



"Sweetened Condensed Milk" : from promotional media to corporate crime

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ABSTRACT

Promotion is defined as the activity of introducing or disseminating information about goods and/or services, to attract consumers' buying interest in goods and/or services that will and are currently transacting. Promotion has a significant impact in influencing consumers' decision to purchase a product. The need for regulations governing consumer protection is intended so that in promotional activities the public is not trapped in a rotating promotional media, whether through words, images or other things. Recently there has been a polemic regarding the use of the word "milk" in advertisements or packaging for sweetened condensed milk products by business actors. Based on this, in this article the author will examine in depth how promotional media can lead to corporate criminal acts, especially in connection with the use of the word "milk" in sweetened condensed milk. To answer a problem, the author uses legal research methods assisted by statutory and doctrinal approaches. The results of the research show that promotional media that outlines legal provisions as regulated in the Consumer Protection Law, as well as other laws and regulations, is a form of criminal act that can require criminal liability, not only for the person involved, but also for the corporation.

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1. Introduction

Increasingly fierce business competition requires business owners to always have a strategy so that the business can survive and continue to grow in all situations. This level of competition forces every business to come up with a variety of different innovative ideas to beat its competitors, especially for businesses operating in the same industry. A marketing strategy is a plan designed to achieve the marketing objectives of a product or service (Eka Nur Alfiah & Syahrinullah, 2023). In general, marketing is a social process by which individuals and groups obtain what they need and want by creating and exchanging products and value with other individuals and groups. In a broader sense, marketing seeks to obtain responses to an offer (Irdha Yanti Musyawarah & Desi Idayanti, 2022)

Talking about marketing, among them is done by creating attractiveness through delivering messages about products with the use of several approaches to attract consumers (Herliani Gemmy & Jony Oktavian Haryanto, 2019). For example, by displaying uniqueness through advertising slogans, the display of image animations, which can influence the demand to buy a product (David R. P. Tulong et al., 2022).

Purchase intention is a decision-making process carried out by consumers before making purchase transactions on certain products needed by consumers (Kadarusman, 2018). Therefore, it can be known that the more advertising is able to interpret the message well, the better the customer will be in recognizing the brand which ultimately certainly affects purchase intent. The importance of advertising media for business actors can be illustrated in the opinion conveyed by David Oughnton and John Lowry as quoted by (Dedi Harianto, 2010), conveying as follows : "Advertising is the central symbol of consumer society, advertising plays a central role in making available to consumers information which the producers of the advertised product wishes the consumer to have.

The need for regulations governing consumer protection is due to the weak position of consumers compared to the position of business actors (Cindy Aulia Khotimah Jeumpa Crisan Chairunnisa, 2019). Imagine, starting from the production process to producing a finished item, done without the slightest consumer intervention. Not surprisingly, consumers are always at a disadvantage (Angel Amalia & Margo Hadi Pura, 2021). In fact, it is often found that business actors convey information that causes errors through advertising, this incident is due to the imbalance of position between business actors and consumers (Chandra Adi Gunawan Putra & I Nyoman Putu Budiarta, 2023). This can be proven from the results of data from the Advertising Supervisory Agency of the Indonesian Advertising Companies Association (PPPI). Based on data from the Advertising Supervisory Agency (BPP) PPPI for the period 2005-2008, 346 problematic advertisements were found, including the one that is currently a polemic about "Sweetened Condensed Milk" (SKM). The polemic departs from a question whether SKM is the same as milk in general, or even different, both from its content, and composition, then what if in its promotional media SKM producers use the word "milk" in each packaging.

Theoretically, this research is expected to contribute to the development of legal science, especially related to corporate crimes committed by business actors in promoting products to the community. In practice, the author hopes that with this research, legal rules related to promotional crimes carried out in a structured manner can be enforced comprehensively, meaning that this kind of incident is not only seen from individual actions, but also corporate actions as legal subjects that can be held criminally liable.

Furthermore, the problem that will be discussed in this paper is how is the legal construction of actions that can be categorized as a form of "Promotional Crime", especially related to the use of the word "milk" in advertisements and SKM packaging?, and how is criminal liability for the perpetrators of the "Promotion Crime"?

2. Method

The authors uses a type of normative legal research (normative juridical), namely legal research that puts the law as a norm system. The norm system in question is about principles, norms, rules, from laws and regulations, and court decisions (Mukti Fajar & Yulianto Achmad, 2010). The focus of this research will be focused on matters related to legal systematics, namely identifying the main notions in law including legal subjects, legal acts, legal events in relation to the application of legal theory, legal doctrine and legislation, The approach that the author uses includes the *statutory approach* (*statute approach*).

3. Analysis and Results

3.1. Criminal Acts and Criminal Liability

In general, the Criminal Law or Criminal Law is the entirety of regulations that determine what acts are prohibited and prohibited are included in criminal acts, and determine what penalties can be imposed on those who commit them. Criminal acts, also referred to by experts as *delict* or *strafbaar feit* (Febriansyah, 2023). One of the experts in question is Simons. Simons gives the most complete understanding of *strafbaar feit* by calling it an act that by law is threatened with punishment, contrary to the law, committed by a guilty person and that person can be responsible for his actions (Annisa Medina Sari, 2023).

The opinion expressed by Simon besides being the most complete, can also be said to be the closest to the definition of criminal acts which is implied in Article 1 paragraph (1) of the Law Number 1 of 1946 Concerning the Regulation of Criminal Law (Criminal Code), which reads: "An act cannot be criminalized, except based on the strength of existing criminal legislation provisions" reads the provision if interpreted a *contrario* will be: "An act is a criminal offense (punishable), if it is based on the strength of existing criminal legislation provisions". In addition, Simons' opinion also separates guilt from criminal liability. This is in accordance with several rules contained in the Criminal Code, especially if you pay attention to the rules that eliminate crime as stated in Chapter III of the Criminal Code. With this rule, it can be said, someone who commits a criminal act, may not necessarily be held criminally responsible.

Criminal acts can be divided into 2 (two), namely Crime and Violation. The threat of sanctions and imprisonment is only found in crimes. Based on that, in order to answer the two problem formulations above, it will first be separated between Deeds, and accountability.

3.2. On the use of the word "milk" on the packaging of sweetened condensed milk in the perspective of promotional crimes

In Article 1 point 6 of the Law Number 8 of 1999 Concerning Consumer Protection, Promotion is defined as: "... activities of introducing or disseminating information on goods and/or services to attract consumer buying interest in goods and/or services that will be and are being traded"

In promotional activities, Article 7 letter b of the Consumer Protection Law also requires business actors to provide true, clear and honest information about the conditions and guarantees of goods and / or services and provide explanations of use, repair and maintenance, in addition to prohibiting the use of standard clauses (Sekararum Intan & Munggaran Sudjana, 2019).

So important are promotional activities in influencing people's buying decisions as consumers, in order to protect consumers, the Consumer Protection Law also contains prohibitions on actions for business actors, along with their legal responsibilities (Aan Handriani, 2020).

The prohibitions in question, among others: (a) Article 8 paragraph 1 letter e, contains a prohibition for business actors not to produce and/or trade goods and/or services that are not in accordance with the quality, level, composition, processing process, style, mode, or specific use as stated in the label or description of the goods and/or services; (b) Article 8 paragraph 1 letter f. contains a prohibition for business actors not to produce and / or trade goods and / or services that are not in accordance with the promises stated in the label, etiquette, description, advertising or sales promotion of these goods and / or services, (c) Article 9 (1) letter a, contains prohibitions for business actors to offer, promote, advertise a good and/or service incorrectly, and/or as if the goods have met and/or have discounts, special prices, certain quality standards, certain styles or modes, certain characteristics, history or certain uses (Dwi Budiarti, 2019)

For actions that violate the above legal rules, business actors may be subject to criminal sanctions as stipulated in Article 62 (1), which reads: "Business actors who violate the provisions as referred to in Article 8, Article 9, Article 10, Article 13 paragraph (2), Article 15, Article 17 paragraph (1) letter a, letter b, letter c, letter e, paragraph (2), and Article 18 shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

Furthermore, to determine whether the use of the word "milk" in advertisements and/or packaging of Sweetened Condensed Milk can be categorized as a form of criminal act as specified in the Consumer Protection Law above, it is necessary to first describe the meaning and characteristics of Sweetened Condensed Milk as contained in Appendix I of the Food and Drug Supervisory Agency (BPOM) (Food and Drug Supervisory Agency Regulation Number 34 of 2019 concerning Food Category).

In BPOM Regulation No. 34/2019 explained: "Sweetened condensed milk is a milk product in the form of a viscous liquid obtained by removing some water from a mixture of milk and sugar or reconstituted milk and sugar, or by other processes so as to achieve a certain level of concentration, with or without the addition of other ingredients. Added sugar should be able to prevent damage to the product, with basic characteristics: milk fat rate not less than 8%, Protein content is not less than 6.5%."

Based on the data obtained, SKM which is generally circulating in the community has the characteristics of 67% [carbohydrates](#) (including sugar), 30% fat, and only contains 3% protein (dr. Andreas Wilson Setiawan, 2023). Thus, the protein content contained in SKM is still far below the characteristics of SKM as determined in BPOM Regulation No. 34/2019. Therefore, business actors who offer, promote, and/or advertise a product they refer to as "Sweetened Condensed Milk", especially with the use of the word "milk" to influence consumer purchasing decisions, which in fact are not in accordance with the characteristics as specified in BPOM Regulation No. 34/2019, can be categorized as a criminal offense as stipulated in Article 9 paragraph (1) letter a Jo. Article 62 paragraph (1) of the Consumer Protection Law.

The full text of Article 9 paragraph (1) letter a is as follows: "Business actors are prohibited from offering, promoting, advertising goods and / or services incorrectly, and / or as if: a. The goods have met and/or have discounts, special prices, certain quality standards, certain styles or fashions, certain characteristics, history or certain uses".

Referring to Simons' opinion, To be convicted an act must meet the formula of delict, as described from the criminal act in law. If this is the case, then there is no need to investigate, whether the act is against the law or not. In the formulation of letter a above, there is the word "or". It signifies, all acts formulated in the provisions of the article are alternative, the commission of only one act by business actors, then it can be said that the actions as stipulated in the provisions, have occurred.

3.3. Criminal liability in the "crime of promotion" of sweetened condensed milk against corporation.

In Article 1 point 3 of the Consumer Protection Law, it is explained: "Business actor is any individual or business entity, whether in the form of a legal entity or non-legal entity established and domiciled or carrying out activities in the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements to carry out business activities in various economic fields"

From the sound of the legal provisions above, it is known that legal subjects who can be categorized as "business actors" are not only persons as *natuurlijk persoon*, but also business entities, both legal entities (*rechts person*), and unincorporated. If you pay attention to the definition of business actors in Article 1 point 3 of the Consumer Protection Law, especially regarding business entities, there are similarities with the definition of Corporation as defined in Article 1 number of The Supreme Court Regulation of the Republic of Indonesia Number 13 of 2016 Concerning Procedures for Handling Criminal Cases by Corporations,(Perma No. 13/2016) which reads: "A corporation is an organized collection of persons and/or wealth, whether it is a legal entity or a non-legal entity"

Regarding criminal acts committed by corporations, according to the theory proposed by Von Savigny and Feuerbach, both consider that only humans have a will while corporations are only abstract, so they cannot be made subjects of law (S.R. Sianturi, 1986). However, as crime and evildoers developed, Otto van Gierke put forward an organ theory that postulated that corporations were like humans and the incarnation that really existed in legal associations (Abdurrahman Alhakim & Eko Sopyono, 2019). This theory makes the corporation as something that forms its will by means of the tools or organs of the body, such as its members, members or managers, such as humans who express their will through the medium of their mouths or with their hands when the will is conveyed in written language. In other words, What these organs decide is the will of that legal entity (Chidir Ali, 1987). Corporations etymologically, derived from Dutch, namely *corporatie*, which in English is also called corporation, and in Latin corporation which in the narrow sense can be interpreted as a legal entity authorized to do something (Retnowinarni R, 2019)

Laws and regulations in Indonesia seem to adopt the latter opinion or theory. This can be seen from the many statutory provisions that consider that corporations are included in the subject of criminal law (Nanda Melani & Shenti Agustini, 2021). Even through Article 4 paragraph (1) of Perma No. 13/2016 expressly states: "Corporations can be held criminally liable in accordance with the criminal provisions of the Corporation in the law governing Corporations"

In determining whether the corporation can be held criminally liable, the Judge may assess the Corporation's guilt by, among other things: a) The Corporation may profit or benefit from such criminal acts or such criminal acts are committed for the benefit of the Corporation; b) Corporations allow criminal acts to occur; or c) The Corporation does not take the necessary steps to prevent, prevent greater impact and ensure compliance with applicable legal provisions in order to avoid criminal acts.

Furthermore, related to the criminal act of "marketing crime" of Sweetened Condensed Milk, as described in the previous section, if it is proven that the act was committed by corporate organs and has an economic impact on the corporation, the occurrence of a neglect by the corporation, or the absence of measures / precautions from the corporation related to the use of the word "milk" in advertisements or packaging of sweetened condensed milk that is not in accordance with the characteristics as determined by Laws and regulations, then the corporation and/or corporate organs may be subject to criminal liability. This is in accordance with the legal arrangements contained in Article 23 (1) of Perma No. 13/2016 which states: "The judge may impose a crime against the Corporation or Management, or the Corporation and Management" then in paragraph (2) affirms: "The judge administers the crime as referred to in paragraph (1) based on each law that regulates criminal threats against the Corporation and / or Management."

In connection with paragraph (2) above, Article 62 paragraph (1) of the Consumer Protection Law has been regulated regarding the Principal Crime, namely in the form of "...imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah)"

In addition to the main crime mentioned above, the Consumer Protection Law, precisely in Article 63 also determines Additional Crimes. The provisions are as follows: Against criminal sanctions as referred to in Article 62, additional penalties may be imposed, in the form of: a. confiscation of certain goods; b. announcement of the judge's decision; c. payment of damages; d. order to stop certain activities that cause consumer losses; e. the obligation of withdrawal of goods from circulation; Or f. revocation of business license.

In line with that, Article 25 (1) of Perma No. 13/2016 states: "*The judge imposes a penalty against the Corporation in the form of principal and/or additional crimes*". Thus, it can be concluded that both people involved in SKM "Promotion crimes", as well as their corporations, can be held criminally responsible in accordance with the provisions of applicable laws and regulations. Moreover, in criminal law, especially regarding matters that can eliminate criminal responsibility as stipulated in Chapter III of the Criminal Code, namely the perpetrator has a mental disorder (Article 44), because of the influence of force (Article 48), because of a forced

defense (Article 49), because of a Law Order (Article 50), and / or because of an Office Order (Article 51), it is impossible and illogical to apply to the Corporation. However, it should be noted, for corporations that are proven to have committed the SKM "promotion crime", they can only be subject to penalties in the form of a maximum fine of IDR 2,000,000,000.00 (two billion rupiah), and/or additional penalties in the form of confiscation of certain goods, announcement of judge's decisions, payment of compensation, orders to stop certain activities that cause consumer losses, obligations to withdraw goods from circulation to revocation of business licenses. The main crime that can be applied to corporations is fines (Fajar Padly & Anwar Sulaiaman, 2021)

Finally, regarding the payment of criminal fines imposed on corporations, the implementation is carried out in accordance with the provisions of Article 28 of Perma No. 13/2016, which is given a period of 1 (one) month from the decision with permanent legal force. Unlike the case with the management / organ of the corporation where if the fine is not paid in part or in full, the management / organ is imposed imprisonment in lieu of a proportionally calculated fine, if it is against the corporation (in the event that there is no good reason to extend the period of payment of the fine), then the property of the Corporation can be confiscated by the prosecutor and auctioned to pay the fine

4. Conclusion

To be convicted an act must meet the formula of delict, as described from the criminal act in law. The use of the word "milk", in advertisements and/or packaging of Sweetened Condensed Milk can be categorized as a form of criminal act as specified in Article 9 paragraph (1) letter a Jo. Article 62 paragraph (1) of the Consumer Protection Law. This is due to a discrepancy between the use of the word "milk" in Sweetened Condensed Milk, with the characteristics of Sweetened Condensed Milk specified in BPOM Regulation No. 34/2019.

The definition of business actors in Article 1 point 3 of the Consumer Protection Law, especially regarding business entities, has similarities with the definition of Corporation as defined in Article 1 point 1 of Perma No. 13/2016. Therefore, if it is proven that the act was carried out by the organs of the corporation and has an economic impact on the corporation, the occurrence of a neglect by the corporation, or the absence of steps / precautions from the corporation related to the use of the word "milk" in advertisements or packaging of sweetened condensed milk that is not in accordance with the characteristics as determined by laws and regulations. From the results of this study, it can be seen that not only individuals can be held criminally responsible, but also against corporations. Based on the legal construction as outlined in the discussion, according to the authors, there are no longer obstacles for law enforcement officials to implement related statutory provisions to crack down on corporations that commit promotional crimes. However, we realize, the promotional crimes that we discuss in this article, are only limited to the scope of consumer protection laws, for that it is hoped that further research with broader aspects of the study, such as the ITE Law and / or the Health Law

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