

Legal Protection For Instant Coconut Milk Consumer

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ABSTRACT

Consumer protection is a fairly new thing in the laws and regulations in Indonesia. Despite the call for the need of comprehensive legislation for consumers has been socialized for a long time, it was only on April 20, 1999 the government of the Republic of Indonesia issued and enacted Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as the Consumer Protection Act) . This study aims to describe a number of things, which include the legality of food additives in instant coconut milk circulating in Indonesia, as well as understanding the legal liability of businessmen of instant coconut milk products containing food additives that exceed the threshold. The results of data analysis are obtained as follows. First, according to Law Number 7 of 1996 concerning Food, it is regulated about food / food additives, including: Article 10 Paragraph (1): Every person who produces food for distribution is prohibited from using any material as food additive which is declared prohibited or exceed the maximum limit set. Food Additives may be used in the production of instant coconut milk, except that the level of use must not exceed the threshold set by BPOM. Article 11 also states: ... Materials that will be used as food additives, but whose impacts on human health are not yet known, must first be examined for security, and their use in food production activities or processes for distribution is carried out after obtaining approval from the government. Second, the legal liability of business actors who use food additives that exceed the threshold can be requested for litigation, both by conducting criminal and civil claims. Or resolved beyond litigation with a pattern of mediation, arbitration and conciliation.

Keyword: Legal protection, threshold, food additives, consumer protection.

1. INTRODUCTION

Consumer protection is a fairly new thing in the world of legislation in Indonesia. Although the appeals regarding comprehensive laws and regulations for consumers have been socialized for a long time, but only on April 20, 1999 the government of the Republic of Indonesia issued and enacted Law Number 8 of 1999 concerning Consumer Protection, hereinafter referred to as the Consumer Protection Act.¹

From the results of the BPKN study in the field of food related to consumer protection announced on Friday, April 30, 2007, there are 4 (four) main problems related to consumer safety of food consumed, namely: Food poisoning can occur due to damage and contamination or mixed with hazardous materials, prohibited use of materials, label provisions for food and beverage industry products that are not in accordance with the provisions of food labels and advertisements according to PP no. 69 of 1999 along with Minister of Health Regulation, expired food and beverage industry products.²

¹ Gunawan Widjaa, *Hukum Tentang Perlindungan Konsumen*, Gramedia, Jakarta, 2001, h. 1-3.

² Badan Perlindungan Konsumen, BPKN News Letter : Konsumen dan Pelaku Usaha Harus Setara, dalam <http://www.bpkn.go.id>. Diakses pada 5 September 2018, Jam 12.15 WIB.

The 2013 BPS data shows that the per capita consumption of coconut commodities in Indonesia in March 2012 was 0.133 items. In September 2012 there was a decrease in consumption by 0.75 percent so that the amount of consumption became 0.132 items. In March 2013 coconut consumption was 0.117 items which meant a decrease of 11.36 percent. The percentage of the total decrease in the amount of coconut consumption by the people in Indonesia for one year is from March 2012 to March 2013 which is 12.03 percent.³

The decrease in the number of coconuts consumed by Indonesian people is assumed due to changes in the trends that occur in the community. According to the 2013 BPS data, coconut consumption in rural areas is equal to 0.7547 grains per capita a month. Urban communities consume less coconut than rural communities which is equal to 0.3613 grains per capita a month. The low amount of coconut consumption in urban communities is caused by changes in trends in urban communities that are more rapidly occurring.⁴

Changes in the trend in consuming coconut which is generally made into coconut milk occur because of changes in the mindset of the community (Roesli, Heri, & Rahayu, 2017). Changes in the mindset of the community especially occur in urban areas that prioritize efficient activities. Eating coconut milk made directly from coconuts gives satisfaction to those who consume it. This is because the milk obtained is more and more guaranteed quality. But this is now felt to be less efficient. This is because the traditional coconut milk squeeze or by hand requires a lot of time and energy. Coconut coconut produced also has a short storage period or easily damaged. This is the underlying shift from conventional coconut milk to the use of packaged coconut milk.

This study will look at aspects of the provisions of production and distribution permits of coconut milk in packaging. To see how these aspects are related to the Consumer Protection Act. Are there provisions that regulate the production procedures and enter the circulation of coconut milk in packaging in Indonesia. This research will begin by describing the forms of coconut milk production in packaging, the impact of the circulation of coconut milk in packaging to consumers, and outlining aspects of consumer protection in instant products.

In a simple way, this thesis departs from the main design of consumer protection which includes: First, a general review of the provisions of production and permits for the distribution of instant food, which are specifically for packaging coconut milk as part of the issue of drug and food safety. Second, related to consumer protection. because consumer protection for instant food is still very minimal in Indonesia, and there is still a large possibility that these food producers will

³ Badan Pusat Statistik, Statistik Perkebunan Indonesia, dalam <http://www.bps.go.id>. Diakses tanggal 5 September 2018, Jam 12.40 WIB.

⁴ *Ibid.*

still not comply with the applicable provisions. Which of course will harm consumers from various aspects.

A food product to arrive at consumers does not occur directly but through the marketing channels, namely business people or intermediary media. As a result of the industrialization process in processing food products, legal problems arise due to the presence of defective and dangerous goods or food products that harm consumers, both financially and non-financially, and even loss of life. Regarding this, there is no clarity about who is responsible (Muhammad Teguh Nugraha, 2015).⁵

In connection with the above, are there provisions that regulate the circulation of coconut milk in packaging related to consumer protection, and whether the coconut milk circulation permit in packaging is regulated in the Consumer Protection Act. Due to the current global era, many products and / or services such as coconut milk in packs are produced by businesses (producers) that are unsafe and cost consumers. This is inseparable from the result of competition between business actors whose ends harm consumers.

The consumer party itself is a group that is vulnerable to being exploited by business actors, and because of that legal instruments are needed to protect consumers. Based on the background described previously, then the subject matter that will be raised in this study is the legal protection of consumers of instant coconut milk with the formulation of the problem as follows: Legality of food additives in instant coconut milk and legal liability of instant coconut milk business actors containing Food Additives that exceed the threshold. The purpose of this study has the objectives to be achieved, among others: To find out the legality of food additives in instant coconut milk circulating in Indonesia. To understand the legal liability of business operators of instant coconut milk products containing Food Additives.

2. RESULTS AND DISCUSSION

Legality of Additives in Instant Coconut Milk Product

1. Regulation of food product that containing food additives

The scope of consumer protection is difficult to limit only by accommodating it in one type of legislation such as the Consumer Protection Law (UUPK). Consumer protection law always relates and interacts with various branches and other legal fields, because in every field and branch of law there is always a party that is predicated as "consumer".

The need for a law to provide protection for Indonesian consumers is inevitable, in line with our national development goals, namely the full development of Indonesian people

⁵ Muhammad Nugraha Teguh, Analisa Variasi Kecepatan Output RPM yang Dihasilkan dari Sistem Penggerak Terhadap Kapasitas Hasil Perasan pada Mesin Pemas Kelapa Parut, dalam <http://www.jurnalmahasiswa.unesa.ac.id>. Diakses tanggal 5 September 2018, Jam 12.40 WIB.

To unite perceptions in the discussion it is necessary to limit the understanding of food and food. Regulation of the Minister of Health No. 329 / Me n.Kes / Per / XII / 76 concerning Food Production and Circulation, Foods are: Goods used as human food or drinks, including gum and the like but not drugs.

Regulation of the Minister of Health No. 180 / Men.Kes / Per / IV / 85 About expired food, Food is: Goods that are contained and labeled and which are used as human food or drinks but not drugs. Regulation of the Minister of Health of the Republic of Indonesia No. 382 / Men.Kes / Per / IV / 89 concerning Registration of Food, Food are: Goods intended to be eaten or drunk by humans and all materials used in the production of food and beverages.

In anticipation, consumers are required to be critical and smart in looking at the food they face. In addition, there are still a number of explanations regarding various handling errors, treatments, and food processing that often occur, resulting in food additives that were originally harmless to be harmful to consumers. The above materials are then known as Food Additives (BTM) or often called Food Additives (BTP).⁶

Food additives (BTM) are ingredients added to food to influence the nature or shape of food. Food additives can have nutritional value, but they may not. According to the stipulated conditions, there are several categories of Food Additives.⁷

First, Food Additives that are safe, with unlimited doses, such as starch. Second, Food Additives are used at certain doses, and thus the maximum dosage of use has also been determined. Third, Food Additives that are safe and in the right dosage, and have obtained outstanding licenses from the authorized agency, for example coloring agents that are already equipped with a secure certificate.

So that consumers can choose food additives to be used, it's good for consumers to know some food additives that are safe to use, namely those that have been permitted by the Food and Drug Monitoring Agency (BPOM).

Unfortunately, a lot of dangerous chemicals that are not intended for food or are not food additives are actually added to food. This is of course very dangerous for consumers.

Regulation of the Minister of Health No. 329 / Men-Kes / XII / 1976 Concerning Food Production and Circulation Article 1 number 6 states provisions relating to food / beverage quality standards: Quality standards are a provision stipulated by the Minister of Health regarding names, raw materials, supplementary materials, auxiliary materials , composition, container, packaging and other provisions for testing each type of food / beverage.

⁶ Nurheti Yulianti, *Awas Bahaya di Balik Lezatnya Makanan*, Andi, Yogyakarta, 2007.

⁷ *Ibid.*

Disruption of consumer interests can cause losses to consumers, both in the form of loss of property, disruption to body health and or threats to the safety / mental health of consumers. Disturbances in the interests of these consumers, directly or indirectly, are also affected by "poor" laws that consumers can use to acquire rights and or protect their interests.

2. Authorized agency that regulates food product containing food additives

Packaging and food companies in Indonesia are currently growing rapidly. However, it is very unfortunate that a lot of packaged food produced is only concerned with aspects of consumer tastes regardless of health aspects.

Based on the Decree of the Minister of Trade of the Republic of Indonesia No. 1458 / KP / XII / 1984 About Trading Business License (SIUP) On December 19, 1984 stated that businesses in the industrial sector are divided into 3 (three) groups, namely: small, medium (medium) and large groups. This difference is determined by the amount of invested working capital and the company's net worth.

Deperindag is an agency authorized to carry out technical guidance and supervision of all industries. The Ministry of Industry and Trade is also authorized to carry out the control of Trading Business Permits (SIUP) for each type of business that runs its business in the trade sector, including industrial and food and beverage trading businesses, after fulfilling the specified conditions.

Guidance and supervision by the Deperindag on industrial companies has been carried out since the establishment until the operation of the industry. When the operation of the industry, guidance and supervision continues to be carried out, both through reports and through checks to industrial locations. As long as the industry is running (operating) supervision and inspection are carried out through periodic reports that must be submitted by employers and through incidental inspection to industrial locations. Deperindag based on the results of the examination called the businessman and provided an explanation of the things that must be done by the industrial company, and gave sanctions in accordance with the violations or mistakes made. In this case the Ministry of Industry and Trade cooperates with the Ministry of Health and the Food and Drug Supervision Agency (BPOM).

In carrying out supervisory actions for producers or food and beverage business actors to enable the company to operate, Deperindag refers to Minister of Industry Regulation No. 72 / M / SK / 5/1976 Concerning Industry Standardization And Industrial and Goods Quality

Control, and Minister of Industry Decree No. 210 of 1979 concerning Establishment of Industrial Permits.

Supervision and inspection in the field of food and beverage processing and distribution is carried out by the Food and Drug Supervision Agency (BPOM). BPOM conducts supervision and inspection in accordance with RI Health Act No. 23 of 1992 and Food Law No. 7 of 1996).

Supervision and inspection of food and beverages includes, among others: (a) Examination of places of activity or processes for the production, storage, transportation and trade of food (food and beverages). (b) Examination of food safety, quality and nutrition for the benefit of consumers' health. (c) Examination of books, documents, or other records that are suspected of containing information on the activities of production, storage, transportation and or trade of food, including also citing information or duplicating it. (d) Examination of business licenses or other similar documents. (e) Examination of the use of additional materials that are declared prohibited or exceed the maximum limit set. (f) Examination of the use of food / beverage packaging material that is declared prohibited because it is feared that it can release contaminants that harm or endanger the health of consumers.

Supervision and inspection carried out by BPOM on a regular basis, namely 1 time 3 months, directly to each food and beverage processing location and to the distribution facilities. In carrying out the inspection of food and beverages on the market, BPOM periodically checks the food and beverage companies directly to the factory and to the field or food stores, supermarkets, shops or stalls that sell food and beverages based on rules determined by the Regulation of the Minister of Health of the Republic of Indonesia No. 329 / Men-Kes / PER / XII / 1976 concerning Food Production and Distribution.

BPOM also conducts direct checks on producers or food and beverage businesses to look closely at how to produce healthy and hygienic food and beverages in accordance with the stipulated provisions, based on the Decree of the Minister of Health of the Republic of Indonesia No. 23 / Men-Kes / SK / I / 1996 Concerning Inclusion of Halal Writing on Food labels.

BPOM also conducts incidental inspections, namely based on complaints or reports from the public directly. BPOM also checks on request from government agencies or other non-formal institutions, as well as from producers or businesses of food and beverage itself, even based on mass media. The Food and Drug Supervisory Agency (BPOM) has opened a Consumer Complaints Service Unit (ULPK) to the public.

The way people submit their complaints is to contact or come directly to the respective secretariat office of the Food and Drug Supervisory Agency (BPOM) in the area where the

consumer is located, or consumers who feel their rights have been violated need to file it with the authorized institution.

Consumers can also request assistance from the Non-Governmental Consumer Protection Agency (LPKSM) to request legal assistance or be able to directly resolve it to the Consumer Settlement Agency (BPSK). In addition, consumers can also go to the sub directorate (sub-directorate) of complaints services at the Directorate of Consumer Protection, Ministry of Commerce.

Disruption of consumer interests can cause losses to consumers, both in the form of loss of property, disruption to body health and or threats to the safety / mental health of consumers. Disturbances in the interests of these consumers, directly or indirectly, are also affected by "poor" laws that consumers can use to acquire rights and or protect their interests.

In the framework of this supervision, the supervisory duties are carried out by the Food and Drug Supervision Agency (Balai POM) in each province as part of the Directorate General of Drug and Food Control of the Ministry of Health of the Republic of Indonesia, which has the authority to carry out inspection food sector (paragraph (1)). So, it should be noted that the task of fostering in the food sector is carried out by the Health Office, while the supervisory duties are carried out by the POM Office, both of which are part of the Ministry of Health of the Republic of Indonesia.

Legal Responsibility of Instant Coconut Milk Producer that containing food additives who exceeding limited liability

1. Producer Responsibility

According to Law No. 7 of 1996 concerning Food, it is also regulated that food / food additives for the use of Food Additives on instant coconut milk are permitted, but may not exceed the threshold specified in PerKB POM no. 24 of 2013 concerning Food which regulates Food which regulates Stabilizer Type Food Additives.

Mentioned in PerKB POM no. 24 The threshold for using food additives listed in the Regulation of the Head of the Republic of Indonesia Drug and Food Control Agency No. 24 of 2013 concerning the Maximum Limit for Use of Food Additives Stabilizers in instant coconut milk, namely 1100 mg / kg for stabilizers of orthophosphate, 2500 mg / kg for stabilizers of fatty acid and glycerol types.

For producers or food / beverage businesses that violate the Regulation of the Minister of Health of the Republic of Indonesia No. 329 / Men-Kes / XII / 1976 concerning Food Production and Circulation subject to repression. Article 34 states: violations of the provisions stipulated in articles 2, 10, 21, 22 and 23 of these regulations relating to criminal acts are punished based on Article 204, 205, 212 of the Criminal Code and Article 386 of the Civil

Code. Regulation of the Minister of Health of the Republic of Indonesia No. 382 / Men-Kes / Per / VI / 1989 Concerning Food Registration in Article 19 states: for food that has received registration approval, a reevaluation can be carried out if based on the development of science and technology, inappropriate things are found.

The role of food additives (BTM) or often referred to as food additives (BTP) is very large to produce packaging products. The existence of food additives (BTM) aims to make food look more quality, more attractive, with more perfect taste and texture. In essence, the use of food additives (BTM) that have been proven safe actually does not endanger health. However, its use in doses that are too high or exceeding the permissible threshold may cause serious health problems. The thing that has become a serious problem in this country is that there are a lot of public lies carried out by packaged food producers.

Often producers or businesses do not provide incorrect information from the products they produce, for example labeling compositions that are different from the actual content, both the amount and type of ingredients added, making advertisements that overestimate their products, for example a number of drinks that are beneficial for health even though the beverage is actually just a thirst reliever without extraordinary properties for health.

The increasing number of cases of food poisoning is caused by several factors. Among other things, changes in people's consumption patterns are more likely to like ready-to-eat foods provided by catering or restaurants, the increasing number of people who are vulnerable to diseases due to age, health conditions and lifestyle, a more advanced communication system, and caring increasing food security. From the available data, it turns out that poisoning cases that occur generally occur in ready-to-eat foods that are processed in bulk. This food is more likely to be contaminated by pathogenic microorganisms. Of the various cases of poisoning, it turns out that the cause is low individual hygiene and environmental sanitation.⁸

Food poisoning can also be caused by chemicals. Keep in mind that basically all chemicals are toxic. When entering into the human body these chemicals will cause different effects, depending on the type and amount of chemicals that enter the body. Examples of these toxic chemicals are mercury compounds that can cause genetic abnormalities or poisoning. The organic compounds containing benzene rings, nickel compounds, and chromes can be carcinogenic or cause cancer, headaches, digestive disorders. etc. Toxins are substances or compounds that enter the body in various ways that inhibit the response to biological systems and cause health problems, diseases, and even death. Various types of substances can be toxic to consumers.

⁸ F.G Winarno, *Kimia Pangan dan Gizi*, Gramedia Pustaka Utama, Jakarta, 2004.

Various other chemical compounds are also not food additives, but are often used in Indonesia, including Dulsin Nitrofurazon, Salicylic Acid, Diethylpyrocarbonate (DEPC), and Pottasium Bromat. Manifestations of food poisoning can be acute or chronic. Acute poisoning includes diarrhea, vomiting, and other gastrointestinal diseases, while chronic ones can cause neurological disorders to cancer.⁹

With regard to the above matters, the government immediately establishes an institution which serves as a supervisor while regulating the hazardous materials contained in these food products.

The government has issued legislation and regulations relating to food security both at the production level and at the distribution level. Legislation that forms the basis for taking action or punishment for actions that cause harm or harm to consumers in various forms of legislation.

the form of consumer rights is the obligation of the entrepreneur. The consequence is that every act that violates is an illegal act. Thus the consumer whose rights are violated can sue the producer / business actor for the fulfillment of their rights or to compensate. The conception of responsibility in the regulation of the UUPK basically has a difference with the arrangement of responsibilities in the Civil Code.

2. Legal consequence of food that containing hazardous substances

According to the Civil Code that the responsibility of the business actor (producer) to provide compensation is obtained after consumers who suffer losses can prove that the losses incurred are mistakes of the business actor. Whereas in the UUPK it regulates the reverse obligation, where the business actor is obliged to prove that the loss suffered by the consumer is not due to a mistake of funds or negligence of the business actor, even though in this case the first consumer proposes the loss argument, and this is known as absolute responsibility (strict liability). The concept of absolute liability in the UUPK itself in the United States has been known and enforced since the 1960s.

Where with the implementation of the principle of absolute responsibility all people / consumers who are harmed due to a product or item that is defective or insecure can sue for compensation without having to dispute the presence or absence of elements of error on the part of the manufacturer.

The term Product Liability was only known around the 1960s in the world of insurance in the United States, in connection with the commencement of large-scale food production, both among producers (producers and manufacturers) and sellers (sellers,

⁹ *Ibid.*

distributors) insure the goods against the possibility of a risk due to food products that contain hazardous ingredients that cause harm to consumers.

This standardization is closely related to consumer safety and security, which is related to the feasibility of a product to be used or consumed. Goods that do not meet quality requirements, especially food, can cause havoc to consumers, besides harming consumers from a financial perspective, they can also threaten their security and safety and even the safety of the general public.

As an implementation of this standardization, products that meet the standards are given a product certificate (Certification Marking) which is made with SNI mark that can be placed on the product, packaging or document. This sign is affixed by the producer to the product goods after obtaining permission from the Minister of Industry in accordance with the Decree of the Minister of Industry No. 210 of 1979.

The government has issued legislation and regulations relating to food security both at the production level and at the distribution level. Legislation that forms the basis for taking action or punishment for acts that cause harm or harm to consumers in various forms of legislation, which already exists such as:

1. Law No. 23 of 1992 concerning Health, including: a. Article 21 paragraph (3), namely: "foods and beverages that do not meet standards and or requirements and or endanger health are prohibited from being circulated, withdrawn from circulation and confiscated to be destroyed in accordance with the provisions"; b. Article 80 paragraph (4), namely: "anyone who intentionally circulates food and / or drinks that do not meet standards and or requirements and or endangers health is punished with a maximum of 15 (fifteen) years imprisonment and a maximum fine of Rp. 300,000,000; (three hundred million rupiah);
2. Law No. 7 of 1996 concerning Food, including: e. Article 55, namely: "anyone intentionally contradicts Article 8, Article 21 letter (a), Article 26 letter (b) shall be punished with a maximum of 5 (five) years imprisonment and / or a maximum fine of Rp. 600,000,000; (six hundred million rupiah); b. Article 62 paragraph (1), namely: "business actors who violate the provisions referred to in Article 8 shall be punished with imprisonment for a maximum of 5 (five) years or a fine of at most Rp. 2,000,000,000; (two billion rupiah);

If the provisions of coaching and supervision above apply to all business activities that produce and distribute goods and services, for food products (food) there is a special regulation that applies, namely Law No. 7 of 1996 concerning Food, Provisions concerning guidance are contained in Chapter VII of Article 49, and provisions concerning supervision are contained in Chapter IX of Article 53 and Article 54.

The guidance referred to in practice is carried out by the Health Office (Ministry of Health of the Republic of Indonesia). Article 53 of Law No. 7 of 1996 concerning Food said that those who are authorized to supervise the fulfillment of food legislation are the government. In the framework of this supervision, the supervisory duties are carried out by the Food and Drug Supervision Agency (Balai POM) in each province as part of the Directorate General of Drug and Food Control of the Ministry of Health of the Republic of Indonesia, which has the authority to carry out inspection food sector (paragraph (1)). So, it should be noted that the task of fostering in the food sector is carried out by the Health Office, while the supervisory duties are carried out by POM, both are part of the Ministry of Health of the Republic of Indonesia.

Disputes occur due to differences in views or opinions between certain parties regarding certain matters. That is the opinion of people in general if asked about what is meant by a dispute. Disputes will arise if one party feels their rights have been harmed by another party, while the other party does not feel that way. Consumer disputes are disputes between consumers and business actors (public or private) about consumer products, certain consumer goods and / or services. Stating that consumer disputes are disputes relating to violations of consumer rights. Its scope includes all aspects of law, both civil, criminal and state administration.¹⁰

3. CONCLUSION

According to Law Number 7 of 1996 jo. PerKB POM No. 24 of 2013 concerning Food regulates food / food additives, including: Article 10 Paragraph (1): Everyone who produces food for distribution is prohibited from using any ingredients as food additives which are declared prohibited or exceed the maximum threshold set.

Food Additives may be used in the production of instant coconut milk, except that the level of use must not exceed the threshold set by BPOM. Article 11 also states: ... Materials that will be used as food additives, but whose impacts on human health are not yet known, must first be examined for security, and their use in food production activities or processes for distribution is carried out after obtaining approval from the government.

Business actors found using Food Additives that exceed the specified threshold, legal liability can be requested by litigation, namely by making a criminal or civil claim. Or resolved beyond litigation with a pattern of mediation, arbitration and conciliation.

Advices

¹⁰ Shidarta, Hukum Perlindungan Konsumen Indonesia, PT. Grasindo, Jakarta, 2006.

There needs to be more stringent law enforcement from BPOM as the Food and Drug Supervisory Agency, especially in Law no. 7 of 1996 concerning Pangan jo. PerKB POM No. 24 of 2013 which regulates the threshold for the use of food additives for instant coconut milk products circulating in Indonesia.

For all levels of society or consumers, socialization is needed through counseling to increase awareness of consumer rights and legal protection in the law, as well as ways to resolve legal disputes regarding products that contain food additives that exceed the threshold.

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