

Consumer Protection for the Use of Hazardous Asbestos Building Materials (Based on Supreme Court Decision Number 6 P/HUM/2024)

Nabila Adifia Azzahra¹, Dwi Desi Yayi Tarina²

^{1,2}, Fakultas Hukum, Universitas Pembangunan Nasional “Veteran”

Jakarta, Indonesia

Jalan. RS. Fatmawati Raya, Pd. Labu, Kec. Cilandak, Jakarta Selatan 12450

E-Mail: 2110611255@mahasiswa.upnvi.ac.id (Corresponding Author)

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Abstract

The purpose of this study is to analyze the process of legal protection for the community and victims of the use of asbestos products based on Supreme Court Decision Number 6 P/HUM/2024. This study uses a normative legal research method (normative juridical) with a statutory, case, and conceptual approach. The results of the study indicate that the process of legal protection for the community and victims has not been running well and there is still much that needs to be improved. If in accordance with Supreme Court Decision Number 6 P/HUM/2024, legal protection can be carried out through institutions that provide legal assistance. Legal protection for consumers can also be resolved through litigation or non-litigation. This is in accordance with the regulatory arrangements contained in Law Number 8 of 1999 concerning Consumer Protection (UUPK), Government Regulation Number 58 of 2001 concerning Guidance and Supervision of the Implementation of Consumer Protection, and Regulation of the Minister of Health Number 472 of 1996 concerning Safeguarding Materials Hazardous to Health. Therefore, business actors or producers must also be responsible for the welfare of society as consumers by replacing asbestos materials with safer alternatives.

Keywords: Asbestos, Consumer Protection, Decisions.

INTRODUCTION

A natural silicate mineral made of small fibers and its heat-resistant and very durable properties are commonly referred to as asbestos, so asbestos-based products are often used as building and construction materials. However, if asbestos fibers are inhaled too often by humans, it will cause a disease commonly referred to as asbestosis. Asbestosis itself is a disease caused by the large amount of scar tissue from asbestos fibers that are retained in the lung tissue and usually the disease appears after being exposed to it for 10 to 30 years.

The type of asbestos itself is divided into three types, namely; chrysotile, amosite, and crocidolite. The type of chrysotile (white asbestos) is the most commonly used as an item marketed to consumers. Then, the type of amosite (brown asbestos) is one of the most dangerous and is often used as an insulating material or building product. Then, if the type of

crocidolite (blue asbestos) is also the most dangerous type of asbestos because the shape of the fibers is sharp and smooth so that it is easier to enter the lungs. But even though the blue and brown asbestos types are the most dangerous, the white asbestos types are also dangerous if used because they all have the potential to cause serious diseases such as lung cancer and mesothelioma.

A warning about asbestos disease in Indonesia has actually been widely conveyed by international institutions. This is because the large consumption of asbestos in Indonesia has started since the 1950s and is the 4th largest population in the world. According to research from the Global Burden of Disease (GBD) data, it also says that more than 1,600 Indonesians die each year from this asbestos disease. The number of deaths is also expected to continue to increase if the consumption of asbestos materials in Indonesia is not stopped immediately. It can be concluded that many Indonesian people still use asbestos-based products because all of this is based on the quantity of asbestos used and also the length of time that asbestos has been used in Indonesia so far.

Therefore, it is very important to have a policy regarding consumer protection in using goods, especially hazardous materials, such as asbestos which are dangerous if used for a long period of time. Legal policies in Indonesia regarding this matter have actually been regulated and explained in several regulations, but have not been implemented properly. One of them is the Regulation of the Minister of Health Number 472 of 1996 concerning the Safety of Hazardous Materials for Health, the existence of this regulation is one of the efforts to reduce the use of hazardous materials, which is done by providing correct and clear information about the handling of hazardous materials to hazardous material managers and the general public.

Many foreign countries have also restricted the use of asbestos for building materials and eliminated the use of the material as a consumer good. According to the International Ban Asbestos Secretariat, at least 69 countries have banned asbestos, from the European Union to the Persian Gulf, and also industrialized countries such as Japan to developing countries in Africa. For example, another country is the United States, which has long been very serious about responding to health problems caused by asbestos fibers in its country. This is done by forming authorized institutions to regulate the asbestos problem and its government has also opened information centers that can be accessed by all its people. Meanwhile, other developing countries continue to use asbestos in large quantities. This lawsuit is an attempt by LPKSM and LION to obtain accurate information, among others, regarding asbestos-containing products circulating in the market. So far, products that use asbestos do not have complete information regarding their uses or the dangers they contain.

Therefore, this application was submitted by the applicants because of their concerns about the commodity of asbestos itself. Because, this has the potential to cause losses for the applicants and the community who use asbestos-based goods. So, the applicants hope to require the inclusion of instructions for use and clear hazard symbols or warning signs so that the goods are easy to understand, because if not, it will harm the health of the community as consumers who use the product.

In 2016, LION Indonesia and INABAN (Indonesia Ban Asbestos Network) also conducted health checks for asbestos processing factory workers in two different factories. The results showed that dozens of workers experienced lung disorders from the two factories. There were 10 people with almost similar symptoms and came from the same factory. Although the victims received compensation, they could only receive compensation if the victims were no longer working. So, this is very detrimental to the victims who can lose their jobs if they get diseases caused by asbestos.

Based on the above problems, it shows that the use of asbestos is very dangerous for both users and workers who make it. Both can be seriously affected, especially with health

problems because asbestos has long-term effects. So, if this is not prevented quickly, it will cause more victims and repeated incidents every year. Therefore, the preparation of this study will examine the form of legal and consumer protection for the community and victims affected by asbestos products based on the Supreme Court Decision Number 6 P / HUM / 2024.

RESEARCH METHODS

A research cannot be said to be research if it does not have a research method (Koto, 2021). Research methods are one of the factors of a problem that will be discussed. The type of research used in this research is normative legal research. This research was conducted using a statutory approach. The statutory approach is carried out by reviewing all laws and regulations that are related to the legal issue being handled. (Marzuki, 2017). Analysis of legal materials is carried out using qualitative analysis methods which are used to explain legal events, legal materials or legal products in detail to facilitate legal interpretation (Zainuddin & Ramadhani, 2021).

DISCUSS AND ANALYSIS

Legal Protection for the Community and Victims of the Use of Asbestos Products in Supreme Court Decision Number 6 P/HUM/2024

One form of protection that must be provided by a country to the community is legal protection because every citizen has the right to receive it. In the form of legal protection for the community and for the victims of use, it is important to carry out because considering all forms of danger can occur because of asbestos, especially to a person's health. Based on Supreme Court Decision Number 6 P/HUM/2024, legal protection and problem solving are resolved through litigation. In this case, it is done by submitting an application to the Supreme Court regarding objections to the right to judicial review of the Regulation of the Minister of Trade Number 25 of 2021 concerning "Stipulation of Goods Required to Use or Complete Indonesian Language Labels Attachment Letter B Number 5". The applicants who submitted the application are also community groups that form the Community Self-Help Consumer Protection Institution (LPKSM) which is under the auspices of the Yasa Nata Budi Foundation and one of its goals is to play an active role in realizing consumer protection.

The lawsuit or application is one of the efforts of consumer protection institutions, namely LPKSM and LION Indonesia, to obtain correct information regarding products or goods containing asbestos. This is because currently asbestos-based products do not include clear and complete information in detail on how to use them or the hazardous content contained in the product. This problem is triggered by the fear of a producer if they list in full the ingredients used in the product to be sold because it triggers a loss of consumer trust regarding the products produced. However, this is very detrimental to consumers because there is no label on how to use it and a clear hazard symbol and/or warning sign in the Regulation of the Minister of Trade. Therefore, the public as consumers need to be protected in their rights and the importance of legal protection for consumers. Legal protection for consumers is a big problem and needs serious attention from the Government in order to realize the welfare of society and create balance, harmony, and harmony between the interests of individuals, society, and the

interests of the nation. Therefore, regarding the Regulation of the Minister of Trade Number 25 of 2021 concerning "Stipulation of Goods Required to Use or Complete Indonesian Language Labels in Appendix letter B number 5" which is contrary to the principles of protection and balance, harmony, and alignment.

Not only that, the object of the application also contradicts Article 2 of Law Number 7 of 2014 concerning Trade. The article states that trade policies must be formulated based on the principles of fairness and health, business safety, and environmental awareness. However, if it is adjusted to the object of the application which does not require the inclusion of how to use and danger symbols on an item, then this is very contrary to the stated principles.

Therefore, in this case, the legal protection process for the community and the victims that is most in accordance with Supreme Court Decision Number 6 P/HUM/2024 is to carry out legal protection through institutions that provide legal assistance such as LPKSM and LION Indonesia. This is done by submitting an application to the Supreme Court regarding the Regulation of the Minister of Trade which still contradicts several of the Laws and Regulations above it. Of course, this protection is carried out to ensure that victims get justice and of course compensation for the victims and is a prevention effort for the entire community.

Consumer Protection Against the Use of Asbestos-Based Products Reviewed from Law No. 8 of 1999 concerning Consumer Protection

The term consumer comes from the Dutch "consumer" and "consumer" (American English) and can be interpreted as the final user of goods and/or services (Nugroho, 2008). That in short, the definition of a consumer is someone who will give wages or pay to get goods or services according to their respective needs. In accordance with Law Number 8 of 1999 concerning Consumer Protection, that "a consumer is every person who uses goods and/or services available in society, either for the benefit of themselves, their families, other people, or other living things and not for trading". According to Abdul Halim Barkatullah, who defines a consumer as "a person who buys certain goods or uses certain services"; which means "every person who uses goods or services" (Barkatullah, 2007).

Consumer protection is an effort to guarantee legal certainty for consumers in the form of protection. Consumers can guarantee their legal certainty by being given all knowledge about their protection, and for business actors or producers must be able to provide information on goods as honestly and openly as possible relating to the condition and even guarantees for goods and/or services traded to consumers.

Legal protection for consumers can be done through litigation or non-litigation. In accordance with Article 47 of Law Number 8 of 1999 concerning Consumer Protection, which states that "out-of-court consumer dispute resolution is carried out to reach an agreement on the form and amount of compensation and/or regarding certain actions to ensure that the losses suffered by consumers will not happen again or will not be repeated". This can also be called a non-litigation settlement which can be done through mediation, conciliation, and arbitration. Meanwhile, if with litigation it is a problem resolution that is resolved through the judicial process in accordance with Article 48 by considering the provisions of Article 45 of Law Number 8 of 1999 concerning Consumer Protection. Article 45 paragraph (1) of the Consumer Protection Law states that "every consumer who is harmed can sue a business actor through an

institution tasked with resolving disputes between consumers and business actors or through a court in the general court environment".

There are several cases of violations by business actors or producers that have an impact on the health of consumers, one example is in the study regarding asbestos-based products that are still widely traded, especially in Indonesia. In this case, the party that is most disadvantaged is the consumer because they have paid for the goods but have to bear a fairly large risk, namely that it can interfere with the health of those who use them. So, in this situation, consumer protection is important because consumers are often disadvantaged by violations made by business actors or producers.

Judge's Consideration on Judicial Review of Minister of Trade Regulation Number 25 of 2021

In Indonesia, judicial review is carried out by the Constitutional Court (MK) and the Supreme Court (MA) but have different scopes of authority. If in accordance with the decision of the study, the authority is the Supreme Court, which has the authority to conduct judicial review of laws and regulations under the Law against the Law. The definition of Judicial review itself is a test carried out through the mechanism of the judicial institution against the truth of a norm (Asshiddiqie, 2006).

The Ministerial Regulation also includes the authority of the Supreme Court to conduct a judicial review, which is in accordance with the research, namely in the Regulation of the Minister of Trade Number 25 of 2021. This is done to test whether the regulation is in accordance with or still contradicts higher laws and regulations, especially the Law and the Constitution.

There are several steps that can be taken to conduct a judicial review, especially by the Supreme Court against the main Ministerial Regulation, namely, filing an application and having a strong legal basis and basic reasons for the application to be submitted. Then, the Supreme Court will conduct a substantive and procedural test related to the regulations submitted. If the Supreme Court decides that the Regulation of the Minister of Trade No. 25 of 2021 is contrary to a higher law, then the regulation has the right to be canceled and is no longer valid by the Supreme Court. If in accordance with the considerations of the judges of the Supreme Court in the Supreme Court Decision Number 6 P/HUM/2024, it is explained that formally the object of the application is in accordance with the procedure for making statutory regulations by the Minister of Trade of the Republic of Indonesia as the respondent. However, if materially the object of this application is contrary to several statutory regulations. One of them is in Article 23 paragraph (3) of Government Regulation Number 29 of 2021 concerning the Implementation of the Trade Sector, which stipulates that "goods related to the safety, security, and health of consumers and the environment must contain instructions for use, and clear and easy-to-understand hazard symbols and/or warning signs". Meanwhile, the Regulation of the Minister of Trade No. 25 of 2021 does not include these two important things. This also contradicts the principles of relational law, especially the principle of not harming others (*alterum non laedere*) and the principle of giving everyone what is their right (*sum cuique tribuere*).

Therefore, the judge has considered all laws and regulations that conflict with the Regulation of the Minister of Trade No. 25 of 2021. Therefore, the petition for objection to the

right to judicial review filed by the applicants must be granted and the regulations that are the object of the a quo judicial review case must also be canceled so that they do not have binding legal force. So, from all the considerations of the judges written, it can be concluded that the Supreme Court Judge has granted the petition for objection to the right to judicial review from the applicants with all the appropriate evidence.

CLOSURE

Conclusion

The use of asbestos as a building product is a wrong action to do because of the long-term impacts on health that are very severe, especially for workers, consumers, and the community who are exposed or victims. However, in Indonesia there are still many who use asbestos products such as; roofs, pipes, and other building materials because the price is cheaper and the durability is quite long. Therefore, it is necessary to provide education to the public to increase public awareness to be wiser in using or consuming goods whose content is not clear. This is because there are still many people who do not know the dangers or consequences of using asbestos products. In the form of regulations, it is actually clear as regulated in Law No. 8 of 1999 concerning Consumer Protection, as well as various occupational health and safety (K3) standards, but the implementation of these regulations is still limited due to lack of supervision or lack of awareness of the dangers caused and also there are still many business actors who do not comply with applicable legal provisions.

Suggestion

One of the legal efforts made based on this research is through litigation to submit an objection request for material review rights against the Minister of Trade Regulation Number 25 of 2021 concerning "Stipulation of Goods Required to Use or Complete Indonesian Language Labels Attachment Letter B Number 5" to the Supreme Court and has been granted as stated in the Supreme Court Decision Number 6 P/HUM/2024. Based on this research, it is also recommended for the Government to carry out a broader education campaign to increase public understanding of the risks of using asbestos, increase supervision and law enforcement related to the use of asbestos materials in industry, and provide incentives for the use of safer alternative building materials. Then, for business actors or producers, they must be responsible for the welfare of the community as consumers by replacing asbestos materials with safer alternatives and implementing strict work safety standards for workers. So, now is the time to reduce dependence on asbestos materials and switch to safer alternative materials.

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