



Legal Protection for Consumer of the Unlicensed Vapor from Drug and Food Supervisory Agency

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Abstract

This research begins with the number of liquid vapor which spread in Indonesia that is not licensed by BPOM, and there is no clear law for liquid vapor, so there is no clarity from legal protection against liquid vapor consumers who are not licensed by BPOM. Therefore, in this research, the formulation of the problem is as follows: Is there legal protection against liquid vapor consumers who are not licensed by BPOM? The purpose of this research is to determine whether there is legal protection against liquid vapor consumers who are not licensed by BPOM. So this research can be useful for subsequent research that has the same theme and beneficial to researchers, liquid vapor consumers and also for the government. The research method used is the normative method. Normative research methods use the statute approach. The result of the research shows that there is a legal protection for liquid vapor consumer who is not licensed by BPOM, which is reviewed from the Law of the Republic of Indonesia Number 36

Year on concerning the health of Article 113 paragraph (1) and Article 114, Law of the Republic of Indonesia Number 8 Year 1999 on Consumer protection Article 8 paragraph (1) c and paragraph (1) i, Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number 4 Year 2017 on the Supervision of the Importation of Drugs into the Territory of Indonesia Article 4 paragraph (1).

Keywords: *Legal Protection, Consumer, Liquid-Vapor*

A. Introduction

In reality, some community activities have become daily activities but have no law, one of them is the electric cigarette. Electric cigarette or usually called as vapor is a community activity that has no legislation. Vapor is the same as conventional cigarettes that have long been used by the people of Indonesia, and vapor has the same function as the conventional cigarettes. Currently, the vapor is being loved most by young people, and even adults also take vapor. This can be known based on the results of research conducted by Diponegoro State University of Semarang that the characteristics of the respondents are mostly electrically smoking male (72.2%), the respondents are the late adolescents (17-25 years) (65.6%), high education (diploma and college) (60.0%), respondents (66.7%) and most of them work as entrepreneurs, and have high income (\geq Rp.2.000.000) (76.7%).¹ Also, Indonesia is among the top 4 cigarette users, according to WHO data, the largest cigarette consumption sequence in the world including China (1.643 billion cigarettes), the United States (451 billion cigarettes), Japan (328 billion cigarettes), and Russia 258 billion stems). While the level of cigarette consumption in Indonesia occupies the fourth position of the five highest in the world, which reaches 260 billion cigarettes in 2009 (WHO, 2009).²

Despite the current sale of liquid circulating in the market, some liquids do not have permission. Basically, in the case of liquid sale or use of vapor, there is no prohibition from the government, but there is no legislation or law. So that it can harm people who act as liquid traders or liquid users, not only liquid sellers are harmed, but consumers or users of liquid also being disadvantaged if something is not desired,³ because there is no clear permit

¹ Delima, Rahayu Istiqomah, et al. "Lifestyle Community of Electric Cigarettes Semarang Vapor Corner", *Jurnal Kesehatan Masyarakat FKM Undip*, 4 (2), (2016)

² Apsari, Damayati, *Users Electronic Cigarette Public Personal Vaporizer Surabaya*, Surabaya: Department of Epidemiology Faculty of Public Health Airlangga University, (2015)

³ Mengenal 4 Bahaya dan Efek Samping Vapor Bagi Kesehatan, diakses dari www.vaporterbaik.com, 2016

and law in Indonesia. Hopefully, this research can contribute to the current state and can clarify the legal protection for liquid vapor consumers in Indonesia. Based on the above background, then the formulation of the problem in this study are as follows: Is there legal protection for the consumer of the unlicensed liquid vapor consumers unlicensed by BPOM? The purpose of this study is to determine whether there is legal protection consumer of the unlicensed liquid vapor unlicensed by BPOM. The theoretical benefits of this research can be used as a reference or reference materials and can be compared with subsequent studies that have the theme and focus of the same study with this research, namely the legal protection measures against the unauthorized liquid vapor users.⁴

For the government, it is expected to be more regulative in the legislation about liquid unpaid liquid vapor that has been circulated in the market, and for liquid consumers are expected to learn about the liquid in the market that is spread, so that liquid users can sort out between the original liquid or the official liquid with a fake or contain harmful materials. Also, this research is expected to have a clear law regarding liquid users in Indonesia.

B. Research Methods

This study uses the normative method. Normative research method has another term, namely the method of library research. The normative legal research method is a method or method used in legal research conducted by examining the existing library materials.⁵ In adjusting the problems in this study, the methods being used are the normative method and the Statute Approach. The source of legal materials is a source of data obtained by researchers when doing the research. In the normative method, there are two sources, namely the material of primary law and secondary raw material. The primary legal material used in this research is the Law of the Republic of Indonesia Number 8 Year 1999 on Consumer Protection, Law Number 36 Year 2009 on Health, and Regulation of the Head of National Agency of Drug and Food Control of the Republic of Indonesia Number 4 Year 2017 on Supervision of Drug Import and Food Into Indonesia Region. Then, the and secondary legal materials used in the form of secondary Legal Material books or articles, journals, and related documents concerning legal protection for unlicensed liquid vapor users, such as consumer protection law books, vapor articles, and some documentation in the form of images.⁶

⁴ As above

⁵ Soerjono Soekanto dan Sri Mamudji, *Normative Law Research A Brief Review*. Jakarta: Raja Grafindo Persada, (2009), pp. 13-14

⁶ As above

In the legal material analysis of normative legal methods, it is generally deductive. Deductive is a discussion that goes from the study of the general truths of the constitution and the law as a framework for addressing specifically the legal issues. So the explanation begins with the common thing and then discussed into a special discussion, which discusses the consumer in general or universal consumer, then in specifying the explanation of consumer protection from the liquid-vapor being unlicensed by BPOM.

C. Discussion

1. Legal Protection for Consumer of The Unlicensed Liquid Vapor from BPOM Based on the Law of the Republic of Indonesia Law No. 36 on 2009 of Health

Liquid sales that have not been licensed by BPOM are very disturbing the public, especially liquid consumers, some consumers assume that using liquid vapor is safer than using the conventional cigarettes, but according to BPOM, liquid vapor causes the adverse impact. In the liquid-vapor label that has not been licensed by BPOM is usually written the number of nicotine levels being used, but in fact, the amount written in the liquid is not the same as the contents therein. Similarly, the results of laboratory testing by BPOM on 7 (seven) brands of liquid electronic cigarettes sold through cigarette shops and online, found 4 (four) brands of which show the results of positive nicotine levels which are different from those listed in the label with deviation of 12 , 8% -19.8%. Nicotine when it is used excessively in the long term and gradual will be accumulated in the body so it cannot be tolerated by the body and can lead to serious health problems.

In such case, it is inconsistent with the Law of Health No. 36 on 2009, Article 113 paragraph (1) that: "Safeguarding the use of substances containing addictive substances is directed not to interfere and endanger the health of individuals, families, communities and the environment." The case is not in accordance with Article Health Act Article 113 paragraph (1), because it has clearly consumed liquid that has a high nicotine content and is not in accordance with the writing of nicotine content on the liquid label can harm a person's health, not only the health of active smokers but also the health of passive smokers that also inhale the smoke of the liquid vapor. Liquid vapors that have not been licensed by BPOM also do not include warnings or information about the health of the use of liquid. It is also not by Article 114, Law No. 36 on 2009 of Health which states: "Anyone producing or entering cigarettes into the territory of Indonesia shall include health warnings." The health warnings referred to in the article may be clear or clear images, which may explain the harmful consequences of consuming

liquid vapor containing addictive ingredients as a warning for people to be more careful.

Article 114 shall be applied as long as the Health Act is still in force and if Article 114 is violated shall be liable to sanctions in accordance with Article 199 paragraph (1) that: "any person who intentionally produces or imports cigarettes into the territory of the Unitary State of the Republic of Indonesia without the mention of health warning in the form of drawings as referred to in Article 114 shall be imprisoned for a maximum of 5 (five) years and a maximum fine of Rp500,000,000.00 (five hundred million rupiahs)". If something unwanted happens to consumers of the liquid-vapor being unlicensed by BPOM which certainly includes violations in the Health Act, for example, because the writing of nicotine content that is not in accordance with the label on liquid vapor makes consumers into shortness of breath suddenly or poisoning by inhaling the excessive nicotine, then the consumer may report it to the investigator and file a lawsuit in a public court. Consumers may report it to the appropriate authorities, i.e., the police or to the party concerned in the health sector, i.e., civil servants in the health service. It is in accordance with Article 189 that: "In addition to police investigators of the Republic of Indonesia, certain civil servant officials in the government who conduct health affairs are also given special powers as investigators as referred to in Law No. 8 on 1981 of Procedural Law Criminal to conduct criminal investigations in the field of health".

In Law No. 8 on 1981 of Criminal Procedure Code has explained in Article 1 paragraph (1) and Article 6 paragraph (1) that the investigator is a police officer of the Republic of Indonesia or an official of Civil Servants (PNS).⁷ If the consumer has reported his complaint to the investigator, in accordance with Article 189 paragraph (2) of the Health Act, the investigator will perform his duties as follows: Conduct an examination of the correctness of the report as well as the information about the crime in the field of health, Conduct examination to a person who has allegedly committed penalty in the field of health, Requests information or evidence from a person or legal entity in relation to criminal acts in the field of health, Conducts inspection or seizure of material or evidence in case of criminal acts in the field of health, Requests expert assistance in the implementation of criminal investigation tasks in the field health, Stop the investigation if there is not enough evidence to prove the existence of a criminal in health.

The points mentioned above, which are the duties or authority of the investigator, shall be applied if the investigator is a police officer, by Article 7 paragraph (1).⁸ However, if the investigator is a civil servant in the health

⁷ Law Number 8 on 1981 of Criminal Procedure Law

⁸ Law No. 8 on 1981 of the Criminal Procedure Code

office, then has the same authority or duty but still in the coordination and supervision of police officers. If the case continues because of strong evidence, the case will be further investigated, the investigator makes an official report on the crime and submits the proceedings to the prosecutor. That way all the next process is left to the public prosecutor who will delegate all cases to the court, which will be decided by the law applicable to the perpetrators of criminal acts in the field of health. In the case of or experienced by consumers, it only takes courage to report things that should not happen to the officers, because the state of Indonesia is a state law, and all activities or activities of the community are supervised under the umbrella law.

2. Legal Protection for Consumer of Unlicensed Liquid Vapor from BPOM Based on the Law of the Republic of Indonesia Law No. 8 on 1999 of Consumer Protection

Legal protections against liquid vapor consumers who are not licensed by BPOM are also reviewed from Law No. 8 of 1999 on Consumer Protection. In the Act, several chapters become the focus of this research, because according to the problems that occur in the community. Some events in the community about unlicensed liquid vapor have been delivered in the previous point, that the content of nicotine in the liquid-vapor label that is not licensed BPOM has a deviation of 12.8% -19.8% with the content of nicotine in the liquid content. In such a case it is inconsistent with the Consumer Protection Act: "Not according to size, quantity, scales, and quantities regarding actual size."⁹

The article applies because by what happened in the community. Writing liquid-labeled content should be the same as that contained in the actual liquid content. If the opposite happened then it would be sanctioned, because it is not in accordance with the applicable law, it will be sanctioned in accordance with the Law of Consumer Protection (UUPK) Number 8 Year 1999, Article 62 paragraph (1) that: "Business actor which violates the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be liable to a maximum imprisonment of 5 (five) years or a fine of not more than Rp. 2.000.000.000 (two billion rupiahs)".

The incident in the community about liquid vapor which is not licensed by BPOM that is mostly not installed as a result of the use of liquid or side effects of the use of liquid, although it has included the contents of net and

⁹ Law of the Republic of Indonesia Number 8 Year 1999 about consumer protection, Article 8 paragraph (1) c

liquid composition, because, in a stuff containing addictive substances, it should be listed beside it as those written in the conventional cigarettes. It is not in accordance with Article 8 paragraph (1) i that: "Not labeling or making explanations of goods containing items of goods, size, weight / net or net contents, composition, rules of use, date of manufacture, side effects, name and address business actor and other information for use which according to the terms must be installed / made "Should the article be violated it will be subject to sanctions in accordance with the Consumer Protection Law No. 8 of 1999, Article 62 paragraph (1) that: "Business actors violating the provisions referred to in Article 8, Article 9, Article 10, Article 13 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with imprisonment for a maximum of 5 (five) years or the maximum fine penalty many Rp. 2.000.000.000,00 (two billion rupiahs)".

In the event of a problem between liquid vapor consumer and business actor or producer, the consumer may refer to Article 45 paragraph (1) of Law Number 8 Year 1999 on Consumer Protection that: "Any disadvantaged consumers may sue business actors through the agency in charge resolve disputes between consumers and business actors or through courts located in the general judicial environment. "According to the article, consumers can sue business actors or producers if consumers experience a loss. UUPK explained that the settlement of consumer and producer problems could be pursued through two channels, namely through the courts or outside the court.¹⁰ If a liquid-vapor consumer who is not licensed by the BPOM, chooses to resolve a dispute or a matter through a court of law, then the consumer may sue directly to a public court. However, if the liquid-vapor consumer chooses to resolve the dispute or problems throughout of court, the consumer may complain his complaint or his problem to the consumer dispute settlement body, it is by Article 49 paragraph (1) UUPK. But if the outer court of the dispute or issue is still not resolved, then it can file a lawsuit in a public court, by Article 45 paragraph (4) UUPK. Consumer problems with producers as business actors entering the realm of court, it will be investigated in advance by the investigator, and if it is proven to be continued to prosecutor general prosecutor, so the problem can be resolved properly. Also, the law will apply by the Act. It is by Law No. 8 on 1981 of Criminal Procedure Law in Chapter IV namely investigators and public prosecutors Article 4 through Article 15.

With the rise of liquid vapor that has not been licensed by BPOM, the public should be more vigilant about it, because it can be dangerous for

¹⁰ Law of the Republic of Indonesia Number 8 Year 1999 about Consumer Protection, Article 45 paragraph (2)

himself and others. Also, it is still feared that it will cause a negative impact that can harm liquid vapor consumers. If the Liquid vapor has a bad effect, then the one who is responsible for it is the producer or the business actor. And for business actors or producers, they must be more careful in producing liquid vapor that will be disseminated to the public, because although the liquid is not licensed by BPOM, but liquid consumers remain protected by law, and if business actors or the producers do not produce goods in accordance with the law, then the business actor may be subjected to severe sanctions.

3. Legal Protection for Consumer of Unlicensed Liquid Vapor from BPOM Based on the Regulation of the Head of National Agency of Drug and Food Control of the Republic of Indonesia Number 4 on 2017 of Supervision of Food and Drug Import into Indonesia Territory

Legal protection of liquid consumers has been reviewed through two laws, namely the Health Act and the Consumer Protection Act. However, there is a legal review through the Regulation of the Head of National Agency of Drug and Food Control of the Republic of Indonesia Year 2017 concerning Supervision of Drug and Food Inclusion into Indonesian Territory. The liquid in circulation has violated the rules in government because the liquid has not been listed in BPOM, and the existing content in liquid vapor is still in doubt, meaning its content can be categorized as unsafe.

It is inconsistent with the Regulation of the Head of the National Agency of Drug and Food Control of the Republic of Indonesia No. 4 on 2017 on the Control of the Importation of Drugs and Food into the Territory of Indonesia,¹¹ that: "In addition, it must meet the provisions referred to in Article 3, medicine and food should also get approval from the head of the agency ". The liquid is a drug because it contains VG, PG, and addictive substances, and should be before the circulation of liquid vapor must be registered to BPOM, but in fact, some liquid vapor does not have permission from BPOM so that the article can apply. If the article is violated then Article 29 paragraph, one shall apply: "Violation of the provisions in the Regulation of the Head of this Body, may be subjected to administrative sanctions in the form of a. Written warning; b. Temporary suspension of import and distribution activities; c. Extermination or re-export; d. Free distribution permits; and e. revocation of marketing authorization; ". The sanctions have made it clear that it is not a criminal penalty but an

¹¹ Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number 4 Year 2017 on the Supervision of The Importation of Drugs Into The Territory of Indonesia, Article 4 paragraph (1)

administrative penalty. With the given sanctions, it will provide a deterrent effect to business actors or producers who cheat by doing disrespectful act to the consumers. And if the consumer feels harmed by the business actor or producer, then consumers can complain through a website that is used for complaints, namely *ulpk.pom.go.id*. Through the website, then consumers can contact the BPOM online, or can visit at the headquarters of BPOM, namely in Building A floor 1 Road State Printing No.23 Central Jakarta 10560 or can contact Contact Center Halo BPOM as follows: Phone: 1500533, Message: 081.21.9999.533, Faximile: 021-4263333, Email: *halobpom@pom.go.id*, Twitter: @ HaloBPOM1500533¹².

Based on the description above, it can be said that the protection of liquid vapor consumer law that is not licensed by BPOM, can be reviewed through several Laws, namely Law of the Republic of Indonesia Number 36 Year 2009 on Health Article 113 paragraph (1) and Article 114, Law No. 8/1999 on Consumer Protection Article 8 paragraph (1) c and paragraph (1) i, Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number 4 Year 2017 on the Supervision of the Importation of Drugs into the Territory of Indonesia Article 4 paragraph (1).

D. Conclusion

There is legal protection for consumer of liquid vapor that has no licenced from BPOM, as viewed from the Law of the Republic of Indonesia Number 36 Year 2009 concerning the health of Article 113 paragraph (1) and Article 114, Law of the Republic of Indonesia Number 8 Year 1999 on consumer protection Article 8 paragraph (1) c and paragraph (1) i, Regulation of the Head of the National Agency of Drug and Food Control of the Republic of Indonesia Number 4 Year 2017 on the Supervision of the Importation of Drugs into the Territory of Indonesia Article 4 paragraph (1).

The researcher suggests the following: liquid vapor consumers should be careful with the rise of liquid vapor sold in the market because BPOM has not licensed the liquid, so it is still doubtful in its security, it can even lead to losses for yourself and others. The producers should make a liquid with safer materials and immediately registered to BPOM so as not to disrupt the liquid consumers. The government should further reinforce the existing law for the problem of vapor or an electric cigarette because the vapor has now become a trend among the adolescents, whereas liquid vapor is the same as conventional cigarettes that cause many losses, especially for consumers, so it is expected for the government to take the right steps.

¹² Information POM, "Food and Drug Supervisory Agency of the Republic of Indonesia", 16 (5), (2015).

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