

Consumer Protection for Fast Food Restaurants which not Qualify Food Health Standards

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ABSTRACT

The purpose of this research is to examine the standardization of fast-food restaurants in Indonesia which not qualify food health standards as the responsibility of business actors in serving fast-food restaurants and dispute resolution for losses suffered by consumers. The research method used is normative juridical with a statute approach and conceptual approach. The results showed that there is no specific regulation related to the standardization of fast-food restaurants in Indonesia. The responsibility of business actors is based on Article 86 paragraph (2), Article 94 paragraph (1) and paragraph (2) of the Food Law, Article 19 of the Consumer Protection Law, and Article 1365 of the Civil Code that business actors must be responsible and fulfill consumer rights in getting returns as before. Dispute settlement for losses suffered by consumers can, in principle, be requested directly. However, if the business actor refuses or ignores, then by Article 45 paragraphs (1) and (2) of the Consumer Protection Law, consumers can submit dispute resolution efforts outside the court (through BPSK, arbitration, conciliation, or mediation) or through the court following Article 48 of the Consumer Protection Law (guided by the provisions of the General Court of HIR and RBg) based on the voluntary choice of the parties in the consumer's domicile.

Keywords: Consumer Protection, Standardization, Fast Food Restaurants, Food Health Standards, The Liability of Business Actors.

INTRODUCTION

Human needs are divided by Maslow into several levels of a hierarchy of needs.^[1] The theory hierarchy of needs is a theory that classifies human needs according to motives and motivations that are following general human behavior. Maslow also said that humans will not go to the second hierarchy of needs when the first need is unfulfilled. Maslow categorizes human needs into five, through a pyramid of levels, namely security needs, belonging and love, self-esteem, self-actualization needs, and physiological needs. Food is one part of physiological needs and the main human need.

In the modern era, activities, high mobility, and work demands cause people, especially urban people, to not have enough time to fulfill their food needs, so they choose to buy food at restaurants, especially fast-food restaurants that provide food in a relatively short time.

Food purchased outside the home cannot be one hundred percent safe. There are still several complaints and cases that occur in the field. The first case occurred in July 2022 when a female customer visited a well-known sushi restaurant at Nipah Mall Makassar with her friend. Through a video uploaded by the owner of the TikTok account @ayudewisartika4, it was seen that there were live maggots on the ramen that was being consumed by the woman. The woman reported it to the waiter who delivered their food and the restaurant manager apologized for the incident and wanted to visit the woman's house. The woman mentioned that she and her friends had forgiven the restaurant and hoped that nothing similar would happen again.^[2]

The second incident occurred around 20.00 WIB in June 2018, when a female customer visited the famous

Bakerzin restaurant in Terminal 3 of Soekarno Hatta International Airport, Tangerang, Banten. On the woman's Instagram account named @anastasiachristabel, cockroaches were found on the plate she was eating. She ordered a menu of Salmon and Black Olive Spaghetti. At first, one of the restaurant staff argued that the animal was not a cockroach, but an olive. After checking again, one of the employees said that the animal was indeed a cockroach and he apologized and was willing to take responsibility. Bakerzin was ready to take responsibility for the loss of Anastasia by taking her for a personal examination at the laboratory and covering all the medical expenses. Bakerzin has also expressed his apology directly. Anastasia's party responded positively by accepting Bakerzin's good intentions in resolving the problem in a family manner.[3]

LITERATURE REVIEW

Objectives of the Study

- To know and understand the standardization regulation of fast food in Indonesia.
- To know and understand the responsibilities of business actors in serving fast food that does not qualify for food health standards.
- To know and understand the settlement of disputes over losses suffered by consumers due to consuming fast-food that does not qualify for food health standards.
- To contribute knowledge in the field of consumer protection law by applying the results of knowledge through practice in the field.

Research Questions

- How is the standardization regulation of fast food in Indonesia?
- How is the responsibility of business actors in serving fast food that does not qualify for food health standards?
- How is dispute resolution for losses suffered by consumers due to consuming fast food that does not qualify for food health standards?

METHODOLOGY

The research method is based on the theory or perspective behind a study and indirectly has implications for the research method. The type of research used is the normative juridical method, namely research guided by positive legal regulations following the laws and regulations that apply in society. The author, in resolving a legal issue, uses two approaches, namely the Statue Approach which is carried out by reviewing all laws and regulations that are following the legal issues to be studied, and the Conceptual Approach which interprets the principles, laws, and legal concepts according to the legal issues being studied.

RESULTS

Standardization Regulation of Fast Food in Indonesia

To create safe and quality food, standards are needed as a reference to ensure the performance, suitability, and safety of the products produced. Standards are part of management tools, especially this time when testing or certifying products by scientists, business actors, planners, and engineers who must be thoroughly analyzed and mastered. Standardization according to Article 1 Point 1 of Law Number 20 of 2014 concerning Standardization and Conformity Assessment is a procedure for determining, monitoring, enforcing, maintaining, and implementing which is carried out in a coordinated and systematic manner with authorized interested parties.

Standardization is intended for business actors, scientists, and consumers. The application of standardization for business actors is to facilitate the creation of available formats; streamline inspection procedures; testing and quality control to reduce the reprocessing of unspecified products; market and build consumer confidence; and increase productivity in all departments (in the sense of lower costs and prices, more sales to obtain higher profits). As for consumers, standardization has the benefit of making it easier to choose a particular product; cutting down on disputes and misunderstandings; and guiding transactions.[4]

The implementation of standardization is regulated in the Indonesian National Standard (SNI) following Law Number 20 of 2014 concerning Standardization and Conformity Assessment as well as Government Regulations on Standardization and Conformity Assessment Systems adopted from Hazard Analysis Critical Control Point (HACCP) through SNI 01-4852-1998 and later revised to SNI CAC / RCP 1-2011 intended as guidelines for Hazard Analysis Critical Control Point and Guidelines in its Application, namely BSN Guidelines Number 1004 of 1999.[5] HACCP is an analysis of food safety supervision in the form of prevention of the onset of poisoning or disease of products, materials, and processes in determining components so that food can be guaranteed safe and meet the specified requirements.[6] Hazard analysis in HACCP consists of three elements, namely biological elements, namely fungi to harmful bacteria in certain foods, for example, Salmonella, E. coli, and Bacillus Cereus. The second element is the chemical element, which consists of chemicals contaminating the food, such as soap or pesticides. The third element is the physical element in the form of objects that contaminate the food, for example, stapler, glass fragments, pieces of needles, wood, hair, mouse droppings, and cockroaches.[7]

The implementation of SNI following Article 8 of the Standardization and Conformity Assessment Law states that Standardization and Conformity Assessment activities are carried out by the National Standardization Agency (BSN) which is responsible to the President through the Minister of Research, Technology and Higher Education. Article 13 of the Standardization and Conformity Assessment Law stipulates that SNI must be compatible with international standards which is done by adopting and modifying international standards that are reviewed with consideration of national interests. In terms of national interests, SNI can be described as not equivalent to international standards. Guidelines for the implementation of SNI are listed in Article 20 to Article 26. Article 24 and Article 25 of the Standardization and Conformity Assessment Law are intended for the interests of safety, health, and security. Any business actor who does not have a certificate will be temporarily suspended or prohibited from trading activities.

The implementation of standardization in Indonesia is not only regulated through SNI but is also supported by several laws and regulations. Health Law, Food Law, and Industry Law are supporting and regulate food standardization in general. The Health Law has relevance to the regulation of ready-to-eat food standardization. Article 109 and Article 111 paragraph (1) of the Health Law state that every business actor must ensure that food and beverages are safe for human consumption and are based on health standard requirements.

There is also the Food Law, precisely in Article 4 of the Food Law, which explains how the implementation of food is aimed at fulfilling the quality of food safety. It is further clarified in Article 67 of the Food Law which states that Food Safety is directed at preventing the possibility of chemical, biological, and harmful contamination if consumed by humans. The implementation of food safety and quality is carried out by considering Article 86 paragraph (2) to Article 86 paragraph (4) of the Food Law which explains that every person (in the sense of food business actors) who produces and distributes food is obliged to cover the standards of food safety and quality through certification by the Government and/or certification bodies. In Article 94 paragraph (1) and Article 94 paragraph (2) of the Food Law. Article 86 paragraph (6) of the Food Law states that the regulation of food safety and quality is stipulated in a Government Regulation. The relevant Government Regulation is the Food Safety Regulation. Article 2 paragraph (1) Letter a of the Food Safety Regulation regulates how food sanitation is implemented as part of food safety. Continued in Article 3 of the Food Safety Regulation states that food sanitation is carried out in the production process up to food circulation so that food is safe for consumption by the public.

Quality control supervision related to the food industry, starting from manufacturing, processing, and distribution of food industry products. Article 50 of the Industry Law confirms that supervision of industrial standardization is carried out by the Minister of Industry in the form of SNI which takes place actively throughout the territory of the Republic of Indonesia. Article 51 of the Industry Law adds that SNI is voluntary by adding the SNI label to goods and/or services if they meet SNI requirements. Article 52 of the Industry Law states that the Minister of Industry stated the implementation, of technical SNI of goods and/or services on a mandatory basis based on SNI that has been formulated following international standards. All technical and procedural guidelines for the implementation of SNI can be found in Article 52 to Article 53 of the Industry Law. It is emphasized in Article 54 and Article 55 of the Industry Law, for goods and/or services that do not require SNI techniques, business actors are obliged to withdraw from circulation and/or stop industrial activities. The Minister of Industry in coordination with the relevant ministers has the right to withdraw or stop trading activities.

Standardization is one part of the three actions of quality control. The authority to supervise food quality in Indonesia is given by the President to the National Agency for Drug and Food Control (BPOM), which is responsible to the President through the Minister of Health (following Article 1 of Presidential Regulation Number 80 of 2017 on the National Agency for Drug and Food Control). Article 3 paragraph (1) letter d of the Presidential Regulation on the Food and Drug Supervisory Agency outlines the function of BPOM, which is to conduct supervision before and during circulation in its supervisory function of drugs and food. It is emphasized in Article 3 paragraph (2) of the Presidential Regulation of the Food and Drug Supervisory Agency which states that preventive efforts are made to realize the creation of food that meets the requirements of food safety and quality standards. Supervised during the circulation of food and beverages carried out by BPOM to prove if a drug and food meet the requirements of food safety and quality standards and law enforcement actions following established regulations.

The most important point in the first problem statement is that food standardization in general has been regulated. However, specific provisions for fast food restaurants are still not available. This is a task for the Government in making these arrangements so that they can become an official basis for fast food restaurant owners and provide clear sanctions.

Responsibility of Business Actors in Serving Fast Food Which Not Qualify for Food Health Standards

The issue of consumer harm will continue to be discussed if the incident still occur in the community such as the appearance of maggots and cockroaches in food that is being consumed, indicating that business actors commit unlawful acts and cover the elements of acts against the law following Article 1365 of the Civil Code. The binding obligation in carrying out business activities is the responsibility assumed by business actors. This product liability is referred to as product liability, which is the legal responsibility of individuals or legal entities in producing or distributing a product.^[8] Article 86 paragraph (2) of the Food Law states that every person who sells food (in the sense of business actors) shall be responsible for the safety and quality of food. Strengthened in Article 94 paragraphs (1) and (2) of the Food Law which states that any person who goes against a rule that is not following food quality standards as mentioned in Article 86 paragraph (2) of the Food Law, will be subject to administrative sanctions, namely fines, withdrawal of food from circulation by producers, suspension of production and distribution activities temporarily, compensation, and withdrawal of licenses.

Regulations related to the responsibility of business actors are stipulated in Article 19 paragraph (1) of the Consumer Protection Law which states that business actors are responsible for providing compensation for damage, pollution, and/or consumer losses due to consume goods and/or services produced or traded. Referring to the provisions in Article 19 paragraph (1) of the Consumer Protection Law which can be related to the principle of strict liability, namely that business actors are directly and fully responsible for losses incurred by consumers due to errors or omissions such as expired products, defects and unfit for consumption.

This situation is the basis that business actors bear the feasibility of products that are of high quality and safe for consumption by consumers. Reaffirmed in Article 1365 of the Civil Code which states that anyone who commits an unlawful act and causes harm to another person, is obliged to compensate for the damage that has been done.

The risk of finding food that does not meet food health standards cannot be avoided. However, it can be prevented through supervision and guidance in Article 29 paragraph (4) of the Consumer Protection Law aimed at the realization of a healthy business climate between business actors and consumers; the use of non-governmental consumer protection institutions in protecting consumers; and maximizing the excellence of human resources and increasing research and improvement activities in the field of consumer protection.[\[9\]](#)

Dispute Resolution for Losses Suffered by Consumers Due to Consuming Fast Food Which Not Qualify for Food Health Standards Loss is described as a situation when a person does not receive a return on the capital that has been spent.[\[10\]](#) Compensation in Civil Law is caused by two causes, namely in Article 1240 to Article 1252 of the Civil Code which states that the birth of the right to compensation is caused by default, and in Article 1365 of the Civil Code which organizes compensation caused by unlawful acts.[\[11\]](#)

Meanwhile, based on the type, compensation is classified into two, namely material compensation (namely physical or real losses suffered) and immaterial compensation (in the form of loss of benefits that should have been received).[\[12\]](#)

In general, consumers can request immediate compensation for their losses to the business actor.[\[13\]](#) However, if the business actor refuses or ignores this, then the consumer according to Article 45 paragraph (1) of the Consumer Protection Law can submit through the out-of-court dispute resolution route (non-litigation route) and the dispute resolution route in court (litigation route) based on the voluntary option of both parties in the consumer's domicile. Article 47 of the Consumer Protection Law also adds in essence that the settlement of consumer disputes conducted outside the court is organized to obtain an agreement in determining the amount and form of compensation to ensure that an incident does not cause harm in the future and does not occur again.

Article 49 of the Consumer Protection Law states that the handling of out-of-court disputes is carried out by the Government by establishing an authorized institution that handles disputes, namely the Consumer Dispute Settlement Body (BPSK). The decision of BPSK following Article 53 paragraph (3) of the Consumer Protection Law is binding and final. However, filing an objection to the District Court is a form of judicial involvement in dispute resolution through BPSK.[\[14\]](#) If the business actor does not file an objection to the decision, then the strength of the BPSK decision becomes permanent.[\[15\]](#) Consumer dispute resolution efforts in court can be chosen as a dispute resolution route if non-litigation efforts are declared ineffective for the litigants following Article 45 paragraph (4) of the Consumer Protection Law.[\[16\]](#) Article 48 of the Consumer Protection Law states that the settlement of litigation disputes following Article 45 of the Consumer Protection Law with due regard to the *Herziene Inlands Regeling* (HIR) and *Rechtsreglemen Buitengewester* (RBg) as procedural law in public courts in Indonesia.[\[17\]](#)

CONCLUSION

- The standardization regulation of fast food in Indonesia is carried out through the Indonesian National Standard (SNI) following Law Number 20 of 2014 concerning Standardization and Conformity Assessment. The implementation of standardization is regulated by SNI 01-4852-1998 and then revised to SNI CAC/RCP 1-2011 as a reference for certification in Indonesia which is adopted from Hazard Analysis Critical Control Point (HACCP). HACCP is used as a food safety control analysis that prevents poisoning from biological, chemical, and physical elements. The implementation of SNI following the Standardization and Conformity Assessment Law is carried out by the National Standardization Agency (BSN) which is responsible to the President through the Minister of Research, Technology, and Higher Education. Standardization in Indonesia is also supported by the

Health Law, Food Law, and Industry Law, which are supporting and regulate food standardization in general. The authority for quality control in Indonesia is exercised by BPOM, which is responsible to the President through the Minister of Health. The most important point in the discussion of the formulation of this problem is the unavailability of special regulations related to fast food restaurant.

- The responsibility of business actors in serving fast food which not qualify for food health standards refers to the principle of Strict Liability, which is fully responsible for the losses suffered by consumers due to their mistakes following Article 86 paragraph (2) of the Food Law, Article 94 paragraph (1) and paragraph (2), and Article 19 of the Consumer Protection Law, which explains that business actors must be responsible for the safety of food quality and are fully responsible for the rights of consumers in getting back to their original state through compensation for losses suffered by consumers. The government also plays a role in guiding business actors following Article 29 paragraph (4) of the Consumer Protection Law.
- Dispute settlement for losses suffered by consumers as a result of consuming fast food which not qualify for food health standards can be in general requested directly as stated in Article 19 of the Consumer Protection Law, namely refunds, exchanges of goods, or other similar goods, health maintenance and compensation following the stipulated provisions. However, if the business actor refuses or ignores this, then according to Article 45 paragraphs (1) and (2) of the Consumer Protection Law, consumers can submit dispute resolution efforts outside the court (through BPSK arbitration, conciliation, or mediation) or through the court according to Article 48 of the Consumer Protection Law (guided by the provisions of the HIR and RBg General Courts) based on the voluntary choice of the parties in the consumer's domicile.

RECOMMENDATIONS

- The standardization regulation of food in Indonesia has provisions that regulate (through the Standardization and Conformity Assessment Law and supported by the Food Law, Health Law, and Industry Law). However, special provisions that regulate the standardization of fast food restaurants are still not available. So, the author provides advice for the Government to make special regulations related to the standardization of fast food restaurant in Indonesia and enforce them (if special regulations have been made), to have a deterrent effect on business actors who do not comply with the standardization of fast food restaurant which not qualify food health standards.
- Food businesses should remain fully responsible for food safety and quality in providing food consumed by consumers (as stated in Article 86 paragraph (2) of the Food Law) and continue to comply with standardization regulations for fast food restaurant.
- Hoped that consumers can be more vigilant before consuming their food and maintain their critical thinking that consumer rights need to be protected from business actors who do not comply with standardization regulation of fast food restaurant food which not qualify food health standards.

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FOOT NOTES

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