

The Supervision of Government on Implementation of Import of Processed Food Products in Effort of Legal Protection for Consumers

Muhammad Sood,¹ Sudarsono,² Sihabudin,³ Hirsanuddin,⁴

Abstract

Increasing of imports product as if would be favorable the domestic consumers because many alternative products that can be obtained by the consumer, but less recognized that not all the imported products have met quality standard of safety and health. The issues in the research namely: Why the rules on the supervision of imported food products are not effective, so that the processed food imports that do not meet health and safety standards can enter and circulate in Indonesia; what efforts are undertaken by the Government (BPOM) to overcome the ccirculation of imported processed food products that do not meet health and safety standards in order to protect consumers.

The result of research shows that, the factors that influence are not effective the regulations on supervision of import food products, namely: the policy of importation is still overlap; the limited staff/field officers; ppattern of supervision is not thorough; there are many traffic lanes of unofficial goods in the border region; weak role of the National Certification Body (BSN); the increasing needs of consumers; regardless of the quality of product; g) low pproducer responsibility, weak legal awareness of consumers to report problematic food products; and weak law enforcement. Government efforts (BPOM) to overcome the circulation of imported processed food products that do not meet the safety and healt standards for protection consumers is through law enforcement include: preventive measures, such as import regulations, product control, and development of (businesses, consumers, and field supervisors); repressive measures such as: application of administrative sanctions, civil sanctions (compensation), and criminal sanction).

Keywords: Supervision, import iimplementation, processed food, legal protection.

1. Introduction

International trade is a business activity lately progressed very rapidly. This is also in line with the increasingly developing the circulation flow of goods, services and capital between countries, either through import-export relations, investment, trade in services, licensing and franchising, intellectual property rights and technology transfer. This activity has been going on both regional and global in scope, known as free trade.

Participation of Indonesia as a member of the world trade organization through its ratification of Law Number 7 of 1994 on Ratification of the Agreement Establishing the World Trade, on 2 November 1994 (L N. RI No. 1994. 57, TLN. RI. 3564), it brings the eexternal and internal consequences for Indonesia. The External consequences, that Indonesia must comply with all the agreements in the WTO, while the internal consequences, Indonesia should amend national legislation in accordance with the legal principles agreed in the GATT-WTO provisions.

Globalization in the trade sector in addition to providing a positive impact in facilitating import-export activities, but on the other hand it turns free trade brings huge problems for producers and domestic consumers. For the domestic industry, the influx of imported products pose severe competition, due to the ability of competing domestic products in terms of quality and quantity is very limited. Another problem that as if by a surge in imports, including imports of processing food would be favorable domestic consumers because many alternative products that can be obtained by the consumer, but less recognized that not all processing food products imported into Indonesia and outstanding meet quality and health standard for consumers, so too there are many imported processing food products circulating in the community have not been registered and received marketing authorization from the Food and Drug Supervisory Body (BPOM). A variety of food and beverage products illegally entering and circulating in the market, other than through modern shops (retail) such as hypermarkets, supermarkets and mini markets, but also through traditional markets.

¹ Doctoral Students of Law Science, Faculty of Law of Brawijaya University

² Promoter, a Professor on Study Program of Doctorate Law Science, Faculty of Law of Brawijaya University

³ Co-Promoters, a Lecturer on Study Program of Doctorate Law Science, Faculty of Law of Brawijaya University

⁴ Co-Promoters, a Lecturer on Study Program of Doctorate Law Science, Faculty of Law of Brawijaya University

One example of the case put forward by the former head of BPOM, Husnia Thamrin,⁵ which states that "hundreds of imported food, drink and cosmetics products seized because of not having a circulation license, this is due to lack of government supervision". A similar trend is also explained by the Chairman of the National Consumer Protection Body (BPKN), Tini Hadad, which states that:

"Supervision on the quality of products that circulating in the domestic market is still very minimal. It is evident from the many food and drink products that do not meet health and safety standards in the market. One cause is a lack of controlling of government institution; therefore the state should play an important role in empowering consumers, and is responsible for the circulation of goods in the market".⁶

Meanwhile, the Secretary General of the Association of Food and Beverage whole of Indonesia (GAPMMI) Franky Sibarani, stating:

"The realization of the import of food and beverages to March 2011 (Quarter I) reached 44.88 million U.S. dollars, an increase of 6 percent compared to the same period in 2010 amounted to 42.35 million U.S. dollars. The speed of growth of food and beverage imports to Indonesia are already concerned about the domestic industry, the threat comes not only from China, but also from countries in ASEAN. In addition, increased oversight of national food and beverage industry is still waiting for the firmness of government in enacting mandatory labeling in Indonesian language and licence from BPOM that blends with the packaging. Supposedly the application of this provision to protect consumers and the national industry".⁷

Several efforts to control the entry and circulation of imported processing food products in order to protect consumers, the government has issued various laws in the form of legislation, namely: Law Number 10 Year 1994 concerning customs, (L N.RI 1995, No. 75, TLN.RI. No. 3612), Law Number 17 Year 2006 on the Amendment of the Law Number 10 Year 1995 on Customs (L N.RI Year 2006 No. 93, TLN.RI. No. 4661); Law Number 8 Year 1999 on Consumer Protection (LN.RI Year 1999 No. 54, TLN.RI. No. 3821); Law Number 36 Year 2009 on Health (LN.RI Year 2009 No.144, TLN.RI No. 5063), Law No. 18 of 2012 on Food (LN. RI. Years 2012 No. 227, TLN.No.5360), and various other regulations in order to protect consumers.

Although various laws and regulations issued by the government in an effort to protect consumers, but the implementation has not been able to do by the government, it is evident there are many imported food and beverage products that do not comply with safety and health quality standards on the market are up to the consumer. Therefore, to overcome this problem required the cooperation of all parties, especially the Food and Drug Supervisory Body (BPOM) and other agencies, to conduct surveillance of imported processing food products in the context of consumer protection.

Based on the explanation above, the issued can be formulated as follows: 1) Why Rules on surveillance of imported processed food products are not effective, so the import processed food that do not meet the quality standards of health and safety can enter and circulate in Indonesia; 2) What will be done by the government in this regard BPOM to overcome circulation of imported processed food product's that do not meet the quality standards of safety and health in the effort of legal protection for the consumers.

2. Methods

This research is empirical legal research or called the juridical-sociological research is a researcher who analyze the implementation of law or workings the legal norms in public life.⁸ The approach used in this research include: qualitative approach and legislation approach (statute approach), this study was conducted in Jakarta and in Mataram.

The source data used include: Primary data is data that obtained based on the interview with the respondents and informants in the field, and the secondary data is data obtained from the literature study that analyze a several reference both in the legal norms in legislation and literature books relating to the supervision of Import, and consumer protection. The collected field data, and then grouped and analyzed using qualitative analysis, meaning that the data collected be described-it thoroughly and systematically, then checked again its validity. Furthermore verified and concluded, using deductive reasoning.

⁵ Hunia Thamrin, BPOM investigates the Food and Beverage Products and illegal Cosmetics Import, indosiar.com, Jakarta, June 4, 2009

⁶ Tini Hadad, There are many products have no SNI redaksi@koran-jakarta.com, April 20, 2012

⁷ *Ibid.*

⁸ Mukti Fajar ND, and Yuianto Achmad, Dualism of Normative and Empirical Legal Research, ed 1. (Yogyakarta: Pustaka Pelajar, 2010), p. 51

3. Results and Discussion

3.1 Cause Factors are not effective the Regulation on import supervision of processed food Products in Indonesia

Based on the results of research, that the factors that affect the implementation of ineffective oversight of imported processed food products, so the import of processed food products that do not meet the quality standards of health may enter in Indonesia, both internal and external constraints, include the following:

- a. The policy of imported processed food products still refers to a variety of different regulations between the regulation issued by BPOM and Ministry of Trade regulations, especially regarding the import License. The difference of regulation cause overlapping policies between the BPOM and the other Institutions. Overlapping policies and convoluted bureaucracy would require a huge cost, so it inhibits companies' importer or distributor of processing food products in conducting imports activity to Indonesia. This raises the influence of unfavorable in trade traffic, because it will result to an increase in illegal imports, or occurrence smuggling processing food products that carried by an individual or a rogue importers through unofficial ports in border area into Indonesian territory.

The problem if it is related to the Effectiveness theory by Robert B. Siedman,⁹ which refers to the standard of ROCCIPI (Role, Opportunity, Capacity, Communication, Interest, Process, Ideology) that the ineffective rule on control of imports was due to the regulation itself which sanctions less assertive, do not regulate in detail about the coordination, and the limits of performance of duties by each institution; and implementation overlap between BPOM, policy and other institutions, thus providing opportunities both stakeholders (role occupant) and executive officer (implementing agency) to ignore or violate these rules. In addition to the law, it can also be caused by non-legal factors, namely the lack of coordination and communication from the regulatory agencies, or in the process (process) rulemaking does not involve the stakeholders, or because of the sectorial interest of each institution.

- b. Limitations of BPOM staff and field officers of the relevant institutions both at the central and regional levels.

Limitations officers in conducting investigations and verification of imported products greatly affect the low capacity of field staff in monitoring (pre-market and post-market) on the entry and circulation of imported products that do not meet the quality standards of health in Indonesia. These limitations are recognized by Mrs. Tiodora Sirait that stating that,¹⁰ "the availability of supervisory personnel is lacking, both in the BPOM (center) and *Balai POM/Balai Besar POM* in each province, especially at this time many field officers who have retired and difficult to find a replacement. The lack of field workers is certainly not in accordance with the intensity of heavy duty and is increasing, because the area of Indonesia is very broad and the many small ports and goods traffic on the unofficial in border regions of Indonesia is the path of illegal entry of imported products, it will be difficult BPOM and related institution in conducting surveillance in the field. As a result of the lack of field staff both in the BPOM/*Balai Besar POM* and in other related institutions to support supervision conducted by BPOM, then the result of investigation in the field, it found many imported foods that do not fulfill the quality standards of safety and health.

- c. The system of control by BPOM and related institutions are not done thoroughly, but by taking a random sample of just a few among the products that enter and circulate in the market.

According to Mrs. Nining Restu K,¹¹ "random supervision, meaning that not all items indicated but only samples taken in the course of the test, for example if there is a label food products that do not qualify or damaged, or goods already expired, or the goods are still using the foreign language. This activity is conducted periodically by the team involves both central and local levels. This pattern contains weaknesses such inspection, especially for food products that are not sampled yet contain any harmful substances or has expired, then it will be risky for the buyer or consumer.

⁹ Ann Seidman, Robert B. Seidman, and Nalin Abeyesekere, *Designing of Legislative drafting In The Democratic People Change, A Guide for Designing Law, Basic Series of Economic Law, Edition I, ELIPS, USF, July 2001, P. 17.*

¹⁰ Results of Interviews with Mrs. Tiodora Sirait, Head of Sub Section of Legal Counseling of Food and Drugs Supervision Body (BPOM) Jakarta, June 25, 2013

¹¹ Results of Interviews with Mrs. Nining Restu K, Head of Sub Section of Complaints Service of Food and Drugs Supervision Body (BPOM) Jakarta, Tanggal 25 Juni 2013

Furthermore, according to Irna nurhayati,¹² “random investigation and regularly cause there are only imported processing food products that do not fulfill health standards escaped from the BPOM control. Monitoring system periodically will certainly affect the broad scope of processing food products are monitored, it is likely to impact the presence of illegal products and harmful products spread on the market at the time no conducted supervision, or have not had a turn supervision by BPOM. Such supervision models are often used by rogue employers to take a chance to enter the food product that does not meet the quality standards of health into Indonesian territory.

- d. The extent of Indonesian waters area, and there are many traffic goods that enter through unofficial ports, especially in the border region of Indonesia with the neighboring country.

Indonesia is an archipelago with thousands of islands, large and small, and is an area that is frequently visited by many ships from various countries; either human or cargo transport ship, inter-island crossing vessels, merchant ships, or fishing vessels, and also still many small ports and traffic of people and goods in the border areas with neighboring countries. This condition is often use by smuggler of food products to Indonesia.

According to Fredy Hasan Basri,¹³ Indonesia as an archipelago, many unofficial port called "harbor rats" that difficult to be controlled by Customs officials. Many small boats crossing the border areas are sometimes operated midnight. Although there are navy and marine polices, who netted a third at most, they also play cat and mouse, as in *Sebatik* and *Tarakan* area, East Kalimantan. Field supervision also involves various agencies such as BPOM, the Ministry of Industry, Ministry of Agriculture, Ministry of Energy and Mineral Resources; police and military, even involving Intelligence Agency carried out from 2013, but there are still imported products that escape enter and circulated in the market

- e. The weak relationship of cooperation among government institution that involved in preventing the entry and circulation of imported processing food products that do not meet the standards in Indonesia.

Commitment of cooperation between BPOM and various institutions already agreed through the MoU (Memorandum of Understanding) such as: the Directorate General of Foreign Trade, Directorate General of Customs and Excise, Ministry of Health, Ministry of Agriculture and Ministry of Maritime Affairs and Fisheries, as well as the Police and the Prosecutor. According to Mrs. Nining K, such cooperation is still difficult to implement especially related to the coordination and supervision arrangements timetable, so that surveillance activities still tend to be done separately by each agency. Weak relationship of cooperation and there was not good coordination between the BPOM with various government institution will have an impact on the lack of supervision in preventing the entry and circulation of imported processing food products that do not meet the quality standards of health and safety of consumers in Indonesia.

- f. Lack of Role the National Certification Agency (BSN) in the application of SNI.

Lack BSN role in implementing standardization and certification on imported processing food products is due to the application of SNI for processing food generally is voluntary, and has not been a requirement or necessity (mandatory), so that the foreign producers prefer not to standardize or Certify generated processing food products. Another consideration for not standardizing or certifying products that produced because of high cost of process standardization or certification, or because no SNI also any products that produced are sold in the market because consumers still require processing food products that meet the standards and be certified as his main choice, provided that such products can be purchased cheap price.

Lack of BSN role recognized by Heru Yuliandri Kusumaputra stating that, "the BSN cannot directly supervise the entry and circulation of processing food products. Oversight authority is at Minister of Trade, in particular for processing food and medicine to the BPOM, and the about Health from Minister of Health. The leaders BSN already tried fighting for greater authority but to date has not been approved. When we tried to prepare a draft law on controlling the standardization of product, even opposed by the Ministry of Trade. However in practice BSN sometimes included in operations in the field, that is, if we were invited because BSN has no authority to conduct surveillance."¹⁴

¹² Irna nurhayati , The Effectiveness Supervision of Food and Drug Supervisory Body (BPOM) on Distribution of Import Processed Food Products In Realizing Consumer Protection, Report of Research Result, Faculty of Law, Gadjah Mada University, 2008 ,

¹³ Results of Interviews with Mr. Fredy Hasan Basri, Head of Section of, Directorate of Supply of Goods and Services, the Directorate General of Standardization and Consumer Protection, Ministry Trade RI, June 27, 2013

¹⁴ Results of interviews with Mr. Heru Kusumaputra Yuliandri, Legal Staff, Bureau of Legal Affairs, Organization and Public Relations of the National Standardization Agency (BSN) of the Republic of Indonesia, dated June 28, 2013

As a result of the lack of involvement of the BSN, and have not required the standardization and certification of processing food products into a liability (Compulsory SNI), the more processing food products imported into and sold in Indonesia that has no label standardization/quality certification or standardization /certification environment accordance with ISO standards (Indonesian National Standard). Application of standardization by BSN on imports of processing food is one way to protect the people of Indonesia of imported processing food products that do not meet quality standards for the security and health of Indonesian consumers.

g. The increasing needs of Indonesian consumers toward processing food products.

Demand of food and beverages products have increased, so that in a market share of imported food products also increased rising. This was stated by Franky Sibarani, Secretary-General of the Food and Beverage Association of Indonesia (GAPMMI) that, as a result of the increased demand for food import market share rose to 8 %". The market share of imported food and beverage products in 2011 reached 6 %, equivalent to U.S. \$ 4 billion of the total turnover of national food and beverage industry. For this year, the market of imported food products could reach U.S. \$ 7.3 billion because of weak oversight of imported products in port.¹⁵

There is an increasing consumer demand for processing food products not accompanied by efforts to maintain the safety and quality standards for consumer health. Even the opportunity misused by manufacturers and importers naughty to include food that does not meet the National Standard (SNI) illegally to Indonesia. This is evident from a number of products imported examined Skewers found about 9.08 % - 10.23 % of food that do not qualify. The food product is generally to use of food additives is prohibited, there are even contaminated chemical or microbial or have expired. A number of food products are inspected recorded that do not qualify for food is around 7.82% - 8.75 % . The use of food additives in snack food is at a level that is quite worrying because the number of the examined approximately 80 % did not meet the requirements.¹⁶

h. There is still a lack of knowledge, skill, and responsibility of the producers, importer and distributor on quality and safety of processing food.

Lack of knowledge of producers, importers and distributors are only concerned mere profits without regard to the safety and quality of healthcare products distributed, it is characterized by means of discovery and distribution of food products that do not meet the requirements of the application of Good Agricultural Practice (GAP) and environmentally sound production technology is not yet fully by primary producers, the implementation of Good Handling practice (GHP) and Good Manufacturing practice (GMP) and Hazard Analysis Critical Control Point (HACCP).¹⁷

i. The lack consumer concerns about the quality and safety of processing food consumed.

The low consumer awareness due to limited knowledge and low abilities of purchasing, so they still buy food products with a low level of quality and safety as long as it's cheap. In addition, law awareness of consumers is still low due to lack of socialization on the standardization of quality processing products safe for consumption. This effect is also to weak public awareness, especially in providing information or making a complaint about products that do not meet health standards to the competent authorities, in this case Food and Drug Supervision Body (BPOM) and other relevant Institutions.¹⁸

j. Effect of Regional Autonomy

With the convening of regional autonomy, the supervision of circulation of processing food products are sold in various markets, shops, retails, and kiosks delegated to the relevant instance in the regency, the problem of regency officers who have received training either in the Directorate of Supply of Goods and Services, the Directorate of Standardization and Consumer protection Ministry of Trade, or in BPOM, sometimes transferred to other institutions , so that eventually no supervision was effective.

¹⁵ Ministry of Industry, Industry News: Market Share of Import Food Up 8 %. Article, <http://www.go.id>, December 27, 2013

¹⁶ Budi Cahyono, Staff of Bureau of Public Relations, Hearings, and Leader Administration; *Food Safety and Implementation of Quality System of Food Industry in the Free Trade Era*, Articles, Office of the State Minister of National Development Planning, National Development Planning Body, 2011.

¹⁷ Results of the interview with Mr. Michael Manurung, Section Head of the Food Products Business Services, Directorate of Supply of Goods and Services, the Directorate General of Standardization and Consumer Protection Ministry of Trade, dated June 27, 2013

¹⁸ Results of interviews with Mrs. Mira Megawati, Section Head of Supervision of Chief Product and Processed Food, Directorate of Supply of Goods and Services, the Directorate General of Standardization and Consumer Protection, Ministry of Trade, dated June 27, 2013

The field supervisory personnel who served in the Department of Industry and Trade of the Province and Regency / City or on *Balai / Balai Besar* POM is still less common, they must have expertise in the fields of supervision goods . The field supervisors who have obtained a certificate of training in Jakarta appointed as Trustees of Goods and Services (PPBJ), or a civil servant Consumer Protection (PPNSPK), or Civil Servant Officer (PPPNS) in charge of monitoring and problem - the screening of goods circulating in the community. However , with the implementation of regional autonomy many of them are already trained to be moved from the Department of Industry and Trade to other agencies , there is even a new officers moved to other institution after training in Jakarta, so the task of monitoring of goods in the market is not running properly. The condition is one of the problems in the regency as a result of the system of regional autonomy that gives greater autonomy to regional leaders for employee mutated regions without considering the functions and tasks to be run, whether in accordance with the skill or expertise of the employees concerned.¹⁹

- k. Weak of law enforcement, meaning that the sanction is not maximal, as well as the support of the other institutions concerned mainly the Customs and law enforcement authorities are still very weak, thus simplifying the entry of illegally imported products through the border.

According to Mrs. Tiodora Sirait, actually BPOM has formed a PUSKO to monitor border areas, such as in Batam. The program is already running, but not maximized. During this time conducted by BPOM and related institutions are re-export of imported processing food products that do not meet the requirements to their origin country, or destroyed in Indonesia. As for legal sanctions against the perpetrators (manufacturers and importers) only administrative sanction imposed, a written warning, suspension of importation and distribution activities of products, destruction, or re-export, in the form of cancellation of the marketing authorization. Perpetrators are rarely criminalized, unless they get caught smuggling arms or enter and circulate without permission of processing food products in Indonesia.²⁰

The low penalty against imports of food smuggling is not a crime deterrent for the perpetrators. To criminal cases incorporate food products without permission on only the highest sanction of imprisonment is only 4 months and 15 days and a fine of 50 million subsidiary imprisonment for 1 month, whereas in Article 58 of Law Number 7 Year 1996 on Food, stated that “the maximum sentence of imprisonment 3 years and a fine of Rp. 360,000,000 for the packaging of food imports that enter without a label set by the government”. While the Government Regulation Number 28 Year 2004 on Safety, Quality and Nutrition, stated “processing food that goes into the Indonesian must obtain licence from BPOM, subject to administrative sanctions for violators, ranging from a written warning to a maximum fine of Rp. 50,000,000.

3.2 Government's efforts mainly BPOM to overcome circulation of Import Processed Food Product that do not meet the quality standards of safety and health in the context of legal protection for consumers

Government's efforts to overcome the problems circulation Processed Food in Indonesia for consumer protection, law enforcement is something that should be done by the government because the consumer has always been the weaker party should be protected from the tyranny of economic actors (producers) are just thinking about the profits of the mere. The Consumer protection should be done through law enforcement to prevent the circulation of import food products that are not registered in BPOM. This was done to anticipate of the circulation of illegal products that interfere with public health, thus providing a sense of security to the public in the using products that are needed. Therefore, the legal protection against consumer must be supported by good legal instruments, including legal substance (regulation), legal institution, and supported by an increase in public awareness.

The law enforcement can be done both preventive and repressive. The preventive law enforcement may form on the import regulation of processed food products; supervision of imports; and guidance to businesses (manufacturers, importers, distributors), consumers, and staff/field supervisors; whereas repressive law enforcement can take the form of administrative sanctions, civil sanctions and criminal sanctions.

3.2.1 Preventive Law Enforcement

- a. Regulation (Legal Substance) relating to the supervision of import, and consumer protection

The legal substance is a legal instrument in the form of legislation as the basis of law enforcement by officials and law enforcement officers. Various legal instruments form the legislation that became the legal basis used as reference for the supervision of the entry and circulation of import processed food in Indonesia include: Acts

¹⁹ Results of Interviews with Mr. Fredy Hasan Basri, Head of Section of, Directorate of Supply of Goods and Services, the Directorate General of Standardization and Consumer Protection, Ministry Trade RI, June 27, 2013

²⁰ Results of Interviews with Mrs. Tiodora Sirait, Head of Sub Section of Legal Counseling of Food and Drugs Supervision Body (BPOM) Jakarta, June 25, 2013

Number 10 Year 1994 as amended by Law Number 17 Year 2006 on Customs, Acts Number 8 Year 1999 on Consumer Protection, Acts Number 36 Year 2009 on Health, Acts Number 18 of 2012 on Food, Regulation of the Minister of Trade Number 30/M-Dag/Per/5/2012 on the Import Horticultural products; Regulation of the Minister of Trade Number 24/M-Dag/Per/9/2011 on the Import and Export of Animals and Animal Products, for food products derived from animal products; and Regulation of the Minister of Marine and Fisheries of the Republic Number Per.17/Men/2010 on Control of Quality and Safety of Fishery In the entire region of the Republic of Indonesia, if the product is derived from the fishery. Similarly, because the processed food imports are part of a particular product then it should also refer Regulation of the Minister of Trade Number 83/M-Dag/Per/12/2012 on Specific Product Provisions.

The legislation is already adequate as a legal basis to supervise the entry and circulation of import processed food product in Indonesia. However, many regulations only is not enough to solve the problems of law, as was proven that many food and beverage products imported illegally or not in accordance with health quality standards of the consumer. This is because the application of regulations still conducted by sector and the legal instrument not regulate in detail the mechanism to prevent the circulation of illegal imported food products or do not meet the standards of safety and health of consumers. Therefore, in order that the rules can be run, it must also be supported by the role and ability of the legal structure or respectable institution in carrying out the duties, functions and authority to conduct law enforcement for providing the legal protection to the consumer.

b. Supervision of Importation and Distribution of Imported Processing Food

This surveillance is conducted to prevent the entry and circulation of imported processing foods that do not meet the requirements in Indonesia. This activity has done by government especially BPOM or other institution, it is beginning with the investigation by a team of surveyors in the origin country on imported goods, registration of imported products in BPOM to obtain a registration number ML, and the marketing authorization, import certificate request (SSP) from BPOM, inspection by the customs in destination port, and after a field inspection periodically thereafter processing food products marketed in various super-market, and minimarket

Based on the result of interviews with informants shows that during field inspections conducted by BPOM and related agencies, found processing food products that are not in accordance with the provisions such as:²¹

- 1) The product is illegal entry. Illegal product is the product that not registered in BPOM, does not have licence, and does not have a certificate of import (SKI), the product is entered through unofficial ports. The products are found in the border areas such as the entrance to Banda Aceh, Batam, Pekanbaru, Tarakan, Pontianak, and Makassar.
- 2) The packaging is damaged. Imported product packaging or label is damaged or does not meet, especially in the packaging, such as: milk, canned fruit, canned processing meat, and processing sardines, the products are found in Ambon, Manado, Kendari, Makassar, and Yogyakarta.
- 3) Products which have expired. Expired product is a product that is out of the use or usage, and unfit for consumption. This products are found sold in various markets, such as supermarkets, shops and traditional markets, such products also circulated illegally entered and especially to the areas that have access to transportation that are difficult to reach, such as in Jayapura, Ambon, Palangkaraya, Banjarmasin.
- 4) Contains hazardous substances. Based on laboratory analysis of samples of imported processing food by BPOM, some processing food products contain harmful substances such as formaldehyde, Rhoda mine B, saccharin, benzoic acid, methanol, yellow, and cyclamate, and preservatives and other harmful dyes, as contained in the milk packaging, biscuit in cans, candy, and refined sugar in containers.
- 5) Labeling requirements have not been met, still have not found a product that meets the labeling requirements, among others: have not labeled *halal*, there are still many who have not been using the Indonesian language, as well as the composition of the materials used are not included in the processing food products. These products are found in various stores, supermarkets, and also it found in importers storage.

The measures imposed on the importer and the product, begining from a written warning to producers and importers, re-export such products to the origin country, or destruction of products by burning witnessed by importers and distributors, termination and revocation of import Certificate. For products that enter illegally and perpetrators can be arrested (caught), processing through the courts, some of them which have been subject to criminal sanctions as described above.

c. Development of Entrepreneur, Consumer and Field Officer

²¹ Results of Interviews with Mrs. Tiodora Sirait, Head of Sub Section of Legal Counseling of Food and Drugs Supevision Body (BPOM) Jakarta, June 25, 2013

The development efforts by BPOM and other institution are aimed to create a healthy relationship between business and consumers, as well as to improve the quality of human resources in research and development in the field of consumer protection. The coaching efforts include:²²

- 1) To the entrepreneur , this event is an empowerment of entrepreneurs to be able to maintain and meet the quality standards of nutrition and health of processing food products produced and sold to the market, as well as safe and does not contain hazardous materials that can harm consumers . Coaching is also done by BPOM, both to the modern market managers such as hypermarkets, supermarkets and mini market and the traditional market traders.
- 2) To the consumers, the activities carried out by the Center for BPOM either through extension activities are directly to the public or through the mass media and internet facilities, It aim to aware the people to be able to choose a product that meets the quality standard of safety and health . In addition it encourages communities to provide information to BPOM or other relevant institutions over the circulation of processing food products that do not meet the requirements, for example the product illegally enter and circulate , the product or its packaging has been expired, damaged, or defective .
- 3) To the Field Supervisory Officers , the activities carried out by BPOM in collaboration with the Ministry of Trade and the Directorate of Customs and Excise, especially against a civil servant (investigators) as Employee investigators , extension workers in the form of Technical Guidance Supervisor Hazardous Materials , is short to provide skills training for officers in the field testing with test equipment quickly. Field supervisors who have obtained a certificate of training in Jakarta was appointed Officer Civil Servant (PPPNS Officer), both in Balai/Balai Besar POM and Trade Office, such as the Employee Investigator, Extension Officers, Trustees of Goods and Services (PPBJ), or a Civil servant Consumer Protection (PPNSPK), which is in charge of the supervision and inspection of imported goods circulating in the community.

3.2.2 Repressive Law Enforcement.

Repressive Law enforcement is a coercive action against the violators, either in the form of application of administrative sanctions, civil sanction or criminal sanctions. The law enforcement can be done through legal action out of court (non-litigation) or through the courts (non-litigation)

a. Application of Administrative Actions

Several attempts have been conducted by BPOM and other relevant institutions in solving the problems on import processed food, by imposing measures or administrative sanctions to the offenders include:²³

- 1) Starting from a written warning to manufacturers and importers so as not to repeat violate the law.
- 2) Suspension and / or cancellation of the Letter of Approval for registration of imported products
- 3) Temporary suspension of import and distribution of food products imported;
- 4) Re-export of processed food products that do not comply with the origin country, if the product is still within the customs territory.
- 5) Withdrawal of imported products that do not meet the terms of the product distribution
- 6) And destruction by burning, this is done mainly on imported products that have been circulating in the market.

The administrative sanctions referred to above can be applied based on the case consist of:²⁴

- 1) The revaluation results found things that do not meet the safety requirements;
- 2) Processed Food in circulation is not in accordance with the approved data at the time of registration or approval obtained the approval of changes to the data;

²² Hendri Siswandi , Head of Legal and Public Relations ULPK POM , *BPOM Open Socialization Extension In Interactive*, <http://www.pelita.or.id>, February 28, 2014.

²³ Results of Interviews with Mrs. Tiodora Sirait, Head of Sub Section of Legal Counseling of Food and Drugs Supevision Body (BPOM) Jakarta, June 25, 2013

²⁴ See Article 39 section (2) Regulation of Food and Drugs Supevision Body Number 42 Year 2013 on Amandement of Regulation Head of Food and Drugs Supevision Body Number HK.03.1.5.12.11.09955 Year 2011 on Registration of Processed food.

- 3) The results of the investigation and / or testing of Processed Food in circulation does not meet the criteria of raw materials, food additives, other materials, and/or do not include claims that have not been stipulated in the legislation
- 4) The Processed Food that advertised, violate the role of laws and regulations;
- 5) The decision of court who have legally enforceable related to Processed Food;
- 6) The Company violated in the production and / or distribution of Food;
- 7) Importer or Distributor as Registration Approval Letter holder had not received the designation from the origin factories in overseas;
- 8) The Food industry business license to manufacture, Importers license and/or Distributor licenses revoked;
- 9) Location Importer is not as stated in the Letter of Registration Approval or approval of changes to the data;

b. Application of Civil Sanction

Civil sanction is a sanction or actions that given to every person who conducted an illegal action in the form of the obligation to pay compensation to those who suffered losses. In relation to the import violation of that injure the consumer, the sanctions have not been applied because until now researchers conduct research activities, both in BPOM or *Balai* POM of Mataram no consumers who feel lossed to file lawsuit of complaints to BPOM or Consumer Disputes Resolution Board or to district court. This is due to the ignorance of the public about their rights to file a lawsuit and get a legal advocacy.

Some consumer complaints that represented by the Consumers Non Governmental Organization (LKSM) to BPOM about the losses that influenced by the consumer against the manufacturer, importer or distributor of import processed food products that do not meet the requirements, such as was done by the Indonesian Consumers Foundation (YLKI) , or Foundation Consumer Protection of West Nusa Tenggara (YPK-NTB). Any claim that, to businesses that violated, there are none of them imposed civil sanction, but is still limited to the application of administrative sanctions as described above. The application of civil sanctions should be imposed on businesses that injure the consumers, because as a result of entry and circulation of import processed foods that do not meet the requirements, not only harm consumers, but also materially detrimental to the country .

c. Application of Criminal Actions or Sanctions

Criminal law is generally applied when other legal instruments are no longer powerless to protect consumers (*ultimum remedium*). But with the release of the Consumer Acts has started a new paradigm that the criminal law can be used together with the other legal instrument.²⁵

Several cases of violation of imports of processed food products in various regions in Indonesia, since 2010 to 2013, most of the imported products enter and circulate illegally that the perpetrators were arrested (caught) , there are currently in the process through the courts , some which have been imposed the criminal sanctions as follows:²⁶

- 1) In 2010, BBPOM Pekanbaru (Riau) has been run in about 13 cases of illegal imports to trial, a total of six cases have been decided in court, but that the its sanction is a relatively light, probation for 2 (two) months, and a fine maximum of Rp. 2.5 million
- 2) In 2011, the illegal food products found in Jakarta, Semarang , Surabaya , Medan , Makassar, Pontianak as many as 1,133 items or 82,886 packaged with the economic value of Rp.1,726 billion. 99.98 % is imported food products, and 0.02 % of domestic food products. The findings were classified into 23 case, that nowadays is in litigation process
- 3) In 2012, BPOM find 451 cases of violations, 134 cases *pro-Justitia*, and 17 cases of them had received the court verdict, the verdict is the highest 3 month imprisonment and a fine of Rp. 2,000,000; and 317 cases followed up by administrative sanctions.
- 4) In the year 2013 BPOM find 18,507 items in Jakarta, Makasar and Serang were classified into 18 cases, the cases are currently being processed by law (*pro Justitia*)

²⁵ Yusuf Shofie in Susanti Adi Nugroho, *Op.cit.*, p.133

²⁶ Data of BPOM RI Year 2013

4. Conclusions

In accordance with the explanation above, it can be summarized as follows :

4.1 Cause Factors are not Effective the Regulation on Import Supervision of Processed Food Products in Indonesia

- a. The policy import of processed food products still refers to a variety of different technical regulations between regulations of BPOM and the regulation issued by other related institutions, which causes overlapping policies to control imports.
- b. Limitations POM staff and field officers of the relevant agencies both at the central and regional levels. It is influenced on the low capacity of field staff in monitoring both pre-market and post-market supervision.
- c. The pattern of control by the BPOM and related institutions are not done thoroughly, but at random. Monitoring patterns as random checks contain flaws, especially for food products that are not sampled but turned out to contain hazardous substances or has expired, it will be risky for the buyer or consumer.
- d. The extent of Indonesian region, and there are many goods traffic that goes through the port unofficial especially in the border region with the neighboring country. This condition is often used by the smugglers to smuggle processed food products into Indonesia, such as: in Sebatik, Tarakan, Pontianak, Batam, Pekanbaru and Aceh.
- e. The weak relationship of cooperation among government agencies involved in preventing the entry and circulation of imported processed food products that do not meet the standards in Indonesia. The cooperation is still difficult to implement, especially in relation to the coordination and monitoring of time scheduling. Surveillance activities still tend to be done separately by each institution.
- f. Lack of a role of the National Certification Agency (BSN) in Indonesian National Standard (SNI) application, because the application of SNI for processed food generally is voluntary, has not been a requirement or necessity (mandatory), so that the foreign producers prefer not to standardize or certify the resulting processed food products because of high process standardization or certification.
- g. The increasing needs of Indonesian consumers toward processed food products. Demand of food products and beverages have increased, resulting in a market share of imported food products also increased rising land. There is an increasing consumer demand, but not accompanied by efforts to maintain the quality standards for the safety and health of consumers.
- h. There is still a lack of knowledge, skill, and responsibility of manufacturers and importers and distributors of quality and safety of processed food. Lack of knowledge producers, importers and distributors are only concerned with mere profits without regard to the safety and quality of healthcare products of dispatch.
- i. The low consumer concerns about the quality and safety of processed food that is consumed as long as it's cheap. In addition, awareness of consumer law is still low, due to lack of socialization of standardization quality processed products safe for consumption.
- j. Effects of Autonomy. With the convening of regional autonomy, the supervision of circulation of processed food products are sold in various markets, shops, retail, and kiosk delegated to the relevant agencies in the area. The problem, local officers who have received training in both the Directorate of Supply of Goods and Services, the Directorate of Standardization and Consumer Protection Ministry of Trade and BPOM, sometimes they transferred to other institutions, so that eventually supervision was no effective.
- k. Weak law enforcement, meaning that the sanction is not maximal, as well as the support of the institutions concerned mainly Customs and law enforcement authorities are still very weak, thus simplifying the entry of illegally imported products through the border. The low penalties against imports of food smuggling are not a crime deterrent for the perpetrators of violations.

4.2 Government's efforts mainly BPOM to overcome circulation of Import Processed Food Product that do not meet the quality standards of safety and health in the context of legal protection for consumers

Government efforts to anticipate the entry and circulation of imported processed food products that do not meet the quality standards of health and safety in Indonesia is through the efforts of law enforcement (law enforcement) . Law enforcement can be either preventive or repressive

- a. The preventive law enforcement is the law enforcement consists of import of regulation of processed food products; supervision of processed food products imported by BPOM and other government institution; and guidance to businesses (manufacturers , importers , distributors), consumers , and staff / field supervisors ;
- b. The repressive Law enforcement consists of :
 - 1) the application of administrative sanctions, such as: written warning to businesses; suspension or cancellation of registration approval letter imported products; suspension of activities of import and distribution of food products imported; re-export of processed food products that do not comply to the country of origin; withdrawal of imported products that do not meet the requirements of the market to be destroyed; discontinuation of import and Import Certificate revocation.

- 2) Imposition of civil sanction, such as in the form of payment of compensation has not been done at all. This is due to the ignorance of the public about their rights to file a lawsuit and get a legal advocacy. How many complaints made by consumers Governmental Organization (LKSM) to BPOM on the losses suffered by the consumer against the manufacturer, importer or distributor, but no one has imposed civil penalties, but still limited to the imposition of administrative sanctions.
- 3) Imposition of action or criminal sanctions. The implementation has been carried out through the witnesses of criminal acts adjudication (the court), especially on processed food products that enter illegally (smuggling) already indicated that the perpetrators of criminal acts of smuggling and illegally distributing food products . Several cases of violations conducted by businesses since 2010 until 2013 in various regions in Indonesia, the majority of the imported products that enter illegally to Indonesia.

5. Recommendations

The recommendations can be given by the author are:

1. processed food import policy should be conducted by the integrated services program (one gate service) under the coordination of Food and Drug Supervision Body (BPOM), This is to avoid any overlapping between the policy BPOM and the Ministry of Trade related to specific products, such as food and beverages products, which is the licensing of imports under the authority of the Ministry of Trade. Therefore needs to be an equivalent regulatory laws that give special powers to the BPOM associated with the policy of processed food imports (food and beverage packaging) contain provisions that are not only administrative sanctions and criminal sanction, but also the civil sanctions such as compensation
2. The relationship of cooperation (MoU) between BPOM with other relevant institutions in monitoring is maintained and increased, both pre-market and post-market, include involving Standardization National Body (BSN) to assign all imported processed food products mandatory SNI. This cooperation is very important because of Indonesia as an archipelago country, as well as many unofficial ports is the entrance of goods traffic between the islands is difficult to control by field officers. Similarly, the field workers in the area, especially investigators must be improved, both in quality and quantity, therefore the government should assign the investigators according to function as field supervisors who assist the monitoring entry and circulation of the area processed foods, both served under BPOM, Ministry and Minister of Trade.
3. Development and dissemination by BPOM and relevant institution should continue to be done, both to businesses and consumers. Guidance for businesses, it is expected that they will be more careful keeping quality of the production and sale of goods to consumers, including providing an understanding of law in order to increase the legal awareness of the risks and legal consequences if it violated the law by selling illegal products or products that do not meet the health quality standar for consumers. Therefore socialization activity should be done anyway to consumers either through direct outreach to the community, or through print or electronic media about the importance of consumer protection to be able to choose products that are safe for their health, so avoid the danger or risk of consumer injury, and understand their rights as consumers including the right to obtain compensation. Through training and socialization is expected of good relations between producers and consumers, for businesses that will create favorable business conditions, while for consumers to feel safe and secure to consume the import processed food product.
4. Law enforcement must be implemented in effort of consumer protection, it means that consumers must be protected from harm or loss as a result of consuming a product that does not meet the standards of safety and health of consumers by applying the product liability refers to the Strict Liability Principle. Therefore, to businesses that illegally distribute processed food products should be given the weight legal sanction in accordance with their violation, not only in the form of administrative sanction, but also civil sanctions (damages) and criminal sanctions.

References

- Ann Seidman, Robert B. Seidman, and Nalin Abeyesekere, *Designing of Legislative drafting In The Democratic People Change, A Guide for Designing Law, Basic Series of Economic Law*, Edition I, ELIPS, USF, July 2001
- Budi Cahyono, Staff of Bureau of Public Relations, Hearings, and Leader Administration; *Food Safety and Implementation of Quality System of Food Industry in the Free Trade Era, Articles, Office of the State Minister of National Development Planning*, BAPPENAS, 2011.
- Hendri Siswandi, Head of Legal and Public Relations ULPK POM , *BPOM Open Socialization Extension In Interactive*, <http://www.pelita.or.id>, February 28, 2014.

Hunia Thamrin , *BPOM investigates the Food and Beverage Products and illegal Cosmetics Import*, indosiar.com , Jakarta , June 4, 2009 .

Irna nurhayati, *The Effectiveness Supervision of Food and Drug Supervisory Body (BPOM) on Distribution of Import Processed Food Products In Realizing Consumer Protection*, Report of Research Result, Faculty of Law, Gadjah Mada University, 2008 ,

Kurniawan, *Law of Protection Consumer, the Problems pf Status and of Strength of the Consumer Dispute Body Decisions (BPSK)*, First Edition, Malang: Brawijaya University Press (UB Press), 2011

Mukti Fajar ND, and Yuianto Achmad, *Dualism of Normative and Empirical Legal Research*, ed 1. Yogyakarta: Pustaka Pelajar, 2010)

Springga Roy, Deputy of Food Safety Supervision and Dangerous BPOM RI, *Beware on Circulation of Food Products which do not meet the requirement*, <http://health.compass.com/read>., August 1, 2013

Soekano , *Factors Affecting Law Enforcement*, Jakarta: Rajawali Press, 1983 ,

Susanti Adi Nugroho, *Consumer Dispute Resolution Process Viewed From the Procedure And its Problem Implementation*, ed. 1. Jakart : Kencana . 2008

Tini Hadad , *Many Products have no SNI* redaksi@koran-jakarta.com , April 20, 2012

Ministry of Industry, Industry News: Market Share of Import Food Up - 8 %. Article, <http://www.go.id> , December 27, 2013

Acts Number 8 Year 1996 on Consumer Protection

Regulation of Head Food and Drug Supervisory Body, Republic of Indonesia Number HK.03.1.5.12. 11.09955 Year 2011 on Registration of Processed Food

Minister of Trade Regulation No. 83/M-Dag/Per/12/2012 on Specific Product Provisions

Regulation of the Minister of Trade of the Republic of Indonesia Number: 22/M-Dag/ Per/5/2013 on the Import and Export of Animals and Animal Products

Regulation of Head of Food and Drug Supervisory Body (BPOM) Republic of Indonesia Number 27 Year 2013 on Supervision and Importation of the Food and Drug into the territory of Indonesia

The IISTE is a pioneer in the Open-Access hosting service and academic event management. The aim of the firm is Accelerating Global Knowledge Sharing.

More information about the firm can be found on the homepage:
<http://www.iiste.org>

CALL FOR JOURNAL PAPERS

There are more than 30 peer-reviewed academic journals hosted under the hosting platform.

Prospective authors of journals can find the submission instruction on the following page: <http://www.iiste.org/journals/> All the journals articles are available online to the readers all over the world without financial, legal, or technical barriers other than those inseparable from gaining access to the internet itself. Paper version of the journals is also available upon request of readers and authors.

MORE RESOURCES

Book publication information: <http://www.iiste.org/book/>

Recent conferences: <http://www.iiste.org/conference/>

IISTE Knowledge Sharing Partners

EBSCO, Index Copernicus, Ulrich's Periodicals Directory, JournalTOCS, PKP Open Archives Harvester, Bielefeld Academic Search Engine, Elektronische Zeitschriftenbibliothek EZB, Open J-Gate, OCLC WorldCat, Universe Digital Library, NewJour, Google Scholar

