

THE CONSUMER PROTECTION ISSUES TOWARD THE TRADEMARK CIRCULATION OF THE COUNTERFEIT HEALTH PRODUCTS

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ABSTRACT

This research purpose is to analyze the consumer legal protection efforts and reviewing obstacle factor of implementation of consumer protection related to the trademark circulation of the counterfeit health products in Central Java. This research carried out is a empirical research.. The collecting data used are library research and field studies. The results of this study indicate that There so many parties that involved to handle this case in regard with The Consumer legal protection related to the trademark circulation of health product including, Drug and Food Inspection Agency, Health Office, Industry and Trade Office, and Central Java Special Criminal Review of the Central Java Regional Police. The counterfeiting trademark and health products will be handled by the Commercial Court and Drug and Food Inspection Agency. The criminal legal protection by giving penalties to people who have committed crimes and trademark violations. The factors inhibiting the implementation of the consumer legal protection related to the trademark circulation of health product in Central Java: the lack of the public awareness toward the counterfeit trademark of health product and the lack of the public awareness to report the existence of counterfeit drugs to the authorities.

Keywords: The consumer; Trademark Circulation; Counterfeit; Legal Protection.

ABSTRAK

Penelitian ini bertujuan untuk menganalisis upaya perlindungan hukum konsumen serta mengkaji faktor penghambat pelaksanaan perlindungan hukum konsumen terkait peredaran merek produk kesehatan palsu di Jawa Tengah. Penelitian yang dilakukan adalah pendekatan normatif-empiris. Teknik pengumpulan data yang digunakan yaitu studi kepustakaan dan studi lapangan. Hasil Penelitian ini menunjukkan bahwa Banyak pihak yang terkait dalam menangani kasus tentang perlindungan hukum konsumen terkait peredaran merek dengan produk kesehatan palsu di antaranya, Badan Pemeriksa Obat dan Makanan, Dinas Kesehatan, Dinas Perindustrian dan Perdagangan, dan Reserse Kriminal Khusus Kepoisian Daerah. Penanganan merek dan produk kesehatan palsu oleh Pengadilan niaga, Badan Pemeriksa Obat dan Makanan, dan Kementerian Hukum dan Hak Azasi Manusia. Perlindungan hukum secara pidana dengan pemberian hukuman kepada orang yang telah melakukan kejahatan dan pelanggaran merek. Faktor penghambat pelaksanaan perlindungan hukum konsumen terkait peredaran merek-merek produk kesehatan di Jawa Tengah: ketidaktahuan masyarakat terhadap merek produk kesehatan palsu dan kurangnya kesadaran masyarakat untuk melakukan pelaporan keberadaan obat palsu kepada pihak berwajib.

Kata kunci: Konsumen; Peredaran Merek; Palsu; Perlindungan Hukum.

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A. INTRODUCTION

The existence of free trade makes many businessmen conduct unfair competition, especially on traded products. Businessman always looking for innovation so that trade activities run smoothly. Furthermore, the purpose of trading activities is to maintain the rotation of the production activities for consumers and businessman.

The role of consumers is a chain that must be prioritized. That fact shows that the existence of consumers is very important. On the other hand, there are weaknesses in the legal protection for consumers. Consumers must be protected by law. Because one of the objectives of the law is to provide protection to citizen. Protection to the citizen must be realized in the form of legal certainty which is the right of the consumers. Legal protection for consumers is very important matter (Barkatullah, 2010).

Consumers in using goods that are produced or traded by business actors and the condition of the goods are not of quality, the consumers will be harmed. Therefore, legal provisions are made to protect consumer rights in order to prevent losses for consumers and for businessman to be responsible for losses suffered by consumers due to goods produced and traded not in accordance with what is expected by consumers. Guarantee of consumer protection is an effort that guarantees legal certainty to provide the protection to all consumers (Tuela, 2014).

The consumer protection law can be said as a the provision of consumer protection act in order to fulfill their needs as consumers (Miru, 2011). Consumer legal protection needs to be considered properly so that justice can be created in society. In regard to the issue of consumer protection, the low level of awareness and education make the consumers position weak. The Indonesian government finally took the initiative to authorize Indonesian's Consumer protection laws.

Article 1 of Act No. 20/2016 concerning Trademark states that a Trademark is a sign attached to a product in the form of: image, name, word, letters, numbers, arrangement of colors or a combination of these elements which have differentiation and are used in trading activities of goods and services. Trademark have an important role, especially the trade in goods and services. The role of "trademark" in addition to being a sign known to consumers can also be a guarantee for the quality of goods / services that indicate the origin of goods. Trademark have been used for hundreds of years to give marks of products produced with the intention of showing origin of goods (indication of origin). Trademark and the like product were developed by traders before industrialization.

Health products have considerable as demand from consumers. Health products are an important aspect of everyday life in an effort to maintain good health, increase stamina, prevent disease, and even make attractive appearance. Health as part of human rights and it is one of the elements of welfare that

must be realized in accordance with the ideals of the Indonesian nation as mandated by the Pancasila and the Opening of the State Constitution of the Republic of Indonesia 1945.

National law has guarantees the right to health has been tabulated in various laws and regulations. In Article 28 A of the 1945 Constitution stated "All people have the right to live and have the right to defend their lives" then reaffirmed in Article 28H paragraph 1 that, "Every person has the right to live physically and spiritually, reside, and get good environment and healthy as well as entitled to health services". Furthermore state guarantees of the rights to the health of its citizens can also be found in Law No. 39 of 1999 concerning Human Rights and the latest inauguration is stated in Law No. 36/2009 concerning Health.

Sometimes a study is not initiated or be based on previous research as this research is also related to previous research that is relevant and can be used as a reference for writing. However, research that reveals the consumer protection issues regarding circulation trademark of health product in Central Java has never existed or at least has not been published so that research on the circulation of trademark health products in Central Java has not or has not emerged.

In a journal entitled Legal Safeguards for Consumer Protection of Goods Trade. The results of the research mention the responsibility of businessman in providing compensation for damage to goods to consumers and how the legal efforts by

consumers due to the goods used are in a damaged condition. Tuela's research equation with the research conducted by the researcher lies in the legal protection variable of consumer protection while the difference lies in the object of research, namely Tuela covers all goods traded, researchers focus on health products.

The study entitled The Role of Institutions for Consumer Protection Against Consumers and Businessman shows that the existence of the Consumer Protection Law is sufficiently representative to protect consumers as long as the law has been understood by business actors and consumers. Law enforcement of Consumer Protection must involve many parties, especially the government and Consumer Protection Institutions and other supervisory institutions, in addition it must be coordinated with relevant agencies so that there is harmony and not overlapping policies or decisions. The Sukarna research equation with the research conducted by the researcher lies in normative data on consumer protection laws while the difference lies in the subject of research, namely the role of consumer protection institutions while the researchers form and protect consumer efforts.

In a journal entitled Consumer Education in Creating a Consumer Conscious Nation by Mazlan, Redzuan, and Bakar (2014), the results of the study show that education for consumers to raise awareness of consumer protection in Malaysia is still inadequate in both primary, secondary and upper education. The equation of the research conducted

by Mazlan, Redzuan, and Bakar (2014) with the research conducted by the researcher lies in the variable of consumer protection while the difference lies in the variable awareness of consumers and the place of residence in Malaysia.

The level of consumer awareness is also examined by Babaogul, Sener, and Surgit (2010) in a study entitled *An Assessment on Consumer Protection and The Consumer Awareness Level in Turkey*. In the study, Babaogul, Sener, and Surgit (2010) not only examined the level of consumer awareness but also the level of protection of consumers in Turkey. The results of the study shows that each individual consumer is very important and the reactions of consumers can form rules for the companies. The consumers level of awareness, realize and protects their rights as consumers is important to determine the course of this modern market and is very important for consumer protection. The similarity of those research with the research conducted by the researcher lies in the variable of consumer protection while the difference lies in the variable of consumer awareness and the place and context of the implementation of the research in Turkey.

In a journal entitled *An Analysis of Various Aspects of Consumer Protection in India*. The results of the study conducted by Bhattacharyya (2014) show various aspects of consumer protection from various perspectives and propose improvements that will help increase the promotion and protection of consumers. The similarity of the research with the

research conducted by the researcher lies in the variable of consumer protection and aspects of consumer protection while the difference lies in the study population of the population of India.

The motivation for healthy life encourages consumers to buy various health products offered by the businessman. Health products have great development potential. The market demand for health products makes it possible to open opportunities for producers to infringe their trademark. Examples of violations of trademark health products are in the form of counterfeiting and distribution of products that do not meet the provisions of the legislation. The various legal provisions currently in the scope of consumer protection against trademark have regulations that specifically regulate them.

The existence of consumer legal protection in enforcing trademark law is protection so that consumers are not mistaken or deluded in buying products that they don't really want. Therefore, if there is a violation of trademark law, either in the form of counterfeit or imitation of the trademark, not only should the producer be the trademark owner, but also the consumer as the user of the product concerned. The motive of the violation of trademark rights is to make easy profits by possibility to imitate or falsify a trademark that is already known in the community.

Based on these facts, it can be said that there are still many gaps to violate trademark in Indonesia, especially in form of health product that circulate in Central Java. Therefore it is necessary to conduct

research related to the consumer legal protection issues related to the circulation of trademark health products with the feed back to understand that if known factors that cause trademark violations, preventive measures will be taken to prevent similar violations in the future. For this reason, the authors put forth this article in the form of a research with the title: Consumer Protection Issues Regarding Circulation Trademark of Health Product in Central Java.

B. RESEARCH METHODS

The research conducted is a socio-legal approach, namely the concept of paying research carried out with all approaches to law, legal processes, and the legal system. Data collection techniques used are library research and field studies. The research specifications used are descriptive qualitative. The nature of the analysis reflected in this study is to find out the implementation of consumer protection laws related to the circulation of health product trademark in Central Java under the Consumer Protection Act No. 8 of 1999, Trademark Law No. 20 of 2016 and Health Law No. 36 of 2009.

C. RESULT AND DISCUSSION

1. The Consumer Protection toward the Circulation of The Trademark of Health Product in central Java

The consumers are everyone who gets goods or services used for a particular purpose, goods or

services can be consumed by themselves, distributed. The contents of Law No. 08 of 1999 concerning Consumer Protection, article 1 number (1) states "Consumers are every person who uses goods and / services available in society, both for the sake of themselves, family, other people and other living beings and not for trading". .

Regarding health products, there is legal protection as the contents of Health Act No. 36 /2009 stipulated that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation

The existence of consumer legal protection in enforce trademark law is protection so that consumers are not mistaken or deluded in buying products that they really don't want. Therefore, if there is a violation of trademark law, either in the form of counterfeiting or imitation of the trademark, not only harms the producer as the trademark owner, but also the consumer as the user of the product concerned. This matter should be finished.

The Form of Legal Protection to Consumers in the Consumer Protection Act, as follow: a) has the right to choose and receive goods and or services in accordance with the exchange rate and conditions and guarantees promised; b) the business actor or seller provides goods in accordance with the exchange rate and conditions and guaranteed guarantees; c) consumers have the right that information is correct, clear, and honest about the condition and guarantee of goods and / or services. d) The Form of Legal Protection for Consumers in the

Electronic Transaction Information Act, namely Article 2 of the Electronic Transaction Information Act. This law applies to anyone who uphold the legal act. e) any businessman that offers products through an electronic system must provide complete and correct information relating to the contract terms, producers and the offered products (Rusmawati, 2013).

The relationship between the rights and obligations of the businessman is reciprocal with the rights and obligations of the consumers. The right for the consumers is an obligation that must be fulfilled by businessman and consumer obligations is a right that will be accepted by businessman. The essence of consumer protection law is formed to fulfill or provide legal certainty in improve and to create a consumer protection system protected from the behavior of business people who cheat, which in fact there are many complex problems in terms of legal protection for consumers (Marwiyah 2010). The factors or problems from the side of ignorance of the community can be overcome by effective dissemination of information from the government and the safeguards provided by local governments to improve their knowledge of its citizen.

Based on the results of research that conducted in Semarang city regarding the legal protection of consumers regarding the circulation of health product trademark in Semarang. Many parties that involved in handle cases about consumer legal protection related to the circulation of health product trademark include, the Food and Drug Supervisory Agency, the Health Office, the Office of Industry and

Trade, and the Special Criminal Review of the Central Java Regional Police.

According to Special Criminal Review of the Central Java Regional Police in Semarang there are none cases that have occurred related to counterfeiting of health product trademark in the city of Semarang until now. In Semarang the case that had been related was regarding marketing authorization. Sometimes a product cannot get marketing authorization from the Food and Drug Supervisory Agency. Or distribute a product not in accordance with the provisions of the legislation. The product is in the form of serum whitening, mask, anti-acne, and body lotion.

The emergence of health products without marketing licenses is due to lack of awareness of producers in marketing their products. The producer does not register the trademark produced with the Food and Drug Supervisory Agency so that the product is not guaranteed to be safe or not and the trademark has not been protected by the government. In matter of dealing with the presence of dangerous products, the health office conducts guidance by cooperate with the Food and Drug Supervisory Agency, as well as checking the ingredients in making health products. If there is hazardous material or trademark fraud found, it will be followed up by the Special Criminal Review of the Central Java Regional Police.

The consumer legal protection against healths including state guarantees of health resources are all forms of funds, labor, medical supplies,

pharmaceutical preparations and medical devices as well as health service facilities and technology that are used to carry out health efforts carried out by the Government, regional government, and/or citizen. The consumer legal protection that related to health products in this study is in the form of tangible pharmaceutical preparations in the form of drugs, medicinal ingredients, traditional medicines, and cosmetics and medical devices. Law enforcement of Consumer Protection must involve many parties, especially the government and Consumer Protection Institutions and other supervisory institutions, and must be coordinated with relevant agencies so that there is harmony and not overlapping policies or decisions.

2. The Consumer Legal Safeguards Toward The Circulation of The Health Product in Central Java

The weak point implementation of the Consumer Protection Act has been used by global businessman and national businessmen to sell their unsafe and understandard production. This condition is further exacerbated by the weakness and inadequacy of consumer education on the adverse effects of the use of goods that are unsafe and below standard (Mansyur, Rahman, 2013).

The Consumer Protection Act defines consumer protection law as the whole principle and rule of law that regulates and protects consumers in relationships and various problems with suppliers of consumer goods and/or services. The basic norm

then formulates the obligation to follow the legal regulations, and is responsible for the obligation to follow these legal rules. In principle, businessman can be held accountable if consumer losses arise due to non-compliance with legal obligations in various types of transactions. The legal protection for the parties is essentially the same, namely the role of the government to protect the interests of producers and consumers in the framework of trade (Bernada, 2017).

There have been efforts that have been made by various government institutions as a form of consumer legal protection related to the distribution of health products, including through the dissemination of information to various media, conducting guidance and cooperation with other related institutions, conducting socialization or counseling at the villages or sub-district level shown to citizen. With regard to advancing technological advancements and so that the objectives of standardization and certification are achieved to the maximum extent possible, the government needs to be active in making, adjusting, and overseeing the implementation of applicable regulations. Government efforts to protect consumers from harmful products can be carried out by regulating, supervising and controlling the production, distribution and distribution of products so that consumers are not harmed, both in health and financial (Salihendo, 2016).

The role of the consumer institutions in a country such as the Food and Drug Supervisory

Agency and the Health Office is very important to provide protection to consumers. Currently to spread information has been facilitated easily both directly and through electronic media. This is because the information dissemination is very important for consumer comfort and safety.

The existence of government participation will have expected that there won't be a product that can harm and injure the consumers. In addition to the participation of the government, the awareness of producers is very important. For example, the producers are required to label their products so that consumers may know that there are elements that can endanger their safety and security or explain in full about their products so that the consumers can decide whether the product is suitable for them (Nugraha, Mukhtar, Ardianto, 2015).

The Indonesian government requires an effective Drug and Food Control System so that it is able to detect, prevent and supervise these products to protect the safety, security and health of its consumers. Based on Presidential Decree Number 166 year 2000 and Presidential Decree Number 103 year 2001, the Food and Drug Supervisory Agency was formed, which in coordinating its duties with the Minister of Health. This institution carries out government duties in the field of drug and food supervisors in accordance with the prevailing laws and regulations, with its authority, among others, licensing and supervision of drug distribution and supervision of the pharmaceutical industry. This is based on the interests of consumers.

The consumers often do not know where this problem should be complained of when harmed by producers, especially health drug producers. The Food and Drug Supervisory Agency will supervise these products. If in the supervision there are results that show that the cases reported by consumers are detrimental to the public, the Food and Drug Supervisory Agency as the authorized agency does not hesitate to give strict warnings and sanctions to the producers or businessman concerned. This will make people become increasingly critical in choosing and supervising products according to their needs and the quality they want. This is related to and is an implementation of Law Number 8 of 1999 concerning Consumer Protection. Preparing consumers to be critical is absolutely necessary if Indonesia does not want to slip in the face of free markets.

3. Inhibiting Factors of The Implementation of The Consumer Legal Protection Toward the Circulation Trademark of Health Product in Central Java

The consumers can be broadly differentiated into informed consumers and uninformed consumers. This uninformed consumer type is the type of consumer that must be protected by the state. This information must be given equally to all consumers (non-discriminatory). This can be interpreted that each individual consumer is very important and the reaction from the consumers can form regulations for the company. The level of the awareness of the consumers, realizing and protecting their rights as

consumers is important to determine the course of this modern market and that is very important for consumer protection (Babaogul, Serner, Surgit, 2010).

The rights of the consumers who are ignored by businessman need to be examined and carried out by their legal protection and become a moral demand for businessman. According to the laws and regulations, consumer protection is all efforts that ensure legal certainty to provide protection to consumers. The law of consumer protection can be said that the provision of protection to consumers in order to fulfill their needs as consumers (Miru, 2011).

The results of this study found that there were problems or obstacles in the implementation of consumer legal protection related to the trademark circulation of health products in Central Java, for example, in the registration of trademark and problems about the public's ignorance of the trademark. These two issues are very important in Semarang with regard to trademark issues. Trademark registration requires knowledge in its management. Citizen generally do not know and do not understand where to register their trademark. Then the people are also reluctant to register the trademark because they have to spend money, while their profits are sometimes uncertain in the future business estimates.

Constraints or problems in terms of the ignorance of the citizen consist of several factors that are the cause, like; ineffective socialization of the government and safeguards provided by the local

government to improve the knowledge of the citizen. The ignorance of the function and benefits of this trademark is also triggered by the cultural and life problems of the people who run businesses and trade traditionally, even though they have generated relatively large income from these businesses. These obstacles have not been seriously resolved by the government. Because by relying on socialization such as seminars it is not effective to reach the citizen itself.

The problems that are often encountered during the supervision of the implementation of consumer legal protection related to the circulation of health product trademark in Central Java, namely the producers indoctrinate sellers to "sell off" sellers claim to get goods from mobile sales to eliminate traces of producers. The main factor is the occurrence of counterfeiting of health product trademark, usually people who are aware of fake drug trademark do not report because the price is cheap.. Citizen who are not suspicious of drugs that have cheap prices even though these products can have a bad impact.

Some factors or reasons that cause certain parties to violate other people's trademark, including obtaining profits quickly and surely, as follow the trademark that are counterfeited or imitated are usually trademark of goods that are well sold in the market. Usually producers do not want to bear the risk of loss in terms of having to make a new trademark become famous because the cost of advertising and promotion is usually very large.

Besides, the difference in profits obtained from selling goods with fake trademark is far greater than the benefits obtained from selling genuine goods, because counterfeiters do not have to pay for research and development, advertising and promotion costs, and taxes, so they can give discounts to the traders.

Regarding to the problem of the consumer protection is the low level of the awareness and education. The various legal provisions currently in the scope of the consumer protection against trademark have regulations that specifically regulate them. In this case very consumers have a very important role, because consumers are a chain that must be prioritized. On the other hand, there are weaknesses in legal protection. The consumers have a greater risk than businessman, this is due to the weak bargaining position of the consumers. The consumers must be protected by law. The protection to the citizen must be realized in the form of legal certainty which is the right of the consumers.

D. CONCLUSION

There so many parties that involved to handle this case in regard with The Consumer legal protection related to the trademark circulation of health product include, Semarang City Drug and Food Control Agency, Semarang City Health Office, Semarang City Industry and Trade Office, and Special Criminal Review of the Central Java Regional Police. The counterfeiting products will be handled by the Commercial Court, the Food and Drug Supervisory

Agency, and the Ministry of Law and Human Rights. Associated with criminal legal protection, namely by giving penalties to people who have committed crimes and trademark violations.

The factor that hinders the implementation of consumer legal protection related to the circulation of health product trademark in Central Java include the lack of public awareness of fake health product trademark and the lack of public awareness to report the existence of counterfeit drugs to the authorities.

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