

Legal Protection to Consumers Against Hoarding Masks as Consequences of The Spread Of Covid-19



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ABSTRACT: This study discusses issues regarding consumer protection, especially legal protection to consumers as mask purchaser based on Law Number 8 of 1999. It also discusses dispute settlement towards business actors as mask hoarders which is clearly affecting consumers. Researcher implemented the normative juridical research, which used library method by examining various secondary data sources in the form of books, journals, legislation and other legal writings related to research discussion. The results of this study indicate that legal protection for consumers who purchase masks based on Law Number 8 of 1999 is to guarantee and strictly regulate consumer rights and impose obligations on business actors who selling masks in the form of aspect which is allowed and prohibited. The settlement of disputes against business actors who hoard masks that harm consumers are executed through the General Court (litigation) by filing a lawsuit, and also through the Consumer Dispute Settlement Agency (non-litigation) which is carried out by conciliation, mediation, or arbitration.

KEYWORDS: legal protection, hoarding masks, consumer.

INTRODUCTION

Basically consumer protection has been regulated in Law Number 8 of 1999 concerning Consumer Protection. However, the regulation on consumer protection is not only contained in Law Number 8 of 1999 concerning Consumer Protection, but also contained in Law Number 7 of 2014 concerning Trade. This is as contained in Article 5 of Law Number 7 of 2014 concerning Trade which states that:

1. The government shall regulate Domestic Trade activities through policies and controls.
2. Policies and controls of Domestic Trade as referred to paragraph (1) is directed at:
 - a. increase in the efficient and effective Distribution;
 - b. improve the business climate and business certainty;
 - c. integration and expansion of the domestic market;
 - d. improve of access to markets for Domestic Products; and
 - e. consumer protection.

Indirectly, Law Number 7 of 2014 concerning Trade also provides protection to consumers regarding the supply and stabilization the price of products. This is regulated in Article 26 paragraph (2) of Law Number 7 of 2014 concerning Trade which states that guarantee of supply and price stabilization of necessities and essential goods to maintain price affordability at the consumer level and protect producers income. Consumer protection law is part of consumer law which contains principles or rules that are regulating and also contains characteristics that protect consumers.¹

Based on researchers from the Bandung Institute of Technology (ITB) predicting, the spread of Covid-19 in Indonesia will peak in the second or third week of April and end in late May or early July 2020.²

Regarding this arrangement, during Covid-19 pandemic, masks are an essential item that became one of shields for community to protect themselves from transmission of virus while carrying out their activities. Covid-19 is a contagious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This disease was first identified in Wuhan, China in 2019. The most

¹ Az Nasution, *Consumers and Consumers: Social, Economic, and Legal Overview of Indonesian Consumer Protection*, (Jakarta: Pustaka Sinar, 1995), hlm 65.

² Kompas.com, "Prediction of Corona Spread in Indonesia Changes, Ends Early June", accessed from <https://www.kompas.com/sains/read/2020/03/23/115440523/prediksi-penyebaran-corona-di-indonesia-berubah-berakhir-awal-juni>, on May 01, 2021.

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common symptoms of COVID-19 are fever, cough, shortness of breath, muscle aches, phlegm, diarrhea, sore throat, loss of smell and abdominal pain. President Joko Widodo announced the first case of COVID-19 in electronic media that the patients, a mother and her daughter had been in contact with a Japanese citizen who were tested positive infected corona virus. Researchers at the Bandung Institute of Technology (ITB) predicted that Indonesia's corona virus epidemic peak would occur in the second or third week of April and end in late May or early July 2020.

Based on the notification by government, then community began to purchase some basic goods at traditional stores, markets, supermarkets and agents which sell daily necessities. From these needs, people began to buy health equipment, one of which was masks. The increased demand for masks caused a shortage in markets, as a consequence its price became expensive. Masks are one of medical devices to reduce the likelihood of transmission of infection by preventing the spread of respiratory secretions. This induces business actors to manipulate the market price, by hoarding masks until the market price soars and then distributed or through an agreement between business actors by exploitative pricing of masks on market. The demand of masks shifts up, causing the price to rise up as well, so prices are still in the context of market law.

In actual, there are still cases of hoarding masks during the pandemic. One of hoarding cases occurred in Makassar. The perpetrators carried out their actions, started by purchased at pharmacies throughout Makassar, Gowa and Takalar, then sold 200 boxes containing thousands of masks to New Zealand.³ Hoarding masks is the primary reason for the rise in the price of masks.

The data collection technique in this study used library research which was carried out by examining various secondary data sources in the form of books, journals, legislation and other legal writings related to the research discussion. The analysis technique carried out on legal materials that had been collected by author was carried out deductively, namely by drawing conclusions from a general problem to the concrete problems which was encountered. This is done to answer the legal issues in this research.

DISCUSSION

Legal Protection for Consumers as Buyers of Masks Based on Law Number 8 of 1999

Consumers are people who use products and/or services available in community, for their own interests, their families, other people, other living creatures and not intended for trading. Consumer is an important aspect in trading process, therefore their rights must be protected by law in every commercial transaction.

Providing guarantees for consumer protection is a step to ensure the continuity of business activities in a country. In addition, trading as the main driver of a reliable and healthy economy, it is needed to develop a competitive advantage and should be supported by good governance. Good government in this point refers to a government that has implemented the principles of "good governance" and supported by good legal institutions as well as good laws and regulations.⁴

Aspects of law enforcement on consumer protection attempted to provide convenience to community (consumers), because by implementing law enforcement on consumer protection, the legal impact is business actors as producers will be careful towards legal risks, indirectly business actors will manage to improve the quality of their products.⁵

The existence of consumers is very unlimited with multiple strata affects producers to execute marketing and distribution activities of goods or services in the most effective way in order to fulfill consumers needs. For this reason, all approaches are sought so that they may have various impacts, including conditions that lead to negative actions and even not commendable starting from bad intentions. Other negative impacts that might occur, such as regarding the quality of goods, unclear and misleading information, counterfeit and so on.

One of the negative impacts was occurred during Covid-19 pandemic. At that time masks as an essential item that became one of the shields for community to protect themselves from dissemination of virus while carrying out their activities.

Covid-19 is a contagious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). This disease was first identified in Wuhan, China in 2019. The most common symptoms of COVID-19 are fever, cough, shortness of breath, muscle aches, phlegm, diarrhea, sore throat, loss of smell and abdominal pain. President Joko Widodo announced the first case of COVID-19 in electronic media that the patients, a mother and her daughter had been in contact with a Japanese citizen who were tested positive

³ Imas Novita Juaningsih, "Application of Criminal Sanctions for Hoarders of Masks in Indonesia During the Covid-19 Pandemic", 'Are: Law and Justice Bulletin, Vol. 4, No. 1 (2020), page. 78

⁴ Ali Mansyur dan Irsan Rahman, "Law Enforcement of Consumer Protection as an Effort to Improve the Quality of National Production", Journal of Legal Reform Volume II No. January 1 - April 2015, page. 2

⁵ *Ibid.*, hlm. 3

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infected corona virus. Researchers at the Bandung Institute of Technology (ITB) predicted that Indonesia's corona virus epidemic peak would occur in the second or third week of April and end in late May or early July 2020.⁶

At the early period of Covid-19 pandemic in Indonesia, until the first case was announced, masks were only recommended for patients and health workers. This policy follows WHO advice, which prioritizes the use of masks for those who are at risk. However, the United States Centers for Disease Control and Prevention (CDC) and WHO issued new recommendations, masks need to be worn to prevent people infected with this virus. As a consequence, it arises shortage of masks and increased market prices in some e-commerce. Thus, CDC and WHO appealed to the public the usage of cloth masks, since medical masks are recommended for health workers, especially when they are in the Covid-19 risk zone.⁷

The application of masks alone is not very effective in preventing the spread of this virus. WHO mentioned that wearing a mask alone does not guarantee to stop this infection and is recommended to be used only by people who are infected. Other prevention methods are needed, such as maintaining hand hygiene, respiration and avoid direct contact or keep distance with someone suspected of being exposed to this virus.

Then, during the Covid-19 pandemic, the price of masks became increasingly expensive because many people were hunting for it due to the outbreak of corona virus or Covid-19. Concerns about Covid-19 triggered a shortage of N95 brand masks, then traders set the price significantly increased. The previous price was around Rp. 200,000, but due to Covid-19 outbreak and many people search for N95 masks, finally the price of N95 masks immediately rose to Rp. 350,000. Besides its expensive price, N95 masks were difficult to obtain.⁸

In the midst of the current situation and condition of Corona (Covid-19) outbreak, some irresponsible sellers were hoarding masks which causes consumers met difficulties to obtain masks. As a consequence, the stock of goods is unstable and even a shortage of products. In this situation, then the sellers started to sell masks and gain profits by hoarding masks and other medical devices which effect the price uncontrollably soar higher than the usual price.

In order to avoid the spread of corona virus, people are competing to get masks. In another situation, the police investigated and immediately confiscated the hoarding of masks by unscrupulous persons stored in an apartment as many as 350 boxes of masks. Most of us neglect the law and prioritize profit in carrying out an activity such as hoarding masks and Personal Protective Equipment (PPE).⁹

Referring to this case, the act of hoarding masks and raising prices beyond the reasonable limit has basically violated consumer rights as regulated in Law Number 8 of 1999 concerning Consumer Protection. The right of Consumers are:

1. to obtain comfort, security, and safety in using or consuming goods and/or services;
2. to choose goods and/or services and obtain such goods and/or services in accordance with the promised conversion value and the promised conditions and guarantees;
3. to obtain correct, clear, and honest information on the condition and warranty of goods and/or services;
4. to be heard in expressing opinion and complaints on the goods and/or services;
5. to obtain proper advocacy, protection, and settlement in the consumers' protection disputes;
6. to obtain consumers' training and education;
7. to receive proper and honest and nondiscriminatory treatment or services;
8. to obtain compensation, and/or redress substitution, if the goods and/or services received are not in accordance with the agreement or not received as requested;
9. to obtain rights as regulated in the other provisions of the law.

Law as the only instrument that regulates people's lives is required to always keep up with the times by regulating new things that have never existed before, such as regulations on technology, transportation, including business arrangements, and so on. The

⁶Kompas.com, "Prediction of Corona Spread in Indonesia Changes, Ends Early June", accessed from <https://www.kompas.com/sains/read/2020/03/23/115440523/prediksi-penyebaran-corona-di-indonesia-berubah-berakhir-awal-juni>, on May 01, 2021.

⁷ Yuviniar Ekawati, A Year's Flashback of Corona: Stories of Rare Masks, The Price is Up to Millions, <https://health.detik.com/berita-detikhealth/d-5477105/kilas-back-setahun-corona-cepat-masker-rare-prices-to-millions/>, on 07 June 2021

⁸ Achmad Reyhan Dwianto, Rare Stock Due to Corona Virus, N95 Masks Are Expensively Sold at the Scout Market, <https://health.detik.com/berita-detikhealth/d-4875914/stock-rare-due-virus-corona-masker-n95-dijual-mahal-at-market-scout>, on 07 June 2021

⁹ Yuridis.id, Expensive Mask Prices Due to Corona? Unscrupulous Sellers Can Be Snared by Law!, <https://yuridis.id/harga-masker-mahal-hasil-corona-oknum-penjual-dapat-di-jerat-Hukum/>, on June 8, 2021

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existence of these arrangements is something that can provide certainty to the public regarding the rights and obligations of consumers that have been regulated. In general, there are four internationally recognized rights:¹⁰

1. Right to obtain clear information;
2. Right to obtain security;
3. Right to vote;
4. Right to be heard.

Based on these rights, there are several rights that have been violated by business actors who trade mask prices beyond reasonable limits, namely the right to choose goods and/or services and obtain these goods and/or services in accordance with the promised conversion value and condition and warrant, obtain correct, clear, and honest information on the condition and warranty of goods and/or services, the right to receive proper and honest and non-discriminatory treatment or service, to obtain compensation, redress and/or substitution, if the goods and/or services are not in accordance with the agreement or not as received as requested.

Apart from consumer rights, the consumer protection is also provided through the imposition of obligations to business actors who selling masks. The obligations of business actors are regulated in Article 7 of Law Number 8 of 1999 concerning Consumer Protection which states that the obligations of business actors are:

1. having good faith in doing business;
2. provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as provide explanations of the use, repair and maintenance;
3. treat or serve consumers correctly and honestly and non-discriminatory;
4. To guarantee the quality of goods and/or services produced and/or traded based on the provisions of the applicable quality standards of goods and/or services
5. provide an opportunity for consumers to test, and/or try certain goods and/or services as well as provide guarantees and/or warranties on manufactured and/or traded goods;
7. compensate, indemnify and/or replacement for losses arising from the use, application and utilization of traded goods and/or services;
8. provide compensation, indemnify and/or replacement if the goods and/or services received or utilized are not in accordance with the agreement

Besides these obligations, there is also a form of consumer protection for masks buyers which is regulated in Law Number 8 of 1999 concerning Consumer Protection by limiting the actions of business actors on prohibited behaviour. This is regulated in Article 9, Article 10, Article 11, Article 12, Article 13, Article 14, Article 15, Article 16, and Article 17 of Law Number 8 of 1999 concerning Consumer Protection.

Consumer protection in addition to being regulated in Law Number 8 of 1999 concerning Consumer Protection, there are also provisions in Law Number 7 of 2014 concerning Trade which provide a protection for consumers as regulated in Article 3 of Law Number 7 of 2014 concerning Trade which states that the Regulation of Trading activities aims to:

1. increase national economic growth;
2. increase the utilization and trade of Domestic Products;
3. increase business opportunities and create jobs;
4. ensure the smooth distribution and availability of basic necessities and essential goods;
5. improve trade facilities, and infrastructure;
6. enhance partnerships between large businesses and cooperatives, micro, small and medium enterprises, as well as the Government and the private sector;
7. increase the competitiveness of national products and businesses;
8. improve the image of Domestic Products, market access, and national exports;
9. increase trading goods in creative economy-based products;
10. improve consumer protection;
11. increase the use of SNI;
12. increase the protection of natural resources; and
13. improve supervision of goods and/or services traded

DISPUTE RESOLUTION AGAINST BUSINESS ACTORS WHO HOARD MASKS THAT HARM CONSUMERS

High price of masks during Covid-19 outbreak becomes an issue for community as consumers who buy masks.

¹⁰ M. Shidqon Prabowo, *Legal Protection of Indonesian Hajj Pilgrims*, Rangkang, Yogyakarta, 2010 page 38.

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In order to provide legal protection for consumers who buy masks, there are procedures that have been regulated by laws and regulations in resolving disputes regarding the high price of the masks. Consumer disputes involved business actors and consumers who demand compensation for damage, pollution, and/or suffer losses due to consuming goods and/or utilizing services produced or traded.¹¹

Disputes between consumers and business actors selling masks have been regulated in basically a business problem, the resolution of which has been regulated in Law Number 8 of 1999 concerning Consumer Protection. Dispute resolution in the regulation is basically carried out through the Judicial Institution and the Consumer Dispute Settlement Agency, which is the agency tasked with handling and resolving disputes between business actors and consumers. This is based on Article 45 of Law Number 8 of 1999 concerning Consumer Protection which states that:

1. Every consumer who has suffered damage may file charges against the business actor through the foundation which is responsible for settling disputes between consumers and business actors or through a court under the jurisdiction of general court.
2. Settlement of consumer disputes can be conducted in a court or outside the court based on the voluntary choice of the disputing parties.
3. Settlement of disputes outside the court as referred to in section (2) above shall not eliminate criminal responsibility as regulated in the Law

Settlement of disputes that occur between consumers and business actors can be resolved through litigation (through the courts) and non-litigation channels (outside the courts). Settlement through litigation institutions is considered less efficient in terms of time, cost, and energy, therefore settlements through non-litigation institutions are widely chosen by the community in resolving the dispute. However, the court will still be the last option if there is no agreement at the non-litigation level.

The Consumer Dispute Settlement Agency (BPSK) was established as a solution to avoid resolving consumer disputes through the general courts. Proceedings in general courts take a longer time and cost a lot of money, while in consumer dispute resolution procedural law is held faster and inexpensive.

According to Law Number 8 of 1999 concerning Consumer Protection, duties and authorities of the consumer dispute settlement agency shall be:

1. To handle and settle consumer disputes through mediation or arbitration or conciliation,;
2. to provide consultation for consumer protection,;
3. to conduct supervision against the inclusion of standard clause;
4. to report to the public investigators if there are any violations to the provisions of this law;
5. to receive written or oral complaints from the consumers regarding the violations against the consumers protection;
6. to investigate and examine the consumers protection disputes;
7. to summon the entrepreneurs who are accused to have violated against The consumers' protection;
8. to summon and bring witnesses, witness experts and/or each and every one considered to have known that there has been violation against this law;
9. to request assistance from the investigators to bring the entrepreneurs, witnesses, witness experts or each and every one intended by points g and h above who are not willing to fulfill the summon by the consumer dispute settlement agency;
10. to obtain examine and/or evaluate the letters, documents or other evidence to be used for investigation and/or examination;
11. to decide and determine if the consumer has suffered any damages or not;
12. to decide and determine if the consumer has suffered any damages or not;
13. to impose administrative sanctions against the entrepreneurs who have violated this law.

In this case, business actors who hoarding or sell masks at prices above the average which cause consumers suffer losses, can be proposed to the Consumer Dispute Settlement Agency by consumers who have been have been harmed.

BPSK is authorized by UUPK to decide and determine whether or not there is a loss on the part of consumers, notifying the verdict to business actors who have violated consumer protection, and imposing administrative sanctions on business actors who violate the provisions of the UUPK. In handling consumer dispute resolution, the person authorized to determine who will be the assembly in resolving consumer disputes is the chairman of the BPSK.¹²

Consumer dispute resolution through BPSK could be conducted in 3 stages. First, the application stage which includes the requirements for complaints to settle a dispute resolution without a lawyer; second, the trial stage which could be carried out by

¹¹Regulation of the Minister of Trade of the Republic of Indonesia Number 06/M-Dag/Per/2/2017 concerning the Consumer Dispute Settlement Agency

¹² Rahmi Rimanda, "The Existence of the Consumer Dispute Resolution Agency (Bpsk) as a Quasi Judicial Institution in Indonesia", Journal of Bina Mulia Hukum, Volume 4, Number 1, September 2019, page. 19

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means of conciliation, mediation and arbitration; and third, the decision stage which must be completed not later than 21 working days from the date the lawsuit is received, followed by the execution of the decision.¹³

Conciliation

In KMPP 350/MPP/12/2001 Article 1 point 9 explains that conciliation is the process of resolving consumer disputes outside the court with BPSK intermediaries to confront the disputing parties, and the settlement is handed over to the parties. This type of settlement is carried out by the disputing parties, which are consumers and business actors, accompanied by an active Assembly in order to resolve it.

Mediation

Settlement of disputes by means of mediation based on KMPP 350/MPP/12/2001 Article 1 number 10 explains that mediation is a process of resolving consumer disputes outside the court with BPSK intermediaries as advisors and the settlement is left to the parties, namely consumers and business actors. Settlement in this way is carried out by consumers and business actors in dispute accompanied by an active assembly (Article 5 paragraph 2 KMPP 350/MPP/12/2001). With the intention of the Assembly acting as a Mediator by providing advice, suggestions and other efforts in resolving disputes. However, the decision or agreement in dispute resolution remains fully left to the consumers and business actors in the dispute and then stated in a written agreement between the disputing parties. Dispute resolution through mediation or conciliation is entirely left to the disputing parties to obtain an agreement in determining both the form and amount of compensation received by the consumer. This agreement is stated in a written agreement and signed by both disputing parties. This is intended as evidence for the preparation of the official report by the BPSK officers.

Arbitration

In contrast to mediation and conciliation based on Article 1 number 11 KMPP 350/MPP/12/2001, Arbitration is a process of resolving consumer disputes out of court in which the consumer and business actors in the dispute submit the full settlement to BPSK. In resolving consumer disputes out of court through arbitration, the implementation is different from dispute resolution through conciliation or mediation. In this way, the assembly acts actively to reconcile the disputing parties if an agreement is not reached. The first action to provide explanations to consumers and business actors who are in dispute about the laws and regulations in the field of consumer protection and are given equal opportunities to consumers and business actors to explain the disputed matters. In this way the decision/agreement in resolving this dispute is fully the authority of the assembly formed by the BPSK.

CONCLUSION

Based on the explanation above, it shows that legal protection for consumers as buyers of masks based on Law Number 8 of 1999 is by guaranteeing and firmly regulating consumer rights in the form of the right to choose and obtain goods and/or services in accordance with the exchange rate and the promised conditions and guarantees, the right to obtain valid, clear and honest information regarding the conditions and guarantees of goods and/or services, the right to be treated or served correctly and honestly and non-discriminatory, the right to obtain compensation, and/or replacement, if the goods and/or services received are not in accordance with the agreement or not properly and impose obligations on the mask seller business actor in the form of permitted and prohibited actions.

The settlement of disputes against business actors who hoard masks that harm consumers can be done through the General Court (litigation) which is carried out by filing a lawsuit, and also through the Consumer Dispute Settlement Agency (non-litigation) which is carried out by conciliation, mediation, or arbitration.

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