

An analysis of legal protection of halal and thoyib food consumers in court judgments

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Abstract. The compliance of sufficient, halal and thoyib (safe, quality standard, and nutritive) food needs for Muslim consumers is confirmed as human rights which is pledged by international law, Constitution 1945, Act of Human Rights, Act of Health, Act of Consumers Protection, Act of Food, Act of Halal Product Warranty, and the other regulations. The status of Halal Product for Muslim consumers becomes a sensitive issue since it is related to spiritual life that has a consequence in this life and the afterlife. This consumer protection is shown by the obligation of distribution food permit issued by the National Agency of Drug and Food Control (BPOM) and halal certification issued by LPPOM-MUI. Halal certification significantly affects positively towards the buying interest of Muslim consumers that is allied with the profit addition for business actors. Imported or domestic food distributions, which have no distribution permit and halal certification/ non-halal or expired permit alignment, may endanger the consumers' health and life. The business owners that allegedly distributed non-standardized food would be sentenced by administrative charge, civil sanction, and criminal sanction. However, the law enforcement of food consumer protection that appears from the court judgment is not optimal yet. Consequently, there is less guarantee of legal certainty of consumer protection and legal compliance for business actors. Therefore, the optimization of law enforcement of halal and thoyib food consumer protection needs to be done through the following efforts: reformulation of criminal sanctions; improving professionalism and sensitiveness of law enforcement; and increasing community participation.

Keyword: Halal and thoyib food; consumer protection; Court Judgments

1. Introduction

Food is the most substantial and essential basic need in the human's life [1]. Access to safe food is a basic individual right [2]. Dr. Margaret Chan, Director-General of the World Health Organization (WHO), stated: "food safety is a hidden and often overlooked problem" [2]. This is true especially for Muslims that are ordered by the Qur'an to consume and/or use Halal Products and Thoyyib. Therefore, in Indonesia, the right to safe products (Thoyyib) and halal are human rights is protected and guaranteed by law, namely in Article 28E paragraph (1) and Article 29 paragraph (2) of the Constitution of the Republic of Indonesia 1945, Act of Human Right Number 39/2009, Act of Health 36/2009, Act of Consumer Protection 8/1999, Act of Food 18/2012, and Act of Halal Product Guarantee (Jaminan Produk Halal) 33/2014 [3].

For Muslim consumers, the halal product status is a sensitive issue (Endah N. H., 2014), since Haram food is explicitly prohibited in the Qur'an, Sunnah, and the consensus of the Muslim jurist (Ijma'). This is because food intake will affect the development of human well-being and behavior [4], as it deals with the spiritual life which has consequences in the worldly life and in the Hereafter. This case is expressly commanded in the Qur'an Surah Al Baqarah verse 168. The halal concept is related to thoyyib. The concept of halal refers to the law whether or not the product is allowed to be consumed or used. The concept of thoyyib defined "good" which emphasizes on aspects of product quality, such as nutritional content, hygiene, safety, and health (Endah N.H., 2014).

In the last few decades, there has been a development of a modern and Islamic oriented lifestyle [5]. Halal products are not only needed by the Muslim society, but also have become an urgent need for the non-Muslim society [6]. Halal concept commonly concerns the Muslim consumers. However, with the raising concern on health, a halal food business today has huge potential in capturing non-Muslim as target market, because the halal concept on food also represents hygiene, cleanliness, and the quality of the food consumed [7].

Until the end of 2010, global market demand for halal products increased to reach the value of IDR 2.3 trillion. The increase in halal products is dominated by food and beverage products by 67% [8]. The facts are supported by the results of the research, among others: halal label partially have a positive and significant effect on Wardah's cosmetic purchasing decision to Muslim students [5] and Christian students [8].

Halal certified products have an important role and function from the consumer side and business actor [9]. The functions of halal products for consumers are, among others, to protect Muslim consumers from products that are not halal and to provide certainty legal protection. Producers can increase consumer confidence and satisfaction, improve the image and competitiveness of companies and marketing tools [3].

Based on the data, halal product certification in Indonesia from 2005 was 969 products and in 2014 it increased to 13,000 halal certified products, although 13,000 halal products were only 8.39% of the total number of 155,000 products [10]. From halal products in circulation, there are 1319 food products which certification has been expired (Endah Nur Hadiati). Its condition shows the lack of guaranteed protection for Muslim consumers from halal products in a sustainable manner.

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 [11].

Unsafe food can lead to a range of health problems. Food that contains harmful bacteria, viruses, parasites, or chemical substances is responsible for more than 200 diseases, both acute and chronic, ranging from diarrhea to cancer [12]. 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 (Kesehatan, 2012). In 2015, there were reported remarkable incidents of food poisoning, as many as 61 cases, exposure to 8263 people, with 2,251 people fallen ill and 3 people died. WHO estimates that the burden of foodborne disease is much higher than what is currently reported (WHO Regional Office for Europe 2015; WHO 2015a) [12].

The implementation of the consumer dispute by Consumer Dispute Settlement Agency (BPSK) still requires the Court's determination, if the producer does not voluntarily fulfill it. The criminal enforcement by the court is less effective, because the judge only gives light sentence for the perpetrators. This study discusses about the issue "How is the analysis of the implementation of consumer legal protection in the judge's decision on the crime of food".

2. Methodology

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 [13].

3. Findings

This section discusses consumer rights and obligations, prohibitions, and sanctions for business actors and the analysis of court decisions on food crime

3.1. *The Rights and Obligations of the Consumers*

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; and 3) to obtain imposition, redress, and/or substitution, if the product received is not in accord with the agreement or not received as requested.

The obligations of the customers. are: 1) to read or follow the information instructions and application or usage procedures of the product; 2) to act in good faith; and 3) to pay for the price in accordance with what is agreed.

3.2. *Prohibition and sanctions for the Entrepreneurs*

As the effort to protect food consumers, the entrepreneurs are not allowed to: 1) use the label to the specified standards on their product; 2) clearly and explicitly mention the information in the label; 3) use harmful or non-food grade food packaging; 4) remove, cover, replace the label, relabel, and/or change the dates of expiration.

The criminal sanctions are regulated in the Consumer Protection Act, Food Law, and Halal Product Warranty Act. The types of criminal sanctions based on these regulations are: Principal Penalties and additional penalties. The comparison of Principal Penalties each act is described on Table 1.

Table 1: Comparison Regulations of Principal Penalties for Food Crime Sanction

Type of Sanction	Criminal Sanction		
	Consumer Protection Act 8/1999	Food Act 18/2012	Halal Product Warranty Act 33/2014
Imprisonment	≤ 5 years or	≤ 10 years or	5 < years or
Fine	≤ IDR 2 Billions	IDR 10 Billions	< IDR 2 Billions
Sources: Consumer Protection Act 8/1999; Food Act 18/2012 and Halal Product Warranty Act 33/2014			

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.

3.3. *Verdict Court of Food Crime*

The legislative regulation is one of the state's roles in preventive efforts to protect and guarantee consumer rights. Based on a random investigation, there were 33 (thirty three) court judgments that adjudicated the perpetrators for violating the legislation in the field of packaged food. The court ruling is a portrait of law enforcement of food consumer protection.

From the 33 (thirty three) court judgments which were randomly taken, there was a wide gap between public prosecutors' demands and the court judgment with its maximum criminal charge, which is revealed below:

Table 2: Judicial decision of Food Crime				
Type of Crime	Act 8/1999	Act 18/2012	Minimum decision	Maximum decision
Food additives Crime	≤ 5 years or ≤ IDR 2 Billions	≤ 5 years/≤ IDR 10 Billions	Imprisonment: 3 months; Fine: -	Imprisonment: 1 year; Fine: IDR 50 Billions
unsafe standard of food production & distribution		≤ 5 years/≤ IDR 4 Billions	Imprisonment: 23 days; Fine: -	Imprisonment: 8 months; Fine: IDR 10 Billions
Produce & distribute unlabeled food		≤ 5 years/≤ IDR 4 Billions	Imprisonment: -; Fine: IDR 4 Billions	Imprisonment: 4 months; Fine: IDR 15 Billions
Label unlawful		≤ 5 years/≤ IDR 4 Billions	Imprisonment: 15 days; Fine: -	Imprisonment: 6 months; Fine: -
Produce & distribute halal food		≤ 5 years/≤ IDR 2 Billions	Imprisonment: 30 months; Fine: -	Imprisonment: 30 months; Fine: -

Note: All decisions added Evidence seized and destroyed

From these 33 court judgments, there was a high disparity between maximum penalties with the court judgment. Table 3 describes samples disparities of judicial decision:

Table 3: The Examples of Judicial decision of Food Crime

Type of Crime	Criminal Sanction of Act		Judicial decision
	Act 8/1999	Act 18/2012	
295/Pid.Sus/2013/ PN. Jkt.Sel.	≤ 5 years/≤ IDR 2 Billions	≤ 5 years/≤ IDR 2 Billions	Imprisonment: 30 months; Fine: - ; Evidence seized & destroyed
254/Pid.B/2014/ PN Nganjuk	≤ 5 years/≤ IDR 2 Billions	≤ 5 years/≤ IDR 4 Billions	Imprisonment: 15 days; Fine: - ; Evidence seized & destroyed
126/Pid/2014/ PT.Bandung	≤ 5 years/≤ IDR 2 Billions	≤ 5 years/≤ IDR 10 Billions	Imprisonment: 1 year; Fine: IDR 50 Billions; Evidence seized & destroyed

256/Pid.B/2013/PN. Trk	≤ 5 years/≤ IDR 2 Billions	≤ 5 years/≤ IDR 4 Billions	Imprisonment: -; Fine: IDR 4 Billions; Evidence seized & destroyed
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Source: <https://putusan.mahkamahagung.go.id/>

Table 3 above shows that the maximum imprisonment of judicial decision of Food Crime is 30 months or 50 % from the Criminal Sanction. Meanwhile, the maximum imprisonment of Judicial decision of Food Crime is 15 days or 0.8 % from the Criminal Sanction. The maximum fine is IDR 50 billions or 0.05 % from this Criminal Sanction and the minimum fine is IDR 4 billions or 0.1 % from this Criminal Sanction.

In these 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) combining consolidated punishment of imprisonment, fine, and additional punishment; 2) combining 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.

Table 2 and table 3 show that the law enforcers still do not pay serious attention to the importance of law enforcement for food business. This verdict also indicates that the law enforcers are still not sensitive to the impacts or the potential impacts on consumers' health or even their lives in general. The results in other food business are operators being undeterred in committing similar violations to gain more profits.

4. Conclusion

The law enforcement of food consumer protection in the Court Judgments still does not pay serious attention to the importance of law enforcement for food business. This decision also indicates that the law enforcers are still not sensitive to the impacts or the potential impacts on consumers' health or even their lives in general. The results in other food business are operators being undeterred in committing similar violations to gain more profits.

To minimize the rate of crime in food sector and to increase food consumers' protection, it is suggested for 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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