



Supervision of the Safety of Processed Food from the Perspective of Consumer Protection Law

Amalia Zuhra^{1*}, Anna Maria Tri Anggraini¹

¹Faculty of Law, Universitas Trisakti, Jl. Kyai Tapa No. 1, Jakarta, 11440, Indonesia
Corresponding author's email: amalia.z@trisakti.ac.id

ABSTRACT

Food safety needs to be a concern for all stakeholders, especially the existence of standards that guarantee the safety of consumers. Supervision is needed to prevent and act against perpetrators who do not comply with. Then the study to analyze the government's supervision system for processed food products according to the applicable laws and regulations is important. The purpose of this study is to describe and analyze the supervision of the safety of processed food from the perspective of applicable laws and regulations and the mechanism for restoring consumer rights when there is a violation by business actors according to consumer protection law. This research is normative-qualitative research, which is conducting research by describing the data obtained based on legal norms, theories, concepts, and rules that are relevant to the object. The data obtained in connection with this research is a document study of secondary data. Supervision of processed food safety in Indonesia involved several ministries and the Food and Drug Supervisory Agency (BPOM). Integrated steps are needed in the food safety control system, so that it can result in an increase in the effectiveness of food safety assurance. The results of this study are useful for providing input for regulators and policy makers in the food sector at the technical implementation level. In addition, increasing the awareness of business actors to always pay attention to and comply with food safety standards aimed at ensuring consumer safety.

Keywords: *Food Safety; Processed Food; Consumer Protection*

1. INTRODUCTION

Food is the most basic human need that is guaranteed by the state based on human rights. The Universal Declaration of Human Rights in article 25 paragraph 1 states that “[e]veryone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services”. In Indonesia, the right to food is regulated in Article 27 (2) of the 1945 Constitution which mentions a decent life for humans, including the right to safe food. A basic human right is to have access to safe and healthy food. Safe food is a major determinant of human health. To guarantee this right, the government must ensure that the available food meets safety standards. Awareness of the importance of food security and its impact on health, marketing and foreign trade has increased in the last two decades. Every person involved in the food supply chain, from the farm to the final user, is responsible for ensuring the food's safety and quality. Food contamination detection has gotten a lot of attention in the recent decade, and it helps governments and customers determine if food is safe [1].

Food safety is closely related to other legal aspects such as consumer protection, biotechnology and safety of genetically modified organisms, application of the precautionary principle, product traceability, setting quality standards and others [2]. Food safety improvement aims also to strengthen national food safety systems while increasing international and national collaboration. Therefore, food safety is a shared responsibility among various stakeholders. Countries adopt and implement food safety policies and ensure that every stakeholder knows and plays their role properly [3], including among consumers as those who consume the food. Consumption of unsafe food can certainly threaten the safety of the life and health of consumers. This shows that the position of the community as consumers is still weak due to the lack of information received and inadequate knowledge regarding food safety. Therefore, it is necessary to guarantee protection for consumers when buying food products. This is an inseparable part of every business activity, where legal protection for producers and consumers must be balanced so as not to harm one party, especially consumers [4]. Because food is a credence good, the safety of which cannot be

inspected, identified, or controlled by the individual consumer through traditional ways such as smelling or tasting, trust is required. As a result, trust has an impact on how risks are perceived, evaluated, and responded to, and can be considered both a cause and a consequence of risk perception [5].

The food we know consists of fresh food, processed food, derived from industrial processing and home industry processing as well as ready-to-eat food such as restaurants, catering, and street food [6]. Processed food according to Law no. 18/2012 concerning food is food or drink that is processed in a certain way or method with or without additional ingredients. Things that can happen that threaten food safety include microbial contamination due to lack of cleanliness, chemical contamination of contaminated raw materials, misuse of hazardous materials in food and the use of food additives above the permissible limits. This article will focus on supervising the food safety of processed ingredients, considering that the number of processed food industries, both large and household, is increasing. The supervision of the processed food industry is still not optimal, as evidenced by the high number of processed food cases that do not meet the BPOM (Food and Drug Supervisory Agency) requirements.

This article aims to provide an overview and analyze the safety control of processed food based on consumer protection law. The problems to be analyzed are how the government's supervision system for processed food products according to the applicable laws and regulations; and what is the mechanism for restoring consumer rights when there is a violation by business actors according to consumer protection law?

2. METHOD

This research is normative-qualitative research, which is conducting research by describing the data obtained based on legal norms, theories, concepts, and rules that are relevant to the object [7]. The nature of this research is descriptive, i.e., research that aims to get an overview of a certain thing [8]. This study uses secondary data, obtained from various library materials, such as journals, literature, and scientific articles in the mass media. The data obtained in connection with this research is a document study of secondary data through, namely: Primary legal materials, are binding legal materials, which consist of Law No. 18/ 2012, PP No. 86/2019. In addition, secondary legal materials are used, which provide explanations on primary legal materials, such as regulations used by other countries related to research objects, research results, scientific works and articles that are closely related to food safety, especially processed food.

At the next stage, efforts are made to answer the main problems and obtain conclusions and suggestions. The

data that the authors obtained in this study were processed and analyzed with a qualitative approach. Conclusions are drawn in this study using the deductive reasoning method, which is a reasoning process that starts from a general statement or thesis about the takeover mechanism from the perspective of competition law, to arrive at a specific conclusion about a particular matter, namely food safety control of processed food products.

3. RESULT AND DISCUSSION

The scope of this research is limited to the safety of processed food according to the rules that apply in Indonesia, especially the law on consumer protection. The results of the research are as follows:

3.1. Government's Supervision System for Processed Food Product According to the Applicable Law and Regulation

The implementation of processed food safety is carried out through the stages of food sanitation, regulation of food additives (BTP), regulation of genetically engineered food products, regulation of food irradiation, determination of food packaging standards, provision of food safety and food quality guarantees, as well as required halal product guarantees (Article 2(1) of Government Regulation No. 86/ 2019).

The table 1 shows the involvement of several supervisory authorities at each stage.

According to the legislation, food control in Indonesia is carried out through a multi-agency approach involving the central government, provincial governments, and district/city governments. The types of food circulating in Indonesia, notably fresh food and processed food, are subject to various government restrictions [9].

The study of the Government Regulation on Food Safety above shows that there are 8 state institutions at both the central and regional levels that carry out food safety supervision, although they are not always involved in every stage. Each agency is responsible for a specific type of food product. The Minister of Agriculture is responsible of fresh goods like vegetables, meat, and eggs. The Minister of Marine Affairs and Fisheries is responsible of fresh seafood and aquaculture. The National Agency for Drug and Food Control (BPOM) regulates certain processed foods. Finally, the Minister of Health is responsible of fast food. The Indonesian food control system makes a distinction between pre-market and post-market regulations to a large extent [10].

For example, in controlling the content of food additives (BTP), genetically modified products, and packaging standards, only BPOM is involved as a supervisor. It means that at several stages of food safety,

BPOM has an important role in conducting supervision [11]. As for the guarantee of halal products, it involves supervisory agencies at the regional level. For processed food products that require several (5-7) food safety supervisory authorities at the stage of food sanitation, food safety and quality assurance, it requires

coordination, efficiency, as well as the accuracy of the performance of each institution. Food sanitation has received great attention from several parties considering that in general it is still considered poor, moreover it is a fundamental problem that must be resolved, especially among small and medium enterprises [12].

Table 1 Obligation to Implement Food Safety

Food safety	Min. of Agriculture	Min. of Marine Affairs and Fisheries	Min. of Health	Min. of Trade & Industry	BPOM (National Agency of Drug & Food Control)	BATAN (National Atomic Energy Agency)	Regional government	Min. of Forestry	Description
Food Sanitation	V	V	V	V	V	–	–	–	–
Regulation of food additives	–	–	–	–	V	–	–	–	BPOM regulations
Genetic modification	–	–	–	–	V	–	–	–	BPOM regulations
Food irradiation	–	–	–	–	V	V	–	–	BPOM regulations
Standard of packaging	–	–	–	–	V	–	–	–	BPOM regulations
Food safety and quality assurance	V	V	V	V	V	–	V	V	Collaborate with central govt. BPOM regulations
Halal product assurance	–	–	–	–	–	–	V	–	BPOM regulations

Table 2 Additional obligations to implement processed food safety

Food safety	Min. of Agriculture	Min. of Marine Affairs and Fisheries	Min. of Health	Min. of Trade and Industry	BPOM (National Agency of Drug & Food Control)	Regional Gov. (Province/district)	Description
Supervision (Ps. 51 – Ps 58)	–	–	–	–	V	V	BPOM regulations
Handling extraordinary events (Ps 72 – Ps 75)	V	V	V	–	V	V	BPOM regulations
Role of community (Ps 76 – Ps 81)	V	V	V	–	V	V	BPOM regulations

Likewise, for the obligation to supervise each ministry/institution in extraordinary events and community participation, all of which require a regulation from the head of BPOM. In terms of the period, supervision is carried out periodically, within a certain time and in the event of an alleged violation. This supervision is carried out from the process of production, storage, transportation to trading in the community.

The explanation above basically imposes an obligation on business actors who produce and trade processed food to meet national quality assurance standards in accordance with Article 28 PP No. 86/2019. More fundamentally, the law that underlies the government regulation requires business actors who

violate food safety provisions to be subject to administrative sanctions based on Article 94 of Law 18/2012 [11]. The obligation of business actors to meet processed food standards is also mentioned in Law no. 8 of 1999 concerning Consumer Protection (CPL), Article 7 and Article 8, where Article 62 of the CPL will impose criminal sanctions for anyone who violates the prohibition. Both laws which lead to the same thing, namely consumer protection, require harmonization in their implementation, especially when they require implementation in the regions, considering that there is Law no. 09/2015 concerning the Second Amendment to Law 23/2014 concerning Regional Government which is used as a regional (government) reference.

This obligation is also imposed on the supervisory agency which has the authority to do so in accordance with Article 47 PP No. 86/2019 both at the center and in the regions. This government regulation still requires technical elaboration at the ministry/agency level considering that this regulation has not determined the timeframe regarding the length of the process from the initial inspection to the form of output in the form of a permit. Indonesian law that adheres to a multiple agency system is often an obstacle in its application because it will involve a long bureaucratic path and is prone to sectoral egos in the implementation of food safety [4].

In order to further implement the government regulations stipulated on December 26, 2019, several authorities issued regulations as implementation of PP 86/2019, including the Head of BPOM forming regulations such as BPOM Regulation No. 8/2020 concerning Control of Drugs and Food Circulated Online, BPOM Regulation No. 11/2020 concerning Criteria and Procedure for Registration of Health Supplements, BPOM Regulation No. 13/2020 concerning Flavored Food Additives, and most recently BPOM issued BPOM Regulation No. 22/2021 concerning Procedures for Issuing Permits for the Implementation of Good Processed Food Production Methods. BPOM has numerous policies in place for monitoring medicine and food, including designing the supervising medicine and food program, inspecting testing laboratories, and assessing product quality, as well as any additional rules that are required by BPOM in their respective areas of responsibility [13].

The Minister of Industry in 2010 has also issued a similar regulation, namely Regulation of the Minister of Industry No. 75/M-ENG/PER/7/2010. In addition, the Minister of Agriculture issued Regulation of the Minister of Agriculture of the Republic of Indonesia No. 05/2020 concerning Supervision of the Safety of Fresh Food of Animal Origin and Fresh Food of Plant Origin from Japan Against Contamination of Radioactive Substances. The Minister of Maritime Affairs and Fisheries of the Republic of Indonesia issued Regulation no. 17/PERMEN-KP/2019 concerning Requirements and Procedures for Issuing Processing Feasibility Certificates. In relation to this processed food, the Minister of Health also issued Regulation no. 30 of 2013 concerning the inclusion of information on the content of sugar, salt, and fat as well as health messages for processed and ready-to-eat food, where BPOM also issued regulation no. 22/2019 regarding Nutritional Value Information on Processed Food Labels. The Indonesian Ministry of Health in this case has established various regulations governing food safety standards such as the establishment of sanitation and hygiene in food processing companies. The Indonesian Ministry of Health also issued regulations regarding the use of food additives. These regulations are very binding, because food additives are indicated to have a negative impact on

health if they are not used properly. In addition, The Indonesian Ministry of Health issued a ban on the use of hazardous food additives through PERMENKES number 1168/MENKES/PER/X/1999. The issuance of the regulation is suspected by the issue of the widespread use of hazardous food additives in the food industry, such as the use of formalin in fishery products as a preservative [14].

The existence of supervision over the safety of processed food which is imposed on each ministry and state agency according to their duties and functions has the potential to cause problems in the field. These constraints include the time limit for licensing up to the burden of the obligations of business actors who must comply with sectoral regulations at both the central and regional levels. In addition, they are also bound by Law no. 8/1999 on Consumer Protection (CPL) which regulates the obligations and prohibitions of business actors (Article 7 and Article 8 of the CPL) and on the other hand imposes government supervision obligations on business actors (Article 30 of the CPL).

3.2. The Mechanism for Restoring Consumer Rights According to Consumer Protection Law

The law on consumer protection in Indonesia is constitutionally provided sufficient protection for the safety of processed food from the process of production, storage, transportation to trade in the community. The establishment of regulations on consumer protection and food safety is able to increase consumer awareness of the potential risks to food consumers [15]. Act no. 8/1999 as imposing obligations and prohibitions for business actors, as well as supervision obligations by the government. The scope of application of the CPL vis-à-vis sectoral provisions acknowledges the principles of specialization and subsidiarity according to which there can be concurrence between a broader general law and more specific sectoral laws [16].

Basically, the CPL regulates the rights of consumers to comfort, security, and safety in consuming products (Article 4 of the CPL). The protection of consumer rights is supported by provisions concerning the obligations of business actors in Article 7 of the CPL, which among other things regulates good faith in running a business and guaranteeing the quality of goods/services traded based on the provisions of the applicable quality standards. In addition, business actors are also required to comply with the prohibition on producing goods/services that are not in accordance with the standards required by statutory provisions. Furthermore, supervision of consumer rights is carried out by checking the presence or absence of food labels as a source of information for consumers. In Indonesia, food products are still found that do not meet label requirements as a source of consumer information [17].

To maintain food safety, the existence of a distribution permit for packaged processed food products is very important. This is because to obtain a distribution permit, producers must undergo a series of laboratory tests and document verification before being declared eligible and obtaining a distribution permit. In addition to distribution permits, supervision of packaged processed food products is also very important to protect consumers and prevent violations committed by food business actors [18]. When producers do not follow the rules, they will face administrative and criminal penalties. The administrative sanction does not take the place of a criminal penalty. Both administrative and criminal sanction are regulated in Consumer Protection Law (CPL) and the Food Law. The institution authorized to impose administrative sanctions is Consumer Dispute Settlement Agency (BPSK) as regulated by the Consumer Protection Law, while according to the Food Law is The National Agency for Drug and Food Control (BPOM). Meanwhile, for criminal sanctions, dispute resolution is carried out by the district court [19].

In this case, there is the concept of an exchange of private interest between business actors and consumers. The main objective or interest of business actors, especially food business actors, is to gain profit from products produced and/or traded. Profit is impossible to get if there are no consumers, so the presence of consumers for business actors is very important. On the other hand, almost all consumer needs are provided and offered by business actors, so that each party exchanges interests through the means of buying and selling transactions. However, the form of consumer protection in the distribution of processed food products is not only in the form of private legal protection, but also stronger protection, namely public legal protection [18].

As an indication of the existence of legal protection by the State to protect consumers, namely the existence of the following set of laws and regulations: (1) Law Number 8 of 1999 concerning Consumer Protection; (2) Law of the Republic of Indonesia Number 36 of 2009 concerning Health; (3) Law Number 18 of 2012 concerning Food; (4) Regulation of the Food and Drug Administration Number 27 of 2017 concerning Processed Food Registration; (5) Government Regulation Number 28 of 2004 concerning Food Quality and Nutrition Safety; (6) Government Regulation Number 69 of 1999 concerning Food Labels and Advertisements; (7) Law Number 33 of 2014 concerning Halal Product Guarantee.

To protect the public from processed food products that can endanger health and safety, two forms of legal protection are needed, namely preventive and repressive legal protection. Registration of a product distribution permit prior to distribution is a preventive legal protection because the existence of a product distribution permit will prevent things that are harmful and

detrimental to consumers. In addition to supervisory efforts, prevention efforts can be carried out by fostering and educating the public about consumer rights to increase the level of empowerment and intelligence of Indonesian consumers [20]. Meanwhile, repressive protection is in the form of efforts to restore the rights of consumers who have been harmed through law enforcement actions. The process of restoring consumer rights can be carried out either through the Consumer Dispute Settlement Agency (BPSK) [21] or the District Court, either in a simple case (small claim court) or in a civil or criminal manner.

The government supervision system for processed food products according to the applicable laws and regulations is still partially carried out in several relevant ministries and BPOM in accordance with their duties and functions. This supervision method has the potential to cause inefficiency in the licensing process to the output in the form of approval by the authorities in the trade of processed food products. In the event of a violation by business actors, there is a mechanism for restoring rights for consumers who have been harmed, either through the Consumer Dispute Settlement Agency in the area or the District Court through the small claim court mechanism, civil or criminal cases.

REFERENCES

- [1] E. Nagyová *et al.*, "Consumers' awareness of food safety," *Potravinarstvo Slovak Journal of Food Sciences*, vol. 13, no. 1 SE-Articles, pp. 8–17, Jan. 2019, doi: 10.5219/1003.
- [2] S. Negri, "Food safety and global health: an international law perspective," *Global Health Governance*, vol. 3, no. 1, 2009.
- [3] WHO, *Draft Who Global Strategy for Food Safety 2022-2030*. 2021.
- [4] T. R. P. Lestari, "Keamanan Pangan Sebagai Salah Satu Upaya Perlindungan Hak Masyarakat Sebagai Konsumen," *Aspirasi: Jurnal Masalah-masalah Sosial*, vol. 11, no. 1, pp. 57–72, Jun. 2020, doi: 10.46807/aspirasi.v11i1.1523.
- [5] T. Walravens, "Food safety and regulatory change since the 'mad cow' in Japan: Science, self-responsibility, and trust," *Contemporary Japan*, vol. 29, no. 1, pp. 67–88, Jan. 2017, doi: 10.1080/18692729.2017.1256987.
- [6] duma leonard, "Keamanan pangan olahan dan registrasi pangan olahan," no. July, pp. 1–23, 2016.
- [7] S. Soekanto, *Penelitian hukum normatif: suatu tinjauan singkat*. Rajawali, 1985.
- [8] S. Soekanto, *Pengantar penelitian hukum*. Penerbit Universitas Indonesia (UI-Press), 2006.
- [9] D. A. Sandra Barinda, "Assessing the Food Control

- System in Indonesia: A Conceptual Framework,” *Food Control*, vol. 134, no. April 2022, 2011.
- [10] W. Dasep, “Strengthening the food safety control scheme in Indonesia through WTO law and food safety science,” 2018.
- [11] S. A. Putri, “Challenge to Enforce Food Safety Law and Regulation in Indonesia,” *IOP Conference Series: Earth and Environmental Science*, vol. 175, no. 1, 2018, doi: 10.1088/1755-1315/175/1/012216.
- [12] L. Nuraida, “Keamanan Pangan Industri Usaha Kecil dan Menengah (UKM) dan Industri Rumah Tangga (IRT) Pangan,” *Keamanan Pangan Industri Usaha Kecil dan Menengah (UKM) dan Industri Rumah Tangga (IRT) Pangan*, vol. IX, pp. 1–15, 2008.
- [13] R. E. Dwi Bagus Pambudi, “No Title Judicial Assesment of Food Safety in Packaged Processed Food Product,” in *KnE Life Sciences*, 2020, pp. 129–133.
- [14] H. S. Y. Eko Waluyo, Bayu Kusuma, “No Title Implementasi Undang-Undang Keamanan Pangan pada Produk Hasil Perikanan di Indonesia: Kasus Penggunaan Bahan Tambahan Pangan Berbahaya,” *ECSoFiM: Journal of Economic and Social of Fisheries and Marine*, vol. 05, no. 02, pp. 215–220, 2018.
- [15] V. A. Machado Nardi, R. Teixeira, W. J. Ladeira, and F. de Oliveira Santini, “A meta-analytic review of food safety risk perception,” *Food Control*, vol. 112, no. September 2019, p. 107089, 2020, doi: 10.1016/j.foodcont.2020.107089.
- [16] S. Panitchpakdi, “United Nations Conference on trade and development,” *ITU News*, vol. 06945, no. 5, pp. 16–17, 2009, doi: 10.1016/b978-0-444-86236-5.50085-7.
- [17] B. Hermanu and D. I. W. Handayani, “Optimalisasi Perlindungan Konsumen Pangan Industri Rumah Tangga Melalui Penguatan Sistem Keamanan Pangan Terpadu,” *Hukum Dan Dinamika Masyarakat*, vol. 17, no. 1, Oct. 2019, doi: 10.36356/hdm.v17i1.1273.
- [18] E. Nurcahyo, “Pengaturan dan Pengawasan Produk Pangan Olahan Kemasan,” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, vol. 7, no. 3, p. 402, Oct. 2018, doi: 10.24843/jmhu.2018.v07.i03.p10.
- [19] A. H. Fifik Wiryani, Mokhammad Najih, “Juridical Analysis On Consumer Protection In Safe And Halal Food Distribution,” *Jurnal Dinamika Hukum*, vol. 18, no. 1, pp. 20–28, 2018.
- [20] H. Fajarini, “Perlindungan Konsumen atas Penggunaan Bahan Tambahan Pangan pada Makanan dan Minuman,” *Kosmik Hukum*, vol. 20, no. 2, p. 93, Aug. 2020, doi: 10.30595/kosmikhukum.v20i2.6883.
- [21] N. Rustandi, “Consumer Protection Laws In Dispute Solution In Bpsk Cianjur District,” in *Proceeding International Conference on Education of Suryakencana*, 2021, pp. 358–365.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter’s Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter’s Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

