

Government's Efforts to Protect Pertamina's Consumer Rights for Losses Obtained

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Abstract

Disadvantages that are usually found by consumers are usually inappropriate dosages, inappropriate octane values, prices that are different from regulations issued by the Government to accidents such as an explosion at a Pertamina pump that threatens the lives of the pump owner or Pertamina consumers. This research is expected to be able to explain the Government's efforts to protect Pertamina consumers who experience losses. The method chosen for this research process is normative juridical, where this method is used to examine rules, doctrines and principles that are able to answer the problems of this research. The approach chosen to answer the problems of this research is the legal and conceptual approach. The primary source in reviewing this research is legislation that is closely related to consumer protection. Data collection techniques and processing of legal materials use library methods or library research. The results of this study Pertamina business owners must always be responsible for consumer losses. This is known as the Presumption of Always Responsible. Consumers can file a lawsuit for default if there is a previous agreement and it can be an illegal act if there is no mutual agreement but the consumer feels aggrieved. The fastest way to resolve this dispute is through the non-litigation route involving the BPSK compared to the litigation route using the Court. There are three general options in settlement through non-litigation steps, namely mediation, arbitration and conciliation

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Introduction

To meet the daily needs of people all over the world, the natural resource that is most used besides air and water is fuel oil. (Chowdhury et al., 2013) In practice, fuel oil, which is then referred to as BBM, has crucial strengths on a sectoral scale in the world. Not only in the natural sphere, but closely related to the economic sector and the safety of humans or consumers. In Indonesia, the law has regulated Oil and Gas in Law Number 22 of 2001 concerning Oil and Gas (*MIGAS*), which was later called the Oil and Gas Law.

PT. Pertamina is a state-owned officially certified Public Fuel Filling Station, where all buying and selling activities must follow the rules of Article 1 paragraph 14 of the Oil and Gas Law. Not only that, in Government Regulation Number 31 of 2003 dated June 18, 2003 stated that PT. Pertamina (previously named PN PERTAMIN & PN PEMINA) which carries out all upstream to downstream business activities. PT. Pertamina has also pocketed a business license granted by the government where this letter makes PT. Pertamina is the government's official oil and gas supplier, so it has official evidence in carrying out fuel trading activities. (Jelang Fajar Putra Perdana et al., 2020) However, it should be noted that the distribution of gas stations belonging to PT. Pertamina is often difficult to find in small towns or villages that are not densely populated, resulting in high demand for fuel that is not in line with the availability of its own supply.

The community's high demand for fuel has opened up opportunities for small businesses to sell fuel in retail to the public at different prices, security and safety from

official state-owned fuel dealers (Zamroni 2018). This is done because it is expected to provide opportunities for primary or secondary sources of income. The community created a private company called Pertamina which is nearly identical to gas stations in terms of general state-owned operations but uses very risky equipment due to low market prices and lacks safety certification. (Dika Farizal Utomo, 2017)

With *Pertamini*, this *BBM* kiosk is also beneficial for the community because *Pertamini* is easy to reach from locations far from Pertamina. Because so many people have opened Pertamina kiosks in the local community area, it is now easier for consumers to find fuel. However, besides these good uses there are also bad consequences associated with this business activity. Safety is a risk from any of them. Consumers who refuel at *Pertamini* stations are also affected by this hazard, apart from petrol suppliers. (Blue, 2020)

We need to be aware of the fact that every retailer who uses the term *Pertamini* deliberately chooses a name that sounds close to Pertamina so that consumers don't hesitate to fill up their gas there. This is due to the general public's ignorance of the fact that *Pertamini* is not a legitimate partner of Pertamina. The color scheme and symbol of the structure are designed to be similar to Pertamina gas stations. Some Pertamina's are deliberately built from bricks and cement structures that are simple and sturdy so that they are similar to Pertamina's mini pumps. (Puput Wulandari Panjaitan, 2018)

Quoted from the Kompas page (on April 29 2022, 1 passenger car and 3 motorbikes were burnt to the ground in Grobogan. This was because when consumers filled up fuel through a Pertamina machine at the kiosk opposite their house, the fuel spark unknowingly hit the socket and caused a fire that started Scorched the *Pertamini* kiosk as well as several vehicles. (Nugroho, 2022) The absence of an *APAR* (Light Fire Extinguisher) at the kiosk caused the fire to quickly spread and engulf everything that was there. From this case, we can see that apart from the unsafe business Pertamina kiosks, the unavailability of fire extinguishers shows the incompleteness of this effort to reduce or avoid the risk of fire from shorting the machine (Achmad & Ida, 2019)

Apart from not fulfilling the requirements for running the Downstream Business above, Pertamina kiosk business actors also do not fulfill some or all of consumer rights. We can find these consumer rights in Article 4 of Law Number 8 of 1999 regarding consumer protection, including:

- a. The right to comfort, security and safety in consumption.
- b. The right to choose goods or services and obtain goods or services in accordance with the exchange rate and condition of the goods.
- c. Rights regarding the correctness of information, honesty regarding the condition of the goods and accompanying guarantees.
- d. The right to be heard input, complaints, and opinions.
- e. The right to obtain protection if there is a dispute.
- f. The right to obtain education and development.
- g. The right to receive fair, correct and honest treatment.
- h. The right to obtain compensation or compensation if the goods or services obtained are not in accordance with what was promised.
- i. Rights contained in other laws and regulations.

According to the results of the description of the background, the researcher wants to examine the rules for protecting the rights of Pertamina consumers against the losses they experience by finding a formula, namely: How are the Government's Efforts to Provide Pertamina Consumer Rights for the Losses They Get Based on Law No. 8 of 1999 About Consumer Protection?

Materials and Methods

The type of research used is normative (normative legal research). This type of research was used because in this study the authors wanted to find legal rules related to research, legal doctrine, and principles that would answer legal problems or issues in this research. (Isyma Eka Nurmardani & Abraham Ferry Rosando, 2023). According to Johnny Ibrahim, giving a statement that normative research is a scientific research procedure in establishing truth based on the normative side. (Diantha, 2016) It can be said that this type of normative research is a research method and procedure to find a fact of truth that is based on legal scientific logic from a normative perspective..

The statute approach was determined and then used a conceptual approach by looking at the laws and regulations being studied and deviations that might occur. And with a conceptual approach, we are able to see and understand the legal concept behind it and see what values are contained in the relevant rules.

Data collection was carried out using the library research method by reading, quoting, and concluding reading literature that is related to this research. The literature includes journals, books, laws and regulations and other literature covering consumer protection to help fulfill this research material. This data analysis was carried out descriptively, namely by describing the data that had been collected without providing a generalist conclusion. (Iriani et al., 2021).

Results and Discussion

A basic principle of *UUPK* that is always upheld is Product Liability. Product Liability is understood as the legal responsibility of the parties involved in product production (producers, manufacturers), people or entities involved in product assembly (assemblers, processors), product distribution or product sales (distributors, sellers). (Melinda Putri Mulya, 2018) We can find Product Liability in Article 19, Article 27, and Article 28 of the *UUPK* which discuss product dependency. The assumption of liability is regulated by Article 19 of the *UUPK*, the limitation of liability to company operators is regulated by Article 27 of the *UUPK*, and what explains whether or not there is evidence of a violation on the part of the company operator is determined by Article 28 of the *UUPK*. Based on these clauses, it can be concluded that the owner of the company is responsible for the losses of their consumers and then make up for it by replacing the loss with money or new goods. Meanwhile, Article 28 *UUPK* explains whether or not there is a component of company operator error. Then for money the scope of responsibility of business people is explained in article 27 of the *UUPK*.

There needs to be accountability for the actions of the owner of the *Pertamini* company which are detrimental to consumers. Since business owners cannot guarantee the quality or safety of the goods they trade, the concept of Presumption of Liability must be applied to them when they cause injury to consumers. This is based on Article 6 of the Criminal Code, which indicates where business actors do not fulfill their obligations to ensure product quality and safety so that they can be used. This can be proven by measurements made by *Pertamini* where he shows handmade paper made by *Pertamini* fuel sellers. Where this measurement is used to review the fuel measurement value with the form of measurement claimed by Pertamina to be inaccurate. *Pertamini* also charges higher gasoline costs compared to Pertamina's price, where Pertamina's price is in accordance with the fuel price circular from the government. Fuel prices stipulated by Decree of the Minister of Energy and Mineral Resources Number 245.K/MG.01/MEM.M/2022 concerning Basic Price Formulas in Calculating Retail Selling Prices for General Fuel Types, Fuel Types and Diesel Oil as of April 1, 2023 in the Province East Java for 1 liter of Pertamax at a price of IDR 13,300.00 (thirteen thousand three hundred rupiahs) and for 1 liter of Pertalite as of 1 September 2022

at a price of IDR 10,000.00 (ten thousand rupiahs). However, the retail price of fuel sold by *Pertamini* for Pertamax per 1 liter is Rp. 15,500.00 (fifteen thousand five hundred rupiahs), and for Peralite prices per 1 liter is Rp. 13,500.00 (thirteen thousand five hundred rupiahs)

Prohibitions for parties trading goods/services in which the goods/services have calculations that are not in line with the rules have been regulated in Article 8 paragraph (1) letter c *UUPK*. The case of Pertamina's fuel buying and selling activities which harmed Herman Budiono because he paid a higher price than the government's circulation price. As well as the dosage or octane value contained in Pertamax BBM, the quality is unknown because when checked, the seller has never tested the BBM he sells. Then the seller is not willing to be responsible for the losses that arise because the Pertamax fuel purchased by Herman Budiono has a price that does not match the price according to government circulars. In trading an item where the item has a calculation that is not in accordance with the rules, an entrepreneur has violated consumer rights. (Reston Sipta Sihite, 2020) Therefore, the gasoline that Herman Budiono got did not match the price paid. Herman Budiono as a consumer who is protected by the *UUPK* has no doubt that his rights as a consumer have been violated by the Pertamina fuel seller.

Article 4 letter b *UUPK* has stated that consumers basically have the right to choose goods or services according to the exchange rate, conditions and guarantees offered. According to this explanation, it is evident that fraudulent behavior by Pertamina traders has certainly violated consumer rights. As a result, Herman Budiono as a consumer who has suffered a loss must use his right to receive compensation in accordance with the rules in Article 4 letter h *UUPK* which has stated that the aggrieved consumer has the right to obtain compensation for both goods or services obtained and contrary to the agreement.

If the seller of *Pertamini* BBM refuses to compensate Herman Budiono because the Pertamax BBM type purchased has deviated from the HET (Highest Retail Price) paid, this is of course very injurious to consumer rights as mentioned in the previous article. In addition, the Pertamina BBM seller does not carry out his duties and obligations for the business he is running as a seller as stated in Article 7 letter g of the *UUPK* which states that the seller has an obligation to grant compensation rights, compensation, and/or replacement of goods or money. Based on Article 8 paragraph (4) of the *UUPK*, this *Pertamini* BBM seller is prohibited from trading goods and/or services and is obliged to recall goods that have been in circulation because they have violated Article 8 paragraph (1) of the *UUPK*. The essence of Article 8 Paragraph (1) *UUPK* which is not implemented by the *Pertamini* BBM business actors namely:

- business actors may not even be strictly prohibited from producing or even trading their business results if they do not meet the requirements according to regulations,
- business actors do not provide a selling price and dosage according to regulations,
- the business actor provides the condition of the goods that are not in accordance with the product label and the quality is not in accordance with what was agreed,

Not only does the article above explain consumer compensation, the *UUPK* also explicitly states that sellers must compensate all losses suffered by customers because of the impact of the goods they buy and sell which cause losses to consumers. Meanwhile, if he is able to reveal that the losses suffered by his consumers are not a result of his actions, he is released from the obligation to compensate his consumers. The conclusion of the article can be seen that the form of being ready to take all legal responsibility for all the risks of his own actions used by business actors is the (Presumption of Liability Principle.)

The principle of presumption in always being responsible for placing the defendant is always found guilty unless he can prove that he did not make a mistake, so that the responsibility to prove is always on the party being sued. (Jelang Fajar Putra Perdana et al., 2020) Therefore, the burden of proving the act is borne by the defendant. Article 19 of the *UUPK* enforces the Presumption of Liability Principle of accountability because this article stipulates that the seller should be considered legally responsible for consumer losses arising from goods sold by the seller, without any liability from the seller's fault. However, from the seller of *Pertamini* fuel, which has harmed Herman Budiono, it is not in good faith to bear consumer losses as stipulated in the *UUPK*. Even though it is clear that compensating for losses is a form of seller's obligation if the goods obtained from consumers are not in line with the goods previously agreed upon Herman Budiono can take legal action in resolving disputes to obtain his rights as a consumer.

Every customer affected by the business actor to ask for compensation by filing a lawsuit against the business actor. In addition to limiting the ability of consumers who have been harmed to sue the owners of companies that have lost, Article 45 paragraph (1) of the *UUPK* also regulates any avenues in resolving consumer disputes based on non-litigation and litigation. By filing a lawsuit against the defendant's default for an unlawful act, this problem can be resolved through the justice system. If there is a contractual relationship between the two parties, the consumer can file a lawsuit for default. However, if there is no such agreement but the consumer feels aggrieved, a case can be filed as a lawsuit for tort.

With the issuance of Regulation of the Supreme Court of the Republic of Indonesia Number 2 of 2015 concerning Procedures for Settlement of Simple Claims which has been amended by Regulation of the Supreme Court of the Republic of Indonesia Number 4 of 2019 concerning Procedures for Settlement of Simple Claims. When the claim has been submitted to the court with a maximum value of Rp. 500,000,000,000 (five hundred million rupiah). This is stated in Article 3 Paragraph (1) *PMA* RI No.4/2019 concerning Amendments to *PMA* No.2/2015 concerning Procedures for Settlement of Simple Claims. Whereas the dispute must be resolved by a simple lawsuit with the stages regulated in Article 5 of the Supreme Court Regulation Number 2 of 2015, which stipulates the procedure for resolving conflicts with simple litigation stages. According to these rules, the dispute resolution process takes longer with a total of 25 (twenty five) days when compared to the settlement through *BPSK* which is a non-litigation dispute resolution procedure (Kristanto 2014).

According to Article 55 *UUPK* in conjunction with Article 7 Paragraph (1) Decree of the Minister of Industry and Trade, which was later called KMPP No. 350/MPP/Kep12/2001 concerning the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency, consumer dispute resolution must be completed no later than 21 (twenty one) working days after the *BPSK* Secretariat receives the plaintiff's request. Comparing the two regulations, it can be said that *BPSK* certainly has a faster dispute resolution process than the direct litigation process that is in court. Since 25 (twenty five) days is the time needed for conflict resolution, starting with the first trial when the court accepts a simple claim, the time required for dispute resolution in a simple claim will be more than 25 days.

Buyers who feel cheated by business actors can submit a lawsuit in resolving disputes through *BPSK*, which has been stipulated in Article 15 paragraph (1) KMPP No. 350/MPP/Kep12/2001 (Rahman 2018). Given these rules, *BPSK* is a way of resolving consumer disputes outside the court which can be carried out by mediation, arbitration or mediation. (Riris Nisantika & Ni Luh Putu Egi Santika Maharani, 2021) In Article 4 of the Decree of the Minister of Industry and Trade No. 350/MPP/Kep12/2001 has regulated that the management of all disputes with *BPSK* through Conciliation, Mediation or Arbitration must be carried out on a sincere basis from each disputing party and not in the form of a tiered dispute resolution.

Based on Article 5 *UUPK* jo Article 7 Paragraph (2) KMPP No. 350/MPP/Kep12/2001 concerning the Implementation of the Duties and Authorities of the Consumer Dispute Settlement Agency, those who are not quite satisfied with the results of the decision from the BPSK, have 14 days from the decision of the *BPSK*, the issuance aims to submit an objection to the district court. Then they are not happy with the district court's decision and can also submit an appeal to the Supreme Court and there is no legal appeal. (Karjoko et al., 2019) After the BPSK decision was issued and there were no objections to the decision, the execution was immediately carried out by submitting a ruling at the local District Court. Article 5_KMPP_No._350/MPP/Kep12/2001_regarding the Implementation of Duties and Authorities of the Consumer Dispute Settlement Agency regulates BPSK Conciliation which is carried out with several parties conducting disputes only carried out by them and accompanied by Passive Conciliators.

Here, the conciliator only provides facilities in resolving disputes between the two parties and does not intervene in determining the amount of compensation or providing advice and carrying out various instructions for various settlements. Where this provision has been regulated in Article 29 of the Decree of the Minister of Industry and Trade No.350/MPP/Kep/12/2001. Disputing parties, together with actively participating Mediators, resolve their disputes through consumer dispute mediation. Article 31 Decree of the Minister of Industry and Trade Number 1 350/MPP/Kep/12/2001 stipulates that the mediator is actively working to bring the two parties to resolve the dispute as well as providing advice and instructions to resolve the conflict, but the mediator does not intervene in determining the amount of compensation aggrieved party. (Ahead of Fajar Putra Perdana et al., 2020)

The *BPSK* decision will enhance every agreement made by the parties to the dispute following the closing of consolidation and mediation as part of the stages in resolving BPSK disputes, as stated in Article 37 paragraph (2) of the Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/ 2001. According to Article 32 paragraph (1) Decree of the Minister of Industry and Trade Number 350/MPP/Kep/12/2001, the two parties to the dispute choose an Arbitrator from among *BPSK* members to begin the conflict resolution process through *BPSK* Arbitration. After the selection of the Arbitrator with the mutual consent of the two Arbitrator parties, the Arbitrator will try to mediate a settlement between the disputing parties at the first session. If the settlement of the parties cannot be reached, the Arbitrator will be given full control over determining the amount of compensation, which is then stated in the Decision of the Assembly in which the parties must comply with the rules set out in Article 37 paragraph (4) of the Decree of the Minister of Industry and Trade Number 350/MPP/ Kep/12/2001.

Considering the Mediation of the amount and amount of compensation which is based on an agreement between the various parties experiencing disputes, settlement of consumer complaints with parties doing business through BPSK which is carried out by mediation is the right solution. Based on. According to Article 31 letter b KMPP No.350/MPP/Kep12/2001 regarding the implementation of the duties and authorities of the consumer dispute resolution agency, the role of the mediator essentially consists of providing advice and directions on how the parties to the dispute can resolve the dispute.

According to Yahya Harahap, the advantage of conflict resolution is that the resolution approach is oriented towards cooperation in finding compromises, because various parties avoid having to defend personal opinions and support their own evidence and truth. In fact, mediation is a better choice for resolving consumer disputes through a third party, namely BPSK, because in addition to resolving conflicts, it is also based on the agreement of the disputing parties regarding the amount of losses to be paid. (Yahya, 2017) Mediation conflict resolution will occur if the various parties reach an agreement, so that the parties do not need to continue to uphold the facts and truths of each. Of course, in mediation, the parties must

act in good faith to carry out the agreement. According to Article 47 *UUPK* which explains that in resolving disputes outside the court to determine the type and amount of compensation and to ensure that there will be no further consumer losses. Parties in mediation must also have an open mind to find win-win solutions and reach an agreement. In addition, there must also be good faith in carrying out the agreement.

Consumers who suffer losses must be compensated by business owners. Payment of compensation is a form of expression of the responsibility of the business owner for his mistakes and negligence which resulted in consumer losses. Because the presence of *Pertamini* is seen by the public as being comparable to *Pertamina* in terms of accountability, the community is able to use mechanisms to settle both with litigation and outside the court. Consumer protection guarantees have been clearly stated in *UUPK*. If consumers feel aggrieved by business actors, this problem can be handled by taking litigation or non-litigation.

Conclusion

Pertamini business actors must be held accountable for activities that harm consumers. The presumption of liability must always be applied to business owners when they harm consumers because they are unable to guarantee the quality or safety of the products they sell. The problem of consumer compensation offered by the government in terms of protecting consumer rights can be resolved through legal channels by filing a lawsuit against the defendant for committing a default or unlawful act. If the two parties are contractually related, the consumer can file a default lawsuit. However, if there is no mutual agreement and consumers still feel aggrieved, this issue can be filed as an illegal action. In resolving disputes through non-litigation channels with *BPSK* which is less than 25 (twenty five) days is the fastest way than through litigation channels involving the Court. The non-litigation route has 3 ways of resolving disputes, namely mediation, arbitration and consolidation. Mediation is the most appropriate step because this step uses the agreement of the two disputing parties to reach an agreement in which both parties mutually benefit. In addition, the need for good faith in resolving this dispute, because mediation does not require narrow thinking and insisting on maintaining personal opinions.

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