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Regulatory Framework for Growing-Up Milk Advertising for Children Aged 1-3 Years: A Focus on Legal Certainty

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ABSTRACT

In the context of public health, infants are entitled to exclusive breastfeeding from birth until six months of age. When mothers are unable to provide breast milk, infant formula may be administered until the child reaches 12 months. After this period, toddlers aged 12 to 36 months may be introduced to growing-up milk. Government Regulation No. 69 of 1999 prohibits the advertisement of infant formula, while allowing the promotion of growing-up milk. However, the recent 2024 Health Regulation introduces the ambiguous phrase “substitutes for breast milk,” which has sparked controversy regarding the advertising of growing-up milk. This article provides an in-depth analysis of these regulatory frameworks through the lens of legal certainty, utilizing a normative legal approach that references statutory law and the legal theory of Gustav Radbruch. The analysis reveals that the Health Regulation offers critical legal protections for infants' rights to exclusive breastfeeding during the first six months of life. Additionally, it outlines marketing regulations for growing-up milk intended for children aged 1 to 3 years. Nevertheless, the multifaceted definitions within this regulation create legal ambiguities that require urgent clarification by the government to protect both public interests and the growing-up milk industry.

Keywords: legal certainty, advertising, formula milk, growing-up milk.

INTRODUCTION

Breast milk is recognized as the optimal source of nutrition for infants. The World Health Organization (“WHO”) advocates for exclusive breastfeeding for the first six months of an infant's life, without the introduction of any supplementary foods or beverages. This practice should then continue until the child reaches the age of two years or beyond, complemented by appropriate solid foods to support the child's growth and development. These recommendations are grounded in the substantial health benefits that breastfeeding confers not only on

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infants but also on mothers and society at large.¹

Recognizing the importance of exclusive breastfeeding, the Indonesian government has instituted legal protections for breastfeeding through Article 42 paragraph 1 of Law No, 17 of 2023 on Health (“Health Law”), which states that “*every infant is entitled to receive exclusive breast milk from birth until the age of 6 (six) months, unless there are medical indications.*” Furthermore, according to Article 6 of Minister of Health Regulation No. 39 of 2013 concerning Infant Formula and Other Baby Products (“MoHR No. 39 of 2013”), every mother who gives birth is mandated to provide exclusive breastfeeding to her newborn, except in cases where there are medical indications, the mother is unavailable, or the mother is separated from the infant. In such circumstances, the infant may be given infant formula.

Specifically, the National Agency of Drug and Food Control (*Badan Pengawas Obat dan Makanan*, “BPOM”) regulate the provisions regarding infant formula and follow-up milk are outlined in the Appendix of the BPOM Regulation No. 1 of 2018 concerning the Supervision of Processed Foods for Special Nutritional Purposes, as last amended by BPOM Regulation No. 24 of 2020 (“BPOM Regulation on Special Nutritional Foods”), which states the following:

1. Infant Formula is defined as a formula intended as a substitute for Breast Milk for infants up to 6 (six) months of age, specifically formulated to serve as the sole source of nutrition during the initial months of life until the infant is introduced to Complementary Foods to Breastfeeding;²
2. Follow-Up Formula refers to a formula derived from cow's milk or milk from other animals and/or ingredients sourced from animals and/or plants, all of which have been proven to be suitable for infants aged 6 (six) to 12 (twelve) months;³ and
3. Growing-Up Milk is a formula obtained from cow's milk or milk from other animals and/or ingredients sourced from animals and/or plants, all of which have been demonstrated to be appropriate for children aged over 12 (twelve) months up to 36 (thirty-six) months.⁴

Referring to the above description, both Infant Formula and Follow-Up Formula (“Formula Milk”) are intended for infants aged 0-12 months.⁵ BPOM plays a crucial role in establishing standards concerning the ingredients, quality, safety, and labeling for

¹ World Health Organization. 2024. Breastfeeding. Available online from: https://www.who.int/health-topics/breastfeeding#tab=tab_1. [Accessed March 4, 2025].

² Section 2.1. – A.1.1. Appendix of BPOM Regulation on Special Nutritional Foods.

³ Section 2.1 – A.1.2. Appendix of BPOM Regulation on Special Nutritional Foods.

⁴ Section 2.1 – A.1.3. Appendix of BPOM Regulation on Special Nutritional Foods.

⁵ Section 2.3 – A.1.1. dan A.1.2. Appendix of BPOM Regulation on Special Nutritional Foods.

Formula Milk products aimed at infants aged 0-12 months. Only products that meet the stringent criteria set by BPOM are permitted to be marketed and distributed as infant formula; other products cannot be categorized or regarded as suitable sources of nutrition for normal and healthy infants during the initial months of their lives.⁶

Subsequently, children aged 1 (one) to 3 (three) years can consume milk as a specially formulated supplementary nutrition enriched with various vitamins, minerals, and other essential nutrients. This fortified milk serves as an effective complementary alternative to support the nutritional needs of children under five years of age and to prevent the risk of malnutrition.⁷ Specifically, this fortified milk for children aged 1 to 3 years can be derived from cow's milk, which serves as the sole source of protein in this product, commonly referred as "Growing-Up Milk".

In this context, producers of Formula Milk and Growing-Up Milk bear the responsibility of providing products that comply with food safety standards. They must adhere to various existing regulations, including the prohibition of promotion for Formula Milk intended for infants aged 0-12 months, as such promotions could undermine the success of the exclusive breastfeeding program.

Referring to Article 47 of Government Regulation No. 69 of 1999 concerning Food Labeling and Advertising ("GR No. 69 of 1999"), it is stipulated that:

"Advertisements for food intended for infants up to 1 (one) year of age are prohibited from being published in mass media, except in specialized health print media, after obtaining approval from the Minister of Health. Furthermore, such advertisements must include a statement that the food in question is not a substitute for breast milk."

The Minister of Health's approval mentioned in this provision pertains solely to the advertising content, aimed at ensuring a more selective dissemination of information regarding food intended for infants, and is conducted solely to enhance the promotion of breastfeeding. The term "*food intended for infants*" specifically refers to infant formula; however, it does not include complementary foods to breastfeeding, such as baby porridge. This distinction is crucial as it emphasizes the priority of promoting breastfeeding as the optimal nutrition for infants, while also regulating the marketing of infant formula to prevent any potential undermining of breastfeeding practices. The overarching goal is to safeguard the health and well-being of infants by ensuring that any information disseminated about infant food products is accurate, responsible, and aligned with public health objectives.

⁶ *Ibid.*

⁷ Sjarif, Damayanti Rusli, Iskandar, William Jayadi, Yuliarti, Klara. (2019). "Daily Consumption of Growing-up Milk is Associated with Less Stunting Among Indonesian Toddlers". *Medical Journal of Indonesia*, 28(1), 70-76. <https://doi.org/10.13181/mji.v28i1.2607>

This is further reinforced in Articles 20, paragraphs (1), (2), and (3) of MoHR No. 39 of 2013, which states:

“Infant Formula⁸ may only be advertised by producers and/or distributors in specialized health print media, with advertising content that includes a statement that Infant Formula may only be given due to medical indications, the mother being unavailable, or the mother being separated from the infant, as well as a statement that breast milk is the best food for infants. This advertising material must obtain permission from the Minister of Health.”

Referring to the above description, it follows that Formula Milk is categorized as food intended for infants aged 0-12 months, thus advertising for Formula Milk in mass media is prohibited, except in health-related print media (after obtaining approval from the Minister of Health) and must include a statement that the Formula Milk is not a substitute for breast milk. However, GR No. 69 of 1999 does not prohibit the advertising of Growing-Up Milk, which means that this category of products can be promoted more broadly. Similarly, MoHR No. 39 of 2013 contains no provisions that prohibit the advertising of Growing-Up Milk. The regulations specifically restrict advertising for Formula Milk because the category of substitutes for breast milk is not explicitly defined and is included under the definition of Other Baby Products, which refers to *“products directly related to breastfeeding activities, including all forms of milk and other infant foods, baby bottles, nipples, and pacifiers”⁹.*

On July 26, 2024, a significant milestone was reached in Indonesia's public health policy with the enactment of Government Regulation No. 28 of 2024 regarding Implementing Regulation of Law No. 17 of 2023 on Health (“Health Regulation”). This regulation represents a pivotal step towards enhancing the overall health of the population, including safeguarding the well-being of infants and promoting the practice of exclusive breastfeeding. Article 33 of the Health Regulation imposes strict prohibitions on producers or distributors of infant formula and/or other substitutes for breast milk products. The regulation explicitly forbids any activities that could potentially undermine the practice of exclusive breastfeeding, a fundamental aspect of infant nutrition.

This means that producers or distributors of infant formula and/or other substitutes for breast milk products are barred from advertising fant formula and/or other subtitutes for breads mlík products and follow-up formula milk in mass media, including both print and electronic platforms, outdoor advertising, and social media channels.¹⁰ As a note, by instituting these restrictions, the government aims to create an

⁸ Based on Article 1 Number 4 of the MoHR No. 39 of 2013, Infant Formula Milk is milk that is specifically formulated as a substitute for breast milk for babies up to 6 (six) months old.

⁹ Article 1 Number 5 of the MoHR No. 39 of 2013.

¹⁰ Article 33 letter e. of the Health Regulation.

environment that prioritizes breastfeeding as the optimal source of nutrition for infants. This approach not only protects the rights of infants to receive the best possible nourishment but also supports mothers in their breastfeeding journeys. The regulation underscores the importance of exclusive breastfeeding in promoting the health of both infants and mothers, contributing to healthier communities overall. Ultimately, this regulation is a bold declaration of Indonesia's commitment to public health, reinforcing the vital role of breastfeeding in ensuring the well-being of its youngest citizens while fostering a healthier future for all.

However, there is the term "*other substitutes for breast milk products*" used in this Health Regulation, which leads to multiple interpretations and a broader scope of interpretation due to the absence of a clear definition in the general provisions. Nevertheless, referring to the Explanation of Article 3 paragraph (1) of the Health Regulation, it is clarified that:

"Other substitutes for breast milk in this provision include follow-up formula, growing-up milk, and other dairy products that replace breast milk, such as fortified soy milk, whether in liquid or powdered form, marketed for infants up to 36 (thirty-six) months of age, as well as baby bottles, nipples, and pacifiers."

In the context of this Health Regulation, it is understood that "*other substitutes for breast milk*" encompasses both Formula Milk and Growing-Up Milk. When this is juxtaposed with the provisions of Article 47 of GR No. 69 of 1999, it becomes evident that while there exists a prohibition on the advertising of Formula Milk, there are no explicit provisions that prohibit the advertising of Growing-Up Milk. This discrepancy engenders legal uncertainty regarding the permissibility of advertising Growing-Up Milk, particularly considering the prevailing norms established by GR No. 69 of 1999, which allows for the promotion of Growing-Up Milk.

In connection with the discussion, this paper will examine the implementation of advertising for Growing-Up Milk with refer to Article 47 of GR No. 69 of 1999, Article 33 letter e. of the Health Regulation and Explanation of Article 31 paragraph (1) of the Health Regulation, while also correlating these provisions with the principle of legal certainty. This analysis is crucial, as it impacts the enforcement of laws related to advertising and the marketing of Growing-Up Milk for producers and distributors.

RESEARCH METHOD

This study employs a normative legal research methodology, which involves the examination of legal rules, principles, and doctrines to identify solutions to the legal issues at hand.¹¹ This approach focuses on analyzing existing legislation and legal frameworks to derive insights and conclusions relevant to the topic of inquiry. By investigating the applicable laws and their interpretations, the research aims to provide a comprehensive understanding of the regulatory landscape surrounding the advertising of Growing-Up Milk and its implications for legal certainty in the market.

This study utilizes secondary data sources as the basis for analysis. Secondary data refers to information obtained from literature or bibliographic materials that are relevant to the subject being investigated. By reviewing existing legal texts, academic articles, and authoritative commentaries, the research aims to build a robust framework for understanding the regulatory environment surrounding the advertising of Growing-Up Milk and to identify potential legal implications for stakeholders in the industry.¹² The data sources in this study, as referenced in legal literature for normative legal research, are referred to as legal materials. These materials are utilized with the aim of conducting an analysis of applicable law and are categorized into primary, secondary, and tertiary legal materials.¹³

In this study, primary legal materials are utilized, consisting of applicable legislation, alongside secondary legal materials, which include books, journals, and other scholarly articles. The research is conducted by examining these primary and secondary legal materials in conjunction with the legal theory proposed by Gustav Radbruch regarding the principle of legal certainty. This approach allows for a thorough analysis of the regulatory framework governing the advertising of Growing-Up Milk, while also assessing its implications for legal certainty within the context of current legal standards and practices.

DISCUSSION

Law is a set of rules formally established by a state authority, binding on all individuals, and its enforcement can be mandated by authorized state officials to ensure and uphold its validity.¹⁴ The general purpose of law is to establish order and security within society. Law is expected to serve as a structured pillar that ensures equal access to justice for all individuals. However, without effective law enforcement, legal norms

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2010), p. 47.

¹² Ishaq. (2017). *Metode Penelitian Hukum dan Penulisan Skripsi, Tesis, serta Disertasi*, Bandung: Alfabeta, p. 67.

¹³ Soekanto, Soerjono dan Sri Mamudji. (2010). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada, p. 13.

¹⁴ Machmudin, Dudu Duswara. (2010). *Pengantar Ilmu Hukum*, Bandung: Refika Aditama, p. 23.

remain theoretical constructs that fail to deliver the intended benefit.¹⁵ This highlights the importance of not only enacting laws but also ensuring that they are actively enforced and adhered to within the community.

Gustav Radbruch, a German legal philosopher and expert, articulated three fundamental ideas of law, commonly referred to as the purposes of law: justice, utility, and legal certainty.¹⁶ This journal will specifically focus on the concept of legal certainty. Certainty encompasses several meanings, including clarity, lack of ambiguity, non-contradiction, and enforceability. The law must be enforced rigorously within society, involving transparency so that anyone can comprehend the meaning of a legal regulation. Laws should not contradict one another, as this would create doubt and confusion. Legal certainty plays a crucial role in ensuring that individuals can rely on the law and understand their rights and obligations, thereby fostering a stable and orderly society.

Legal certainty refers to the existence of a legal framework that guarantees the rights and obligations of every citizen.¹⁷ Legal certainty also denotes the assurance that the law can render decisions on specific matters. It encapsulates the conviction that laws will be enforced, that individuals entitled to rights under the law will be able to realize those rights, and that judicial decisions are capable of being executed. Law enforcement requires legal certainty, which serves as a justiciable safeguard against arbitrary actions and ensures that regulations provide legal protection for the public.¹⁸ This principle is fundamental to the integrity of the legal system, as it fosters trust and ensures the consistent application of justice, thereby reinforcing the rule of law within society.

Indonesia operates under a civil law system, characterized by a legal framework that is codified in its statutory regulations. Legal regulations serve as written norms that function as guidelines and foundations for the governance of the state.¹⁹ Legal certainty is an inherent characteristic of written law, aimed at fostering clarity and public order.²⁰ Consequently, the regulations in force in Indonesia should be formulated and

¹⁵ Imeltha, Aliza Qory. (2024). "Peranan Hukum Negara dalam Menjaga Keadilan dan Ketertiban Masyarakat." *Jurnal Ilmiah Ekonomi Dan Manajemen*, 2(7), 239-251. <https://doi.org/10.61722/jiem.v2i7.1898>

¹⁶ Lubis, M. Solly. (2014). *Politik Hukum dan Kebijakan Publik (Legal Policy and Public Policy)*, Cet. 1. Bandung: CV Mandar Maju. p. 23-24.

¹⁷ Remaja, Nyoman Gede. (2014). "Makna Hukum dan Kepastian Hukum." *Kertha Widya*, 2(1). <https://doi.org/10.37637/kw.v2i1.426>

¹⁸ Herman, Hendra dan Yeni Widowaty. (2023). "Perlindungan Hukum Terhadap Masyarakat Atas Kegiatan Stockpile Batubara di Kabupaten Muaro Jambi". *Jurnal Bina Hukum Lingkungan*, 8(2), 246. <https://doi.org/10.24970/bhl.v8i2.256>

¹⁹ Suhartanto, Feri Pramudya & Yenny Febrianty. (2024). "Perbandingan Sistem Hukum Civil Law dan Common Law". *Konsensus: Jurnal Ilmu Pertahanan, Hukum Dan Ilmu Komunikasi*, 1(3), 72-83. <https://doi.org/10.62383/konsensus.v1i3.218>

²⁰ Permana, A. R. (2021). "Peranan Yurisprudensi Dalam Membangun Hukum Nasional di Indonesia". *Khazanah Multidisiplin*, 2(2), 70-84. <https://doi.org/10.15575/kl.v2i2.13166>

promulgated with precision to ensure clear and rational governance. The harmonization of legislation plays a critical role in this context. Legal harmonization refers to the effort or process aimed at addressing limitations arising from differences, contradictions, and inconsistencies in order to achieve coherence, conformity, compatibility, and balance among legal norms within statutory regulations, thereby shaping a unified legal system within the national legal framework.²¹

In the Indonesia Legal system, which follows the civil law tradition, legal legitimacy is predominantly derived from codified status and legislative enactments that are formally articulated in written form. As such, written law functions as the principal source of legal norms contained within statutory texts.²² Furthermore, In the civil law tradition, law enforcement is grounded in a hierarchical legal structure in which the written constitution occupies the highest normative position and serves as the principal source of legal reference.²³ Law enforcement is also significantly influenced by a rigid interpretation of written legal regulations. Consequently, the impact of this formalistic approach can affect both the manner in which laws are formulated and how the law is applied in specific cases. In summary, Indonesia continues to adhere to a positivist legal tradition that emphasizes the use of explicit and clear legal texts in the legislative process and law enforcement. This approach offers advantages in ensuring legal clarity; however, it may also present challenges regarding interpretation and legal flexibility, particularly in complex or dynamic situations.²⁴

The process of law formation is specifically governed by Article 5 letter g of Law No. 12 of 2011 on the Formation of Legislation, as amended by Law No. 13 of 2022 ("Law No. 12 of 2011"). This law outlines seven principles for the creation of good legislative regulations: *the principle of clarity of purpose, the principle of appropriate institutional or official formation, the principle of suitable content, the principle of feasibility, the principle of utility and effectiveness, the principle of clarity in formulation, and the principle of openness*. These principles are cumulative, meaning that all seven must be satisfied in the formation of any law. Consequently, it is crucial to consider the implications that regulations may be annulled or declared invalid if they do not adhere to these principles.²⁵ The principle of clarity in formulation means that every regulation must

²¹ Tresnadipangga, Bimo, Fokky Fuad dan Suartini. (2023). "Harmonisasi Peraturan Perundang-Undangan Dalam Pelaksanaan Bantuan Sosial di Republik Indonesia". *Jurnal Binamulia Hukum*, 12(1), 220. <https://doi.org/10.37893/jbh.v12i1.438>

²² Hafizhah, A., J. Leviza, & M. Mulhadi. (2024). "An Overview of the Principle of Legality: Common Law VS Civil Law". *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 4(1), 38-47. <https://doi.org/10.15294/ipmhi.v4i1.76875>

²³ Nurhardianto, Fajar. (2015). "Sistem Hukum dan Posisi Hukum Indonesia." *Jurnal Tapis: Jurnal Teropong Aspirasi Politik Islam*, 11(1), 33-44. <https://doi.org/10.24042/tps.v11i1.840>

²⁴ *Ibid.*

²⁵ Article 10 paragraph (1) of Law No. 12 of 2011.

meet technical requirements for drafting, including systematic organization, careful selection of words or terms, and the use of clear and easily understandable legal language. This is essential to prevent the emergence of various interpretations in its implementation. The primary objective of the principle of clarity in regulatory formulation is to ensure legal certainty.

From a legal policy perspective, regulations in Indonesia often encounter serious issues such as legal obesity, overlapping provisions, multiple interpretations, inconsistencies, ineffectiveness, and sociological problems.²⁶ Multiple interpretations refer to the misinterpretation of language within legal regulations, which is a significant factor contributing to ineffective law enforcement. This ambiguity can lead to situations where individuals suffer due to the lack of clarity in the meanings of the terms used. Such challenges highlight the necessity for clearer, more coherent legal drafting and the importance of ensuring that regulations are both accessible and understandable to the public, thereby facilitating effective implementation and compliance.

Explanation of the Health Regulation Regarding Its Applicability

The Explanation of Article 31 paragraph (1) of the Health Regulation serves as a prime example of how legal norms can be interpreted differently by society. The presence of this article raises various questions and uncertainties regarding the definitions and scope of the legal norms outlined within the regulation. One term that draws particular attention is "*other substitutes for breast milk products*" which is not explicitly defined in the general provisions. This lack of clarity prompts fundamental questions: *what is the actual applicability of the Explanation of Article 31 paragraph (1) of the Health Regulation? Does this explanation apply solely to that specific paragraph, to the entirety of Article 31, or even to all provisions within the Health Regulation?*

These questions are crucial to address in order to provide legal certainty for the public, healthcare professionals, producers of Growing-Up Milk for children aged 1-3 years, and law enforcement agencies. The ambiguity in the meanings of the terms used in the regulation can create opportunities for both the public and law enforcement to interpret those meanings according to their subjective understandings. This situation can be detrimental to society, particularly if such interpretations lead to confusion or misunderstandings regarding the rights and obligations established by the regulation. Clarifying these terms is essential to prevent misinterpretations that could negatively impact compliance and enforcement, ultimately undermining the effectiveness of the

²⁶ Amin, Rizal Irvan, dan Achmad. (2020). "Mengurai Permasalahan Peraturan Perundang-undangan di Indonesia." *Res Publica: Jurnal Hukum Kebijakan Publik*, 4(2), 205-220. <https://doi.org/10.20961/respublica.v4i2.45710>

legal framework. By ensuring that the language used in the regulation is precise and unambiguous, stakeholders can better understand their rights and responsibilities, fostering a more transparent and equitable legal environment.

Upon examining the legal norms articulated in the Explanation of Article 31 paragraph (1) of the Health Regulation, the phrase "*in this provision*" emerges as a critical determinant for assessing the binding nature of the Explanation Article 31 paragraph (1) of the Health Regulation itself. From a grammatical interpretative perspective, the inclusion of the phrase "*in this provision*" unequivocally confines the applicability of the Explanation Article 31 paragraph (1) of the Health Regulation to that specific paragraph alone, thereby excluding its relevance to other paragraphs or to the entirety of Article 31 within the Health Regulation.

This interpretation is bolstered by the normative legal provision delineated in Number 77 of Appendix I of Law No. 12 of 2011, which asserts that a paragraph constitutes a segment of the law that encapsulates a singular regulation, articulated in a concise, clear, and straightforward manner, while maintaining interconnectivity. Such a framework reinforces the premise that the explanation is designed to elucidate the specific paragraph without extending its implications to other sections of the regulation, thereby preserving the integrity and clarity of the legal framework. This precision in legal drafting is essential for ensuring that stakeholders can navigate the regulatory landscape with confidence and certainty.

Furthermore, a paragraph functions as a regulatory unit within legislation that may encompass several interrelated provisions. Therefore, it is crucial to understand that the explanation within a paragraph should neither expand, narrow, nor introduce new interpretations of the legal norms, as articulated by various legal scholars. For instance, Jimly Asshiddiqie asserts that the purpose of an explanation in a paragraph is to clarify a text that may be ambiguous, thereby ensuring that the provision aligns with the objectives intended by the relevant regulation (to classify the same so as to make it consistent with the dominant object which it seeks to serve). In other words, the formulation of an explanation is intended solely to render a text that is perceived as unclear into one that is clear, rather than the reverse—making something clear into something unclear. It is also not meant to expand, narrow, or add new interpretations of legal norms²⁷.

In alignment with Asshiddiqie's perspective, Maria Farida Indrati similarly elucidates that an explanation serves as an official interpretation of a specific norm. Consequently, the substance of the explanation should only contain elaborations or

²⁷ Asshiddiqie, Jimly. (2020). *Perihal Undang-Undang*. Depok: Rajawali Pers. p. 134-135.

further descriptions without introducing new interpretations of the norm, as this could lead to ambiguity and confusion. This adherence to clarity and consistency is essential for maintaining the integrity of the legal framework and ensuring that stakeholders can effectively comprehend and apply the law.²⁸

However, it is important to note that the arguments presented above represent an interpretation from a grammatical perspective, which can be inherently subjective and dependent on the viewpoint from which the regulation is examined. The responsibility for providing definitive explanations ultimately rests with the government as the legislative body responsible for enacting regulations. This underscores the necessity for clear and precise legal drafting by lawmakers to ensure that the intended meanings of legal provisions are unequivocal and accessible to all stakeholders, thereby enhancing the overall effectiveness and reliability of the legal system.

In this context, the government must take proactive steps to clarify ambiguous norms and provide clear definitions for the terms used. This approach is essential to eliminate discrepancies in interpretation that could harm the public or create legal uncertainty. Additionally, it is important for the government to engage various stakeholders, including the public, healthcare professionals, and producers, in the process of drafting and elucidating regulations.

Such measures will not only enhance transparency but also foster a sense of ownership among all parties involved. In the long run, this will strengthen compliance with existing regulations and ensure that the objectives of the Health Regulation are effectively achieved. Consequently, legal certainty will be maintained, allowing the public, including producers of Growing-Up Milk, to feel secure in exercising their rights and fulfilling their obligations in accordance with the prevailing regulations.

Ultimately, it is crucial to remember that the law should not merely serve as a tool for regulation but also as a means to protect the rights of the community. Therefore, clear and unequivocal explanations of the legal norms within the Health Regulation are vital for creating a fair and just legal environment for all parties involved.

Alignment of Advertising Provisions for Growing-Up Milk Based on GR No. 69 of 1999, MoHR No. 39 of 2013 and Health Regulation

Referring to Article 47 of GR No. 69 of 1999 and Article 20 of MoHR No. 39 of 2013, there are no specific provisions that prohibit producers from advertising Growing-Up Milk. However, this situation changes with the introduction of Article 33 letter e. of the Health Regulation, which prohibits producers from advertising Growing-Up Milk as

²⁸ Indrati, Maria Farida. (2007). *Ilmu Perundang-undangan (Proses dan Teknik Pembentukannya) Jilid 2*, Yogyakarta: PT Kanisius. p. 147.

part of “*other substitutes for breast milk products,*” based on the Explanation of Article 31 paragraph (1) of the Health Regulation. Consequently, there exists a discrepancy in the regulatory framework concerning the advertising of Growing-Up Milk at the governmental level, leading to confusion and legal uncertainty. This inconsistency may hinder producers' ability to effectively market their products while simultaneously raising concerns about compliance with the law. Such ambiguity necessitates a thorough examination of the existing regulations to clarify the legal standing of Growing-Up Milk advertising and ensure a coherent approach that aligns with public health objectives.

This legal uncertainty is particularly significant to address, especially in the context of legal certainty articulated by Lon Fuller. According to Fuller, law can achieve the principle of certainty by adhering to the following eight principles:

1. A legal system must consist of regulations rather than being based on erroneous decisions regarding specific matters.
2. The rules must be communicated to the public.
3. They must not have retroactive effect.
4. The laws should be structured and formulated in a manner that is comprehensible to all individuals.
5. There should be no conflicting guidelines.
6. It is prohibited to demand actions that exceed one's capacity.
7. The regulations must be consistent.
8. There must be alignment between the rules and their everyday implementation.²⁹

In a comprehensive analysis of the advertising regulations for Growing-Up Milk, there exist conflicting guidelines and inconsistencies between the provisions outlined in Article 47 of GR No. 69 of 1999 and Article 20 of MoHR No. 39 of 2013, in relation to Article 33 letter e. of Health Regulation.

This inconsistency creates significant complexities in the implementation of advertising for Growing-Up Milk products by producers, which in turn affects marketing practices that may not align with the current regulations. This uncertainty arises because producers of Growing-Up Milk tend to maintain the perspective that they possess the right to advertise their products based on the provisions that were in effect prior to the enactment of the Health Regulation, specifically GR No. 69 of 1999 and MoHR No. 39 of 2013. As a result, producers of Growing-Up Milk may argue that advertisements conducted prior to the introduction of the prohibition are legitimate and do not violate the law.

²⁹ Fuller, Lon L. (1971). *The Morality of Law*. New Haven: Yale University Press. p. 54-58

However, with the enactment of the Health Regulation, there emerged an explicit prohibition against the advertising of Growing-Up Milk, adding a layer of complexity to the legal understanding that producers must navigate. On one hand, the provisions in GR No. 69 of 1999 and MoHR No. 39 of 2013 remain in effect and have not been revoked, thereby allowing producers of Growing-Up Milk to continue their advertising practices. On the other hand, the prohibition on advertising Growing-Up Milk in the Health Regulation creates a legal conflict that is perplexing.

This legal conflict not only affects the marketing strategies for Growing-Up Milk but also poses a potential risk to consumers who may be exposed to inaccurate or misleading information. Such dissonance highlights the necessity for better regulatory harmonization in the advertising of Growing-Up Milk, to provide clear legal certainty for producers while simultaneously protecting consumers from unethical advertising practices.

The Health Regulation, as a written statute aimed at protecting exclusive breastfeeding, should ideally serve as a guiding framework for healthcare professionals and producers of Formula Milk in carrying out their activities. This is intended to ensure that the continuity of the exclusive breastfeeding program, which has become a public health priority, is not disrupted or jeopardized. The Health Regulation is expected to provide clear boundaries and strong legal certainty, particularly regarding the provision of Formula Milk and Growing-Up Milk. By doing so, the public will be better educated about their rights and responsibilities in the context of exclusive breastfeeding, Formula Milk, and Growing-Up Milk. This clarity will not only enhance compliance with health guidelines but also empower consumers to make informed decisions regarding infant nutrition, ultimately contributing to improved health outcomes for both infants and mothers.

However, in the absence of clear and definitive definitions within these provisions, various interpretations may arise, leading to subjective understandings. This ambiguity can result in legal uncertainty in the enforcement of the Health Regulation, creating a space for ambiguities that could adversely affect all parties involved. Therefore, it is crucial to clarify and meticulously regulate the provisions concerning Growing-Up Milk within the Health Regulation, so that all stakeholders—producers, distributors, healthcare professionals, and the public—can operate within a clear and directed legal framework.

To address this uncertainty, a more comprehensive and integrated approach is required in the regulation of Growing-Up Milk advertising. This includes the development of clear and consistent guidelines regarding the advertising of such products, as well as the involvement of all stakeholders in the regulatory drafting

process. By adopting this approach, it is anticipated that a healthy and equitable business climate will be established, where producers can market their products without violating existing legal provisions, while consumers remain protected from misleading information.

The success of the exclusive breastfeeding program and the regulation of Growing-Up Milk is heavily reliant on the synergy between regulations, ethical marketing practices, and public education. By providing clear and accurate information to the public regarding the products they consume, as well as protecting them from unethical advertising practices, we can ensure that consumer rights are safeguarded, and public health is effectively maintained.

Ultimately, it is essential to recognize that laws and regulations serve not only as tools for governance but also as mechanisms for protecting the rights of the community. Therefore, clarity and consistency in the regulation of Growing-Up Milk advertising will be crucial for ensuring that all parties – producers, distributors, healthcare professionals, and the public – can operate within a clear and directed legal framework. This clarity will support the effective implementation of exclusive breastfeeding programs by fostering a legal ecosystem that is fair and equitable for all stakeholders involved.

CONCLUSION

Article 33 of Health Regulation has provided protection for the rights of infants to receive exclusive breastfeeding during the first six months of life, ensuring their health for the future. However, while the primary objective of this legal protection is to promote exclusive breastfeeding for infants up to six months old, the regulation also addresses the marketing of Growing-Up Milk intended for toddlers aged 1-3 years. The ambiguous definitions present in the Explanation of Article 31 paragraph (1) of Health Regulation directly impacts and involve stakeholders with interests in this regulatory material, leading to legal uncertainty and controversy for a broader segment of society as well as the Growing-Up Milk industry. It is imperative that the government promptly addresses and resolves these ambiguities to ensure clarity and consistency in the regulatory framework.

There is a need for alignment between regulations, especially since both provisions govern the same subject matter. In relation to the implementation of advertising for Growing-Up Milk, particularly following the enactment of the Health Regulation, it is essential to establish a new governmental regulation that will serve as a legal umbrella for the regulation of Growing-Up Milk. This new regulation should clarify, align, and harmonize with the existing provisions. This is particularly important given that GR No. 69 of 1999 is not explicitly listed in the closing provisions of the Health Regulation as a

regulation that has been revoked and rendered ineffective. Establishing this new regulatory framework will ensure consistency and coherence in the legal landscape, ultimately facilitating effective compliance and protecting the interests of all stakeholders involved in the marketing and distribution of Growing-Up Milk.

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