

## LIABILITY OF NUTRITION PRODUCERS IN THE PERSPECTIVE OF CONSUMER PROTECTION

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### ABSTRACT

Legal protection to consumers and the compensation when consumers are impaired are the liabilities of producers or businesses, and they have been regulated in Act No. 8 of 1999 on Consumer Protection. Consumer is any user of the goods and/ or services available in the community for self-interest, family, other people, or other living beings and not to be traded. The level of consumer awareness to their rights is still low because of their ignorance and reluctance to take care of their rights or other factors caused by the absence of legal protection. Businesses/ producers are individuals or business entities in the form of legal entities or non-legal entities, domiciled in the Unitary State of the Republic of Indonesia, either individual or jointly through the agreements on the conduct of business activities in various economic fields. The main point of this research was the Liability of Nutrilite Nutrition Producer in the Perspective of Consumer Protection. The aim of this research was: first, to recognize the regulation on the liability of Nutrition Producer in Indonesia; second, to identify the implementation of Liabilities of Nutrilite Nutrition Producers and the Production of Other Producers; third, to identify the implementation of producer responsibility in terms of the Consumer Protection Law. This study was conducted using the empirical juridical approach, and the data obtained were analyzed quantitatively and qualitatively. The research result was that Nutrilite Nutrition Producers managed specifically with their own rules by considering the principles of Consumer Protection and giving the widest possible rights to the consumers if they are not satisfied to consume their products. Then, Nutrilite Nutrition Producer will also responsibly serve the consumers who will exercise their right in legal protection.

Keywords: Producer Liability, Consumer Protection, Nutrition Products

### INTRODUCTION

Producers produce goods and/ or services to meet the needs of community/ consumers and the needs of product (goods) necessity of producers. The relationship of the existence of producers and consumers to one another is a reasonable and rational relationship<sup>1</sup> because both producers and consumers equally need each other and have interests.

With regard to the type of produced goods of food, beverages, and medicines, nutrition is one of the types of goods produced by producers.

Nutrition is a nutritious food<sup>2</sup> in which nutritious food is contained in a variety of foods that must be obtained each day, both animal and vegetable. In general, food additives (nutrients) are produced by food businesses; in large, medium, and small scales. Nutrition product is demanded to have the quality and composition corresponding to the consumers, and does not endanger consumers in general. It is the responsibility of manufacturers to the products circulating in the community.

Product responsibility is a legal term derived from *product liability*, which is the responsibility of a product caused by the specific circumstances of product (defects or harm to others). In other words, product liability arises as a result of "*product schade*", that is, the damages caused by the goods marketed by producers<sup>3</sup>

Nutritional product liability focuses on product quality and also considers the safety and appropriateness of the product consumers. One of nutritional products on the market is called Nutrilite. Nutrilite has the *Halal* Certificate from the two bodies authorized to certify *Halal*; the Indonesian Ulema Council and IFANCA (*The Islamic Food and Nutrition Council of America*) which is the authorized body to check the standards of production and raw materials according to Islamic law in the United States. Therefore, there is nothing to worry about since the nutritional product has already obtained the authorization as *halal* supplements in accordance with Islamic law.<sup>4</sup> In addition, their protection is pursuant to the responsibilities under Act No. 8 of 1999 on Consumer Protection.

<sup>1</sup> Hartono Sri Redjeki, *Peranan Organisasi Konsumen Sebagai Mediator Kepentingan Konsumen*, FH UGM, 1991, hal. 2

<sup>2</sup> *Kamus Besar Bahasa Indonesia*, Departemen Pendidikan dan Kebudayaan RI, Edisi ke tiga, Balai Pustaka, Jakarta, 2002, hal. 789.

<sup>3</sup> Ali Mansyur M, *Penegakan Hukum Tentang Tanggung Gugat Produksen Dalam Perwujudan Perlindungan Konsumen*, Genta Press, Yogyakarta. 2007, hal. 52.

<sup>4</sup> Buku Panduan Nutrilite, AMWAY, 2016, hal. 12.

The efforts to realize the relationship between producers and consumers should increase consumer's dignity through increased awareness, knowledge, care, ability and independence of consumers to protect themselves and to develop the attitude to be responsible for implementing consumer protection leading to the efforts to ensure legal certainty for consumers. It is in accordance with Article 2 and 3 of Act No. 8 of 1999 on Consumer Protection.

It is common that manufacturers are responsible when consumers do not feel comfortable to consume/ eat/ drink a product which causes health disorders. From the description above, the issues of responsibility discussed were: 1. How is the responsibility of Nutrilite nutrition producers in Indonesia ? 2. How is the implementation of the responsibility of Nutrilite nutrition producers viewed from Consumer Protection ?

## DISCUSSION

### 1. Nutrition Producer Liability of Nutrilite di Indonesia

#### a. General Regulations of Act No. 23 of 1992 on Health

Food and beverage safety is carried out to protect people from the foods and beverages that do not meet health standards and/or requirements.

Every packaged food and drink shall be marked or labeled containing:

- (1) the materials used,
- (2) the composition of each material,
- (3) the date, month, and year of expiration,
- (4) other provisions.

The foods and drinks that do not meet the health standards and/or requirements and/or endanger the health are prohibited to be circulated, withdrawn from circulation, and to be destroyed. (Article 21).

#### b. The rules issued by Nutrilite Company

The rules on the liability of Nutrilite Nutrition producer are set out in the Company's Code of Conduct listed in the Handbook of Product Order and Return.

The Code of Conduct and Regulation are not the legal requirements, but they are only the explanation on the set of rules or principles concerning the rights and obligations.

#### a) The rules stated in the company's Code of Conduct

Nutrilite nutritional products present to the community through the distribution chain carried out by the Independent Business Owner (IBO) to get to the end user; the consumer.

One of the forms of the responsibility provided by the Company when launching a new product is to provide information and edification to the IBO through Amagram (the monthly magazine for IBO), product flyers and guidebooks, training, seminars, and special meetings. There are also special programs to get closer, learn, and experience Nutrilite products and their benefits.

Nutrilite nutritional products are sold directly through the IBO, and they are not sold in stores, pharmacies and supermarkets. To get the products, consumers must go through IBO or become a member in advance.

Regarding the service as a vital consumer interests at this time, it is a guarantee for a certain period provided by producer to consumer through the IBO. Similarly, it is also producer's responsibility to meet consumer's rights, especially in obtaining the goods in accordance with the exchange rate. The problem of seller service is consumer protection that can not be separated with the stages of consumer's transaction service and applicable to producers/ IBO as product sellers (IBO is also the seller of the nutritional product of Nutrilite). The seller is the responsible one commonly known as product liability. It is the responsibility of the producer/ IBO who distributes products in a responsible manner throughout its products. It is an absolute responsibility (*Strict liability*) or liability without fault.

In the implementation and corporate responsibility as a producer of the nutritional product of Nutrilite, the provisions on the implementation procedures and the ways how to purchase or return the product have been included.

#### b) The implementation of sales with product satisfaction guarantee.

Whenever buying the product of the nutrition company, the nutrition of nutrilite, they have the right to use it within a certain period, so they can determine to continue to use the product or not, or it is satisfactory or not. If it is not satisfactory, they can return it to the unused department.

The IBO selling the nutrition product of nutrilite will offer the following options:

1. Replacement of goods without any cost, or
2. Refunds in accordance with the buying price.
3. The warranty does not cover the warranties or consequences of the use of products that have been damaged intentionally or misuse.

### c) The Rules of Satisfaction Policy

It provides satisfaction guarantee only for the goods produced by it (Nutrition of Nutrilite). In accordance with the request, the selling IBO must be willing to buy back from the buyers all within 3 months (90 days) after the sale by showing the proof of purchase:

1. The terms and policies for refunds should be communicated to the buyer clearly before the selling transaction.
2. Only the end users are eligible for the terms of the "Buyback" policy.

The implementation of the liability of the nutrition producer is regulated in Article 19 through Article 28 of Act No. 8 of 1999 on Consumer Protection (UUPK), as follows:

#### 1) Juridical Liability

Juridically, producer liability can be viewed in Civil, Criminal and Administrative Liabilities.

##### (a) Civil Liability

In general, consumers do not have many problems in consuming the manufactured nutritional product of Nutrilite because consumers believe that they know the producer have performed the matters related to consumer protection, such as performing its obligations as a producer. Concerning producer liability, the data showed that producer liability to the nutritional goods/ products of Nutrilite was indicated by the matters, i.e.:

- a) Setting up product label
- b) Attaching the Registration of the Food and Drug Supervision, the Ministry of Health (POM SI/ POM RI)
- c) Embedding expiration dates
- d) Lists the usefulness
- e) Including the number of LOT
- f) Providing assurance and warranty
- g) Listing the compositions
- h) Stating that the products received must be in good condition
- i) Emboding the ways of product storage.

In addition to the aforementioned, the nutrition producers of Nutrilite gave the information directly to consumers on how to use/ consume correctly. The goodwill of the nutrition producer/ company of Nutrilite to fulfill its responsibilities to the quality of the goods produced is obvious as stipulated in Article 1338 paragraph (3) of the Civil Code stating that an agreement must be performed in a goodwill.

By putting on the label on the product as mentioned above, it is in compliance with the provisions set forth in Article 21 paragraph (2) of Act No. 23 on Health. It means that the nutritional product of Nutrilite has performed its obligation to provide correct and honest information about the condition and guarantee of the goods and/ or services as well as an explanation on the use and maintenance as stipulated in Article 7 of Consumer Protection Law<sup>5</sup>.

Article 19 until Article 23 of Consumer Protection Law, particularly Article 19, states that the liabilities of producers/ businesses are as follows:

- (1) Businesses are liable to provide compensation for damage, contamination and/ or loss of consumers due to the consumption of goods and/ or services produced or traded
- (2) The compensation as stated in paragraph (1) and in the form of a refund or replacement of goods and/ or services of the same type or value, or the health care and/ or donations in accordance with the provisions of applicable law.
- (3) The granting of compensation is executed within seven days after the transaction date.
- (4) The compensation referred to in paragraphs (1) and (2) does not eliminate the possibility of criminal prosecution under further evidence of the existence of fault element
- (5) The provisions referred to in paragraphs (1) and (2) do not apply if the businesses can prove that the error is consumer's mistake.

Act No. 8 of 1999 on Consumer Protection in Articles 6 and 7 set forth the rights and obligations of producers and producer liability as stipulated in Article 19, Act No. 8 of 1999 on Consumer Protection, which states that the areas of business/ producer responsibility are:

- (1) responsibility for damage compensation
- (2) responsibility for pollution damages, and
- (3) responsibility for consumer loss compensation

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<sup>5</sup> Agnes M Toar, 1998. *Tanggung Jawab Produk dan Sejarah Perkembangan di Beberapa Negara*, APTIK Yogyakarta,

Based on the matters, they are not only the responsibility of the producer as an entrepreneur, but producer responsibility is also for any losses suffered by consumers who used or consumed the nutritional products of Nutrilite.

Article 19 paragraph (2) has the weaknesses which are harmful to consumers. When a consumer suffers a disease, the compensation stated in the article is only the replacement of goods in the form of health care. Besides, the consumer has suffered, not only due to the loss on the price of goods, but the loss incurred is also the loss on health care.

Supposedly Article 19 paragraph (2) determines that the return of compensation can be either a refund or services as well as the replacement worth of the replacement for the health care/ donations given to the consumer at the same time. It means that the value is equivalent to "health care".

Article 19 paragraph (3) is the provision on the time limit that the granting of compensation to consumer is in 7 (seven) days after the occurrence of loss and not 7 (seven) days after the transaction other than nutrition producers.

#### (b) Criminal Liability

Criminal liability may include imprisonment and / or compensation, as well as fines for the violations resulting in serious injury, illness, permanent disability, or death as set forth in the Consumer Protection Law and in the provisions of the Criminal Law.

#### (c) Administrative Liability

Administrative responsibility in the Consumer Protection Law is regulated in Article 60. Basically, the businesses in violation of Article 19 paragraphs (2) and (3), Article 20, Article 25, and Article 26 can be penalized administratively. The administrative sanction is an application for compensation of maximally IDR 200,000,000,- (two hundred million rupiah)

#### 2) Non Juridical Liability

Because non juridical responsibility is a moral responsibility which is not regulated under the law, non juridical responsibility is the responsibility of the company in accountable for its products which have been restored and to compensate in accordance with the regulations issued by the company as stated in its code of conduct.

#### 2. Implementation of Producer Liability in terms of Consumer Protection.

In-Act No. 8 of 1999 on Consumer Protection, the implementation of producer liability is outlined in the Articles 19, 23, 24, 25, 26, 27, and 28, as follows:

- a. Articles 19, 20, 21, 24, 25, 26 and 27 set forth business liability
- b. Articles 22 and 28 set forth evidence
- c. Article 23 set forth dispute resolution in the case of the businesses which do not fulfill the obligation to provide compensation to consumers.

Article 19:

- (1) Businesses are responsible for providing compensation for damage, contamination, and/ or consumer loss from consuming the goods and/ or services produced or traded
- (2) The compensation referred to in paragraph (1) is in the form of refunds or returns of goods./ or services which are similar or equivalent in value, or a health care and/ or donations in accordance with the provisions of the legislation in force
- (3) The granting of compensation is implemented in a period of 7 (seven) days after the date of transaction
- (4) The granting of compensation as referred to in paragraphs (1 ) and (2) does not eliminate the possibility of criminal lawsuit based on further evidence regarding the presence of error element.
- (5) The provisions of paragraphs (1) and (2) do not apply if the businesses can prove that the error is a mistake of consumers.

In article 19 mentioned above, it describes the responsibilities of producers (businesses) under Article 1365 of the Civil Code if the producer is really problematic to satisfy the elements of Article 1365 of the Civil Code. However, if the producer can prove that the fault is not on him, it is the consumer's responsibility. Then, the risk is the consumer's responsibility, and the producer is exempt from the responsibility. In this case, the producer may refuse to pay compensation to the consumer, as referred to in Article 19 paragraphs (1) through (4), and it can be seen in the same chapter of Article 19 paragraph (5) and Article 27 of the Consumer Protection Law.

The legal basis used by consumers is Article 23 by filing a lawsuit to the Consumer Dispute Organizing Body (BPSK) or filing a lawsuit to the court in the domicile of the consumers.

Article 24 and Article 27 state that the legal facts infringed by producers are the foundation in filing the lawsuit that include:

Article 24:

It sets the transfer of responsibility from one business to another business which says: businesses selling goods and/ or services to other businesses are liable for claims for compensation and/ or consumer lawsuit if:

- a. Other businesses sell to consumers without committing any action to the goods and / or services

- b. Other businesses in sale and purchase transactions recognize the change of goods and/ or services performed by the business or not in accordance with the example, quality of goods, and composition.

Two other articles, Article 25 and Article 26, are about a relationship with post-sales service by businesses for the traded goods and/ or services. In this case, businesses are required to be fully responsible for the guarantee and/ or warranty given, in terms of the provision of spare parts or repairs.

Article 27 is the clause of "Helper" for the businesses who release their responsibility to provide compensation to consumers.

Article 27 is clear that businesses who produce goods are exempted from the liability for damage suffered by consumers if:

1. the goods should not be circulated or not intended for circulation
2. the product defect arises in the future
3. the defects arise due to compliance with the provisions on the qualification of goods
4. the negligence caused by consumers
5. the termination of prosecution period of 4 (four) years from the purchase of goods or termination of the period agreed upon.

Article 22 and Article 28, which is about the burden of proof of criminal and civil law or mistakes of businesses in the Consumer Protection Law; the burden of proof is "reversed" into a burden and responsibility of businesses entirely. In such a case, as long as businesses can not prove that the fault lies on his side, then by law, the businesses are responsible for and shall compensate such loss suffered.

Article 23 of Consumer Protection Law is one of the articles that regulate in specific the right of consumers to sue the businesses that refuse and/ or do not give response, and not compensate for the demand of consumers as referred to in Article 19, either through the dispute resolution body of consumers or submitting to the judiciary in the domicile of the consumer.

From the description above, the implementation of the nutrition producer liability of Nutrilite had been able to be conducted optimally in accordance with the Consumer Protection Law.

Concerning the Consumer Protection Law, the legislation in force today only emphasizes the fulfillment of rights and obligations and the responsibilities of businesses in conducting business activities. Any violation of the juridical obligation is always accompanied by the threat and the sanctions of civil, criminal, and administrative laws.

The execution and responsibility of businesses/ producers in conducting their business activities had fulfilled the obligations in accordance with the Consumer Protection Law on in Article 7, which states that:

1. Having good will in making their efforts.
2. Giving the correct, clear, and honest information about the condition and guarantee of the goods and/ or services, as well as explaining the use, care and maintenance.
3. Treating and serving customers properly and honestly and non-discriminatorily
4. Assuring the quality of goods and/ or services produced and/ or traded under the provisions of the quality standards of goods and/ or services.
5. Giving consumers a chance to test the goods and/ or services and trying the warranty the goods made and/ or traded.
6. Giving compensation and damages or losses resulted from the use, consumption and utilization of goods and/ or services traded.
7. Compensating for damages and/ or replacement if the goods and/ or services received or used which are not in accordance with the agreement.

The obligation of businesses to have a goodwill through their business activities is one of the principles known in contract law. It is regulated in Article 1338 paragraph 3 of the Civil Code, which states that the agreements must be implemented in goodwill. In the Consumer Protection Law, goodwill is not only for consumers, but this obligation is concerned with businesses/ producers. The obligation of goodwill must meet all the stages in the conduct of business, starting from production stage until in the hand of consumers.

Of the various legislations, the Consumer Protection Law is still scattered in various regulations. Efforts are needed to be integrated and comprehensive regulations when viewed from the position of the Consumer Protection Law in the Indonesian legal system (the Civil Code). However, the term of consumer in terms of Civil Law does not exist, but the other relevant terms with it are buyer, tenant, and debtor. Accordingly, the adoption of consumer protection is the same as the protection to buyers, tenants, and others.

## CONCLUSION.

1. The Regulation for the Nutrition Producer Liability of Nutrilite in Indonesia,  
The setting of the nutrition producer liability is set forth specifically by not leaving producer obligations and respecting the rights of consumers as stipulated in Act No. 8 of 1999 on Consumer Protection Law which is placed in the Company's Code of Conduct, so each IBO knows and understands their rights and obligations and disseminates to other consumers.
2. The Implementation of Producer Liability

- a. Juridically, the implementation of producer liability had been carried out in accordance with the company's internal regulations and in line with Act No. 8 of 1999.
- b. In non-judicial, producers are responsible for the products manufactured and will notify the public when there is a product that is not going to be marketed anymore (NLA) or replaced concerning an increase in the quality or other reasons, no later than 3 (three) months prior to the termination of the sale.

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