

Responsibility of Manufacturers and Advertising Bureaus in the Product Advertised which Consumer Consumers (Research in Drug and Food Control Boards (DFCB) Denpasar)

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Abstract: *The position of the owner of the goods as a person who will bear the economic risk in a civil case, if the product is detrimental to the consumer, then according to the purpose of Article 1367 paragraph 1 BW, the formulation of the problem of the author's research problem is how the producer and the advertising agency are responsible for the advertised product. is detrimental to consumers? and What legal steps can be taken by consumers who are harmed by the producers and advertising agencies? By using the theory of Muhammad Djumhana (2000: 340), consumer safety and security factors as the use of goods includes the worldly and religious context of the consumer itself, this is also in accordance with the provisions that recognize the right to security and safety of consumers. The author uses this type of research with juridical empirical approach method, empirical juridical is a study that studies and analyzes the workings of law in society (law in action), using primary and secondary data sources. With the results of the research is the responsibility of the producer and advertising agency as the producer of the product and broadcast media for the advertisements broadcast which are detrimental to the consumer if the information presented through the advertisement does not correspond to reality, the producer and the advertising agency must be held responsible to the consumer for any true loss - really happened. And the consumer can make a lawsuit or claim for compensation.*

Keywords: Responsibility of Producers, Advertising Bureaus, Products to be Advertised, and Harming Consumers

1. Introduction

1.1. Background

People who are interpreted as consumers do not always have to give their achievements by paying money to obtain goods and / or services. In other words, the basic legal relationship between consumers and businesses does not need to be contractual (the privity of contract) (Shidarta, 2000: 5)

So far, consumers are not aware of their rights, as well as consumers' ignorance of consumer protection laws. When examined, the situation today, consumers as users of goods and services face two enemies at once, namely producers who are often dishonest, and advertising practices that support dishonesty of the entrepreneur or producer.

The position of the owner of the goods as a person who will bear the economic risk in a civil case, if the product is detrimental to the consumer, then it is in accordance with the purpose of Article 1367 paragraph 1 BW which states that:

A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods that can be under his supervision. (Wirjono, 2000: 70)

With the development of the global economic world, what needs to be fulfilled is the need to obtain the widest and maximum access to the world market for the various products of our nation that require technological and legal strength to protect the various commodities of the Indonesian people (Eddy Damian, 2001 : 15).

Consumer protection should receive more attention, one thing and another because foreign investment has become part of Indonesia's economic development and in international trade the need for consumer protection is a way to fend off the negative implications for consumer protection in Indonesia (Erman Rajagukguk, et al, 2000: 2). The negative implications, if left unchecked, will have a negative impact on economic development in Indonesia. And a broad impact on the community as consumers.

When examined from the legal certainty of advertising media, many advertisements that mislead consumers, resulting in a vacuum of legal norms, where one party Law No. 8 of 1999 requires legal certainty and whereas on the other hand many consumers feel disadvantaged over advertising broadcasts. Therefore, the authors raise the title of the responsibility of producers and advertising agencies in terms of the product being advertised to harm consumers (research at DFCB Denpasar).

1.2 Formulation of the problem

- 1) How is the responsibility of the producer and the advertising agency in terms of the product being advertised detrimental to the consumer?
- 2) What legal steps can be taken by consumers who are harmed by the producers and advertising agencies?

2. Theoretical Basis

The law on consumer protection is indispensable because it involves elements of the wider community, the government, foundations of Indonesian consumer institutions and producers and advertising agencies. In addition, also because advertising in various media often diverges between what is

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advertised with the reality of products in the community, which harms consumers.

Pitlo's opinion quoted by Abdurrahman states that whoever is aware of marketing defective production goods, i.e. if the goods are used normally in accordance with their objectives will endanger the person (consumer) or the property of others, commits an act against the law and he is responsible against all losses when the danger actually happened (Abdurrahman, 1979: 84).

The importance of educational value on consumer protection is receiving serious attention in the world of education, which began in Higher Education with the inclusion of Law courses on Consumer Protection in law education programs in several Law Faculties in Indonesia, although it has not been included in the compulsory curriculum only as an eye elective lecture (Shidarta, 2000: 4).

Consumer protection legal education is indeed important because with the sophistication of technology in the field of telecommunications and information, it opens up opportunities for producers and advertising agencies to be used in marketing their products so that it is necessary to overcome the law.

Troelstrup's opinion quoted by Shidarta states that, consumers today need a lot of more relevant information than when about 50 years ago. The reason is now: (1) there are more products, brands and of course sales, (2) consumer purchasing power is increasing, (3) more variations of brands are circulating in the market, so that not many people know about them, (4) models product models change more quickly, (5) ease of transportation and communication so as to open greater access to a variety of producers or sellers (Shidarta, 2000: 20).

Due to the different levels of education in Indonesia, consumer ignorance will emerge, namely the inability of consumers to receive information due to technological advances and the diversity of products marketed can be used improperly by producers and advertising agencies. That is why, consumer protection law gives consumers the right to correct information, which includes the right to proportional information and is given non-discriminatory.

AZ Nasution's opinion quoted by Erman Rajagukguk stated that until now it was not clear what was meant and what was included consumer law and / or consumer protection law so it needed to be studied in depth so that later there would be clarity that could provide protection to consumers.

The essence of advertising in the framework of consumer protection is a promise from the party that announces the advertisement in various forms to bind the party that announces with all the consequences. As a source of information, the use of misleading advertisements deceiving or tricking consumers must be prevented.

With the direction of increasingly global economic development it needs to be supported by legal instruments that are able to protect Indonesian consumers both

domestically and in the future more and more foreign products are used by domestic consumers.

To anticipate the supervision of product use, the Goods Quality Testing and Consumer Protection Center (PPMBPK) has duties in the field of product quality testing and certificates and has the functions: guidance, counseling and technical supervision of testing as well as product quality and consumer protection certificates (Harkristuti Harkrisnowo, 1998: 28).

In terms of positive advantages about the global development of technological advancements in the field of advertising is pushing more quickly the pace of producers and advertising agencies to catch up with the use of information and communication technology. With this there are also negative impacts, including the emergence of advertising crimes both old and new types that are modified with sophisticated technology that can harm consumers, (Hadiman H, without years: 49).

According to Muhammad Djumhana (2000: 340), the safety and safety factor of consumers as the use of goods includes the worldly and religious context of the consumers themselves, this is also in accordance with the provisions that recognize the right to security and safety of consumers.

With a variety of issues broadcasting advertisements that have a direct impact on society and the lack of awareness of the community as consumers to conduct legal measures, it is deemed necessary to implement Law No. 8 of 1999 concerning Consumer Protection in order to prevent conflicts between producers and consumers and the achievement of honesty in advertising.

Legal steps that can be taken by consumers who are disadvantaged as a result of marketing a product through the Advertising Agency are; file litigation lawsuits in the form of small claims, or through non-litigation legal steps (legal standing) for non-governmental consumer protection institutions (GCPI) or through class action legal actions (group lawsuits).

3. Research Methods

3.1. Types of research

In this study the authors use this type of research with an empirical juridical approach method, empirical juridical is a study that examines and analyzes the workings of law in society (law in action), using primary and secondary data sources.

3.2 Data Processing and Analysis Techniques

After the required data is collected, the legal material will be processed and analyzed using qualitative legal material processing techniques. What is meant by the technique of processing legal materials qualitatively, namely by choosing legal materials with quality to be able to answer the problems raised (Ronny Hanitijo Soemitro, 1990: 47). While the legal material is analyzed by interpreting and for presentation it is carried out in a descriptive analysis which

is a way of analyzing data by systematically compiling so that a scientific conclusion is obtained.

4. General Review on Laws of Consumer Protection and Advertising

4.1 Overview of Consumer Protection Laws

The term consumer is derived from the translation of the word Consumer (English-American), or Consument / Konsument (Dutch). Literally the meaning of the word Consumer is everyone who uses goods. The purpose of using the goods / services will determine which consumers the group includes (A.Z. Nasution, 2002: 3). Protection of consumers is seen both materially and formally as increasingly important given the advancement of science and technology as a driving force for producers of goods and services produced in order to achieve business targets which in practice cannot be separated from the relationship with consumers. So directly or indirectly consumers who feel the impact (Sri Redjeki Hartono, 2000: 78).

Disputes between consumers and businesses are not new. This is due to the large number of transactions made outside the existing regulations. In its development, consumers are increasingly aware of their rights and struggle in terms of consumers receiving achievements that are not in accordance with the contents of the contract, the quality of goods purchased is not good or there are hidden defects that harm consumers and there is an element of fraud or coercion in conducting transactions (Endang Sri Wahyuni, 1989: 20).

The definition of consumer protection based on Article 1 number 1 of Law No.8 of 1999 concerning Consumer Protection is as follows: "Consumer protection is any effort that guarantees legal certainty to provide protection to consumers." The above definition of the definition of consumer protection is sufficient. "The sentence which states 'everything that guarantees legal certainty', is expected to be a stronghold to negate arbitrary actions that harm businesses only for the sake of consumer protection (Ahmadi Miru and Sutarman Yodo, 2004: 1)

Although this law is referred to as the Consumer Protection Act (CPA), it does not mean that the interests of business actors are not a concern, especially since the existence of the national economy is largely determined by business actors.

4.2 Consumer Rights and Obligations and Business Actors (Producers)

Rights are one's ability to influence the behavior of others, not by using their own strength, but based on public opinion or public power (Sunaryati Hartono, 1991: 36). Every consumer desires to obtain their rights properly, wants a market that is governed by regulatory principles and a good faith from all elements involved in it, both producers, government and consumers themselves (Ujang Sumarwan, 2002: 332). According to Article 4 of the Consumer Protection Act, consumers have the following rights:

1) The right to comfort, security and safety in consuming goods and / or services

- 2) The right to choose and obtain goods and / or services according to the exchange rate and conditions and guarantees promised
- 3) The right to correct, clear information and also regarding the condition and guarantee of goods and / or services
- 4) The right to be heard of opinions and complaints on goods and / for services used
- 5) The right to obtain advocacy, protection, and efforts to resolve consumer protection disputes appropriately
- 6) Right to guidance and education of consumers
- 7) The right to be treated or served properly and honestly and not discriminatory
- 8) The right to obtain compensation, compensation and / or replacement, if the goods and / or services received do not comply with the agreement or are not as intended
- 9) Rights regulated in other statutory provisions.

The most basic consumer rights, which should be fulfilled by business actors, are the right to get comfort, security and safety in consuming goods and / or services (the right to be safety). This right is a universal right of consumers, this means that products, especially food that is produced or traded by businesses must be safe for health.

The right to compensation is closely related to the use of products that have harmed consumers both in the form of material losses, as well as losses relating to consumers (sickness, disability, and even death). As a consequence of the existence of consumer rights that must be fulfilled by business actors, consumers must also fulfill their obligations. According to Article 5 of the Consumer Protection Act, Consumer Obligations.

In the Consumer Protection Act (CPA), it appears that good faith is emphasized more on business actors, because it covers all stages in carrying out their business activities from the time the goods are designed / produced to the after-sales stage. The importance of delivering true information to consumers about a product, so consumers are not mistaken about the description of a particular product. Submission of information to consumers can be in the form of representation, warnings, or in the form of instructions (Ahmadi Miru, 2000: 140). Thus it can be seen that these obligations are manifestations of consumer rights on the other hand which are targeted or intended to create a culture of responsibility on the business actors themselves.

4.3 The Responsibilities of Producers and Advertising Agencies in the event that the Advertised Product Harms Consumers from the perspective of Law No. 8 of 1999

The responsibility of business actors for consumer losses in the Law on Consumer Protection is specifically regulated in one chapter, namely Chapter VI, starting from article 19 to article 28. I can sort out these ten articles as follows:

- 1) Seven articles, namely article 19, article 20, article 21, article 24, article 25, article 26, and article 27 which regulate the liability of business actors.
- 2) Two articles, namely article 22 and article 28 which regulate proof.
- 3) One article, namely article 23 which regulates dispute resolution in the event that the business actor does not provide compensation to consumers.

Of the seven articles governing the liability of the business actor, specifically regulating the responsibilities of the producer and the advertising agency in the event that the advertised product is detrimental to consumers, is article 19 and article 20 of the CPA. From the provisions above it can be seen that Article 19 and Article 20 of the CPA regulate the liability of business actors, especially producers and advertising agencies, to be responsible for the advertisements produced and all consequences caused by such advertisements. And provide compensation for damage, pollution, and / or consumer losses due to consuming goods and / or services produced or traded through these advertisements.

Regarding the provisions in Article 19 and Article 20 of the CPA, according to Ms. Budawati, as an advertisement staff at the advertising agency at the Bali Post Denpasar office, agreed to agree with the contents of the article, but because there were no complaints from Bali Post daily customers, so the Bali Post has not taken any action, (Interview with Mrs. Budawati Staff Bali Post Denpasar Ad Section, May 3, 2016)

With the lack of complaints from Bali Post customers, consumers are still vulnerable to absorbing "unhealthy" advertising information, this will be easily misused by producers and advertising agencies, so that a producer and advertising agency can escape from responsibility by not providing compensation for its products are detrimental to consumers.

According to Muhammad Djumhana, sanctions are important in terms of responsibility, because "unhealthy" advertisements are fraudulent and deceptive advertisements, so consumers are harmed because their rights are violated and such forms of advertising are called Fraudulent Misrepresentation crimes. (Muhammad Djumhana, 1994: 360)

So to overcome this, Law No. 8 of 1999 concerning consumer protection, provides administrative sanctions and even criminal sanctions for producers and advertising agencies who are not responsible for their products.

So it is clear that, based on the provisions in Law No. 8 of 1999, the producer and the advertising agency are responsible for the products being advertised and are subject to administrative sanctions as well as criminal sanctions for their products that harm consumers.

4.4 Legal steps that can be taken by consumers who are disadvantaged by the producers and the advertising agency

Legal steps that can be taken by consumers who are harmed by producers and advertising agencies are contained in the provisions of Article 23 CPA, which states, business actors who refuse and / or do not respond and / or do not meet compensation for consumer demands as referred to in Article 19 Paragraph (1), Paragraph (2), Paragraph (3), and Paragraph (4), can be sued through the consumer dispute resolution body or submit it to the judiciary in the consumer's place of residence.

The article appears to be slipped specifically, specifically regulating the right of consumers to sue business actors who refuse, and / or do not respond, and / or do not meet compensation for consumer demands as referred to in article 19 of the CPA, either through the Consumer Dispute Resolution Board (CDRB)) and by submitting it to the judiciary in the consumer's domicile.

M. Nur Rasaid argues that legal efforts in the business world carried out by consumers, require special expertise for judges to appreciate and examine all problems experienced by consumers in the resolution of consumer disputes with business actors, such as in the case of various contracts in trade, advertising cases and conflicts between producers and consumers, (Nur Rasaid M., 1995: 83

From the consumers' acknowledgment, indeed the legal efforts of the consumers need to be increased because according to Mrs. Sukedi as staff staff of the Denpasar District Court, there is no legal claim yet for small claims, legal standing and class actions carried out by the consumers, who enter the Denpasar District Court, describing consumers are not yet aware of their rights that have been violated by producers and the Advertising Bureau, so it needs attention from the government (Interview with Mrs. Sukedi Staffing Staff of the Denpasar District Court, May 4, 2016). Based on these provisions, legal proceedings with three legal proceedings can be taken by consumers who are disadvantaged by the producers and the advertising agency.

4.4.1 A small claim suit

A small claim is a type of lawsuit that can be filed by consumers, even if seen economically, the value of the lawsuit is very small. In consumer protection laws in various countries, the small claim process is a widely adopted principle, including in Indonesia, which is contained in article 46 paragraph (1) letter (a) of the CPA, which states that: A lawsuit for a business actor violation can be made by a consumer harmed or the heir concerned.

And reaffirmed in Chapter XI article 60 paragraph (1) and (2) CPA, which states that:

The Consumer Dispute Resolution Agency (CDRA) has the authority to impose administrative sanctions in the form of a compensation determination of up to Rp 200,000,000.00 (two hundred million rupiahs) that can be imposed on business actors. So that BPSK was originally formed for the settlement of small cases, which if the dispute is settled in court, it will actually harm consumers because the cost of the case to be borne by consumers is greater than the value of the loss.

In consumer disputes that are of very little value, it is best if they are resolved through a small claim court, which in a simple small claim court can be interpreted as a quick trial, with a single judge, the procedure is simple, there is no need to use a lawyer and the costs are very light. (Sudaryatno, 1999: 92)

So with the recognition of small claims by CPA and with the existence of Non-Governmental Consumer Protection

Institution (N-GCPI), consumers who have small claim values can sue and fight for their rights which have been violated by producers and advertising agencies.

4.4.2 Legal Standing for Non-Governmental Consumer Protection Institute (N-GCPI)

The CPA also accepts legal proceedings carried out by certain institutions that have legal standing. The rights possessed by such institutions are known as NGO's standing. The legal standing formulation in the CPA is found in article 46 paragraph (1) letter (c) which states that:

Non-governmental consumer protection institutions that meet the requirements, namely in the form of legal entities or foundations, which in the articles of association expressly state, the purpose of the establishment of the organization is for the benefit of consumer protection and to carry out activities in accordance with its articles of association.

So consumer institutions, on behalf of consumer interests, can file lawsuits for violations committed by business actors (producers and advertising agencies) that harm casual consumers whether or not there is a power of attorney from a disadvantaged consumer, (Sudaryatno, 1999: 120). Besides that in order to have the legal standing, N-GCPI who is the consumer's representative must not be a victim in the case submitted. Therefore, the element of commonality that is the similarity of questions of law and questions of fact between the party represented (class members) and the party representing them (class representatives), are not required in the legal standing for N-GCPI, (Shidarta 2000: 57). Article 1 Number (9) of the CPA states that: Non-Governmental Consumer Protection Institutions are non-Governmental organizations registered and recognized by the Government which have activities to deal with consumer protection.

From the definition of this article, the Non-Governmental Consumer Protection Institution (N-GCPI) is required to be registered and recognized by the government. Without such registration and recognition, the institution cannot assume the rights as parties in the proceedings in court, especially with regard to the search for legal standing N-GCPI. Administratively, there are logical consequences because the registration and recognition can automatically be revoked by the party giving, in this case the government, for example by reason of N-GCPI deviating from the original functions and duties. On the one hand, this authority is useful to prevent the emergence of "fake" N-GCPI that have the potential to harm consumers, but on the other hand it also opens the opportunity for the emergence of critical Government discriminatory treatment against N-GCPI.

So with the legal standing legal efforts for N-GCPI, consumers who are harmed by the producers and advertising agencies can make complaints and legal efforts with N-GPI in demanding violations of the rights committed by producers and advertising agencies.

4.4.3 Classroom Lawsuit

Group lawsuits or more commonly called class action or class representative are legal institutions originating from the Common Law system. However, in many countries adhering to the Civil Law system, the principle was adopted

as well, including in the Indonesian CPA. Gregory's opinion quoted by Erman Rajagukguk states that, class action is a legal remedy taken by some people who feel disadvantaged by a product, demanding compensation in court not for themselves but also for all those who has suffered the same loss, (Erman Rajagukguk, 2000: 71).

According to Ms. Anom Ariesa Erma Wiarsi, as a consumer said that she knew little about class action legal remedies from watching television, according to her class action was a group legal effort like a demo. Meanwhile, according to Bagus Astawa, as a consumer and as an entrepreneur, he expressed his support for the existence of class action (group action) on the grounds that, for the same purpose and case can save costs. In addition, according to Ms. Diah as the head of counseling at the Indonesian Consumers Foundation (ICF), she stated that ICF supports the existence of class action legal actions approved by the Act which certainly broadens aspects of consumer protection, but every consumer complaint to ICF who wants an effort class action law, ICF will cross-check first to the field and work together with an independent Legal Aid Institute (LAI) to fight for the rights of consumers who have been violated by producers and advertising agencies.

The CPAK accommodates class action in Article 46 paragraph (1) letter (b) which states that a lawsuit for violations of business actors can be carried out by a group of consumers who have the same interests. In the explanation of Law No. 8 of 1999 concerning consumer protection it is stated that, the group's lawsuit must be filed by consumers who are truly disadvantaged and can be proven legally, one of which is the existence of transaction evidence.

From the discussion of the three legal remedies above, it is clear that every consumer who is harmed by the producer and the advertising agency in the event that the product is not in accordance with what is advertised, can take a legal step namely: with a small claim legal step, legal standing legal step for the Institute Consumer Protection for Non-Governmental Organizations as well as with class action (group action). However, if seen from the implementation practice in the field, especially in Denpasar, no customer has taken legal steps, according to the results of interviews with the Denpasar district court, the ICF, the advertising agency at the Bali Post Denpasar Office, as well as with several consumers.

5. Closing

5.1 Conclusions

Based on the discussion and description in the previous chapters, the problems raised can be concluded, namely the responsibility of the producer and advertising agency as a producer of products and broadcast media for advertisements broadcast that are detrimental to consumers if the information presented through advertisements is not in accordance with reality, the producers and advertising agencies must take responsibility for consumers for any losses that actually occur. And the consumer can make a lawsuit or claim for compensation.

5.2 Suggestions

Based on the author's analysis, the suggestions that can be put forward are as follows:

- 1) The government together with National Agency of Drug and Food Control (NADFC) and ICF, should be more frequent to provide counseling to regions about consumer protection and directly socialize law number 8 of 1999, so that people in the regions as consumers have education and knowledge that is useful to foster the consumerism movement in Indonesia.
- 2) Due to the large number of consumer rights that are violated in advertising and products, which bring harm to consumers and the lack of legal efforts by consumers to get their rights, then in the context of law enforcement and consumer protection efforts, especially to consumers in Denpasar who are disadvantaged by producers and advertising agencies should take legal action.

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