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### CONSUMERS [WOMEN] PROTECTION AGAINST HAZARDOUS CHEMICALS IN PANTYLINER PRODUCTS

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#### **ABSTRACT**

This study examines about the legal protection for the consumers of sanitary pad and pantyliner products which use the hazardous chemicals. The aim of this study is to reveal the responsibility of government as the the supervisor of the sanitary pad and pantyliner products circulation, as well as to know the liability of the businessmen for the disadvantage suffered by the consumers of sanitary pad and pantyliner products. The researcher uses normative juridical method. As the results of this study are the responsibility of the government as the party who provides the standardization is contained in Legislation No. 102 of 2000 regarding national standardization; and as the consumer legal resistance to the businessmen is based on Article 19 of Act No. 8 of 1999 regarding consumer protection. The result of this study shows that the Government, as the the organizer of the distribution permission for sanitary pad and pantyliner, must strive to develop the legal products to create a product that is safe to be used by the society.

#### **INTRODUCTION**

In the economic activity, consumers have a very important position that can determine the movement of economic wheels. However, the interests of consumers as users of a product in the form of goods and/or services are often ignored by the producers. In order to obtain huge benefit, the producers tend to commit an act which does not consider the rights of consumer as a user (Prakoso and Setyaningati, 2018).

When there is a legal dispute, the position between the producer and the consumer is always unbalance. The consumer is always on the weak party. The main factor

which becomes the consumer weakness is the low consumer education, the low consumer awareness of their rights, and financial ability (Kurniawan, 2011).

In 1962, President J.F. Kennedy in his speech before the United States Congress stated four consumer rights, namely: the right of safety, the right to be informed, the right to choose, and the right to be heard. Meanwhile, the European economic society formulate for consumer basic right, namely: the right to protection of economic interest, the right of redress, the right to information and education, the right to representation (the right to be heard) (Wahyuni, 2003).

In 2015, there was a case about sanitary pad and pantyliner which contain hazardous chemicals for the body, namely chlorine and dioxin. This case was really disturbing the society especially the women. The finding of sanitary pad and pantyliner which contain the hazardous chemicals is delivered directly by the Indonesian Consumers Foundation.

Consumers whose existence is very unlimited with a very varied social class causes producers to carry out marketing and distribution of goods or services in the most effective way possible in order to reach these very diverse consumers. All approaches are sought so that they may have various impacts, including circumstances that lead to negative and even commendable actions that begin with bad intentions. Common adverse effects include the quality or quality of goods, unclear information and even misleading counterfeiting and so on (Kristiyanti, 2008).

With the circulation of these hazardous sanitary pads, the consumers feel disadvantaged, as well as supported by the helplessness of those who are concerned about it which then try in various ways to be able to realize a regulation that regulates and especially protects consumers from various things that can cause harm to them. This such condition causes to need an effort of consumers empowerment and protection, especially the protection towards the consumers of sanitary pad and pantyliner which contain chlorine and dioxin. This is because it can violate the health in someone's body.

The aim of this study is to discover the responsibility of government as the supervisor of the sanitary pad and pantyliner products distribution, and to find out the liability of businessmen for the disadvantage suffered by the consumers of sanitary pad and pantyliner products.

It is expected that this research can give an advantage in the form of clarity in the legal protection provided by the Indonesian government towards consumers in the Indonesian jurisdiction. In addition, it is also with the provision of guaranteed protection for consumers who use sanitary pad and pantyliner to feel safe with those products on the market.

## **RESEARCH METHOD**

this research is more likely to be a "normative juridical" research done by collecting primary legal material (Soekanto and Mamudji, 2001). this research uses doctrinal research, which is a process for discovering the rule of law, legal principles, as well as legal doctrines to address the legal issues at hand (Marzuki, 2005). The primary legal material consists of: Constitution of the Republic of Indonesia of 1945, Act No. 8 of 1999 regarding Consumer Protection, Act No. 39 of 1999 regarding Human Rights, Act No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution, Act No. 36 of 2009 regarding Health, Legislation No. 58 of 2001 regarding Guidance and Supervision of the Consumer Protection Implementation, and Regulation of the Minister of Health of the Republic of Indonesia No. 70 of 2014 regarding Household Medical Devices and Household Health Supplies Company.

### **CHLORINE AND DIOXIN**

Chlorine (Cl<sub>2</sub>) will produce a byproduct which is super toxic and is believed to be the most poisonous compound that humans have ever discovered because it can cause the widespread organ damage, namely dioxin. Dioxin is a substance which is pretty dangerous, the levels are very low, and are calculated in picograms. The level that can be tolerated by the human body according to the EPA (Environmental Protection Agency) in the United States is 0.006 picograms per kilogram of body weight. Dioxin is only able to come out or decrease in levels from the human body in three ways, which are through the chemical half time, the placenta from mother to fetus, and the breast milk to baby. The dangers of dioxin are as follows: disrupt the hormone system; reduce the immune system; endometriosis; infertility; fetal defect; miscarriage; disrupt the function of the liver, heart, kidney; as well as interfere the metabolism. Nowadays, there is a lot of female problem faced by the women in their reproduction organ from the most minor disorders, such as irregular menstruation, menstrual pain, and vaginal discharge that can be caused by fungus, bacteria or protozoa (Septiningrum and Sugesty, 2016).

Dioxin is a byproduct from the whitening process which is used in the manufacture of paper products, including tampon, sanitary pads, pantyliners, and diapers (Kongres Tampon Safety and Act, 1999). Meanwhile, chlorine in the research of in vitro and in vitro (tested to animals), exposure 2,3,7,8-TCDD (chlorine compound) positively damages to the genetic levels, such as DNA damage, gene mutations, sibling chromatid exchange, and cell transformation (IARC, 1997). The exposure shows that the use of chlorine and dioxin can cause health problems in the female organs.

### ***The Government Role towards the Protection of Consumer in Indonesia***

The circulation of sanitary pad and pantyliner which contain the hazardous chemicals, chlorine and dioxin, needs to be attentive for the government. The government needs to conduct a protection effort towards the consumers, whether through control, permission, and submission of those products. Thereby, it needs a

provision that regulates, supervises, and able to provide the protection for the users of those health products.

In the explanation of Legislation No. 58 of 2001 regarding Guidance and Supervision of the Consumer Protection Implementation mentioned that the guidance of consumers protection conducted by the government is all efforts to guarantee the achievement of consumers and businessmen rights, as well as each conducted obligation is in accordance with the principle of justice and balance of interests. The duty of guidance in the consumers protection implementation is conducted by the minister who is in charge of the matter. This minister conducts the coordination for the consumers protection implementation.

To provide a certainty and legal protection in order to increase, guide, and give the base for health development, then the dynamic health legal instruments are needed for health service provider, food, and beverages produced by the government-assisted household. That legal instruments should be able to reach the complex development which will exist in the coming time. Thereby, it needs refinement and integration of the existing legal instruments.

In Indonesia, there are several non-governmental organizations which have purpose to protect the consumers. The government as well needs to contribute in controlling the role of those non-governmental organizations so that the balance control between government and businessmen can exist. In Act of Consumer Protection is mentioned three types of consumers organizations, which are the National Consumer Protection Agency (BPKN), the Non-Governmental Consumer Protection Institute (LPKSM), and the Consumer Dispute Resolution Agency (BPSK). In addition, there is an institution named the Indonesian Consumer Foundation (YLKI) which contributes in conducting legal protection towards consumers and their rights as well.

### ***The Liability of Sanitary and Pantyliner Businessmen***

The liability based on negligence is a subjective responsibility principle, which means a responsibility determined by the producers (Inosentius, 2004). This can be found in the negligence theory formulation which states that the failure to exercise the standard of care that reasonably prudent person would have exercised in a similar situation. Based on this theory, the producers' negligence which caused to the consumers disadvantage to submit a claim for damages to the producers' negligence can be used as a basis for a lawsuit, when fulfilling the conditions as follows: 1.) A behavior that causes harm, not in accordance with the normal caution, 2.) It must be proven that the defendant was negligent in his duty to be careful towards the plaintiff, 3.) The behavior is a real cause (proximate cause) of the losses incurred. Generally, the claim of compensation for the disadvantages suffered by the consumers as a result of using the product, whether in the form of material, physical or life disadvantages, can be based on several provisions, which are compensation claim based on the Unlawful Acts.

The sanitary pad which contains chlorine has a high negative risk towards the women's reproductive health, including the risk of vaginal discharge, itching, irritation, and causing cancer. The legal protection for consumers towards the defective products and the products which are detrimental to the health of consumers in Indonesia are labelled with the civil law regulated in Article 1382 BW which the liability is based on default. Whereas in Article 1504 BW mentioned that the seller must bear the hidden defective goods. It is mentioned that the seller must bear those hidden defective goods regulated as well in Article 1365 BW regarding act against the law, which the elements include act against the law, there is an act, an error, a suffered disadvantage. In order to provide more legal protection for the consumers, hence, Indonesia uses the Act of Consumer Protection.

The aim of this Act of Consumer Protection is to protect the consumers interests, and on the other side also becomes a whip for businessmen to improve their quality. Regarding the consumer complaints, Article 4 point d of the Consumer Protection Act, the consumers have the right to be heard regarding their opinions and complaints on the used goods and services. Not only just that, the consumers have the right to get advocacy, protection and effort to resolve the consumer protection disputes appropriately (Yusuf Shofie, 2008).

The dispute submitted by the consumers based on the businessmen who do not conduct their legal obligation as regulated in the Act, this kind of dispute can be called as a legal dispute. Afterward, the source dispute also based on the businessmen or consumers who disobey the contents of the agreement, which means that both businessmen and consumers do not comply with the obligations according to the arranged contract or agreement between them. This kind of dispute can be called as a contract dispute.

### ***The Revocation of Distribution Permission for Businessmen***

Basically, the permission is single-sided legal act that applies regulations in the concrete terms based on the the requirement and procedure as stipulated by the provision of the legislation. The permission is a juridical instrument in the form of constitutive provision and used by the government to deal with or determine the concrete occurrence, as that permission stipulation is made with the terms and conditions which apply to the agreed provision (Basah, 1992).

The position of consumers in relation to the businessmen can be explained through the principles of the position of consumers with businessmen depart from the doctrine or theory known in the course of the history of consumer legal protection. As for those included in this group are (1) let the buyer beware (caveat emptor), (2) let due care theory, (3) the privity of contract, and (4) a not condition contract principle (Kurniawan, 2011).

The Minister of Health obliges each sanitary pad must fulfill the requirements in accordance with Indonesian National Standard (SNI) 16-6363-2000 which has a minimum absorption of 10 times the initial weight and has no strong fluorescence. Fluorescence itself is a test conducted to see the presence of chlorine found in sanitary pad. Thereby, the nine sanitary pad brands and seven pantyliner brands which have the permission circulation and have passed the safety, quality and product utilization tests of the accredited laboratory are indeed marketable.

In Article 45 section 1, and Article 46 section 2 of Consumer Protection Act tend to allow the consumer lawsuits only to be filed in the general court environment. This limitation clearly prevents the consumers whose case might touch the competence of state administrative justice. However, if consumers is interpreted as wide which include the receipt of public services as well, then indeed the state administrative court should also serve those lawsuits. Hence, the requirements need to be attentive, that the dispute started from the existence of the written, concrete, individual, and final determinations which must be fulfilled.

The state legal administrative is quite pivotal in the matter of consumers protection. The aspect of legal administrative is an alternative public according to the government policy in order to increase the consumers protection. This aspect related to the permission given by the government to the businessmen. The administrative sanction is actually more effective rather than the civil and criminal sanctions because it can be implemented directly and unilateral. The government, for example, unilaterally can impose sanction to cancel the permission granted without requesting the approval of another party.

The new development in the legal administrative section according to the Consumers Protection Act is regulated in Article 60 section (1) of the Consumer Protection Act (UUPK) regarding the administrative sanction. This section determines that Consumer Dispute Resolution Agency (BPSK) authorizes to impose an administrative sanction to the businessmen. As has been known, BPSK is an alternative institution of consumers dispute settlement which is formed as a government organ to the district or city government. Thereby, the government organ which authorizes to institutionalize administrative institutions have increased, besides of the technical institutions (if they are non-litigative) as well as the State Administrative Court (PTUN) and BPSK (litigative).

## **CONCLUSION**

The government responsibility towards the products circulation in Indonesia has been showed by the existence of product standardization and the Government Regulation No. 102 of 2000 regarding National Standardization which serves as a guideline for the establishment of the Indonesian National Standard. The sanitary pad and pantyliner which circulate in Indonesia must in accordance with the standard set by the National Standardization Agency which is SNI 16-6363-2000. That standardization conducted by the government as an effort to guarantee the achievement of consumers and businessmen rights, as well as perform their

respective obligations in accordance with the principles of justice and balance of interests. The duty of guidance in the consumers protection implementation conducted by the minister who is in charge of the matter. This minister conducts a coordination of the consumers protection implementation.

The liability of businessmen towards the consumers is based on two things, which are liability based on the agreement and liability based on the act against the law. In Article 19 of Act No. 8 of 1990 regarding the Consumers Protection stated that the businessmen have responsibility in providing compensation for damage, pollution, and/or consumer disadvantage due to consuming goods produced or traded. One of the efforts to protect and increase the consumers position is by implementing the principle of strict liability in the law regarding the producers responsibility. Afterward, each complaint of consumers towards the suffered disadvantage from the businessmen can be reached through two ways referred to in Article 45 section (1) of the Consumer Protection Act.

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