



ISSN NO. 2320-5407

Journal homepage: <http://www.journalijar.com>

INTERNATIONAL JOURNAL  
OF ADVANCED RESEARCH

## RESEARCH ARTICLE

# STATE RESPONSIBILITY FOR FOOD SAFETY IN INDONESIA

Anna S Wahongan

Student of Doctoral Degree Faculty of Law Hasanudin University, Makassar - Indonesia

### Manuscript Info

#### Manuscript History:

Received: 15 June 2015  
Final Accepted: 22 July 2015  
Published Online: August 2015

#### Key words:

State Responsibility, legal protection

#### \*Corresponding Author

Anna S Wahongan

### Abstract

Community needs legal protection in the food sector calls for the optimal role of the law to give a sense of security both in producing and consuming food products, because in fact often still circulating types or food products that do not meet quality standards and health. Humans need food and other vital needs. The food is required, in accordance with their human rights, is a nutritious and healthy foods. But, often people do not receive the appropriate needs, even deliberately got inhumane treatment in the form of unhealthy food from other humans. As consumers some food products, many people often do not know how to select the products that will be consumed. Legal protection of the consumer is impressed semantics (sterilization rules) and nominal (not implemented consistently). The producers, distributors and sellers often do not heed the provisions of consumer protection laws. Government as regulator is also in many ways too late to anticipate violations of law such as the sale of food that has expired.

Copy Right, IJAR, 2015,. All rights reserved

## INTRODUCTION

### A. Background

The right to a safe food product, quality, nutritious and provided enough each time create an obligation on the state to protect, respect and implement them. The state's obligation is also clearly stated in Article 8 of Law No. 39 of 1999 on Human Rights, namely "the protection, promotion and enforcement of human rights, especially the responsibility of the state". It is also stated in the International Convention on Economic, Social and Cultural Rights Article 11 paragraph (1), that the state parties to the present Covenant recognize the right of everyone to an adequate standard of living for him and his family, including food, clothing and shelter adequate for the improvement of living conditions continuously. This convention has been ratified by Indonesia and set in the Act No. 11 of 2005. Food as the fulfillment of basic human needs is a fundamental right of every people of Indonesia must always enough every time, safe, quality, nutritious and varied with reasonable price by purchasing power. To achieve all this, it should be held a food system that provides protection, both for those who produce and who consume the food, and not contrary to public belief, the management should be able to provide prosperity and welfare to the people to the maximum. To achieve these goals, the law is necessary to act to protect all activities of producing and consuming food. The intent and purpose of the law is in line with the philosophy of Jeremy Bentham law is to achieve the greatest happiness for the greatest number. Bentham further states that the purpose of the legislation is to produce happiness for the people. To that end, legislation must try to achieve the four elements, namely:

- a. To provide subsistence
- b. To provide abundance
- c. To provide security
- d. To attain equity

Community needs legal protection in the food sector calls for the optimal role of the law to give a sense of security both in producing and consuming food products, because in fact often still circulating types or food products that do not meet quality standards and health.

### **B. Problem**

Guarantees safety of food products circulating in Indonesia that did not meet quality standards and health have been rife everywhere so the function and role of law in regulating the activities of producing food products require the involvement of state or government. Based on what is described above, then the problem is "how the state's responsibility for food safety".

## **II. DISSCUSION**

### **A. The Right Of Food Safety**

The right to food is a human right (HAM). Food availability has a positive relationship with the level of human welfare. A developed nation, of course, not only supported by advances in science and technology, but also have the independence in terms of food availability. Food distribution patterns of unequal and uneven, has implications for the direction and future of a country. Resilience and food security is an urgent need to improve the welfare and prosperity of the nation.

As human rights, the right to food reflects determination and thought of the importance of food availability. Humans depend on the availability of food. Poverty will be established and perfect if food situation in a country experiencing significant difficulties. The right to food symbolizes heightened awareness of the increase in people's lives. As a basic human right, the right to food should not be ignored. Similarly, the right to life, the right to food is a right that cannot be transferred under any circumstances (non derogable rights).

Has become the responsibility of the state to protect and serve the people / citizens as a necessary consequence of the purpose and function. Relationship with the people / citizens bore certain obligations to be fulfilled state. Liabilities arising as a consequence of the relationship between the state and the people / citizens are very wide and varied, one legal obligations born of human rights claims. The purpose and function of the state in relation to the people / citizen is essentially organized by the government as legal entities personification of the state.

State is an abstract entity which is personified by the government as a legal entity that represents the interests of the state. Like a vehicle, the government is steering. Government cannot do an act except through the medium of the people who are in it are acting in the capacity as agents. Efforts to connect the actions taken by the people in his capacity as the apparatus so that it meets the capacity of government action that is considered to represent the interests of the country called imputation, immutability or attribution. Wallace specifically classifies subjects that can be considered to represent the country to perform certain actions with the state responsible for the consequences of what he does. Subjects were considered to be able to act in the capacity of the country, among others: the government; any political sub-division of the State; any organ, agency official employee or other agent of its government or any sub-division acting within the scope of their employment

By putting a human rights perspective in the study of the right to food, including food security, the rights of persons with primary correlative obligation is the responsibility of state / government.

There are two general provisions on which the obligation of the state in the field of human rights:

- 1) The provisions of the Basic Law on the Protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government. (Article 28 i paragraph 4 Constitution of Republik Indonesia (UUD NR I 1945).
- 2) The provisions of the law: The government is obliged and responsible to respect, protect, uphold and promote human rights stipulated in this law, regulations, other legislation and international law on human rights ratified by the Republic of Indonesia "(Article 71 of Law No. 39 of 1999).

Above provisions have step coverage effective implementation in the field of legal, political, economic, social, cultural, defense, state security and other fields (Article 72 of Law No. 39 of 1999).

Concepts such as the protection, promotion, enforcement and fulfillment of human rights are not clear. Legislation itself does not give an interpretation of what is meant by these concepts. These concepts should be serving judicial authority to make an interpretation that the issue of whether the definition of concepts should be traced earlier in the decision - the decision of the court (case approach). However, conditions in Indonesia, human rights issues tend to be political rather than legal matter of debate. So that the judicial institution functions as a protector of human rights is still not well established.

Correlative obligations of the state in response to the claims of the right to food security the government commissioned to organize, direct and supervise the efforts resilience and food security. The government's aim to provide guidance to all the activities related to the implementation of food safety efforts to :

- 1) Realizing degree of the highest life;
- 2) Fulfillment of public needs sufficient food, safe, quality and affordable by all communities;
- 3) Protect the public against any possible events that can cause interference and / or danger to public health in consuming the food;
- 4) Provides convenience in order to access to the food products;
- 5) Improve the quality and nutrition of food products at affordable prices.

Government oversight of all activities related to implementation efforts and the availability of food safety and public can participate. In the framework of government oversight authorities take administrative action against businesses which produce food that is not good and the food is harmful to consumers in this regard the wider community. Violations of the rules of law made by her employer as exemplified by Nurhayati Abbas action producer / food business operators lately that include the word *halal* on the packaging of its products, but has never been tested by the Research Institute for Food and Drug Administration Indonesian Ulama Council (MUI ), is not yet certified kosher.

Actually, the government has issued various laws regarding prohibitions, obligations and responsibilities of producers / entrepreneurs, in addition of course about their rights. In Law No. 8 of 1999 on Consumer Protection has been set 9 (nine) consumer rights:

1. The right to comfort, security, and safety in consumption of goods and / or services ;
2. The right to choose the goods and / or services and get the goods and / or services in accordance with the exchange rate and conditions and guarantees promised;
3. The right to information is correct, clear, and honest about the condition and guarantee of the goods and / or services;
4. The right to be heard opinions and complaints on the goods and / or services used;
5. The right to consumer protection advocacy inappropriate;
6. The right to receive guidance and consumer education;
7. The right to be treated or serviced properly and honestly and not discriminatory;
8. The right to obtain compensation, compensation and / or replacement, if the goods and / or services received are not in accordance with the agreement or not as it should be;
9. The rights set forth in the provisions of other legislation.

Of the nine items of consumer rights, it seems that the problem of comfort, security and safety of consumers is the most basic and primary in consumer protection.

Accordingly, all food products should provide comfort, security and safety for consumers. All food products are not harmful to human health.

Snack food research studies whose results have been reported by various research institutions in various countries reveals that about 62% of artificial food dyes found in food sold in suburban and rural areas, it consists of a dye that is not permitted which can threaten health consumer. Even foods that are allowed to use dyes have been studied turned out to be 6.6% have a much higher threshold (730 ppm) of the threshold permitted use of 220 ppm. So not only prohibited the use of dyes that must be monitored and controlled but also dose permitted coloring agents also need to be monitored.

The problems do exist and have proven their risks to health. Yellow dye most abundant natural foods that are not allowed include so-called Metanil yellow. Metanil yellow has been known to cause food poisoning with symptoms of methaemoglobinaemia (Sachdeva et al, 1992) and cyanosis (Miller, 1982). Of the dyes are allowed, tartrazine is the most frequently reported cause of poisoning and closely related to hypersensitivities symptoms, when used in doses that are too high.

By and large groups of poor people are always more exposed to food from the informal sector, which usually has a poor level of hygiene and the higher the chance of contamination. More than 90% of cases of food poisoning caused by microbial contamination, as well as to food and food that are making use of food additives.

## **B. Responsibility of States against Food Safety In the Consumer Protection Efforts**

With regard to the responsibility of the state, Jeddawi forward four principal functions is the duty and responsibility of the state, namely:

1. The State shall protect the entire homeland and the entire homeland
2. The State shall prosper the life of the nation

3. The State shall educate the nation
4. The State shall create peace in the life of the state and society.

State responsibility for a safe food product raises an obligation on the state to protect, respect and implement them.

Food safety as stipulated in the Consumer Protection Act is based on the principle of benefit, justice, equity, security and safety of consumers as well as legal certainty. The elaboration of this provision is explained further that consumer protection is organized as a joint effort by five principles that would be relevant to national development, namely:

1. The principle of benefit that all efforts in the implementation of consumer protection should provide maximum benefit to the interests of consumers and businesses as a whole.
2. The principle of fairness is so that the participation of all people can be realized optimally and provide an opportunity for consumers and businesses to obtain their rights and carry out its obligations in a fair.
3. The principle of balance is supposed to deliver a balance between the interests of consumers, businesses and government in the sense of material and spiritual.
4. The principle of security and safety of consumers is intended to provide a guarantee for the security and safety to consumers in the use, consumption and utilization of goods and services consumed or used.
5. The principle of legal certainty intended to both businesses and consumers to obey the law and to obtain justice in the implementation of consumer protection.

If there is no legal protection and certainty for consumers, the more circulation of products that are not qualified. And even more alarming is that the welfare of the people who aspired to be more difficult to materialize.

Governments in consumer protection efforts have an important role as a mediator between the interests of businesses and the interests of consumers, so that each party can go hand in hand without harming each other mutually. The government must be responsible for the development and implementation of consumer protection oversight, to secure the rights of consumers and businesses as well as the implementation of the obligations of consumers and businesses as provided for in Article 29 and Article 30 of Law No. 8 of 1999 on Consumer Protection

The government's role as a supervisor is an important function to protect the public from unsafe food and dangerous. Without a good surveillance, worried consumers will not be protected, therefore the regulations issued will be a guarantee that can hit businesses to be able to distribute food to be consumed.

### **C. Guidance and Control of Food Safety By POM**

Consumer protection carried out by the government in terms of guidance and supervision is based on Article 2 of Government Regulation No. 58 of 2001 on the Development and Implementation of Supervision of Consumer Protection, said that the government is responsible for the development of protection consumer that secure the rights of consumers and businesses as well as the implementation of obligations consumers and businesses. Whereas in the case of government oversight, further stipulated in the provisions of article 7 in the same government regulation. That is said to supervise the implementation of consumer protection and the application of the provisions of laws and regulations made by the government, community and non-governmental consumer protection agencies. It thus becomes clear that the government has a responsibility to protect the public as consumers. Therefore, if the terms of the rights and responsibilities that people as consumers should be protected by the government, then this line as stipulated in article 29 of Law No. 8 of 1999 on Consumer Protection which states as follows

- a. Government is responsible for fostering the implementation of consumer protection ensuring that a consumer rights and business as well as the implementation of the obligations of consumers and businesses;
- b. Guidance by the government on the implementation of consumer protection as described in paragraph (1) carried out by the Minister and / or Minister related technical;
- c. Minister referred to in subsection (2) coordinating the implementation of consumer protection;
- d. Development of consumer protection as referred to in paragraph above include efforts to:
  - 1) The creation of the business climate and the emergence of a healthy relationship between businesses and consumers,
  - 2) The development of non-governmental consumer protection agencies,
  - 3) Increasing the quality of human resources as well as increased research and development activities in the field of consumer protection.
- e. Further provisions on the development and implementation of consumer protection regulated by government regulation.

In order to protect consumers, the government increased welfare and prosperity of the people to demand an increase in the availability of products required to meet the dietary needs as well as for the promotion, health maintenance, treatment and prevention of disease. Currently, the development community has reached the stage where technological advances in various fields has brought a rapid and significant changes in the industry pharmaceutical and food preparation, so now able to produce on a large scale, covering diverse variety of products with a very wide range of marketing. Also the advancement of information and the development of international trade law, to the stage where commercial transactions do not recognize national boundaries and with lower transaction costs. With such a variety of food products that are not safe and quality can spread rapidly to various countries and regions were able to reach all strata of society, which in turn foods will become illegal products.

With the existence of such reason, then the government (BPOM) require the Food and Drug Monitoring System (SisPOM) effective so as to detect, prevent and control these products in order to protect the security, safety and health of consumers. As stated in Presidential Decree No. 103 of 2001 on the Status, Tasks, Functions, Authority, Organizational Structure and Work Procedures of Non Departmental Government Institutions, last amended by Presidential Decree No. 64 of 2005, then formed Food and Drug Supervisory Agency (BPOM) which in the execution of their duties in coordination with the Minister of Health. At the beginning of the formation of BPOM, the name of this institution is the Directorate General of Drug and Food Control under the Ministry of Health, from 1974 to 2000, which has run most tasks and functions of the authority in the field of medicine and food, as stipulated in the Decree of the Minister of Health No. 130 / MenkesSK / I / 2000 on the Organization and Procedures of the Ministry of Health. Then in 2000, after the reform goes, Abdurahman Wahid who was then serving as President issued a Presidential Decree number 166 of 2000, which provides that BPOM determined to be LPND which has the task of carrying out government duties in the field of food and drug supervision in accordance with the provisions of regulations applicable law.

These institutions carry out government duties in the field of food and drug supervision in accordance with the statutory provisions in force, with authority, among others, licensing and control the circulation of drugs as well as supervision of the pharmaceutical industry. It is based on the interests of consumers. Functions of Food and Drug Supervisory Agency (BPOM) is carrying out control and supervision in the field of medicine and food. BPOM be a non departmental government agency (Officials). Therefore, as a democratic country Indonesia should have an agency that takes care of the areas of health and pharmaceuticals, and conduct surveillance in the field of medicine and food. The powers and functions of BPOM to organize its work in the field of supervision, as well as other developing countries, handling provided by the government to the agency that by law can implement to support overall economic growth.

In order for supervision by BPOM more focused, then the distinction between the functions and authority. BPOM as LPND has the function and authority in the form of regulation in the field of food and drug supervision, either in the form of laws and provisions that are hierarchically below it to be effective, obviously requires human resources capable of running commands and carry out law enforcement or the provisions of the legislation. Therefore, in carrying out enforcement of the provisions of the applicable law is, formed the Food and Drug Supervisory Agency (BPOM).

As stipulated in the provisions of Article 67 of Presidential Decree number 103 of 2001, BPOM functions are as follows:

- a. Assessment and formulation of national policies in the field of drug and food control;
- b. The implementation of certain policies in the field of drug and food control;
- c. Coordination of functional activities in the implementation of tasks BPOM;
- d. Monitoring the provision of guidance and guidance to the activities of government agencies and the public in the field of drug control food;
- e. Provide guidance to the public administration in the field of general planning, administration, organization and management, personnel, inance, filing, legal, supplies, equipment and house stairs.

Similarly, the authority BPOM, which includes such things as the following:

- a. Macro national planning in the field;
- b. To formulate policies to support macro development;
- c. Determination in the field of information systems;
- d. The determination of the terms of use additional materials (addictive) specific guidelines for the determination of food and drug supervision of food circulation;
- e. Licensing and supervision of drug distribution and monitoring farmation industry;
- f. Determination of guidelines for the use of conservation, development and supervision of medicinal plants.

As a government agency that has the authority to carry out the functions of supervisory duties in the field of medicine and food, all programs and activities BPOM has the essential purpose is to protect the public as consumers on the quality, safety and benefit of medicines and food products in circulation. Moreover, because the main tasks, functions and authorities in the field of food and drug supervision has broad scope and complex as well as directly related to the lives of many people, the BPOM in carrying out its duties and authorities of the way of cooperation and building a network (networking) with cross-sector related and the office holders (stakeholders).

As an institution that has the authority to issue a policy in the field of food and drug supervision (regulatory authority), the government is also carrying out the functions of supervision. The government must also be able to develop competence and credibility (competent authority) in drug control and food in Indonesia, which is recognized internationally

Thus legally BPOM has had a strong position in creating a policy in the field of medicine and food in the framework of the implementation of drug control and food supply in Indonesia. BPOM notch as a non departmental government agency if the terms of the formation of legislation in Indonesia, as a non departmental government agency directly responsible to the President in terms of filing the formation of legislation insofar as it relates in the field of medicine and food in order to take out a policy which refers to the legislation in force. The function of the government is run by the government in accordance with its authority in the form of legal acts (rechtshandeling) and or legal decisions (rechtsbesluiten) which can be set in the function that includes several things, among others, are

1. The setting, regulation, establishes regulations having the force of law (delegated legislation);
2. Development of the community, generally the establishment of policies, guidance on the course of people's lives;
3. Police, which acts directly against violators of law and bully the region and the country as well as public security;
4. Justice, which means solve various conflicts or disputes between citizens or between the institutions and the citizens or the agency to agency.

BPOM role in the execution of its functions when associated with legal rules set forth in the rules of the State Administration Law is mutually supportive and relate, because as an organization, BPOM establishment of regulations that are fixing (beschiking). Where the issuing certification in medicine and food to the BPOM Register a course through the process in accordance with the applicable mechanisms and systems. Therefore, as a state organ, BPOM obliged to protect the public from the drug and food that does not meet the requirements determined by the laws and legislation in force.

Based on the information provided by the BPOM, said that the food monitoring system has three main pillars. Firstly, monitoring is done manufacturer. Second, supervision by the government, and third, supervision by the public, including NGOs. Further said that the monitoring of food is not only done by the government, but producers and consumers also conduct such surveillance, even though the government has greater authority in terms of supervision of food.

The three main pillars of food surveillance conducted by the BPOM today, namely:

- (1) surveillance system manufacturer that is implemented internally by the manufacturer through the implementation of the means of production (good manufacturing practices) that any form of deviation from the standard of quality can be detected since initial, legally, the manufacturer is responsible for the quality and safety of the products it produces. In the event of irregularities and violations of established standards, the manufacturer of sanctions, either administrative or pro justisia,
- (2) consumer control system is a system of supervision by the public as consumers themselves through increased awareness and increase knowledge about the quality of the products it uses, and the ways rational use of the product. Supervision is done by the community itself is very important because in the end the people themselves who take the decision to purchase and use a product, consumer awareness and high level of knowledge regarding the quality and usability of a product, on the one hand can fortify themselves against the use of products who do not qualify and products that are not needed. Being on the other side will encourage manufacturers to be extra careful in maintaining quality,
- (3) System or BPOM government control through standardization arrangements; product quality and safety assessment before being allowed to circulate in Indonesia; inspection, sampling and laboratory testing of products in circulation as well as a warning to the public that supported law enforcement, safety and efficacy of the product, the government is also conducting communication, information and education.

Food safety supervision aims to protect consumers against possible food distribution that does not meet quality standards and food safety and labeling are incorrect and misleading. Technological advances in the fields of

industry, information and transportation have caused the food industry increasingly easier to produce and distribute its products in a very wide range of areas and on a large scale, including the spread between countries. Domestic consumption of food products tends to increase, along with changes in lifestyle and consumption patterns. While the knowledge and ability of people has not been sufficient to select and use the product appropriately, correctly and safely. On the other hand, advertising and promotional incentive to encourage consumers to consume excessive and often irrational. With the increasing number and types of food products circulating in Indonesia, then in the context of consumer protection needs to be improved surveillance systems for food products prior to circulate.

Supervision is done by the government in this case BPOM also includes safety and nutritional quality of food. This is the government's efforts in the development of food to meet the basic needs of each country in a fair and equitable based on independence and not contrary to public confidence. The government's efforts to require further details regarding the procedures other than food needs based on safety, quality and nutritional also institutions and government agencies in charge of implementation. Then in addition to that set and determined as quality control, security and nutritional well defined provisions stipulated in Government Regulation No. 28 of 2004 on Safety, Quality and Nutrition, as contained in the provisions of Article 30 as follows:

- (1) The Indonesian National Standard as referred to in Article 29 shall be applied in considering the safety, security, or public health or environmental conservation and economic considerations must meet certain quality standards.
- (2) The Indonesian National Standard is mandatory as referred to in paragraph (1) carried out by the Minister responsible in the field of industry, agriculture, or the Head of the Agency in accordance which field duties and authority of each coordinate with the Head of the Agency which is responsible for national standardization ;
- (3) Matters relating to implementation and conformity assessment of the Indonesian National Standard (SNI) compulsorily applied as referred to in paragraph (2) shall be implemented in accordance with the provisions of the legislation in force;
- (4) Any person who manufactures or distributes food items as referred to in paragraph (1) shall meet the Indonesian National Standards in accordance with the applicable rules and regulations.

Oversight is basically geared entirely to avoid the possibility of fraud or irregularities on the objectives to be achieved. Through surveillance is expected to help implement the policies that have been established to achieve the planned objectives effectively and efficiently. Even through oversight created an activity that is closely related to the determination or evaluation of the extent to which the implementation of the work already carried out. Supervision is also able to detect the extent to which the policy is executed leaders and the extent to which irregularities that occurred in the execution of the work.

Concepts such surveillance actually shows that supervision is part of the management function, where supervision is considered as a form of inspection or control of the parties over the above to the below. Supervision is an ongoing process that is carried out by repeating the road carefully and periodically. In doing surveillance should be prioritized for cooperation and maintaining a sense of trust. Guarantee the achievement of objectives by knowing the differences between the plan and execution in a timely manner so that it can be held improvements immediately and prevent prolonged fault. As for forms of control by the government, is divided into two kinds, namely:

1. Preventive Monitoring, which is monitoring conducted on an activity before the activity was carried out, so as to prevent irregularities. When linked with supervision by BPOM in the fields of medicine and food, then this is a preventive surveillance monitoring is to prevent consumer loss.
2. Repressive supervision, ie supervision conducted on an activity after activity was carried out. Or in other words the action taken by the government after the occurrence of a problem.

Consumer protection is the responsibility of all parties, namely the government, businesses, consumer organizations and consumers themselves. Without the contribution of the four elements, in accordance with their respective functions, it is not easy to realize the welfare of consumers. The government must be responsible for fostering the implementation of consumer protection, to secure the rights of consumers and businesses as well as the implementation of the obligations of consumers and businesses. In addition to coaching, the role of government that is quite important is the monitoring of the implementation of consumer protection. This is in accordance with the provisions contained in the provisions of article 30 of Law No. 8 of 1999 on Consumer Protection, who said:

- (1) Monitoring of the implementation of consumer protection and the application of the provisions of the legislation is organized by the government, public, and non-governmental consumer protection agencies.

- (2) Monitoring by government referred to in paragraph (1) shall be done by the minister and / or minister related technical.
- (3) The supervision by the public and non-governmental consumer protection agencies applied to goods and / or services on the market.
- (4) If the supervision referred to in paragraph (3) appeared to deviate from the legislation in force and harm consumers, the minister and / or technical ministers take action in accordance with the legislation in force.
- (5) The results of monitoring held by the public and non-governmental consumer protection agencies can be disseminated to the public and can be delivered to the secretary and technical secretary.
- (6) The task of monitoring the implementation of the provisions referred to in paragraph (1), paragraph (2) and paragraph (3) shall be determined by government regulation.

Based on the provisions of article 30, it is known that the government acts as a protector of the community as well as coaches businesses in improving industrial and economic progress of the country. Given the form of consumer protection is to pass laws, government regulations, issuance of Goods Quality Standards. Besides the no less important is to supervise the implementation of regulations, or standards that already exist. Oversight of the food product should also be carried out by the government.

In accordance with the provisions of Article 74 and 75 of Law No. 18 Year 2012 on Food, the government makes the rules regarding supervision as follows:

Article 74:

- (1) The Government is obliged to check the safety of the material to be used as food tambahan yet unknown implications for human health in the activities of the food production process to be circulated.
- (2) additional material security checks referred to in paragraph (1) is performed to obtain a license to sell.

Article 75:

- (1) Any person who undertakes the production of food for distribution are prohibited from using:
  - a. Food additives which exceed the maximum threshold specified and or
  - b. Substances banned from use as food additives.
- (2) The provisions concerning the maximum threshold of prohibited substances as referred to in paragraph 1, shall be regulated by or under government regulations.

To monitor and prevent contamination of food, the food control BPOM split into two major groups, namely Pre-market control and Post-market control. The implementation of food monitoring conducted by the BPOM through Pre-market surveillance control and Post-market control as part of efforts by government regulation, which can be explained as follows:

1. Evaluation of the quality, safety, and effectiveness of the benefits of the product (pre-market evaluation) before being allowed to circulate in order of registration; Against drug preparations and food before at the production and authorized to circulate in parts of Indonesia, should first be evaluated to assess security, quality, efficacy / benefit and label / product information. Only products that meet the criteria of safety, quality, efficacy / benefit that can be approved for production and marketed in Indonesia.
2. Post marketing vigilance, ie inspection activities of production facilities or distribution, sampling and testing activities outstanding products, and investigations and enforcement action. Government conducting inspections of industrial facilities / production and distribution of medicinal preparations and food on a regular basis, with the aim of direct control over production and distribution activities and to ascertain whether businesses are consistent in applying the means of production or distribution. This is very important as an internal control system that guarantees the quality of the entire process of production and distribution are carried out. Implementation of the sampling and laboratory testing of the products circulating in the community done to detect the quality and safety. This is done as the basis for law enforcement as well as to protect the interests of the public as consumers.

### III. CLOSING

#### A. Conclusion

State responsibility for food safety is a constitutional mandate NRI terumus in the Constitution of 1945 which, among others, is to promote the general welfare and educating the nation. This mandate implies the duty to meet the needs of every citizen through a government system that supports the creation of adequate food security in

order to meet the basic needs and rights of every citizen. Food is a basic human need that fulfillment into a fundamental right of every people of Indonesia in creating quality human resources to implement national development. State responsibility for food safety is done through (1) supervision in which the monitoring system has three main pillars, namely (a) the oversight conducted by the manufacturer, (b) the supervision of the government, and (c) supervision by society, to monitor contamination of food, the food control agency POM split into two large groups that control the pre-market and post-market control, (2) *halal* labeling is permitting the installation of *halal* logo on the packaging of food products by POM body based on the *halal* certification issued by the MUI fatwa commission.

## B. Suggestions

So that safe food product available in sufficient and adequate, it is necessary the creation of a food system that is able to provide protection to the people who consume them so that the food is distributed or traded is not harmful and which are safe for the health of the human soul. In other words, must meet food safety requirements. Food products consumed by people is basically through a process that includes the chain of production, storage, transportation, distribution until arriving at the hands of the consumer. In order for the entire chain meets the security requirements of quality and nutrition and food security, it is necessary to realize a system of regulation, guidance and effective oversight in the areas of safety, quality and nutrition and food availability. The government must remain responsible and continues to be actively involved in ensuring security of food products circulating in Indonesia that did not meet quality standards and health and *halal*. Coaching, supervision, counseling and training should still be intensified so that all food products provide comfort, security and safety of the consumer. Thus the state's responsibility for food safety creates obligations on the state to protect, respect and implement them.

## BLIBLIOGRAFY

### Books

- Abdul Razak, **Peraturan Kebijakan (Beleidsregels)**, (Yogyakarta: Republik dan Rangkang Education, 2013).
- Fardiaz, Dedi., **Kriteria dan Tata Laksana Penilaian Produk Pangan**, Cetakan Pertama, Jakarta: Badan Pengawas Obat dan Makanan, 2004
- FAO-WHO.. **Assuring Food Safety and Quality: Guidelines for Strengthening National Food Control Systems**. Rome, Italy, 2003.
- Kementerian Pertanian. **Kompendum 1 Kodifikasi Hukum Bidang Pangan**. (Jakarta: Jaringan Komunikasi dan Informasi Hukum, Biro Hukum dan Humas, 2010).
- Kurnia, Titon Slamet., **Hak atas Derajat Kesehatan Optimal sebagai HAM di Indonesia**, PT. Alumni, Bandung, 2007.
- Lubis, Todung Mulya., **Bantuan Hukum dan Kemiskinan Struktural** (Jakarta: LP3ES, 1986).
- Mahmudatuss'adah, Ai., Pentingnya Jaminan Pangan *Halal* Dan Baik Untuk Meningkatkan Daya Saing Pangan Lokal Indonesia, Makalah, PKK-FPTK- UPI- Bandung, 2007.
- Mandey, Lucia., **Kondisi Fatal Keamanan Pangan Selama ini**, Makalah disampaikan pada Seminar Keamanan Pangan dan Perlindungan Konsumen, Kerjasama Fakultas Hukum Universitas Sam Ratulangi, Yayasan ZGP Sulut - Program Pascasarjana Program Studi Ilmu Hukum Universitas Sam Ratulangi Manado, 3 Juni 2006.
- Nurhayati Abbas, **Tanggung Jawab Produk Terhadap Konsumen Dan Implementasi Pada Produk Pangan**, ASPublishing, Makassar, 2011
- Prajudi Atmosudirjo, **Hukum Administrasi Negara**, Seri Pustaka Ilmu Administrasi VII, Cetaka ke sepuluh, Jakarta: Ghalia Indonesia, 1994.

Sampurno, *Profile Badan POM Tentang Sistem Informasi Pengawasan Obat dan Makanan*, Diterbitkan oleh: Badan Pengawas Obat dan Makanan, Jakarta, 2003

Sadjiono., *Hukum Administrasi*. Laksbang : Jakarta, 2008.

Husni Syawali & Neni Sri Imamyati, *Hukum Perlindungan Konsumen*, Jakarta: CV Mandar Maju, cetakan 1, 2000

Samsul, I., *Perlindungan Konsumen Kemungkinan Penerapan Tanggung Jawab Mutlak*, Universitas Indonesia, Jakarta, 2004.

Sudaryatmo., *Hukum & Advokasi Konsumen*, Cetakan Kedua, (Bandung: Citra Aditya Bakti, 1999).

Susilo, Zumrotin, K., *Menyambung Lidah Konsumen*, Diterbitkan atas kerja sama YLKI dengan Puspa Swara, April 1996.

Yuningsih, Rahmi., *Perlindungan Konsumen Dari Dampak Buruk Makanan Tidak Halal Bagi Kesehatan*, Aspirasi Vol. 1. No. 2, Desember 2010.

### **Internet**

Ahmad Taufiqurrakhman. *Beras Adalah Salah Satu Pangan Kunci Di Dunia* ([www.okezone.com](http://www.okezone.com)).

Annual Report: *Violations of Peasants Human Rights; a Report on Cases on Pattern of Violations 2006* ([www.viacamtiesina.org](http://www.viacamtiesina.org))

### **Regulation**

Keputusan Kepala Badan POM No. HK. 00/05.1.2569 tentang *Kriteria dan Tata Laksana Penilaian Produk Pangan*, tanggal 31 Mei 2004.

Keputusan Kepala Badan POM RI, Nomor: HK.00.05.23.0131 tanggal 13 Januari 2003, *tentang Penyantuman Asal Bahan Tertentu, Kandungan Alkohol, dan Batas Kedaluwarsa Pada Penandaan/Label Obat-obat Tradisional, Suplemen Makanan, dan Pangan*.

Keputusan Kepala BPOM No. HK. 00.05.23.0131 tentang Penyantuman Asal Bahan tertentu.

Keputusan Menteri Kesehatan Republik Indonesia Nornor 1593/Menkes/SK/X1/2005 tentang Angka Kecukupan Gizi Bagi Bangsa Indonesia.

Keputusan Presiden RI Nomor 132 Tahun 2001 tentang Dewan Ketahanan Pangan.

Peraturan Menteri Kesehatan Republik Indonesia No. 180/Men.Kes/Per/IV/1985 tentang Makanan Kedaluwarsa.

Peraturan Pemerintah Republik Indonesia No. 28 Tahun 2004 tentang Keamanan, Mutu dan Gizi Pangan.

PP Nomor 68 Tahun 2002 tentang Ketahanan Pangan;

Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

Undang-Undang Nomor 18 tahun 2012 tentang Pangan

Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen.

Undang-Undang Nomor 88 Tahun 2002 tentang Ketahanan Pangan.