
CIGARETTE COMPANY'S RESPONSIBILITY FOR CONSUMER HEALTH LOSSES AFTER HEALTH WARNING INCLUSION

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ABSTRACT

This study aims to examine whether cigarette companies can release responsibility for the health losses of smokers by including warnings on the dangers of smoking on cigarette packages and analyze how responsibility can be imposed on cigarette companies for the health losses of smokers. This research is a normative juridical study with a statute approach. The primary and secondary legal materials obtained are systematized and synchronized through deductive logic, then analysis is carried out using the interpretive method to provide answers to the proposed legal problems. The results show that cigarette business actors can release responsibility for the health losses of consumers due to smoking if the health losses are as stated in the warning of the dangers of smoking on cigarette packages. However, cigarette companies that cause consumer health losses beyond what is stated in the warning of the dangers of smoking contained in cigarette packs, can be liable based on the principle of product responsibility with a variety of the presumption of always being responsible.

Keywords: responsibility; cigarette company; consumer health loss; health warning clause

Introduction

Basically, people really want safety and security in consumption products, namely consumption products that are nutritious and do not interfere with one's health. In fact, there are many products that cause people to get sick (Aulia Muthiah, 2018) which can cause death. Likewise, with cigarette products, according to The Tobacco Atlas, data on smokers in Indonesia in 2015 were estimated at more than 53,248,000 people for the age range 15 years and over, and more than 469,000 people for the age range 10 to 14 years. Meanwhile, data on death cases caused by cigarette use in Indonesia continues to increase each year and in 2016 it is estimated that there have been more than 225,700 cases. Tempo stated that Indonesia was awarded the title as the third largest country in terms of cigarette consumption after China and India.

In Indonesia, the emergence of the smoking habit cannot be separated from the perception that smoking is part of the culture. In Javanese history, immortalized in Wikipedia, cigarettes are recorded in the story of Roro Mendut, which depicts a daughter from Pati who is made a wife by Tumenggung Wiroguno, one of Sultan Agung's trusted warlords selling "klobot" cigarettes (cigarettes wrapped in dry skin). The development of cigarettes in Indonesia is still unclear, but many sources say it occurred around 1870 with the discovery of kretek cigarettes (derived from the burning sound of cigarettes that reads "kretek") by Haji Djamhari in Kudus. From his experiments on curing his chest pain when applying clove oil, he then applied it to klobot cigarettes by mixing chopped cloves and tobacco to be used as cigarettes. Ten years later, according to Andika Kurniantoro in his article entitled "History of Cigarettes", the kretek cigarette industry was carried out seriously and professionally by Nitisemo by opening the first kretek cigarette factory in Kudus in 1906 which was named "Tjap Bal Tiga". Until 2011, according to data from the Directorate of Excise, 1,132 cigarette factories had been established, consisting of: 871 factories for hand-rolled kretek cigarettes (SKT), 242 factories for machine-made kretek cigarettes (SKM), and 19 factories for machine white cigarettes (SPM). (Tobacco, 2018).

The presence of cigarette companies in Indonesia, including the presence of world cigarette companies that participate in the cigarette industry in Indonesia, supports the number of cigarette consumers in Indonesia. As a world tobacco producer, Indonesia ranks 5th with tobacco production of 135,678 tonnes, or around 1.9% of total world tobacco production. Tobacco production, increased from 135,678 tons (in 2010) to 226,704 tons (in 2012). But on the other hand, tobacco imports also increased from 65.6 thousand tons (in 2010) to 106.5 thousand tons (in 2011). Meanwhile, cloves as the basic ingredient of kretek cigarettes experienced a very sharp increase in imports from 277 tons (in 2010) to 14,979 tons (in 2011), while local production decreased from 98.3 thousand tons (2010) to 72.2 thousand tons (Tobacco Control Support Center - Association of Indonesian Public Health Experts, 2018) Because cigarette consumers continue to increase, cigarette production has also increased, until 2016 it was recorded that around 342 billion cigarettes had been produced (Atlas, 2018).

Scientific studies that state that consuming tobacco can cause cancer (mouth, pharynx, larynx, esophagus, lung, pancreas, and bladder), blood vessel system diseases (coronary heart, aortic aneurysm, peripheral blood vessels, arteriosclerosis,

brain blood vessel disorders) and the respiratory system (chronic bronchitis, emphysema, chronic obstructive pulmonary, pulmonary tuberculosis, asthma, pneumonia, and other respiratory diseases) (World Health Organization, 2018) has been widely practiced. Therefore, Article 114 of State Law Number 36 Year 2009 concerning Health (hereinafter referred to as Health Law) in conjunction with Article 14 paragraph (1) Government Regulation Number 109 of 2012 concerning Safeguarding of Materials Containing Addictive Substances in the Form of Tobacco Products for Health (hereinafter referred to as Government Regulations Number 109 of 2012), states that every person who produces or imports cigarettes into Indonesian territory is required to include a health warning.

The obligation to include health warnings is an accommodation for the rights of cigarette consumers, but in practice there are still violations of consumer rights as regulated in Article 4 letter a of State Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) regarding the right to comfort, security and safety in consuming goods and / or services. Violations of consumer rights by business actors require cigarette business actors to be responsible to cigarette consumers in accordance with Article 19 paragraph (1) of the Consumer Protection Law which states "Business actors are responsible for providing compensation for damage, pollution, and / or consumer losses due to consuming goods and / or services produced or traded". Then in Article 19 paragraph (2) of the Consumer Protection Law it is stated that "Compensation as referred to in paragraph (1) can be in the form of refunds or replacement of goods and / or services of similar or equivalent value, or health care and / or provision of compensation in accordance with the provisions of the prevailing laws and regulations ". However, the responsibility of cigarette business actors to cigarette consumers is not easy to carry out because Article 19 paragraph (5) of the Consumer Protection Law states "The provisions referred to in paragraph (1) and paragraph (2) shall not apply if the business actor can prove his mistake. It is the consumer's fault".

The existence of proof of consumer error causes cigarette consumers who have experienced acute addiction and cannot easily stop consuming cigarettes directly to be very difficult to claim their rights as cigarette consumers, especially the right to health. The element of consumer error is possible because of the obligation to include a health warning clause on cigarette packages as regulated in Article 114 of the Health Law in conjunction with Article 14 paragraph (1) Government Regulation Number

109 of 2012 which seems to be a protector of cigarette business actors in facing a consumer lawsuit.

Whereas the existence of the Consumer Protection Law is intended as a legal basis for the government and Non-Governmental Organization for Consumer Protection in the context of making efforts to empower consumers through consumer guidance and education. These efforts are important because it is not easy to expect the awareness of business actors, who basically use economic principles to get the maximum possible profit with the minimum possible capital. The economic principles applied by business actors in running their business are clearly detrimental to the interests of consumers, both directly and indirectly (Dewi, 2015).

Considering the case of Rohayani (50) in 2018, he has fought for his rights to the health of cigarette consumers by subpoenaing cigarette companies Gudang Garam and Djarum to take responsibility for experiencing a number of health declines and having experienced acute addiction due to consuming cigarettes. However, Rohayani's subpoena has never been answered by the cigarette company and seems to have evaporated without being continued as a lawsuit due to the consumer's weak bargaining position. This is different from several cases of dispute over cigarette consumers abroad, such as the case of Cynthia Robinson in 2014 in Florida, United States, which won a lawsuit against tobacco company RJ Reynolds worth 23.6 billion US dollars (Tirto, 2018).

In addition, the weak bargaining position of cigarette consumers is caused by the existence of a warning clause on the impact of smoking in cigarette product packaging which is implemented by the government, which causes cigarette companies to seem free from their responsibility for disrupting consumer health due to consuming cigarettes. Whereas the right to health is a consumer right. In this regard, it is necessary to conduct research on the responsibility of cigarette companies for consumer health losses after the inclusion of health warnings.

Research Methods

This research is a normative legal research or doctrinal law research (Soejono, 2003). Normative research is legal research which includes research on legal principles, research on legal systematics, research on the level of legal synchronization, research on legal history, and comparative legal research (Soekanto, 1981). In this case, research was conducted on the problem of cigarette companies'

responsibility for consumer health losses after the inclusion of warnings on the dangers of smoking. The research approach used is a statute approach (Marzuki, 2016) which is carried out by examining all laws and regulations related to the legal issue being handled. Legal materials include primary legal materials and secondary legal materials. Secondary legal materials include all publications regarding the law relating to the liability of cigarette companies for consumer health losses after the inclusion of health warnings. The collected legal materials are then systematized and synchronized using deductive logic, then analyzed with the interpretive method to produce prescriptive propositions (Marzuki, 2016), namely explanations that provide prescriptions for existing legal problems.

Results and Discussion

The Analysis of Health Warnings on Cigarettes as a Discharge of Business Actors for Losses on Consumer Health

The massive consumption of tobacco used in products in the form of cigarettes that contain addictive substances in the composition of the ingredients has caused the government to pay special attention to tobacco product business actors in the form of cigarette products with the presence of the Health Law in the Chapter on Health Efforts in the Addictive Substances Protection Section, Government Regulation No. 109 of 2012, Regulation of the Minister of Health Number 28 of 2013, and Regulation of the Minister of Health Number 56 of 2017.

These policies arise because of the dangers of cigarette products due to additives from tobacco plants that can cause various diseases, especially lung cancer, stroke, chronic obstructive pulmonary disease, coronary heart disease, and blood vessel disorders. Besides causing a decrease in fertility, it also causes an increase in the incidence of pregnancy outside the womb, fetal growth disorders (physical and mental), seizures in pregnancy, impaired infant immunity and increased perinatal mortality. Generally, tobacco-related diseases take between 15 and 20 years after smoking begins, so the tobacco-related disease epidemic and the number of deaths in the future can continue to increase.

Carrying the predicate of being dangerous to public health and the environment, according to the Law on Consumer Protection, the presence of cigarette

products is not in line with the safety and security principles of consumers as referred to in Article 2. Cigarette incompatibility with these principles causes cigarettes and / or cigarette business actors to also violate consumers' rights to comfort, security and safety in consuming goods and / or services. Cigarette consumers in consuming cigarettes do not find comfort, security, and safety which cause health losses to death.

The health loss suffered by cigarette consumers due to consuming cigarettes is a form of loss that arises from the actions of cigarette business actors. The action of the cigarette business actor as a producer by still producing cigarettes that are harmful to health is a mistake and / or negligence of the business actor. Based on Article 19 paragraph (1) of the Consumer Protection Law it is stated "Business actors are responsible for providing compensation for damage, pollution, and / or losses to consumers due to consuming goods and / or services produced or traded". In these provisions, there are elements that have been fulfilled, including: elements of consumer losses due to consuming cigarettes; elements of fault and / or negligence of business actors; elements of a causal relationship between acts of error / negligence of business actors and consumer losses; and elements of goods produced or traded by business actors.

The fulfillment of the above elements allows cigarette business actors to be held accountable by cigarette consumers in the form of compensation. The provision of compensation to cigarette consumers is regulated in Article 19 paragraph (2) of the Consumer Protection Law which states that "Compensation as referred to in paragraph (1) can be in the form of refunds or replacement of goods and / or services of similar or equivalent value, or health care and / or compensation in accordance with the provisions of the prevailing laws and regulations. In terms of health loss, cigarette consumers can ask for compensation from cigarette business actors in the form of health care and compensation.

The fulfillment of responsibility with compensation in the form of health care and provision of compensation is considered appropriate because cigarette business actors in conducting their business have been very convincing that they have never guaranteed security and safety to consumers in the use, use and utilization of goods and / or services consumed or used. From this description, cigarette companies should be responsible for realizing consumer protection objectives as regulated in Article 3 letter b, letter e, and letter f of the Consumer Protection Law, that cigarette companies should uplift the dignity of consumers by avoiding negative excesses. use

of goods and / or services, raise awareness of business actors regarding the importance of consumer protection so that an honest and responsible attitude grows in doing business, improves the quality of goods and / or services that ensures the continuity of the business of producing goods and / or services, health, comfort, safety, and consumer safety.

But in reality, tobacco companies have never given responsibility in the form of compensation to cigarette consumers. This can happen because in demanding the responsibility of cigarette business actors, cigarette consumers must also obey all their obligations before claiming their rights. The obligations that must be obeyed by cigarette consumers are contained in Article 5 letter a of the Consumer Protection Law which states that "*Reading or following information instructions and procedures for using or utilizing goods and / or services, for security and safety*". Failure to comply with the consumer's obligations can be assumed to be a consumer's fault so that cigarette consumers cannot hold business actors accountable as regulated in Article 19 paragraph (5) which states that "*The provisions referred to paragraph (1) and paragraph (2) will not apply if the business actor can prove that the error is the consumer's fault*".

Proving the existence of a cigarette consumer error is a burden and responsibility of cigarette business actors as regulated in Article 28 of the Consumer Protection Law which states "*Evidence of whether there is an element of error in a claim for compensation as referred to in Article 19, Article 22, and Article 23 is the burden and responsibility of business actors*". Consumer errors may occur if consumers do not comply with their obligations as stated in Article 5 letter a, so that it is assumed that consumer mistakes are consumer negligence which causes cigarette business actors who produce dangerous cigarettes to be exempted from responsibility for health losses suffered by cigarette consumers. As stipulated in Article 27 letter d of the Consumer Protection Act, business actors producing goods are exempted from responsibility for losses suffered by consumers, if negligence caused by consumers.

Consumer errors and negligence arise as a result of not reading and following information instructions and procedures for use on cigarette packages by cigarette consumers as stipulated in Article 5 letter a of the Consumer Protection Law. The obligation of consumers to read and follow information instructions and procedures for the use or utilization of goods and / or services for the sake of security and safety is an important matter. The problem is, if the warning given by the business actor is

not clear or does not invite the attention of consumers to read it, as in the case of *ER Aquib & Sons Inc V Cox*, the court will argue that the consumer cannot sue if the warning has been given clearly and firmly. However, if the producer does not use a reasonable and effective way to communicate the warning, which causes consumers to not read it, then that does not prevent the compensation for consumers who have been harmed. (Miru, 2014).

The government through its policies related to cigarette products (Health Law in the Chapter Health Efforts in the Safety of Addictive Substances Section, Government Regulation Number 109 of 2012, the Minister of Health Regulation Number 28 of 2013, and Regulation of the Minister of Health Number 56 of 2017) has regulated the form of security against cigarette products through labeling, where the label contains information about a cigarette product so that it can be known by everyone.

According to Government Regulation Number 109 of 2012, a label is defined as any information regarding tobacco products in the form of images, writing, a combination of both, or other forms included in tobacco products, inserted into, placed on, or part of tobacco product packaging, and labels. on cigarette packaging can contain health information. According to the Minister of Health Regulation Number 56 of 2017, the definition of health information is information related to health that is printed on tobacco product packaging.

Provision of information on cigarette packages containing health information including health warnings in Articles 19, 20, 21 and 22 of PP 109/2012, namely information on nicotine and tar levels; the label is prohibited from selling or giving to children under 18 years of age and pregnant women; and production code label, date, month and year of production, as well as the name and address of the manufacturer. In addition, there is still an additional label but it is not required to be printed on cigarette packaging and has never been used by any cigarette business actors, the statement "there is no safe limit" and "contains more than 4000 hazardous chemicals and more than 43 cancer-causing substances".

One of the most basic labels on cigarette packaging is health warnings, which are an effective and inexpensive means of education for the general public because the government does not bear the costs. The fulfillment of the inclusion of health warnings by cigarette business actors is an order from Article 114 of the Health Law in conjunction with Article 14 paragraph (1) of Government Regulation Number 109

of 2012 in conjunction with Article 3 paragraph (1) of Regulation of the Minister of Health Number 28 of 2013 which orders that "Everyone who producing or importing cigarettes into the territory of Indonesia must include a health warning ". Minister of Health Regulation Number 56 of 2017 defines in Article 1 point 2, that health warnings are images and writings that provide information and education about the dangers of smoking.

The history of health warnings for cigarette products in Indonesia has started from 1999 to 2001. Cigarette packaging uses a health warning in the form of the text "government warning: smoking can cause cancer, heart attacks, impotence and pregnancy and fetal disorders." However, the words "government warning" were later removed in 2002. In 2003, the Government issued Government Regulation No. 19 of 2003 concerning Safeguarding Cigarettes for Health which was valid until 2013, so that health warnings in the form of text read: "smoking can cause cancer, attacks heart, impotence and pregnancy and fetal disorders. " Currently, every pack of cigarettes must include a warning in the form of a word and picture on 40% of the pack.

There are 5 (five) types of pictorial health warnings that must be included in each production time according to the Tobacco Control Support Center - Indonesian Association of Public Health Experts, with images that will be evaluated and can be changed at the earliest every two years.

The existence of health warnings and information labels on cigarette packages that oblige cigarette consumers to read and follow them has legal consequences for the discharge of responsibility by cigarette business actors according to the Consumer Protection Law. In the event that consumers demand their rights to comfort, security and safety when consuming cigarettes based on Article 4 letter a of the Consumer Protection Law, namely by holding tobacco companies accountable, consumers are also required to fulfill their legal obligations first as stipulated in Article 5 letter a of the Law Consumer Protection Law, which means that they must read and follow the instructions for cigarette product information.

However, by consuming cigarettes, it can be assumed that cigarette consumers have read and followed health warnings and information labels on cigarette packaging. Whatever happens to cigarette consumers, if the consumer experiences health losses due to smoking, is not the responsibility of the cigarette company as long as a health warning has been included and the information label contains information

about the condition of the goods correctly, clearly, and honestly in accordance with Article 4 letter c and Article 7 letter b, that the obligation of business actors is to provide true, clear and honest information regarding the condition and guarantee of goods and / or services as well as providing an explanation of the use, repair and maintenance, and the consumer rights is to have the right to correct, clear and honest information regarding conditions and guarantees of goods and / or services.

The purpose of health warnings is to provide warnings about health information and education about the impact of smoking on certain diseases such as lung cancer, throat cancer, oral cancer, and laryngeal cancer and can take happiness one by one as in the five health warning pictures shown. applies today. Then in terms of other information labels on cigarette packages, it only includes information about: nicotine and tar levels; the label is prohibited from selling or giving to children under 18 years of age and pregnant women; and production code label, date, month and year of production, as well as the name and address of the manufacturer.

On a contrario basis, cigarette consumers can still hold the cigarette business responsible for their health loss as long as the health warning pictures and information are contained on cigarette packages and are limited to four cancers (lung cancer, throat cancer, oral cancer, and cancer of the larynx). In fact, cigarette products have the potential to cause more than four of these diseases as stated in the health warning on cigarette packaging.

Based on the time period, the contents of health warnings that must be printed on cigarette packages have changed. From 1999 to 2013 the contents of the health warnings covered several diseases such as cancer, heart attacks, impotence, and pregnancy and fetal disorders. In 2013 to 2017 the contents of the warning include diseases: oral cancer, throat cancer, lung cancer and chronic bronchitis, and smoking kills you. However, other diseases apart from those already mentioned, which may result from cigarette consumption, have never been used as health warning materials for smoking, such as strokes and blood vessel disorders. (Tobacco Control Support Center - Indonesian Association of Public Health Experts).

Therefore, cigarette business actors can release responsibility for the health losses of cigarette consumers if the health losses are in accordance with what is stated in the health warning. However, if a consumer experiences health loss due to smoking by suffering from a disease outside as stated in the health warning, then the cigarette

consumer can hold the cigarette business actors' accountability based on Article 19 of the Consumer Protection Law.

The rights of every person in the Health Law are violated by the presence of cigarettes and / or their business actors as contained in Article 6 "*The right of every person has the right to a healthy environment for the achievement of a health degree*". With the existence of cigarettes and / or their business actors, it is clear that they have taken away everyone's right to have a healthy environment for the attainment of health status. Whereas in terms of its obligations, cigarettes and / or their business actors do not carry out the obligations ordered by the Health Law concerning the obligation to realize, maintain and improve the highest public health status and do not respect the rights of others in an effort to obtain a healthy environment, both physical and biological. social, as well as not having a healthy lifestyle to create, maintain, and promote the highest health. (Article 9 paragraph (1), Article 10 and Article 11 Health Law)

From this explanation, it can be concluded that cigarette business actors can still be held responsible as long as the health losses suffered by cigarette consumers are not included in the health warnings that apply to cigarette consumers.

The Responsibilities of Business Actors That Can Be Charged For Consumer Health Losses

Responsibility is a condition that makes a person obliged to bear all matters caused by his actions or the person and / or property under his control. The responsibilities of business actors in the Consumer Protection Law can be divided into two, namely in general and specifically. General responsibility is the provision of compensation to consumers for damage, pollution, and losses due to consuming goods and / or services produced or traded. Whereas the responsibility of business actors in particular is the provision of compensation in the field of advertising and importation as referred to in Article 20 and Article 21 of the Consumer Protection Law, as well as the provision of compensation in terms of providing spare parts or after-sales facilities and guarantees or guarantees in Article 25 and Article 26 Consumer Protection Law.

Before determining the form of responsibility for cigarette business actors, it would be wise to first determine the appropriate principles that will be used in

prosecuting responsibility for health loss for cigarette consumers. Meanwhile, based on consumer protection cases, care is needed in analyzing the principles of legal responsibility to be used, regarding who should be responsible, to what extent should be responsible, and what responsibilities can be borne by business actors. In this regard, the responsibility of business actors also gets influence from several formal sources of law, such as statutory regulations and standard agreements in the field of civil law, thereby creating restrictions on the person in charge and the form of his responsibility.

In civil law, two principles of responsibility are generally recognized, responsibility for mistakes and responsibility for risks (risk liability). Accountability on the basis of wrongdoing is the responsibility that is born as a result of a default, an act that violates the law, and is not careful. Meanwhile, accountability on the basis of risk arises because of the existence of a position or legal position that requires a person to always be responsible (Sidabalok, 2014).

In cases of civil law, there are two possibilities, first, losses due to default where previously there was an agreement, second, losses due to illegal acts and / or lack of prudence by business actors where previously there was no legal relationship. If the event that causes the consumer to suffer loss has a contractual relationship between the business actor and the consumer, then the next step is to look for parts of the agreement that may not be fulfilled by the business actor so that it can be blamed for default on causing consumer losses. Meanwhile, if there is no contractual relationship between the business actor and the consumer, it must be investigated by means of facts which state that the business actor has committed an illegal act (tort) or is not careful in committing the act. (Muthiah, 2018).

In terms of the legal relationship, cigarette consumers have a legal relationship based on a sale and purchase agreement to the seller (not a cigarette producer) which is generally carried out in an unwritten manner, as in Article 1457 of the Civil Code which states that "*buying and selling is an agreement with which one party binds himself to deliver an item, and another party to pay the promised price*". The main elements in the sale and purchase agreement are the goods and prices with the consumer paying the cigarette price and the seller submitting the cigarette goods to the consumer. In addition, the elements of the validity of the agreement must also be fulfilled as referred to in Article 1320 of the Civil Code including agreements, skills, certain matters, and lawful causes.

In the case of a legal incident of health loss to cigarette consumers due to smoking, according to Article 1491 of the Civil Code, the seller must always be obliged to bear the consumer for the guarantee of an item as the two obligations of business actors, first, control of objects sold safely and peacefully. Second, against hidden defects. Then according to Article 1504 of the Civil Code it is stated that the seller is responsible for hidden defects in goods where the cigarette product is a defective item because it is dangerous for the health of cigarette consumers. But if the defect is clearly visible (such as a health warning) by the cigarette consumer when the agreement is made, then the seller will not bear it. The seller only covers the consumer for cigarette goods as long as a defect is not visible.

From this explanation, it can also be seen that the purpose of inclusion of health warnings on cigarettes for the discharge of cigarette companies' responsibility is to implement one of the principles of business actor responsibility (*presumption of non-liability*). In this principle, cigarette business actors (cigarette companies) cannot be held their accountability for the health losses of cigarette consumers who have been warned in a health warning on cigarettes.

It was discovered that the seller (not the cigarette producer) was also obliged to take responsibility for selling cigarettes to consumers and had an unwritten sale and purchase agreement. In fact, it will make cigarette consumers difficult to prosecute responsibility by going through a long series of prosecution posts from sellers, distributors, to producers. The loss of cigarette consumers, even though they have an agreement with the seller, does not arise from a default. Therefore, cigarette sellers, in this case, do not need to be held responsible for the health losses of cigarette consumers.

After knowing that the health loss to cigarette consumers is due to a defect in information and is not a default, it will be reviewed through a legal relationship without any agreement or engagement arising from law. Article 1365 of the Civil Code states that "Every act against the law that causes harm to other people, obliges the person who due to his mistake published or caused the loss, to compensate the loss." This article is commonly known as an article regarding acts against the law, in order to realize legal accountability to a person, four elements must be fulfilled, including the existence of an act against the law, an error committed by the perpetrator, the loss suffered by the victim, and a causal relationship between mistakes. with a loss. The four elements constitute a norm structure rather than the substance of a complete

legal provision. Therefore, the substance of the provisions of this article always requires materialization outside the Civil Code, whereas in terms of a norm structure, this article will remain eternally used (Kristiyanti, 2017).

The absence of caution in the process of producing cigarettes safely can be categorized as the fault of the cigarette business actors. These mistakes cause health losses for cigarette consumers in which the health losses are directly related to the products of business actors consumed by consumers. The existence of a causal relationship between cigarette products made with mistakes by cigarette business actors causes cigarette consumers to experience health losses. Then due to mistakes in the actions of cigarette business actors that cause health losses to cigarette consumers, the actions of cigarette business actors can be said to have violated the law. With the fulfillment of the elements in Article 1365 of the Civil Code, cigarette business actors can be held accountable by law by compensating for health losses suffered by cigarette consumers and the health of the community environment.

Even though various elements have been fulfilled, Article 1365 of the Civil Code still requires substantial provisions outside the Civil Code regarding illegal acts by business actors. Acts violating the law are not only contained in violations of statutory regulations but also in violations of the norms of decency and violations of public order. In the context of the legal incidents of health loss for cigarette consumers, because it emphasizes the relationship between consumers and business actors, it will be reviewed through the Consumer Protection Law. This law is a special law regarding consumer protection in the event of a legal incident where the conditions of the parties who have a legal relationship or are in legal trouble are not balanced.

After knowing that the health loss of cigarette consumers comes from acts against the law under general civil law, then the case according to consumer protection law needs to be carefully determined regarding the principle of responsibility of the relevant business actor. This is to negate the principle of presumption of irresponsibility and shorten the length of the chain of prosecution of responsibility. One of the principles that can negate the principle of presumption of always being irresponsible is to use the opposite principle, the principle of presumption of liability. Furthermore, to cut the long chain of prosecution, the principle of risk responsibility will be used as the basis for determining who is responsible and the rest will use the principle of product liability because it is product / goods based

Cigarette companies as cigarette producers can be defined in the principle of responsibility for risk. This principle is always inherent in cigarette companies as their legal position as cigarette producers / entrepreneurs so that they are given legal obligations and responsibilities as business actors in the Consumer Protection Law. The use of the principle of responsibility for risk is also relevant to cases of consumer health losses due to smoking. This principle is useful for cigarette consumers to go through a long series of prosecution posts starting from the seller, distributor, and producer, assuming that the obligation to compensate is borne to the party that creates the risk of such loss, that is the cigarette company as the cigarette producer / business actor.

After knowing who should be sued based on the principle of risk responsibility, cigarette consumers in suing cigarette business actors can apply the presumption of responsibility principle. A suit using the presumption principle is always responsible for imposing the burden of proof on the defendant (reverse proof). Articles 19, 22, 23, and 28 of the Consumer Protection Act apply this principle. This principle says that the defendant is always held responsible until he can prove his innocence.

The principle of presumption of responsibility is always the initial capital in a lawsuit against the cigarette business actors because the legal positions of the parties from the start. This principle aims to make it easier for consumers to sue business actors who harm consumers. Not only proving wrongdoing, but proving the existence of a causal relationship between the health losses of cigarette consumers and smoking products produced by cigarette companies is also borne by the business actor as the defendant. This can happen because consumers are considered not to understand the chain of processes of a product (cigarettes) produced by cigarette business actors. In addition, the principle of presumption of always being responsible is also appropriate to negate the principle of presumption of always being irresponsible by providing assumptions to cigarette consumers that if there is a health loss due to smoking outside of the health warnings on cigarettes, then automatically the cigarette business actor must always be held responsible.

However, the principle of presumption of responsibility is only used as the beginning of a lawsuit, the rest will use the principle of product responsibility because it is product-based. The principle of product responsibility is the responsibility borne to business actors for goods marketed to consumers if they experience health losses as a result of consuming these goods. This principle is appropriate to be applied to

ensnare business actors, especially producers of goods who distribute and market their products that harm consumers like cigarettes. Losses suffered by a user of a defective or dangerous product, even a user who is also a victim, is the absolute responsibility of the business actor (Wibowo: 2008).

Product responsibility is a special form of absolute responsibility where the principle of responsibility in an illegal act is not based on error (as with tort in general). However, this principle obliges cigarette business actors to be directly responsible for the losses arising from these illegal acts. By ignoring the mistakes of business actors, making cigarette business actors must always be responsible for losses arising from defective products, lack of prudence and therefore they must prevent such losses themselves.

In generally civil law, the principle of product responsibility is found in Article 1367 of the Civil Code. This article regulates the responsibility of a person for losses caused by "people and goods that are under his / her control". So it can be assumed that "people and goods" are goods and / or services in this case are cigarettes, while "those under the responsibility of their supervision" can be interpreted as those who are given an order by that article to be responsible for supervising goods and / or services that are circulated and marketed, in this case the cigarette business actors. In this provision, cigarette consumers who have suffered losses must ask for compensation to cigarette business actors (Wibowo, 2008).

Even so, business actors can still escape from the principle of product responsibility with the presumption of not always responsible principle which is applied by cigarette companies to health warnings on cigarettes that apply to cigarette consumers. So, the responsibility of cigarette business actors for the health losses of cigarette consumers is only as far as it goes beyond the health warnings on cigarettes. Apart from the principles and health warnings, business actors are also limited in their responsibilities under the circumstances regulated by the Consumer Protection Law as follows:

- a. If the producer does not distribute the product (*put into circulation*),
- b. The defect that causes the loss does not exist when the product is distributed by the manufacturer, or the defect only arises later,
- c. That the product is not made by the manufacturer either to be sold or circulated for economic or business purposes,

- d. That the occurrence of defects in the product is due to the obligation to fulfill the obligations stipulated in the regulations issued by the government,
- e. That scientifically and technically (*state of scientific a technical knowledge, state or art defense*) when the product is circulated, it is impossible to defect,
- f. In the case of the manufacturer of a component, that the defect is caused by the design of the product itself where the component has been matched or is due to an error in the instructions given by the manufacturer,
- g. If the party who suffered the loss or the third party contributed to the loss (*contributory negligence*),
- h. Losses that occur and result from acts of nature (*acts of god*) or force majeure.

Then in terms of the forms of responsibility of business actors, the Consumer Protection Law in articles 19 to 28 has determined the form of responsibility that can be imposed on business actors who harm consumers. The form of responsibility related to cigarette producers is in Article 19. The forms of responsibility include:

- (1) Business actors are responsible for providing compensation for damage, pollution and / or loss to consumers due to consuming goods and / or services produced or traded.
- (2) Compensation as referred to paragraph (1) may be in the form of refund or replacement of similar goods and / or services or equivalent value, or health care and / or provision of compensation in accordance with the provisions of the prevailing laws and regulations.
- (3) The compensation shall be given within a grace period of 7 (seven) days after the transaction date.
- (4) The provision of compensation as referred to paragraph (1) and paragraph (2) does not eliminate the possibility of a criminal charge based on further evidence regarding the element of error.
- (5) The provisions referred to paragraph (1) and paragraph (2) shall not apply if the business actor can prove that the error is the fault of the consumer.

The responsibility of business actors also includes the burden of proof of violations by the business actor himself, where the burden of proof is borne by the business actor directly without having to wait for a judicial decision. This is regulated in Article 28 of the Consumer Protection Law which states that "*Evidence of whether there is an element of error in the claim for compensation as referred to in Article 19, Article 22 and Article 23 is a burden and responsibility of the business actor*".

Through the principle of presumption of always being responsible as the initial capital of a lawsuit, then the principle of product responsibility as the responsibility of business actors, and the principle of presumption of always being irresponsible as a limitation, consumers who feel that their health is harmed by smoking can ask cigarette business actors as producers to be responsible for their products which are dangerous and harmful to humans. This responsibility can be in the form of health care costs and compensation according to applicable regulations and it is also possible to claim compensation for the purchase of the cigarette product. Cigarette companies can be subject to civil or criminal sanctions. In accordance with the provisions of Article 62 paragraph (3) of the Consumer Protection Law, for violations that result in serious injury, serious illness, permanent disability or death, the applicable criminal provisions are imprisonment. Meanwhile, for administrative sanctions, provisions in the form of business license revocation may apply.

Conclusion

1. Cigarette companies can waive responsibility for consumer health losses due to smoking if the losses are as stated in the health warning on cigarette packages. However, if the health loss suffered is not in accordance with what is stated in the health warning on the cigarette package, then the cigarette company will be responsible.
2. Cigarette companies that cause health losses to cigarette consumers due to smoking can be held liable in accordance with Article 19 of the Consumer Protection Law by applying the principle of product responsibility with a variety of presumption principles, always responsible as a preliminary prosecution and the principle of presumption is not always responsible for limiting it. The forms of responsibility that can be charged include providing compensation in the form of health service fees and compensation according to applicable regulations and it is also possible to claim compensation for the purchase of these cigarette products.

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