
THE EXISTENCE OF PROOF OF CRIMINAL LIABILITY FOR FOOD POISONING IS REVIEWED UNDER THE LAW NUMBER 18 OF 2012 CONCERNING FOOD

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Abstract (Indonesia)

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Latar Belakang: Perkembangan dalam bidang perekonomian, perdagangan dan perindustrian semakin hari semakin meningkat hal ini juga telah memberikan kenikmatan tersendiri kepada setiap konsumen karena banyaknya variasi produk yang disajikan.

Tujuan: Penelitian ini bertujuan untuk mengetahui serta menganalisis tentang pertanggung jawaban pidana keracunan pangan berdasarkan undang-undang nomor 18 tahun 2012 tentang pangan. Serta mengetahui dan menganalisis tentang eksistensi pembuktian terhadap tindak pidana keracunan pangan.

Metode: Penelitian ini termasuk jenis penelitian normatif. Sehingga dapat diketahui bahwa pertanggungjawaban pidana keracunan pangan adalah pertanggungjawaban pelaku usaha diatur dalam Pasal 19 ayat (1) dan (2) Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

Hasil: Pertanggungjawaban pidana pelaku usaha terkait keracunan makanan diatur dalam Pasal 134 Undang-Undang Nomor 18 Tahun 2012 Tentang Pangan. Selanjutnya pembuktian terhadap tindak pidana keracunan pangan adalah penyidik menggunakan proses pembuktian dengan cara mengambil hasil tes dari dokter dan lab, hasil visum, serta keterangan dari pihak konsumen yang menjadi korban keracunan makanan, lalu di proses kembali melalui bantuan BPOM.

Kesimpulan: Berdasarkan kesimpulan dari pertanggungjawaban pidana keracunan pangan adalah pertanggungjawaban pelaku usaha diatur dalam Pasal 19 ayat (1) dan (2) Undang-Undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.

Kata kunci: Ancaman Pidana, Keracunan Pangan, Badan Pengawas Obat dan Makanan

Abstract (English)

Background: Developments in the economy, trade, and industry are increasing day by day, this has also given its enjoyment to every consumer because of the large variety of products presented.

Objective: This study aims to find out and analyze the criminal responsibility for food poisoning based on law number 18 of 2012 concerning food. As well as knowing and analyzing the existence of evidence against the criminal act of food poisoning.

Methods: This research belongs to the normative type of research. So that it can be known that the criminal responsibility for food poisoning is the responsibility of business actors regulated in Article 19 paragraphs (1) and (2) of Law Number 8 of 1999 concerning Consumer Protection.

Result: Criminal liability of business actors related to food poisoning is regulated in Article 134 of Law Number 18 of 2012 concerning Food. Furthermore, the proof of the criminal act of food poisoning is that the investigator uses the proof process by taking test results from doctors and labs, visual results, and information from consumers who are victims of food poisoning then reprocessing through the help of BPOM.

Conclusion: Based on the conclusion of the criminal liability for food poisoning, the responsibility of business actors are regulated in Article 19 paragraphs (1) and (2) of Law Number 8 of 1999 concerning Consumer Protection.

Keywords: Criminal Threats, Food Poisoning, Food, and Drug Administration

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INTRODUCTION

Developments in the fields of economy, trade, and industry are increasing day by day, this has also provided its enjoyment to every consumer because of the large variety of products presented.

This development also creates a very free space in the trade sector, one of which is changing or modifying food packaging, this creates attraction for consumers, making every business actor compete to provide food according to consumer needs.

This does not rule out the possibility that unfair trade competition has a weaker impact on consumer protection so that everything is done by business actors so that every processed food they sell remains in great demand to forget the rules or ignore the quality of every action taken.

Food is a basic need that is certainly very important for human life, what is meant by food in the general provisions in Article 1 paragraph (1) of the Law of the Republic of Indonesia Number 18 of 2012 concerning Food (hereinafter abbreviated as the Food Law) namely:

"Everything that comes from biological sources of agricultural products, plantations, forestry, fisheries, animal husbandry, waters and water whether processed or untreated intended as food or beverages for human consumption, including food additives, food raw materials, and other materials used in the process of preparing, processing, and/or making food or beverages".

In this case, every food ingredient that wants to be consumed should go through a good inspection process.

Things that harm consumers can be caused by a lack of supervision from the government and legal entities such as the Police, the Food and Drug Supervisory Agency (hereinafter abbreviated as BPOM), the Industry and Trade Service (hereinafter abbreviated as Disperindag), and the Health Office (hereinafter abbreviated as Dinkes).

One form of legal protection provided by the government to ensure sufficient, safe, high-quality, and nutritionally balanced food is based on the Food Law because food safety in Indonesia is far from safe.

This is evidenced by the recent occurrence of damaged foodstuffs and packaging, the factor in this occurrence is none other than due to business competition, one of which is because they want to get a lot of profits.

Based on the Regulation of the Food and Drug Supervisory Agency of the Republic of Indonesia Number 29 of 2017 concerning Supervision of the Entry of Drug and Food Ingredients into the Territory of Indonesia that drugs and food that can be entered into the territory of Indonesia must meet the requirements of safety/efficacy benefits, and quality.

In addition to meeting the requirements of safety/benefits, and also as intended, food must also meet the provisions of laws and regulations in the field of importation, and the importation of medicinal and food ingredients by laws and regulations.

Many losses will be caused by the circulation of many food products that contain harmful ingredients.

There is no bpom label, and expiration date or expired date, but many consumers do not realize that the negative impacts or effects caused by consuming these foods can cause headaches, nausea, and respiratory problems.

Even neurological disorders cause sleeplessness, inflammation, and coughing, then food products produced or circulated by distributors must meet the requirements starting from using materials that have met the requirements.

Produced using good food feeding methods, and last but not least the food must be registered or received a distribution permit from the Food and Drug Control Agency (BPOM).

RESEARCH METHODS

The research method used in this study is a normative legal research method. Normative legal research is legal research carried out by examining library materials or secondary data (Soekanto, 2007).

According to Peter Mahmud Marzuki (Marzuki, 2010), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced.

In this type of legal research, often the law is conceptualized as what is written in legislation or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate (Asikin, 2004).

RESULTS AND DISCUSSION

Criminal Responsibility for Food Poisoning Based on Law Number 18 of 2012 concerning Food

Article 8 paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection states that business actors are prohibited from trading pharmaceutical and food preparations that are damaged, defective, or used and polluted, with or without providing complete and correct information.

Article 19 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection states that business actors are responsible for providing compensation for damage, pollution, and or consumer losses due to consumer goods and or services produced or traded.

Article 19 paragraph (2) of Law Number 8 of 1999 concerning Consumer Protection states that compensation, as intended in paragraph (1), can be in the form of a refund or replacement of goods and/or services of similar or equivalent value,

Or health care and/or the provision of compensation by the provisions of the applicable laws and regulations.

Criminal Liability of business actors related to food poisoning has been protected by Article 134 of Law Number 18 of 2012 concerning Food states that everyone who produces certain processed food to be traded

who deliberately does not apply food processing procedures that can hinder the process of decreasing or losing the nutritional content of raw materials.

Food used as referred to in Article 64 paragraph (1) shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

The Existence of Evidence against Food Poisoning Crimes

In the development of consumer protection science, business actors here are restaurant business actors in this case who experience food poisoning.

Consumers who are poisoned usually report it directly to legal institutions without providing evidence.

The evidentiary process, in this case, can be seen from medical science which includes the examination of food bags, the results of the doctor's visum, and the statements of the victim.

The results of the food can prove that the food is positive that it contains harmful substances for the body and can cause disturbances in the victim's digestive system.

The doctor's visum can prove that the victim did consume food that contained these harmful substances.

Visum is a biological and physiological examination to prove irregularities in the victim. The victim's statement is the victim's confession that he experienced symptoms that can be classified as food poisoning.

These symptoms include the victim experiencing nausea, itching, shortness of breath, fever, and so on. Of the three evidentiary processes, investigators processed further through the help of BPOM (BPOM, 2000).

From BPOM, it can be concluded that business actors are guilty of poisoning that occurs to consumers or not.

The criminal liability process for cases of food poisoning victims has been protected by Article 134 of Law Number 18 of 2012 concerning Food which states:

"Any person who carries out the production of certain processed foods for trade who deliberately does not apply food processing procedures that can hinder the process of decreasing or losing the nutritional content of food raw materials used as referred to in Article 64 paragraph (1) shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

Article 136 of Law Number 18 of 2012 concerning Food: Everyone who carries out food production for circulation who knowingly uses:

- a. Food additives exceed the set maximum threshold; or
- b. Prohibited ingredients are used as food additives.

As referred to in Article 75 paragraph (1) shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of Rp.10,000,000,000.00 (ten billion rupiahs).

Legal umbrellas for consumers who have food poisoning due to the negligence or intentionality of business actors: Articles 204, 205, 359, 360, 383, 390 of the Criminal Code.

Law Number 18 of 2012 concerning Food, namely Article 83 paragraph (1) and Article 85 of Law Number 18 of 2012 concerning Food.

In foreign writing, consumer protection in the first aspect is called product *liability* in Indonesian this term translates to product responsibility.

In a broad sense, a product is all goods and services produced by a process so that the product is closely related to technology. Products consist of goods and services.

According to Article 1 number 4 of the Consumer Protection Law:

"Goods are any object whether tangible or intangible, whether movable or immovable, expendable or inexhaustible, which can be traded, used, used or utilized by consumers".

Meanwhile, according to Article 1 number 5 of Law Number 8 of 1999 concerning Consumer Protection: Services are any services in the form of work or achievements provided to the community to be utilized by consumers.

The use of technology that is getting better, on the one hand, allows manufacturers to make products of various types, shapes, uses, and qualities so that the fulfillment of consumer needs can be met more broadly, completely, quickly, and reach the largest part of society.

However, on the other hand, the use of technology allows the production of products that are not by the security and safety requirements of users, causing losses to consumers.

About products, defects can be found in three classifications according to the stages of production, namely product damage, design damage, and insufficient information provision.

A product can be categorized as defective if the product is defective, the design is not as it should be, or the information accompanying the product is inadequate.

Defects in the product, to some degree, can harm the consumer.

About the use of increasingly advanced technology as mentioned above and for the objectives of standardization and certification to be achieved as much as possible, the government needs to be active in making, adjusting, and supervising the implementation of applicable regulations.

By the principle of development which, among other things, states that development is carried out jointly by the community with the government and therefore is a shared responsibility as well, then through arrangements and courts and by the government, national development goals can be achieved properly.

Government efforts to protect consumers from harmful products can be implemented by regulating; Watching; and controlling the production, distribution, and circulation of products so that consumers are not harmed, both in their health and finances.

Based on the objectives to be achieved and the policies to be implemented, the steps that can be taken by the government (Ahmadi Miru, 2014):

- a. Registration and assessment.
- b. Production supervision.
- c. Distribution supervision.
- d. Coaching and business development.
- e. Improvement and development of infrastructure and manpower.

The role of the government as mentioned above can be categorized as a role that has a long-term impact so it needs to be carried out continuously to provide information, counseling, and education for all parties.

Thus, creating a healthy business environment and the development of responsible entrepreneurs. Including here creating a competitive market by gradually eliminating monopolies and protections.

In the short term, the government can solve directly and quickly the problems that arise.

The positions of the three related parties, namely producers-business actors, consumers, and the government, of them are independent so they need to be well-regulated to achieve harmony and harmony in economic activities.

The government, which is assigned to regulate this matter based on Article 33 of the 1945 Constitution of the Republic of Indonesia, can implement it through rulemaking and supervision of the implementation of these regulations.

The regulations in question are regulations that are also binding on the government so that there is no collusion between entrepreneurs and the government that can harm consumers.

In addition, criminal liability to resolve cases of extraordinary events of food poisoning must be punished by applicable laws and regulations after the holding of supervision and identification of which categories of safe food are contained in the Regulation of the Food and Drug Supervisory Agency Number 34 of 2019 concerning the Food Category.

CONCLUSION

Based on the conclusion of the criminal liability for food poisoning, the responsibility of business actors is regulated in Article 19 paragraphs (1) and (2) of Law Number 8 of 1999 concerning Consumer Protection.

Criminal liability of business actors related to food poisoning is regulated in Article 134 of Law Number 18 of 2012 concerning Food.

Furthermore, the mechanism for proving food poisoning crimes is that investigators use the proof process by taking test results from doctors and labs, visual results, and information from consumers who are victims of food poisoning, then re-processed through BPOM assistance.

Suggestion

Consumers who experience food poisoning should first go to the hospital or laboratory so that when consumers demand responsibility from business actors, consumers already have strong evidence to report to legal institutions.

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