

THE EFFECTIVENESS OF THE SUPERVISION OF PERPETRATORS OF EFFORT IN PRODUCING QUALITY PRODUCTS AND ITS IMPLICATIONS FOR CONSUMER PROTECTION

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ABSTRACT

The purpose of this research was explain how the substance of the law against the perpetrators of the oversight arrangements of effort in producing quality products contained in the legislation in the field of consumer protection, explain how the implementation of surveillance against perpetrators of effort in producing quality products, explain how the form of the application of the sanctions for the perpetrators of the attempt that violates the provisions of the legislation in making products that are not qualified. Research conducted in the framework of this dissertation outlines is of type socio-juridical, because in addition to researching the secondary legal materials in the form of regulations, manual and electronic law library, relevant research results in the field of law of particular problems in the field of consumer protection and other written materials, as well as researching various legal facts about the implementation of surveillance against perpetrators of effort in producing quality products and its implications for consumer protection This is the case, the form of the application sanctions. The results showed that 1). The substance of the law against the perpetrators of the oversight arrangements of effort in producing quality products that are found in a wide range of legislation in the field of consumer protection is basically adequate. 2). surveillance of implementation against the perpetrators of the work done by the three main pillars of supervision: the Government, communities and non-governmental Consumer Protection Agency (LPKSM) is not yet effective due to still having a lot of constraints. 3). The form of the application of the sanctions for the perpetrators of the attempt that violated regulations in making a quality product, it is still better to put forward sanctions administrative compared to criminal sanctions and civil penalties.

Keywords: consumer protection, producing quality, supervision

INTRODUCTION

After such a long period of struggle of the African-American activist consumers driven by Consumer Agencies Indonesia Foundation (YLKI), to expect the birth of consumer protection laws that specifically regulate the protection of consumers, then on 20 April 1999, the Government set the law number 8 of 1999 on the protection of Consumers who then abbreviated (UUPK).

The fight to push the birth of UUPK is not without reason, as it cannot denied that more than half a century after the independence of Indonesia, the system of the national economy is still putting the position of consumers in a State of concern. At least, since the policy of national legislation which only recognizes three main principals or subject in the national economy, State-owned enterprises, cooperatives and private companies. When only three protagonists can be called as the subject, then without any questionable consumer position must indeed is just as objects or indeed consume is not a community that can be given priority spaces.

The implications of Government policy, has given rise to tendencies of the practice of trying of perpetrators attempt to harass consumers ' rights as well as exploiting consumers without having to get the sanction of the law. Businessmen have the freedom produces or produces products without having to follow the standards in force. Businessmen do not need to replace any losses experienced by consumers due to purchasing or consuming products that are not qualified. Businessmen are quite freely doing promotion over its products by means of phishing websites or take advantage of the ignorance of the consumer about the product. Businessmen do not need replacing and/or reimburse the consumer if the goods that he had purchased the new turns out he knows that the goods are defective/damaged premises took refuge on the words that are already commonplace that the goods purchased are non-refundable.

Weak position of consumers to get legal protection over the tendency of businessmen, not only caused by the legal system that protects consumers who have not been able to give a sense of security, or inadequate to directly protect the interests of consumers. However, law enforcement (law enforcement) itself is perceived less assertive. The condition of the consumer as it is, tends to be a victim of potentially trade. What else is supported by the orientation of thinking from some of the businessmen who still are solely profit oriented in the context of short term, without regard for the safety of consumers who are part of the guarantee the sustainability of the effort of the trade in the context of the long term?

Be aware of it, then an effort to provide protection for the consumer in the use/use of quality products produced by the businessmen is an urgent thing. To that end, protect consumers from arbitrary actions of top businessmen who tend to ignore the principles of producing the goods and/or service quality is in line with one of the country's goals as stated in the preamble of the Constitution of the Republic of Indonesia Unity State in 1945, i.e. protecting the whole nation of Indonesia, which also means protecting consumers.

This is the case in the preamble UUPK especially the letter c stated that the more the opening of the national market as a result of the process of economic globalization should still ensure the enhancement of the welfare of the community as well as the assurance of the quality, quantity, and the security of goods and/or services that are acquired in the market. To guarantee this, then needed a more effective supervision by the Government and other surveillance components against perpetrators of effort in producing quality products. Supervision by the Government and other surveillance components get legitimacy through legislation against the perpetrators of the attempt in running its business activities, is a form of State intervention in the Affairs of the welfare of its people, as well as the hallmark of the modern welfare state.

Government interference in business activities is very necessary, especially in terms of surveillance against businessmen, both at the time of the production process to the distribution or distribution of the product the goods and/or services so as to the consumer. Because there are many facts in the community who showed that business activity the businessmen so far deviated from both the ethical aspect as well as the waiver of applicable laws and regulations.

Related to the above, then Werner Menski with triangular theory of concept or concepts of the triangle that It should be named as law, not just a State law (Official Law, positive law is

written), but also includes law that stems from social norms (triangular of society) and sourced from religious, ethical, or moral (triangular of morality). Consumer protection is an integral part of a healthy business activities. In a healthy business activities there is a balance between legal protection of consumers, businessmen and the Government, the absence of a balanced protection cause consumers are on a weak position. The more so if the product produced by the businessmen is the kind of product that is limited, businessmen may be abusing its position that such monopolistic. It of course will harm consumers. In order to realize a balance between two different interests namely; consumers on the one hand and trade on the other side, then the author looked at that Government's role in consumer protection is very strategic and important, not only as a regulator, but no less important is in terms of oversight, to keep a balance between the interests of businessmen and consumers.

Related to the importance of supervision in the protection of the consumer, then the article 30 UUPK explicitly set about surveillance authority against the perpetrators of the attempt made by the Government, the community and Ngos Consumer Protection Agency (LPKSM). The three components of the supervision, by the author named as three pillars of strength to be able to encourage the creation of awareness of the perpetrators of the attempt to always produce quality products that can be enjoyed by consumers.

Government intervention together with other supervision component to conduct surveillance against businessmen, pointed out that the task of the Government is no longer as "night watchman" only silence and passive, but must be active to participate (actively participate) in community activities so that prosperity for people remain secure. Thus, the Government should provide protection for its citizens, not only in the political sphere but also in the field of social economy, so that the arbitrariness of the rich (rulling class) must be prevented by the Government.¹

The importance of the supervision is carried out, because with the supervision against the business activities of businessmen, then the quality of the resulting products are expected to be realized. As such, then the consumers can be more secure and comfortable wearing it. So any otherwise, ignore or tendency of turning against the rule of law, ethics and morals would cause losses and social unrest.

Of the cases that arise in a society that is largely known through news coverage of the media, it appears that there are expenditure financially to cope with the potential negative consequences of the use of the product, for example, should seek treatment due to food poisoning and also financial losses due to wear products that are not qualified. In addition to these costs, consumers may still bear the loss of morale/material, for instance because a family member died after consuming contaminated foods or became disabled. As such, then the economic cost and social cost in connection with the use of the product is very large.²

Based on the above reality, then it seems clear that there are gaps in consumer protection practice especially in terms of how to prevent the consumer from harm or loss due to

¹ I Gede Pantja Astawa, Suprin Na'a. Memahami ilmu Negara dan Teori Negara, Rafika Aditama, Bndung. 2009. Hal. 121

² Janus Sidabalok. Hukum Perlindungan Konsumen di Indonesia. Citra Aditya Bakti. 2010. Hal. 5

eating/wearing product of goods and/or services that are not qualified (Das Sein) with the provisions of the legislation in the field of consumer protection, both UUPK as well as other regulations that apply in sectoral (Das Sollen). Over the gap between the two, then gave birth to the issue of law: "the implementation of Surveillance against the perpetrators of the Attempt made by the Government, the public and consumer protection Ngos is far from effective, so that the protection of consumers is far from the real expectations".

Based on the background issues as mentioned above, then it can be formulated as the problem of the following: 1) how is the substance of the law against the perpetrators of the oversight arrangements of effort in producing quality products contained in the legislation in the field of consumer protection. 2.) How does the implementation of surveillance against perpetrators of effort in producing quality products? 3). How form the application of sanctions for the perpetrators of the attempt that violates the provisions of the legislation in making products that are not quality? As for the purpose of this research is to know the substance of the law against the perpetrators of the oversight arrangements of effort in producing quality products contained in the legislation in the field of consumer protection. To know the implementation supervision of perpetrators of effort in producing quality products, to know the form of the application of sanctions against the perpetrators of the attempt that violates the provisions of the legislation in generate products not qualified.

The results of this research are expected to benefit in the development of the science of law in General and the law on consumer protection especially as well as information materials for Government, community and consumer protection NGOs in an effort to optimize the supervision of perpetrators of effort in producing quality products, so that consumers can be protected his rights.

THEORETICAL FRAMEWORK

The fundamental question thus Act No. 8 of 1999 on the protection of Consumers is made, because there are a lot of facts related to the relationships between businessmen and consumers are in the position unbalanced. The position of the perpetrator's efforts are always more dominant compared with the position of a consumer, so the consumer seems powerless facing businessmen. In it, it cannot be denied that the two can only be distinguished but cannot be separated because they both need each other. In a position such that, then of course it takes a legal device that can balance the interests of the community. That's why so that Roscoe Pound with conviction looked at that to achieve a proportional balance, then the Setup is needed against a wide range of interests that exist. As such, then Pound introduces a theory about the law as a tool of social engineering.³ Related to this, it seems that the existence of the UUPK be a fresh wind for consumers, because is a matter of substantive principles and norms that regulate the balance of interest between businessmen and consumers. Merits principle i.e., justice, balance, security and safety of the consumer, as well as legal certainty. The embodiment of the principle of the balance

³ Bernard L. Tanya, Yoan N. Simanjuntak, Markus Y. Hage. Teori Hukum, Strategi tertib manusia lintas ruang dan generasi, CV. KITA Surabaya, 2007, Hal. 180.

can be seen through the arrangement of the rights and obligations of both. In fact not only that, UUPK has also been arrange supervision against businessmen in generate products of goods and/or services carried out by the Government, the community and Ngos Consumer Protection Agency (LPKSM). The basic philosophy of supervision in Islam, according to Ahmad Ibrahim Abu Sinn emerges from understanding the responsibilities of the individual mandate, and justice. Islam instructs individuals to deliver the mandate that he would hold, Office of (job) is a form of mandate to run. That is why the internal oversight (built-in control) attached to every Muslim keep her away from the personal forms of irregularities, and lead him to consistently run the Sharia laws and God in every activity.⁴

Realize that in every community, one of them is sure to have that tend to stray from the truth, or keep the lust. Therefore, the Islamic socio-political setting to run the function of supervision of the implementation of Sharia law and God. Supervision is the responsibility of social and public need to run society, either in the form of a formal institution or non-formal.

In line with the above, then the Affluent said that real surveillance functions to provide a thoroughly clarity and credible all parties especially party to conduct surveillance against activities that have been or are being conducted by the party supervised, so the results of supervision as the findings always provide a real justice and expressed the truth.⁵ The more the case P.De Haan suggested motives of oversight namely: securing policy (de beleidsbewarking), coordination (coördinatie-motief), the protection of quality (kwaliteitsbewarking), 1997 financial (financielemotief), and the protection of the law and the rights of citizens (het motief van de rechts en belangenbescherming)⁶.

As such, then the importance of surveillance against perpetrators of effort in producing quality products, not only to determine whether the activities of enghasilkan products goods and service also have been implemented as statutory provisions in the field of consumer protection. However, supervision is also aiming to provide protection to consumers. Thus, there are some of the Government's efforts to protect consumers with ways to regulate, monitor, and control the production, distribution, and circulation of products so that consumers are not harmed, whether it's health or Financials.

Supervision is one manifestation of the law enforcement process. By Gustav Radbruch says that law enforcement aims to embody the ideas of Justice, legal certainty and social benefit⁷. While Ahmadi Miru and Sutarman Yodo call it that fairness, certainty, and benefit as the "three basic value of law"⁸. Law enforcement according to Munir Fuady is none other than any power to

⁴ Ahmad Ibrahim Abu Sinn. *Manajemen Syariah: sebuah kajian historis dan kontemporer*. Diterjemahkan dari Buku aslinya *Al-Iddrah fi Al-Islam* oleh Dimyauddin Djuwaini. PT. RajaGrafindo Persada. Jakarta. 2008. Hal. 180

⁵ Makmur. *Efektivitas kebijakan Kelembagaan Pengawasan*. Rafika Aditama Bandung. 2011. Hal. 179

⁶ Laode Husain. *Hubungan Fungsi Pengawasan Dewan Perwakilan Rakyat dengan Badan Pemeriksa Keuangan Dalam Sistem Ketatanegaraan Indonesia*. Utomo, Bandung. Hal. 120

⁷ Satjipto Rahardjo. *Penegakan Hukum, Suatu Tinjauan Sosiologis*. Genta Publishing. Yogyakarta. 2009. Hal. 12

⁸ Ahmadi Miru dan Sutarman Yodo. *Hukum Perlindungan Konsumen*. PT. RajaGrafindo Persada, Edisi 1, Cetakan 1. Jakarta. 2004. Hal. 26

describe the legal norms into the life of society, and thus can be the implementation of the objectives of the law in the community in the form of embodiment of the values of Justice, proportionality constant, legal certainty, the protection of the community's joy, order, and others⁹. In line with this, then the Bambang Sutiyoso said that law enforcement (law enforcement) that can be done well and effectively is one of the benchmarks of success of a country in an effort to uplift the dignity and the dignity of his people in the field of law especially in providing legal protection of its citizens. And this, also means the existence of a guarantee of legal certainty for the people, so that people feel safe and protected his rights in living the life. Instead of law enforcement that doesn't run properly is indicator that the State in question has not been fully able to give legal protection to its citizens.¹⁰

Systematic studies in a variety of law enforcement and justice, theoretically that new law enforcement activity will be fulfilled in 5 pillars of the law can go well, namely: 1.) Instruments of law. 2.) Law enforcement officers). 3.) Equipment. 4.) People. The bureaucracy 5).¹¹. By Soerjono Soekanto referred to it as the five factors in law enforcement. In the empirical, law enforcement activity has also been expressed by Walter c. Reckless, that is to be seen how the system works, how the Organization and its legal system, how the system of judiciary and how the bureaucracy.¹² From different study system it can be said that the effectiveness of law enforcement in theory or practice, faced a similar problem. That is why Anton so Doggedly said that political will (political will) of decision makers is a factor which determines the laws can be upright or collapsed, or half-measures. In the consumer protection perspective, seem to factor these factors, it is a staple in realizing the consumer rights enforcement obligations of businessmen.

RESEARCH METHODS

Research done in the framework of the preparation of this dissertation is the normative-empirical type. On the normative aspect of using secondary data are purely descriptive (descriptive exploratory), data analysis and qualitative in nature, while for empirical research, using primary data. As for the approach used in this study is a combination between the study of normative and empirical studies. On the study of normative, is used for the formulation of the problem first analyses the substance of the law against the perpetrators of the oversight arrangements of effort in producing quality products according to the legislation in the field of consumer protection. Whereas empirical studies, used to analysis the second problem formulation implementation supervision of perpetrators of effort in producing quality products by the agency/institution given the authority of supervision in the field of consumer protection. Similarly, empirical studies are used to analyze the third problem formulation, namely the form of application of the sanctions for

⁹ Munir Fuady. *Hukum Kontrak (Dari Sudut Pandang Hukum Bisnis)* Buku Kedua. Citra Aditya Bakti. Bandung. 2003. Hal. 39.

¹⁰ Bambang Sutiyoso. *Reformasi Keadoilan dan Penegakan Hukum di Indonesia*. UII Press. Yogyakarta. Cetakan Pertama. 2010. Hal. 18

¹¹ Ibid. Hal. 19

¹² Ibid. Hal. 19

the perpetrators of the attempt that violates the legislation in producing products that are not qualified.

Toward the study of empirical, descriptive data obtained from the respondents carried out by means of in-depth interviews a certain respondents, especially against apparatus on the agency/institution is given the authority to conduct surveillance against perpetrators of effort in producing a quality product. The agency or component in question is the Government, the public and consumer protection Ngos (LPKSM).

RESULTS OF THE RESEARCH AND THE DISCUSSION

The substance of the law against the perpetrators of the oversight arrangements of effort in producing quality products contained in the legislation in the field of consumer protection.

It needs to be understood that before promulgation UUPK number 8 of 1999 on the protection of consumers. Consumer protection in Indonesia is not as a system that is to say in terms of the framework legal basis/layout of our national law (legal frame work). Nevertheless, in fact without any UUPK, norms of consumer protection that already exists, it just spread out in various instruments of principal. Related to this, then the AZ. Nasution said that consumer protection laws are spread in the form of legislation and various branches of civil law, commercial law, criminal law and the law of the State administration, which sometimes seem to protect consumers, or mixed with stir so require interpretation or merely from a rule. On that basis, so it can be said that prior to the enactment of UUPK, consumer protection in Indonesia could not be viewed as a system of consumer protection¹³.

Within the framework of sectoral laws, UUPK can be viewed as a system of protection (law) against the consumer. Therefore, as a new law, at least it is a law that is needed in the areas of Economics, finance, industry and people's welfare. Thus, so Oughton and Lowry looking that the consumer protection law (consumer protection law) as a modern phenomenon that is typical in the 20th century.¹⁴ Sunaryati Hartono by emphasizing that the task of the law, namely to create a new balance between the interests of consumers, entrepreneurs, community and Government.¹⁵

Related to the above matters, then in UUPK has set the norms (laws of material) protection of consumers with regard to things that are prohibited by the trade in produce goods and/or services for the purposes of the consumer. These norms can be grouped into two groups,

1. The Act prohibited for businessmen as set forth in Chapter IV article 17 article 8-UUPK
2. The provision bans the inclusion of raw clause as provided for in Chapter V, Article 18 UUPK.

The implementation of the provisions of the above, it is not possible can be realized by itself, especially if the only expect awareness of businessmen to meet conditions that contains prohibition/or things that should not be doing in generating product of goods and/or services.

¹³ Yusuf Shofie. *Pelaku Usaha, Konsumen, dan Tindak Pidana Korporasi*. Ghalia Indonesia. Jakarta. 2002. Hal. 26

¹⁴ Ibid. Hal. 26

¹⁵ Ibid. Hal 26

Therefore, effective surveillance required against perpetrators of an effort by the agency/institution oversight of consumer protection in the 56th.

UUPK has been set in the matter of oversight in implementing consumer protection as well as the application of the provisions of the legislation. It is provided for in article 30 of UUPK that the oversight of consumer protection as well as organizing against the application of the provisions of regulation held by the Government, community, and consumer protection NGOs. These provisions further elaborated by the Government Regulation Number 58 in 2001 about the construction and supervision of the conduct of the various consumer protection and regulation of the Minister of trade. The provisions of article 30 UUPK according to Ahmadi Miru and Sutarman Yodo that is promising consumer protection efforts through the empowerment of each element that exist namely communities and NGOs consumer protection agencies in addition to the Government itself through the Minister and/or the Minister related technical¹⁶. Thus the author concludes that the substance of the law against the perpetrators of the oversight arrangements of effort in producing quality products is already quite sufficient. He arranged three pillar supervisory: the Government, communities and consumer protection Ngos in organizing consumer protection in Indonesia is not solely in the interest of consumer protection, but at the same time to encourage businessmen to always be cautious in producing goods and/or services that have implications for against the inception of responsible trade, which in turn will manifest a balanced relation pattern between consumer trade in line with the provisions of the applicable consumer protection legislation..

The implementation of effective supervision against perpetrators of effort in producing quality products.

As the author has pointed out in the previous section that the supervisory duties towards the Organization of consumer protection as well as the application of the provisions of regulation held by the Government, the public and consumer protection NGOs. Efforts to implement the task, especially in consumer protection in the city of Makassar, then the following authors will elaborate on the basis of data obtained from institutions/agencies that serve as the object of research of which are as follows: the large Hall supervision of food and drug (BBPOM) in Makassar, Department of industry and trade of the South Sulawesi province, Department of industry and trade of the city of Makassar, Makassar City Consumer dispute resolution Health services, Makassar city, Indonesia's Consumer Institute Foundation of South Sulawesi consumer protection Agencies and some Ngos (LPKSM) in the city of Makassar. Based on the research results obtained by the author of the institution/institutions as such, then it can be inferred that the institution/agency essentially has been implement supervision tasks as mandated by the legislation, just that its implementation has not been effective because there are still some constraints: the limitations of the human resources (HR) both in terms of quantity as well as quality, budget constraints, limitations of the oversight activities of the implementation means of laboratory and other means such as Office advice has not been adequate and others. It can be seen as an example of what is expressed by Thebecker.com.

¹⁶ Ahmadi Miru dan Sutarman Yodo. Hukum Perlindungan Konsumen. Edisi 1. Cetakan 1. RajaGrafindo Persada. Jakarta. 2004. Hal. 184-185.

Thunder¹⁷. The head of drug and food Hall city of Makassar, that in general we have been carrying out the task of supervision as the target set by the Fda RI, it's just we are aware that there are still some obstacles faced in between; (1). The number of human resources owned by a large Hall food and drug Supervision in Makassar only amounted to 122 people. The numbers are based on an analysis of the workload, it is really not worth the coverage area (catchmen area) which includes South Sulawesi and West Sulawesi. (2) Budget constraints that are only sourced from DIPA. (3) The limitations of the means of testing laboratories and others. The case was said by Sri Rejeki. Head of consumer protection and Kemetroligi Disperindag Makassar city that the implementation of the tasks of supervision Department of industry and trade in particular fields of consumer protection and kemetrologian Makassar city for 2014 not yet fully realized the target accordingly. It is because of several factors including: (1) the limitations of the budget. (2) Has not been sufficient human resources as well as a good number of quality. (3) The operational Vehicles is very limited to support implementation of the supervision of goods and/or services of Department of industry and trade of the city of Makassar.¹⁸

The form of application of the sanctions for the perpetrators of the attempt that violates the provisions of the legislation in making products that are not qualified.

When you take the substance of the provisions of the legislation in the field of consumer protection, then at least a three-discovered form of administrative sanctions, i.e. sanctions criminal sanctions, as well as civil penalties. Of three (3) form of such sanctions, based on the results of the study authors concluded that its application is not yet implemented as expected. The form of the implement sanctions more dominant application of administrative sanctions is done, then the new limited provides a warning whether oral or written, the order the withdrawal from circulation of problematic products, products that Act of genocide has violated the provisions of regulation invitation. While other administrative sanctions in the form of repeal efforts, has not been made Trail because government agencies are authorized to impose administrative sanctions still more persuasive approach proposes the (coaching) compared with the repressive approach (appliance).

CONCLUSION

1. The substance of the law against the perpetrators of the oversight arrangements of effort in producing quality products deemed adequate. Article 30 UUPK, has become a cornerstone of conducting surveillance against consumer protection which States unequivocally that the task of supervision in the Organization of consumer protection as well as the application of rule exercised by the Government, the public and consumer protection NGOs. In addition to these provisions clarify the whereabouts of the three main pillars of surveillance against perpetrators of effort in producing quality products namely: the Government, communities

¹⁷ Muhammad Guntur. Kepala Balai Pengawasan Obat dan Makanan di Makassar. Wawancara, tanggal 27 Oktober 2014.

¹⁸ Sri Rejeki. Kepala Bidang Perlindungan Konsumen dan Kemetrologian Disperindag kota Makassar. Wawancara tanggal 4 November 2014.

and non-governmental Consumer Protection Agency (LPKSM), also make it clear that in addition to UUPK, there are still other regulations already made to prop this consumer protection, which contains a provision against trade supervision, among other things: Food law, Health Law, Trade Law, legislation the prohibition of Monopoly and competition of unhealthy Businesses Act OJK The legislation, Guarantee Products Halal, government regulation and the regulation of the Minister of consumer protection, as well as Change of South Sulawesi province.

2. The supervision carried out by the three pillars of the Government's surveillance component, i.e., community and consumer protection Ngos (LPKSM) was not as effective as hoped. It is caused by several the limitations of the owned as follows: human resources (HR) a good amount of time as well as qualities, Means in the form of Laboratories, offices and equipment and transportation, budget.
3. The form of the applied sanctions against businessmen who violate the provisions of the legislation in the field of consumer protection is the administrative sanctions, criminal sanctions and civil penalties. However, the application of sanctions sanctions are more dominant administrative, whether oral or written warnings, orders the withdrawal of the goods from circulation, termination of production for a while and the destruction of goods monitoring and results proved to not comply with the applicable legislation.

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