

IMPLEMENTATION OF CRIMINAL REGULATIONS ON THE USE OF HAZARDOUS CHEMICALS IN FOOD DISTRIBUTION

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Abstract - The presence of hazardous chemicals in food is a serious threat to public health and requires effective enforcement of criminal laws. Hazardous chemicals can directly harm consumers, cause various health problems, and damage the reputation of the food industry. This study aims to analyze the legal framework governing the use of chemicals in food, evaluate the effectiveness of existing law enforcement, and provide recommendations for improvement of the law enforcement system. In order to protect the public from serious health risks and support food integrity, enforcement of criminal laws against the use of hazardous chemicals in food is crucial. The sustainability of our lives also depends on safe and quality food. All parties, including producers, distributors and regulators, need to play an active role in ensuring that food on the market meets strict food safety standards. In addition, strict law enforcement not only penalizes perpetrators who violate the rules, but also guarantees justice for consumers who are entitled to safe food products. The application of fair and effective penalties is also a trigger to encourage industry compliance with existing regulations, thus creating a healthy and responsible business environment. It should even be remembered that there is a responsibility to safeguard public health and safety through concerted efforts in ensuring that the food consumed by each individual is safe and free from harmful chemicals.

Keywords: criminal law enforcement, food inspectors, hazardous chemicals, safety, health, food.

INTRODUCTION

The rapid advancement of the times has brought the world into a digital era characterized by rapid technological advances. Along with this technological development, there are also developments in many fields and one of them is in the field of food. Food is a basic need that must be fulfilled by every living thing for its survival, especially humans because it contains the necessary nutrients. Food is a source of energy that is needed by the human body in carrying out daily activities, without food humans will not get energy to carry out their activities.

In modern times at present, there are still very many foods produced by business actors in producing food whose quality is not necessarily guaranteed (Njatrijani, 2021). In food circulation, it is important to ensure that food quality and safety are guaranteed (Djazilan, 2023). Some traders may not pay attention to safety and quality standards in the food production and handling process. This can lead to health risks for consumers. In addition, circulation from suppliers to end buyers also needs attention. Food service providers also receive careful attention so that consumers are protected (Retnowati et al., 2021; Darmawan, 2022). Consumer behavior that wants convenience and practicality in shopping must be followed by the quality of products that are guaranteed safety (Khayru, 2021). Therefore, it is necessary to carry out strict supervision to ensure that the food sold meets the established safety and quality standards (Darmawan, 2021).

Consumers, who are the end users of the food produced by the business that will actually experience losses and the impact of harmful chemicals deliberately mixed in the food to be sold if consumed continuously. The effects of these materials can be very dire, ranging from triggering cancer, genetic disorders, congenital birth defects if consumed by pregnant women, weakening brain and nerve performance, and many other bad effects, in which case consumers are the most disadvantaged and get the impact (Ratnani, 2009; Issalillah, 2021).

Considering the weak position of consumers in general compared to the relatively stronger position of producers in many respects, the protection of consumers is viewed materially and formally (Lukman & Kusnandar, 2015). It is increasingly important due to the advancement of science and technology which is the driving force for the productivity and efficiency of producers of goods or services produced in order to achieve business goals. In order to pursue and achieve these two things, finally, either directly or indirectly, it is consumers who will generally feel the impact, thus efforts to provide adequate protection of consumer interests are an important and urgent matter to find an immediate solution.

The criminal liability of business is also based on commercial liability, namely civil liability based on the agreement or contract of the business actor (goods and/or services), for the losses suffered by consumers as a result of consuming the goods produced or utilizing the services provided (Nainggolan, 2018). The responsibility of the business actor where there is no agreement relationship between the business actor and the consumer, the responsibility of the business actor is based on product liability, namely the direct civil responsibility of the business actor for the losses

suffered by consumers as a result of consuming the goods produced. The liability of business actors is based on professional liability, which uses the direct civil liability of business actors for losses suffered by consumers as a result of utilizing the services provided.

Food safety is a critical aspect in ensuring the well-being of the global community (Lestari, 2020). One of the main challenges faced in this context is the use of hazardous chemicals in food circulating in the market. The phenomenon that occurs in the field is that there are many cases that have been revealed that food and/or beverages circulating in the community, some of which are "dangerous food and/or beverages or contain chemical substances that exceed the dose/portion outside the predetermined rules, so that it is dangerous for people who consume it (Purnamasari et al., 2019). There are quite a number of cases that occur in Indonesian society such as cases of the use of formalin, borax, bhodamin B (red coloring), metanil yellow (yellow coloring), salicylic acid, chlorine (used to whiten rice), even these chemicals are not intended as food mixtures.

Street food is food regulated by Law No. 18/2012 on Food ("Food Law") as amended, repealed and/or newly regulated by Law No. 11/2020 on Job Creation ("Job Creation Law"). Food is everything that comes from biological sources of agricultural products, plantations, forestry, fisheries, livestock, waters, and water, both processed and unprocessed which are intended as food or drinks for human consumption, including food additives, food raw materials, and other materials used in the preparation, processing, and/or manufacture of food or drinks (Nurita & Lubis, 2019).

This obligatoriness to meet safe food standards also applies to everyone who produces and trades food, including food for the purpose of grants, assistance, government programs, and/or research purposes, as stipulated in Article 86 paragraph (2) of the Food Law and Article 28 paragraphs (1) and (2) of Government Regulation No. 86/2019 on Food Safety ("GR 86/2019"). The negative impacts of hazardous chemical consumption can include serious health risks, threatening the integrity of the body's organ systems, and harming society as a whole.

Therefore, criminal law enforcement against the use of hazardous chemicals in food is a must to protect consumer rights and maintain public trust in the food industry. Any person who violates the above provisions, the form of action is 1) according to the Health Law: If it does not meet the provisions of standards, health requirements, and/or endangers health, then the food is prohibited from circulation, must be withdrawn from circulation, revoked business licenses, and secured/seized for destruction in accordance with the provisions of laws and regulations.⁹ 2) according to the Food Law: Any person who violates the provisions regarding the fulfillment of food quality standards as well as adulterated food as stipulated in the Food Law is subject to administrative sanctions, in the form of fines, temporary suspension of activities, production, and/or circulation, withdrawal of food from circulation by producers, compensation; and/or revocation of licenses.

The importance of law enforcement in this context is becoming increasingly apparent along with the increasing globalization of food trade, where food products can easily move between countries with the risk of violating food safety standards (Wilbert et al., 2020). Therefore, attention to criminal law enforcement efforts is important to prevent, detect and crack down on violations related to the use of hazardous chemicals in food. Effective law enforcement requires collaboration between law enforcement agencies, food regulatory agencies and other relevant parties. Increased capacity and human resources are needed in conducting supervision, inspection and investigation of violations related to the use of hazardous chemicals.

In furtherance, transparency of information to the public on the results of supervision and legal actions taken can increase public awareness and encourage compliance by the food industry. With a focus on consumer protection and public health impacts, this research is expected to make a real contribution to strengthening the criminal law enforcement system in the face of complex challenges related to the use of hazardous chemicals in food circulating in the community. Thus, business actors who sell food containing hazardous substances can be charged with articles in the Food Law, Health Law, and/or Consumer Protection Law with the penalties outlined above.

RESEARCH METHODS

This research is part of normative legal research. Data collection through primary data and secondary data. From the data obtained, both primary data and secondary data that has been collected, selected and then the data is clarified, then qualitative analysis is carried out, this analysis is needed or used to obtain data that has a relationship with the results of the research conducted and then conclusions are drawn in the form of statements.

RESULTS AND DISCUSSIONS

The legal regulation of the use of hazardous chemicals in food circulating in Surabaya City has been regulated in laws and regulations, namely: Law No. 8/1999 on Consumer Protection, Law No. 18/2012 on Food ("Food Law") as amended, deleted, and/or contains new regulations by Law No. 11/2020 on Job Creation ("Job Creation Law"). Criminal law enforcement against the use of hazardous chemicals in food in circulation is based on evidence from laboratory tests, examinations, and preliminary investigations. The law enforcement process up to *projustitia* may end with the imposition of administrative sanctions such as banned from circulation, withdrawn from circulation, revoked distribution license,

and confiscated for destruction. If the violation falls into the criminal realm, then the perpetrator of the violation can be processed under criminal law. The perpetrators are suspected of violating articles 196 and 197 of Law No. 36 of 2009 concerning Health with a maximum prison sentence of 15 years and a maximum fine of 1.5 billion rupiah. In addition, Article 64 number 19 of the Job Creation Law which amends Article 140 paragraph (1) of the Food Law stipulates that every person who produces and trades food that intentionally does not meet food safety standards resulting in victims of human health problems shall be punished with imprisonment of up to 2 years or a maximum fine of Rp 4 billion. However, it should be noted that the above criminal provisions are exempted for any person conducting low or medium risk businesses and/or activities.

Food products circulating in the community first go through the process of distribution feasibility at the Food and Drug Supervisory Agency (BPOM) to ensure that those circulating in the market are safe and convenient for consumption by the public and can be traded. Therefore, it is necessary to have laws and regulations to prevent and minimize the occurrence of fraud in producing food that is circulated to the public. In Indonesia, the regulation of food products containing hazardous materials has been regulated in legislation, namely: Law Number 8 Year 1999 on Consumer Protection provides protection to every consumer who feels harmed by business actors.

Article 8 paragraph (1) and paragraph (3) of Law Number 8 Year 1999 on Consumer Protection regulates prohibited acts for business actors, which reads: (1) Business actors are prohibited from producing and/or trading goods and/or services that: (a) does not meet or is not in accordance with the required standards and the provisions of laws and regulations; (b) does not match the net weight, net or net contents, and the number in the count as stated in the label or etiquette of the goods; (c) does not match the size, measure, scale and number in the count according to the actual size; (d) not in accordance with the conditions, guarantees, features or efficacy as stated in the label, etiquette or description of the goods and/or services; (e) not in accordance with the quality, level, composition, processing, style, fashion, or specific use as stated in the label or description of the goods and/or services; (f) not in accordance with the promises stated in the label, etiquette, description, advertising or sales promotion of the goods and/or services; (g) does not include the expiration date or the best period of use / utilization of the goods; (h) does not follow the provisions of halal production, as the "halal" statement included in the label; (i) does not install labels or make explanations of goods that contain the name of the goods, size, weight / net or net content, composition, usage rules, date of manufacture, side effects, name and address of the business actor and other information for use which according to the provisions must be installed / made; (j) does not include information and / or instructions for the use of goods in Indonesian in accordance with applicable laws and regulations.

The Consumer Protection Law does not explicitly mention food regulations. However, the provisions in Article 8 paragraph 1 letter (i) can be used as a basis for protection of consumers who buy food products containing hazardous ingredients. It is stipulated that it is not allowed to trade goods that do not meet or do not comply with the standards required and determined by laws and regulations. Food that is traded must include the composition, rules of use, date of manufacture, and side effects when consuming the food. Thus, consumers can choose what kind of food products are suitable for them and do not harm them. This means that consumers know exactly the content of the food products they consume. In this case what is needed is the honesty of the business actor, considering that the goods produced and to be circulated are in the control of the business actor before reaching the consumer. Paragraph (3) states as follows: Business actors are prohibited from trading pharmaceutical preparations and food that is damaged, defective or used and contaminated, with or without providing complete and correct information. In paragraph (3) above, it is stated that business actors are prohibited from trading adulterated food. The above article explains that business actors who violate the agreed provisions shall be subject to sanctions as mentioned above. However, the article does not explicitly explain the provision of compensation or the burden of proof to consumers. This means that the compensation mentioned above is still based on mutual agreement between business actors and consumers. In terms of proving the absence of elements of fault in a claim for compensation by the consumer, the burden and responsibility of the business actor.

According to the provisions of Law No. 18/2012 on Food in Article 1 paragraph (5), it is stated that: "Food safety is a condition and effort needed to prevent food from possible biological, chemical, and other contaminants that can interfere with, harm, and endanger human health and do not conflict with religion, beliefs, and culture of the community so that it is safe for consumption. This regulation is very influential on consumer safety in the use of food products that are traded, because it has covered all aspects of consumer life, namely things that are detrimental both in terms of health, religion, beliefs and religion. So it can be said that Law No. 18/2012 on Food, especially in Article 1 paragraph (5), has become part of consumer protection. In addition, every person is prohibited from distributing tainted food, in the form of: (a) food that contains toxic, hazardous materials, or which may endanger human health or life; (b) contains contaminants that exceed the specified maximum threshold; (c) contains materials that are prohibited to be used in food production activities or processes; (d) contains dirty, rotten, rancid, decomposed materials, or contains diseased vegetable or animal materials or comes from carrion; (e) is produced in a prohibited manner; and/or; (f) has expired.

Food production activities or processes for distribution or trade must comply with provisions on food sanitation, food additives, contaminant residues, and food packaging. Another point that should be considered by everyone who produces food is that the use of certain methods in food production activities or processes that have the possibility of causing risks that can harm or endanger human health, such as genetic engineering or irradiation, must be carried out

based on certain requirements. Every person who produces food for distribution should be held liable, especially if the food produced causes either harm to human health or death of the person who consumes the food. In that regard, this Law specifically regulates the responsibility of the food industry to provide compensation to the injured party. In addition to the responsibility to provide compensation, it also stipulates other sanctions, both administrative and criminal, against violators. In food trading activities, the consuming public needs to be provided with adequate means to obtain correct and not misleading information. In this regard, it is necessary to stipulate provisions on food labeling and advertising. Thus, people who consume food can make decisions based on accurate information so as to create honest and responsible food trade, which in turn fosters healthy competition among food entrepreneurs. The provisions on food safety, quality and nutrition, as well as food labeling and advertising, apply not only to food produced and/or distributed in the territory of Indonesia, but also to food imported into the territory of Indonesia. In certain cases for national food production to be circulated abroad, the same provisions apply.

Producers' violations of various laws and regulations are not only caused by economic factors, but can also be caused by a lack of knowledge about regulations and inconsistent law enforcement by the authorities. Implementation and law enforcement in terms of food safety are not going well. This is evident from the absence of enforcement in accordance with applicable regulations against perpetrators of food safety violations. Community participation is needed as an early detector of the presence of chemical additives in food, in this case, the foresight of the community as consumers is needed. The public must be careful in ensuring that the content is in accordance with the label. This is necessary because many cases of food poisoning are due to preservatives, due to low consumer vigilance. Consumer carelessness is exacerbated by low human resources and the fact that the area to be monitored is too large. Another obstacle in monitoring the use of preservatives is the circulation of chemicals for the home food industry, which is very large. The most discussed poisonings are usually short-term ones. However, it is rarely questioned the impact of foods containing food additives that can threaten humans in the long term. For example, organ damage after consuming certain foods. Legally, it has not been firmly stated to sanction long-term effects because proof is difficult.

The use of chemicals in food reflects a lack of coordination among the three agencies responsible for handling the circulation of food and beverages. The Department of Industry and Trade (Deperindag) is in charge of fostering industry and handling commerce, and the Food and Drug Administration (BPOM) is in charge of monitoring and even investigating. The legal regulation on Food Additives (BTP) is regulated in the Regulation of the Minister of Health of the Republic of Indonesia (Permenkes) No. 033/2012 on Food Additives. General Provisions Article 1 point 1 of Minister of Health Regulation No. 033/2012 states: "Food additives are materials that are added to food to affect the nature or form of food. Regarding the safety of food and beverages, according to Article 111 paragraph (1) of Law Number 36 Year 2009 on Health (hereinafter abbreviated as Health Law) states that "food and beverages used for the public must be based on health standards and/or requirements". The safe food standard is also regulated in Article 86 paragraphs (1) and (2) of the Food Law, namely: "every person who produces and trades food is obliged to fulfill the standards for food safety and food quality set by the Government.

CONCLUSIONS

In order to protect the public from serious health risks and support food integrity, the enforcement of criminal laws against the use of hazardous chemicals in food is crucial. The sustainability of our lives also depends on safe and quality food. All parties, including producers, distributors and regulators, need to play an active role in ensuring that food on the market meets strict food safety standards. In addition, strict law enforcement not only penalizes perpetrators who violate the rules, but also guarantees justice for consumers who are entitled to safe food products. The application of fair and effective penalties is also a trigger to encourage industry compliance with existing regulations, thus creating a healthy and responsible business environment. It should even be remembered that there is a responsibility to safeguard public health and safety through concerted efforts in ensuring that the food consumed by each individual is safe and free from harmful chemicals.

With the cooperation between government, industry and society, we can achieve the common goal of creating a healthy, equitable and sustainable food environment for future generations. Based on these results, it can be conveyed that the local City Health Office and BBPOM must strictly supervise the production and circulation of food products that use food additives, if violations of the provisions stipulated in Law No. 18/2012 are found, criminal sanctions must be imposed in accordance with applicable regulations.

There needs to be cooperation between the local City Health Office and BBPOM with police officers in enforcing criminal law against the use of food additives that exceed the maximum threshold set and/or materials that are prohibited from being used as food additives as stipulated in Law No. 18/2012. Authorized agencies, especially the City Health Office and BBPOM, must provide supporting infrastructure such as laboratories and be supported by the provision of adequate human resources and budgets to conduct supervision in the context of law enforcement. The government seeks to improve consumer protection with policies that can minimize the dangers that will harm the public with food products containing harmful chemicals in food. Consumers are becoming smarter by digging up information in an effort to avoid the dangers of food consumed containing harmful chemicals that can damage their organs.

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