



SETTLEMENT OF CONSUMER COMPENSATION CLAIMS AGAINST BUSINESS ACTORS FROM EXPIRED FOOD

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ABSTRACT

Background. Due to serious concerns about illegal business practices in Indonesia's food manufacturing sector, the government passed Law Number 8 of 1999 on Consumer Protection (UUPK). This law seeks to protect consumer rights and promote moral business practices, especially when it comes to food product marketing. Despite these regulations, violations still occur, often resulting in consumer harm. One such instance is illustrated by Criminal Case Number 747/Pid.B/2020/PN.Bgl, where the defendant was found guilty of selling expired food, highlighting the ongoing risks faced by consumers. This study investigates the legal mechanisms for resolving disputes between consumers and business actors, with a focus on the legal responsibilities of businesses that violate consumer protection laws.

Research Method. This study used a normative legal research method. The analysis is based on statutory regulations and case law, particularly Article 1365 of the Indonesian Civil Code regarding unlawful acts.

Findings. Selling expired food constitutes an unlawful act under Indonesian law and causes material and moral losses to consumers. Business actors are not only subject to criminal penalties but are also obligated to provide compensation for damages.

Conclusion. Stronger enforcement of consumer protection laws and increased awareness among business actors are essential to prevent future violations. Legal remedies must be applied consistently to uphold justice and consumer rights.

Keywords: Compensation, Consumer, Expired Food.

BACKGROUND

Public awareness to consume nutritious and varied food is currently increasing. This can be seen from the increasing number of products food products sold in the centers sales of food products. This awareness is influenced by the advancement of information technology in the field of food, so that the public or consumers are more aware of all the changes that exist [1]. On the one hand, the expansion and development of the goods and services sector has positive effects, such as making needs available in sufficient quantities, improving quality, and giving customers more options for meeting their requirements. On the other side, there are drawbacks, specifically the effects of technology use and corporate practices brought on by fiercer competition that have an effect on the consumer base [2]. These changes have indirectly changed people's tastes and habits regarding the food products they consume. One essential human requirement that cannot be neglected in daily life is food. Humans cannot function effectively in their daily tasks if they do not consume enough food and drink in adequate amounts and quality. Concerns about food also include safety, security, and

physical and spiritual well-being. One of the crucial elements that must be taken into account when consuming food on a regular basis is food safety. Therefore, in addition to being reasonably priced and available in adequate numbers, food must also satisfy additional requirements, such as being safe, halal, and healthful [3]. Therefore, the food must first be entirely safe to eat before it is delivered, and it must also meet quality, appearance, and flavor standards. In relation to the inclusion of expiry date on the label of a product, attention needs to be paid so that there is no misunderstanding, because the expiry date is not an absolute limit of a product can be used or consumed, because the expiry date is estimated only is the manufacturer. Expired food is one of the foods that can be harmful to consumers if they consume it. Expiry date means the expiry of a specified period of time and if consumed, the food can be harmful to the health of those who consume it [4].

According to article 1365 of the Civil Code, which states that "Every unlawful act, which brings harm to another person, obliges the person who for his reason publishes the loss, to compensate the loss," issues that arise as a result of producers' negligence in controlling products that are produced so that they cause harm to consumers can be considered not against the law [2]. Therefore, anyone does something that harms someone else is required to make up for the loss. Expired food is one of the foods that can harm consumers if they consume it. Expired has the meaning of having passed or the expiration of the time period as has been determined and if consumed, then the food can be harmful to the health of those who consume it[5].

Not a few business actors who try to achieve very large profits in conditions of very high market demand by committing fraud which is very detrimental to consumers. As an example, that occurred in the Bangil District Court with Decision No. 747/Pid.B/2020/PN.Bgl. About the sitting of the case the defendant in this case is HMK, has been legally proven guilty of committing the crime of selling expired food. This case began when on 4 and 5 September 2020 AD admitted to having removed the expiry date markings that were in the food packaging and then sold the expired food to S. By establishing evidence in the form of Chocolate wafers as many as 84 cans, Astor as many as 18 jars, pilooang wafers as many as 4 boxes, peanut wafers as many as 10 cans and strawberry wafers 6 cans. Because of the actions of M that disturbed the community, the judge sentenced M to imprisonment for 2 (two) months [4].

The phrase "consumer protection" refers to the legal safeguards that are put in place to protect customers from items that could endanger them. According to the Consumer Protection Law, consumer protection includes all initiatives aimed at guaranteeing legal clarity in order to safeguard customers. The scope of consumer protection is wide, encompassing both the protection of products and services from the point at which activities are undertaken to acquire them to the outcomes of using them [2].

Some types of food products are basically not harmful products, but are easily contaminated or contain toxins, which if negligent or not careful in their manufacture, or indeed negligent to keep circulating, or deliberately not withdrawing food products that have expired. Thus, legal protection against consumers provided by the State must be immediately implemented in the lives of people in Indonesia and also balanced by interference or initiative from both business actors and consumers. Based on the background above, the author is interested in examining more deeply about the legal protection of consumers of expired food [5].

RESEARCH METHOD

Normative legal research is the kind of research that will be employed in this legal writing. The normative legal research technique, also known as the legal research method literature,

is a legal research methodology that solely uses secondary data or library resources. The method makes use of statutory, conceptual, and case approaches [6].

The statutory approach is used to analyze relevant laws and regulations that serve as the legal basis for resolving the issues discussed. Legislation is used in this research because it provides binding rules that govern legal relationships, defines the rights and obligations of the parties involved, and serves as a formal source of law. In the context of consumer protection, legislation such as Law Number 8 of 1999 on Consumer Protection establishes the legal framework that holds business actors accountable and ensures the protection of consumer rights [10].

The key legal materials that were employed in this study are authoritative—that is, they have authority—legal materials. Legislation, official records, and minutes used to create legislation are examples of primary legal materials. Secondary legal materials gleaned from legal literature, scientific publications, legal experts' comments, and websites that address similar topics. Legal dictionaries, encyclopaedias, and other secondary legal documents are examples of tertiary legal materials, which offer clarification or direction to basic legal materials.

FINDINGS

1. Legal Principles of Consumer Protection

One of the most crucial topics in consumer protection law is the notion of accountability. Care must be used when determining who should bear responsibility and how much of the blame can be placed on the parties involved in consumer rights violations. Some formal sources of law, such as laws and regulations and agreements standards in the field of civil law often provide limitations on the liability of the violator of consumer rights.

In general, The following distinguishes the legal concepts of liability:

a. Fault (liability based on fault); b. Presumption of liability; c. Presumption of non-liability;d. Strict liability

The concept of liability limitation, also known as liability based on fault or fault liability, is widely used in both criminal and civil law. This idea is solidly established in the Civil Code, particularly in Articles 1365, 1366, and 1367 [7]. According to this theory, a person may only be held legally accountable if they have committed some sort of fault. The existence of an act, the existence of a fault element, the existence of a loss suffered, and the existence of a causal relationship between fault and loss are the four main requirements that must be met by Article 1365 of the Civil Code, also referred to as the article on acts against the law. The element that violates the law is what is meant by fault. In addition to being against the law, the term of "law" also refers to social morality.

According to this theory, until the defendant can demonstrate his innocence, he is always deemed culpable (presumption of responsibility principle). Therefore, the defendant bears the burden of proof. The opposite of the second principle is this one. Only a relatively small portion of consumer transactions are covered by the presumption of nonliability principle, and these limitations are typically supported by common sense. In consumer protection legislation, the concept of absolute accountability is typically employed to "ensnare" corporate actors, particularly manufacturers, who promote their goods in a way that harms consumers. Product liability is the term used to describe this obligation idea. This idea states that manufacturers are liable for any damages that customers sustain as a result of using the goods they sell.

A product liability lawsuit [8, 9] can be based on three things:

- a. Breach of warranty (breach of warranty), for example the efficacy that arises is not in accordance with the promise stated in the product packaging.
- b. There is an element of negligence (negligence), namely the manufacturer neglects to meet the standards of making good medicine.
- c. Applying absolute liability (strict liability).

The principle of liability with limitation of liability is highly favored by businesses to be included as an exculpatory clause in the standard agreements they make. In a film print lease agreement, for example, it is determined that if the film to be washed/printed is lost or damaged (including due to staff error), then the consumer is only limited to compensation for the loss of ten times the price of one roll of new film. This principle of responsibility is very detrimental to consumers if it is determined unilaterally by business actors. According to Article 19 paragraph 1 of the GCPL, business actors should not be allowed to unilaterally determine clauses that harm consumers, including limiting the maximum liability. If there are absolute restrictions, they must be based on clear laws and regulations [10].

2. Principles of mediation based on Supreme Court Regulation

As alternative resolution generally institutions other disputes, the advantages and benefits of mediation are still related to the general characteristics of the advantages and benefits found in alternative dispute resolution institutions, namely: a. reasonably priced in comparison to other options; b. the disputing parties have a propensity to accept and take ownership of the mediation's ruling; c. it can be used as a foundation for future disputes between the parties; d. it offers a chance to analyse the issues that underlie a dispute [11].

If an agreement has been reached between the parties, then the judge only has to uphold the verdict in rendering a decision in accordance with this peace agreement with dictum, namely: "Punish the parties to obey and implement the contents of the peace agreement". The next ruling is "punishing the parties to pay court costs with borne by each party equally large". For the Supreme Court, if mediation in the courts can be carried out well, then it will reduce the number of cases waiting to be resolved in the Supreme Court. Because if a dispute can be resolved peacefully through the mediation process then automatically the number of cases filed for cassation to the Supreme Court will decrease. The contents of contained in the peace decision include: Consent of the parties, this first condition means that the parties concerned together agree voluntarily to end the dispute. Consent in this case comes from the parties themselves and not halil coercion from other parties. The peace verdict ends the dispute, the peace verdict really ends the dispute that occurred between the two parties. A peace verdict that does not end the dispute completely between the parties to the dispute is considered not to meet the formal requirements. Peace over a dispute that already exists, meaning that a peace decision can only be implemented against a dispute that has already occurred. In writing, to obtain adequate legal force, the written form of any agreement is important.

DISCUSSIONS

According to Article 19 paragraphs (1) and (3) of the Consumer Protection Law, consumers who feel aggrieved can directly demand compensation for losses to the producer and the producer must provide a response and/or settlement within 7 days after the transaction takes place [12]. For example, someone buys an item that is neatly wrapped. After arriving at home, the goods are opened and found to be defective/damaged. The buying consumer can immediately demand the seller to replace the goods or refund the purchase price. This must

be done within a period of 7 days after the sale and purchase took place, which also means that the buyer must immediately file his claim. Therefore, following the provisions of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution[13, 14], The methods of out-of-court dispute settlement for this consumer dispute resolution could include expert judgement, mediation, conciliation, negotiation, or consultation. According to Article 19 paragraph (1) of the GCPL, damages, pollution, and other losses brought on by consuming products and/or services are among the losses that may be claimed in this kind of settlement. The recompense may take the shape of: [9]

- a. Refund of money for the purchase of goods and/or services.
- b. Replacement of goods and/or services of similar or equivalent value; or
- c. Health care; or
- d. Provision of appropriate compensation.

The choice of the form of compensation depends on the loss actually suffered by the consumer and is tailored to the legal relationship that exists between them. In the above example, the buyer can demand that his money be returned or the goods replaced with new ones or other similar goods [9]. Demand for compensation through Badan Penyelesaian Konsumen (BPSK) if the business disputing does not want to settle the demand for compensation or there is no settlement between them, the buyer can submit the case to BPSK or to the court. Regarding which body examines and resolves the dispute, whether BPSK or the court depends entirely on the voluntary choice of the parties to the dispute Article 45 paragraph (2) of the GCPL [3]. Following the provisions of Article 23 of the Consumer Protection Law, the settlement of consumer disputes through BPSK can be pursued, namely if an amicable settlement outside the court process is unsuccessful, either because the producer refuses or does not respond or if no agreement is reached. If settlement is chosen through BPSK and BPSK is not successful in resolving the dispute, the dispute can still be submitted to the court. The settlement of disputes through BPSK begins with a request or complaint from the victim, either written or not written about the event that caused harm to the consumer. Those who can file a lawsuit or a request for compensation through BPSK is only a consumer or his/her heirs. While other parties are possible suing as referred to in Article 46 of the Consumer Protection Law, such as consumer groups, non-governmental organizations, and the government, can only file their lawsuit to the general court, not to BPS [2].

Following the provisions of Article 48 of Law Number 8 Year 1999 on Consumer Protection[15], according to Article 142 RBg./118 HIR, the claim or lawsuit must be filed in the form of a lawsuit letter, which is signed by the plaintiff or his attorney to the chairman of the district court in whose jurisdiction is located the residence of the defendant or if his residence is unknown, the place where the defendant actually resides (Article 142 Rbg./ paragraph 1 HIR). In general, the lawsuit is filed in writing. However, the lawsuit can be filed orally. The filing of the lawsuit is accompanied by the payment of a sum of money administration [9]. In the lawsuit, the plaintiff puts forward the arguments in the form of the basis of the claim called the *pundamentum petendi*, which consists of two parts, namely the part that describes the events or events and the part that describes the law. According to Article 1865 of the Civil Code, the plaintiff is required to prove the incident that gives rise to the right. That is, if the event of default provides the basis for the reparation litigation. The plaintiff must demonstrate:[9]

1. The existence of a binding relationship (contract, agreement);
2. The existence of parts of obligations that are not fulfilled by the producer; and

3. The incidence of harm to consumers with the plaintiff.

Proof of the above matters is carried out according to the tools regulated in the law. According to Article 284 RBg. /164 HIR or Article 1866 of the Civil Code, the evidence that can be submitted is a letter, witness, suspicion, confession, and oath. In relation to product liability, in a lawsuit filed by a consumer who is in a sales contract relationship, he must prove the defendant-producer's default [7]. The default that must be proven includes all obligations not carried out by the manufacturer as the defendant, namely obligations not carried out according to the sales agreement including the obligation to cover hidden defects [7]. So, the guideline for proving whether or not the seller's producer's obligations have been fulfilled is the existing agreement. Here, the norm that is violated is the contractual norm. In a lawsuit based on breach of contract, the consumer-plaintiff does not need to prove that the defendant made a mistake so that he/she breached the contract. So, it is sufficient to show evidence that the defendant producer has not carried out its obligations properly.

The number of losses related to consumer disputes is not determined by Law Number 8 of 1999 concerning Consumer Protection, Article 19 [10]. This makes sense because the quantity of losses undoubtedly fluctuates depending on the incident. Only the following instructions or suggestions are provided by Law Number 8 of 1999 concerning Consumer Protection, Articles 19 and 20 [10]. In this regard, the guidelines for determining the amount of compensation in Articles 1246-1250 of the Civil Code in connection with breach of contract and unlawful acts can be used as a guideline. In the case of a claim for compensation due to a breach of contract, the amount or amount of compensation is [16] a. The amount of the actual loss experienced by the plaintiff, namely the loss actually experienced by the consumer-plaintiff; b. The amount of the loss that can be anticipated, namely the loss that can be anticipated to be experienced by the consumer-plaintiff if business actors' obligations does not fulfill, c. The amount of loss resulting directly from the business actor's default; d. The amount of loss in the form of a direct result of the business actor's default. The amount of compensation, namely the amount determined by statutory regulations. Article 60 paragraph (2) states that administrative sanctions in the form of a determination of compensation determined by the BPSK are a maximum of Rp.200,000,000.00; e. This amount is the agreement made by the parties (agreed upon in the consumer transaction) [16].

According to Article 19 paragraph (1) of the Consumer Protection Act, losses resulting from damage, pollution, and consumer losses are the components of loss that fall under the purview of the producer-business actor. According to Article 19 paragraph (2) of the Consumer Protection Act, the main forms of compensation in consumer disputes include money refunds, returns of goods and/or services, health care, and compensation [16].

The contribution of this research is that consumers must be careful in choosing the food they will consume, do not judge the freshness of food from the color of the food. And if you know that there are business actors who market food products that have expired immediately report the business actors to the police or existing non-governmental organizations. Business actors must have good intentions in conducting their business, do not only think about profit for themselves, without thinking about the impact that will be caused by expired food [4]. However, they must also take greater responsibility by offering recompense for harm, pollution, and/or losses suffered by consumers as a result of using traded goods. This can be done through refunds, returns of goods and/or services, health care, and compensation [4].

CONCLUSION

The responsibility of business actors in resolving consumer disputes cannot only be pursued through the courts with criminal sanctions. However, consumers can also take the path of peace by settling disputes through mediation based on regulation Number 1 of 2016 which accommodates peace conducted outside of the court. According to Law Number 8 of 1999 Concerning Consumer Protection, there are two different ways to settle consumer disputes: either through the court or out of court by settling claims for immediate compensation, or through the Consumer Dispute Resolution of consumers by establishing a consumer dispute resolution procedure. Law Number 8 of 1999 concerning Consumer Protection states that producers have a legal obligation to consumers as business actors when they commit crimes that result in damages for customers. Business actors are accountable for compensating consumers for harm, pollution, and/or losses resulting from the consumption of traded goods through refunds, returns of goods and/or services, health care, and compensation, according to Article 19 of Law Number 8 of 1999 concerning Consumer Protection.

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