Soerjono Soekanto normative legal research is: "legal research is conducted by researching the references or secondary data"²

The approach used in this study is the Statute Approach, which is: a way to examine all regulations related to the protection of consumers on the use of BTP that is harmful to health. Conceptual Approach is "approach which is moved from the views and doctrines that are developed within law".³ This approach is used in order for the development of consumer protection law in the future considering that health is a human right that must to be considered. The Fact Approach is the approach that is used to study the implementation of norms that are performed, because each food products will always use BTP in any form or kind. Those facts are studied to gain an overview of the use of BTP that can harm the health of consumers.

Those legal materials were collected and analyzed by using descriptive, evaluative, and interative techniques that are to analyze, interpret, assess and explain the principles, norms or the rules contained in the laws of economics, especially related to the protection of the consumer, to find a legal concept as the answer of the existing problems, especially regarding the safety of food on the use of BTP.

3. Result and Discussion

¹ Wisnu Cahyadi, *Analisis Dan Aspek Kesehatan Bahan Tambahan Pangan*, PT. Bumi Aksara, Jakarta, 2008, hlm. 2

² Soerjono Soekanto dan Sri mamudji, *Penelitian Hukum Normatif. Suatu Tinjauan Singkat*, CV. Rajawali, Jakarta, 1986, hlm. 15

³ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2010, hlm. 95

3.1 Legal Protection against Consumers' Health of Food Products Containing Food Additives.

Basically between Businessmen and Consumers are the two parties that need each other. Businessmen need Consumers as the party who receive or use the goods they produce, otherwise Consumers need businessmen to get goods which are needed in order to meet the needs of daily life. Related to this, Sumarwan Ujang said that:

How good any product is will not mean anything for the company if it is not purchased by individual consumers. Individual consumers are the backbone of the national economy, most of the factories and companies and sector of agriculture, produce products and services to be used by the final consumer.¹

The definition of businessmen according to the Consumer Protection Law is:

Any individual or business entity that is a legal entity or not a legal entity that are established and domiciled or conducting activities within the jurisdiction of the Republic of Indonesia, either individually or jointly by agreement for business activities in various economic fields.

As a businessman when producing a food product, it needs attitude of honesty and care in running his business. Businessmen not only create and market products, but also think that the food products that are produced are safe for consumption and not harmful for anyone that consume. Related to this, Elizabeth Martin said that: "In the duty of care, it actually saved a legal obligation to act or do appropriately in order not to get losses."²

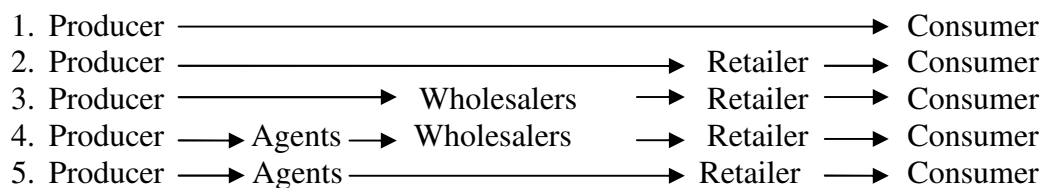
Every businessman as a Manufacturer in producing the ultimate goal is the wants to get as much profits as it can, despite the honest businessmen or businessmen who have bad purpose when produce or market their products. Related to this, Josephus L.Sinuor said:

A good business should not stop with the supply of goods and services for fulfilling the needs of many people (social dimension), but it must also be run with legal norm (legal dimension) in which the business efforts may not do all kind of ways to achieve economic objectives (economic dimension). All in all, the good business is a business that is run in an honest, fair, and responsible way (moral dimension).³

Based on that opinion it can be said that as a businessman when producing a food product it should not only find benefit, but also must consider any things: social dimension, means that producing for fulfilling the needs of large community because the biggest percentage is the fulfillment the needs for food. Legal dimension means that the businessman should pay attention to the legal norms that are applied in order the food products of the production result are not detrimental to the public when they consume it. Economic dimension, means that the businessmen in making efforts has goal of getting profit solely for its survival and moral dimension, that means in running his business it needs honesty or good purpose from the businessmen in order the food products made truly provide safety for the people who consume them.

The legal relationship between the manufacturer as a businessman and the Consumer started from the circulation of goods made by the manufacturer and then distributed through the various parties to get into the hands of consumer. That legal relationship is associated with its short or length of the distribution of food products on the market. The short or length of law relationship will affect accountability form of the businessmen to the consumer if the food product that is distributed has harmed consumers when it is consumed.

According to Basu DH Swastha and Ibn Sukotjo, distribution pattern that is known in the science of marketing management will be explained as follow:⁴



Based on the distribution pattern as mentioned above, it can be said that the arrival of a food product from the manufacturer as the businessmen to the hands of consumers can be through two (2) distribution models that are:

1. Producer directly to the consumer;
2. Producer through various parties to get into the hands of consumers.

So with that distribution model, a legal relationship that occurs between businessmen as the Producer and Consumer can happen in two (2) ways: (1) a direct relationship; (2) an indirect relationship.

According to Ahmadi Miru, direct relationship is: "the relationship between producers and consumers that are tied directly with agreement", while the indirect relationship is: "the relationship between Producer and Consumer that are not directly bound with agreement because there is party between Consumers and Producers".⁵

¹ Ujang Sumarwan, *Perilaku Konsumen. Teori Dan Penerapannya Dalam Pemasaran*, Ghalia Indonesia, Bogor, 2004, hlm. 25

² Yusuf Shofie 1, *Kapita Selekta Hukum Perlindungan Konsumen Di Indonesia*, PT. Citra Bhakti, Bandung, 2004, hlm. 127

³ L. Sinuor Yosephus, *Etika Bisnis*, Yayasan Pustaka Obor Indonesia, Jakarta, 2010, hlm. 66-67

⁴ Janus Sidabalok, *op cit.*, hlm. 67

⁵ Ahmadi Miru, *Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia*, PT. Raja Grafindo Persada, Jakarta, 2011, hlm. 34-35

3.2 Forms of Legal Protection to Customers Related to the Use of Food Additives

Food Label

The label is primarily a medium of information from Businessmen to Consumer about something that is related to the product made by the Manufacturer. Everything about the existence of these products is contained in the label, for example: the raw material that is used, the composition of the materials that are used, production date, expiration date or other information, such as halal label, methods of storage, method of use, nutritional value and so on.

The definition of Food Labels as stipulated in Article 1 paragraph 3 of the Indonesian Government Regulation Number 69 Year 1999 on Food Label and Advertisement (hereinafter abbreviated as PP food label and advertisement) is:

Each description of the food in the form of pictures or writing, a combination of both, or other forms that are included in the food, put into, attached to, or a part of food packaging, hereinafter in this Government Regulation called Label.

Related to the use of BTP on every food product, for a Consumer the existence of Food Label plays an important role because it is information that is needed by the consumer when they will buy and consume the food product, at least to know things related to the description of that food product, it is in accordance with the provisions in Article 96 paragraph (1) Food Act as follows: "Giving Food Label aims to provide correct and clear information to the public about every food product that is packaged before purchasing and/ or consuming food".

The use of BTP on every food product should be informed on the Label Food by Manufacturers clearly about the composition of its size and its impact that can be dangerous to health if it is consumed continuously, because the BTP was derived from chemicals. Manufacturers use BTP on each food production for a particular purpose, for example: for preservatives, sweeteners, dyes, disintegrating, and so on, but it still have to be watched out for anyone who consume the food product, because it can be harmful to health.

Considering the importance of the role of Food Label for Food Consumer, especially when choose to buy, then it needs the attitude of manufacturers as businessmen to have good purpose and be honest in producing food before distribute it, accordance with Article 7 letter a and b Consumer Protection Law that is the obligation of businessmen, which are: good purpose in running business activities and providing the correct, clear and honest information about the condition of the products they make.

This needs to be done by the manufacturer because as the businessmen they should be more aware of the composition of additives that are used for food products that will be distributed, so that when food products circulated then it contains the ingredients that cause harm to health of the consumers who consume it, then the responsibility for the food safety was the responsibility of businessmen, not the parties that are related to the chain of distribution, for example: distributors, agents, shops and so on, because the parties were only have interest in marketing a food product that has been made by the manufacturer to distribute to wide community.

Precautionary Principle *Caveat Venditor dan Caveat Emptor*.

The relationship between businessmen and consumers is based on the high level of dependency, meaning that the success of a businessman can not be separated from the role of a consumer. Similarly, without the role of the consumer the product that is made will not give an advantage. Considering the position of both sides that need each other, then the consumer actually has a balanced position with businessmen. This balance position makes the same rights and obligations between businessmen and consumers.

One form of respecting the rights and obligations of the consumer is the existence of the caution that must be done by Business Actors as Manufacturer (*caveat venditor*) in producing a food product. The circumspection done by a producer will create a food product that is safe for consumers and is one of the efforts to give legal protection to the Consumer Food. Circumspection done by the Manufacturer, for example: (1) using a safe BTP and that does not endanger health; (2) BTP is made of chemicals that must be informed with a maximum amount that is not exceeding the regulation; (3) inform you of the side effects when using BTP continuously and the accumulation in the body. All of it is a form of preventive action for the Customer before choosing food product to meet their daily needs.

Actions that are taken by the businessmen are the realization of the objectives of consumer protection as well as the provisions of Article 3 letter e and f Consumer Protection Law as follows: "raise the awareness of businessmen of the importance of consumer protection so that the attitude of honest and responsible grows in running business and improving the quality of goods which guarantees the existence of the production business, health, comfort, safety, and the safety of the consumers".

After the businessmen doing his duty to be careful in producing food products using the BTP to be circulated to the public, as a form of alignment or balance between Businessmen and the Customer, then the circumspection needs to be done by the consumer to protect himself. For example: read the information on the Food Label regarding the use of BTP and be careful on it, it is done in order to maintain safety and salvation of his body and health.

The information in the form of warnings about the dangerous BTP that is used continuously and accumulated, will minimize the loss on health experienced by consumers, for example: "Warning: The use of BTP that is excessive and continuous can harm health". The warning could make the consumers to be more wary and careful in choosing and consuming food products to meet their daily needs. It is actually in line with the objectives of consumer protection as the provisions of Article 3 letter a and c the Consumer Protection Law, which are: "to raise awareness, ability and independence of consumers to protect themselves and increase the empowerment of consumers in selecting, deciding and demanding their rights as consumers".

Responsibilities of the Businessmen on Health of The Consumers as a Result of the Use of Food Additives in Food Products.

The enactment of the Consumer Protection Law is not intended to shut down the efforts of businessmen, but with the enactment of rule of law regarding the protection of the consumer, that can indirectly affect to encourage a healthy business climate and to encourage businessmen to be responsible for the products they make.

The weak position of consumers when consuming a food product that use the BTP, there needs to be some form of protection to reach the health of consumers in the future in order to implement health development as mandated in the Constitution of the Republic of Indonesia, 1945. The definition of health according to Article 1 paragraph 1 of Law of the Republic of Indonesia Number 36 of 2009 (hereinafter referred to as the Law of Health) is: "Healthy condition, both good in physical, mental, spiritual and social that allows every person to live productively, socially and economically". One form of safe feeling in consuming a product of food containing BTP is the fulfillment of health for consumers in accordance with the provisions of Article 4 of the Health Law as follows: "everyone is entitled to be healthy".

The need to improve health effort is actually a follow-up of the mandate of the Law of Health in the preamble letter c as follows:

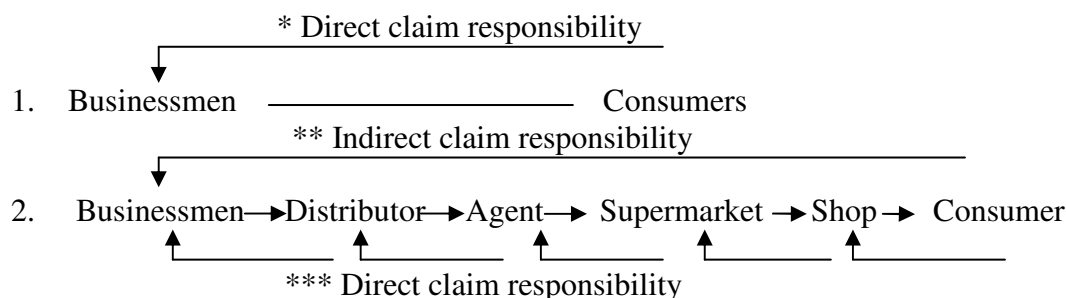
That every thing that causes health problems to the Indonesian people that would cause huge economic losses for the country, and every effort to improve community health status also means investment for the development of the country.

Considering the importance of health effort for every human, therefore it is necessary to arrange continuously in order to realize the goals of health development in accordance with the provisions of Article 3 of the Law of Health, which is:

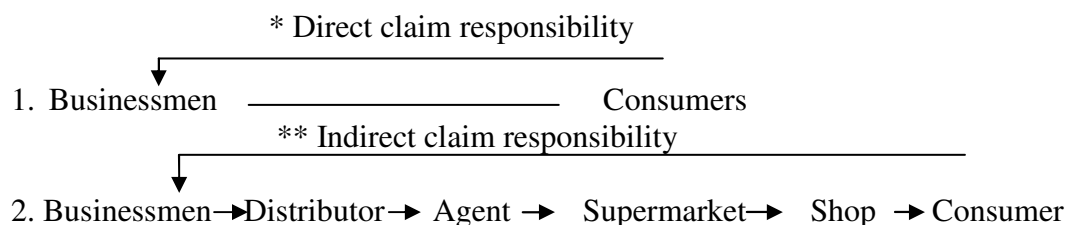
Health development aims to increase awareness, willingness and ability of healthy life for everyone in order to achieve the health status as high, as an investment for the development of human resources socially and economically productive.

The losses on health experienced by consumers as a result of consuming food products using the BTP continuously, businessmen as Manufacturers are obliged to provide compensation for his actions that had circulated food products using the BTP, whether it is related to a direct connection or an indirect relationship between businessmen with consumers in product distribution chain.

The accountability of businessmen to the loss suffered by the Customer (not related to BTP), the form of responsibility of the claim can be described as follows:



Accountability of Businessmen towards the losses suffered by the Customer (related to the use of BTP that harm health), the form of responsibility of the claim can be described as follows:



Current conditions, provisions that regulate the claim for compensation of aggrieved consumers against the use of goods or services are contained in several articles in the Consumer Protection Law, which are:

- a. Article 19 (1) and (3) determine the following:
 - Paragraph (1) businessmen are responsible for providing compensation for damage, contamination, and/ or losses of the consumption due to the consumption of goods and / or services produced or traded;
 - Paragraph (3) Indemnity is carried out within a period of seven (7) days after the date of the transaction.
- b. Article 28 determines as follows: "the proof on whether there is an element of fault or not in lawsuit of indemnity as referred to in Article 19, 22 and 23 is the burden and responsibility of businessmen".

Paying attention to the provision above, it shows that the consumers get law protection of the losses due to the consumption of goods or services sold by businessmen. Regarding whether there is an element of fault or not, it is charged to the businessmen who have to prove it.

The grant of this grace period is not possible to be applied to the losses as a result of using BTP that is taken continuously to meet daily needs, because the harmful impact of BTP for the body is felt after the long period of time. In contrast, the existing provisions regulate the granting of indemnity that is carried out within a period of seven (7) days after the date of the transaction.

Related to the chain of distribution of food product into the hands of consumers may involve multiple parties, for example: distributors, agents, supermarkets, shops, or stalls. In terms of accountability to consumers that are harmed as a result of the use of BTP, such parties can not be held responsible for the losses as stated in the provisions in Article 24 paragraph (1) letter a Consumer Protection Law as follows: "businessmen that sell goods and/ or services to other businessmen are responsible for claims of compensation and/ or Consumer lawsuit if: "Other businessmen sell to the Consumers without making any changes for goods and/ or services".

In connection with this provision, it shows that the use of BTP in food products that endanger the health of consumers is the responsibility of businessmen as Producers. This is in line with the General Explanation of the fourth paragraph of Food Act which specifies that: "Food businessmen are responsible for the food that was circulated, especially if the food that is produced causes harm, both to the health problems and the death of those who consume that food".

Considering that food is a basic human need that is most important and it is a part of the fulfillment of human rights, then it needs food circulation of safe and healthy food for the body. The right to be healthy is a fundamental right of every human being, health problem on society will lead to large economic loss for the country and every effort to improve the degree of public health means investment for the development of the country as stated in the preamble of the Health Law.

There needs to be a rule that can provide legal protection to consumers who consume a food product using the BTP, because regulations that concern on indemnity with a grace period of seven (7) days cannot be used because the impact of the use of BTP exceed the grace period. Related to the use of adverse BTP, businessmen at any time can be asked for compensation, meaning that when something that is adverse happen, then the consumer can ask for accountability.

There are various principles of responsibility, which are:¹

1. Liability based on fault means that it can be asked for the responsibility of law if there is an element of fault. The burden of proof is on the plaintiff.
2. Presumption of liability principle means that the defendant is always considered to be responsible until he can prove that he is not wrong. The burden of proof is on the defendant.
3. Presumption of non-liability principle means that the defendant is not always considered to be responsible. The burden of proof is on the defendant with the compensation restriction.
4. Strict liability means that the responsibility sets the fault is not as decisive factors. The burden of proof is on manufacturers as defendants.
5. Limitation of liability principle means that responsibility with restrictions includes the exoneration clause. Businessmen limit the maximum responsibility.

Related to the losses suffered by consumers as a result of consuming food products using the BTP, the businessmen can be asked an accountability on the basis of the principle of the responsibility of the presumption of liability, which is considered to be responsible to prove that he is right and the one that should prove is the defendant that is businessmen. This principle is more appropriate to use because BTP is intentionally put into food products by businessmen, so it can be more aware of the existence of food products made whether it is safe or not, including all the risks that happen later.

4. Closing

Conclusion

1. Businessmen as Manufacturers are always considered to be responsible if a food product using BTP that is circulated has harmed health of consumers, except if businessmen can prove that he is not wrong of the actions that have been detrimental to the health of consumers.
2. The provisions of Article 19 paragraph (3) of the Consumer Protection Law cannot be used for compensation to consumers as a result of consuming food products using the BTP, considering the use of BTP constantly and it is accumulated which will have an impact on health after long periods of time. Such provisions can only be used for product-related loss of goods due to damage that is unrelated to BTP, so that consumers who consume food products using the BTP continuously and accumulated are unprotected based on that provision.

Suggestion

1. There should be an addition to the provisions of Article 19 of the Consumer Protection Law as follow: "indemnity as a result of the use of BTP that is implemented any time".
2. Add provisions in the Consumer Protection Law regarding the obligation of businessmen to include warning as follow: "in order to be wary against the use of continuous BTP that can be harmful for the body and health".

¹ Shidarta, *Hukum Perlindungan Konsumen Indonesia*, PT. Grasindo, Jakarta, 2000, hlm. 58 – 65

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