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Product Liability of Business Actors to Consumers Due to the Sale of Expired Food Products and Without a Distribution License

Darmayani Gita[1*], Helsina Fransiska Pello[2], Husni Kusuma Dinata[3]

[1,2,3] Faculty of Law, Universitas Nusa Cendana, Kupang, Indonesia.
: darmayanigita6@gmail.com
Corresponding Author*

Abstract

The circulation of expired food products and without a distribution permit is still a serious problem in the consumer protection system in Indonesia because it has the potential to endanger public health and safety. This study aims to analyze the regulation of product liability of business actors to consumers due to the sale of expired food products and without distribution permits based on Law Number 8 of 1999 concerning Consumer Protection, as well as to examine the legal sanctions that can be imposed on business actors. The research method used is normative legal research with a statutory approach and a conceptual approach. The source of legal materials consists of primary, secondary, and tertiary legal materials that are analyzed qualitatively. The results of the study show that consumer protection of food products is regulated through the Consumer Protection Law, Law Number 18 of 2012 concerning Food, Government Regulation Number 86 of 2019 concerning Food Safety, and regulations of the Food and Drug Control Agency regarding the distribution permit of processed foods. The concept of product liability in the Consumer Protection Law is reflected in Article 8 and Article 19 through the application of the principle of strict liability, where business actors are still responsible for providing compensation without the need to prove the existence of an element of fault first. In addition, business actors who sell expired food products and without a distribution permit can be subject to administrative, criminal, and civil sanctions. The regulation of product liability in the Consumer Protection Law aims to provide legal certainty, protection, and a sense of security for consumers against food products circulating in the community.

Keywords: Product Liability; Consumer Protection; Expired food products; Distribution Permits; Business Actors.

INTRODUCTION

Every citizen has the right to have the basic human needs of food met. In developing countries such as Indonesia, food security guarantees are not only health issues, but also touch on broader legal, economic, and social dimensions. Along with the rapid development of the national food industry and the expansion of product distribution networks, including through digital platforms, the challenge of supervising the circulation of food products that are suitable for consumption is increasingly complex.[1] The inability of the state and business actors to ensure food safety standards has a direct impact on the fundamental rights of consumers, which ultimately threatens public trust in the national food system. The large number of food products and expired goods sold and without a distribution permit is one of the most worrying problems in the food distribution system in Indonesia. Expired food products have the potential to contain biological, chemical, and physical contaminants that can endanger consumer health, ranging from mild indigestion to serious, life-threatening poisoning.[2] On the other hand, products that do not have a distribution license show that the

[1] Happy Susanto, *Hak-Hak Konsumen Jika Dirugikan* (Jakarta: Visimedia, 2021). p, 23-25.
[2] J Siburian, R., & Ginting, "Tanggung Jawab Produk Dalam Hukum Perlindungan Konsumen Indonesia," *Jurnal Hukum & Pembangunan* 51, no. 2 (2021): 312–15.

product fails the safety, quality, and nutritional value tests required to be carried out by regulators, so consumers do not get guarantees of their feasibility.

A fairly worrying scenario is illustrated by the latest statistical data released by the Food and Drug Supervisory Agency through the Food Safety Intensification Program (INWAS) for the period from February 24 to March 19, 2025. A total of 1,190 processed food distribution facilities in Indonesia have been inspected, and 35,534 food items were found to be Non-Compliant, with the total value of findings in *offline distribution* exceeding IDR.500 million in border areas, including Batam, Tarakan, Balikpapan, and Pontianak, 19,795 illegal processed food products were found. Meanwhile, as many as 14,300 food items are circulating without adequate supervision in Manokwari, Jambi, Kupang, Bandung, and Palangkaraya.[3] These findings clearly show that the product accountability mechanism as stipulated in laws and regulations has not been implemented optimally.

Consumer protection in Indonesia's positive legal framework, for food products is regulated through a number of complementary regulations. The main legal basis that is the basis of consumer rights is Law Number 8 of 1999 concerning Consumer Protection regulating the safety and security of products. Article 8 paragraph (1) of the Consumer Protection Law expressly prohibits businesses from producing or selling goods that do not comply with specified standards or information stated on labels, as well as goods that have passed the expiration date.[4] Furthermore, Article 19 of the Consumer Protection Law emphasizes the application of the principle of *strict liability*, the Company is obliged to compensate for losses suffered by customers without the need for proof of the element of *fault*. This provision is also strengthened by Law Number 18 of 2012 concerning Food and Government Regulation Number 86 of 2019 concerning Food Safety which requires the existence of an official distribution permit issued by a competent authority for all processed goods sold.

Civil law studies, the liability of business actors for losses suffered by consumers due to the sale of unsafe products is known as product liability. This doctrine recognizes three theories of liability: first, *negligence,* which is the negligence of business actors in meeting the standard of care; second, *breach of warranty*, which is a violation of the guarantee given to the product; and third, *strict liability* is absolute responsibility regardless of whether there is fault or not.[5] Indonesia, in the context of the Consumer Protection Law, has adopted the principle of *strict liability* through Article 19, which is an important instrument for protecting consumers from risks associated with food products that do not comply with safety regulations.

However, there is a huge gap between the actual conditions in society and what is regulated by law. Although regulations have clearly regulated the obligations of business actors, law enforcement in the field is still weak, characterized by the still high number of findings of products that do not meet the requirements by the Food and Drug Supervisory Agency as described above. This weakness in law enforcement is exacerbated by the limited understanding of consumers of their rights, the lack of access to consumer dispute resolution mechanisms, and the low deterrent effect of sanctions imposed on business actors who

[3] BPOM found 376 illegal and expired food sales facilities during Ramadan food supervision, Monday, March 21, 2025, https://www.pom.go.id/berita/bpom-temukan-376-sarana-jual-pangan-ilegal-dan-kedaluwarsa-selama-pengawasan-pangan-ramadan.

[4] A Miru & Yodo S, *Hukum Perlindungan Konsumen* (Jakarta: RajaGrafindo Persada, 2021).

[5] Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen* (Jakarta: Sinar Grafika, 2022).

violate.[6] As a result, consumers, especially from the lower middle economic group, remain the most vulnerable parties to bear losses.

However, in accordance with Article 7 of the Consumer Protection Law, business actors are obliged to provide honest, transparent, and accurate information regarding the characteristics and conditions of their products, including the expiration date and status of distribution permits. In today's digital era, this obligation of information transparency is increasingly crucial considering that consumers now interact with products not only through conventional retail means, but also through *e-commerce platforms* that are difficult to physically supervise.[7] The negligence of business actors in fulfilling their obligations Public trust in the food industry as a whole is weakened by the dissemination of such information, which also harms consumers individually.

Based on the above background, the question that can be formulated to analyze this research is how to regulate the product *liability* of business actors to consumers due to the sale of expired food products and without a distribution license reviewed from Law Number 8 of 1999 concerning Consumer Protection? What are the legal sanctions that can be imposed on business actors who sell expired food products based on applicable laws and regulations?

METHODS OF THE RESEARCH

The research method used is normative legal research with a legislative approach, a conceptual approach, and an analytical approach. The source of legal materials consists of primary, secondary, and tertiary legal materials that are analyzed qualitatively. The aspects studied from this study are the regulation of product liability in the case of the sale of expired food products and without a distribution permit by business actors. Companies that sell expired food products may face legal consequences under applicable laws and regulations. Data collection techniques in *library research* are carried out through documentation techniques. Furthermore, the data that has been collected is then analyzed using a qualitative descriptive method to answer the problems analyzed in this study.

RESULTS AND DISCUSSION

A. Basis of Consumer Protection in Food Products

Consumer protection of food products is a basic element of the system that provides legal protection to consumers in Indonesia, considering that food products are related to human rights to health and life safety. The urgency of this protection is even more important considering the high volume of circulation of food products in the market that has expired and without a distribution license, both domestically produced and imported, so that the risk of consumer losses that do not meet safety standards is a real threat that needs to be prevented through strict and comprehensive legal regulations.[8] Theoretically, the basis for consumer protection of food products can be seen from two main theories that complement each other, namely the theory of legal certainty *(rechtssicherheit)* and the theory of legal protection. Legal certainty According to the idea of Gustav Radbruch, the law must be able

[6] Y Nurhayati, "Efektivitas Penegakan Hukum Perlindungan Konsumen Di Indonesia," *Jurnal Ilmu Hukum Universitas Riau* 14, no. 1 (2023): 45–48.

[7] A Anwar, K., & Rahmat, "Perlindungan Konsumen Dalam Transaksi Pangan Daring Di Indonesia," *Jurnal Hukum Bisnis Bonum Commune* 5, no. 1 (2022): 198–201.

[8] Rezie Dava Amar and Rani Apriani, "Analisis Perlindungan Hukum Terhadap Konsumen Produk Pangan Tanpa Label Bahasa Indonesia," *Transparansi Hukum* 7, no. 2 (2024): 81–91, https://doi.org/10.30737/transparansi.v7i2.5797.

to uphold three main values: justice (gerechtigkeit), usefulness (zweckmühligkeit), and legal certainty (rechtssicherheit), in the context of consumer protection of food products, legal certainty requires clear and firm norms regarding the obligations of business actors, prohibition of the circulation of dangerous products, and accountability mechanisms that can be predicted by all parties.[9] Without legal certainty, consumers cannot know their rights for sure, and business actors have the opportunity to avoid liability by taking advantage of the ambiguity of existing norms. This legal certainty is the basis for why Law Number 8 of 1999 concerning Consumer Protection explicitly formulates a prohibition for businessmen and the accompanying legal consequences.

Philipus M Hadjon's idea of legal protection distinguishes between repressive and preventive legal protection in addition to the idea of legal certainty.[10] Preventive legal protection is intended in terms of preventing the occurrence of disputes through the establishment of standards, licensing, and supervision before products circulate in the community. On the other hand, repressive legal protections seek to resolve conflicts by imposing punishment and offering compensation.

Both forms of protection in the context of food products, these work simultaneously and complement each other. The supervision of the Food and Drug Supervisory Agency and the obligation of distribution permits are preventive instruments, while the product liability mechanism in the Consumer Protection Law is a repressive instrument. Thus, the consumer protection framework for food products in Indonesia is comprehensive and layered.

Normatively, the basis for consumer protection of food products in Indonesia is based on two complementary layers of regulations. The first layer is the general Consumer Protection Law *(lex generalis),* which guarantees consumers' rights to comfort, security, and safety when consuming goods in accordance with Article 4 letter a, and requires business actors to always be in good faith and convey true, clear, and honest information to consumers as stated in Article 7 letter b. The second layer is sectoral regulations that are special *(lex specialis),* namely Law Number 18 of 2012 concerning Food and Government Regulation Number 86 of 2019 concerning Food Safety, which in detail manage safety, quality, nutrition, labeling, and distribution obligations for food products. The relationship between these two layers of regulation is complementary based on the principle of *lex specialis derogat legi generali*. The Consumer Protection Law regulates basic principles and actions, while the sector implements technical standards that must be complied with by food business actors.

Under the regulatory framework, the Food and Drug Supervisory Agency carries out the function of supervising food as a representative of the state to ensure that consumer rights are fulfilled before products die on the market. Regulation of the Food and Drug Supervisory Agency Number 27 of 2017 concerning the Registration of Processed Foods which has been amended through the Regulation of the Food and Drug Supervisory Agency Number 22 of 2023, every food food in retail packaging produced domestically or imported for trade purposes must have a circulation. This obligation is not just an administrative formality, but a substantive mechanism to verify that the product has met safety, quality, composition, and

[9] Nurlaily Owen Santiago, Ampuan Situmeang, "Perlindungan Konsumen Terhadap Penjualan Produk Palsu Di E-Commerce Perdagangan: Perspektif Hak Asasi Manusia Dan Kepastian Hukum Dalam Indonesia," *Jurnal Mediasas: Media Ilmu Syari'ah Dan Ahwal Al-Syakhsiyyah* 8, no. 1 (2025): 230, doi: 10.58824/mediasas.v8i1.288.

[10] Daniel Syahputra Apri Amalia, Sindi, Zarieva Yousif, Malika Ramadhani, Sandi Almirah Putri, Nadia Surati Annisa, "Consumer Legal Protection of Food Products Containing Hazardous Ingredients," *JAKSA: Journal of Legal and Political StudiesJournal of Legal and Political Studies* 4, no. 1 (2026): 15–29, https://doi.org/10.24246/alethea.vol4.no1.p21-40.

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label information standards before reaching consumers. The absence of a distribution permit not only violates the administrative aspect, but also indicates that the product has not gone through a proper safety verification process, so that it can legally be considered a defective product that harms consumers.[11]

B. Legal Construction *of Product Liability* in the Consumer Protection Act

The legal construction of product liability refers to the liability of businesses regarding losses caused by products produced or traded to consumers. *Product liability* is the legal responsibility of the producer *and distributor of the product* (seller/distributor) for products circulating in the community. Furthermore, Agnes M. Toar, argued that what is meant by *product liability* is the responsibility of the producer for the goods that have been delivered and resulting in losses due to defects in the product.[12] Although Law Number 8 of 1999 concerning Consumer Protection does not explicitly mention the term *product liability*, the concept is described in the provisions regarding the obligations of business actors and their liability for losses experienced by consumers as a result of products circulated in the market, including food products that are consumed directly and have the potential to affect public health. The basis for the birth of business actors' responsibilities is contained in the prohibition stipulated in Article 8 of the Consumer Protection Law related to the circulation of expired food products and without a distribution permit. For expired food products, the most relevant provisions are Article 8 paragraph (1) g which prohibits business actors from distributing products without including an expiration date, and Article 8 paragraph (3) which expressly prohibits the circulation of food products that are damaged, defective, or contaminated, either with or without accurate information.[13] Based on Article 90 paragraph (2) letter f of Law Number 18 of 2012 concerning Food *jo*. Article 41 paragraph (2) letter f of Government Regulation Number 86 of 2019 concerning safety, expired food is categorized as contaminated food, so its legal circulation is included in violating Article 8 of the Consumer Protection Law. Meanwhile, for products without a distribution permit, the prohibition refers to Article 8 paragraph (1) letter a of the Consumer Protection Law which prohibits business actors from marketing goods that are not in accordance with the standards set by laws and regulations, where the obligation to obtain a distribution license is one of the requirements regulated in the regulations of the Food and Drug Supervisory Agency.

Any violation of the prohibition contained in Article 8 of the Consumer Protection Law automatically gives rise to the liability of business actors in accordance with the provisions of Article 19 of the Consumer Protection Law. This provision reflects the application of the principle of *strict liability* in the consumer protection legal system in Indonesia, where business actors are required to provide compensation for damage, pollution, and/or losses experienced by consumers due to the use of products produced or distributed. The implementation of *strict liability* does not require business actors to admit mistakes or negligence.[14] Simply by proving that the consumer has suffered losses and there is a causal relationship between the products consumed and the loss, the obligation of compensation

[11] Retno Wulansari Maya Ainiyyah, "Perlindungan Hukum Bagi Konsumen Atas Pelanggaran Hak InformasI (Studi Kasus Produk Vitamin D3 Yang Tidak Memiliki Izin Edar BPOM)," *Literasi Hukum* 6, no. 2 (2022): 89–103.

[12] M T Marbun, "Tanggung Jawab Produk (Product Liability) Pelaku Usaha Yang Menimbulkan Kerugian Bagi Konsumen," *Judicial*, no. 1 (2020): 1–12.

[13] Christian Audy Manopo, "The Responsibility of Business Actors for the Distribution of Expired Food According to Law No. 8 of 1999," *Lex et Societatis* 3, no. 7 (2015): 85.

[14] Ridwan Yoga Pratama, "Implementasi Asas Strict Liability Atas Tanggungjawab Produk Dalam Hukum Perlindungan Konsumen: Studi Perbandingan Antara Indonesia & Amerika Serikat," *Lex Stricta : Jurnal Ilmu Hukum* 4, no. 1 (2025): 81–92.

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can be imposed on business actors. From the theory of legal certainty, this principle guarantees clarity and firmness of norms for consumers that any losses arising from defective products will obtain legal compensation, without having to be hampered by the difficulty of proving elements of error that are technically difficult for consumers to do.

Consumer Protection Law, the liability of business actors for goods that cause losses to consumers is based on the principle of strict *liability* as stated in Article 19 of the Consumer Protection Law. This provision emphasizes that business actors are obliged to provide compensation for damage, pollution, and/or losses experienced by consumers due to consuming goods produced or traded. This provision does not require prior proof that the business actor committed an error or negligence. Simply by proving that there is a loss and a causal relationship between the product and the loss experienced by the consumer, the obligation to compensate can be imposed on business actors.[15]

In addition to regulating liability after repressive losses, the Consumer Protection Law also builds the construction of *product liability* through the preventive obligations of business actors before products are distributed to the public. Article 7 of the Consumer Protection Law stipulates that business actors are obliged to carry out their business activities in good faith, while at the same time conveying accurate, clear, and honest information about the circumstances and guarantees of the goods traded. This preventive obligation is particularly relevant in the two contexts that are the object of this research. First, in the context of expired food products, business actors are obliged not to distribute products that have passed the consumption time limit and are obliged to withdraw the product from circulation as ordered by Article 8 paragraph (4) of the Consumer Protection Law. Second, in the context of products without a distribution license, business actors are obliged to ensure that each processed food product has gone through the registration process and obtained distribution permit approval from the Food and Drug Control Agency before being marketed to consumers.

C. Standards and Parameters of Food Product Violations According to the Consumer Protection Act

The standards and parameters of food product infringement in the Consumer Protection Law are essentially aimed at ensuring the fulfillment of consumers' rights to safety, security, and accurate information about the products they consume. This protection is realized through the prohibition of the circulation of defective, damaged, or non-standard goods, as well as the obligation of business actors to convey information about the quality and condition of products honestly through labels. Violation of this provision not only causes civil consequences in the form of compensation obligations, but can also lead to criminal sanctions if the act endangers the public interest. The Consumer Protection Law regime places consumer protection as part of the public interest, not merely a private relationship between consumers and business actors.

Article 8 paragraph (1) letter g of the Consumer Protection Law specifically prohibits business actors from producing or selling products without the best use date or expiration date, especially on food products that are at risk of spoilage quickly and can endanger health. This provision cannot be understood as an administrative responsibility in the inclusion of labels, but also as a measure of how safe a food is to consume. Goods that have passed their

[15] Pratama.

expiration date, even if they still physically look good, are still categorized as legally defective products because they no longer meet the safety standards that consumers expect. In addition, the circulation of damaged, polluted, or used food is also included in the category of goods that do not comply with the conditions stated on the label, so that they can mislead consumers and violate the right to correct information. The sale of expired food in judicial practice can be subject to criminal sanctions based on Article 62 juncto Article 8 of the Consumer Protection Law, because its actions are considered to have the potential to endanger consumer safety and damage public trust in the food distribution system.

Although the Consumer Protection Law does not expressly mention the obligation of distribution licenses, Article 8 paragraph (1) letter a requires that the goods traded meet the standards set forth in laws and regulations. This provision must be interpreted systematically with Law Number 18 of 2012 concerning Food and Government Regulation Number 86 of 2019 concerning Food Safety, which requires processed foods in retail packaging to have a distribution permit from the Food and Drug Supervisory Agency before being marketed. The distribution permit functions as an instrument of state preventive supervision to ensure that the product has passed safety, quality, composition, and accuracy tests on label information. Therefore, food products without a distribution permit are legally considered not to meet legality standards and are not suitable for distribution to the public. While there are exceptions for micro-enterprises with very short shelf life, the basic obligation to ensure food safety and include minimal information, including production and expiration dates, remains with business actors. The absence of a distribution permit is not just an administrative violation, but can be a strong basis for declaring that the product is legally defective from a consumer protection perspective.

The parameters of food product violations in the Consumer Protection Law are comprehensively formulated in Article 8 paragraph (1), which includes various forms of non-conformity between products and standards that should be met. Violations can be in the form of non-compliance with legal provisions (letter a), non-conformity with weight or net content (letter b), inaccuracy of size or scale (letter c), non-conformity with the condition of the goods with the description or guarantee on the label (letter d), and non-conformity of quality, composition, or processing process (letter e). For food products, the parameter is expanded with a special prohibition on spoiled, defective, contaminated, or expired food as stipulated in letter g. Food products are said to harm consumers not only when they have caused illness or poisoning, but also when they have the potential to harm health, for example they contain harmful ingredients such as formalin and borax, do not meet hygiene standards, or do not include complete composition information. Consumer losses are not limited to physical losses, but also include economic losses, medical costs, and loss of security in consuming products.

Violation of Article 8 of the Consumer Protection Law as the main norm prohibiting the automatic circulation of defective goods In accordance with Article 19 of the Consumer Protection Law, activate the business actors' liability system. According to this article, companies are obliged to provide security in the form of compensation to customers for any loss, pollution, or damage suffered due to the use of their products, without the need to prove the existence of an element of error. This principle is strengthened through Article 28 of the Consumer Protection Law which applies a reverse proof mechanism, where business actors are burdened with the responsibility to be able to prove that the goods produced or traded do not cause losses suffered by customers. In practice, consumers simply prove the existence of losses and causal relationships with the products consumed, while the responsibility for defense shifts to the business actor. If violations are proven, the legal consequences are not only in the form of material and immaterial damages, but can also be in the form of withdrawal of products from circulation, revocation of business licenses, administrative sanctions, and criminal sanctions as stipulated in Article 62 of the Consumer Protection Law. This layered sanction scheme shows that violations of food product standards are seen as acts that threaten public safety and must be addressed through firm and comprehensive legal instruments.

The regulation of *product liability* for the circulation of expired and unlicensed food products in Law Number 8 of 1999 concerning Consumer Protection can be analyzed using the theory of legal objectives put forward by Gustav Radbruch, which includes justice, utility, and legal certainty. The three basic legal values are interrelated in forming a consumer protection system for food products that have the potential to endanger public health and safety. In the context of consumer protection, the law not only serves to regulate the relationship between business actors and consumers, but also provides a guarantee of protection of consumer rights to safety and security in consuming food products. The value of legal certainty is reflected in the existence of clear regulations regarding the obligations and prohibitions for business actors in producing and distributing food products. This legal certainty can be seen in the provisions of Article 8 of the Consumer Protection Law which prohibits business actors from trading goods that do not meet standards, do not include correct information, and distribute damaged, polluted, or expired food products. In addition, the provisions regarding the obligation of distribution permits in Law Number 18 of 2012 concerning Food, Government Regulation Number 86 of 2019 concerning Food Safety, and Regulation of the Operator and Food Supervisory Agency regarding the registration of processed foods further strengthen the standards of legality of food products that can be circulated in the community. Legal certainty can also be seen in the regulation of Article 19 of the Consumer Protection Law which affirms the obligation of business actors to provide compensation for losses experienced by consumers, with this provision, consumers obtain clear legal guarantees if they suffer losses due to food products that do not meet safety standards.

From the aspect of justice, the regulation of *product liability* in the Consumer Protection Law aims to create a balance of protection between consumers and business actors. Consumers are basically in a weaker position than business actors due to limited information and the ability to prove product defects. Therefore, the application of the principle of *strict liability* in Article 19 of the Consumer Protection Law reflects legal efforts to provide fair protection to consumers. Business actors in this principle can still be held accountable without having to first prove the existence of elements of error or negligence. Consumers can only prove the existence of losses and causal relationships between the products consumed and the losses experienced. The regulation shows that the law provides greater protection to consumers as vulnerable parties so that their rights are still fairly fulfilled, especially the right to security, safety, and compensation for losses incurred due to consuming expired or unlicensed food products. Meanwhile, the value of legal usefulness can be seen from the function of regulating consumer protection as an instrument to maintain the health and safety of the community at large. The obligation to include expiration dates, distribution permits from the Food and Drug Supervisory Agency, food safety standards, and supervision of food products are forms of preventive protection that aim to prevent the circulation of dangerous products in the community. In addition, the existence of administrative, civil, and criminal sanctions against business actors who violate the provisions of the Consumer Protection Law provides a deterrent effect while encouraging business actors to be more responsible in carrying out their business activities. Product *liability* regulation not only provides protection for consumers after losses occur, but also provides social benefits in the form of creating a sense of security, order, and public trust in food products circulating in the market.

Based on this description, it can be understood that the regulation of product liability in the Consumer Protection Law has reflected three basic legal values according to Gustav Radbruch, namely legal certainty through the regulation of clear and firm norms, justice through the protection of consumer rights, and benefits through efforts to maintain the safety and security of the public from the circulation of dangerous food products. The application of the principles in the Consumer Protection Law not only serves as the basis for business actors' accountability, but also as a comprehensive legal protection instrument for consumers in Indonesia. Law Number 8 of 1999 concerning Consumer Protection which has regulated the product *liability* of business actors to consumers for the circulation of expired food products and without a distribution license through the provisions prohibiting the circulation of goods that do not meet safety and legality standards as stipulated in Article 8 of the Consumer Protection Law shows that violations of these provisions give rise to obligations for actors efforts to provide compensation to consumers based on Article 19 of the Consumer Protection Law with the application of the principle of *strict liability*, where business actors remain responsible without having to first prove the existence of an element of fault. Legal protection for consumers is also strengthened through the mechanism of reversal of the burden of proof in Article 28 of the Consumer Protection Law and supported by sectoral regulations in the Food Law, Government Regulations on Food Safety, and regulations of the Food and Drug Supervisory Agency regarding distribution permits for processed foods. The regulation shows that the consumer protection system in Indonesia not only focuses on resolving losses after the occurrence of violations, but also on preventive efforts to ensure safety, safety, and legal certainty for consumers of food products circulating in the community.

D. Legal Sanctions That Can Be Imposed on Business Actors Who Sell Expired Food Products Based on Applicable Laws and Regulations

1. Case Examples

Violations of the obligations of business actors in ensuring the safety and feasibility of food products still occur frequently. One example of a case can be seen in a case that occurred in Sampit, Central Kalimantan, which involved an alleged Micro, Small, and Medium Enterprises in the frozen food industry selling food products without the legally required distribution permit. In addition, the products sold are also not accompanied by adequate information, such as expiration dates, so they have the potential to endanger consumers.

Based on the results of the examination by law enforcement officials, it is known that food safety regulations are not met by the goods that are traded. In reality, police laboratory tests showed that the items may contain hazardous materials. On this basis, business actors were then legally processed and charged with violating the provisions of Law Number 8 of 1999

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concerning Consumer Protection Article 8 paragraph (1) letter a prohibits business actors from selling products that do not meet the necessary criteria. In addition, commercial business actors are also subject to criminal sanctions as stipulated in Law Number 18 of 2012 concerning Food and Article 62 paragraph (1) of the Consumer Protection Law.[16] However, in the trial process, problems arose related to differences in laboratory test results between authorized institutions. The test results from the Food and Drug Supervisory Agency previously stated that the product did not contain any harmful substances, while the test results from the police showed the presence of harmful substances. These differences have caused polemics regarding the validity of evidence and legal certainty in enforcing the responsibilities of business actors, especially in the context of proving the elements of error and losses experienced by consumers.

From a business perspective, this case shows that the accountability of *product liability* business actors not only reaches losses that have actually occurred, but also includes potential losses due to goods that do not meet safety and conformity requirements. Business actors are still charged regarding liability if it is proven that they trade goods that do not comply with legal requirements, both related to distribution permits and completeness of product information. Therefore, the implementation of the Consumer Protection Law is very important in providing legal protection for consumers while affirming the obligations of business actors in maintaining the quality and safety of products marketed. As for the practice of food product circulation, violations of provisions regarding the expiration period also often occur and have the potential to harm consumers. One example of a case occurred in the Tambora area, West Jakarta, where the police succeeded in uncovering the practice of selling expired food carried out by a business entity. The business actors in the case, it is known not only to trade food products that have passed the expiration date, but also to deliberately manipulate by changing the label of the expiration date so that the product can still be circulated in the market. Based on the results of the investigation, it is known that the processed food products traded are imported goods that initially did not meet distribution standards because of their limited expiration period. However, instead of being destroyed, the product is stored and then recirculated after replacing the expired label. This practice is carried out in several locations, ranging from storage warehouses to distribution places, which shows the systematization of these activities. The products distributed include various types of processed foods such as mayonnaise, baby milk, jam, snacks, and instant spices that have been spread to various regions in Indonesia.

For their actions, business actors are subject to criminal sanctions as stipulated in Article 62 paragraph (1) jo. Article 8 paragraph (1) and paragraph (3) Business actors are prohibited from trading goods that do not meet the criteria based on Law Number 8 of 1999 concerning Consumer Protection and providing misleading information to consumers. In addition, perpetrators can also be subject to provisions in the distribution of dangerous and unfit food prohibited under Law Number 18 of 2012 concerning Food.[17] This case clearly shows that there is a violation of the principle of *product liability*, where business actors are not only negligent in fulfilling their legal obligations, but also actively take actions that have the potential to endanger the health and safety of consumers. Replacing expired labels is a

[16] Rina Wahyuningrum, "*UMKM Pangan di Sampit Terjerat Hukum, Diduga Tak Miliki Izin Edar,*" Berita Borneo, 20 Juni 2025, https://beritaborneo.com/main/umkm-pangan-di-sampit-terjerat-hukum-diduga-tak-miliki-izin-edar/

[17] Rima Wahyuningrum, "Kasus Penjualan Makanan Kedaluwarsa," Kompas.com, 21 Maret 2018, https://foto.kompas.com/photo/read/2018/03/21/1521565439b24/Kasus-Penjualan-Makanan-Kedaluwarsa

misleading act and violates consumers' rights to true, clear, and honest information. Therefore, the business actor in this case can be held legally liable, both civil and criminal, for the losses that have occurred. as well as potential losses that can be experienced by consumers.

2. Legal Basis for Imposing Sanctions

The sale of expired food items is legally considered an unlawful act because it is contrary to laws and regulations that protect consumer rights and food safety. The main legal basis that prohibits this is contained in Law Number 8 of 1999 concerning Consumer Protection. Producing and/or trading goods without specifying the time of use or expiration date of the product is prohibited for business actors, in accordance with Article 8 paragraph (1) letter g of the Consumer Protection Law. This provision states that complying with the expiration date is an absolute legal obligation, as it is directly related to the safety and health aspects of consumers.

Violations of Article 8 of the Consumer Protection Law can cause civil legal problems, and have the potential to be criminally sentenced. This is explained in Article 62 paragraph (1) of the Consumer Protection Law which stipulates that a maximum prison sentence of five years or a maximum fine of two billion rupiah can be imposed for any violation of the requirements of Article 8. The Consumer Protection Law emphasizes that trading in expired food is a serious illegal act, so it cannot be called a minor mistake or administrative matter, but an act that violates the law and harms society in general. In addition to the Consumer Protection Law, the rules regarding the prohibition on the circulation of expired food are also strengthened in Law Number 18 of 2012 concerning Food. According to this law, food safety, quality, and nutritional value standards must be met by every food produced and supplied. Foods that have passed their legal expiration date no longer meet applicable standards, so selling them violates the rules of the law about food. The Food Law also imposes criminal and administrative sanctions on business actors who do not comply with the rules regarding food safety and quality, as a way to protect public health in general. In addition, technical provisions regarding the writing of expiration dates and the supervision of food distribution are regulated in various regulations issued by the Food and Drug Supervisory Agency. Food and Drug Control Agency regulations require every processed food product sold to display expiration date information clearly and accurately on its packaging. The Food and Drug Supervisory Agency can also supervise, stop products from being sold, destroy goods, and impose administrative sanctions on corporate actors who commit violations.[18] Therefore, expired food trade not only violates the Consumer Protection Act and the Food Law, but also goes against the technical provisions set by the country's official food regulatory agency.

Legal sanctions that can be imposed on companies that produce expired food products.

a. Administrative Sanctions

Business people who sell expired food without a permit can also get administrative sanctions. Administrative sanctions are described in Article 60 of the Consumer Protection Law, which authorizes the government to impose sanctions by withdrawing products from the market or issuing written warnings, up to the point of stopping business activities. These

[18] Farhan Nandiva, "Peranan BPOM Dalam Melakukan Pengawasan Terhadap Produk Makanan Kadaluarsa Farhan Nandiva Mahasiswa Fakultas Hukum Universitas Singaperbangsa Karawang," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 8 (2023): 132–38.

administrative sanctions have a preventive nature and aim to immediately stop the circulation of products that can harm consumers.

The provisions regarding administrative sanctions in the Food Law are explained in more detail in Article 94 and Article 95. Administrative consequences include written warnings, fines, temporary suspension of food production and/or distribution operations, and withdrawal of food from the market, revocation of business licenses, and destruction of food. The application of this administrative sanction indicates that the state gives great authority to the government to protect the public from risky food circulation.

b. Criminal Sanctions

Before discussing the types of criminal punishments, it is first necessary to explain the legal principle *of lex specialis derogat legi generali*, this principle emphasizes that specific regulations take precedence over general regulations. Law Number 8 of 1999 concerning Consumer Protection and Law Number 18 of 2012 concerning Food in this context, are special regulations, while the Criminal Code functions as a general provision. The Consumer Protection Law and the Food Law in food cases take precedence because both specifically regulate acts related to product safety and consumer protection. The Criminal Code can be applied if the provisions in the two laws are not sufficient to accommodate the act committed.

Based on the provisions of Article 8 paragraph (1) letter g of Law Number 8 of 1999 concerning Consumer Protection, business actors are expressly prohibited from producing and/or trading products that do not include an expiration date or products that have exceeded their expiration date. This provision is a form of legal protection provided by the state to consumers to avoid products that have the potential to harm health. If the business actor is proven to have violated the provisions in question, then the person concerned can be threatened with criminal sanctions as stipulated in Article 62 paragraph (1) of the Consumer Protection Law, namely imprisonment with a maximum sentence of 5 (five) years or a fine with a maximum value of IDR. 2,000,000,000.00 (two billion rupiah). The threat of sanctions reflects the state's seriousness in cracking down on business actors who ignore consumer safety and rights.

Furthermore, Article 63 of the Consumer Protection Law stipulates that in addition to the principal criminal sanctions as referred to in Article 62 paragraph (1) business actors can also be subject to additional complementary punishments. These additional penalties include confiscation of certain goods, announcement of the judge's decision to the public, obligation to pay compensation to the aggrieved party, order to stop certain business activities that cause losses to consumers, obligation to withdraw products from circulation, and revocation of business licenses. The application of this additional penalty is intended to provide a more comprehensive deterrent effect while restoring the rights of consumers who have been harmed due to the actions of irresponsible business actors. The threat of imprisonment and fines shows that lawmakers view the sale of expired food as a serious act because it can endanger the safety and health of consumers.

In addition to the Consumer Protection Law, the Food Law also regulates criminal provisions for food circulation that does not meet safety standards or does not have a distribution permit. The existence of this regulation confirms that the state pays serious attention to the protection of public health through strict supervision of food products circulating in the market. Article 86 paragraph (2) of the Food Law expressly requires every food produced and distributed to the public to meet the standards of safety, quality, and nutritional content that have been set. This provision is a form of responsibility of business actors in ensuring that the products marketed are not only commercially feasible but also safe for consumption and do not endanger consumer health. If the business actor is proven to have committed a violation of the obligations as referred to in Article 86 paragraph (2), then the person concerned will be sentenced to criminal sanctions as stipulated in Article 142 of the Food Law, which is a maximum prison sentence of 2 (two) years or a maximum fine of IDR. 4,000,000,000.00 (four billion rupiah). The application of criminal sanctions in the food law is basically intended to provide a *deterrent effect* so that business actors do not repeat acts that have the potential to endanger the health and safety of consumers. With the threat of significant sanctions, it is hoped that business actors will always comply with applicable regulations and act responsibly in every stage of production and distribution of food products marketed to the public.

c. Civil Sanctions

Business actors who sell expired food without a distribution permit can face civil liability in addition to criminal sanctions. The legal basis is contained in Article 19 of the UUPK which stipulates that the company must compensate customers for losses, pollution, and/or damage they suffer as a result of the use of the products and/or services traded. The idea of business liability is emphasized in this clause (*product liability*) for any losses incurred due to unsafe products.[19]

The type of compensation that can be obtained by consumers as stipulated in Article 19 paragraph (2) of the Consumer Protection Law, namely refunds, replacement of goods and/or services with equivalent value, health care, and/or the provision of compensation, the form of compensation in the context of expired food is not only limited to the refund of the product price, but can also include medical expenses if the consumer experiences health problems due to consume the product. That way, civil sanctions serve as a tool to restore the rights of aggrieved consumers. In addition, the Food Law highlights that consumer losses are the responsibility of business actors. Everyone who produces and sells food is subject to Article 97 of the Food Law is responsible for the safety of such food. This clause confirms the idea that corporate actors are responsible for all damage caused by unsafe food circulation.

Business actors who sell expired food products based on applicable laws and regulations can be subject to legal sanctions in the form of administrative, criminal, and civil sanctions. Administrative sanctions include written warnings, withdrawal of products from circulation, termination of business activities, and revocation of business licenses as stipulated in the Consumer Protection Law and the Food Law. In addition, business actors can also be subject to criminal sanctions in the form of imprisonment and fines based on Article 62 of the Consumer Protection Law and criminal provisions in the Food Law if proven to be trading food products that do not meet safety and consumer safety standards. In addition, business actors are civilly responsible to provide compensation to consumers for losses caused by the circulation of expired food products. The regulation of sanctions in laws and regulations shows that there is comprehensive legal protection for consumer rights as

[19] Celina Tri Siwi Kristiyanti, *Hukum Perlindungan Konsumen*.

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well as a form of accountability of business actors in ensuring the safety of food products circulating in the community.

CONCLUSION

Consumer protection of expired and unlicensed food products in Indonesia is regulated through two complementary layers of regulations, namely Law Number 8 of 1999 concerning Consumer Protection as a general rule (*lex generalis*) and Law Number 18 of 2012 concerning Food and Government Regulation Number 86 of 2019 as a special rule (*lex specialis*). Although the Consumer Protection Law does not explicitly mention the term *product liability*, the concept is reflected in Article 8 and Article 19 of the Consumer Protection Law. Business actors are prohibited from distributing expired food products or without a distribution permit, and if the prohibition is violated, the responsibility for compensation can be directly imposed on business actors based on the principle *of strict liability* without the need to prove the existence of an element of fault first. In addition to being repressive, the Consumer Protection Law also builds preventive protections, including through the obligation of distribution permits from the Food and Drug Supervisory Agency and the obligation to include accurate expiration dates on product labels. The absence of a distribution permit is not just an administrative violation, but shows that the product has not gone through proper safety verification, so that it can be legally categorized as a defective product. Business actors who are proven to sell expired food products or without a distribution permit can be subject to three types of sanctions in the form of: a) Administrative Sanctions, in the form of written warnings, withdrawal of products from circulation, termination of business activities, and revocation of business licenses, as stipulated in Article 60 of the Consumer Protection Law and Articles 94–95 of the Food Law; b) Criminal Sanction, in the form of imprisonment for a maximum of 5 years and/or a maximum fine of IDR. 2,000,000,000.00 billion based on Article 62 paragraph (1) of the Consumer Protection Law, or a maximum prison sentence of 2 years and/or a maximum fine of IDR. 4,000,000,000.00 billion based on Article 142 of the Food Law. Additional penalties may also be imposed under Article 63 of the Consumer Protection Law, such as confiscation of goods and announcement of the verdict to the public; c) Civil Sanctions, in the form of an obligation to provide compensation to aggrieved consumers, which can be in the form of refunds, product replacements, health care costs, or compensation, as stipulated in Article 19 of the Consumer Protection Law and Article 97 of the Food Law.

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