

THE COMPARISON OF ADVERTISING REGULATIONS IN CONSUMER PROTECTION ENFORCEMENT BASED ON LAW NUMBER 8 YEAR 1999 AND THE US FEDERAL TRADE COMMISSION ACT

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THE COMPARISON OF ADVERTISING REGULATIONS IN CONSUMER PROTECTION ENFORCEMENT BASED ON LAW NUMBER 8 YEAR 1999 AND THE US FEDERAL TRADE COMMISSION ACT

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Abstract-The enterprise promotes products and services through marketing process. It used to persuade consumers to buy the products. Besides, the objective of many enterprises to create advertising is to gain high revenue.³ The development of marketing concepts and strategies carried out by enterprises may cause the consumer in a weak bargaining position. Therefore, the government must enforce consumer protection laws to establish legal certainty and justice. This study aims to examine the comparison of advertising regulation to support State Consumer Protection Law in Indonesia and United States. This research conducted normative legal research methods by applying a statute and comparative legal approaches. The result found that the advertising regulations in Indonesia includes the liability of enterprises and consumer dispute resolution. Meanwhile, advertising regulations in the United States are regulated in the FTC Act, which specifically regulates the prevention of misleading advertising practices aimed at convincing consumers to receive valid information about the product and services in the interest of economic efficiency and consumer safety.

Keywords: Advertising, Comparative law, Consumer Protection

INTRODUCTION

The free trade era has raised economic activities in a country increasingly competitive. The enterprises in various sectors compete to attract consumers to buy goods and use their services. They carry out production activities to create and increase the value or usability of goods and services. In addition, the marketing strategy used to promote their products and services.¹ It helps to make a profit. The market research is applied to find consumer behavior in making decision. It also conducted to create the advertising campaign activities.

The development² of marketing concepts and strategies carried out by enterprises may cause the consumer in a weak bargaining position. It requires legal protection for consumers in the goods and/or services trade chain. It considers² that consumer interests have existed since the production and distribution process.² In providing legal protection for consumers, the state is required to regulate the relationship between enterprises and consumers as follows 1) guaranteeing the rights of consumers to obtain products that are appropriate and not harmful, 2) keeping the goods/services trading system stable and healthy, and 3) ensuring legal certainty for consumers to be treated well and certainty for producers to run their business responsibly.³ Besides, the legal certainty for consumers can be interpreted as a step to empower consumers to make choices about goods and/or services. It also protects their rights in the losses events due to the enterprises.³

¹ Suherman Rosyidi, *Pengantar Teori Ekonomi: Pendekatan Kepada Teori Ekonomi Mikro & Makro*, Edisi ke 1 (Depok: Rajawali Pers, 2019).

² Abdul Halim Barkatullah, *Framework Sistem Perlindungan Hukum Bagi Konsumen di Indonesia* (Bandung: Penerbit Nusa Dua, 2017).

³ Hanum Rahmiani Helmi, "Eksistensi Badan Penyelesaian Sengketa Konsumen Dalam Memutus Sengketa Konsumen di Indonesia", *ADHAPER: Jurnal Hukum Acara Perdata*, 1.1 (2015), 77-89
<<https://doi.org/10.36913/jhaper.v1i1.4>>.



The consumer protection arrangements in Indonesia can be considered based on Law Number 8, Year 1999 on Consumer Protection. The primary key in consumer protection is that enterprises and consumers have a mutual relationship. It is because production by enterprises means nothing if there are no consumers.⁴ In implementing the law enforcement of consumer protection in Indonesia, this study aims to examine the comparison of advertising regulation to support State Consumer Protection Law in Indonesia and United States.

13 RESEARCH METHOD

The research method is conducted normative law research, namely library legal research using legal norms as its object. This research used a statute approach and a comparative approach. A statutory approach is an approach that examines all laws and regulations related to the content of the law.⁵ This statutory approach is a study of legal products.⁶

DISCUSSION

The Advertising Regulation of State Consumer Protection Law in Indonesia

The consumer protection in Indonesia is regulated under Law Number 8 of the Year 1999. It is contained in the provisions of Article 3 of Law Number 8 Year 1999 on Consumer Protection. It relates to consumers' interest in using the goods and/or services. These refer to the benefits of products for the body's safety and health, security of life, property and objects, family, and household. Therefore, this regulation emphasizes the legal protection of consumer kinship.⁷

In the regulation of consumer protection in Indonesia, several aspects can be analyzed to determine how State Consumer Protection Law in Indonesia can provide benefits, justice, and certainty for consumers in exercising their rights as consumers relating to goods and/or services from enterprises or entrepreneurs as follows:

a. Prohibited practices of entrepreneurs

Indonesian consumer protection law, Law Number 8 the Year 1999 on Consumer Protection, referred to as State Consumer Protection Law (SCPL), provides regulations on what the CPL prohibits aspects of actions in carrying out their business relating to consumers. The substance contained in the provisions of Article 8 of the CPL is the prohibition of enterprises activities related to producing and trading goods and/or services for consumers, which aims to protect the assets/health of consumers for the use of goods/services of lower quality than the value or price paid by consumers; it is not by the information provided by enterprises.⁸

b. Aspects of the Responsibility Principle

In the Consumer Protection Law, the provisions governing the responsibility of business actors are in Article 19 Paragraph (1) of the GCPL. The purpose of the provisions of this article is that defective goods and/or services are not the only basis for enterprises responsibility. However, it is related to all losses that happened to the consumers.⁹ It concerns on a fundamental analysis and study in consumer protection. In connection with the analysis of violations of consumer rights, an in-depth study is needed to determine who is responsible and the amount of responsibility that can be imposed.¹⁰ The principles that can be applied in consumer protection are¹¹:

¹² A. Zen Umar Purba, "Perlindungan Konsumen: Sendi-Sendi Pokok Pengaturan", *Jurnal Hukum & Pembangunan*, 22.4 (1992), 393 <<https://doi.org/10.21143/jhp.vol22.no4.386>>.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 14 (Jakarta: Kencana Prenada Media, 2019).

⁶ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum* (Bandung: Mandar Maju, 2008).

⁷ AZ. Nasution, *Hukum Perlindungan Konsumen: Suatu Pengantar* (Jakarta: Diadit Media, 2014).

⁸ Ahmadi Miru en Sutarman Yodo, *Hukum Perlindungan Konsumen* (Jakarta: RajaGrafindo Persada, 2005).

⁹ Miru en Yodo.

¹⁰ Aulia Muthiah, "Tanggung Jawab Pelaku Usaha kepada Konsumen tentang Keamanan Pangan dalam Perspektif Hukum Perlindungan Konsumen", *Dialogia Iuridica: Jurnal Hukum Bisnis dan Investasi*, 7.2 (2017), 1 <<https://doi.org/10.28932/di.v7i2.712>>.

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1. The principle of fault (liability based on fault);
2. The presumption of liability principle;

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3. The presumption of non-liability principle;
4. The principle of strict liability;
5. The principle of limitation of liability.

6. The principle of product liability. It was raised due to the imbalance of responsibility between producers and consumers, where producers initially applied product-oriented in the marketing process of their products. They must change their promotional strategy to become consumer-oriented. In addition, the financial losses and threat to consumers due to defective products are caused by the lack of enterprises awareness. They cannot fulfill the responsibilities to protect and ensure product/service safety guarantees. Therefore, it is also necessary for the government to have a role in supervising and testing goods and/or services and how to produce them in order to create justice in the fulfillment of consumer rights.¹²

c. The Advertising Aspects

The media development from conventional to digital media has raised the increasing number and complexity of the circulation of advertisements offering products or services. Advertising as a marketing instrument for companies uses sentences, information, and visuals that are packaged in such a way as to attract consumers to buy products or use services from enterprises. However, producers and advertising companies still often produce advertisements that provide invalid information; it may cause mislead consumers, resulting in losses experienced by consumers after buying products and using producer services.¹³ The misleading advertisements convey information through print, electronic and digital media that aim to persuade and seduce consumers to buy goods and / or use services but are done dishonestly and not by existing conditions or situations. Many of these advertisements only to exaggerate their products.¹⁴

As misleading advertisements harm parties, consumers can then carry out dispute resolution because enterprises and advertising service companies have responsibility for their product. It can be regulated in Article 19 paragraph (1) of the State Consumer Protection Law (SCPL) where enterprises must be responsible for compensating the losses consumers suffer. Moreover, it is also regulated in Article 20 of the SCPL, which states that enterprises in advertising agencies must be responsible for every aspect of the production and the consequences of these advertisements. In addition, the form of losses consumers suffer due to unlawful acts committed by producers and advertising companies based on the provisions of Article 1365 of the Civil Code.¹⁵

d. The Aspects of Consumer Dispute Resolution

As a result of economic and trade activities involving an agreement between enterprises and consumers, a dispute often arises due to consumers being harmed or violating the rights of consumers by business actors. State Consumer Protection Law regulates the type of consumer

¹¹ Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*, Cet. 4 (Jakarta: Sinar Grafika, 2014).

¹² Holijah, "Pengintegrasian Urgensi dan Eksistensi Tanggung Jawab Mutlak Produsen Barang Cacat Tersembunyi Pelaku Usaha Dalam Undang-Undang Perlindungan Konsumen di Era Globalisasi", *Jurnal Dinamika Hukum*, 4.1 (2014) <<https://doi.org/http://dx.doi.org/10.20884/1.jdh.2014.14.1.286>>.

¹³ Raditya Aufar Dewangga en Sanianda Kurnia Hartantien, "Legal Protection for Consumers as Victims of Swab/PCR Tests Based on Regulation Number 8 of 1999 Regarding Consumer Protection", *Ius Positum: Journal of Law Theory and Enforcement*, 1.3 (2022).

¹⁴ Gusti Ayu Indra Dewi Dyah Pradnya Paramita en Desak Putu Dewi Kasih, "Perlindungan Hukum Terhadap Konsumen Terkait Iklan Yang Menyesatkan Ditinjau Berdasarkan Undang-Undang Perlindungan Konsumen Dan Kode Etik Periklanan Indonesia", *Kertha Semaya: Jurnal Ilmu Hukum*, 5.2 (2017).

¹⁵ Putu Mita Apsari Dewi en Sagung Putri M.E. Purwani, "Perbuatan Melawan Hukum Yang Dilakukan Oleh Produsen dan Biro Iklan Terhadap Iklan Yang Menyesatkan Masyarakat", *Kertha Semaya: Jurnal Ilmu Hukum*, 2.4 (2018).



dispute resolution through the provisions of Article 45 Paragraphs (1) and (2) of the CPL. Based on these provisions, consumer dispute resolution can be carried out through litigation and non-litigation dispute resolution. Mediation, conciliation, arbitration, minitrial, summary jury trial, settlement conference, and other forms may be utilized for out-of-court dispute resolution.¹⁶ The CPL, in this case, regulates the out-of-court dispute settlement through 3 (three) channels, namely arbitration, mediation, and conciliation, which are the duties of the Consumer Dispute Settlement by the mandate of Article 52 of the CPL.

In its current development, economic and trade activities have penetrated the digital era. Therefore, transactions through cyberspace or e-commerce transactions have run massively and quickly. However, it may cause the potential for violations of consumer rights. Therefore, the provisions of consumer dispute resolution contained in the State Consumer Protection Law must be synchronized and harmonized with the Electronic Information and Transaction Law (ITE Law). It is because the electronic transactions have specific aspects, so the processes and violations that occur in the third space often must be accommodated by the CPL.¹⁷

Legal Regulation of Consumer Protection in the United States

The development of State Consumer Protection Law in the United States started with the Consumer Bill of Rights by President John F. Kennedy in the 1960s. Then the subsequent development is the protection of American consumers through applying a combination of State Consumer Protection Law regulations from federal, state, and local government laws from unsafe products, fraud, misleading advertising, and dishonest business practices.¹⁸ The United States, as a federal country, has several regulations governing consumer protection. However, the central government has Federal Trade Commission (FTC) institution to supervise and regulate the enterprise's activities related to consumer protection. Based on Section 5 of the FTC Act, the Federal Trade Commission has the authority to take precautions as follows:

- a. Prevention of unfair business practices;
- b. Prevention of unfair business competition;
- c. Prevention of misleading advertising promotion practices.

Furthermore, the objectives of consumer protection in America through the Federal Trade Commission are: To protect consumers by preventing fraud and unfair business practices in an economic activity; and to maintain a climate of competition by preventing unfair business competition.

The policies taken by the FTC have a vital role in terms of supporting the market or economy. It helps the consumers get valid information about products/services from producers.¹⁹ Another goal of the FTC is to realize economic efficiency and consumer welfare. The agency also performs its duties in developing product and/or service standards for businesses or producers and regulating the recall of products from the market that can and has harmed consumers.²⁰ Another agency with authority to regulate consumer protection in the United States is The U.S. Consumer Product Safety Commission through its regulations in The U.S. Consumer Product Safety Commission Act. The mandate of this agency is to reduce disability, injury, or death caused by the products and/or services of businesses.

¹⁶ Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan dan Penyelesaian Sengketa* (Bandung: Citra Aditya Bakti, 1997).

¹⁷ Iman Sjahputra, *Perlindungan Konsumen Dalam Transaksi Elektronik : Ditinjau Dari Perspektif Hukum Perlindungan Konsumen dan Hukum Siber*, Cet. 1 (Bandung: Alumni, 2010).

¹⁸ Spencer Weber Waller et al., "Consumer Protection in the United States: An Overview", *European Journal of Consumer Law*, May (2011).

¹⁹ Waller et al.

²⁰ Timothy J. Muris, "The Federal Trade Commission and the Future Development of U.S. Consumer Protection Policy", *SSRN Electronic Journal*, 2004 <<https://doi.org/10.2139/ssrn.545182>>.



State Consumer Protection Law in the United States was created to increase the amount and accuracy of available information for consumers.²¹ Thus, they can obtain accurate information on enterprises' products and/or services. It aims to prevent dishonest practices, misleading advertising, and fraud enterprises commit. Advertising in State Consumer Protection Law in the United States is also regulated to protect the consumer's rights. Misleading advertisements in the United States are regulated in Section 5 of the Federal Trade Commission Act (FTC Act), which can be interpreted as any action or business practice in an attempt to compete by using a form of promotion in the form of misleading advertising is a form of violation of the law. In addition to the provisions in Section 5 of the FTC Act, the regulation of misleading advertising is also regulated in Section 43 Sub (a) The Lanham Act, Self-Regulation or code of ethics issued by The National Advertising Division (NAD) of The Council of Better Business Bureaus, Inc. and regulations issued by each state (State Consumer Protection Law).²²

CONCLUSION

Based on the explanations above, it can be concluded that consumers are in a lower bargaining position than enterprises in economic and trade activities. State Consumer Protection Law must be enforced to provide protection due to losses suffered by consumers from buying goods or using services from business actors. It is intended that consumers obtain their rights and enterprises can carry out their obligations correctly and under regulations; thus, the balance of consumers' and enterprises interests can be adequately established and consistently. The regulation of consumer protection in Indonesia through Law Number 8 Year 1999 on Consumer Protection covers the consumer protection aspects. However, it still has shortcomings in terms of anticipating phenomena that have occurred recently. Through this comparative study with State Consumer Protection Law in Indonesia and the United States, recommendations can be made on aspects that need to be completed in the amendment of the State Consumer Protection Law in Indonesia. It is expected to accommodate every aspect and problem in the era of globalization and digital.

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²¹ Neil W. Averitt en Robert H. Lande, *Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law* (Baltimore, USA, 1997).

²² Dedi Harianto, *Perlindungan Hukum Bagi Konsumen Terhadap Periklanan Yang Menyesatkan* (Bogor: Ghalia Indonesia, 2010).



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