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Legal Protection for Consumers as Victims of Swab/PCR Tests Based on Regulation No. 8/1999 Regarding Consumer Protection

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ABSTRACT

In pandemic era, it is clear that compliance with procedures is needed and has a huge impact on the pandemic period completion. Besides the use of masks and social distancing, some of the processes needed are conduct the tests to detect the viruses routinely, one of them is the antigen test. This is based to the Minister of Health's Decree No. 234/2020 which was issued on April 7th, 2020, where all laboratories in Indonesia are required to implement early identification and report the result to the local Health Office. However, this turned out to be a new crime that violated the right of customers indirectly through the falsification of test result by service provider. In a similar case, legal efforts are always discussed in the direction of criminality, while on the one hand there are consumer rights or consumer protections that have been violated. In this study, the author discusses legal protection for consumers who are maltreated by fake SWAB/PCR tests as well as the government's responsibilities and efforts in providing legal protection to consumers who are harmed by fake SWAB/PCR tests. In this research, the researchers use Juridical-Normative Research method where the legal materials obtained from secondary legal materials with statutory and case approach. In this research, researchers using a descriptive analytical specification to obtain the answers from the problem statement that has been determined by the researchers.

Keywords: Consumer, Legal Protection, Swab/PCR Test

INTRODUCTION

In current pandemic era, it is clear that prokes adherence is needed and has a huge impact on the completion of the pandemic period. Besides the use of masks and social distancing, some of the protocol needed are implementing the tests routinely to detect the viruses that infect our bodies, one of them is the antigen test. The antigen test itself is a test conduct to examine the early detection of viruses that may be infect in our bodies. This test is usually conduct to detect respiratory pathogens such as flu and RCV. In addition to the two viruses, the antigen test can also detect SARS CoV-2.

After the antigen test, when the results show positive, the next step taken by the medical team is to implement a PCR test based to the Minister of Health's Decree No. 234/2020 which was published on April 7th, 2020, in which all laboratories in Indonesia are required to do the early identification and report the results to the local Health Office. This is clearly done solely for the form of handling and reducing the spread of the virus. However, this turned out to be a new crime that indirectly violated the rights of consumers as users, called the falsification of test results by service providers. In similar cases, legal efforts are always discussed in a criminal result, while on the one hand there are consumer rights or consumer protections that have been violated regarding the correctness of information on the services or products they use. This research aims to discuss legal protection for consumers who are maltreated by fake SWAB/PCR tests as well as the government's responsibilities and efforts in providing legal protection to consumers who are harmed by fake SWAB/PCR tests.

RESEARCH METHODS

The author uses a type of juridical-normative research method. Normative legal research involves the study of the law as an object and removes any non-legal material from the scope of this research.¹ The analysis of legal materials is carried out qualitatively, where the discussion and research results are described in words based on the legal materials obtained. The collected legal materials will be analyzed by finding and determining the relationship between the legal materials obtained from the research and the problems raised in this research.

RESULT AND DISCUSSION

Legal Consequences for Fake Swab/PCR Letter Maker

The rule of law has several concepts from different countries, including the terms rule of law, *rechstaat*, *etat de droit* and so on. In European countries, the

¹ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 201–207, <https://linkinghub.elsevier.com/retrieve/pii/S1877042816300660>.

concept of the rule of law is known as *reechstaat*, while in other countries that adhere to Anglo-Saxon it is known as the rule of law. Indeed, it seems there is no significant difference, but in further examination, there are several distinguishing elements. The point of difference between the two is the focus. The concept of *rechstaat* rests on the principle of continental law which tends to have an administrative character. Meanwhile, the concept of the rule of law is based on a legal system with a judicial character.²

There are 3 meanings regarding the rule of law in the concept of rule of law proposed by AV Dicey, such as:

1. Absolute supremacy over the law itself
2. The existence of the application of the principle of legal equality
3. The constitution is considered as the basis for the application of a law

Tahir Azhary, also stated that based on several values of Pancasila, it can be concluded that the core characteristics of a legal state based on Pancasila are:³

1. State and religion have a close relationship with each other
2. God is made the main focus in all actions and policies taken
3. Giving absolute freedom as long as it is still in a good or positive sense
4. Do not accept the principles of atheism and communism
5. Harmony and kinship are the moral principles
6. Pancasila is used as the core of the elements of the rule of law
7. The existence of a people's consultative assembly which is used as a forum for the community to express their aspirations
8. Adhering to a constitutional system
9. Uphold equality and an independent judiciary

Indonesia is a democratic country where the transactions including buying and selling are happened as daily activities, the right to feel safe and comfortable in using goods or services is clearly owned by consumers. The regulation is contained in Regulation 4 Letter (a) where the right of the consumer is to obtain correct data and information on the product they buy or use. This is also in accordance with Regulation 4 Letter (c) of the PK Law.

Based on some of the problems above, it can be said that in Indonesia has two institution that are considered to have full responsibility in the case of the emergence of False Swab test service providers, namely the Health Service and the Food and Drug Supervisory Institution. Both institution have similar task, including the supervision of activities related to health and drugs circulating in the Indonesian market. Not only a supervisory function, both institution also has a training function

² Janpatar Simamora, "Tafsir Makna Negara Hukum Dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Dinamika Hukum* 14, no. 3 (2014).

³ Made Hendra Wijaya, "Karakteristik Konsep Negara Hukum Pancasila," *Jurnal Advokasi* 5, no. 2 (2015).

in the process of implementing in the health sector activities, including food and drug health.

The Consumer Protection Law has also stipulated in Regulation 1 Number 2, which stated "Every person who uses goods and services available in the society, both for the benefit of himself, his family, other people and other living creatures and is not for trade". There are also several efforts that can be taken by parties who feel their rights have been violated and harmed, including:

1. Non-Litigation efforts where this attempt is conduct outside the scope of the court in the form of:

a. Determination for peace

This type of settlement is implements when the parties want to resolve the problem through the family path in the form of a peaceful effort by conduct the process or deliberation activity to determine a middle way towards each other's interests and abilities.

b. Consumer Dispute Settlement Agency

This type of settlement is similar as the previous settlement, the difference is that this type of settlement is implement through BPSK as the mediator who determines each of the rights and obligations of the parties. This type of settlement is usually taken when the settlement of the type of peace does not find a consensus or agreed answer between the two parties concerned. The provisions regarding its implementation are regulated in Article 23 of the UUPK, and when still there is no final consensus in this stage, then the next step is implemented through litigation.

2. Legal Efforts Through Court

Article 45 paragraph (1) of the UUPK states that "every consumer who is harmed can sue the business actors through institution tasked with resolving disputes between consumers and business actors or through courts within the general court environment". The provisions of the next paragraph declared that "settlement of consumer disputes can be reached through the courts or outside the courts based on the voluntary choice of the disputing parties".

In civil legal remedies, generally cases that reach court usually involve the consumer losses in a fairly large nominal amount and are filed in groups (class action) or by using a lawsuit mechanism by non-governmental organizations or non-governmental organizations (NGOs) or legal standing. This is effective in dealing with the very expensive costs of litigation in court and can represent the interests of all group members.

For the efforts in numbers 2 and 3, the consumer can request assistance from the Consumer Protection and Development Agency (LP2K) by making a complaint. Not only that, the obtained form of legal protection when consumers want to take legal action individually, legal remedies that can be taken by

consumers who are harmed due to fake SWAB/PCR tests include litigation and non-litigation. Non-litigation is an effort to discuss amicably to reach an agreement which can be conducted through deliberation or negotiation.

In this case, deliberation and negotiation efforts are considered no longer possible since the service provider used has been previously detained in a case of falsification of legal materials in fake swab/pcr. In the law, it is stated that when non-litigation legal remedies do not produce results, then litigation legal remedies can be implemented where the settlement is conducted through a local District Court lawsuit. The long description above explain that the consumer feels disadvantaged because she was offered a swab test service initially, not buying/falsifying documents, not only that, the consumer also conducted an offline swab test process through taking mucus samples from inside the nose and throat in Jakarta, where the service provider said that was his friend's clinic. This can also be said as an act of breach of contract where one party neglects or party failure to fulfill its obligations under contract, both in writing and orally. In this case, in accordance with Article 1 1267 of the Civil Code, called in an effort to obtain their rights, the aggrieved party may choose litigation to force the service provider to fulfill its achievements in the agreement through reimbursement of costs, losses and interest.

According to Article 19 paragraph (2) of Law Number 8 of 1999 that the claim for compensation that can be made is in the form of a refund that he has previously paid to the service provider in the amount of Rp. 300,000. In every act of violation of rights, it is the victim who always suffers huge losses caused by other parties. The losses experienced are not only in the form of money or material but also immaterial in the form of time, psychology, mental and so on, since there is still a lack of public understanding regarding the protection and legal obligations that owned by every human. There are also many parties who actually understand but deliberately violate the law for their own satisfaction and benefit without thinking about the rights of other parties which are also protected by law.

The immaterial loss felt by the victim was not only when the crime was committed, but also during the trial process where the victim was obliged and had to retell what she had experienced which indirectly re-opened her bad memories. This clearly affects the psychological condition of the victim, moreover, it must be told in front of many people in court. Not only that, the victim also suffered material losses such as travel costs to court and so on. The aggrieved party, in this case the consumer, can file a lawsuit to the district court with a lawsuit for an act of breach of contract or a violation of consumer rights that has been conducted by the service provider to get her rights back. The lawsuit is considered as the most effective legal remedy that victim can take to obtain the compensation and provide a deterrent effect to parties who violate the consumer's rights.

Therefore, the law guarantees the provision of protection for the victims' rights and the law is required to uphold justice to reveal true legal facts. The legal

protection must be given by the state to every society in its jurisdiction as an effort to fulfill individual rights recognized by the state as well as to limit the rights of other parties, since human rights are limited by the rights of others. Therefore, these restrictions must be maintained fairly through laws and regulations.

Legal protection is all forms of protection made by the government towards human dignity and recognition of human rights in the field of law.⁴ The legal protection is given for individual's safety, peaceful and comfortable in a certain legal area. Not only protecting against other parties or civilians, but also protecting citizen from abuse of power from existing authorities and to create an orderly legal environment according to nation guidelines and principles. Thus, it can be concluded that legal remedies taken by parties who feel aggrieved by an agreement an act of breach of contract or things that are not in accordance with the agreement promised in the form of legal alternatives through litigation or non-litigation as long as the legal conditions of the agreement are fulfilled and has enough evidence. In general, the legal action must be taken in the form of non-litigation initially, when the legal efforts have been made through litigation but have not achieved results, then it will me conduct through litigation by a lawsuit to the local district court.

In English, the term accountability is referred as responsibility and liability which means accountability. However, in practice, the notion of liability is still considered opaque and varies depending on who the definition is given to. One of them, according to Martono, who considers that responsibilities are generally divided into three, accountability, responsibility and liability.⁵

Accountability is considered as an attitude of responsibility regarding the value of currency and trust in it, while responsibility is more general, in contrast to liability which has a civil element.⁶ The principles of participation and accountability have important implications for many of the central debates on universal jurisdiction statuses and proceedings such as which crimes they may include, how these crimes should be defined, which doctrines from the general part of international criminal law they should incorporate, how universal jurisdiction cases should be selected, what the relationship between universal jurisdiction prosecutions and the ICC should be, and how individual universal jurisdiction proceedings could give participation to the international community.⁷ In this case, the victim of a fake test feels that she has been harmed materially and immaterially in the form of the amount of money he paid and loss of time and reputation which

⁴ Desak Nyoman Oksi Selina and I Made Wirya Darma, "Legal Protection for Online Transportation Service Providers in Transporting Passengers," *Jurnal Hukum Prasada* 8, no. 2 (October 11, 2021): 70–77, <https://www.ejournal.warmadewa.ac.id/index.php/prasada/article/view/3697>.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005).

⁶ Martono, *Kamus Hukum Dan Regulasi Penerbangan* (Jakarta: Raja Grafindo Persada, 2007).

⁷ Maximo Langer, "Participation and Accountability to the International Community as Legitimacy Requirements of Universal Jurisdiction: Illustrations from the German Code," *SSRN Electronic Journal* (2012), <http://www.ssrn.com/abstract=2170494>.

was also tarnished due to a court decision that did not fully state the actual events in practice.

The Government's Responsibility to Provide Legal Protection to Harmed Consumers Due to Fake Swab/Pcr Tests

In the issue of consumer protection, it is not only related to the wrong choice of goods but also about the awareness of the various parties involved. Among other things, for business actors or the government as well as consumers, it is also about the importance of consumer protection. The establishment of the PK Law is considered to have high urgency considering many cases regarding the consumer protection. In principle, consumers should have the option to file a complaint with the relevant business actors, and if necessary, process it through various means, such as reporting it to the authorities, out-of-court settlement (e.g., alternative dispute resolution), and litigation. However, consumers in Indonesia are not quite active in reporting complaints. Even though this is already guaranteed by the existing laws in Indonesia; As well as most disputes often experience many obstacles and rarely give satisfactory results. The lack of consumer complaints can also be caused by the lack of knowledge of consumers regarding their rights and the institutions responsible for consumer protection⁸

The existence of UUPK provides an element of encouragement regarding the hope of implementing a consumer protection institution, both in terms of non-governmental organizations and the consumer community to implement empowerment through supervision and guidance. The article 29 of the UUPK states that the government is the party that has the most role and responsible for fostering the implementation of consumer protection. The relevant ministers in charge of conducted this guidance are:

1. Minister of Industry and Trade
2. Minister of Health
3. Minister of the Environment

The government guidance on consumer protection implementation as referred to in paragraph (1) is conducted by the relevant minister or technical minister. The Minister as referred to in paragraph (2) coordinates the implementation of consumer protection. The development of the implementation of consumer protection as referred to in paragraph (2) includes efforts to:

1. Building a business climate and growing healthy relationships between business actors and consumers
2. The development of non-governmental consumer protection institutions

The supervision is one thing that is considered quite crucial in fulfilling consumer protection. The government should always maintain the synergy of cooperation with the community. In accordance with what has been stated in Article

⁸ R Arifin, "Protecting the Consumer Rights in the Digital Economic Era: Future Challenges in Indonesia," *JALREV 3 Special Issue* (2021): 135–160.

30 of the UUPK that the supervision by the government is conducted on the implementation of consumer protection and the application of the legislation provisions. The supervision implements by the community and non-governmental consumer protection institutions, in addition to the implementation of consumer protection and the application of the provisions of the legislation, is also conducted on goods circulating in the market. The form of supervision is implements through research, testing and surveys.

The results of supervision conducted by the community and non-governmental consumer protection institutions can be disseminated to the public and can be submitted to the Minister and technical ministers. In the provisions of Article 130, it is stated when during the supervision there is a deviation from the laws and regulations, the government must take administrative action or legal action as the sanctions as imposed by the UUPK.

With this decisive action, it is hoped that it will be able to increase consumer confidence in the consumer protection legal system built by the government, increase participation in public and consumer supervision institutions, and encourage business actors to produce quality products and create a better business environment. Various consumers are interests as mutually agreed upon by all members of the United Nations in the resolution on Guidelines for Consumer Protection (39/248 Resolution) require legal infrastructure and facilities to be realized for the benefit of the people.

Indonesian Consumers Foundation or YLKI classifies the legal interests of consumers as reflected in various consumer rights as follows:

- a. Right to safety and security
- b. Right to information
- c. Right to choose
- d. Right to be heard
- e. Good environmental bag rights

From the description above, it can be concluded that disturbances in the interests of consumers can occur due to physical occurrence, mental or property damage to consumers, optimum profit is not obtained from the use of consumer economic resources in obtaining goods/services based on consumer needs, and the law protection for consumers. Another reason is commercial practices that abuse the consumers (negative commercial business behavior), where this really requires regulation and protection from the government. The United Nations revolution on consumer protection, among others, states that negative commercial practices are:

1. Acts that do not comply with statutory provisions
2. Trade practices that abuse the consumers
3. Unclear responsibilities of business actors
4. Unfair competition that caused limited choice and expensive price for consumer
5. Unavailability of spare parts and after-sales service

6. Unilateral standard contracts and essential rights removal from consumers
7. Unfair credit terms

The issue of consumer protection also cannot be separated from the issue of the free market economy that has occurred so far. The traffic of mass-produced goods or services and the use of sophisticated technology have an impact on consumers' ignorance of every product they consume. Ignorance and dependence of consumers on business actors is also a fundamental weakness that will ultimately cause harm to consumers⁹.

The norms of consumer protection in the UUPK can be found in Article 1 number 1 and 12 of Law Number 8 of 1999 concerning consumer protection. Article 1 point 1 states that "Consumer protection is all actions that guarantee legal certainty to provide protection to consumers. As one of the government's efforts to provide legal protection through the provision of legal sanctions for business actors, when consumers feel disadvantaged due to using misleading services according to Regulation no. 8 of 1999. In general, the relationship between business actors and consumers is a continuous and fundamentally relationship, since both of them really be partial to and have a fairly high level of dependence on one another.¹⁰

Business actors really need and rely heavily on consumer support as customers. Without the consumers' support, it is impossible for business actors to guarantee their business continuity. Consumers as users of products or services are also exploitation objects by business actors who deliberately seeking the profit because there are still many consumers who only directly accept or use services without getting the correct information about the product or service.

The disturbance of the consumer's interest can cause harm to the consumer, either in the form of loss of property, physical health or on the consumers' safety/mental health. This disruption of consumer interests is directly or indirectly affected by the lack of laws that consumers can use to enforce their rights and protect their interests. Even because of the Indonesia's weak law regarding the protection of consumers' interests, it is not uncommon for aggrieved consumers are unable to claim their compensation and enforce their rights without fault on their part in dealing with business actors. The increase of human resources quality was followed by increasing research and development activities in consumer protection. According to Law Number 8 of 199 concerning consumer protection in the form of sanctions that can be imposed by the government on business actors, called administrative sanctions (Article 60), which include:

⁹ Misnar Syam et al., "Consumer Protection Enforcement Law Characteristics on Civil Law Aspects in Indonesia," *Linguistics and Culture Review* 5, no. S2 (December 13, 2021): 1471–1481, <https://lingcure.org/index.php/journal/article/view/1976>.

¹⁰ D Karyono, Rohadin, & Indriyani, "Penanganan Dan Pencegahan Pandemi Wabah Virus Corona (Covid-19) Kabupaten Indramayu," *Jurnal Kolaborasi Resolusi Konflik* (2020).

1. The Consumer Dispute Settlement Agency has the authority to impose administrative sanctions on business actors who violate Article 19 paragraph (2) and paragraph (3), Article 20, Article 25 and Article 26
2. Administrative sanction in the form of determining compensation for a maximum of Rp. 200,000,000.00 (two hundred million rupiah)

The procedure for determining administrative sanctions as referred to in paragraph (1) shall be further regulated in laws and regulations. The regulation on the authority of the Consumer Dispute Settlement Agency to impose administrative sanctions actually still has several problems. The understanding of administrative sanctions is focused on sanctions in the form of permits revocation. Through this understanding, the practice in the general judiciary is to find violations that require administrative sanctions for business actors.

On one hand, it is stated that BPSK has the authority to impose administrative sanctions, while on the other hand it turns out that what is meant is civil sanctions. Based on Article 60 paragraph (2), it means that when the producer or business actor fails to fulfill his responsibilities, the business actor can be sentenced to a maximum amount of Rp. 200,000,000 (two hundred million rupiah). The compensation is a form of limited liability, then it can be said that the compensation adopted in the Consumer Protection Act adheres to the principle of limited subjective compensation. Consumer protection in addition to being reviewed in paragraph 4 of the 1945 Constitution, is also implied in article 27 paragraph 1 which reads: "all citizens are at the same position in law and regulation and must uphold the law and government with no exception",¹¹ As stated in Article 62 of Law Number 8 of 1999 concerning Consumer Protection, perpetrators of acts that violate consumers right due to offering misleading services as criminal acts are punishable by imprisonment or a compensation. In certain cases, according to Article 63 of Law Number 8 of 1999 concerning Consumer Protection, additional penalties may also be added in the form of:

1. Confiscation of certain items
2. Announcement of judge's decision
3. Compensation payment
4. Discontinue the certain activities that cause consumer losses
5. Revocation of business license.

¹¹ Dra. Dyah Lestiyarini, "IMPLEMENTATION OF CONSUMER PROTECTION ACT AND BUSINESS ETHICS TOWARDS BATIK CRAFT ENTREPRENEURS IN KAMPUNG BATIK SEMARANG," *Indonesian Law Journal* 12 (2019): 91–104.

CONCLUSION

Legal remedies outside the scope of the court such as peace efforts and settlements through the role of the Consumer Dispute Settlement Body while Legal Efforts Through the Court Article 45 paragraph (1) UUPK. In this case in accordance with Article 1267 of the Civil Code, called an effort to obtain their rights, the aggrieved party can choose litigation to force the service provider in fulfilling its performance in the agreement of reimbursement of costs, losses and interest. The government is expected to cooperate with the community in an effort to fulfill consumer protection guarantees through the supervisory function as stated in Regulation 30 of the PK Law. The implemented supervision by the government is through focusing on the mobilization of consumer protection practices and the existing laws and regulations. Meanwhile, the supervision process conducted by the community itself is in the form of establishing consumer protection with non-governmental organizations, in addition to the successful application of consumer protection as well as the legislation provisions, it is also implementing on goods circulating in the market. The supervision is conducted through research, testing and surveys.

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