

# *The Model of Business Activities Legal Responsibility in Anticipation of Environmental Pollution Impact on Sea Fish as a Food Raw Material by Small and Medium Enterprises*

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**Abstract-**Indonesia, as one of the largest fish-producing countries in the world, has great potential to improve the fishing industry, one of which is food processing made from sea fish. On the other hand there are legal issues that often occur related to processed foods as the use of raw materials that increase pollution which is detrimental to consumers. In this case the planning of processed food business has a big responsibility for the selection of raw materials for making food including fish. Therefore this research is very important to do. The purpose of this study is to look for evidence and analyze the legal issues of responsibility for entrepreneur in the use of marine fish related to pollution as raw material for processed food in Micro, Small and Medium Enterprises (MSMEs) and provide a model of future legal development that can help the community to support negative impacts arising from the use of sea fish as raw material for processed food.

**Keywords-** *Liability, Impact, Pollution, Environment, Sea Fish, Raw Materials.*

## I. INTRODUCTION

The public is often surprised by the news coverage of various mass media that many products, especially foods that are often consumed daily, contain ingredients that are harmful to health. Food safety in Indonesia is still far from safe, which can be seen from the recent food poisoning events. Under these conditions, consumers in general do not yet have an awareness of the safety of the food they consume, so that not many consumers have demanded these food producers. This causes food producers to increasingly ignore the safety of consumers in order to obtain the maximum profit. Consumers will be greatly disadvantaged by the condition of the product that is not in accordance with health standards, let alone bring a bad impact on people's lives.

The reality above shows that the issue of product responsibility from producers and consumer protection is a very serious problem. Consumer protection is intended to realize a balanced legal protection between producers and consumers [1]. The extent of the relationship between food and various fields of life is an important topic in the broader field of study of economic development and development [2].

Food consists of processed or non-processed food extracts. Food processing made from marine fish is done by businesses both large and small, including Micro, Small, and Medium Enterprises (MSMEs). Food businesses have a great responsibility for the food they produce. In various countries in the world, food is also crucial, which is always being discussed. Asha Kaur et al (2019) [3] suggested that "Health-related claims (HRC) are found in quality food packages. The introduction of new quality food problems has become a pattern of coaching from an early age. The problems was stated by Ingrid Marie ovdenak [4], Mariel Marcano-Olivie [5], Namrata Sanjeevi [6], Shannon M. Robson [7]. In Indonesia quality food problems also becomes a serious problem for the government [8].

Food Production is an activity or process of producing, making, processing, preserving, packaging, repackaging, and/or changing the form of food (Article 1 Number 6 of the Act of the Republic of Indonesia Number 18 of 2012 concerning Food / Food Act). In its business activities, entrepreneurs must be responsible for all business activities ranging from producing food, transporting food, distributing food, trading food to food that can be purchased by consumers. This is intended so as not to cause harm to the rights of others who in this case are consumers. In the Food Act which contains a prohibition on businesses to use additional substances which are prohibited by act which can harm the health of consumers who consume them.

Processed Food is food or drink resulting from the process by certain methods with or without additional ingredients (Article 1 Number 19 of the Law of the Republic of Indonesia Number 18 of 2012 concerning Food / Food Law). Sea fish is one of the raw materials used by many people. There is a possibility that the raw material of sea fish used in the process of making food is affected by pollution which can have a negative impact on people who consume it. Hazardous substances that contaminate fish as processed food can be started from polluted seas, capture using hazardous materials, or the equipment and processing of the fish thereafter. These events can cause harm to consumer rights. Furthermore, if the contaminated fish becomes a raw material in the

process of making food, it can have a detrimental impact on the safety and health of consumers. Consumer protection is any effort that guarantees legal certainty to provide protection to consumers ". The purpose of this study is to find and analyze the responsibilities of Micro, Small and Medium Enterprises (MSMEs) as producers in the use of polluted sea fish as raw material in the manufacture of processed food and provide an alternative model of producer accountability in the future as a legal protection for consumers.

**II. RESEARCH METHOD**

The research method in this case uses a qualitative method with a normative legal research approach. The data used are sourced from secondary data obtained by library research with techniques of literature study by collecting various laws and regulations, Data from the Food and Drug Supervisory Agency, books and journals relating to the theory and concept of responsibility of processed food producers and legal protection of consumer. Data validation was conducted with source and method triangulation. Data analysis was conducted using inductive logic towards cases of processed food. Conclusions were made regarding responsibility of producers in anticipating the impact of the use of marine fish as raw material for processed food in MSMEs.

**III. FINDINGS AND DISCUSSION**

Nowadays food is not only used to fulfill primary human needs, but has become widespread as one of the culinary attractions. On the one hand, the development of various foods and their functions provides great benefits for improving the welfare of the community in general and business actors, both large businesses, as well as micro, small and medium enterprises. A variety of processed foods are served in various ways that increasingly attract consumers. On the other hand various legal issues related to food are also increasingly common, including in the procurement of raw materials, production processes, packaging, transportation, distribution, marketing to its use by consumers. One of the most crucial impacts of food use is the impact of safety and health on society. Food safety and environmental concerns became a significant issue, especially in developing countries [9]. Often in various stages of food supply, there are deviations and mismatches in health quality standards. For example, raw materials from materials that have been exposed to pollutants that are very dangerous to human health and life.

Food Safety is the condition and effort needed to prevent food from possible contamination. Food Safety is organized to keep food safe, hygienic, quality, nutritious, and not contrary to the religion, beliefs and culture of the community. Food Safety is intended to prevent the possibility of biological, chemical and other contaminants that can interfere with, harm and endanger human health. Food Sanitation is an effort to create and maintain healthy and hygienic food conditions. Sanitation Requirements

are hygiene and health standards that must be met to guarantee Food Sanitation. Quality food is food that meets safety criteria and good nutrition content.

From the results of the study showed that there are industrial facilities used by food businesses that do not meet the standards. In food retailing in 2017, routine checks of 9,087 food retail facilities were carried out, with a result of 6,089 (67.01%) of facilities fulfilling the provisions (MK) and 2,998 (32.99%) of the facilities not meeting the provisions (TMK) in the application of methods Good Food Retail (CRPB). The types of violations that cause distribution facilities that fall into the TMK category can be seen in table 1.

**TABLE 1. FOOD PRODUCTS THAT DO NOT MEET REQUIREMENTS**

No	Types of TMK Findings	Total Number	Economic Value (Rupiah)
1	Product is damaged	71.764	327.049.004
2	expired	281.684	691.546.315
3	TMK label	472.399	1.187.194.272
4	Food without marketing authorization	3.707.002	3.411.540.903
5	Other (contain dangerous ingredients)	471	3.656.500

From the results of the examination, it is known that one facility can commit several types of violations. Follow-up of the violations carried out include: withdrawal and destruction of products, warnings, pro-justisia, product returns and coaching. Drug and Food Supervisory Agency supervision is also carried out on the distribution of hazardous materials. Hazardous material in question is a hazardous material that is often misused in food. Based on the examination results of the Center together with the Integrated Supervisory Team for Hazardous Substances and Balai Besar / POM for 88 official distribution facilities of hazardous materials consisting of Registered Importers of Hazardous Substances, Registered Distributors of Hazardous Substances and Registered Retailers of Hazardous Substances, obtained 48 (54.55%) facilities that meet the provisions of 40 (45.45%) facilities that do not meet the provisions. Facilities which do not meet these provisions are in terms of licensing, procurement, distribution and reporting administration aspects.

The data above shows that there are various legal issues related to food, especially concerning 1) Licensing of food supply businesses that do not meet the requirements (for example there is no business permit); 2) Environmental health where food raw materials are procured, the process of making, packing, distributing, marketing, serving that is not in accordance with health standards, for example pollution that results in contamination of food ingredients which ultimately adversely affects human health; 3) Food products

circulating in the community are not in accordance with health standards; 4) food raw materials and packaging that are not in accordance with health standards; 4) Processing methods that are not in accordance with health standards; 6) The packaging process and packaging materials that are not in accordance with health standards; 7) Labeling that is not in accordance with the standards and is misleading; 8) The use of labels without official certification; 9) Paying less attention to risks that can adversely affect public health; 10) Lack of attention related to ideology, social impact, culture of healthy living by paying attention to good and healthy food and healthy lifestyle.

Problems related to the production of processed food by the producers as described above can endanger consumers. These problems regarding food production have an impact on public health and the national economy. According to Jack Lyons (2019) [10] “The global food trade has a huge impact on both the health of populations and the economies of nations. Around 600 million people become ill and 420,000 die each year from food-borne diseases, according to WHO. Losses in productivity and trade and treatment costs amount to US \$ 110 billion annually, mainly in low and middle-income countries.”

Producers are responsible for the consequences arising in connection with the food they produce. Legal protection for producers including MSMEs as food producers and consumers must be balanced. Thus it will create business development of the processed food sector by paying more attention to food quality standards. In the event of the use of fish affected by pollution as a hazardous material, producers can be sued based on tort. The basis of the lawsuit is Article 1365 of the Civil Code. Tort (*onrechtmatige daad*) in this case are intended as acts against the law in the civil field. Tort means a civil error that does not originate from default.

The elements contained in the tort are: a. The existence of an act; b. The act is against the law; c. There is an error on the part of the perpetrator; d. There is a loss for the victim; e. There is a causal relationship between actions and losses. So far, the assessment and legal framework have only seen relative signs of difference in the way in which the court sees key elements of tort legal action, namely the concept of damage, the existence of a causal relationship and the burden of proof. [11] At present the tort law states that a separate claim for violations against that person is no longer needed, given the growth and development of the law of neglect. In this case there is a role of continuous violation for the person, and that the interests protected by the violation suit are not adequately included in negligence. Whatever the convergence that occurs between violations and negligence lawsuits, there will continue to be different elements of violation for which negligence is unknown. [12]

The Indonesian Civil Code regulation model regarding illegal acts, as in other countries in the Continental European legal system. Models of legal responsibility in continental European countries include:

- 1) Liability with an element of error, (intentional and negligence), as contained in Article 1365 of the Civil Code.
- 2) The responsibility with an element of error, especially the element of negligence, as contained in Article 1366 of the Civil Code.
- 3) Absolute liability (without error) in a very limited sense is found in Article 1367 of the Civil Code.

Since 1919, in the Netherlands and Indonesia, tort have been interpreted broadly, which includes one of the acts which includes: 1) Acts that are contrary to the rights of others which include wealth, right to freedom, right to honor and good name ; 2) Actions that are contrary to their own legal obligations; 3) Actions that are against morality; 4) Actions that are contrary to prudence or necessity in good community relations.

The responsibility of processed food producers for the negative impacts of the use of raw materials for fish that are affected by pollution can also be seen in Article 64 Paragraph (1) of the Food Law which states that every person who conducts a certain Processed Food Production for trading must apply procedures for food processing that can inhibit the process of reducing or losing the nutritional content of the raw materials used. Article 64 Paragraph (2) of the Food Act states that the application of food processing procedures is carried out in stages based on the type of Food and the type and scale of business of Food Production.

Article 65 Paragraphs (1) and (2) of the Food Law state that everyone who violates the provisions referred to in Article 64 paragraph (1) will be subjected to administrative sanctions. Administrative sanctions can be in the form of: a. fine; b. temporary cessation of activities, production and / or distribution; c. Food withdrawal from circulation by producers; d. compensation; and / or e. revocation of permission. In an effort to create a balance between consumers and producers in the provision of healthy food, the government has the same obligations as stipulated in Article 68 of the Food Law:

- (1) Ensure the realization of the implementation of Food Safety in each Food chain in an integrated manner.
- (2) Establish norms, standards, procedures and criteria for Food Safety.
- (3) The application of norms, standards, procedures and criteria for Food Safety shall be carried out in stages based on the type of Food and the scale of the Food business.
- (4) Must foster and oversee the implementation of the norms, standards, procedures and criteria for Food Safety

Farmers, Fishermen, Fish Cultivators, and Food Business Actors must apply the Food Safety norms, standards, procedures and criteria. Implementation of Food Safety is carried out through:

- a. Food Sanitation;
- b. regulation of food additives;
- c. regulation of Genetically Modified Food Products;
- d. regulation of Food Irradiation;
- e. stipulation of food packaging standards;
- f. granting guarantees for Food Safety and Food Quality; and
- g. halal product guarantee for those who are required.

Regarding Food Sanitation is regulated in Article 70 of the Food Law. Food Sanitation is done so that Food is safe for consumption. Food Sanitation is carried out in activities or processes of production, storage, transportation, and / or distribution of food. Food Sanitation must meet the requirements of Food Safety standards. Article 71 of the Food Law states that "Every person involved in the Food chain is obliged to control the risk of danger to Food, whether it comes from materials, equipment, production facilities, or from individuals so that Food Safety is guaranteed. Every person who carries on activities or processes of production, storage, transportation, and / or distribution of food must: a. meet Sanitary Requirements; and b. guarantee food safety and / or human safety.

Any person who violates the provision is subject to administrative sanctions in the form of: a. fine; b. temporary cessation of activities, production and/or distribution; c. Food withdrawal from circulation by producers; d. compensation; and / or e. revocation of permission. Thus producers producing processed foods with raw materials for marine fish affected by pollution are responsible for negative impacts on consumers. Food safety is also an obligation for everyone involved in the food chain to control the risk of harm to food, both from materials, equipment, production facilities, and from individuals. Food safety efforts for the whole community, which end in efforts to improve the nutritional status of the community must always be improved. Health is a human right and one of the elements of well-being that must be realized in accordance with the ideals of the Indonesian people as referred to in the Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia. The high is carried out based on the principle of non-discrimination, participatory, protection, and sustainable which is very important for the formation of Indonesian human resources, enhancing national resilience and competitiveness, and national development.

In the future, the responsibility of producers should be given more serious attention to provide legal protection to consumers. In addition, an integrated supervision system must be carried out between the government, business actors, the community and integrated socialization between the government, academics, business actors, the

community about Quality Control of raw food fish food, Standardization about labeling, packaging, processing, distribution.

#### IV. CONCLUSION

MSMEs as producers of processed foods that have used raw materials for marine fish affected by pollution are responsible for the consequences that arise detrimental to consumers. This responsibility is based on civil liability, regulations on food and regulations on consumer protection. In the future, the responsibility of producers should be given more serious attention to provide legal protection to consumers. In addition, an integrated supervision system must be carried out between the government, business actors, the community and integrated socialization between the government, academics, business actors, the community about Quality Control of raw food fish food, Standardization about labeling, packaging, processing, distribution.

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