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Consumer protection of food products containing formaldehyde during the Covid-19 pandemic in Indonesia

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Abstract

The widespread circulation of food containing formaldehyde lately in the community, due to the actions of food business actors who intentionally produce food containing formaldehyde during the Covid-19 Pandemic, can harm consumers and consume food with excessive levels of formaldehyde can cause damage to health. The consumer has the right to compensation from the business actor against the business actor who violates Article 17 of Law Number 8 of 1999 concerning Consumer Protection. In this study, there are several problems: First, how is the regulation of food products containing formaldehyde during the Covid-19 Pandemic related to consumer protection. Second, how is the government's role in protecting consumers against food products containing formaldehyde. This research method uses normative legal research, namely, studies conducted by reviewing legislation and library materials. The conclusions are as follows: Regulations governing food products are the government's obligation to provide a sense of security for users of goods and services through the Consumer Protection Act and the Food Law. Legal remedies taken as consumers who feel their rights have been harmed can report or complain and file a lawsuit through the Consumer Dispute Settlement Agency and the General Court. If the business actor is proven to have violated, he will be subject to criminal sanctions in the form of administrative sanctions and criminal sanctions.

Keywords: consumer protection, food products, contain formaldehyde

Introduction

Food is one of the basic human needs for food, a fundamental thing whose fulfilment is the basic right of every Indonesian people in realizing quality human resources to carry out National Development. "Every citizen has the right to work and a decent living for humanity" and everyone has the right to healthy and halal food and ingredients^[1, 2]. It must be protected by the government and fulfilled by all producers by not selling food or drinks that are not fit for consumption, especially during the current Corona Virus Disease 2019 (COVID-19) pandemic. The use of food additives in food production that does not pose a risk to human health is permitted to be used, and the quality must meet the established standards^[3]. Additional materials that are prohibited from being used as food additives are declared as hazardous materials when used in food, one of which is formaldehyde preservatives in food, especially in food.

The use of formaldehyde preservatives that are wrong in preserving food is prohibited, considering the danger to consumers' health when consuming formaldehyde food. According to Law Number 18 of 2012 concerning Food, every food or food ingredient must be guaranteed its safety before being eaten by consumers. The use of food additives in food production that does not pose a risk to human health is permitted, and the quality must meet the established standards. Additives that are prohibited from being used as food additives are declared hazardous materials when used in food. One of them is the use of formaldehyde preservatives in fish, tofu, meat, milk and fruits during the COVID-19 Pandemic, precisely in the fasting month of May 2021. The Food and Drug Supervisory Agency (BPOM) found several dangerous components in 8,144 samples of

fast-breaking snacks in various cities in Indonesia, with samples containing hazardous materials, namely formaldehyde (0.45%) borax (0.59%), rhodamine B (0.73%)^[3]. Circulation of foodstuffs containing preservatives or excessive formaldehyde in the community, especially during the Covid-19 Pandemic, for consumers who consume them, can cause damage to the digestive tract, allergies, eye irritation, kidneys, liver, and lungs, even cause cancer^[5]. Formaldehyde should not be used in food but used to kill pests and preserve corpses. Nevertheless, formaldehyde is used as a food preservative that is traded^[6]. Maybe many food products in circulation that use ingredients that are harmful or not.

Suppose it can be distinguished eligibility by the buyer. Business actors may be less observed in trading the food products being sold. Therefore, it is necessary to get attention from the government or related agencies on how the government role in the losses experienced by consumers due to the actions of producers. Not only that, by looking at the incident, the government and related agencies should increase supervision and take action against business actors who have committed fraud. The government carries out strict control and act on various food products that can cause food safety problems (in this case, the Food and Drug Supervisory Agency). One of the protections that the State must provide is consumer protection so that people do not consume or use food products and services that can endanger safety and health. Therefore, consumers also need universal legal protection. Given the weak position of consumers in general compared to the place of producers, relatively more robust universal legal protection consumer protection will always feel actual and always essential to be reviewed. Consumer protection is a term used to describe

the legal protection provided to consumers to meet their needs for crucial products they buy from things that can harm the consumer itself.

Regarding consumer protection, Article 1 to 8 of 1999 concerning Consumer Protection is all efforts to ensure legal certainty to protect consumers. The existence of this law is expected to have a positive influence on business actors and consumers. On the other hand, it covered the ability to collect and process information about the food they consume, so they have limitations in assessing nutrition. It is difficult to avoid the risks of food products of poor quality and unsafe for health. The right to comfort and security and safety in consuming goods and services as contained in Article 4 of Law Number 8 of 1999 concerning Consumer Protection, namely in the case of consumers getting safe food for their health, security and safety, is not fulfilled by business actors. The perpetrator has violated the rights of others. In addition, safe food has acted contrary to the law, namely not carrying out their obligations as regulated in the Legislation- Invitations regarding producing and distributing good food for health. Regarding producing and distributing food that is good for health. Producers' obligations, among others, are the duty of good food) in producing and distributing food.

Based on the description above, there are several problem formulations: a) How is the regulation of food products containing formaldehyde concerning consumer protection? Furthermore, b) What legal remedies can consumers take to obtain protection for their rights that business actors violate due to consuming food containing formaldehyde during the COVID-19 Pandemic?

Theoretical Review

Lawrence M. Friedman^[2] Legal System Theory suggests that the success or failure of law enforcement depends on three elements of the legal system, namely the structure of law, substance of the law, and legal culture^[7, 8]. The legal form concerns law enforcement, legal substance includes statutory instruments, and legal culture^[2] is a living law adhered to in a society. The structure of the legal system consists of the following elements, the number and size of courts, their jurisdiction, and the procedure for appeals from court to court. The legal structure is how legislation is organized, what the president can and cannot do, and the police follow procedures. So, this structure shows the courts, lawmakers and legal entities and processes running and being carried out. When talking about the legal design in Indonesia, it includes the design of law enforcement institutions, such as the police, prosecutors, and courts. Another element of the legal system is its substance^[9]. Its substance is the rules, norms, and patterns of actual human behaviour within the system.

So the legal substance concerns the applicable laws and regulations that have binding power and becomes guidelines for law enforcement officers. This component of legal substance is relevant concerning Law Number 8 of 1999 concerning Consumer Protection, the right of consumers to obtain compensation, and as business actors are responsible for providing compensation for consumer negligence and losses. Meanwhile, according to Friedman, legal culture includes values in society that underlie applicable law^[10]. Legal culture can also affect the level of use of courts, namely attitudes about whether it will be seen as suitable or useless or useless if you sue in court. In reality, some people

are afraid to use their rights, as is the case with legal culture on food products containing formaldehyde during the COVID-19 Pandemic in Indonesia. Consumers' legal awareness of formaldehyde food is still fragile, and there is no easy complaint mechanism for consumers who suffer losses. Consumers do not understand to fight for their rights to complain^[11]. It is stated in Article 67 of Law Number 18 of 2012 concerning food that the government guarantees food security to keep food safe, hygienic, quality, nutritious. It does not conflict with religion, belief, and community culture. Food safety is intended to prevent the possibility of biological, chemical, and other objects contamination that can interfere, harm, and endanger human health. Even though the consumer protection law contains many articles that guarantee legal certainty for consumers, consumers' rights have been fulfilled to raise the dignity of consumers by preventing them from using goods and services. Consumers are still in a weak position, often causing them to become objects of business actors. A vulnerable position often causes a weak bargaining position when dealing with business actors. Therefore, in trading activities, one way to align consumers with business actors is by campaigning for intelligent consumers, determining and demanding their rights.

Several terms are used and have the following meanings: Consumer Protection is "all efforts that ensure legal certainty to provide a sense of security to consumers"^[12]. Consumers are "every person who uses goods and / services available in the community, both for the benefit of himself, his family, other people and other living creatures and not for trading". Food is "everything that comes from biological sources of the agricultural, plantation, forestry, fishery, animal husbandry, water and water products both processed and unprocessed. It is intended as food or drink for human consumption, including food additives, food raw materials, and other materials used in the process of preparing, processing, and making food or beverages"^[13].

Formaldehyde (formaldehyde solution) is an "organic compound with a CH₂O structure, produced from incomplete combustion of several organic compounds"^[14]. *Corona Virus Disease 2019 (COVID-19) or SARS - Cov - 2 is a "new virus that causes respiratory diseases and belongs to the coronavirus family"*^[15].

Research Method

This study uses a normative legal research method conducted by reviewing the applicable laws and regulations. Normative research, often called doctrinal research, is research whose object of study is documents, laws, and regulations. The specifications used in this study are analytical descriptive. This research was conducted by describing in full the object under study based on the laws and regulations relating to consumer protection in food products containing formaldehyde during the Covid-19 Pandemic in Indonesia. This method was chosen because the object of the study was Law Number 8 of 1999 concerning Consumer Protection and Law Number 18 of 2012 concerning Food. The data source is a literature study that uses secondary data. Secondary data through this research was obtained through a literature study, by seeking the information as complete and as much as possible with journal literature, articles, scientific works and laws and regulations relating to consumer protection issues in food products containing formaldehyde. The secondary data in

this study uses primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are in the form of laws and regulations related to consumer and food protection- tertiary legal materials in the form of legal dictionaries and encyclopedias. The data collected in this study will be analyzed descriptively with a qualitative approach. That is by providing an in-depth explanation and explanation based on words arranged in a scientific setting. In this context, the analysis aims to see the development of consumer and food protection regulations.

Result and Discussion

Regulations governing food products, the government's obligation to provide a legal basis so that the people who use goods and services get legal certainty their rights are protected in consuming food safely from harm hazardous additives containing formaldehyde. Formaldehyde is often used in food preservation, and this preservative is prohibited, considering the dangers of being used as a food preservative. Formaldehyde is a chemical gas with a pungent odour and is colourless, which is often used to preserve corpses in the form of a mixture of 40% methanol in water [16]. Therefore the need for supervision by the Food and Drug Administration. Irresponsible food producers use this kind of misuse of formaldehyde [17]. Some types of food that are often found circulating in the market, such as salted fish, fresh fish, chicken pieces, wet noodles and tofu, circulating in market.

Nevertheless, not all food products contain formaldehyde. In Indonesia, regulation of food products containing hazardous materials is regulated in Article 8, Paragraph (1), Law No. 8 of 1999 concerning consumer protection, regulating prohibited actions for business actors. It is stated, "Business actors are prohibited from producing and trade in goods and services which: do not meet or do not comply with the required standards and provisions of laws and regulations" [18].

Article 8 Paragraph (1) does not explicitly mention regulation on food, but it can be used as a basis for protection for consumers who consume food containing formaldehyde. According to Article 1, Number (5), Law Number 18 of 2012 concerning Food states: "Food Safety is a condition and effort needed to prevent food and the possibility of biological, chemical, and other objects that do not conflict with societies religion, belief and culture so that it is safe for consumption" [19].

This regulation on food relates to the safety and security of consumers in consuming food products traded by producers. Based on the Regulation of the Minister of Health Number 1168/MENKES/PER/X/1999 concerning Amendments to the Regulation of the Minister of Health Number 722/MenKes/Per/IX/88 concerning food Additives that the additives that are prohibited from being used in food such as Boric acid and its compounds, Silicic acid and its salts, Diethylpyrocarbonate, Dulsin, Potassium Chlorate, Brominated Vegetable Oil, Nitrofurazone, Formaldehyde, Potassium bromate [20]. It is proven that several types of food during the Covid-19 Pandemic containing formaldehyde were recently discovered by the Head of the Food and Drug Administration, Penny K Lukito. The snacks for breaking the fast (*takjil*) supervision results show that of the 6,677 samples examined, as many as 73 to (1.09%) did not meet the requirements. It was still found *takjil* food for breaking the fast containing dangerous ingredients such as

formaldehyde, borax, rhodamine B, methanol yellow during the Covid-19 Pandemic and Ramadan ahead of Eid al-Fitri 2020 [21]. Several types of food contain formaldehyde, and from the findings, the most widely used food additive is formaldehyde (45%) [22].

Legal remedies that can be taken for consumers whose rights are violated by business actors have the right to get advocacy, protection, and efforts to resolve consumer protection dispute correctly. If the consumer feels aggrieved, he/she can sue the business actor through an institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment [23]. Settlement of consumer disputes out of court in Article 47 of the Consumer Protection Act is held to reach an agreement on the form and amount of compensation and/on specific actions to ensure that the losses suffered by consumers will not occur again or will not be repeated.

The high number of reports of food poisoning cases in Indonesia shows that dangerous food is still a threat to consumers. The weak supervision of dangerous food containing formaldehyde circulates freely in the community. Although Indonesia already has a Consumer Protection Law, a Food Law, and other regulations that are not enough, law enforcement is not yet effective because it only takes action, which usually occurs after food poisoning occurs [24]. The government must ensure that all products circulating in the market can be consumed by the public safety and free from hazardous materials. Consumers are still victims due to limited access to information or opportunities to access correct information about goods or services. Consumers do not understand that their rights are protected and can report or complain to several consumer institutions in Indonesia. Even during the Covid-19 Pandemic, these consumer institutions are still active in submitting and receiving consumer complaints. Several complaint institutions for consumers whose rights have been harmed, in addition to filing a lawsuit with the consumer Dispute Settlement Agency, there are consumer institutions recommended by the government, namely: a) Consumers can report to the Consumer Complaints Service Unit of the Drug and Food Control Agency, through the Halo National Agency of Drug and Food Control Contact Center 1500533 online complaints from the public access to submit their complaints; b) Consumers can report their rights if they are harmed through the Consumer Protection Agency, through the website; and c) Consumers can report through information, education, and consumer protection services to the Indonesian Consumers Foundation, using [25].

Business actors who are proven to have violated the Consumer Protection Act and the Food Law will be subject to administrative sanctions and criminal sanctions. Administrative sanctions in the form of "fines; temporary cessation of production and circulation activities; withdrawal of food from circulation by producers; compensation; and; license revocation. Meanwhile, criminal sanctions imposed on business actors who violate and have not obtained food safety approval by using hazardous food additives shall be punished with imprisonment for a maximum of 5 (five) years. Or a maximum fine of Rp. 10,000,000,000.00. (ten billion rupiahs). Criminal sanctions will have a deterrent effect and will not repeat their actions. The consumer protection act aims to protect consumers and protects business actors because of legal certainty and gives

a sense of security to the public. Consumers feel that their rights are protected as users of goods and services, comfort, security and safety, for consumers, and ensuring the continuity of the production business. The existence of consumer protection cases shows that the position of business actors as suppliers and consumers is in a weak position, and the formation of this Consumer Protection Law protects business actors to encourage a strong business climate in facing competition through the provision of goods and services.

Conclusion

The regulations governing food products containing formaldehyde in Indonesia are Law Number 8 of 1999 concerning Consumer Protection and Law Number 18 of 2012 concerning Food. It is the legal basis in protecting consumers who use goods and services, especially consumers who consume food products, to feel safe from harmful additives containing formaldehyde. Legal remedies that can be taken by consumers who feel that business actors have harmed their rights can file lawsuits through the Consumer Dispute Settlement Agency and the General Courts. Alternatively, you can report the complaint through the Consumer Complaints Service Unit of the National Agency of Drug and Food Control, the National Consumer Protection Agency, and the Indonesian Consumers Foundation. Suppose it is proven that a business actor violates or produces food using hazardous additives. In that case, it is stated in the Consumer Protection Act and the Food Law that producers will be subject to administrative sanctions in the form of fines, temporary suspension of production and distribution activities, with drawal of food from circulation by producers, compensation and revocation of business licenses. While the criminal sanctions in the form of imprisonment for five years or a maximum fine of ten billion rupiahs.

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