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## PROTECTION CONSUMER RELATED CIRCULATION OF FAKE SHAMPOO JUDGING FROM LAW NUMBER 8 OF 1999 CONCERNING PROTECTION OF CONSUMER

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### **ABSTRACT**

*This research aims to study and analyze the Protection of Consumer-Related Circulation Shampoo falsely reviewed from Constitution Number 8 of 1999 concerning the Protection of Consumers. The method used is method study juridical normative by type study descriptive analysis. Conclusions of results research: (1) protection of consumer-related circulation shampoo false can be seen from provision Article 45 paragraph (1) of Law Number 8 of 1999 Concerning Protection Consumer as well as Article 1365 of the Civil Code, (2) Responsibility answer perpetrator business related circulation shampoo fake is natural perpetrator business can give change loss to consumer related circulation shampoo false as has been regulated in Article 19 paragraph (2) of the Law Number 8 of 1999 concerning Protection Consumer.*

**Keywords:** *Consumer Protection, Responsibility, Distribution of Fake Shampoo.*

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### **INTRODUCTION**

Indonesia experienced progress in the field pretty fast business which can be seen from how consumers moment choose as well as use or consume products and services. That matter makes something reference for companies in Indonesia used to interpret attitudes towards consumers in the target market as well as targets from the company. This is due to continuity from company business to use operate the business, which is useful to complete needs as well as Consumer desires are very dependent on behavior consumers, for one is industry maintenance body. Products included in the industry maintenance body become needed for every individual. One of the products maintenance lots of bodies use is shampoo.

Currently increasing awareness as well as view consumers about health also brings consumers to require excellent service by the industry maintenance body. Quickly developed knowledge and technology cause problems that relate to security as well as safety for consumers. Diverse appearance services must get attention because with increasing awareness consumers will have importance in health as well as safety on the time to use goods consumed.

Shampoo is one of the cosmetics that cleanse hair and skinheads from all types of dirt, whether in the form of oil, dust, dead cells, and so on. In early January 2022, there are news related circulation of shampoo fake which one found thousand jointly sachet shampoo false use brands famous like Pantene, Clear, Sunsilk, Dove, Head and Shoulder, and Gatsby. The fake shampoo has already in circulation for three few years been in the Banten, Palembang, and Lampung regions. Fake shampoo is very dangerous, if used constantly, and will give rise to the problem health of the skin until can experience irritation. Therefore, the author is interested in discussing and writing a journal about the Protection Consumer related Circulation of Fake Shampoo Reviewed from Constitution Number 8 of 1999 concerning Protection Consumer.

## METHOD

In this research, the author used form study juridical normative, which is a study of law that aims to research invention principles law positively, compare law history law, systematic law, and synchronization law. The type of research used has descriptive analytical which the author will analyze about the Protection Consumer related Circulation of Fake Shampoo Reviewed from Constitution Number 8 of 1999 concerning Protection of Consumers. Legal materials used that is material originating primary law from regulation legislation, materials law of secondary origin from related books and journals, as well as material law tertiary.

The data collection technique used in this research is through activity studies document to the data collected that is study bibliography. The data analysis method used in this research is method qualitative, by using this method researchers will produce an analysis of the way deep about Protection Consumer related Circulation of Fake Shampoo Reviewed from Constitution Number 8 of 1999 concerning Protection Consumer.

## RESULTS AND DISCUSSION

### 1) Protection Consumer-Related Circulation of Fake Shampoo Reviewed from Constitution Number 8 of 1999 concerning the Protection of Consumer

General consumers are shared into 3 (three) parts, namely: Consumers, namely everyone who gets goods or services used for a purpose certain; Intermediate Consumers are everyone who gets goods and/or services for the intended use of making other goods/services or for trading (purpose commercial); Final Consumer, is every natural person who gets and uses goods and/or services for purposes fulfill need his life personal, family and or home ladder and not for trading back (non-commercial).<sup>1</sup>

Protection law is something protection provided to subject law in the form of a device good in nature preventive or of a nature repressive, both verbal or written.<sup>2</sup> In another sense, yes understood that protection law is something reflected separately in function law, which has the principle that is that law. There is to enforce something justice, order, certainty, benefit, and peace.

In carrying out and implementing protection law required something the place in which it is realized is called the means protection law. Protection of consumers in the era of globalization becomes very important to universal rights and those that are very specific.<sup>3</sup> In the era of trade free is an era where marketing is something universal specificity. The principle from marketing seen from scheme global marketing has changed each time.

Protection of consumers covers two aspects i.e. protection of goods received not under the agreement and protection of existing adverse conditions for the consumers.<sup>4</sup> The perpetrator sending business goods that do not match the picture can considered do deed default because the perpetrator business does not fulfill obligations in the contract electronically which gives rise to a loss for the consumer.<sup>5</sup> Based on diverse events that have occurred related to goods that do not match the picture have a diverse form of nonconformity for example shape as well

<sup>1</sup>Innocent Samsul. (2015). *Protection Law Enforcement Consumer Through Maintenance Legal Metrology in the Era of Regional Autonomy*, State of Law, Vol. 6 No.2, p. 172.

<sup>2</sup>Revelation of Simon Tampubolon. (2016). *Legal Protection Efforts for Consumers Judging from the Law Protection Consumers*, Scientific Journal "Advocacy", Vol. 04 No. 01, p. 53.

<sup>3</sup>Niru Anita Sinaga, Nunuk Sulusrudatin. (2015). *Implementation Protection Consumers in Indonesia*, Scientific Journal of Aerospace Law, Faculty of Law, Suryadarma University, Vol. 5 No. 2, p. 72.

<sup>4</sup>Rosmawati. (2018) *Basics of Protection Law Consumer*. Jakarta: Kencana, p. 6.

<sup>5</sup>Sapta Abi Pratama. (2020). *Legal Protection Against Consumers of Goods Not Matching the Picture in Marketplace Transactions*, 2nd National Conference on Law Studies: Legal Development Towards a Digital Society Era, p. 187.

as size are not synchronous, quality are not synchronous, colors are not synchronous as well and material is not synchronous. Goods received the most are class of goods in sync with the desires of consumers, however, there is a lack even inconsistencies in the information pictures provided by the seller. Not even that anymore foreign again that goods have poor quality causes matter thereby very harm for of consumers.

The goals of implementation, development, and regulation protection planned consumers is to improve the dignity and awareness of consumers, so don't push straight away perpetrator efforts to organize activity business with a full sense of responsibility. However, still lots of consumers who don't understand about law, as well as their rights and obligations as consumers.<sup>6</sup> Protection Consumer aimed at equalizing the position of consumers and the perpetrator's business as mutual parties interact and need, which in this day and age often happens exists possible discrepancies harm to the consumers.

There is a connection between perpetrator businesses and consumers, the relationship in question is rights and obligations between perpetrator businesses and consumers, therefore the law protection consumer arranges rights and obligations perpetrator guaranteed business and consumers fulfillment through enforcement law<sup>7</sup>. The legal basis protection of consumers is contained in Article 1 paragraph (1) of Law Number 8 of 1999 concerning Protection Consumers, which explains that the Protection Consumer is a guaranteed effort exists certainty law to give protection to consumers. Based on Article 1 paragraph (1) of Law Number 8 of 1999 concerning the Protection of Consumer show that there is some protection law to guarantee certainty law for consumers. Protection of consumer-related circulation of shampoo fake that can be given to the public as consumer can done in various ways way, as has been explained in Article 1365 of the Civil Code that is each deed violates the law, which brings loss to others, obliges the person who because wrong publish that loss, compensate loss.

Legal effort in the protection of consumer that is coaching and policy enhancement quality by implementing standardization of quality production.<sup>8</sup> Standardization of quality production aims to realize the rights of consumers as provisions in Article 4 of the Law Protection Consumer. Awareness of perpetrator efforts in standardization quality production always obeyed the perpetrator efforts that have been regulated in applicable regulations is highly expected Because standardization quality is the focus of the perpetrator business to still look after characteristic quality unsafe and understandable production is can dangerous for the consumer.

Related circulation shampoo fake, according to provision Article 1365 Civil Code should seller of shampoo must be accountable for related shampoo fakes he sells Because can harm consumers, the responsibility in question namely by replacing loss. Compensate for losses in general nature replacement cost, with reimbursement cost the felt not enough give effect deterrent for perpetrator detrimental business consumer. Article 45 paragraph (1) of Law Number 8 of 1999 Concerning Protection Consumer explains that every consumer harmed can sue the perpetrator's business through an agency in charge of finishing a dispute between consumers and the actor's effort or through justice in the environment Justice general.

If replaced loss is less, the consumer can sue the perpetrator's business by completing an agency dispute between consumers and the perpetrator's business such as the Settlement Body Dispute Consumer. Protection of the consumer is various guaranteed efforts and goals that exist in certainty law to give protection to the consumer. Article 3 of the Law Number 8 of

<sup>6</sup>Leli Juwanti, Marta Tilov. (2018). *Legal Protection Against Consumers on Sales of Medicines Illegal Online*, Niagawan Journal Vol. 7 No. 3, p. 168.

<sup>7</sup>Ali Mansyur, Irsan Rahman. (2015). *Enforcement of Protection Laws Consumer as an Effort to Improve the Quality of National Production* Journal of Legal Reform Vol. II No. 1, p. 6.

<sup>8</sup>Ali Mansyur, Irsan Rahman, *Op.cit.* p.5

1999 Concerning Protection Consumer has explained about objective protection of consumers, namely:

1. Increase awareness, ability, and independence of consumers to protect themselves;
2. Lift the honor and dignity of consumers by sparing them from excess negative usage of goods and/or services;
3. Increase empowerment of consumers in choosing, determining, and demanding their rights as consumers;
4. Create a system protecting pregnant consumers element certainty law and openness information;
5. Grow awareness among perpetrator businesses about the importance of protection of consumers so that grow honest and responsible attitudes in business;
6. Increase quality guaranteed goods and/ or services continuity business production goods and/or services, health, comfort, security, and safety consumer.

Society as consumers own rights and obligations as stated in Article 4 of Law Number 8 of 1999 concerning Protection Consumers, but still lots of consumers aren't aware that they own rights that must be obtained. Related rights for consumers in Article 4, namely:

1. Top rights comfort, security, and safety in consuming goods and/or services;
2. Right to choose goods and/or services as well as get goods and/or services corresponds to the value exchange and conditions as well as the promised guarantee;
3. Top rights correct, clear, and honest information about conditions and guarantees goods and/or services;
4. The right to hear opinions and complaints on goods and/ or services used;
5. Right to get advocacy, protection, and effort solution dispute protection consumer in a way appropriate;
6. Right to get coaching and education consumer;
7. The right to be treated or served in a way true and honest as well as No discrimination;
8. Right to get compensation, replace loss and/or replacement, if goods and/ or services received not under the agreement or not as should;
9. Rights regulated in the provisions regulation legislation other.

Perpetrator businesses also have mandatory obligations implemented under Article 7 of Law Number 8 of 1999 concerning the Protection of Consumers, namely:

- a) Have faith in good at doing activity his business;
- b) Give correct, clear, and honest information about conditions and guarantees goods and/ or services as well as explain use, repair, and maintenance;
- c) Treat or serve the consumers in a way true and honest as well as non-discriminatory;
- d) Ensure quality goods and/or services are produced and/or traded based on the provision of standard quality applicable goods and/ or services;
- e) Give a chance consumers to test, and/or try goods and/or services as well as give a guarantee and/or guarantee on goods made and/ or traded;
- f) Give compensation, replace loss, and/or replace on loss consequence use, usage, and utilization of traded goods and/ or services;
- g) Give compensation, replace loss, and/or replacement if goods and/ or services received or utilized not under the agreement.

As can be seen from the regulation above, that right as well as obligation from the perpetrator business is related to the rights as well as obligations consumer. This is what it means that right for the consumer is mandatory obligations fulfilled by the perpetrator business. Likewise, with obligations consumers have the right to be accepted by the perpetrator business. When

compared with the provisions general in the Civil Code, the arrangement Constitution Protects Consumer more specifically, because the act invite the Protection of the Consumer must active effort with intention good perpetrator effort must also be made can make a climate conducive business, without unfair competition between perpetrator business.

A set enforcement law is there to protect consumers and is not meant to be deadly in the perpetrator's efforts effort, but this reciprocates protection consumer can push climate a company that is tough to deal with competition through the provision of quality goods and or services.<sup>9</sup> Implementation Constitution Protection Consumer still focuses on special perpetrator businesses small and medium. This is done with effort coaching as well as application penalty on the violation.

There are still many public consumers who don't understand the rights they have consumers, like the right to get correct, clear, and honest information. Perpetrator businesses are obliged to act well. Sometimes perpetrator's business cheats by ignoring this obligation due want to the goods he sells and getting profit, with the perpetrator neither does the business guarantee the quality of goods he sells. By giving clear information to consumers related to the goods he sells consumers can feel guaranteed safety at the moment consume the goods they bought.

There is an effort protection law for consumers, as they have known right consumer the right to comfort, security, and safety in consuming goods and/or services. Choose goods and/or services as well as get goods and/or services corresponding to the value exchange and conditions as well as promised guarantee, above correct, clear and honest information about conditions and guarantees goods and/or services, to be heard opinions and complaints on goods and/or services used, obtain advocacy, protection, and effort solution dispute protection consumer in a way deserve, get coaching and education consumer. Consumers are treated or served in a way true and honest and well is no discrimination. As well as for compensation, loss, and/or replacement, if goods and/or services received are not under the agreement and not as they should be.

## 2) Responsibilities of Related Business Actors Circulation of Fake Shampoo

Civil law arranges that every existing demand responsibility answer must have a clear basis. Can be interpreted as something the thing that gives rise to it right law for somebody to use to prosecute other people. Thus, which is in the form of the thing that gives rise to obligation law for other people it's useful to give responsibility the answer.

Civil law study responsibility is divided into two, namely errors and risks. Somebody required a responsible answer because of his mistake actions, whether in the form of error or negligence. There is a possibility somebody responsible answered no because of the error, rather because he chose to risk in position the law is thus formed in which it is obligatory to be the responsible answer. Both of them cause some consequences as well as far-reaching consequences.

Perpetrator businesses must protect consumers in this case because between perpetrator businesses and consumers has happened connection contractual requirements party perpetrator business responsible answer if default this is under the principle of *the privity of contract* existence connection contractual so There is not quite enough answer.<sup>10</sup> Many perpetrators less

<sup>9</sup>Alfina Maharani, Adnand Darya Dzikra, (2021). *Function Protection Consumers and the Role of Protection Institutions Consumers in Indonesia: Protection, Consumers and Business Actors (Literature Review)*, Vol. 2, Issue 6, p. 663.

<sup>10</sup>Desy Ary Setyawati, Dahlan, M. Nur Rasyid. (2017). *Protection for Consumer Rights and Responsibilities of Business Actors in Agreements Transaction Electronics*, Syiah Kuala Law Journal: Vol. 1, No. 3, p. 44.

effort to realize not quite enough the answer is to protect consumers or guarantee safety and security in the consumption of the products it produces.<sup>11</sup>

If one of them happens which events cause losses to consumers, such as losses caused at the time use or consume something product, then what must be done is look for because there exists something causing event that loss. In the case of law civil can look for two possibilities that is loss because exists previous default has happened in connection law form agreement, or occurrence loss because the existing deed opposes which law was not a connection law previously.<sup>12</sup>

Not quite enough answer perpetrator efforts in the protection of consumers can categorized into 3 (three) aspects, namely:

1. Prohibited activities to perpetrator business;
2. Fulfillment rights consumer;
3. Standardization of quality production.<sup>13</sup>

Prohibited activities to perpetrator business can be understood as something prohibition actions that are not can harm the quality of goods. Perpetrator businesses are required to provide quality products to fulfill the rights of consumers.

In general, demands change loss on losses experienced by consumers as a consequence use of products, whether in the form of loss material, physical or soul, can based on several provisions that have been mentioned, which are in broad outline only there are two categories, namely demands change loss based on default and demands change loss based on deed oppose law.<sup>14</sup> There are differences principal between demands change losses based on default with claims change losses based on actions that violate the law. On-demand change loss based on default, then the defendant and the plaintiff first have ties in an agreement. Compensate for losses incurred because existing default is a consequence of no fulfilled obligation main or obligation additional forms obligation on performance main or obligation guarantee/ guarantee in the agreement forms this default can be in the form of:<sup>15</sup>

- a. Debtor No fulfill performance The same very;
- b. Debtor late in fulfilling performance;
- c. Debtor achievement no as it should be.

It happens default party debtor in an agreement, bringing the consequences are not wearing for the debtor, because the debtor must:<sup>16</sup>

- a. Replace loss;
- b. Things that become object engagement, since happen default become not quite enough sue debtor;
- c. If the engagement arises from reciprocal obligations, creditors can request cancellation (termination) of the agreement.

Meanwhile, to avoid loss for creditors because of default, the creditor can demand one of five possibilities:

- a. Cancellation (termination) of the agreement;
- b. Fulfillment agreement;
- c. Compensation payment loss;

<sup>11</sup>Abuyazid Bustomi. (2018). *Responsibilities of Business Actors Loss Consumers*, Solutions: Journal of the Faculty of Law, University of Palembang, Vol. 16, no. 2, p. 155.

<sup>12</sup>Aulia Muthiah. (2016). *Responsibilities of Business Actors to Consumer About Food Safety in the Perspective of Protection Law Consumer*, Dialogia Iuridicia, Vol. 7 No. 2, p. 3.

<sup>13</sup>Ali Mansyur, Irsan Rahman, *Op.cit*, p. 6.

<sup>14</sup>Ahmadi Miru & Sutarman Yodo. (2004). *Protection Law Consumer*. Jakarta: PT RajaGrafindo Persada, p. 127.

<sup>15</sup>Purwahid Patrik. (1994). *Basics of Engagement Law (Emerging Engagements from agreement and of Constitution)*. Bandung: Mandar Maju, p. 11.

<sup>16</sup>Purwahid Patrik, *Ibid*, p. 11.

- d. Cancellation agreement accompanied by change loss;
- e. Fulfillment agreement accompanied by change loss.

Demands change losses based on actions that violate the law no need is preceded by an agreement between producers with consumers, so demand change loss can be done by everyone the injured party, though no once there is a connection agreement between producers with consumers. Therefore, party all three can demand change loss.<sup>17</sup> To demand change loss, the loss must be a consequence of the deed violating the law. This is meaningful that to be able to demand change loss, one must fulfill elements as follows:

- 1) Some actions violate the law;
- 2) There are losses;
- 3) There's a relationship causality, between deed violating law and damages;
- 4) There is a mistake.

Three basic demands change loss consumers, the third base demands are demands because of negligence (negligence), demands because of default/renegeing promises (breach of warranty), and demands based on theory not quite enough to answer absolute (strict product liability).<sup>18</sup> Not quite enough answer based on negligence is something principle, not quite enough characteristic answer subjective, that is something, not quite enough responsibility determined by behavior producer. This subjective nature can be found in the formula about negligence theory, with formulation as follows: "the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation."<sup>19</sup>

The principle not quite enough to answer absolute (strict liability) is the basic responsibility answer, so consumers are not required again to prove the mistake perpetrator's effort, this is because this principle is the basic responsibility answer it's don't an error but the perpetrator's business is the directly responsible answer as risk.<sup>20</sup> In principle, responsibility answers absolute no again important whether there is no error, but rather the perpetrator is the directly responsible business answer on losses caused by non-conforming products.

There is a connection because consequence between aspect prohibited activities to the perpetrator business as well as the fulfillment rights consumer. If the perpetrator business can implement prohibited activities they will directly realize the rights of consumers. Therefore, prohibited activities of the perpetrator business as well as the rights consumer are connected because of resulting consequences from rights as well as obligations. Prohibited activities to perpetrator business as well as rights consumer manifestation of the real origin of the right as well as obligation perpetrator businesses and consumers. Prohibited activities to perpetrator effort, fulfillment rights consumers and standardization quality production is something mandatory unity done in tandem because matter the is because of consequence from the right as well as obligation perpetrator business.

Negligence producers which resulted in the emergence of loss of consumers are a factor deciders, the right consumers, to apply demands change loss to the producer. Besides factor error or omission manufacturer, demands change loss based on negligence producer also submitted other evidence, namely: first, parties defendant is a true manufacturer and must do possible actions to avoid loss to the consumer. Second, producers do not carry out obligations to guarantee quality the product complies with standards that are safe for consumption or use.

<sup>17</sup>Purwahid Patrik, *Loc.cit*, p. 129.

<sup>18</sup>Jethro K. Lieberman and George J. Siedel. (1989). *Legal Environment of Business*. Harcourt Brace Jovanovich, p. 264.

<sup>19</sup>Garner A Bryan. (1999). *Black's Law Dictionary*, Seventh Edition. St. Paul, Minnesota: West Group, p. 1065.

<sup>20</sup>Aulia Muthiah. (2018). *Protection Law Consumer Dimensions of Positive Law and Sharia Economic Law*. Yogyakarta: Pustaka Baru Press, p. 136.

Third, consumers suffer loss. Fourth, negligence producer is contributing factors exists loss to consumers (relationships because of consequence between negligence and loss consumer).<sup>21</sup>

Deciding not quite enough answer perpetrator business there is a link in protecting consumers, therefore the facts that exist in the events that give rise to loss perhaps assessed as something deed opposes the law. Has means that the perpetrator business deed opposes the law, whether in the form of a violation of the rights of consumers, or the actor business does acts contrary to obligations of the law alone, against decency, or those who have done something contrary to propriety as well as association life community in carrying out his business.

Article 19 paragraph (1) of the Law Number 8 of 1999 concerning the Protection Consumer explains that “Perpetrators business responsible answer give change make a loss on damage, pollution, and/or loss consumer consequence consume goods and/or services produced or traded.” From art the can is known that not quite enough answer perpetrator business covers not quite enough answer change loss on damage, bear it answer change loss on pollution and liability answer change loss on loss consumer. Based on the matter the exists product defective goods and/or services are not the only base accountability perpetrator business. This is meaningful because not quite enough answers to the perpetrator business to cover all losses experienced by the consumer.

Related circulation shampoo, this counterfeit means that consumers are seriously harmed due to harmful products from the perpetrator business. As regulated in Article 19 paragraph (2) of Law Number 8 of 1999 concerning Protection Which consumer explains that “Compensation as referred to in paragraph (1) can form refund or replacement similar or equivalent goods and/or services value, or care health and/or gifts compensation under the provisions regulation current regulation. Can be seen that is appropriate perpetrator business can give change loss to consumer related circulation shampoo false as has been regulated in Article 19 paragraph (2) of the Law Number 8 of 1999 concerning the Protection Consumer.

## CONCLUSION

Protection consumer related circulation of shampoo can seen from provision Article 45 paragraph (1) of Law Number 8 of 1999 Concerning Protection which the consumer explains that everyone harmed can sue the perpetrator business through an agency in charge to finish a dispute between consumers and actors’ effort or through justice in the environment justice general. Meanwhile, in Article 1365 of the Civil Code should seller of shampoo must be accountable related shampoo the fakes he sells Because can harm consumers, the responsibility in question namely to replace loss.

Not quite enough answer perpetrator business related circulation shampoo false regulated in Article 19 paragraph (2) of the Law Number 8 of 1999 concerning Protection Consumers are the core change make a loss can form refund or replacement similar or equivalent goods and/ or services value, or care health and/or gifts compensation under the provisions regulation current regulation. Can be seen that is appropriate perpetrator business can give change loss to consumer related circulation shampoo false as has been regulated in the article. The government has made a constitution to protect consumers to understand and comprehend rights as well as their obligations which are regulated by law, and consumers expect can more smarter in choosing the product they want to consume. Perpetrator businesses are obliged to act well, and necessary enhancement of quality sales and supervision of perpetrator efforts to get products sold to perpetrator business in condition good and not detrimental to the consumption consumer.

<sup>21</sup>Arthur Best. (1997). *Torts Law Course Outlines*. Aspen Law and Business, p. 269.



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