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Consumer Protection against the Use of Polycarbonate Plastic Packaging That Contain Hazardous Substances by Business Operators

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Abstract

The importance of consumer protection regarding the use of polycarbonate plastic packaging is reinforced by BPOM findings which prove that exposure to BPA in AMDK has exceeded the threshold and has serious impacts on health. This research is normative juridical research, with a statutory and conceptual approach. This article discusses legal protection, the responsibilities of the *government* and business actors, as well as the efforts that need to be taken if losses are caused by polycarbonate plastic packaging that contains dangerous substances. Several existing regulations have not been able to stop business actors who ignore

standardization regarding the use of polycarbonate packaging and harm consumers. Business actors need to have the awareness to trade products that comply with applicable standards, the government needs to provide guidance and supervision and consumers who have experienced losses can take efforts to resolve disputes outside the court and in court. The participation of all parties is needed so that problems regarding polycarbonate plastic packaging containing dangerous substances can be prevented and resolved.

Keywords: Polycarbonate Plastic, Standardization, Processed Food, Distribution

1. Introduction

People have needs that have no limits, especially in the fulfillment of goods and/or services. The need for this causes business actors to compete to launch new innovations that are unique and attractive. In this era with highly advanced technology and information, consumers benefit because it is facilitated in finding the desired goods and quite a lot of choices. However, another impact of this situation is that consumers are victims of business activities that focus on getting the maximum profit without caring about consumer rights. Business actors have an obligation to provide transparent and honest information about the products they sell as a form of responsibility to the public as consumers.¹

Consumers are parties who have greater risks than business actors. This is the impact of the provisions or conditions that have been made unilaterally by business actors before marketing products to the public. Consumer protection in this condition is crucial. One of the objectives of law is to provide protection to the community, especially in the form of legal certainty. Business actors and consumers should be in an equal position in terms of their rights and obligations. With this alignment, business actors should not be able to produce goods by ignoring the negative impact on society or consumers.

The negative impact caused by business actors is because business actors do not care about the applicable rules relating to standardization in marketing products that are not suitable for consumption by the public, even food packaging commonly used in packaging the basic needs of the community, many of which contain hazardous substances are traded freely on the market. The use of food packaging such as gallons is the most widely used option by the Indonesian people because it has become a habit and is easier to find on the market. Standardization in the production of gallons itself has been regulated in BPOM Regulation Number 20 of 2019 concerning Food Packaging at point 17. However, the use of polycarbonate plastic packaging often contains harmful substances whose side effects are sustainable and, in the future, have a negative impact on health and cause various dangerous diseases.²

¹ Ahmad Fajar and Beggy Tamara. The Principle of Justice in Legal Aspects of Consumer Protection, Sependikum National Seminar, Faculty of Law UNIKAMA, 2017, p. 261.

² Reynaldo Salomo, Lusy Gerungan, and Sarah Roeroe. Liability of Business Actors for Dangerous Food in the perspective of Consumer Protection Law in Indonesia. Lex Administratum Vol. 10, No. 4, 2022.

One of the plastic packaging that contains harmful substances is polycarbonate plastic which is commonly used as storage containers such as jars, beverage bottles, and food containers. However, polycarbonate plastic packaging is most commonly used in the manufacture of gallons with various substances as constituents. The threshold for the use of the substances in question has been regulated in the Food and Drug Administration Regulation No. 20/2019 on Food Packaging. However, in practice, business actors still often violate this regulation, especially in the use of Bisphenol A (BPA). BPA is a material that is often used in the production of polycarbonate plastics and epoxy resins. This material has been used since 1950 in the manufacture of plastic bottles so that they are not easily damaged when dropped and ensure a clear appearance. The various advantages and specifications of polycarbonate plastic cause this material to be widely used by business people to conduct their business. Polycarbonate plastic packaging commonly found in gallons accounts for 96 percent of all gallons distributed in Indonesia. This shows that consumers have little choice but to use this BPA-containing material. Migrating BPA is very dangerous for health because this material is carcinogenic. According to KBBI, carcinogenic is a compound or substance that can cause cancer. In addition, the content of this can disrupt the reproductive system, interfere with fetal development in the womb, cardiovascular disorders³, obesity⁴, diabetes, kidney disorders, and problems in brain development. BPA contained in polycarbonate plastic packaging has many negative health effects. This chemical can resemble estrogen and other hormones in the human body so that it can interfere with the secretion system, production, function and even remove natural hormones. Based on research, the FDA (Food and Drug Administration) argues that BPA is safe only at low levels of exposure after standard toxicity tests⁵. In addition, as reported by WebDM, existing evidence has shown the potential effects of BPA on the brain as well as behavior and the prostate gland in fetuses, infants and children.⁶ This has caused various countries to limit the use of this chemical and even ban its circulation. Indonesia itself gives permission to use polycarbonate plastic packaging but with restrictions on the content of chemicals including BPA.⁷

³ The term "cardiovascular disorders" refers to disorders that affect the heart and blood vessels, such as coronary heart disease and hypertension. Utarina Febrina, Galih Permadi, and Fenty, The Relationship Between Physical Activity and Macronutrient Nutrient Adequacy Rates and Total Cholesterol/HDL Ratio in Rural Communities, *Journal of Science and Community Pharmacy*, Vol. 14, No. 1, 2017, p. 16.

⁴ Obesity is a condition where a person's body weight exceeds the relative body weight, due to the accumulation of nutrients, especially carbohydrates, protein and fat. Fathan Nurcahyo, Link between Obesity and Physical Activity, *Journal of Medikora*, Vol. VII, No. 1, 2011, p. 88

⁵ Toxicity test is a test to detect the toxic effect of a substance. Fikarini Hadi, Dian Agustin, and Febriastuti Cahyani, Toxicity Test of Mangosteen Peel on Fibroblast Cells BHK – 21, *Conservative Dentistry Journal*, Vol. 5, No. 1, 2015, p. 7.

⁶ Dan Brennan, MD, The Fact About Bisphenol A, *WebDm*, 17 Desember 2021, p. 1.

⁷ Trias Palupi, loc.cit.

Based on a study by the Food and Drug Administration (BPOM), polycarbonate plastic packaging containing hazardous substances has been widely circulated. BPOM in 2021-2022 found six cities, namely, Jakarta, Medan, Bandung, Southeast Aceh, Banda Aceh, and Manado where bottled water contained BPA exceeding the predetermined limit. The predetermined threshold limit for BPA content is 0.6 parts per million (ppm) per liter. BPOM found excess BPA in about 8.6 percent of products in circulation facilities and 5 percent in production facilities that had been sampled. Substances that exceed the threshold set in the BPOM Regulation can cause great harm to consumers, especially to children who are the next generation of the nation.

Globally, the circulation of polycarbonate packaging containing hazardous substances has financial and health implications for consumers. The lack of information about this plastic packaging causes people to buy because they do not know the difference between which ones contain hazardous substances and which ones do not. In this case, the government needs to be firm with standardization and labeling in food packaging products. Labeling and standardization of food packaging by the government aims to make consumers feel safe and have no worries. In this case, people feel safe because the government has set rules in product manufacturing, materials used, marketing and other things so as not to harm the community. The government plays an important role in standardization, guidance and supervision of production and distribution so that the provisions regarding this matter are implemented properly by business actors. However, it cannot be denied that deviant behavior still occurs where business actors violate existing regulations either intentionally or negligently. Thus, the responsibility of business actors for the products they sell and distribute is an important issue in consumer protection.

2. Research Methodology

The research method used in the preparation of this paper is Normative Juridical, namely the problems raised, discussed, and described in this study focus on the application of rules or norms in positive law. The approach used is a statutory approach where the author will examine all laws and regulations relating to the legal issues discussed and a conceptual approach where the researcher will refer to legal principles found through the views of legal scholars and legal doctrine. The conceptual approach requires the author to understand the concepts to be studied that come from scholars contained in legal textbooks, legal dictionaries, legal journals and others.⁸ The legal materials used are primary legal materials, secondary legal materials and non-legal materials. Primary legal materials consist of the Civil Code, Consumer Protection Law No. 8/1999, Food Law No. 18/2012, Government Regulation No. 86/2019 on Food Safety, BPOM Regulation No. 31/2018 on Processed Food Labels and BPOM Regulation No. 20/2019 on Food Packaging. Secondary legal materials consist of critical writings of experts and academics on various legal products as well as court decisions, minutes of legal seminars, memoranda containing legal opinions, hearing results, declarations and internet sites. In addition, non-legal materials are the use of materials that have relevance to the

⁸ A' an Efendi dan Dyah Ochterina Susanti, *Legal Research*, Jakarta: Sinar Grafika, 2018, p. 116.

research topic in the form of the internet, non-legal research reports and journals as long as they have relevance to the research topic.

3. Results and Discussion

3.1 Legal Protection for Consumers of Polycarbonate Plastic Packaging Containing Hazardous Substances

People around the world have different lifestyles and change from time to time which causes a diversity of needs for both goods and services. Fulfillment of goods and services is done in various ways, one of which is by buying and selling activities. The buying and selling activity itself is a transaction where there is an exchange of goods that have value, where one party (seller) sells goods and / or services, and the other party (buyer) buys goods and / or services in accordance with the agreement.⁹ In buying and selling transactions, consumers need to be careful in fulfilling their needs in order to prioritize security and safety. This happens because business actors violate existing regulations and override consumer rights to get the maximum profit. Several cases that have occurred where the safety and health of consumers have been put aside by business actors show that legal protection for consumers is very important.¹⁰

In a sale and purchase transaction, consumers receive goods and/or services from business actors, where each goods and/or services traded must meet certain conditions in accordance with safety and security standards in their use. The transaction that occurs between business actors and consumers is an agreement in accordance with Article 1234 of the Civil Code, namely an obligation which is intended to give something, do something, or not to do something.

The diverse needs of society are divided into various types and one of them is based on intensity. One of the needs based on intensity is primary, namely clothing, food and shelter. Food is a need that must be met by consumers every day so that its use is classified as long-term. Current technological developments encourage various unique innovations with good quality, especially in the food sector. This innovation not only has an impact on food, but also on the development of packaging used in packaging food and beverages produced. The packaging used is increasingly diverse ranging from malleable packaging, strong packaging, disposable packaging, and many other types. One of the packaging that is often used is plastic packaging and in Indonesia itself has been widely used for both food and beverages.

Consumers who need food every day cause business actors to use packaging that can be used repeatedly and one example is polycarbonate plastic packaging. The polycarbonate plastic packaging produced contains several ingredients that tend to be harmful if they exceed the standards regulated in the legislation. This causes unrest for consumers because business actors have committed acts of bad faith that cause some consumer rights that have been regulated in the consumer protection law not to be fulfilled. The position of the community as consumers is still very vulnerable to fraud committed by business actors. This vulnerable position of consumers causes consumers to

experience losses in the sale and purchase of food without guarantee of health and safety in its use due to business actors who do not provide clear information on food packaging products that are traded.¹¹

Goods and/or services traded to consumers must have clear information about the condition and how to use the goods, so that consumers can use them safely and comfortably and guarantee their health so as not to cause losses in the future. This is not well implemented in the sale and purchase of food with polycarbonate plastic packaging containing hazardous substances, because business actors do not provide or include correct and clear information about the food packaging being traded, where consumers receive goods with outward appearances that look safe but can basically have a negative impact on health. The right of consumers to obtain comfort, security, and safety in consuming goods and/or services and the right of consumers to obtain clear and correct information about the products purchased are contained in Article 4 letter a and letter c of the consumer protection law. The regulated rights themselves have elements of legal protection to protect consumer rights in order to obtain justice, order, certainty, benefit and peace. Therefore, legal protection efforts are very important to fulfill consumer rights. Legal protection according to M. Isnaeni can be divided into two types based on its source, namely internal legal protection and external legal protection.

The form of internal legal protection is basically protection that is packaged by the parties themselves when making an agreement, where when packing the clauses, both parties want their interests to be fulfilled on the basis of an agreement. Likewise, all risks are sought to be avoided by agreement as well, so that with the agreement the parties will obtain balanced legal protection by mutual consent. Meanwhile, external legal protection is legal protection made by the authorities through regulations for the interests of the weak, according to the nature of laws and regulations that must not be one-sided and partial, proportionally, legal protection must be given as early as possible to the other party. This is because in practice, there is a party that is relatively stronger than its partners, but in the agreement to implement the agreement, the party that was originally strong, falls into a weak party or victim, for example, if there is a default, that party also needs protection. External legal protection explains the protection that comes from legislation.

The sale and purchase of food with polycarbonate plastic packaging containing hazardous substances carries a high risk. This can occur because the consumer does not make an agreement directly with the business so that the consumer is in a more vulnerable position than the business actor. Consumers who should receive all their rights but get losses due to the actions of business actors who only focus on business profits. The irresponsible actions of business actors cause the relationship with consumers to experience problems or disputes. There is an engagement in the relationship between the two parties because the parties have done something, and given something, namely a food product itself to the consumer by the business actor. This is in accordance with Article 1234 of the Civil Code which

⁹ Puteri Asyifa, Melawati dan Panji Adam, The Importance of Consumer Protection Law in Buying and Selling, *Journal of Management and business*, Vol. 3, No. 1, 2021, p. 14

¹⁰ Yusuf Shofie. *Consumer Protection and Its Legal Instruments*, Bandung, Citra Asitya Bakti, 2009, p. 21

¹¹ Muhammad Djumhana. *Indonesian Economic and Social Law*. Bandung, Citra Aditya Bakti, 1994, p. 337

states that the obligation is intended to give something, to do something, or not to do something.

The agreement that occurs between the two parties that causes harm to the consumer in this case requires legal protection efforts to be made so that the comfort and safety of consumers can be guaranteed, one of which is to protect consumer rights that are violated in this case. The sale and purchase transaction of food with polycarbonate packaging is carried out directly and has been legally bound due to the existence of a legal relationship in accordance with Article 1457 of the Civil Code which states that a sale and purchase agreement is an agreement between a seller and a buyer in which the seller binds himself to transfer his ownership rights to an item to the buyer, the consumer in this case will receive food with polycarbonate plastic packaging which should be in accordance with what was promised. Based on this provision, the parties have rights and obligations that must be carried out in accordance with the attachments regulated by the Civil Code. The rights and obligations that must be carried out in accordance with Article 1457 of the Civil Code are a form of internal legal protection. Thus, consumers have the right to sue if they suffer losses due to the sale and purchase transaction that occurs. Based on the sale and purchase agreement that has been regulated in the Civil Code, consumers can sue for losses with the basis of the lawsuit can be added from the legislation which is a form of external legal protection.

Legal protection in the form of regulations to protect consumers can be seen directly with the making of the consumer protection law, especially in the provisions of rights that must be obtained by consumers along with prohibitions against business actors. In the use of polycarbonate plastic packaging containing hazardous substances, the legal protection provided to consumers is to protect consumer rights as contained in Article 4 letter a and letter c of the consumer protection law. The rights that must be fulfilled in this case are the right to security, comfort and safety in consuming goods and / or services and the right to correct, clear and honest information about the condition of goods and / or services is the main one and has been experienced by many consumers in transactions, one of which is in the use of polycarbonate plastic packaging containing hazardous substances. Fulfillment of the protection of consumer rights is expected to prevent fraud that is often committed by business actors. Apart from the rights that must be fulfilled, business actors are also prohibited from committing acts as stipulated in Article 8 paragraph (1) letter a where it is prohibited to produce and/or trade goods and/or services that do not meet or do not comply with the required standards and statutory provisions. Consumers' rights are very important to be fulfilled because they are very vulnerable to obtaining unclear information about the packaging used for the food they consume. Information about the products sold must be provided to consumers either verbally, through advertisements and media, or included in the packaging directly. This is done so that consumers do not get a wrong picture of a product. Protection of consumer rights by both the state and business actors needs to be done so that the community as consumers in this case are not harmed and the relationship between consumers and business actors and the government can be maintained properly without disputes.

The right of consumers to obtain clear information about the food consumed is stated in Article 101 paragraph (3) of Law

No. 18/2012 on Food where processed food that is traded must contain information about how to use, how to use, and/or other information that consumers need to know about the impact of food on human health. Processed food itself based on Article 1 point 19 is food and beverages processed in a certain way or method with or without additives. Polycarbonate plastic packaging is commonly used as a packaging for drinking water and food that is classified as processed food.

Food packaging with polycarbonate plastic material provides many advantages to businesses. Strong and clear-colored packaging can make it easier for consumers to see the appearance of processed food without damaging the initial shape of the packaging. The various benefits of using polycarbonate plastic require businesses to produce food with materials that do not endanger human health. This is as stated in Article 24 paragraph (1) of Government Regulation No. 86/2019 on Food Safety, which states that every person who produces food in packaging must use food packaging materials that do not endanger human health. In addition to Article 24 paragraph (1), Article 25 paragraph (1) also states that every person who produces packaged food for distribution is prohibited from using food packaging materials that contain prohibited food contact substances that can release contaminants that endanger human health. Food contact substances as mentioned in Article 1 point 22 are substances that make up food packaging, which in use come into direct contact with food. Polycarbonate plastic packaging is a food contact substance with various materials that can migrate and contaminate food when exposed to heat and given a hard enough impact.

Traded food packaging must contain clear, correct and honest information about the condition of the food. It also contains how to use, prohibited matters and information about the food consumed. Article 2 paragraph (1) of Food and Drug Administration Regulation No. 31/2018 on Processed Food Labels states that every person who produces processed food domestically is obliged to include a label. The label in Article 1 point 3 of NA-DFC Regulation No. 31/2018 is any information about processed food in the form of pictures, writings, a combination of both, or other forms that are included in processed food, inserted into, affixed to, or are part of food packaging. Article 4 paragraph (1) also states that every label traded must contain information about processed food correctly and not misleadingly.

Polycarbonate plastic packaging is packaging that can be used by businesses as stated in point.17 of BPOM Regulation No. 20 of 2019. Packaging with this material can be used with certain standards that are limited to protect consumers from negative impacts in long-term use. Polycarbonate is a material that can migrate so that it is regulated regarding the conditions for substance migration, namely as follows:

Table 1

S. No	Requirements	Maximum Limit
1	Total extract of distilled water, at reflux temperature for 6 hours to resin weight	0,15%
2	50% (v/v) total ethanol extract, at reflux temperature, for 6 hours to resin weight	0,15%
3	Total n-heptane extract, at reflux temperature for 6 hours against resin weight	0,15%
4	Bisphenol A monomer	0,6 ppm

In relation to consumer rights that must be protected with this form of legal protection, Article 4 letter h of the consumer protection law also states that consumers have the right to compensation, compensation, and/or replacement, if the goods and/or services received are not in accordance with the agreement or not as they should be. In the case of polycarbonate plastic packaging containing hazardous substances, the quality assurance of the goods received by consumers is not in accordance with what it should be, causing consumers to suffer losses. This is due to the packaging that supposedly safe for long-term use contain harmful substances that have exceeded the prescribed threshold.

3.2 Forms of Responsibility of Business Actors and the Government for the Distribution and Use of Polycarbonate Plastic Packaging Containing Hazardous Substances

Every individual in society needs each other which causes a reciprocal relationship and the emergence of rights and obligations. The rights and obligations of each individual are different from one another. These differences in rights and obligations must complement each other so that no disputes occur. Likewise, business actors and consumers have rights and obligations that must be fulfilled so that the relationship is well established without any disputes.

The relationship that occurs between consumers and business actors in buying and selling transactions if it is not in accordance with the laws and regulations can harm consumers. So, business actors have responsibility for actions that are considered detrimental to consumers in accordance with applicable laws and regulations. In addition to business actors, the government as a stakeholder also has the responsibility to provide guidance and supervision of the implementation of consumer protection.

Liability is very important in consumer protection. In the case of the use and circulation of polycarbonate plastic packaging, care is needed in analyzing who should be responsible and how far the responsibility is imposed on the relevant parties. The use and circulation of polycarbonate plastic packaging as one of the cases of consumer protection violations is the responsibility of business actors and the government. This is so that consumers can enter into a sale and purchase agreement safely as well as guarantees for compensation in the event of a dispute.

3.2.1 Responsibility of Business Actors for the Use and Distribution of Polycarbonate Plastic Packaging Containing Hazardous Substances

Each Regarding the use and circulation of polycarbonate plastic packaging containing hazardous substances, business actors have an obligation to produce goods and/or services in accordance with BPOM Regulation No. 20/2019 on Food Packaging. Business actors are directly responsible for the violations they commit if they take actions that are not in accordance with the established regulations.

Responsibility in law has several limitations according to several formal sources of law, such as legislation and standard agreements in the field of civil law. The principles of responsibility in legal protection law can generally be distinguished as follows:¹²

¹² Aulia Mautiah, Responsibility of Business Actors to Consumers Regarding Food Safety in the Perspective of

1. Principle of liability based on fault/negligence

Responsibility based on fault/negligence is a subjective responsibility, where responsibility will be determined according to the actions of the business actor. Based on this theory, consumers have the right to file a lawsuit if the business actor commits a negligent act that causes harm to consumers. Negligence can be referred to as the basis for a lawsuit if it meets several conditions, namely:¹³

- An action that causes harm is not in accordance with the care that should be taken.
- It must be proven that the defendant has committed an act of negligence in the performance of its duty of care towards the defendant.
- The act of the business actor is the main cause of the loss.

2. Presumption of liability

The principle in question is that the defendant is always presumed responsible until he can prove his innocence, so the burden of proof is on the defendant. This proof is often referred to as reverse proof where a person will be considered guilty until they can prove otherwise. This system of proof is used in the consumer protection law as stated in Articles 19, 22, 23 and 28, namely that the business actor has the burden of proving his innocence.

3. Presumption of nonliability

This principle is the opposite of the principle of presumption of liability, where the defendant is always presumed not to be liable until proven guilty. This principle is only recognized in limited consumer transactions and is justified by common sense. However, this principle is no longer used absolutely and leads to the principle of responsibility with limitation of damages.

4. Strict Liability

Strict liability is a special form of tort, where the principle of liability in tort is not based on fault, but the business actor must be responsible for the losses suffered by consumers due to the tort. The principle of strict liability does not discuss the existence of fault, but is directly responsible for consumer losses due to defective products, because the business actor is not careful and because the business actor must prevent the loss.¹⁴

5. Limitation of liability

Limitation of liability is something that is often done by business actors and included in the exculpatory clause in the standard agreement they make, which tends to harm consumers. If there is an absolute limitation by the business actor, it must be based on the laws and regulations.

With regard to compensation, if there is an obligation to prove fault, then the fault is the basis for the obligation to be liable. The fault committed by the business actor is considered to be the cause of the loss. Based on Article 1365 of the Civil Code, it is stated that fault is the basis for

Consumer Protection Law, Journal of business law and investment, Vol. 7, No. 2, Mei 2017, p. 7

¹³ Ahmad Miru, Consumer Protection Law, Jakarta, Raja Grafindo Persada, 2004, p. 148

¹⁴ Janus Sidabalok, Consumer Protection Law, Bandung, Citra Aditya Bakti, 2014, p. 101.

liability. The mistake made in this case is a violation of regulations and contrary to applicable law. The result of the actions taken by the party is harm to other parties, namely consumers who are threatened with safety and health because they consume food with packaging containing hazardous substances. Consumer rights have been violated or not fulfilled by the circulation of polycarbonate plastic packaging containing hazardous substances. The rights violated are Article 4 letter a of the consumer protection law where consumers have the right to comfort, security, and safety and Article 4 letter c of the consumer protection law, namely the right to correct, clear, and honest information about the condition of goods and/or services. In addition, business actors also do not carry out their obligations in accordance with the provisions in Article 7 letter a of the consumer protection law where business actors must act in good faith in carrying out their business activities and Article 7 letter d where business actors must guarantee the quality of goods and / or services produced and / or traded based on the provisions of the applicable quality standards for goods and / or services. Thus, it can also be stated that these provisions have been violated and can be linked to Article 1365 of the Civil Code on unlawful acts. The actions of business actors who distribute food with polycarbonate plastic packaging containing hazardous substances are not in accordance with food packaging standards and are not in accordance with the provisions of the Civil Code causing harm to consumers because it is classified as harmful to health can be categorized as a tort.

This problem regarding compensation is a consumer right according to the consumer protection law in Article 4 letter h where consumers have the right to receive compensation, compensation, and / or replacement if the goods and / or services received are not in accordance with what they should be. This article shows that every consumer has the right to get compensation if the product received is not in accordance with the agreement. Likewise, in the case of the use of polycarbonate plastic packaging containing hazardous substances, if consumers suffer losses caused by this, then business actors must provide compensation rights to these consumers.

In the study of consumer protection law also provides a solution, namely the principle of risk responsibility, this is based on the idea that the obligation to bear losses is seen as a risk that must be borne alone because no other party can be blamed. In the case of food with polycarbonate plastic packaging containing hazardous substances, the business actor bears product liability where this liability is caused by certain conditions of the product (defects or endangering other people. In connection with the above, by using the principle of strict liability as the basis of responsibility, the consumer as the plaintiff is no longer required to prove the fault of the business actor as the defendant. Because according to this principle, the basis of responsibility is no longer fault, but the defendant business actor is directly responsible as a risk of his business. On the other hand, it is the business actor who must prove his innocence, namely that he has carried out the production process in accordance with applicable regulations, by upholding the principle of prudence in production.¹⁵

Article 19 paragraph (1) of consumer protection law states that business actors are responsible for providing compensation for damage and or loss to consumers due to consumption of goods and/or services produced or traded. Based on this, the product being traded contains not the only thing that needs to be accounted for by business actors, but also all forms of losses experienced by consumers due to the use of consumed products.

The form or form of compensation in consumer disputes based on Article 19 paragraph (2) of consumer protection law, includes:

1. Refunds

The refund referred to as a form of compensation is the return of money paid by consumers at the time of the transaction.

2. Return of goods and/or services

The return of goods and/or services in question is a form of replacing goods and/or services with other products needed by consumers.

3. Health care

The intended health care is the business actor providing costs for health care due to consuming goods and/or services.

4. Providing compensation

Providing compensation is giving a sum of money to consumers or their heirs if consumers are disabled or die as a result of consuming goods and/or services.

The provision of compensation above does not eliminate the possibility of criminal prosecution based on further evidence of the existence of elements of fault and can also not be applied if the business actor can prove that the fault is the fault of the consumer. The form of compensation to the injured party as above also applies in the relationship between business actors and consumers of polycarbonate plastic packaging. Business actors, in this case acting as producers who create food with polycarbonate plastic packaging, must compensate if proven guilty. Business actors in addition to fulfilling compensation for the use of polycarbonate plastic packaging also have other responsibilities related to its circulation. In accordance with Article 8 paragraph (1) letter a, business actors It is prohibited to trade goods and/or services that do not meet or do not comply with the required standards and statutory provisions. Business actors who produce food with polycarbonate plastic packaging have violated this provision and have the responsibility to stop trading such goods and/or services and are obliged to withdraw them from circulation. This has been regulated in Article 8 paragraph (4) of consumer protection law. In relation to sanctions after a violation is proven, additional sanctions can also apply in the circulation of polycarbonate plastic packaging containing hazardous substances in accordance with Article 63 of the consumer protection law where business actors are prohibited from trading goods and/or services produced and are obliged to withdraw goods and/or services from circulation.

Based on the description above, the responsibility of business actors is very important, which is realized in the provision of compensation to consumers for errors or omissions that have been committed. The compensation that can be given can be in the form of a refund or replacement of goods, health care or compensation in accordance with applicable laws and regulations. This is in accordance with what has been regulated in Article 19 of the consumer

¹⁵ Dezonda R Pattipawae, Liability of Food Producers to Consumers, Journal of Legal Perspective, Vol. 17, No. 2, 2017, p. 270

protection law. In addition, the responsibility that needs to be carried out in relation to the circulation of polycarbonate plastic packaging containing hazardous substances is to stop trading these goods and/or services and to withdraw them from circulation in accordance with Article 8 paragraph (4) consumer protection law.

3.2.2 Government Responsibility for the Use and Distribution of Polycarbonate Plastic Packaging Containing Hazardous Substances

The implementation of consumer protection is not only the responsibility of business actors and consumers, but also the government as a stake holder. The interest in question is its role as a party that keeps the country stable with regard to problems or policy makers in the form of rules made so that the community is better and prosperous.¹⁶ The government has a very important role in providing protection to consumers. This protection is carried out in the form of several responsibilities that have been regulated in Article 29 and Article 30 of the consumer protection law regarding guidance and supervision so that consumers get their rights. The fulfillment of responsibilities by the government is one of the factors to achieve dynamic and positive business activities.

The regulation used in providing protection to consumers and businesses using polycarbonate plastic packaging is the consumer protection law. The protection provided must help packaging users and the wider community without discrimination. Protection in the form of compensation and other sanctions against the perpetrator must be implemented to protect consumer rights.

The purpose of organizing consumer protection as stated in Article 3 of consumer protection law requires adequate guidance and supervision efforts. The coaching and supervision referred to are as follows:

1. The business actors themselves
2. Production facilities and infrastructure;
3. The overall business climate; and
4. Consumers.

Guidance and supervision carried out by the government is expected to help guarantee consumer rights and fulfillment of obligations by business actors. Coaching of business actors means that business actors are encouraged to carry out business activities in accordance with applicable regulations. Coaching carried out by the government contains an element of assistance where business actors are maximally assisted to carry out obligations with toughness in business so that consumers and business actors have a healthy attachment and the business climate is also healthy. Good coaching can achieve the highest quality of human resources as actors of business activities.

Based on the provisions of Article 29 of consumer protection law, the government's coaching responsibilities are as follows:

1. The government is responsible for fostering the implementation of consumer protection that ensures the rights of consumers and business actors are obtained and the obligations of consumers and business actors are carried out.
2. Guidance by the government on the implementation of consumer protection as referred to in paragraph (1) shall

be carried out by the Minister and/or the relevant technical Minister.

3. The Minister as referred to in (2) shall coordinate the implementation of consumer protection.
4. Guidance on the implementation of consumer protection as referred to in paragraph (2) includes efforts to:
 - a. The creation of a business climate and the growth of a healthy relationship between business actors and consumers.
 - b. The development of non-governmental consumer protection organizations;
 - c. Improving the quality of human resources and increasing research and development activities in the field of consumer protection.
5. Further provisions concerning the guidance of the implementation of consumer protection shall be regulated by Government Regulation.

Guidance on the production and/or distribution of food with polycarbonate packaging is by implementing guidance to business actors regarding human resources, by implementing an understanding of the fulfillment of the stipulated terms, conditions and procedures is very important. The guidance implemented has the aim that business actors carry out production with safe packaging and do not harm consumers. The implementation of guidance by the government can encourage business actors to understand the obligation to provide clear, correct and honest information in food products.

Coaching has the meaning of assistance, providing guidance and assistance to business actors so that they are able to survive and always grow and develop towards good things by fulfilling their obligations. The government's responsibility in the circulation of polycarbonate plastic packaging containing hazardous substances is to carry out guidance to business actors who produce and/or distribute food products that should not be consumed sustainably. The government's responsibility in fostering consumers is realized by the existence of the Non-Governmental Consumer Protection Agency (LPKSM), which was established under the consumer protection law, with the task of empowering and educating consumers.

The government's responsibility is not limited to providing guidance, but also to supervise the products in circulation. Consumers getting clear enough information is one of the government's responsibilities. Consumer difficulties in obtaining information about product content can be utilized by business actors for things that have a negative impact. Government supervision of the use and/or circulation of polycarbonate plastic packaging based on Article 30 of consumer protection law is as follows:

1. The laws and regulations are implemented by the government, the community, and non-governmental consumer protection organizations.
2. Supervision by the government as referred to in paragraph (1) shall be carried out by the Minister and/or the relevant technical Minister.
3. Supervision by the public and non-governmental consumer protection organizations is carried out on goods and/or services circulating in the market.
4. If the results of the supervision as referred to in paragraph (3) are found to deviate from the prevailing laws and regulations and endanger consumers, the

¹⁶ Eni Suhaeni, Public Participation in the Implementation of Consumer Protection, Tempo Newspaper, 28 Juli 2003

Minister and/or technical Minister shall take action in accordance with the prevailing laws and regulations.

5. The results of supervision organized by the public and non-governmental consumer protection organizations can be disseminated to the public and can be submitted to the Minister and technical Ministers.
6. Provisions for the implementation of supervisory duties as referred to in paragraph (1), paragraph (2), and paragraph (3) shall be stipulated by Government Regulation.

The government in supervising food products with polycarbonate packaging containing hazardous substances may conduct an inspection in the event of an alleged violation of the law in the food sector in accordance with Article 110 paragraph (1) of the Law on Food, which states:

- a. Entering any place suspected of being used in the activities or processes of food production, storage, transportation, and trade to inspect, examine, and take samples of food and everything suspected of being used in the activities of food production, storage, transportation, and/or trade.
- b. Stopping, inspecting and preventing any means of transportation suspected or reasonably expected to be used in the transportation of food as well as taking and inspecting food samples.
- c. Opening and examining food packaging.
- d. Examine any books, documents, or other records allegedly containing information regarding production activities of food storage, transportation, and/or trade, including duplicating or quoting such information.
- e. Order to show business license or other similar documents.

The government's responsibility to supervise the implementation of consumer protection of food products can be through three supervision systems, starting with prevention where food products traded must have gone through the registration stage. The next supervision is to actively monitor the existence of cases concerning food that have a broad impact on society which is not only detrimental to consumer health but also from a social and economic perspective. When there is a case of food packaging that contains harmful substances and has violated the predetermined standardization, the system will encourage law enforcement to handle the problem with specific actions based on the specificity of the violation committed. The last supervision is a system where law enforcers will conduct surprise inspections (sidak) of food products suspected of containing hazardous substances.

The implementation of supervision on food packaging is carried out by the minister who organizes government affairs in the field of industry, the minister who organizes government affairs in the field of trade or the Head of the Agency in accordance with their authority. This is in accordance with Article 49 paragraph (1) of Government Regulation No. 86/2019 on Food Safety. The head of the agency itself, according to Article 1 point 25 of Government Regulation No. 86/2019, is the head of a non-ministerial government agency that carries out government tasks in the field of food and drug control. Follow-up on supervision of food packaging is carried out in coordination with the minister who organizes government affairs in the field, the Head of the Agency, and the regent/mayor in accordance with their authority. The supervision is conducted periodically, intensively at a certain time and in case of

suspected violations. The inspection actions carried out based on Article 51 paragraph (3) of Government Regulation No. 86/2019 are almost the same as those stipulated in the Law on Food, but in the case of entering a place suspected of violations, the authorities may conduct testing.

The government after carrying out guidance and supervision, if it finds any irregularities, then the business actors who commit violations can receive administrative sanctions. Administrative sanctions that can be imposed by the government on business actors who violate the provisions under Article 59 paragraph (2) of Government Regulation No. 86/2019 are: fines; temporary suspension of activities, food production, and/or food circulation; withdrawal of food from food circulation by producers; compensation; and/or revocation of licenses. The imposition of sanctions in this case is implemented in stages, not hopefully and/or accumulatively.

Supervisors in carrying out their functions to enter premises suspected of violating the regulations shall be equipped with a warrant and supervision and/or inspection as well as identification. This is in accordance with Article 110 paragraph (2) of the Food Law and Article 53 paragraph (5) of Government Regulation No. 86/2019 on Food Safety. The government's responsibility for the circulation of polycarbonate plastic packaging containing hazardous substances is to carry out guidance and supervision of products and standardization. This has been regulated in Article 30 of the consumer protection law and Article 4 of the consumer protection law where the government must be responsible for exercising consumer rights, namely the right to receive guidance and education.

Based on the description above, the government has the responsibility to supervise and conduct guidance activities related to food products with polycarbonate plastic packaging. In general, the form of responsibility for guidance carried out is in accordance with Article 29 of consumer protection law. Meanwhile, the form of supervisory responsibility is carried out based on Article 30 of the consumer protection law with supervisory authority regulated in Article 110 paragraph 1 of Law No. 18/2012 on Food. In violation of the regulations stipulated by the circulation of polycarbonate plastic packaging containing hazardous substances, the relevant minister may temporarily suspend the violating activity, withdraw the food in circulation, and stop the use of materials that are classified as hazardous substances or exceed the specified threshold.

4. Conclusion

Based on the problems described above, a conclusion can be drawn as follows:

1. The form of legal protection for consumers against the use of polycarbonate plastic packaging containing hazardous substances can be seen from two aspects, namely internal and external. The internal form of legal protection against the use of polycarbonate plastic packaging is the attachment to the sale and purchase relationship that occurs in accordance with Article 1457 of the Civil Code. External protection is in the form of legislation, namely the fulfillment of consumer rights to obtain correct and clear information about products to be consumed in accordance with Article 4 letter c and consumer rights to obtain security, safety and comfort in accordance with Article 4 letter a of the consumer

protection law. The form of legal protection for consumers is reaffirmed in Article 101 paragraph (3) of Law No. 18/2012 on Food to provide correct and clear information about the food being traded, Article 24 paragraph (1) jo. 25 paragraph (1) of Government Regulation No. 86/2019 on Food Safety where processed food packaging must not endanger consumer health, Article 2 paragraph (1) of NA-DFC Regulation No. 31/2018 on Processed Food Labels must include a label, and in point.17 of NA-DFC Regulation No. 20/2019 on Food Packaging which regulates the production standards of polycarbonate plastic packaging.

2. The responsibility of business actors for the use of polycarbonate plastic packaging containing hazardous substances is to compensate for the losses suffered by consumers. This is as regulated in Article 19 of consumer protection law. The responsibility of business actors related to circulation is carried out by stopping the trade in goods and / or services that are contaminated and must withdraw them from circulation. Meanwhile, the form of government responsibility related to the use and circulation of polycarbonate plastic packaging is by conducting guidance and supervision. The form of government guidance is regulated in Article 29 of consumer protection law and the form of supervision is regulated in Article 30 of consumer protection law. The implementation of supervision of the circulation of processed food is also regulated in Article 110 of Law Number 18 of 2012 and Article 51 of Government Regulation No. 86 of 2019. Guidance and supervision is carried out by the government towards business actors to encourage the production of quality goods and / or services in accordance with the standards regulated in laws and regulations.

5. Recommendations

Based on the problems that are the topic of discussion of writing this thesis, the author provides the following Recommendations:

Based on the problems and conclusions that have been stated above, the authors provide the following suggestions:

1. Business actors should have an awareness that in producing and/or distributing polycarbonate plastic packaging, it must meet the standards set forth in the laws and regulations. The content of substances contained in polycarbonate plastic packaging is prone to migrate in hot temperatures so that business actors should carry out distribution activities that are safe from heat exposure such as sunlight.
2. The government in providing protection against the use of polycarbonate plastic packaging should prioritize preventive protection or before a dispute occurs. This can be done by prioritizing guidance and supervision so that food with polycarbonate plastic packaging with hazardous substances is not produced by business actors or can prevent circulation by conducting surveillance before distribution to be traded to consumers. In addition, the government can also make rules governing the use of more specific labels for some potentially hazardous substances so that consumers get clearer and more detailed information. Furthermore, the

government should focus on developing natural resources and technological development so that people can consume clean water directly at home without using gallons or other potentially hazardous packaging because basically people do not have many options to get clean water.

3. Consumers should be more careful before consuming processed food and seek information about the food product, not only about the ingredients in processed food, but also food packaging. This can also be prevented by following various actual news about cases that are happening to consumers.

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