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## **Legal protection to consumers of fresh food of imported plant origin**

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**Abstract.** This research is a normative legal research. After the enactment of Law No. 18 Th. 2012 Concerning Food, in particular the enactment of Decree of the Minister of Agriculture Number: 55/PERMENTAN/KR.040/11/2016 concerning Food Safety Supervision of Importation of Fresh Food from Plants Juncto Government Regulation Number 86 of 2019 concerning Food Safety Preventive legal protection for PSAT consumers suffers from decrease or be degraded, because imported PSAT is not subjected to laboratory testing in the country of origin to determine the content of biological or chemical contaminants, only if PSAT circulated in Indonesia is proven to contain biological and/or chemical contaminants, the PSAT is withdrawn from circulation.

**Keywords.** legal protection; fresh food, plant origin

### **Introduction**

Every Indonesian citizen has right to live and defend his life. To survive, everyone needs food, and has right to obtain legal protection from the state. The right to life to maintain life in Indonesia is placed as a human right, namely in Article 28A of the 1945 Constitution Republic of Indonesia. Therefore, the state is obliged to guarantee sufficient food for its citizens. Food fulfillment is carried out in various ways, such as intensification and extensification of agriculture to increase food yields. In addition, the government imports food commodities, including Fresh Food of Plant Origin (PSAT), from other countries through food import policies.

PSAT is one of most popular imported commodities, because besides being cheap, the variety, type, and quality are better than domestic production. In addition, imported PSAT of all kinds can be found almost any time, regardless of time or season. But on the other hand, there are aspects that need attention, especially those related to legal protection for PSAT consumers. Considering that imported PSAT is at risk of biological and/or chemical contamination, such as fertilizers, insecticides, and so on from the country of origin of imports. (Syahputra et al., 2017)

In relation to import of PSAT, the government has made regulations that regulate procedures, requirements, and legal protection measures (*rechtsbescherming van de burgers tegen de overheid*) (Garner, 2009) for consumers of PSAT from imports. The PSAT import

regulation was first based on Law no. 7Th.1996 Regarding Food, which was later replaced by Law no. 18Th. 2012 on Food (Food Law). The Food Law is then elaborated through various policies, particularly those issued by Minister Agriculture Republic of Indonesia, which regulates in detail procedures and requirements needed to import PSAT, including legal protection for PSAT consumers.

### **Research Method**

This research is a normative legal research.(Michael, n.d.)

### **Research Results Analysis**

Food imports are carried out to meet people's needs, however, food imports, including PSAT imports, but food imports must still pay attention to aspects of public health, especially PSAT consumers. Legal protection for food consumers is very important to be carried out by the government as holder of import regulations.(Mangesti, 2020) This is because imported PSAT carries the risk of containing chemical and/or biological contaminants, which are very dangerous to health. For this reason, through regulations on PSAT imports, efforts should be made as much as possible to prevent the possibility of minimizing content of contaminants in imported PSAT as a form of preventive legal protection for consumers.

Philipus M. Hadjon, said that legal protection can be defined as protection of society by using legal means or protection provided by law.(Hadjon, 2008) Given the character or nature of PSAT, the risk of being exposed to biological or chemical contaminants, such as residues of fertilizers or drugs, or preservatives such as formalin and so on, is very likely. The chemical contaminants and/or biological contaminants are not easily detected by consumers, unless they use special tools for that purpose. The risks due to biological contamination and chemical contamination cannot be felt and have a direct impact, but will process in a very long term.

At the time of the enactment of Law No.7/1996 on Food (Food Law-1996), the government's policy in field of FFPO imports, preventively provided adequate legal protection for PSAT consumers. Through the policies of the Minister of Agriculture as a derivative of the 1996 Food Law, has a commitment to prevent the occurrence of dangers of biological and/or chemical contamination. These prevention efforts are carried out through various Ministries of Agriculture issuing various policies on PSAT import policies, including policies that require food laboratory tests to be carried out in country of origin to determine the content of chemical and/or biological contaminants before PSAT is imported to Indonesia.

Legal protection for PSAT consumers is also carried out through import control, by establishing technical procedures for imports. The policy is contained in the Regulation of the Minister of Agriculture Number: 51/Permen-tan/OT.140/10/2008 concerning Requirements and Procedures for Registration of Fresh Food of Plant Origin. Such provisions are also carried out by developed countries in controlling the rate of PSAT imports, with the aim of protecting local PSAT producers. On October 21, 2009, Regulation of the Minister of Agriculture Number: 51/Permen-tan/OT.140/10/2008 concerning Requirements and Procedures for Registration of Fresh Food of Plant Origin was issued, which is part of the preventive legal protection for imported PSAT consumers. Preventive legal protection is directed at protecting one's rights from possible violations by the authorities.(Setyorini et al., 2020)

Legal protection for PSAT consumers is reflected in import requirements which stipulate that before entering Indonesia, the PSAT must be tested in the laboratory first in

country of origin, before being circulated in Indonesia. This provision is reflected in Article 37 of the Food Law-1996, which is formulated:

The government may stipulate the requirements that:

- a. the food has been tested and/or inspected and declared to have passed in terms of safety, quality, and/or nutrition by the competent authority in the country of origin;
- b. food is equipped with documents of test and or inspection results, as referred to in letter a; and or
- c. food is first tested and/or inspected in Indonesia in terms of safety, quality, and/or nutrition prior to distribution.(Salamah, 2012)

This policy was later confirmed by Government Regulation Number 28 of 2004, which in Article 23 stipulates:

Everyone is prohibited from distributing:

- a. food that contains toxic, dangerous or hazardous materials that can harm or endanger human health or life;
- b. food containing contamination that exceeds maximum limit specified;
- c. food containing materials prohibited from being used in food production activities or processes;
- d. food that contains material that is dirty, rotten, rancid, decomposed, or contains plant or animal material that is diseased or comes from carrion so that it makes food unfit for human consumption; or
- e. expired food.

Furthermore, in the provisions of Article 37 paragraph (1) Government Regulation Number 28 of 2004, determines:

With regard to fresh food that will be imported into territory of Indonesia for distribution, the Minister who is responsible for agriculture or fisheries in accordance with their respective fields of duty and authority may stipulate the requirements that:

- a. Food has been tested, inspected and/or passed in terms of safety, quality and/or nutrition by the authorized agency in the country of origin;
- b. Food has complied with the provisions as referred to in Article 21;
- c. Food is equipped with documents of test and/or inspection results as referred to in letter a; and
- d. Food is first tested and/or inspected in Indonesia in terms of safety, quality and/or nutrition before being distributed.

In 2009 Minister of Agriculture Regulation (Permentan) Number 27/Permentan/PP.30/5/2009 dated 18 May concerning Food Safety Supervision on Importation and Exportation Fresh Food of Plant Origin was issued. In this Regulation of Minister of Agriculture it is stated that: "Everyone who imports into or removes PSAT from within the territory Republic of Indonesia for circulation, is responsible safety of PSAT in accordance with the applicable laws and regulations". The scope of this regulation includes acknowledgment of PSAT safety system, equivalence agreement, acknowledgment of PSAT safety where PSAT is produced, PSAT importation and PSAT release.

In 2011, Regulation of the Minister Agriculture No. 27/Permentan/PP.340/05/2009 in conjunction with Minister of Agriculture No. 38/Permentan/PP.340/8/2009 was revoked by Regulation of the Ministe Agriculture Number 88/Permentan/PP.340/5/2011 dated December 14, 2011 concerning Security Supervision of Importation and Exportation of Fresh Food of Plant Origin. In this Ministerial Regulation, changes have occurred including the definition of PSAT, which initially PSAT is food of plant origin that has not been processed and can be

consumed directly and/or can be used as raw material for processing PSAT. The definition of PSAT changed to PSAT is food of plant origin in the form of products produced in post-harvest process for consumption or industrial raw materials, and/or products that undergo minimal processing (*minimum processing products*), (Rode & Rotabakk, 2021) as well as regulations regarding PSAT supervision of prohibited chemicals, namely hazardous chemical compounds that are prohibited from using PSAT.

Ministry of Agriculture Number 88 of 2011 aims to ensure that PSAT imported into the territory of the Republic Indonesia doesn't contain chemical and biological contaminants that exceed the maximum limit as well as prohibited chemicals, so that it's safe and suitable for consumption, and that PSAT released from within the territory of the Republic Indonesia meets the requirements country of destination. In 2015, the Ministry of Agriculture Number 88 of 2011 was revoked and Minister of Agriculture Number 04/Permentan/PP.340/2/2015 dated February 10, 2015 concerning Security Supervision of the Importation and Exportation of Fresh Food of Plant Origin was issued. In the Regulation of the Minister of Agriculture (Permentan) Number 04 of 2015 has a wider scope than the previous Minister of Agriculture, namely in addition to abolition the scope of supervision on chemicals made from (formalin) there is also a change in the definition to that PSAT is fresh food of plant origin that has not been processed can be consumed directly, minimally processed, and/or can be used as raw material for food processing, also regulates the mechanism for recognizing the monitoring system and registration of a country's PSAT safety testing laboratory and hazardous chemicals (formalin) are no longer the scope of testing.

According to the Minister of Agriculture Number 04 of 2015, PSAT IMPORTS are only allowed to enter from countries where the PSAT supervision system is recognized or countries that have testing laboratories registered by the Agricultural Quarantine Agency, so that there is no longer a testing mechanism at entry point, but a monitoring mechanism is implemented with a testing fee borne by the Agricultural Quarantine Agency (Barantan) if import of PSAT is from a recognized country, while for the importation of PSAT from a country that has a testing laboratory that has been registered by Barantan, the cost of testing is borne by owner or his proxies.

Regulation the Minister Agriculture Number 04/Permentan/PP.340/2/2015 was amended by Regulation Minister of Agriculture Number 13/Permentan/KR.040/4/2016. These changes include, in addition to regulating only a few additional rules, for example being allowed to be tested in laboratories of other countries that have been registered by the Agricultural Quarantine Agency, as well as the issuance of PSAT information (*prior notices*) initially by exporters in country of origin no later than when PSAT is finished being raised to means of transportation in country of origin, becomes a PSAT statement (*prior notice*) issued by exporter in country of origin no later than before the ship departs from country of origin, and there are several additional articles including regulating the fulfillment of procedures for issuing PSAT information (*prior notice*) and procedures for issuing certificates test results are given a maximum period of 2 (two) years from the promulgation of this MoA.

The government's efforts to prevent FFPO consumers from being imported, then degraded, have started since the amendment Minister of Agriculture Regulation No. 88/Permentan/ PP.340/12/2011 revoked and replaced with Ministerial Regulation No. 04/Permentan/PP.340/02/2015. Then proceed with the revocation through the Minister of Agriculture Regulation Number 55/Permentan/KR.040/11/2016 concerning Food Safety Supervision on Importation Fresh Food of Plant Origin. This Ministry of Agriculture replaces the previous 2 (two) Ministerial Regulations, namely Minister of Agriculture Regulation

04/Permentan/ PP.340/2/2015 Juncto Regulation of the Minister of Agriculture Number 13/Permentan/ KR.040/4/2016.

Fundamental changes in Regulation Minister of Agriculture Number 55 /Permentan/KR.040/11/2016 concerning Food Safety Supervision Importation of Fresh Food of Plant Origin, namely regarding the import control mechanism, meaning that it no longer regulates the inspection of every import of PSAT, but emphasizes more on recognition of supervision system and registration of a country's PSAT safety testing laboratory and monitoring mechanism. However, it also still provides opportunities for countries whose PSAT safety systems have not been recognized and countries that have not registered PSAT safety testing laboratories, so that it still provides an opportunity for all countries to import PSAT into Indonesia, which distinguishes entry requirements and laboratory costs at the time of monitoring.

After the enactment of Law Number 18 of 2012 concerning Food, the supervision of PSAT was carried out through the Minister of Agriculture Number 04 of 2015, which stipulates that PSAT is only allowed to enter from countries where the PSAT control system is recognized or countries that have testing laboratories registered by the Agricultural Quarantine Agency so that there is no longer a testing mechanism at the point of entry, but a monitoring mechanism is implemented with cost of testing being borne by the Agricultural Quarantine Agency (Barantan) if import of PSAT is from a recognized country, or a country that already has a testing laboratory that has been registered by Barantan, the cost of testing is borne by the PSAT importer or their proxies.

Regulation Minister of Agriculture Number 04/Permentan/PP.340/2/2015 amended by Regulation Minister of Agriculture Number 13/Permentan/KR.040/4/2016, the amendment adds several additional rules, such as being allowed to be tested in laboratories of other countries that have been tested registration by the Agricultural Quarantine Agency, and issuance of a PSAT statement (*prior notice*) which was initially issued by the exporter in the country of origin no later than when the PSAT has been loaded onto the transportation means in the country of origin, becomes a PSAT statement (*prior notice*) issued by the exporter in the country of origin at the latest no later than before the ship departs from the country of origin, and there are several additional articles including regulating the fulfillment of procedures for issuing PSAT information (*prior notice*) and procedures for issuing certificates of test results (*Certificate of Analysis*) given a maximum period of 2 (two) years from the Ministry of Agriculture it was promulgated.

Observing the provisions in import of PSAT as regulated in several implementing regulations of Food Law-1996, shows that the government is committed to providing legal protection to PSAT consumers in Indonesia. After enactment Law Number 18 of 2012 concerning Food ((UUPangan-2012), which replaced the Food Law of 1996, especially since the enactment Minister of Agriculture Regulation Number 55/Permentan/KR.040/11/2016, legal protection for PSAT consumers has decreased significant degradation Because monitoring as a means of controlling PSAT imports is carried out after release of PSAT on the market Argumentatively, with the enactment Regulation Minister of Agriculture Number 55/Permentan/KR.040/11/2016 there is no longer any preventive protection for PSAT consumers who comes from imports, especially for 100 types of PSAT, which was later confirmed by the enactment of Government Regulation Number 86 of 2019 concerning Food Safety.

The enactment Regulation Minister of Agriculture Number 55/Permentan/KR.040/11/2016 jo Government Regulation Number 86 of 2019 concerning

Food Safety, there is a risk that it can harm consumers. This is because imported PSAT is no longer subject to food testing laboratory examinations, so it's feared that PSAT may contain biological contaminants and/or chemical contaminants which are very detrimental to PSAT consumers. The enactment of Ministerial Regulation negates preventive legal protection for PSAT consumers, because imported PSAT circulated in Indonesia will only be withdrawn from circulation, if PSAT is proven to contain chemical and/or biological contaminants that exceed the specified threshold.

In this regard, as an effort to guarantee protection for PSAT consumers as well as PSAT testing in the country of origin, was cases at the time Food Law-1996 came into effect and its implementing regulations. Because preventive legal protection by including preventive (Jaffal & Mahameed, 2018) measures in legislation will be better than repressive legal protection, after an event that harms the community. Even though normatively, people are harmed by PSAT import policy that doesn't take sides with the legal protection of PSAT consumers. Considering the risk of PSAT consumption, it takes a relatively long time and it's not easy to detect this risk. It's also important for PSAT consumers to form a PSAT Consumer Association, in order to file a class action lawsuit, or a *class action* lawsuit against government as the regulator that is authorized to issue policies in field of PSAT imports.

### **Conclusion**

After the enactment of Law No. 18 Th. 2012 Concerning Food, in particular the enactment of Decree of the Minister of Agriculture Number: 55/PERMENTAN/KR.040/11/2016 concerning Food Safety Supervision of Importation of Fresh Food from Plants Juncto Government Regulation Number 86 of 2019 concerning Food Safety Preventive legal protection for PSAT consumers suffers from decrease or be degraded, because imported PSAT is not subjected to laboratory testing in the country of origin to determine the content of biological or chemical contaminants, only if PSAT circulated in Indonesia is proven to contain biological and/or chemical contaminants, the PSAT is withdrawn from circulation.

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