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Civil Liability of Business Actors Selling Sunscreen on Tik-Tok Social Media Containing Fake Sun Protection Factor (SPF)

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Abstract: This research discusses the business actors selling sunscreen with fake SPF content that endangers consumers. The purpose of this research is to find out the civil liability of business actors and to find out consumer efforts to obtain such liability. This research uses normative juridical legal research with a case approach and statutory approach. From this research it can be concluded that the actions of business actors are unlawful acts in accordance with article 1365 of the Civil Code and violate the consumer protection law so that they can be held liable in the form of compensation in accordance with applicable regulations. Consumer efforts to obtain their right to compensation can be done in a non-litigation manner.

Keyword: Civil Liability, Business Actors, Sunscreen, Fake SPF.

INTRODUCTION

Buying and selling activities are now easier and can be done via the internet, namely through E-commerce and social media. The buying and selling transactions carried out by the community to fulfill their needs are one of the impacts of technological developments. Buying and selling transactions are the right of every individual / human being because buying and selling is a human activity that is needed to fulfill life's needs. (lany, 1987) The Indonesian Civil Code (KUHPperdata) regulates the sale and purchase agreement as a legal basis for conducting sale and purchase transactions. The Civil Code, which originated from the Continental European legal system, provides a broad legal framework for regulating civil relationships, such as sale and purchase agreements. (mondoringin, 2023)

In buying and selling transactions, social media can now be a means of buying and selling as well as promoting products or advertisements. Such transactions are not only based on the Civil Code but also the provisions of Law Number 8 Year 1999 on Consumer Protection. Specifically, product promotion or advertising is carried out based on Article 1 Point 6 which states that "Promotion is the activity of introducing or disseminating information on goods and/or services to attract consumer buying interest in goods and/or services that will and are being traded". In addition, the description on the product

packaging can also be an attraction for consumers, for example, a sunscreen product is included in the packaging of SPF 50, anti-whitening, lightweight, and other claims. Of course this is a special attraction for those who see it.

One of the individual needs is the care of body parts, ranging from hair, face to toe. (rini, 2022) The development of technology also makes it easy for people to get information that was previously rarely known, one of which is information about the dangers of sunlight for the skin. Education about the importance of skin care is now easily found on the internet and various platforms, for example the website detik.com, CNN Indonesia as well as on the Liputan6 news page, in addition to various social media including content on the Tik-Tok platform (marina, 2021). Therefore, now people pay attention to skin health by using sunscreen products with SPF content recommended by dermatologists. The SPF level recommended by experts is at least 30 and above according to the recommendations of the American Academy of Dermatology. The higher the SPF number, the better the protection provided. Based on the weather conditions in Indonesia, sunscreen with SPF above 15- or SPF30± is needed because sun exposure is very intense. As a result, the SPF listed on the label does not always represent the actual value (sometimes only 80% of the label value) and protects us from sunburn and erythema (sulistyowati, yushardi, & sudarti, 2022).

One Tik-Tok content creator who has more than fifty thousand followers decided to try thirty-three sunscreens. Lab test results showed that some sunscreen brands had SPF values that did not match the claims on the packaging and lab test results. The content creator conducted laboratory experiments with several SPF 50 sunscreens. Lab test results showed that sunscreens claiming SPF 50 only contained SPF 6, or even 2 (kharisma, 2023). One of the sunscreen products from a brand that is quite viral in the Tik-Tok application because of its sales that are often ranked, suspected netizens are in the video, based on reviews of the use of several consumers who have used the suspected sunscreen, the result is that their skin becomes very quickly sunburned and irritated, with an SPF value of 50, sunscreen has 98% protection against UV rays and lasts for 500 minutes (sulistyowati, yushardi, & sudarti, 2022). The brand issued evidence of in vitro testing to show that their sunscreen was in accordance with the SPF claim on the packaging, but there were irregularities from the test results because the description explained that they conducted in vitro tests, while the results column wrote in vivo results.

The explanation from BPOM regarding this is that it is likely that the product samples sent by business actors are not the same as the products that will be circulated. Monitoring of sunscreen labeling and marketing with SPF requirements in 2020 to 2023. About 16.67% of products did not meet the SPF support requirements, and the process of filling in information for 8.33% of products is ongoing. (BPOM, 2023). In fact, SPF is very important in sunscreen products. SPF levels protect against sun exposure that can damage the skin, the effects of long-term sun exposure that can cause cancer, the effects of reducing dry skin, accelerating skin aging and causing skin pigmentation. (isfardiyana & safitri, 2014). How long this sunscreen can protect the skin from the sun is indicated by its SPF number. The sanctions that will be given by BPOM for products with inappropriate claims are: An order to correct allegations relating to the marking and advertising of cosmetics, an order to withhold and remove the marking and advertising of cosmetics, and an order to temporarily suspend operations and revoke the distribution license of cosmetics (BPOM, 2023).

Quality mismatches with labels on packaging are included in prohibited acts for producers because based on Article 8 paragraph (1) letter e of the GCPL Law, which explains that producers may not produce goods that do not meet the quality standards, levels, composition, processing, style, fashion, or use stated in the label or description of the goods and / or services (dehora & dehora, 2018). This is very detrimental to consumers because it can have an impact on the health of users in the future, therefore to avoid this, it is necessary

to protect consumer rights through the GCPL Law and other related regulations. Based on Article 1365 of the Criminal Code regulates Unlawful Acts (PMH), which includes the Civil Code on Business Actor Behavior. This explains that any unlawful act that harms another person requires the person who caused the loss due to his fault to make up for the loss. For this reason, the research discusses the problem of the civil liability of business actors selling Sunscreen on Tik-Tok social media containing fake Sun Protection Factor (SPF) and consumer efforts to obtain compensation for purchasing Sunscreen containing fake SPF.

METHOD

This research uses a normative juridical research method, which means that the research is based on library materials and secondary data. This research also searches for literature and regulations related to the problem to be studied (Soekanto & Mamudji, 2001). The author uses 2 (two) approaches in this research, namely the case approach and the statute approach. With the writing method previously described, the author draws a conclusion that legal protection efforts are needed for sunscreen consumers with fake SPF content. This research uses primary and secondary data sources. Primary legal materials are sourced from the Civil Code, Law of the Republic of Indonesia number 8 of 1999 concerning consumer protection, while secondary legal materials are sourced from literature, research, academic journals, books, internet sites, as well as the results of research or other works. Data analysis techniques use qualitative analysis techniques by processing predetermined data, namely primary data and secondary data and then producing descriptive analysis.

RESULTS AND DISCUSSION

Civil Liability of Business Actors Selling Sunscreen on Tik-Tok Social Media Containing Fake Sun Protection Factor (SPF)

Unlawful acts are acts committed by business actors who sell sunscreens with fake sun protection factors (SPF). Unlawful acts are described in civil law as unlawful acts, namely acts or omissions that violate the rights of others, the legal responsibility of the perpetrator, or common decency or a decent way of life towards other people or objects commonly called PMH. Anyone who has caused harm to another person through their fault must make restitution. (djojodirjo, 1982).

The act of *onrechtmatige daad* has resulted in a violation of the rights of others, of course there are consequences that must be accepted as a result of these actions (slamet, 2013). In article 1365 of the Civil Code, it is explained that an act that is unlawful and brings harm to another person, obliges the person who causes the loss due to his fault to replace the loss. From these provisions, the existence of illegal activities, fault, loss, and a causal relationship between the act and the loss are some of the requirements for filing a case for unlawful behavior. (Setiawan, 1987).

Based on Article 1365 of the Civil Code, the actions of the business actor can be said to have committed an unlawful act because they fulfill the elements of fault in the article, with the following explanation (Sari, 2020):

1. The existence of a tort, the business actor here commits negligence in violation of Article 8 paragraph (1) of the GCPL Law, where the product in circulation does not match the claims or information displayed to consumers.
2. The existence of fault, the business actor is involved in actions that are detrimental to consumers, namely promoting the product in a way that is dishonest, inaccurate, and does not match the product description, including what is said or intended on the packaging label.
3. The existence of cause and effect between the loss and the act, that the act of the business actor in promoting a product that is not in accordance with its content can cause material and immaterial losses to consumers. The actions of business actors who provide invalid

information on the packaging cause harm to consumers who buy these products (annaba, susilowati, & et al, 2023).

4. The existence of losses, business actors involve two types of losses, First, in material terms can be measured by the amount of costs that consumers have incurred to buy the product. Second, there are immaterial losses that can have a negative impact on skin health as a result of using these products.

Meanwhile, when viewed from the consumer protection law in article 7 of the Law According to Consumer Protection, business actors have a responsibility to provide complete, accurate, and correct information about the condition and warranty of their products and services, along with guidelines for use, maintenance, and repair. without reducing details. Business actors are also obliged to ensure that the quality and quantity of goods and services produced and or traded meet the quality standards of goods and services applicable and established in the Unitary State of the Republic of Indonesia. In addition, business actors must compensate in the form of compensation due to the use of goods or services traded to consumers who prove to be detrimental.

From the description above, the sunscreen business actor with fake spf does not provide a complete set of information in a clear and honest manner regarding the condition of the goods being sold. So that in accordance with existing regulations, business actors can be held accountable for their actions that cause harm to consumers.

The principle of responsibility in law can generally be divided into (Candrawati, 2014):

1. Presumption of liability, which means always responsible;
2. Presumption of non-liability, which means not always responsible;
3. The principle of liability based on fault;
4. Strict liability, which means absolute liability;
5. Limitation of liability, which means there are restrictions on liability.

In criminal and civil law, the idea of liability based on fault is very popular (Eleanora, 2018). It applies throughout the Civil Code, particularly in Articles 1365, 1366, and 1367. According to this theory, people may only be legally liable if they are found to have committed an offense. Regarding the actions of business actors whose products contain counterfeit SPF, it can be subject to the types of liability for fault and strict liability (product liability). In general, product liability refers to the manufacturer for products that have been sold, resulting in losses, such as product defects. From this definition, the duty in question consists of legal liability resulting from breaking the law as well as obligations under agreements or contracts (nur & prabowo., 2011). The main purpose of the concept of absolute liability is to protect consumers from the negative effects or legal consequences of a product that causes them to suffer losses. (Samsul, 2004).

The guarantor is the main purpose of the concept of absolute liability. According to Article 1484 of the Civil Code, customers are entitled to compensation if the goods do not conform to the agreed quality or specifications. Article 19 of the GCPL then states that business actors must compensate for losses, and/or harm to consumers caused by the use of products and services produced or sold. As a result, business actors have the obligation to compensate or hold accountable customers who have suffered because they used the distributed goods. Referring to Article 19 Paragraph (2), buyers who feel aggrieved because of resulting skin problems such as acne, sunburn, and even the risk of skin cancer due to the use of the wrong SPF, can sue and are entitled to receive financial compensation or medical treatment (dhinggar, hermawan, & et al, 2024). As stipulated in Article 19 of GCPL, paragraph (5), businesses can also be exempted from the responsibility to pay compensation to consumers if they can prove that the loss occurred due to the consumer's own fault.

In addition, BPOM, which is one of the references for consumers in choosing safe and guaranteed products, has issued a permit for sunscreen products with fake spf. However, it

turns out that the label on the sunscreen product does not match the content inside, meaning that here BPOM is also obliged to take action against business actors and products that have been circulated because they cause harm to consumers.

The form of responsibility that has been carried out by business actors of sunscreen with fake SPF is the issuance of clarifications made by the sunscreen brand through the Instagram platform by admitting that the product has an error and will delay the production of the product. these actions are carried out by business actors because BPOM has also imposed sanctions on business actors, namely temporary restrictions on distribution or orders to withdraw products from the market. in accordance with the Explanation of Bpom Ri Number Hm.01.1.2.08.23.33 Dated September 4, 2023 (BPOM, 2023). The sunscreen products with fake SPF content have been withdrawn from all official ecommerce accounts of the brand.

Consumer Efforts to Obtain Compensation for Purchasing Sunscreen Containing Fake SPF

Consumer losses due to the use of goods of business actors that are defective or do not meet the demands fall into the following categories (Mantili, 2019):

- 1) material losses, losses actually suffered, and
- 2) immaterial loss, loss of benefits obtained or may be received in the future.

Material losses received from consumers who buy sunscreen products can be measured from the costs incurred to buy these products, while immaterial losses received by consumers can be seen from the health aspect, namely the impact of using these sunscreen products, for example sunburned skin because it does not get protection from the sun. To obtain accountability for the losses received by consumers, efforts are needed to fulfill consumer rights to obtain accountability from business actors.

The dispute resolution process between consumers and sellers may vary depending on the legal jurisdiction and the provisions in the applicable law. There are two (2) methods to resolve disputes: litigation and non-litigation. The term "litigation" refers to the process of resolving disputes in court, where judges have the power to regulate and resolve issues. "Non-litigation" or "out-of-court" conflict resolution is an attempt to use compromise to reach a mutually beneficial arrangement. (Rosita, 2017).

Non-litigation actions that can be taken by disputing parties include:

1. Consultation, consultation or negotiation activities such as clients with their legal counsel (rosyadi & ngatino, 2002, p. 124).
2. Negotiation, an attempt to resolve a dispute by the parties discussing the issue promptly, deliberately, and frankly to reach a mutual agreement based on peaceful and creative cooperation, without using the legal system. (emerson, 2001).
3. Mediation, A third party or other individual may be involved in the mediation process to resolve the dispute.
4. Conciliation, an attempt to reconcile the opposing party's desire to reach a resolution to end the conflict in a familial manner (marwan & jimny, 2009).
5. Arbitration, If the parties' efforts to resolve their dispute through negotiation and mediation are unsuccessful, the parties may reach an agreement in writing to request an arbitration body to help resolve the dispute (Rosita, 2017).

In the case of sunscreen with fake SPF content that went viral on Tik-Tok social media, the settlement of the dispute did not reach the court. the problem was not resolved by means of consolation, mediation or arbitration, but used negotiation. One of the consumers with the initials GM asked for accountability in the form of a refund of the money he had spent to buy the sunscreen, this was done because his skin experienced sunburn even though he had used sunscreen according to the dosage, besides that because of the viral news that the sunscreen turned out to contain fake SPF (GM, 2023). One of the Tik-Tok creators with the

username @Dosenskincare tried to ask BPOM about the sunscreen distribution permit, then BPOM asked business actors to submit test results to finally evaluate the product.

CONCLUSION

The actions of business actors selling sunscreen with fake SPF content constitute a tort in accordance with Article 1365 of the Civil Code, the business actors also violate the rules of Articles 7 and 8 of the GCPL. Based on the elements of fault liability and absolute responsibility, business actors can be held liable based on the principle of responsibility. Article 1484 of the Civil Code gives consumers the right to claim compensation; Article 19 of GCPL further strengthens this right. In civil law, there are litigation and non-litigation channels to resolve disputes. In this case, the problem was resolved by non-litigation channels in the form of negotiations and complaints. The form of responsibility given by business actors is in the form of providing refunds to consumers who submit, besides that the product concerned has also been withdrawn from circulation based on orders from BPOM.

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