

Legal Protection of Fake Drinking Water Consumers Reviewed by Law No. 8 Of 1999 Concerning Consumer Protection (Case Study: The Forging of 2tang Gallon Drinking Water in Periuk, Tangerang, Banten 2018)

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ABSTRACT

In selling counterfeit bottled water (AMDK), the business actor / distributor must carry out his obligations as a business actor as regulated in Article 7 paragraph (2) and (4) of Consumer Protection Law No. 8 of 1999. However, it is known that the sale of 2Tang brand gallon drinking water is located in Periuk, Tangerang, Banten, in 2018, where unscrupulous business actors have falsified 2Tang Gallon Bottled Drinking Water (AMDK) by filling ground water from wells, and has been detrimental to many consumers, which are the people in Periuk sub-district itself, Tangerang and surrounding areas. The application of legal protection to counterfeit bottled drinking water consumers is not in accordance with the laws and regulations listed in the Consumer Protection Law No. 8 of 1999, and causing problems if examined further. The type of research used by the author is legal research methods for academic purposes. This study uses the type of library research, which examines various documents related to research. The method used by the author is a normative legal research method using a statute approach and a case approach. The results showed that the rights of consumers who have been disadvantaged are still not fulfilled based on Consumer Protection Law No. 8 of 1999 and weak government oversight in dealing with counterfeit bottled water so that there are still many sales of fake bottled drinking water and the contents do not match the quality.

Keywords: *the responsibility of the business actor, legal protection, consumer protection, bottled water*

1. INTRODUCTION

The need of living things for water has become a basic need in this world that cannot be separated in everyday life. Not only important for humans, water is an important part of living things, both plants and animals. Living things really need water in everyday life as well as to survive because without water there is no possibility of life in this world. However, the use of drinking water from ground water sources has run low, in addition to that the risk of water pollution is also getting higher so that it can endanger public health. The scarcity of clean drinking water is found today in urban areas because the rivers that are the source have been polluted by various kinds of waste, ranging from household organic waste disposal to toxic waste from industry making ground water is no longer safe to drink. The supply of clean water to the community is not optimal because there are still many obstacles experienced by PT. PAM as a drinking water company in Indonesia, with the presence of bottled drinking water products consisting of various brands is an alternative for the public to meet their needs for proper clean water, so that safety is maintained in their daily safety. Until now, almost most of the people

of Indonesia are certainly no stranger to the existence of bottled water and prefer bottled water as drinking water for daily consumption. From the start of 240ml packaging, 600ml plastic bottles and 1.5 liter plastic bottles to gallons has been consumed by many people, especially in large urban areas. Therefore, the government and the House of Representatives formed Law No. 8 of 1999 concerning Consumer Protection (UUPK). The purpose of the establishment of UUPK is so that all the interests of consumers are given the law by paying for the law and provide legal protection to these consumers so that the interests of the counselors can be protected in a tangible and certain way.

The understanding consumers in the general sense is the user, user and / or beneficiary of goods and services for a particular purpose. while the definition for the above consumer protection law is every user and or service available in the community, both for the benefit of themselves, other people's families and other living things, and not for trading. With the enactment of the UUPK, both directly and indirectly, it is thought of business actors.

Shifts in the thinking of business actors in their treatment of consumers where consumers are no longer seen as objects of profit generation, but also consumers are treated as partners for business actors. Therefore legal protection to maintain a balance between producers and consumers is needed. Legislation regarding consumer protection can be a means.

The increasing needs of the people of Indonesia for bottled water, making a great opportunity for people to do retail sales and distributors of bottled water. However, in reality there are still many AMDK entrepreneurs in Indonesia who conduct business selling their AMDK dishonestly and cause a lot of harm to consumers, such as the police raid in September 2018, located in Garden City Housing, Periuk District, Tangerang City. The businessman initials 'E' as the owner of the AMDK business, and his employees 'S', 'A', 'J' and 'STS'. In order to get a large profit, the AMDK business actor for 2 months plastered the bottled AMDK which he sold by filling ground water with a well drill into a refill gallon precisely in Gembor Village, Priuk, Tangerang City, then brought by the business actors to the label forgery warehouse.

The label used is a well-known brand of bottled water in Indonesia, namely '2 Tang'. This mixed mineral water product has also taken its toll. A resident living near the production site was reported to have heartburn and vomit after consuming the mixed mineral water. In addition, another victim was a teenager named Andi (15 years) who had to be taken to the hospital because of severe stomach pain. The making of UUPK which aims to protect consumers, in fact is still not reached optimally. Can be seen in the case of Counterfeit 2 Gallon Drinking Water in Periuk, Tangerang, Banten, in 2018, where consumers, the community in Periuk sub-district, Tangerang, had their rights impaired because they had bought and consumed fake gallons of 2Tang gallons.

There are many factors that are the source of the problem of consumer violations to date, while the two main factors are due to the very low price of bottled drinking water, especially the goods offered are well-known brands in Indonesia, namely 2Tang, the price tends to be expensive, while the second factor is the influence of people's lifestyles. do not want to bother and want to get something in a practical way so it is not careful in advance in buying an AMDK. The rise of problems and polemics about business actors who falsify and sell bottled water that are false and not in accordance with quality, so the author was moved to write this research because there are actions that are not in line with legal norms and with the rules listed in Law No. 8 of 1999 concerning Consumer Protection.

2. FORMULATION OF THE PROBLEM

1. Legal protection for counterfeit bottled drinking water consumers (Case Study: Counterfeiting 2Tang

Gallon Drinking Water in Periuk, Tangerang, Banten in 2018)?

2. Legal liability of counterfeit AMDK business actors not conforming to the quality of consumers according to Case Study: Falsification of 2 Gallon Tang Drinking Water in Periuk, Tangerang, Banten in 2018?

3. BACKGROUND

3.1. Probabilistic Automata

Business actors with the initials 'E' as owners of the AMDK business, and their employees 'S', 'A', 'J' and 'STS' were raided by the police in September 2018, which is located in Garden City Housing, Periuk District, Kota Tangerang. In order to get a large profit, the AMDK business actor for 2 months plastered the bottled AMDK that he sold by filling groundwater using bore wells into refill gallons in Kelurahan Gembor, Priuk, Tangerang City.

The water that is filled into gallons is taken directly from groundwater casting located in the back room where the business location and the water filtration process are also not in accordance with the standard, where the water that has been taken is immediately filtered and first deposited in a large tank. Then the stored water is put into gallons that have been provided with a small hose. Mr. Commissioner Eliantoro as the Head of the Jatiuwung Police Station stated that the process of filling gallon water is very unhygienic and certainly dangerous to drink every day, because water from the ground which normally contains iron. The perpetrators used simple equipment to practice bottling of bottled water, they only used hoses and filters and then tanks to settle the water.

The gallons that have been filled with well water are then taken by business actors to the label forgery warehouse. After that they seal the gallon with a gallon lid by heating it with matches, so it looks neat. The label and gallon used are original from the well-known bottled drinking water brand in Indonesia, namely '2 Tang' and in a day they can produce 100-150 gallons of fake mineral water. The production results are then distributed to agents, stalls and shops in the City and Regency of Tangerang at a price of Rp 15 thousand per gallon. This mixed mineral water product has also taken its toll. A resident living near the production site was reported to have heartburn and vomit after consuming the mixed mineral water. In addition, another victim was a teenager named Andi (15 years) who had to be taken to the hospital because of severe stomach pain. With that, the perpetrators are charged with consumer protection as referred to in Article 62 UURI No. 8 of 1999 concerning the protection of consumers and violation of copyright sentenced to a maximum of 10 years in prison.

3.2. Legal protection for counterfeit bottled drinking water consumers (Case Study: Counterfeiting 2Tang Gallon Drinking Water in Periuk, Tangerang, Banten in 2018).

There is a legal relationship between consumers as purchasers of bottled drinking water with business actors whose "E" is the owner of a fake 2Tang AMDK distributor business and its employees whose initials are 'S', 'A', 'J' and 'STS' are based for an event that is a sale and purchase, in which case the sale of the purchase raises a right and obligation to each party. "E", 'S', 'A', 'J' and 'STS' as business people / sellers of AMDK 2Tang fake have the obligation to have good faith in providing goods that they sell honestly and guarantee the quality of AMDK they sell and consumers are obliged to do payment in line with the price set by the business actor.

Consumers are arguably the weakest party when paired with business actors. Consumers become the object of business activities in which businesses collect maximum profits through promotion methods, sales methods, massive promos, cheap prices, and the application of standard agreements that make businesses and consumers domiciled so that they tend to be detrimental to consumers.

Legal protection is the narrowing of the meaning of protection, in this case only protection by law. Protection provided by law is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with fellow humans and their environment. As subjects of human law, they have the right and obligation to take legal actions.

The Consumer Protection Act provides protection to every consumer who feels his rights have been impaired by a business actor, as stated in Article 4 of the UUPK, namely:

- a. The right to comfort, security and safety in consuming goods / services.
- b. The right to choose goods / services and obtain goods / services in accordance with the exchange rate and conditions and guarantees promised.
- c. The right to true, clear and honest information about the conditions and guarantees of goods / services.
- d. The right to be heard opinions and complaints on goods and / services used.
- e. The right to obtain appropriate advocacy, protection, and efforts to resolve consumer protection and education disputes.
- f. The right to consumer education and guidance.
- g. The right to be treated and served properly and honestly and not discriminatory.
- h. The right to obtain compensation, compensation and / or replacement goods, if the goods / services received are not in accordance with the agreement or not as intended.
- i. The rights regulated in the provisions of other laws and regulations.

Some of the descriptions of consumer rights above, can be broadly divided into three rights which become basic principles, namely:

- a. Rights intended to prevent consumers from losses, both personal losses and property losses;

- b. The right to obtain goods and / or services at reasonable prices; and

- c. The right to get an appropriate solution to the problems faced.

There are still many cases of consumer violations by unscrupulous business actors in Indonesia, so consumers whose rights have been impaired by entrepreneurs certainly need to get legal protection. As a case of violation of consumers of counterfeit 2Tang business players who clearly violates the UUPK provisions, where the process of filling gallon bottled water is very unhygienic and does not meet quality standards because water from the ground which usually contains iron which is regulated in the Regulations of the Food and Drug Supervisory Agency Number 27 of 2017 and Regulation of the Minister of Health of the Republic of Indonesia Number 492 / Menkes / Per / IV / 2010 concerning Drinking Water Quality Requirements which are certainly dangerous for consumers. Based on interviews conducted by the author to complete the data in this study, on June 2, 2020 the author conducted an interview Mr. Bambang Sumantri, MBA as a Commissioner of the National Consumer Protection Agency (BPKN) in the Communication and Education Commission representing the LPKSM elements online through the Video Call Zoom application Meeting, not only the government must carry out its duties to oversee business people in the circulation and sale of bottled water, but we as a community must also be smart and meticulous in buying and consuming bottled water. With the advancement of technology today, we can easily access information about a product / goods, see the regulations on Consumer Protection, news about consumer violations, and others.

The opinion given by Ms. N.G.N. Renti Maharaini, SH, MH, as a lecturer in the Consumer Protection course at Trisakti University when answering the author's question conducted by the author on June 7, 2020 online through the WhatsApp and Gmail application, regarding the fulfillment of the rights of counterfeit bottled drinking water consumers, that consumers who feel disadvantaged can file an effort to claim compensation for the business owner in question.

In Article 19 of the UUPK, it is said that the business actor has the responsibility to provide compensation for consumer losses due to consuming goods and / or services that are produced or traded in an inappropriate manner or goods obtained by consumers that do not meet their expectations. The compensation can be in the form of:

1. The return of consumer money or goods and / services that are replaced with similar or equivalent goods;
2. Business actors provide health care and / or provide compensation in accordance with the provisions of the applicable laws and regulations for consumers.

Then proceed to Article 19 paragraph (3), (4), (5):

- (3) The compensation is given within 7 (seven) days after the transaction date.

- (4) The granting of compensation as referred to in paragraph (1) and paragraph (2) does not eliminate the possibility of

criminal prosecution based on further evidence regarding the existence of an element of error.

(5) The provisions referred to in paragraph (1) and paragraph (2) do not apply if the business actor can prove that the error is a consumer error.

She also believes that regarding the requirements that have been set regarding the requirements for business actors / prospective business operators of AMDK / AMDK Distributors before selling their AMDK, the regulations are in principle considered sufficient to provide legal certainty and legal protection. But of course it also needs to be followed by a supervisory function in the field that must be carried out properly by the government and the community which in this case is represented by the LPKSM (Community Consumer Protection Institute).

It is clear that consumers are protected by law, as evidenced by the regulation of the rights of consumers who are also an obligation of business actors in the UUPK. Based on the provisions of the articles above, the crime that has been committed by unscrupulous business actors in the Counterfeit 2K AMDK can be submitted to a district court, where consumers should claim compensation for the business actor and the resolution of disputes submitted through the general court may not contrary to the UUPK provided for in Article 48 jo 45 jo 64, which applies the principle of *lex specialist derogat lex generalis*.

3.3. Legal liability of counterfeit AMDK business actors not conforming to the quality of consumers according to Case Study: Falsification of 2 Gallon Tang Drinking Water in Periuk, Tangerang, Banten in 2018.

The fake EIA 2Tang perpetrators whose "E" as the owner of the fake EIA 2Tang distributor business and their employees whose initials are 'S', 'A', 'J' and 'STS' have violated the provisions of Law Number 8 of 1999 concerning consumer protection, because these unscrupulous bottled drinking business actors have provided untrue information to consumers, as well as Regulation of the Minister of Health of the Republic of Indonesia Number 492 / Menkes / Per / IV / 2010 concerning Drinking Water Quality Requirements, where business actors to obtain the greatest profit by producing less Gallons of bottled water use well water that is not stratified or treated in advance in accordance with the rules listed in the Regulation of the Minister of Industry of the Republic of Indonesia Number 96 / M-IND / PER / 12/2011 concerning the Technical Requirements of the Bottled Drinking Water Industry in which business operators do not pay attention the safety, health and security of consumers who consume these bottled water.

Looking again at the previous discussion, where the regulation of consumer rights is also an obligation and responsibility of the business actor, the following are the obligations of the business actor that must not be violated in

conducting their business, as stated in Article 7 of the UUPK at point 1, 2, 4, 6, 7:

1. Having good faith in carrying out its business activities;
2. Provide true, clear and honest information about the conditions and guarantees of goods and / or services and provide an explanation of the use, repair and maintenance;
3. Guarantee the quality of goods and / or services produced and / or traded based on the provisions of the applicable quality standards of goods and / or services;
4. Provide compensation, compensation and / or compensation for losses resulting from the use, use and utilization of traded goods and / or services;
5. Provide compensation, compensation and / or replacement if the goods and / or services received or utilized are not in accordance with the agreement.

The case of counterfeiting AMDK 2Tang carried out by business actors "E", 'S', 'A', 'J' and 'STS', has clearly not fulfilled its obligations as a business actor, causing many victims to experience illness stomach, one of them was a 15-year-old teenager named Andi, who had to be taken to the hospital because of severe stomach pain after consuming the fake gallons of drinking water.

In Article 8 paragraph (1) letter b of the UUPK concerning Act prohibited for Business Actors, it is also stated that business actors are prohibited from producing and / or trading goods and / or services that are not in accordance with net weight, net or net contents, and the amount in the calculation as stated in the label or label of the item. If there is a business actor or a distributor who has violated the above rules by selling and circulating goods that are not in accordance with the quality of the laws and regulations, especially in this case, namely counterfeit bottled drinking water whose raw materials use well water, then counterfeit bottled AMDK goods must be withdrawn from circulation by the Minister of Trade (Trade Minister). Business actors will also be convicted under Article 62 of the UUPK.

Following Article 19 of the Consumer Protection Act, business actors have several responsibilities to their consumers. Seeing the contents of article 19 paragraph (1), conclusions can be drawn from the responsibilities of the business actor, including:

1. To compensate for damage;
2. Losses from pollution;
3. Loss on consumer losses.

Entrepreneurs who have fulfilled the requirements to conduct their business, have obligations that must not be violated and must be carried out by entrepreneurs whose own business obligations are already listed in Article 7 of the UUPK.

Based on the interviews conducted by the author to complete the data in this study, on June 3, 2020 the author conducted an interview with Ms. Tri Anggraini as a lecturer in Consumer Protection courses at Trisakti University and Tarumanagara University online through the WhatsApp and Gmail application, she said that every item, food , mass beverages sold to the public must meet the standards in the laws and implementing regulations. The regulation of the minister of industry also regulates and guarantees the quality of the product, by directly controlling and

supervising the drinking water industry. The bottled drinking water product must also meet the Indonesian National Standard (SNI) and meet the technical requirements of the industry regarding the requirements that contain the definition of bottled drinking water, types of bottled water, provisions regarding expiry date, standards used, specifications of water produced, and matters the other.

Thus, based on the data obtained, it is known that the business operators of AMDK 2Tang have been proven to have committed a crime in which the business actor is responsible for violating the legal provisions and carried out intentionally (intentional tort liability) for not implementing quality standards as stipulated by law legislation, which should be the obligation of business actors.

In addition to getting criminal sanctions for business actors "E", 'S', 'A', 'J' and 'STS' have falsified the trademark AMDK 2Tang as in Article 100 paragraph (1) and (2) of Law Number 20 2016 concerning Geographical Marks and Indications and criminal sanctions according to Article 62 UUPK for producing & selling goods not in accordance with quality, such as what is stated in Article 19 point (a) and Article 4 item (h), that business entities are obliged to provide compensation to consumers whose health and safety have been harmed.

Look again at the results of interviews conducted by the author to Mr. Bambang Sumantri, MBA, where the regulations issued by BPOM related to permit requirements for businesses selling / distributing bottled drinking water themselves as stated in the Regulation of the Drug and Food Supervisory Agency Number 27 of 2017 concerning Food Registration Processed is also considered sufficient, but still often not done effectively and correctly.

He argued how supervision and supervision by the government and related agencies should be to the distribution or sale of bottled water, because there is still a lack of routine supervision by the provincial Health Office of AMDK sellers / distributors that should be done at least once a month / once every 2 months, which should Health checks what ingredients are contained in bottled water sold / circulated by business actors.

Another matter, business actors violate Article 5 and Article 6 of the Regulation of the Minister of Industry of the Republic of Indonesia Number: 96 / M-IND / PER / 12 / 2011 concerning Technical Requirements for the Drinking Water Industry which states that the requirement to apply Hygiene health requirements that must be met for this AMDK raw material governed the quality requirements, and the stages of the process of making AMDK technically. The unscrupulous business actors make their bottled water with improvised tools so as not to maintain the hygiene of bottled drinking water products. Therefore consumer rights as stipulated by Article 4 of the 1999 UUPK have not been optimally implemented by fake 2Tang AMDK businesses in Periuk District, Tangeang, Banten.

4. CONCLUSION

Based on the description of the analysis that the author has described, regarding legal protection of consumers who consume counterfeit bottled water that is not in accordance with quality according to Law Number 8 of 1999 concerning Consumer Protection (Case Study: Counterfeiting of 2Tang Gallon Drinking Water in Periuk, Tangerang, Banten in 2018) in the previous chapters, in this chapter the author draws the conclusion, that:

1. Consumers are often faced with problems related to Health standards and quality of bottled drinking water that are not in accordance with the provisions set forth in the Regulation of the Minister of Industry of the Republic of Indonesia 96 / M-IND / PER / 12/2011 concerning Technical Requirements for the Industry of Bottled Drinking Water and Regulation of the Minister of Health Republic of Indonesia No. 492 / Menkes / Per / IV / 2010 regarding Drinking Water Quality Requirements which in practice are still found by many business actors who commit fraudulent acts by selling fake AMDK.
2. There are many factors that are the source of the problem of consumer violations to date, while the two main factors are due to the very low price of bottled drinking water especially the goods offered are well-known brands in Indonesia, namely 2Tang, the price tends to be expensive, while the second factor is the influence of lifestyle people who do not want to bother and want to get things in a practical way so they are not careful in advance in buying an AMDK.
3. Legal protection for counterfeit AMDK 2Tang consumers has been harmed in terms of health and safety according to Article 4 of the UUPK, where the business actor is obliged to fulfill the consumer's rights which oblige the business actor to compensate for the actions he has committed, namely the provision of material compensation in accordance with what is stipulated in Article 7 UUPK and can also include immaterill losses based on a fair and fair value.

5. SUGGESTION

1. To Consumers:

AMDK consumers are demanded to be smarter and more careful in buying and consuming bottled water sold through home distributors who sell branded bottled water at low prices, considering that bottled water is a basic need for Indonesian people until now especially in urban areas so that people who already consume bottled water are not feel the negative impact on his health both in the short and long term. With the increasing number of cases of consumer violations in Indonesia, consumers should become Smart Consumers and be demanded to be more careful in buying goods or consuming goods.

If there are consumers who feel their rights have been harmed as in the case in Serang, Banten, fake AMDK consumers whose safety and health are threatened have the right to ask for compensation as referred to in Article 19 of the UUPK which has not been applied by the perpetrators of the usha. The case of counterfeiting AMDK 2Tang carried out by business actors "E", 'S', 'A', 'J' and 'STS', has clearly not fulfilled its obligations as a business actor, causing many victims to experience illness stomach, one of them was a 15-year-old teenager named Andi, who had to be taken to the hospital because of severe stomach pain after consuming the fake gallons of drinking water.

2. To the Government:

The existence of AMDK distributors as well as the refilling of DAM businesses must be regulated and supervised by the government, bearing in mind that there are still many fake AMDK cases in circulation so that the safety standards and product quality are met by AMDK business actors. The government must continue to socialize how to check authentic or fake goods that are circulating in the community, but considering the amount and type of goods that are circulating in the community are very many, then each type of product must be set certain standards by including labels or the like that are easily read by consumers.

Government agencies such as the Health Service, BPOM and the Ministry of Health to be more pro-

active in fostering and supervising AMDK business actors in order to meet various existing laws and regulations and are required to carry out routine checks and the results must be announced to the public both regarding the safety of bottled drinking water products and products DAM refill businesses that are self-produced and provide even more strict sanctions to business entities that have violated existing regulations.

3. To academics and practitioners:

Activities that aim to be able to educate the public to be able to better understand and understand about various types of psychiatric disorders so that the community can take an active role in preventing and acting on these problems. The role of students in Indonesia is also considered very important to disseminate information and educate consumers in Indonesia to become intelligent and conscientious consumers, by using the power of social media or holding online seminars on Consumer Protection.

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