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The Liability of Business Actors in Producing Product Not In Accordance With Halal Information

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ABSTRACT

The Law on Guarantee of Halal Products and the Law on Consumer Protection are legal arrangements that guarantee legal protection for consumers of halal products, but these rules have weaknesses regarding the responsibility of business actors who produce goods that do not meet with halal information. This study aims to uncover consumer losses and formulate forms of legal liability for business actors for consumer losses. The type of research used is normative legal research with primary legal materials and secondary legal materials then analyzed qualitatively by explaining theories to obtain significant and scientific results and then finding a thesis. The results show that the inability of business actors to maintain halal product, both in terms of the use of food ingredients or the production process, causes losses for consumers, namely spiritual losses, property losses, health losses, social and mental losses. Consumer losses as the basis for the responsibility of business actors to consumers by providing cumulative compensation for both material and immaterial losses. There needs to be a legal reform by revising the Consumer Protection Law related to compensation as an effort to support the effectiveness of the implementation of the Halal Product Guarantee Act.

Keywords: Responsibility, Business Actor, Halal Products.

INTRODUCTION

Food industrialization provides benefits for business actors because it increases productivity effectively and efficiently in meeting consumer demand. However, on the other hand, it creates new problems for the community, such as the use of sophisticated equipment that allows the mixing of unprohibited (halal) ingredients with prohibited (haram) ingredients in the production process and is difficult to avoid. As a result, consumers cannot know the halal of a product, both in terms of the substance and the production process. As a 2rm of state responsibility in protecting the public from illicit products, [1] in 2014 the government has passed the Law No. 33 of 2014 concerning Halal Product Guarantee (UUJPH), then followed by other regulations. UUJPH is one of the government policies that supports the implementation of the Law No. 8 of 1999 concerning Consumer Protection, (UUPK). The ratification of UUJPH provides many changes in the implementation of halal product guarantees. One of them is the submission of halal certification which is voluntary to be mandatory. The submission of a halal certificate is coercive and has sanctions. Before UUJPH was enacted, the application for halal certification was a

company initiative because most companies realized that the obligation of halal certification was a moral obligation that could bring benefits to business actors in improving company image, product marketability, customer satisfaction, [2] competitiveness, [3] and building consumer trust. [4] so as to be able to maintain business continuity (blessing). KN. SofyanHasan states that the awareness of business actors about the obligation to realize an Islamic lifestyle in business is a necessity because these actions are able to maintain human relations and human obedience in the sight of Allah SWT. [3] On that basis, not a few business actors apply for halal certification voluntarily or without coercion from any party, including the state. The fact is that before the birth of UUJPH, several business actors have obtained halal certificates but in the production process, they still use haram materials. This phenomenon indicates that although the application for halal certification is done voluntarily, it does not mean that business actors do not make mistakes that can harm consumers. This act is possible in the era of mandatory halal, because the application for halal certification is done because of compulsion or fear of sanctions. The inability to maintain halal product is an unlawful act that can result in losses for consumers. Therefore, business actors must be responsible for the losses incurred as stipulated in UUPK.

The state has tried to protect the interests of consumers from acts of halal manipulation either through the ratification of laws and regulations or through internal and external supervision, [5] including imposing criminal sanctions as an ultimumremedium. [6] However, civil liability is not governed in UUJPH. In addition, the government imposes legas responsibility on business actors as a consequence of their actions as enshrined in Article 19 of Law no. 8 of 1999 concerning Consumer Protection. [7] Although the civil responsibilities of business actors have been regulated in the UUPK, this provision has weaknesses to harm the consumers.[8] On that basis, business actors who are proven unable to maintain halal product are not responsible for all consumer losses, both material and immaterial. Based on the description above, the focus on this paper is to identify what losses do consumers suffer from the actions of business actors in producing products not in accordance halal information, and to formulate what is the civil liability of business actors for consumer losses.

Food industrialization provides benefits for business actors because it increases productivity effectively and efficiently in meeting consumer demand. However, on the other hand, it creates new problems for the community, such as the use of sophisticated equipment that allows the mixing of unprohibited (halal) ingredients with prohibited (haram) ingredients in the production process and is difficult to avoid. As a result, consumers cannot know the halal of a product, both in terms of the substance and the production process. As a 2rm of state responsibility in protecting the public from illicit products, [1] in 2014 the government has passed the Law No. 33 of 2014 concerning Halal Product Guarantee (UUJPH), then followed by other regulations. UUJPH is one of the government policies that supports the implementation of the Law No. 8 of 1999 concerning Consumer Protection, (UUPK). The ratification of UUJPH provides many changes in the implementation of halal product guarantees. One of them is the submission of halal certification which is voluntary to be mandatory. The submission of a halal certificate is coercive and has sanctions. Before UUJPH was enacted, the application for halal certification was a company initiative because most companies realized that the obligation of halal

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RESEARCH METHOD

This research is a normative legal research. This study focuses on the construction of legal norms to cover and formulate the responsibility of business actors for consumer losses. In order to collect materials to be processed and analyzed in this paper, the authors use the types and sources of legal materials, namely Primary legal materials in the form of legislation, namely the Indonesian Constitution 1945, the Civil Code, and some regulations related to consumer protection such as UUJPH, UUPK, the Law No. 7 of 1996 concerning Food, the Law No. 36 of 2009 concerning Health, the Law No. 18 of 2009 concerning Livestock and Animal Health, and the Governmental Regulation No. 31 of 2019 concerning Implementing Regulations of the Law No. 33 of 2014 concerning Halal Product Guarantee and other regulations relating to consumer protection for halal products. Secondary legal materials are then obtained through literature studies and reviewing books, scientific journals, legal references related to the object of study. Those legal materials will be analyzed qualitatively. [9]

RESULTS AND DISCUSSION

3.1. Forms of Consumer Loss

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Indonesia has entered the halal era where all products in circulation must be labeled halal. In this phase, the government is faced with problems in the implementation of mandatory halal for business actors ranging from financing halal certification, supervision systems, availability of halal facilities, awareness of business actors/consumers and the application of legal sanctions. In addition, the mindset of business actors in producing products is always profit-oriented without considering the moral, safety, and aesthetic values of a product. [10] On that basis, the government must develop a strategy in overcoming all problems that arise in the halal regime, including providing guidance to business actors so that they do not arbitrarily take actions that can harm consumers, including inconsistencies in the production of halal products. which is not in accordance with halal information (halal certificate).

Inconsistency in the production of halal products is the act of business actors who are unable to maintain the halal products starting from the use of food ingredients in the form of basic ingredients, additives, auxiliary materials to the production process. Therefore, business actors who have obtained a halal certificate are required to maintain their halal products as mandated by UUJPH. [11] In addition, the UUPK emphasizes that the inability to maintain halal product is an act that is prohibited for business actors. [12]

In essence, the existence of consumer protection arrangements as an effort to prevent losses due to imperfections of traded products. According to Nieuwenhuis, loss is a decrease in the assets of one party, which is caused by the act (doing or letting) violate the norm by the other party. [13] The problem of product production that does not meet the halal provisions is an act that results in losses to consumers. The indicator is the delivery of an amount of money in accordance with the agreed price of the goods, but the product received does not match the halal information. As a result, consumers experience material losses, namely loss of property (money) and receive non-halal products. [14]

The incurred losses indeed create immaterial losses because non-halal products that have been received are then used for the benefit of themselves, their families, or others. Therefore, the consumers have consumed non-halal products. In UUJPH, it has been classified as haram food. These provisions are in accordance with the Islamic law. The cases of illicit objects generally are divided into two, namely:

1. Haram li-zatih means the substance of the object is forbidden by religion

a. Carcass.

One of the reasons why carcasses are haram to be consumed is that they can cause harm (disease), because of their death without being slaughtered in the right way according to the Islamic law. [15]

b. Blood

The blood in question is flowing blood. Forbidden blood because first; how to get blood by hurting animals, second: harmful to health. Consuming excessive blood results in a buildup of fluid in the lungs, nervous disorders, dehydration, and low blood pressure. [16]

c. Pork

The reasons for consuming pork are haram: first; because the pig is a dirty animal, unclean, second; research results prove that pigs can be harmful to health. [16]

d. Animals that are slaughtered are not in accordance with the Shari'a. [16]

Not slaughtered animal is one of the foods that are forbidden if due to the method and intention of slaughtering it is not right, such as being slaughtered in the name of an idol, slaughtered without reading Basmallah, strangled, beaten, horned or eaten by a wild animal. [17]

- e. Khamr. Khamr is forbidden because it is intoxicating, it can prevent the soul from remembering Allah. In addition, consuming khamr can cause hostility. [18]
- 2. Haram li-gairih. This means that the substance of the object is halal but the method of handling or obtaining it is not justified by Islamic law. [19]

Every action must be interpreted as worship, including eating and drinking. [20] Consuming haram food results in the act of worship not being accepted for 40 days and is an act that results in sin. [3] According to KH. Ma'ruf Amin, eating and drinking halal is a condition for the acceptance of human worship and prayers. From this description, consuming halal products is an order that in principle maintains a healthy body and as a form of Muslim piety to God. If violated, get a sin. [3] According to Zulham, the determination of halal and haram on products is due to first is endanger agidah, second is life threatening, third is disgusting, and fourth is intoxicating. [21] Eating halal and thoyyib food is not only related to fulfilling physical needs, but also related to spirituality, faith, and worship. [3] Determination of haram food in essence provides benefits for humans. Carcasses, blood, and pork are forbidden to be consumed because they can cause harm (disease) in humans. Therefore, the existence of UUJPH in the implementation of halal product guarantees is intended for consumers regardless of religion. Grunert emphasizes that halal labels can function as religious identity and product quality assurance for Muslim consumers, while for non-Muslim consumers, halal labels can function as food quality assurance. [22] Halal label is a halal guarantee or information regarding the quality of goods. Trading products that do not meet the halal guarantees can result in immaterial losses for consumers in the form of health problems, spiritual losses (sinful), mental disorders in the form of fear, anxiety, disappointment.

Business actors who do not have good intentions in processing food that are not in accordance with halal information can damage social relations between consumers and business actors. Therefore, the values of humanity, justice, propriety, protection contained in the Pancasila and the 1945 Constitution of the Republic of Indonesia must be internalized in humans as guidelines in socio-economic life. Whereas in Islam, there are also known business ethics values such as intention, fairness, trustworthiness, prioritizing worship, avoiding usury, and welfare of employees. [23] In principle, these values do not conflict with each other, if they are used as guidelines, they can maintain balance and good faith between business actors and consumers. Business actors who have good intentions (benevolence) in ensuring halal product will be considered by consumers to build trust so that it is beneficial for business actors in establishing cooperative relationships, relationships, commitments,

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and quality. Thus, the inability to maintain the halal products, causing consumers to use or consume the product, can result in losses for consumers. The forms of consumer losses can be in the form of: [24]

- 1. Material loss; loss of property for the amount of money spent by consumers in transactions.
- 2. Immaterial losses:
- a. Loss of health both physical and non-physical (damage to the mind, mental disorders),
- b. The spiritual loss (HablumMinnallah) is destroying the human relationship with God because eating halal food is a commandment. Carrying out His commands is a picture of a religious human (religious expression) when humans fail to obey His orders and get sin.
- c. Social Loss (HablumMinannas) is to damage kinship relations.

One of the rights of consumers is the right to get compensation. Business actors are obliged to provide compensation for consumer losses due to consuming goods produced or traded. [25] On that basis, the provision of compensation is an absolute, ethical thing for post-sales commitment and communication to build long-term customer loyalty. [26]

3.2. Responsibility of Business Actors for Consumer Loss

It has been stated previously that the production process that does not meet the halal information is one of the actions of business actors which is prohibited in the Consumer Protection Law, Health Law, Food Law, Livestock and Animal Health Law, Halal Product Guarantee Act and Job Creation Law. In addition, these actions are not in accordance with Islamic business ethics and include acts that violate propriety in the social life of the community in carrying out their business.

The actions of business actors can also result in losses for consumers. Consumers who are harmed are not only parties bound by the contract but also parties who are not bound by a contractual relationship. The forms of losses suffered by consumers are material and immaterial losses. With this loss, the consumer has the right to file a claim for compensation as stipulated in the law.

In the BW it is explained that losses can come from acts of default and acts against the law (tort). Losses on the basis of default begins with the existence of a contractual relationship and one of the parties does not carry out what was agreed (default). The aggrieved party can file a claim for compensation on the basis of default (Article 1267 BW). Meanwhile, losses for unlawful acts (tort) are not based on a contractual relationship, but are indicated by an unlawful act, whether it is a violation of consumer rights or a business actor committing an act that is contrary to the law. The aggrieved party can file a claim for compensation on the basis of an unlawful act (Article 1365 BW).

From this description, the consumer's loss for the act of producing a product that does not meet the halal provisions is a loss due to the action against the law (tort) committed by business actors. What is meant by an unlawful act (rt) is; first, acts that violate the rights of others; second, contrary to the legal obligations of business actors; third, contrary to decency; fourth, not in accordance with appropriateness in society. On that basis, the consumer can file a claim for compensation on the basis of an unlawful act. To be able to claim compensation on the basis of an unlawful act, there must be an unlawful act, negligence, loss, and there must be a causal relationship between the loss and the error. [27]

The classification of unlawful acts is the existence of an act to do (active) or not to do (passive). [27] The active action of business actors is to carry out their obligations by maintaining halal products to protect and fulfill the rights of halal consumers. While the passive actions of business actors are those who do not carry out their obligations as mandated in the law. Therefore, the consumer (plaintiff) must prove an event that the business actor's actions are against the law. [28] In the implementation of halal assurance, business actors are required to include a halal label on the product. Labeling is a must as has been regulated in several laws and regulations. Label (Express warranty) is a guarantee or halal guarantee from business actors that using or consuming the product will get enjoyment, benefits, and uses in fulfilling their needs. [29] Products that do not meet the halal provisions are a breach of warranty because the quality of the food does not meet the halal guarantee (label). Thus, there is an element of error due to breach of warranty which results in loss to consumers, both material and immaterial. A lawsuit based on a breach of warranty can be accepted even without a contractual relationship, with the consideration that the guarantee is addressed to the public in accordance with the law. In addition, the consumer (plaintiff) must also prove the existence of a loss and a causal relationship between the error and the loss, namely the loss as a direct result of the error of the business actor (the defendant). Proving a loss is not an easy matter, such as proving the existence of a disease due to consuming non-halal products. According to Cita, consuming meat from carcasses causes typhoid fever, a disease characterized by a long-lasting fever accompanied by inflammation that can damage the liver and intestines. [15] If a consumer who accidentally consumes carrion meat then suffers from typhoid fever, then the consumer cannot prove that the disease is caused by consuming non-halal products. Therefore, it is difficult for consumers to prove a causal relationship between loss and error. Legal liability on the basis of unlawful acts (tort) actually burdens consumers to prove the existence of mistakes made by business actors. [27] The failure of the consumer to prove the business actor's fault will be a threat that the business actor is not responsible for the loss suffered by the consumer. The amount of loss suffered by consumers due to the actions of business actors, according to Traynor, consumers should no longer prove that there is an element of error and business actors are absolutely responsible for their actions. What Traynor put forward is the imposition of strict liability that has been applied in developed countries such as America.[29] Strict liability is the principle of responsibility in unlawful acts that are not based on mistakes, but requires business actors to be responsible for losses arising from acts against law. [27] The principle of absolute responsibility actually guarantees the protection of the basic rights of consumers, namely the right to compensation for the actions of business actors which are difficult to prove by consumers. UUPK does not adhere to absolute responsibility or strict liability, it only states that business actors are obliged to provide compensation for several losses caused by consuming goods and/or services, namely first, losses for damage to goods; second, losses on the pollution of goods and/or services; third, losses due to consuming goods/services. Consumers can file a claim for compensation to business actors for losses incurred in consuming non-halal products. Article 28 of the UUPK emphasizes that in terms of proving whether there is an element of error committed by a business actor, it is the burden and responsibility of the business actor. From the description above, the liability adopted by the UUPK is liability based on errors with the burden of proof on the producer. The liability of business actors is also known as the reverse burden of proof principle. [29] The reversed burden of proof in the UUPK is the principle of accountability in unlawful acts for mistakes made by business actors (defendants) thus obliging business actors to be responsible for losses arising from unlawful acts. Proof based on errors with the burden of proof on business actors (defendants) is considered fairer, because the burden of proof is more accurately borne by the party who is least disadvantaged. [29] The principle of the inverse burden of proof is a legal instrument intended to guarantee halal products for consumer rights. The aim to be achieved from the accountability of business actors is to reduce losses due to defective products and as a legal means for consumers to claim compensation. [8] Thus, the UUPK provides space for consumers to demand compensation from business actors who are inconsistent in processing products that are not in accordance with halal provisions because these provisions can ensnare business actors from actions that harm consumers' rights based on the principle of reverse proof. The provision of compensation is regulated in Article 19 paragraph 2 of the UUPK with the concept of compensation which accommodates consumer compensation for both material and immaterial losses, but the immaterial losses are converted materially. On the other hand, consuming non-halal products has immaterial losses that cannot be converted into money. The concept of compensation in Article 19 of the UUPK has many weaknesses that can benefit the position of business actors (defendant), namely; first, it has not accommodated the disadvantages of consuming non-halal products; second, the provision of compensation in the UUPK is alternative. Ideally done cumulatively except the replacement of goods; third, the time of giving compensation, which is seven days after the transaction, is very detrimental to halal consumers. Because to know the halal/holiness of a product, a special study with multidisciplinary science is needed. In line with AhmadiMiru's opinion, ideally the compensation is carried out 7 days after the loss occurs.[29] The percentage of compensation in the form of refunds must be determined proportionally, namely by taking into account the economic capacity of business actors and consumer losses to provide a sense of justice and balance which is the philosophical basis for the responsibility of business actors for consumer losses. According to M. Tjoanda, immaterial losses cannot be valued in money, they are not economical. Therefore, the concept of compensation for spiritual and social losses is in the form of an apology because the impact of the loss cannot be resolved with (material) money. Business actors (defendants) are required to submit an apology to all parties who are harmed (victims) so that the relationship between the two is more cooperative so that it will create order in society. Therefore, to create a sense of justice and balance between business actors, compensation must be given cumulatively, namely refunds, health care, compensation, and apologies. Sentencing is too weak for business actors who violate the applicable legal provisions, clearly not effective protection for consumers. Thus, the essence of providing compensation is to prevent fraud occurs, provides a deterrent effect for business actors and as a means of recovery for victims. [30]

CONCLUSION

The production process that does not meet the halal provisions results in losses for consumers. The forms of consumer losses are: First, material losses; property/financial loss. Second, immaterial losses in the form of health losses (mental disorders), Third, spiritual losses (sins), fourth, social losses. Inconsistency of business actors in the use of food ingredients or production processes that are not in accordance with halal information is a violation of norms, both religious, ethical and legal norms. Business actors are responsible for consumer losses based on the principle of reverse proof. Therefore, the UUPK should accommodate immaterial losses due to consuming non-halal products an effort to fulfill the basic rights of consumers and support the effectiveness of the implementation of the Halal Product Guarantee Act.

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