Law Enforcement of Consumer Protection for Safe Food Packaging in The Decisions of Criminal Justice

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Abstract. The right to a safe food is a human rights protected by the 1945 Constitution and legislation, including the Health Act, the Consumer Protection Act and Food Act. The law governing the rights and obligations of consumers; rights, obligations and responsibilities of businesses, as well as prohibitions and sanctions for businesses that violate. Food consumers aggrieved can file a non-litigation legal action and / or litigation. Non-litigation legal efforts made through negotiation or mediation or through Consumer Dispute Resolution Body (BPSK). The litigation efforts made by filing a lawsuit for damages to the court and / or reporting the case to the criminal law enforcement. This study specifically examines the enforcement of criminal law in the judgment as a safeguard against food consumers. Sanctions provisions setting a strategic role in an effort to make the protection of consumers of food. Patterns general formulation of the maximum penalty in the third Act is not appropriate because it too gives flexibility for the judge to make a decision as low to the Defendant. Facts on society, business agent has a dominant and strong position compared with consumers of food. These favorable conditions business agent position and vice versa less give legal protection to the Consumer Food. Preferably the pattern formulation penalty of criminal acts in the field of food using a specific minimum and maximum public.

1. Introduction

Food is the most substantial and essential basic need in the human’s life [1]. Its fulfillment is a part of human rights [2] listed in the Universal Declaration of Human Rights (UDHR), the 1945 Constitution of Indonesia, the Law on Human Rights, the Law on Health, the Law on Consumer Protection, and the Law on Food as well as in their regulations of implementation.

Food is also the basic component to materialize the qualified human resources. Accordingly, food supply is to constantly be in sufficient availability accompanied by food safety, quality, nutrients, and varieties. However, society’s purchasing power must also be taken into account and this food supplying is not to go against the principles of religions, faith, and society’s culture sustainably [3]. Food safety refers to the condition and effort required to prevent food from biological and chemical harm as well as any other defective substances. As it is to be conducted in line with the religious and cultural values, the food safety effort is to ensure that the food supply would be safely consumable [4] and promote no defects to the people’s health. The enforcement of food safety should be conducted through the provisions of food sanitation, food additives regulation, genetically modified food products and food irradiation regulation, food packaging standard, food safety and quality warranty, and required halal product certification [5].

Every packaged food circulated in the community is to be labeled. Label refers to any form of
information related to food presented in the form of photograph, text, photo-text combination, or any other forms included in or printed out on the food packaging [6].

The labeling is regulated in the various legislations such as Act No. 18 Year 2012 on Food, Act No. 8 of 1999 on Consumer Protection, Act No. 36 of 2009 on Health, PP 69 of 1999 on Food Label and Advertisement, PP 102 of 2000 on National Standardization, Perka BPOM No. HK.03.1.23.11.09909 of 2011 on Supervision Claims In Processed Food Labelling and Advertising, Decree No. 033 of 2012 on Food Additives and Jo Decree No. 034 of 2012 on the Maximum Limit Melamine In Food, as well as the Director General of POM Decree No. 02 591 / B / SK / VIII / 91 which amend Regulation of the Minister of Health No. 180 / Menkes / Per / IV / 1985 on food expiration.

The administration of label certification on the packaged food product by Food and Drug Monitoring Agency takes hold of a strategic role as an attempt to ensure the safety of food products. Each packaged and marketed food product in Indonesia is required to meet the national standards and add an information label in Indonesian Language (Bahasa Indonesia) explaining the product name, composition, size net weight/volume, name and address of the company, production dates, dates of expiration, and/or halal certification [7].

However, the existed statutory laws and institutional regulations authorized to perform and control the safe packaged food labeling and halal certification have not fully safety guaranteed.

Based on the research of the National Consumer Protection Agency (BPKN) there are four major problems in food safety, namely: 1) Food poisoning as a result of damaged and contaminated food, or mixed with any adverse substances; 2) The use of restricted food additives; 3) The incompatibility of food label with the standard provisions; and 4) Food expiration [8].

According to BKN label problems receive less attention from both the consumer and manufacturers, only 6.7% of the consumers pay attention to the whole information on the label. In Indonesia, we can easily find food products which do not have complete label information on their packaging [9]. Lina Apriana Sari et al. found that many food manufacturers knowingly re-distribute and sell their expired food products [10]. Aisyah Herlita Setyaningrum also found the circulation of imported packaged food products which do not meet the safety requirements of the national standard provisions [11]. Based on the annual report of POM 2015, was found violations of the labeling of food product packaging, including the halal label, as well as tables 1 and 2 below [12]:

| Type of Product | complying the regulation | Not complying | Total | Percentage |
|----------------|--------------------------|---------------|-------|------------|
| MD             | 10,175                   | 321           | 10,496| 3%         |
| ML             | 795                      | 151           | 946   | 16%        |
| PIRT           | 273                      | 221           | 494   | 45%        |
| TOTAL          | 11,243                   | 693           | 11,936| 6%         |

MD: Licensed Domestic Product  
ML: Licensed Foreign Product  
PIRT: Local Licensed micro enterprises

| Violations of the labeling of food product packaging |
|-----------------------------------------------------|
| Not comply | complying the regulation |
| not mention the name and address of manufacturer / importer | 33 offense, 96 offense |
| not mention the production code | 678 offense, 847 offense |
| not mention the expired date | 62 offense, 283 offense |
| composition incomplete / not appropriate | 68 offense, 226 offense |
| Netto | 42 offense, 42 offense |
| Not in Indonesian | 1 offense, 0 offense |
| misleading claims | 2 offense, 3 offense |

The impact of unsafe food consumption is the occurrence of food-borne illness and death cases. Based on the reports of the Food and Drug Monitoring Agency in 2005, from the 152 exceptional food poisoning incidents during 2004, 7295 people suffered from food poisoning and 45 lives were
claimed [13]. In 2015, there were reported remarkable incident of food poisoning, as many as 61 cases, exposure to 8263 people, as many as 2,251 people ill and died as many as three people [14].

The World Health Organization (WHO) estimates that the ratios between the reported food poisoning incidences and the actual incidences are 1:10 in the developed countries, and 1:25 in the developing countries. Based on this estimation, in 2015 the possibility of actual incidences in Indonesia at that time was approximately 206,575 people were food-poisoned, 56,275 sick and 75 people died.

Food entrepreneurs who do not comply with the provisions of safe packaged food labeling can be sentenced with administrative and/or criminal sanctions. The victim consumers may report the provision violation to the local Food and Drug Monitoring Agency and/or to the Police Offices. They are also allowed to sue for damages to the violating entrepreneurs. This paper specifically examines the application of criminal sanctions in the judgment.

2. Experimental

2.1 Problem Statement

This study discusses two issues: 1) How is the analysis of the regulations of consumer legal protection on safe packaged food; and 2) How is the analysis of the implementation of consumer legal protection in the judge’s decision related to the criminal acts on the packaged food.

2.2 Research Methods

This study used juridical doctrinal approach. The type of data was secondary data obtained from primary and secondary sources in law. The data from the primary legal material were in the form of statutory laws regulating food and consumer protection as well as the judge’s decision related to the criminal acts on the packaged food. As for the data from the secondary legal materials, they were taken from journals, reference books, academic papers, articles, studies, and printed or electronically-presented news related to the study. The data were collected by using literature and document searches both physically and electronically. The collected data were analyzed by employing content analysis combined with the principles of statutory laws as well as prescriptive analysis [15].

3. Result and Discussion

3.1 Analysis of the Consumer Legal Protection on Safe Packaged Food

This study on the food consumer legal protection would be viewed from the aspect of the regulations related to the rights and obligations of the consumers, the rights and obligations of the entrepreneurs, and the prohibition and sanction imposed on the entrepreneurs.

3.1.1 Rights of the Consumers and Obligations of the Entrepreneurs

The rights of the consumers stipulated in Article 4 of the Law on Consumer Protection are: 1) to obtain comfort, security and safety in using product; 2) to choose and obtain correct, clear and honest information on the condition and warranty of product; 3) to obtain impensation, redress and/or substitution, if the product received are not in accord with the agreement or not received as requested.

The obligations of the entrepreneurs: 1) to act in good faith; 2) to provide correct, clear and honest information with regard to the condition and warranty; 3) to guarantee the product based on the prevailing quality standard provisions; 4) to provide compensation, redress and/or substitution for the damages caused by the use, consumption and application of the product; 5) to guarantee the food products produced and/or traded complied with the food safety and quality standards; 6) to have a legal license for distributing and marketing; 7) to use safe and food-grade packaging materials.

3.1.2 Obligations of the Consumers and Rights of the Entrepreneurs

The obligations of the customers [16] are: 1) to read or follow the information instructions and application or usage procedures of the product; 2) to act in good faith; 3) to pay for the price in accordance with the agreed.
The rights of the entrepreneurs [17] are: 1) to receive the payment in accordance with the sales agreement; 2) to obtain legal protection from the consumer’s acts of bad faith; 3) to conduct proper self-defense in the legal settlement; 4) to be exempted from compensation liability to the customers, if: a) the customers’ losses and damages caused by the consumption of the goods purchase are due to the customers’ faulty acts; b) the goods are evidently not to be circulated or not intended to be distributed; c) the goods defect appears at a later date after purchasing; d) the negligences are due to the customers themselves; e) the customers’ claims are overdue more than 4 years.

3.1.3 Prohibition and Sanction Imposed on the Entrepreneurs

As the effort to protect food consumers, a set of prohibition imposed on the entrepreneurs of packaged food product was promulgated. The entrepreneurs are not allowed: 1) do not use the label to the specified standards on their product; 2) to not clearly and explicitly mention the information in the label; 3) to use harmful or non-foodgrade food packaging; 4) to remove, cover, replace the label, re-label and/or change the dates of expiration.

Entrepreneurs violating the above-mentioned prohibition are threatened with administrative and criminal sanctions. The imposed administrative sanctions do not repeal their criminal sanctions. The type of administrative sanctions and criminal sanctions respective regulations are:

### Table 3. The Regulation of Administrative Sanctions

| The Types of Administrative Sanction | Consumer Protection | Food | Health |
|-------------------------------------|---------------------|------|--------|
| Fine                                | ✓                   | ✓    | ✓      |
| Compensation stipulation            | ✓ (200 M ¥)        | ✓    |        |
| Termination offers, promotions and advertising | ✓ | ✓ | ✓ |
| Temporarily                         | ✓                   | ✓    | ✓      |
| The obligation to pull out goods from circulation by Manufacturers | ✓ | ✓ | ✓ |
| Confiscation and destruction        | ✓                   | ✓    | ✓      |
| Temporary product distribution disallowance | ✓ | ✓ | ✓ |
| Revocation of product distribution permit | ✓ | ✓ | ✓ |
| Revocation of production permit     | ✓                   | ✓    | ✓      |
| Revocation of business permit       | ✓                   | ✓    | ✓      |

Sources: Act No. 8 on 1999 [18]; Act No. 18 on 2012 [19]; and Act No. 36 on 2009 [20].

The administrative sanctions provided by BPOM or local governments as providers of food packaging distribution license. Application of criminal sanctions based on a court decision made through the mechanism of criminal justice. Criminal sanctions is ultimum remedium, which attempts to latest sanctions If the attempt is given administrative sanctions not effective. Implementation of administrative given, does not remove the criminal sanction.

Types of criminal sanctions based on the regulations are: Principal Penalties and additional penalties. Principal Penalties, consists of:

### Table 4. Comparison Regulations of Principal Penalties for Food Crime Sanction

| Type of Sanction | Consumer Protection Act | Food Act 7/1996 | Food Act 18/2012 |
|------------------|-------------------------|-----------------|------------------|
| Imprisonment     | ≤ 5 years               | 1 – 5 years     | 1 – 10 years     |
| Fine             | IDR ≤ 2 Milyars         | IDR 120 – 600 Milyars | IDR 2 – 10 Billions |

Sources: Consumer Protection Act [21]; Food Act 7/1996 [22], Food Act 18/2012 [23]

Additional Penalties, which consists of: 1) Confiscation of certain goods; 2) Announcement of judge’s decision; 3) Payment for damages; 4) Injunction to stop certain activities that cause damages to the consumers; 5) The obligation to pull out goods from circulation; 6) Revocation of business
permit; or 7) Revocation of certain rights [24].

Entrepreneurs violating the provisions above may be defined as conducting criminal acts which may be the subject to administrative sanctions and/or criminal sanctions. While for the Law of Health, there are no criminal provisions related to this study. However, this law imposes administrative sanctions as well.

The pattern of punishment in the Law is assigned by the law makers with the severity of the crime or violation as the consideration. Whereas, the stipulation of serious or minor criminal threats is determined based on the eminence or the level of the crime and the damage it causes. This can be seen in the maximum penalties which are dependent on the type of crime committed. From the same type of crime, there are several different maximum penalties in different Law such as in Law on Consumer Protection, Law on Food of 1996, and Law on Food of 2012.

3.2 An Analysis of the Implementation of Penalties on the Violation of Labeling and The Circulation of Packaged Food in Judicial Verdict Provision

Legislative regulation is one role of the state in the effort to achieve the welfare of the citizens. It is also a preventive endeavor to protect and guarantee the rights of the citizens. As for the Judicial Decree, it was the last bastion for the justice-seekers who have been denied their right.

Based on a random investigation, it was found that several samples of court judgments that adjudicated the perpetrators for violating the Law of Consumer Protection and Food of 1996, and Law on Food of 2012.

| The Article | The Criminal Sanctions | Prosecutions | Court decisions |
|-------------|------------------------|--------------|----------------|
| **Foods additives Crime** | | | |
| Food act 7/1996: | | | |
| Pasal 10 (1) Consumer Protection Act 8/1999: | Imprisonment: ≤ 5 years & Fine: | Imprisonment: 5-12 months; and Fine: IDR 2,5 – 50 Milyars; Evidence seized and destroyed | Imprisonment 4-12 months & Evidence seized and destroyed. |
| Article 55 (1) & 8(1) a | 120-600 Milyars | | [25] |
| **Unlawful importation and distribution of food** | | | |
| Act 7/1996: | Imprisonment: ≤ 3 years & Fine: | Imprisonment: 6-10 months + Fine IDR 4.10 Millions + Evidence seized and destroyed. | Fine IDR. 5 Millions + Evidence seized and destroyed |
| Article 36 (2) & 58 k | Act 7/1996: IDR 120-600 M. | | [26] |
| Act 8/1999: article 8 (1) a | Act 8/1999: IDR 2 B | | |
| **No Food distribution license** | | | |
| Oct 18/2012: | Imprisonment: ≤ 2 years & Fine: ≤ IDR 4 Bills | Fine: IDR 5–15 Millions + Evidence seized and destroyed | Imprisonment: 7 months |
| Article 91 | Act 7/1996: IDR 120-600 M. | | [27] |
| Article 142 | Act 8/1999: IDR 2 B. | | |
| **Label Unlawful** | | | |
| Act 7/1996: | Imprisonment: ≤ 3 years & Fine: ≤ IDR 360 M | Imprisonment: 6 months + Fine IDR 5 Milyars + Evidence seized & destroyed | penjara 6 bulan + Evidence seized and destroyed |
| Article 30 (3) & 58 h | | | [28] |
| **No food distribution license** | | | |
| Act 18/2012 | Imprisonment: ≤ 2 years & Fine: ≤ IDR 4 Bills | Imprisonment: 1-8 months + Evidence seized and destroyed | Imprisonment: 8 Months |
| Article 141 & Article 89 | | | [29] |
| **Advertising and labeling violations** | | | |
| Act 8/1999: Article 62(1) | Penjara ≤ 2 years & Fine: ≤ IDR 4 Bills | Imprisonment: 4 years months + Evidence seized and destroyed. | Imprisonment: 23 days + Evidence seized and destroyed |
| the ministerial decree of religion 518/ 2001: Article 8(1) a | | | [30] |
The table 5 describes that: 1) All judges decided to punish the defendant with a penalty that was equal or lower than the demand submitted by the Public Prosecutors; 2) There were two verdicts that had the widest gap between the court judgment and the maximum penalty, they were: a) The court judgment of Nganjuk District Court Number 254/Pid.B/2014/PN.Njk. where the maximum penalty is 2 years imprisonment or Rp. 4,000,000,000.00 fine; and b) The Judges only imposed 15 days imprisonment and evidences to be deprived or destroyed. The court judgment of Singkawang District Court Number 36/Pid.SUS/2013/PN.SKW where the maximum penalty according Law Number 7 of 1999: 5 years imprisonment or Rp. 2,000,000,000.00 fine; and according Law Number 7 of 1996: 3 years imprisonment or Rp. 360,000,000.00 fine, whereas the Judges only gave 23 days imprisonment and evidences to be deprived and destroyed.

The low of the Public Prosecutors’ prosecution against the defendants who committed a criminal offense in food sector compared to the penalty could be interpreted that there is a tendency that the Law Enforcers still did not pay serious attention to the importance of law enforcement for food business operators. This verdict also indicated that the law enforcers were still not sensitive to the impacts or the potential impacts on consumers’ health or even their lives in general. This also resulted in other (food) business operators being undeterred in committing similar violations to gain more profits.

4. Conclusion
The laws that regulate food consumers’ protection are Law Number 36 of 2009 about Health, Law Number 8 of 1999 about Consumer Protection, Law Number 18 of 2012 about Food which substitutes Law Number 36 of 2009 about Health that did not regulate the provision of the sanction.

Law on food consumers’ protection implemented general maximum punishment system. The system made use of the highest penalty in the criminal offense in food sector. In this system, the Public Prosecutors could freely lay a demand and the Judge could give the court judgment in the matter of the length or the amount of the penalty for the defendant. However the court judgment should not exceed the maximum penalty.

Meanwhile, as seen from the pattern of sanction implementation, Law Number 8 of 1999 and Law Number 18 of 2012 used alternative pattern. With this pattern, the Public Prosecutors could enact the demand and the Judges decided upon the type of the penalty alternatively that is imprisonment or a fine.

In the studied court judgments, the Public Prosecutors’ demands were always far below the maximum penalty and there was no judge who gave penalty above the Public Prosecutors’ demand. In the pattern of sanction implementation, 4 (four) variations were used, they were: 1) implementing consolidated punishment of imprisonment, fine, and additional punishment; 2) implementing of consolidated punishment of imprisonment and fines; 3) implementing only one type of punishment either imprisonment or fines with additional punishment; 4) implementing imprisonment or fines only.

To minimize the rate of crime in food sector and to increase food consumers’ protection, thus it is suggested to: The Government to make changes in the regulation of specific minimum and general maximum penalty and the pattern of the implementation of cumulative and/or alternative sanction.

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