

PROTECTION LAW FOR CONSUMERS AGAINST THE DECEIVING INFORMATION OF ADVERTISEMENTS

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ABSTRACT

Advertisement is an important medium in trade, because by using advertisement the businessmen could promote their products to the consumers. However, what is informed in the advertisement is not right, so that the consumers suffered financial loss.

Advertisement is a kind of promotion which is mostly chosen by businessmen, to introduce their products to the consumers, therefore the businessmen do everything in order to be able to deliver effectively and efficiently their message by choosing the appropriate media, even sometimes it ignores the rights and interests of the consumers which are to get the right and truthful information.

The existence of consumer protection law practically is still insufficient in protecting the consumers against the disadvantageous information of advertisement. Subsequently, it needs the role and cooperation from many sides especially the government in monitoring the advertisements so that the consumers could not be in disadvantageous position more.

Keywords: Protection Law, Consumer, Advertisement

INTRODUCTION

Business world is one of many sectors which make rapid progress, and has passed the borderline territories, in which also supported by the free trade era. This situation and condition affects to the emergence of rivalry among the businessmen, to be able to snatch away market segment. Many strategies are done by businessmen in marketing the product,

Advertisement is a media which largely selected by businessmen in introducing the products to the consumers. Advertisement could attract the consumers' attention so that the consumer uses the advertised product, practically the information of the advertisement is not true, or not in line with the truth, so the hope of consumer is not achieved even till make the disadvantage such as disable, suffered from disease even dead.

As marketing communication media, advertisement has the essential role, so it must be truthful, responsible, does not against the law, and may not offend feeling and prestige of country, religion, norm, custom, culture, ethnic, group, and advertisement should be based on the fair competition.⁵

The most essential effort in protecting the consumers is through the law, but in reality the law in consumer protection field is unable to protect the consumers towards the businessmen who deceive the consumers because the information of advertisement that is delivered are not

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⁵<http://ekonomi.kompasiana.com/bisnis/2013/04/07/hak-konsumen-terhadap-promosi-produk-melalui-iklan-548990.html>

right, and practically it is still found out advertising activities that is contrary to the rule and often becomes the target of complaint of consumer because considered as unfair and misleading or deceive and against the law and code of ethics.

The regulations of advertising in Indonesia could be interpreted in some acts that exist such as: Law Number 8 in the year of 1999 about the Consumer Protection (*UUPK*), Law Number 7 in the year of 1996, Law Number 32 in the year of 2002 about broadcasting, nevertheless this regulation is still inadequate in protecting the consumer which suffered a financial loss because of the incorrect information of the advertisement.

The renewal of law is highly needed in terms of giving sufficient and optimum protection for consumer, to create the fair and prosperous public. Hence, the law product that is made by the government related to the consumer protection in advertising activities should have firm sanction and clear substation so that it could protect consumer in advertising activities.

RESEARCH PROBLEM

Based on the background above the problem in this research is “Why is there no law which protects the consumer in advertising activities”?

DISCUSSION

Definition of Consumer, Businessmen, and Advertisement

Consumer is usually defined as the last user of the product which is marketed by the entrepreneur, every person which gets the goods to be used and not to be commercialized and sold.⁶ Inosentius Samsul stated that consumer is the last user of a product, either as a buyer or obtained through other ways such as a gift, prize and invitation.⁷

According to Law Number 8 in the year of 1999 Article 1, it states that consumer is every person which is user of goods or services which are available in the society, either for the interest of itself, family, other people, or other creatures and not to be sold.

According to Article 1 section 3 UUPK the businessman is every individual or company either in the form of legal entity or not that is held and stood or do the activities in the territory of jurisdiction of Indonesia Republic Country, either individually or together through agreement of holding a company in many sectors of economy. It means that the businessmen are those who are included in this category such as company, corporation, importer, seller, distributor, and many others.

In advertising field, there are some terms of advertising businessmen, which are stated as follow:

1. Advertiser is an enterprise which orders advertisement and pay the cost of making advertisement to promote/ market their products by conveying the messages and any other information about those products to the advertising agency.
2. Advertising agency is a company or agency that designs, makes or creates advertisements based on message or information which is delivered by the advertiser to them.

⁶ Janus Sidabalok, *Op cit*, hlm. 17.

⁷ Inosentius Samsul, dalam Zulham, 2013, *Hukum Perlindungan Konsumen*, (Jakarta:Kencana Prenada Media Group), hlm 16

3. Advertising media are non electronic media (newspaper, magazine, and etc.) or electronic media (radio, television, computer, and etc.) that are used to broadcast and or present certain advertisements.⁸

The term of advertisement in English is known as *advertisement*, *advertising*, and in Dutch is known as *advertentil*, while in Bahasa is known as *iklan*, which meaning is a form of any presentation for a product, idea or concept of sponsor and use the media such as magazine, radio, television or newspaper.

In proportion to Sidabalok, advertisement is a type of communication to promote by using media service, and its sponsor that exists, in which there are at least three parties that are the buyer (the owner of the advertised product), the company which advertise the product (the advertising agency), and the viewers/readers public as consumers.⁹

Consumer Protection According To Law Number 8 Year 1999

The regulation of advertising in Consumer Protection Law Number 8 in the year of 1999 is arranged in some chapters in the following:

- Article 8, the businessmen are not allowed to produce and/or sell the goods and/or services which are not in line with the promise printed in the label, etiquette, information, advertisements or the promotion of selling of goods and/or services.
- Article 9, explains about the prohibition of offering, promoting, or advertising products or services incorrectly as if it is correct.
- Article 10 is about the prohibition of offering, promoting, or advertising the incorrect/ mislead statements
- Article 12 states the points of prohibition of promoting, or advertising products or services with special tariff in certain time and number although it actually does not mean to do it.
- Article 13, gives explanation on prohibition of promoting, or advertising by promising a prize although it does not mean to give as they promise.
- Article 17, states that the businessmen are not allowed to make advertisements that deceive the consumers, contain false information, do not contain information about the risks of usage, exploit the event or people, break the ethics and legislation.

These regulations are prohibition for businessmen in advertising activities, as an effort to protect the consumers, but these bans are meaningless when they are not accompanied with the clear and firm sanction. The businessmen will be responsible individually of information in the advertisement that they deliver to the consumer, if that information performs a disservice to the consumer, there will be sanction that is imposed for the businessmen, therefore Article 19 Consumer Protection Law regulates about the responsibility of businessmen.

Article 19 Consumer Protection Law states as follow:

- (1) The businessmen are responsible to give indemnity for the damage, pollution, and/or loss suffered by consumers because of consumption of goods and/ or services that are produced or sold.

⁸ Adrian, Sutedi, *Op cit*, hlm 12-13

⁹ Janus Sidabalok, *Op Cit*, Hlm 243

- (2) The indemnity that is meant in substance (1) can be in the form of refund or goods and/or services replacement that have the same value, or medical treatment and/or giving compensation which are in accordance with the legislation.
- (3) The giving of indemnity is done in 7 (seven) days after the date of transaction.
- (4) The giving of indemnity that is stated in substance (1) and substance (2) does not delete the possibility of the existence of criminal prosecution based on further proof deals with the existence of margin for error.
- (5) The regulations which are stated in the substance (1) and substance (2) cannot be applied when the businessmen are able to prove that those are the consumers' error."

The regulations in Article 19 substance (1) and substance (2) here are not clear, and do not give the protection law for the consumer, because the indemnity that is established in the form of choice, for example the refund or the goods replacement. It is not fair for the consumer and is not accordance with the principle of consumer protection. As Ahmadi Miru stated that principle of consumer protection are divided into healthy/wealthy protection and goods and price protection.¹⁰

It means that the indemnity to the consumer is not only limited to goods replacement or refund, but amount of loss that affect the healthy because of consuming products of businessmen, everything should be calculated accurately either material or immaterial losses.

Next, the regulations of Article 19 substance (3) also give the dead line of the hidden damage on the goods which have been bought. When the hidden damage found after the time of guarantee is over, so it would not be a responsibility of businessmen. On the other hand, the hidden damage itself is something that could not be seen or imperceptible after buying it. This regulation of Article 19 gives question on how if that hidden damage is seen after 7 days which is not measured or achieved by the knowledge of a buyer.

In advertising activities especially, the promise that is made in the advertisement could be valid after 7 days or even 14 days as in the cosmetics advertisements, which use words such as "bright skin, clear after 7 days". If the conveyed information in the advertisements are not true and contains elements of deception, the consumer is not able to claim to the businessmen, due to Consumer Protection Law only give 7 days.

The essence of the Article 19 itself is unable to give the optimum protection and it will make many interpretations especially dealing with the form and type of indemnity as stated in Article 19 that is in the form of: refund or goods/service replacement or such kind of it or something that equals, or medical treatment and or giving compensation in accordance with the law. The businessmen can select only one form of indemnity as the responsibility to the consumer, although the loss that is suffered by the consumer can be more than that, in which beside material loss, it also affects the consumer's health. It means that Consumer Protection Law, do not touch the immaterial loss, that is loss suit on missing chance to get the fortune, enjoyment, good reputable and etc.

This means a weakness Consumer Protection Law (UUPK), which needs to be revised by the government, so the consumers get the maximum protection. Moreover, the prohibition and responsibility of the businessmen in Consumer Protection Law (UUPK) tends to identify with the advertising agency, which should become the main responsibility of the businessmen of products' owner. In conclusion, Consumer Protection Law (UUPK) does

¹⁰ Ahmadi Miru, Op cit, hlm 184

not regulate the responsibility of businessmen of products' owner or businessmen of advertiser because Consumer Protection Law even regulates the responsibility of advertising agency.

The regulation of responsibility of businessmen that is on Article 19 UUPK is not able to give the justice to the consumer, because of the 7 days dead line that is very short for the consumer. This limitation of suit submission needs to be arranged but the 7 days limitation is less appropriate for the condition of geographical area of Indonesia which is known as the archipelago country. This means the consumers are spread out in the entire region, and the domicile among the businessmen and consumers are different, so that to find the site and to whom they have to claim spend much time for the consumers.

This 7 (seven) days limit today, protect the interests of the businessmen only by ignoring the consumers' interests, this is unfair for the consumers. According to Rawls in his theory of justice, justice does not sacrifice some people's interests for other's interests, because in fair public the public rights are guaranteed by the justice without any obedience to the politic bargaining or other social interests. In addition, the most important thing is the justice context in our country which is known as theory of Pancasila justice; in fifth principle that is "social justice for all of Indonesian people" that means justice for all of people not for a group of people only.

Then UUPK also regulate the administration sanction as in Article 60

Article 60

1. Consumers lawsuit solving agency have an authority to give administrative sanction to the businessmen who break the law of article 19 substance 2 and 3, article 20, 25 and 26.
2. Administrative sanction is mostly Rp 200.000.000 (two hundred million rupiah)
3. The procedure on administrative sanction decree like what on substance (1) arranged further in law.

This regulation even gives the chance to the businessmen who have no good intentions to abdicate their responsibilities to the consumers, by preferring to pay administration sanction than to pay the consumers' losses that may be bigger than the administration sanction. This weak decision of sanction in UUPK causes the consumer protection in advertising activities becomes worst.

The consumer protection efforts in UUPK also are done by the National Consumer Protection Agency (BPKN). To develop consumer protection UUPK require the formation of the National Consumer Protection Agency that functions to give the advice and consideration to the government in terms of giving the consumer protection in Indonesia.

According to article 34 UUPK, national consumers' protection court has job descriptions as follow:

- a. Giving suggestions and recommendations to the government in order to construct law in consumers' protection area.
- b. Doing a research and study on legislation in consumers' protection area.
- c. Doing a research on the goods or service which has relation to the consumers' safety.
- d. Support the development of society consumers 'protection institute.

- e. Inform a brief and correct information through mass media relate to consumers' protection and shows that the government take consumers side.
- f. Accepting complain about consumers' protection from society, consumers' protection institution of society, or businessmen.
- g. Doing survey which relate to the consumers' need.

According to the researchers, the existence of national consumers' protection court is very appropriate to protect consumers, however need to expand costumer authority in the case of:

1. Contact businessmen who do mistake to the consumers.
2. Give warning to the businessmen who give incorrect information which cause loss to the consumers.
3. Ask claim to the businessmen who ignore the warning.

According to the researchers, giving this authority is useful to protect consumers because:

1. Less authority of the consumers' position on businessmen.
2. There is reluctant of the consumers for having business with appeal court
3. Both from the economic and education side, consumers often under businessmen authority. So that will be difficult if the consumers who ask claim.

The Politics of Law Of The Government in Arranging The Act Number 8 in The Year of 1999 about Consumer Protection

In Indonesia, the action of consumer protection is really known recently around 20 years ago, which is when a NGO named the Indonesian Consumers Foundation (YLKI). After YLKI, then there are some organizations which are *Lembaga Pembinaan dan Perlindungan Konsumen (LP2K)* in Semarang which exists since February 1988 and in 1990 joined as the member of Consumers International (CI). Besides, there are so many such kind of those NGO today, such as *Yayasan Lembaga Bina Konsumen Indonesia (YLBKI)* in Bandung and the delegation of YLKI in many provinces in Indonesia.¹¹

YLKI is formed of a small group of citizen that led by Lasmidjah Hardi, which firstly aims to promote the products of Indonesia. This promotion site which is named as *Pekan Swakarya* has the idea to make such organization for the action of consumer protection in Indonesia. This idea is included in the article of association of foundation in the presence of notary public G.H.S. Loemban Tobing, SH with deed establishment Number 26, 11th of May 1973.¹²

This foundation initially does not want to confront with the producer or even the government. It is proven by YLKI, which is by holding *pekan promosi swakarya II & III* that is really utilized by the domestic producers. On this cooperation, then it emerged the motto that is sparked off by Mrs. Kartini Sujono Prawirabisma that YLKI is aimed to protect the consumers, enhance the producers' reputation, and help the government.

The results of YLKI studies that are published in mass media also affect the consumers. The producers' attentions towards the publication are also seen from the reactions that are given, either in the form of correction or objections. It shows in the journey of the third decade, YLKI can have an important role especially in the action of resuscitating the consumers towards their rights.¹³

¹¹ Shidarta, Op cit, hlm 49

¹² Loc cit

¹³ Loc cit

Comparing with the long process of customers' action in abroad, especially in USA, YLKI quite success because no need to start from the beginning. Experiences in taking hand on customer loss cases in developed countries can be a beneficial study, so that Indonesia will not do the same error. It is also the same thing on customer advocacy fiasco cases.

Consumers' action in Indonesia and also which is lead by YLKI notes big attainment after UUPK academic document successfully sent to representatives. Then, the design which was validated became law and known as law No. 8 year 1999 about Consumers' protection (UUPK) which was validated on 20 April 1999

Law No. 8 year 1999 is national consumer's protection politics law. It is because for the first time there is a law protection for customers and as enforcement of opening Constitution of the Republic of Indonesia year 1945 on fourth paragraphs.

Politically, the necessary of law for costumers globally was cited on Broad Outlines of State Policy, such as through parliament degree Number II year 1988 and No. 2 year 1993 although both using different terms. Broad Outlines of State Policy year 1988 use "assure self-interest consumers" term, while Broad Outlines of State Policy year 1993 use "protect self-interest consumers" term.¹⁴

Considering the necessity of that consumers' protection, was created UUPK year 1998. Creating UUPK politic law is as in UUPK consideration that is consumers' protection in order to increase consumers' reputation and to create a responsible producer.

If it seen from consumers' protection historical perspective, thought on costumers' protection in Indonesia influenced much by consumers' actions from abroad especially USA and Europe include international area through economics and social department of UN on its resolution on 6 April 1985 the admiration for consumers' rights have proclaimed.

Some experts on their notes and comments on UUPK stated that UUPK have some weaknesses. Ahmadi Miru and Sutarman Yodo criticize about the substantiation on article 19 relate to the businessmen responsibility in which the roles cannot give maximum protection for consumers.¹⁵ Then about the consumers limitation and authorities on UUPK, according to Shidarta need more field investigation.¹⁶

Cannot be denied that the weaknesses of UUPK are spaces for businessmen in abdicate responsibility to consumers, whether relate businessmen responsibility, the application sanctions, or the role of BPSK authority which is not consistent in UUPK.

From the explanation above, can be conclude that politic law UUPK actually show that the government take the businessmen side in order to recover unstable economics system at that time. As a result, although UUPK created to protect consumers, explicitly, this law also protect the businessmen as on the explanation of UUPK which is stated that a law for consumers' protection not to dead-end business of businessmen.

Taking a side in businessmen which is done by the government clearly seen by administration sanction arrangement that is compensation, in which this sanction will protect more on consumers if in withdrawal certain license. It is clearly seen that there is reluctant from the government to do license withdrawal because related to the economic development and growth. According to Shidarta, the reason that there is dispensation for the businessmen who inflict the consumers is because there is a consideration of tax and employee.¹⁷

¹⁴ Janus Sidabalok, Op cit, hlm 4

¹⁵ Zulham, Op cit, hlm 103

¹⁶ Shidarta, Op cit, hlm 10

¹⁷ Loc cit,

National Law Building Agency (Badan Pembinaan Hukum Nasional/BPHN) itself, when it monitored in social aspect, factors which also weakening consumers' position are:¹⁸

1. Political development in our country give authorship more on businessmen, that is give fax of the norm in assembling and determining consumers law.
2. Unconsistency of trial court on their decrees, in which usually there is different decree on the same cases.
3. Our law system still not enough cover and create policy to protect consumers.
4. Attract each other between businessmen, which part have a good access in this case, not except for the stakeholders. This figure socially and logically beyond the law area...

Consumers Protection on Advertising Attitude and Manner in Indonesia

In Indonesia there was guidance or a rule in advertising practice which is called advertising attitude and manner in Indonesia, which is created to the responsibility of social and protection to the national culture values based on five principles of Indonesia (pancasila) and Constitution of the Republic of Indonesia year 1945. The Guidance which became a system of advertising guidelines is to support national trilogy to reach fair and wealth society, include the developing industrial sector, national advertising and mass communication media.

The background of the need to create EPI which is an ethic code of national advertising, according to Rachmat Trijono based on several reasons, those are:¹⁹

1. Ethic code which is on each association reputed only applicable on each member of those associations. Beyond those associations, everyone does not obligate to follow it.
2. Less on the consumers' awareness to criticize advertising.
3. Economic motives always support advertisement businessmen to give superlative word and some promises.

Some important things which relate with the advertising attitude which is based on the advertising principles are:²⁰

1. Advertisement must be trusted, having responsibility, and doesn't cross to the law.
2. Advertisement does not allow if it insults religion, social, culture, ethnic, and certain group.
3. Making an advertisement must be in a fair competition

Trusted means that advertisement does not mislead, such as by giving incorrect information, deceive, and give exaggerating promise. Then, responsibility means advertisement does not allowed misusing a trust and deceiving society. While do not cross with the law means advertisement should follow the laws and government ordinance.

According to Sutedi Hadiwasito, head of law appeal and laws FPPI, there are six factors which is caused many advertisements break EPI, those are:²¹

1. There is no full power from the advertisement assessor.

¹⁸ N.H.T, *Op cit*, hlm 43

¹⁹ Dedi Herianto, *Op Cit*, hlm 66

²⁰ Janus Sidabalok, *Op Cit*, Hlm 251

²¹ Dedi Herianto, *Op Cit*, hlm 70

2. There is bias between advertisement concept and result that is showed.
3. Government is late in giving sanction for the advertisement which is break the law.
4. Advertising style in Indonesia only showed marketing power.
5. Still there is an unclear regulation (*gray area*) on the advertising guideline book.
6. Lack of creativity of the advertisement makers.

According the writer, these regulations on the advertising attitude and manner still have many weaknesses and cannot give maximum protection to the consumers yet, because:

1. This regulation only applied for association members, how if the one who break the regulation not from the member of association?
2. This regulation decided not from national institution or government.
3. Does the regulation on this advertising attitude and manner reputed as a permanent law?
4. This regulation focused more on the advertisement production which is a responsibility of the advertising company, while in those advertising activity the important side is the owner of the product which is advertised

CONCLUSION

1. Relate to the political law on formation UUPK, the government take businessmen side, so that cannot give optimal protection for the consumers in advertising activity.
2. Regulation of consumers protection in advertising activity cannot give protection yet which is fair for the consumers so that consumers have to responsible on the effect of the entrusted information from the businessmen through media, consumers often do not aware that there is a falsehood on accepted information. As a result caused loss for the consumers.
3. Problem about consumers' protection is every one and all Indonesians problems. Consumers' protection is a serious and important problem, because legislation on consumers' field, especially on advertising activity is unqualified yet. It is caused loss for the consumers because it is to fill uncreated law, and can give contribution to the consumers' protection. Specifically, advertising activity on UUPK need to be revised.

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