

RINGKASAN

Setiap konsumen mempunyai hak untuk mendapatkan keselamatan dan keamanan bila mengkonsumsi suatu produk pangan/makanan, sehingga konsumen dapat terhindar dari kerugian (fisik maupun psikis) apabila mengkonsumsi produk tersebut. Sekarang ini banyak terdapat penyalahgunaan penggunaan bahan tambahan pangan dalam makanan. Berdasarkan Permenkes No. 722/ 1988, bahan tambahan yang dilarang digunakan sebagai bahan tambahan makanan dinyatakan sebagai bahan berbahaya bila digunakan pada makanan sehingga makanan yang mengandung bahan berbahaya dinyatakan sebagai makanan berbahaya. Pengawasan makanan termasuk didalamnya penggunaan BTP dilaksanakan oleh BPOM bekerjasama dengan lembaga-lembaga pemerintah terkait yaitu Departemen Kesehatan, Departemen Pertanian, Departemen Perdagangan dan Departemen Perindustrian.

Kedudukan konsumen sangat lemah dibanding produsen, salah satu usaha untuk melindungi dan meningkatkan kedudukan konsumen adalah dengan menetapkan prinsip *strict liability* dalam *product liability*. Berdasarkan prinsip *strict liability*, kelalaian atau pelanggaran atas keselamatan/ keamanan makanan mengakibatkan produsen makanan bertanggung gugat secara langsung atas kerugian yang diderita konsumen. Konsumen hanya berkewajiban membuktikan kerugian yang diderita sebagai akibat dari mengkonsumsi produk makanan tanpa perlu membuktikan kesalahan produsen sebagai tergugat. Disamping tanggung gugat dalam BW yaitu tanggung gugat dalam hubungan kontraktual dan atas dasar perbuatan melanggar hukum, tanggung gugat produsen makanan juga diatur dalam Pasal 41 UU No. 7/ 1996 jo Pasal 19 UU No. 8/ 1999 dengan beban pembuktian terbalik. Ganti rugi tidak hanya bersifat pengembalian barang dan tuntutan pengurangan/ potongan harga seperti dalam kontraktual atau terbatas pada penggantian kerugian ekonomis sebagaimana perbuatan melanggar hukum, namun meliputi juga ganti rugi atas kerugian nyata, pembiayaan perawatan kesehatan dan atau kematian serta pemberian santunan. Mekanisme penyelesaian sengketa konsumen dapat dilakukan melalui pengadilan (litigasi), BPSK, dan forum perdamaian. Penyelesaian sengketa konsumen oleh BPSK diselesaikan melalui cara Konsiliasi atau Mediasi atau Arbitrase, yang dilakukan atas dasar pilihan dan persetujuan para pihak yang bersangkutan. Setiap konsumen yang dirugikan dapat mengajukan gugatan kepada pelaku usaha baik secara individual maupun secara kelompok. Berdasarkan Pasal 46 UU No. 8/ 1999, gugatan konsumen atas pelanggaran pelaku usaha dapat dilakukan dengan tiga cara. Pertama, oleh seorang konsumen atau ahli warisnya. Kedua, sekelompok konsumen yang mempunyai kepentingan yang sama (*class action*). Ketiga, oleh lembaga perlindungan konsumen swadaya masyarakat (LPKSM) atau pemerintah dan/atau instansi terkait (*legal standing*). Pemerintah dalam kapasitasnya sebagai penggugat, dalam pasal ini sifatnya sangat limitatif, dalam artian gugatan baru bisa dimajukan pemerintah bila mengakibatkan kerugian yang besar dan korban yang tidak sedikit.

SUMMARY

Every consumer have the right to get security and safety in consuming food product, consumer must be protected from damage in consuming the product. This time there are many misuse of additives in food. Pursuant to Decree of Minister of Health No. 722/ 1988, food containing the hazardous substance as additives is considered as a hazardous food. Observation of food is including in it usage of BTP executed by BPOM work along with related/relevant government agency that is Department of Health, Department of Agriculture, Department of Commerce and Industrial Department.

Consumer position is lower than producer, so that one of the effort to protect and improve to domicile consumer is specified strict liability principle in product liability. Pursuant to principle of strict liability, collision or negligence of safety/ food security result food producer account to sue directly of consumer suffered. Consumer only obliged to prove suffered damage in consequence of consuming food product without require to prove mistake of producer as sued. Beside liability in BW that is contractual liability and onrechtmatigedaad, food producer's liability is also arranged in Section 41 Law of 1996 No. 7 Section 19 Law of 1999 No.8 with inversed verification burden. Indemnitation not only having the character of return of reduction demand and goods/ discount like in contractual or limited to economic restitution as deed impinge law, but cover also indemnify of loss of reality, defrayal of treatment of health and or death and also decent gift.

Solving mechanism of consumer dispute can be done through litigation, consumer dispute settlement (BPSK), and peace forum. Every harmed consumer can bring a lawsuit to the court to perpetrator of good effort individually or by group. Pursuant to Section 46 UU No. 8/ 1999, consumer suing of collision of perpetrator of effort can be done by three way. First, by a consumer himself. Second, a group of consumer having same importance (class action). Third, by self-supporting consumerism institute society (LPKSM) or related/relevant institution/ government. Government in the capacities of as plaintiff, in this section in character very limitatif, in new suing can be moved forward by government when resulting big loss and dozens of victim.

ABSTRACT

Basically in many aspect of business the position of consumer are lower than the businessmen/producer or the manufacturer. In food industry often happened misuse additives in food, that is food producer use dangerous or prohibited food additives. This matter of course very harm to all consumers. Therefor the consumer need more protection especially legal protection to protect and uphold consumer rights especially the right to safety-to be protected against the marketing of goods that are hazardous to health or life and the right to be informed-to be protected against fraudulent, deceitful, or grossly, misleading information, advertising, labeling, and other practices, and to be given the facts needed to make informed choices. Food producer obliged to use safety food additives and also mention the additives in food label. In advertising food product, should not perform misleading advertisement. Food consumer protection by applied food safety principle, food label and advertisement regulation as a materialization of rights to have an adequate information. Also food producer are liable for hazardous food by strict liability in product liability.

Indemnation not only having the character of return of reduction demand and goods in contractual or limited to economic restitution as deed impinge law, but cover also indemnify of loss of reality, defrayal of treatment of health and or death and also decent gift. Mechanism of solving consumer dispute can be conducted through litigation, consumer dispute settlement (BPSK), and peace forum. Every harmed consumer can bring a lawsuit to court individually or by groups.

Key words: food consumer protection, food safety, product liability