

## **Legal Certainty of Home Industry Food Through National Agency of Drug And Food Control's Post Market In View From Law No. 8 of 1999 Concerning Consumer Protection**

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### **Abstrak**

*Beredarnya produk olahan dari industri rumah tangga saat ini menjadikan sertifikasi standardisasi produk penting sebagai upaya perlindungan masyarakat. Kajian ini bertujuan untuk menjelaskan kepastian hukum Pangan Industri Rumah Tangga dan pos pasar Balai Pengawas Obat dan Makanan sebagai upaya perlindungan konsumen. Metode yang digunakan dalam penelitian ini adalah metode yuridis normatif yang dilakukan dengan pendekatan perundang-undangan dan dengan pendekatan analitis. Spesifikasi yang digunakan adalah deskriptif konseptual. Data yang akan digunakan adalah data sekunder termasuk perundang-undangan dan literatur yang relevan dengan Pangan Industri Rumah Tangga dan Post Market Balai Pengawas Obat dan Makanan. Dari penelitian yang dilakukan diperoleh hasil bahwa penerapan Pangan Industri Rumah Tangga berdasarkan Peraturan Balai Pengawas Obat dan Makanan No. 22 Tahun 2018 dapat menjadi perlindungan bagi masyarakat dari produk berbahaya. Sebagai tanggung jawab pengawasan terhadap produk yang telah diberikan sertifikat Pangan Industri Rumah Tangga, pelaksanaan pengawasan pos pasar oleh Balai Pengawas Obat dan Makanan atas dasar pelaksanaan Peraturan Balai Pengawas Obat dan Makanan No. 9 Tahun 2020 sebagai bentuk perlindungan hak konsumen sebagaimana diatur dalam UU No. 8 Tahun 1999 tentang Perlindungan Konsumen. Dalam penerapannya, keduanya menunjukkan kepastian hukum yang jelas bagi konsumen.*

*Kata kunci: pangan industri rumah tangga; perlindungan hukum; pos pasar*

### **Abstract**

The current circulation of processed products from home industries makes product standardization certification important as an effort to protect the public. This study aims to explain the legal certainty of Home Industry Food and the National Agency of Drug and Food Control post market as an effort to protect consumers. The method used in this research is the normative juridical method which is carried out with a statutory approach and with an analytical approach. The specification used is conceptual descriptive. The data that will be used is secondary data including legislation and literature relevant to Home Industry Food and Post Market National Agency of Drug and Food Control. From the research conducted, the results showed that the implementation of Home Industry Food based on National Agency of Drug and Food Control regulation No. 22 of 2018 can be a protection for the public from harmful products. As a responsibility for the supervision of products that have given Home Industry Food certificates, the implementation of post market supervision by National Agency of Drug and Food Control on the basis of implementation of National Agency of Drug and Food Control Regulation No. 9 of 2020 as a form of protecting consumer rights as stipulated in Law no. 8 of 1999 concerning Consumer Protection. In their application, both show clear legal certainty for consumers.

Keywords: home industry food; legal protection; post market

### **Introduction**

Food is a basic need for humans, therefore meeting these needs is a basic right that everyone has and is stated in Article 27 of the 1945 Constitution which states that food is a basic need for humans to be able to sustain life. Adequacy of food is a human right that deserves to be fulfilled. (Mangesti 2020) Activities to meet food needs in the current era of development are very far developed with various kinds of breakthroughs and various kinds of experiments to attract people to try and buy unique processed food and beverage products. In this era of development, people are expected to be more vigilant in buying and consuming processed food and beverage products in order to create health in the community. The large number of processed food and beverage products currently in circulation can enable the circulation of food and beverage products that do not meet standards which can be harmful to consumers who buy or consume them.

Standardization of food and beverage products is important in maintaining the safety and health of consumers by paying attention to the quality and nutrition of food from possible hazards, both due to biological and chemical contaminants and other objects that can disturb, harm and endanger human health. (Widjiastuti and others 2020)

The responsibility of the state in the framework of creating health and welfare of the people is important to be carried out as a concern of the state for guaranteeing that the public obtains the right to health and welfare as stipulated in the 1946 Constitution article 28H paragraph 1. Service to health is a human right, namely the right to protect, promote, its enforcement and fulfillment is the responsibility of the Government. The government is expected to be able to participate in the implementation of prevention, protection, security and fulfillment of the right to public welfare and health for the sake of continuity of life as a good citizen. It is very important to take the full responsibility of the state towards health insurance by issuing several laws, national regulations, the 1945 Constitution of the Republic of Indonesia, Law number 36 of 2009 concerning health, Law 39 of 1999 concerning Human Rights. Law Number 40 of 2004 concerning the National Insurance System, and Law Number 24 of 2011 concerning the Health Insurance Organizing Agency. This is a form of the people's basic needs that are fulfilled by the State in the welfare of its people.

As a fulfillment of public protection from health hazards that are very likely to occur and in order to protect the health and safety of Indonesian citizens, it is important to carry out legal protection to protect consumers from obtaining the right to food and beverage products purchased for consumption as stipulated in Law Number 8 of 1999 concerning Consumer Protection. Home Industry Food Production Certificate is a permit for the home-scale food and beverage industry, generally the Home Industry Food is included in a label on the product packaging in the form of a series of numbers registered with the local Health Office. With respect to Home Industry Food, theoretically in this context it is related to the fulfillment of legal certainty in the field of consumer protection and/or security guarantees for processed food products in circulation. According to Utrecht there are two notions of legal certainty, namely first, the existence of general rules make individuals know what actions may or may not be carried out, and second, in the form of legal security for individuals from government arbitrariness because with general rules individuals can know what the State may charge or do to individuals. (Timmer 2014)

Home Industry Food can be a step taken in an effort to protect consumers from various food and beverage products that are currently increasingly mushrooming in society. Home Industry Food can sort various home-scale processed food and beverage products with standards and considerations for the production process starting from the preparation of raw materials to packaging according to health standards that are enforced to obtain permit certificates for wide distribution. The issuance of a Home Industry Food certificate for a processed food and beverage product is expected to guarantee that the community in fulfilling food needs is guaranteed health and safety.

It doesn't stop there, processed food and beverage products must also be controlled in their distribution in order to create stable quality of processed food and beverage products circulating in the community in order to ensure that products that have received a Home Industry Food certificate take place in accordance with the permits that have been granted. Efforts to protect the public from the dangers of processed food and beverage products that

do not meet standards and have been widely circulated by carrying out surveillance after circulation (*Post-Market Control*) carried out by the Food and Drug Supervisory Agency National Agency of Drug and Food Control to see the consistency of product quality, safety and product information carried out by conducting sampling of products in circulation, as well as inspection of production and distribution facilities. This effort is carried out by National Agency of Drug and Food Control as a form of concern for public health and as a form of protecting community rights in activities to meet the needs for healthy and safe food.

The first research is from Mufidatul Khasanah, According to the Health Act, Cosmetics are included in the type of pharmaceutical preparations, in Article 98 paragraph (1) "Pharmaceutical preparations (include cosmetics) must be safe, efficacious/beneficial, quality, and affordable", So deep producing a cosmetic business actor must meet the specified standards and requirements by the government. In Article 106 paragraph (1) "Pharmaceutical preparations (including cosmetics) can only be circulated after get distribution permit". It is intended that society can be protected from the products dangerous cosmetics. So producing and selling cosmetic products that do not get quality certificate and distribution permit from the Food and Drug Supervisory Agency violate the law and may be subject to sanctions. (Khasanah and Suliantoro 2020)

Second article, increasing the legal awareness of business actors by efforts to increase knowledge and understanding in implement their responsibilities, especially in making changes loss if the consumer is harmed by consuming any product packaging. On the other hand, it is also necessary to increase awareness of consumer law especially in selecting and using packaged food products using knowledge, understanding, attitude and behavior as needed and consumer desires. (Poernomo 2020) Third article, Top consumer protection imported cosmetic products that have been consumed and on eventually cause a loss then it is the responsibility of the business actor who must responsible for providing compensation to consumers in accordance with the provisions of Article 19 of the Consumer Protection Act. (Pratiwi and Nurmawati 2019)

However, in practice it can be ascertained the possibility of findings occurring in the field as quoted from KOMPAS.COM which stated that the Food and Drug Monitoring Agency recently discovered coffee containing the chemicals paracetamol and sildenafil. Head of National Agency of Drug and Food Control Penny K Lukito said the use of food ingredients containing medicinal chemicals can cause heart and liver problems, even death. It is undeniable that the prevention and protection system allows for errors or intentional or unintentional errors to occur which endanger and make consumers worry about food and beverage products that are dangerous to public health and safety. As a form of protection, responsibility and guarantee to consumers or the public to obtain their rights in fulfilling healthy and good food needs. Efforts that can be taken by the government in carrying out its responsibilities to prevent, protect and guarantee all forms of action that can harm consumers or the community physically or materially, namely by providing strong legal certainty, which can protect and minimize physical and material losses from the community as consumers those who buy and consume food and beverage products that have been

widely circulated in the community, in order to fulfill the rights to health, safety and welfare of the wider community.

Based on the description above, this study will analyze the legal certainty of Home Industry Food through the National Agency of Drug and Food Control Post Market in terms of Law no. 8 of 1999 concerning consumer protection, and the formulation of the problem is obtained, namely:

1. How is legal certainty for Home Industry Food to protect consumers?
2. How does the National Agency of Drug and Food Control Post Market create legal certainty to protect consumers?

### **Research Method**

This research will use a normative juridical method which is carried out with a statutory approach and with an analytical approach. The specifications used are conceptual descriptive. The data to be used is secondary data including laws and regulations and literature relevant to Home Industry Food and National Agency of Drug and Food Control Post Market. Data will be processed in a comprehensive, all inclusive, and systematic manner with qualitative normative analysis.(Michael 2022)

### **Results and Discussion**

#### **Home Industry Food Legal Certainty To Protect Consumers**

As a step in fulfilling the government's responsibility to protect the public from the dangers of food and beverage products, Home Industry Food is implemented as an effort to ensure that food and beverage products for home industries that have passed the test are safe and suitable for distribution and consumption by the public. The implementation of the Home Industry Food was marked by the issuance of a certificate of distribution permit for home-produced food and beverage products, in National Agency of Drug and Food Control Regulation No. 22 of 2018 in article 1 paragraph 7 it is explained that distribution permits are approval of Processed Food Assessment results issued by the Head of the Agency in the framework of Processed Food distribution.

From this definition, it can be seen that a distribution permit for a processed food and beverage product will be issued if the food and beverage product has been approved after an assessment has been carried out. The assessment carried out as a fulfillment of obtaining the distribution permit will be carried out by National Agency of Drug and Food Control with the criteria set out in the regulation of the head of the drug and food supervisory agency of the Republic of Indonesia Number hk.03.1.23.04.12.2207 of 2012 concerning procedures for inspecting home industry food production facilities. The point or scope of assessment in the examination includes:

- a) Location and Production Environment;
- b) Buildings and Facilities ;
- c) Production Equipment;
- d) Water Supply or Water Supply Facility;
- e) Hygiene and Sanitation Facilities and Activities;
- f) Employee Health and Hygiene;
- g) Maintenance and Sanitary Hygiene Program;
- h) Storage;
- i) Process Control;

- j) Food Labeling;
- k) Supervision by the person in charge;
- l) Product Withdrawals;
- m) Recording and Documentation;
- n) Employee training;

The assessment of the inspection results will be based on the results of the inspection of the elements listed on the inspection form for home industry food production facilities by taking into account the number of discrepancies found. After passing the assessment process, a Household Industry Food Production Certificate is issued by the Regent/Mayor cq District/City Health Office if the Food Household Industry enters level I - II. The levels will be obtained from the results of the examination of several elements covering the scope previously mentioned.

In practice, Home Industry Food certificates are given to home-processed food and beverage products that have passed and gone through the evaluation stage by National Agency of Drug and Food Control. From practice, Home Industry Food can sort home-processed food and beverage products that will be distributed and can evaluate products that do not fulfill them to improve the quality and infrastructure so that they comply with the standards that have been imposed. Products that have been certified Home Industry Food and are widely distributed can also have their distribution permit or Home Industry Food revoked if it is proven to be detrimental to the general public who fulfill the violations mentioned in National Agency of Drug and Food Control Regulation No. 22 of 2018 article 5 paragraphs 1 and 2, states:

- 1) Home Industry Food Production Certificate can be revoked by the Regent/Mayor cq One-Stop Integrated Service Unit if it fulfills the following conditions:
  - a. the owner and/or person in charge of the company commits a violation of regulations in the field of food;
  - b. Food Production of Food Household Industry is proven to be the cause of Extraordinary Events of food poisoning;
  - c. Food Household Industry food is proven to contain hazardous materials and/or medicinal chemicals;
  - d. Food Household Industry Production Food includes claims other than its designation as Food Household Industry Production Food;
  - e. the location of the Food Household Industry Production Food production facility is not in accordance with the location listed in the registration document when obtaining the Home Industry Food Production Certificate and/or the documents registered when the Home Industry Food Production Certificate is granted; and/or
  - f. Processed Food facilities and/or products produced are proven not in accordance with the Home Industry Food Production Certificate that has been given.
- 2) Revocation of Home Industry Food Production Certificate as referred to in paragraph (1) can also be carried out based on recommendations issued by the Food and Drug Supervisory Agency.

From the description of the revocation of the Home Industry Food, it can be seen that the Home Industry Food will be revoked and the distribution permit for its products will be terminated as an action against violations that harm consumers and so that consumer losses do not spread. Indirectly, Home Industry Food can protect the public from products that are harmful to health and guarantee that food and beverage products that are Home Industry Food certified are safe for distribution and consumption by the wider community.(Alaniz-Salinas and Castillo-Montes 2020)

### **Post Market National Agency of Drug and Food Control Creates Legal Certainty to Protect Consumers**

The large number of home-processed food and beverage products that have been circulating in the community and have been certified Home Industry Food does not rule out the possibility that in circulation and in the field there are products that are harmful to the community, either unintentionally or intentionally. As quoted from KOMPAS.COM which stated that the National Agency of Drug and Food Control recently found coffee containing the chemicals paracetamol and sildenafil. Head of National Agency of Drug and Food Control Penny K Lukito said the use of food ingredients containing medicinal chemicals can cause heart and liver problems, even death. If there is no action or control carried out by the authorities as an effort to protect the public who become buyers and consumers, it will be very dangerous. In Law no. 8 of 1999 concerning Consumer Protection clearly states consumer rights include:

1. the right to comfort, security and safety in consuming goods and/or services;
2. the right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and conditions as well as promised guarantees;
3. the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services;
4. the right to have their opinions and complaints heard about the goods and/or services used;
5. the right to obtain proper advocacy, protection, and efforts to resolve consumer protection disputes;
6. the right to obtain consumer guidance and education;
7. the right to be treated or served properly and honestly and not discriminatory;
8. the right to obtain compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as they should be;
9. the rights regulated in the provisions of other laws and regulations.

As an effort by the government to fulfill these consumer rights, the government through National Agency of Drug and Food Control carries out inspections of home-processed food and beverage products after distribution or are called post markets. Described in National Agency of Drug and Food Control Regulation No. 9 of 2020 the post market is an activity to monitor drug and food products while they are in circulation. The Regulation also states that one of the functions and duties of National Agency of Drug and Food Control is to carry out Supervision before Circulation and Supervision During Circulation, with this it can be said that National Agency of Drug and Food Control has the

responsibility to protect the public from the risk of consuming dangerous food and beverage products on the market.

As an effort to protect the public against home-processed products, in practice National Agency of Drug and Food Control will check the packaging, check the expiration date, check product safety labels, and conduct samples on products that are indicated to be unsafe and could endanger the public. By carrying out regular and direct supervision and checking, it is hoped that it will be able to protect the public from the dangers of processed food and beverage products that have been widely circulated, and can guarantee that products that have been widely circulated are safe and healthy for public consumption. Not only on the implementation of supervision in National Agency of Drug and Food Control Regulation No. 9 of 2020 also states that National Agency of Drug and Food Control has the functions and duties to carry out enforcement against violations of statutory provisions in the field of drug and food control, and National Agency of Drug and Food Control emphasizes its functions and authorities for administrative sanctions in accordance with statutory provisions. ('Legal Protection to Consumers of Fresh Food of Imported Plant Origin | Technium Social Sciences Journal' [n.d.]

With its functions and duties based on National Agency of Drug and Food Control Regulation No. 9 of 2020, National Agency of Drug and Food Control has the authority to take action to impose sanctions as in National Agency of Drug and Food Control Regulation No. 9 of 2020, sanctions can be in the form of withdrawing products from the market, canceling distribution permits as in National Agency of Drug and Food Control Regulation No. 22 of 2018 to process criminal law against product manufacturers that can harm society. Not only there, in an effort to protect and guarantee the health and welfare of the community, the community as well as the fulfillment of consumer rights are protected by Law no. 8 of 1999 concerning Consumer Protection, with legal guarantees that if there are activities that reduce or take away consumer rights, sanctions will be given according to Law No. 8 of 1999 article 45, includes:

- (1) Every consumer who is harmed can sue business actors through an institution tasked with resolving disputes between consumers and business actors or through a court within the general court environment.
- (2) Settlement of consumer disputes can be reached through court or out of court based on the voluntary choice of the parties to the dispute.
- (3) Settlement of disputes outside the court as referred to in paragraph (2) does not eliminate criminal responsibility as stipulated in the law.
- (4) If an out-of-court consumer dispute settlement effort has been chosen, a lawsuit through a court can only be pursued if the said attempt is declared unsuccessful by one of the parties or by the parties to the dispute.

With that in mind, if producer practices occur that can harm consumers physically or materially, consumers can file disputes in an effort to get legal protection, claim losses, and get justice.

## Conclusion

With the implementation of the Home Industry Food certification system based on National Agency of Drug and Food Control Regulation No. 22 of 2018 for granting permits for processed food and beverage products for home industries, in supervising products that will be widely circulated to ensure and protect the public from the dangers of processed food and beverage products that are harmful. The public will be guaranteed safety in consuming products that are widely circulated in the market because they have gone through the stages of testing until the distribution permit is issued as a guarantee that the product is safe for distribution.

Having given a distribution permit to products does not make National Agency of Drug and Food Control hands off in carrying out its duties and functions. Post market supervision conducted by National Agency of Drug and Food Control based on National Agency of Drug and Food Control National Agency of Drug and Food Control No. 9 of 2020 implemented as a responsibility in fulfilling the rights of society. With post-market supervision measures, in practice, it can fulfill consumer rights as stipulated in Law No. 8 of 1999, because in its purpose, Post-Market supervision is carried out as follow-up supervision after the distribution permit is given for a product, as well as taking legal action if a product is found that endangers society. in order to protect and fulfill the rights of society as consumers.

## References

- Alaniz-Salinas, Natalia, and Mauricio Castillo-Montes. 2020. 'Evaluation of the Front-of-Package Warning Labels of the Chilean Food Law by Adults Responsible for Schoolchildren in the Districts of La Serena and Coquimbo', *Revista Chilena de Nutricion*, 47.5 <<https://doi.org/10.4067/S0717-75182020000500738>>
- Khasanah, Mufidatul, and Adi Suliantoro. 2020. 'PERLINDUNGAN KONSUMEN TERHADAP PRODUK KOSMETIK YANG TIDAK TERDAFTAR IZIN EDARNYA DI BPOM SEMARANG', *Jurnal Ilmiah Dinamika Hukum*, 21.2 (Universitas Stikubank): 29-35 <<https://doi.org/10.35315/dh.v25i2.8329>>
- 'Legal Protection to Consumers of Fresh Food of Imported Plant Origin | Technium Social Sciences Journal'. [n.d.]. <<https://techniumscience.com/index.php/socialsciences/-article/view/6414>> [accessed 31 December 2022]
- Mangesti, Yovita Arie. 2020. 'LAW OF RESEARCH DEVELOPMENT AND UTILIZATION OF FOOD RESOURCES IN THE FRAMEWORK OF STRENGTHENING FOOD SECURITY', *Jurnal Hukum Magnum Opus* <<https://doi.org/10.30996/jhmo.v3i2.3420>>
- Michael, Tomy. 2022. 'LAW AND REDUCING THE USE OF PLASTIC BAGS IN THE CITY OF SURABAYA', *Opinion "Green Environment Related To Reuse, Recycle And Reduce From Waste"*, 1.1: 46-48 <<https://doi.org/10.32487/jst.v7i1.1131>>
- Poernomo, Hj. Sri Lestari. 2020. 'ANALISIS PERLINDUNGAN HUKUM KONSUMEN PRODUK MAKANAN KEMASAN YANG BEREDAR DI KOTA MAKASSAR', *Gorontalo Law Review*, 3.1 (Universitas Gorontalo): 40 <<https://doi.org/10.32662/golre-v.v3i1.911>>
- Pratiwi, Ni Kadek Diah Sri, and Made Nurmawati. 2019. 'PERLINDUNGAN HUKUM BAGI KONSUMEN TERHADAP PRODUK KOSMETIK IMPOR TANPA IZIN EDAR YANG DIJUAL SECARA ONLINE?', *Kertha Semaya: Journal Ilmu Hukum*, 7.5 (Universitas Udayana): 1 <<https://doi.org/10.24843/km.2019.v07.i05.p03>>



Timmer, Jaap. 2014. 'At the Edges of States: Dynamics of State Formation in the Indonesian Borderlands , by Michael Eilenberg ', *Asian Ethnicity* <<https://doi.org/10.1080/1463-1369.2013.806642>>

Widjiastuti, Agustin, Made Warka, Slamet Suhartono, and Hufron Hufron. 2020. 'Legal Protection of Patients Participants of Health Social Guarantee in Human Rights Perspective', *International Journal of Multicultural and Multireligious Understanding*, 7.10 <<https://doi.org/10.18415/ijmmu.v7i10.2135>>