

Crisis Of Legal Certainty In Criminal Enforcement Against The Practice Of Repacking Food Products

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Abstract

The practice of repackaging food products is increasingly prevalent in Indonesia, especially in the small business sector and in trade in foodstuffs in small packaging without labels. This practice poses serious problems for consumer protection and food safety. Although Law No. 18 of 2012 on food has provided a strict prohibition on the opening of food packaging for repackaging, this provision is subject to a normative contradiction under Article 84 paragraph (2), which provides exceptions for food that is “commonly repackaged,” without clear definitions or technical limitations. This ambiguity creates a crisis of legal certainty that hinders criminal enforcement under Article 139. This study uses a socio-legal research approach, combining normative juridical analysis with empirical data from interviews with BPOM officials and field observations. The results showed that the vagueness of the norm is the main factor preventing the authorities from carrying out repressive measures, so that criminal law enforcement does not work effectively. This condition has an impact on weak consumer protection, distortion of business competition, disruption of the national food security system, and potential violations of state obligations to protect the right to public Health. This study confirms the need for strict implementation regulations, repackaging technical guidelines, and strengthening BPOM capacity and consumer literacy to ensure the effectiveness of law enforcement and food safety in Indonesia.

Keywords: Legal Certainty; Consumer Protection; Food Safety.

A. INTRODUCTION

The use of dating apps has increased rapidly in line with the development of digital technology and shifts in social behaviour in modern society. These apps provide a space for individuals to build new relationships quickly and conveniently before meeting in person. However, this convenience has also been accompanied by a rise in relationship-based crimes, including love scams. Data from the National Police's Cyber Crime Directorate shows that reports of online fraud, including emotionally-based fraud, are increasing annually, particularly through social media and dating apps. The National Police also confirmed that most losses result from perpetrators exploiting emotional closeness to lead victims into fraudulent investments. This phenomenon not only causes financial losses but also impacts the psychological well-being of victims, who feel betrayed by those considered emotionally close. ¹Research on digital crime in Indonesia has so far focused more on online transaction fraud, personal data theft, account hacking, and phishing. ²Some studies have addressed the dynamics of online relationships and emotional vulnerability. Still, very little has specifically examined *love scams, particularly those that use dating apps to offer fictitious investment opportunities*. Most research treats love scams as a small subset of cybercrime, thereby failing to thoroughly examine patterns of emotional manipulation, crime planning, and criminal liability.

Legal certainty is one of the most fundamental principles in the Indonesian legal system. Article 1, Paragraph (3), of the Indonesian Constitution of 1945 affirms that Indonesia is a state of law, so that all aspects of State Administration must be subject to legal principles that provide guarantees of certainty, expediency, and Justice. In the theory of law, E. Utrecht defines law as a set of rules governing human behavior in society that must be complied with and whose violation can provoke a response from the government. This view asserts that law exists not just as a written norm but as a mechanism that creates order. In keeping with that, L. J. Apeldoorn emphasized that the purpose of law is to establish social order by creating a maintained peace. Thus, legal certainty becomes an integral aspect of efforts to realize a stable, safe, and protected community.

¹ "Annual Cybercrime Report" (Kominfo, 2024).

² Muliawansyah Apriandi, Rotua Valentina Sagala, and Basuki Basuki, "Legal Protection for Cybercrime Victims of Online Personal Data Distribution," *SINERGI: Scientific Research Journal* 1, no. 11 (2024): 1069–79, <https://doi.org/10.62335/rxca0x19>.

In the context of food, legal certainty has a much more significant role because food is a basic human need directly related to survival, Health, and the quality of human resources. The provisions of Article 27, Paragraph (2) of the 1945 Constitution guarantee the right of citizens to decent work and livelihood, which implicitly includes the right to safe and sustainable food. Therefore, the state has an obligation to ensure food security as part of the protection of human rights. Regulation on food is contained in Law No. 18 of 2012, which stipulates that food must be safe, of good quality, and nutritious so that it can be consumed without posing a health risk. Through the regulation, the government seeks to enforce standards for the supervision of food production, distribution, and trade, including a ban on repacking food that does not comply with the provisions.

Food Repacking is the practice of opening the final packaging of a food product, then repacking it in a smaller size or in another form for resale. This practice is often found in small businesses such as pastry shops, traditional market traders, and home producers who sell margarine, chocolate, butter, cereals, flour, and other foodstuffs in small packages that lack essential information labels. In many cases, repacking is carried out without complying with food safety standards, without an expiration date, without a marketing license, and without disclosing the business actor's composition or identity. This results in the product's origin not being traceable and potentially endangering consumers' Health.

Normatively, the Food Law imposes a strict ban under Article 84, paragraph (1), which states that "everyone is prohibited from opening the final packaging of food to be repackaged and traded." Violation of this provision is punishable under Article 139 in the form of a maximum imprisonment of five years or a maximum fine of Rp10,000,000.00.³ This provision indicates that the formers of the law are aware of the high risks that can arise from the practice of repacking without safety standards.

However, the firmness of the norm directly contradicts Article 84, paragraph (2), which states that the ban does not apply to food procured in large quantities and commonly repackaged in small amounts for further trade. The phrase "custom repackaged" is at the center of the problem because it does not have a clear legal explanation. There are no implementing regulations, technical standards, or guidelines from BPOM that define which types of food are considered commonly

³ Bawuna, "Penyidikan Dalam Tindak Pidana Pangan Berdasarkan Undang-Undang Nomor 18 Tahun 2012 Tentang Pangan," 201.

repackaged, the limits of such prevalence, or the conditions under which repacking can be legally justified.

The vagueness of the norm gives rise to a crisis of legal certainty, that is, a condition when the rule of law cannot be applied consistently because its elements are not clearly defined. When law enforcement officers are confronted with repacking practices in the field, they have no objective reference to determine whether such actions fall within the scope of violations under Article 84, paragraph (1), or within the exceptions under Article 84, paragraph (2). This led to the norm becoming *lex imperfecta*, that is, a rule that has prohibitions and criminal threats, but cannot be enforced due to the emptiness of the operational setting.

This phenomenon is clearly evident in BPOM's annual report. In 2023, BPOM found at least 69 food distribution facilities that did not meet the provisions, including the circulation of expired food products, the lack of marketing licenses, and repacking issues. However, despite the violation being real, no repacking case was processed to the stage of a criminal investigation. BPOM officials chose a preventive approach in the form of education, socialization, and appeals, not repressive measures. This condition indicates a serious gap between legal norms and implementation on the ground. The state has established a rule prohibiting repacking, but the apparatus cannot enforce it because it lacks a sufficient technical basis. As a result, violations can occur constantly without a deterrent effect⁴.

Meanwhile, the practice of repacking continues to grow as people's demand for food products in smaller, more affordable packages increases. Practical, economical consumption patterns encourage businesses to continue repacking, especially in the trade of cake ingredients and other foodstuffs. Low consumer literacy regarding food safety also exacerbates the situation. Many consumers do not check labels or expiration dates, so they are unaware of the risks associated with consuming repacked food products.

In addition to consumer demand factors, the legal culture of society also affects the sustainability of repacking practices. In some communities, repacking has become a practice taken for granted, even passed down through generations as part of small-business activities. When authorities conduct surveillance, there is often resistance or disapproval because people feel that repacking is a legitimate economic strategy that helps small businesses survive.

⁴ Subagyo Sri Utomo dan Yoel Frans Alfredo, "Perlindungan Konsumen dan Peran Badan Pengawas Obat dan Makanan (BPOM)," *Justisia: Jurnal Ilmu Hukum* 1, no. 2 (2023): 60–68.

This phenomenon puts consumers in a very weak position. Without a clear label, consumers do not know whether the product is safe, still worth consuming, or contains health risks. When losses occur, consumers cannot effectively hold businesses accountable because it is difficult to prove a causal relationship between products and health impacts.

In this context, this study is important because it examines how the crisis of legal certainty affects the criminal enforcement of repacking food products, as well as how the vagueness of norms affects food safety and consumer protection. This analysis is not only relevant for legal reform but also crucial for the government and BPOM in formulating more effective policies to ensure national food security.

B. RESEARCH METHODS

This study uses a *socio-legal research approach* that combines normative and empirical Juridical Studies⁵. Normatively, the study examines the regulations governing food safety and consumer protection, especially Law No. 8 of 1999, Law No. 18 of 2012, as well as BPOM regulations related to labels, marketing licenses, and food quality standards to identify relevant norms and sources of legal uncertainty, especially in Article 84 paragraph (2). An empirical approach is undertaken through semi-structured interviews with BPOM officials and direct observation in pastry shops and traditional markets to examine the implementation of repacking rules and practices in the field. All data were analyzed qualitatively using Soerjono Soekanto's theory of legal effectiveness, which emphasizes five factors of Law, Law Enforcement, facilities, society, and culture to understand how the crisis of legal certainty arises and affects criminal enforcement of food repacking practices.

C. RESULTS AND DISCUSSIONS

Regulatory reform of layoffs in the perspective of legal protection of workers

Indonesia's labor law reform has undergone significant changes in line with the enactment of Law Number 6 of 2023 concerning the determination of government regulations in lieu of Law Number 2 of 2022 concerning job creation into law. This change has a substantial impact on the mechanism of termination of employment (PHK) and legal protection for workers in Indonesia. As a country that adheres to the principles of welfare state and upholds the values of Pancasila, Indonesia has a constitutional

⁵ Irwansyah, *Penelitian Hukum : Pilihan Metode dan praktik penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

obligation to protect the rights of workers as mandated in Article 27 paragraph (2) and Article 33 paragraph (1) of the 1945 Constitution. Nevertheless, the implementation of the job creation law raises academic and practical debates about the extent to which legal protection of workers is actually realized, especially in the context of increasingly flexible layoffs for employers⁶.

1. Forms of Accountability for Love Scammers on Fictitious Dating Apps

This study found that perpetrators of love scams on online dating apps can be criminally liable because their actions satisfy the elements of fraud, psychological manipulation, and the misuse of technology for profit, resulting in material and immaterial losses for victims. ⁷Although love scams are not explicitly regulated in Indonesian law, liability can still be imposed because the act violates applicable criminal provisions and harms another party. The three main elements that form criminal liability in this case include: intentional deception, a causal relationship between the perpetrator's actions and the victim's loss, and the perpetrator's awareness of the consequences of their actions. Case findings indicate that perpetrators typically create false identities, claim to have stable jobs or backgrounds, and then build emotional relationships that are used to convince victims to give money or invest. As a result, victims experience financial loss, psychological trauma, and decreased self-confidence. This crime is growing because perpetrators exploit the lack of digital literacy, legal ignorance, and minimal oversight of online interactions, thereby strengthening the urgency of enforcing criminal liability for love scammers.⁸

2. Crisis of legal certainty in the norms of the ban on Repacking

The results showed that the crisis of legal certainty regarding repacking norms is a fundamental problem that impedes the effectiveness of criminal law enforcement in food safety. The crisis of legal certainty stems mainly from the formulation of Article 84 of Law No. 18 of 2012 on food, which leaves too much room for interpretation, especially regarding the phrase "commonly repackaged." The vagueness of this phrase undermines the nature of *lex certa*, which should be the main character of criminal norms.

⁶ Nabiyla Risfa Izzati, "Kepastian Hukum vs Ketidakpastian Kerja: Substansi Ketenagakerjaan Dalam Undang-Undang Nomor 6 Tahun 2023 Tentang Cipta Kerja," *Jurnal Hukum Ius Quia Iustum* 31, no. 2 (2024): 384–407.

⁷ Alvina Alvina et al., "Analysis of the Occurrence of Criminal Acts of Fraud Through Social Media Platforms," *Viva Themis: Journal of Law and Humanities* 7, no. 2 (2024): 301–15.

⁸ Mohammad and Mesra, "Online Dating Applications as a Platform for Social Identity Formation: A Case Study Among Teenagers and Young Adults in Surakarta City."

Article 84, Paragraph (1) provides a strict prohibition that everyone is prohibited from opening the final packaging of food for repackaging and trading. The ban is actually a form of legal protection for the community as consumers, because opening and repacking food are highly vulnerable to contamination, which can eliminate product identity and remove labels that should provide certainty about food safety information. However, this assertiveness is in direct contrast to Paragraph (2), which provides exceptions for food procured in large quantities and commonly repackaged.

At this point, the main problem arises. The phrase “custom repackaged” is not defined in the law, is not described in the implementing regulations, and does not have a technical standard issued by BPOM. No provision explains which foods are included in the category of commonly repackaged foods. There is no limit to the factors that may determine such prevalence, including venture culture, market habits, product type, or economies of scale. In empirical interviews, BPOM officials have consistently stated that the vagueness of the phrase is a significant obstacle for them in determining the course of action⁹.

The vagueness of the concept of “prevalent” is the primary *source of the norm’s vagueness in situations where legal formulations do not provide sufficient certainty to guide* behavior or law enforcement. Legal norms in the criminal context must meet the elements of *Lex certa* and *lex stricta*, meaning that the elements of the offense must be formulated firmly, not multi-interpreted, and can be applied objectively by law enforcement officers. When the norm is too vague, the apparatus lacks the tools to determine whether an action satisfies the elements of a criminal offense.

In this context, PPNS BPOM investigators face a serious dilemma. They have investigative powers under the Food Law, but those powers cannot be effectively used because the criminal element cannot be clearly proven. To process a repacking case to the investigation stage, the investigator must ensure that the action does not include “customary” repacking.” However, without a standard guideline, investigators have no objective basis to assert that a particular repacking constitutes an offense. This vacuum encourages the authorities to avoid repressive measures, as they risk being seen as an abuse of authority.

In empirical data, BPOM explained that every repressive action must be based on a *strong legal standing*, because business actors can fight the law by stating that their

⁹ Arifiani Ayu Kurnia Dewi, “Penyuluhan Keamanan Pangan BPOM Terhadap Tingkat Adopsi Pada Produksi Pengolah Tahu Tuna di Kabupaten Pacitan,” *Jurnal Penyuluhan Perikanan dan Kelautan* 16, no. 2 (2022): 153–67.

actions include repacking, which is common. In a situation where the evidentiary element is very vague, the apparatus chooses the safe path: it does not elevate the repacking case to the level of a criminal investigation. As a result, although BPOM routinely found various forms of illegal repacking, none of the cases proceeded to the *pro-justitia stage*¹⁰.

This legal certainty crisis also has an impact on the way BPOM formulates surveillance strategies. Because it cannot take repressive measures, BPOM relies more on preventive approaches in the form of socialization, education, and appeals. The socialization was carried out by providing an explanation of the dangers of repacking food without labels, potential contamination, and the obligation of business actors to maintain food safety. However, in practice, preventive approaches are ineffective in suppressing the number of violations, since business actors do not face a real threat from criminal law. In some empirical dialogues, business actors even consider that the appeal is nothing more than an ordinary administrative directive, not a legal warning.

In addition to normative issues, the crisis of legal certainty is also seen in the absence of technical standards and operational guidelines. When the government does not provide detailed guidelines on permissible repacking mechanisms, the scope for interpretation is wide open at the business level. Many businesses consider repacking common because it has been practiced since the beginning by small businesses selling cake ingredients, groceries, and other food products. In fact, in the context of modern food safety standards, custom is not a valid legal basis for excluding an act from the category of offenses¹¹.

The vagueness of the text distorts perceptions among business actors. They believe that repacking is a standard economic practice that is not harmful as long as the product still looks fit for consumption. Small and micro business actors often use the excuse “it’s a habit “or” people are used to buying small packaging” to justify repacking. Because there has never been a strict criminal law, businesses are increasingly convinced that repacking is not a serious offense¹².

Field Data show that repacking is most often done on products whose purchase requires a small size, such as meals, margarine, milk powder, cereals, chocolate powder,

¹⁰ Yuliana Indah Sari dan M. Rizki Azmi, “Perlindungan Hukum Konsumen Terhadap Produk UMKM Yang Tidak Bersertifikat SNI dan BPOM,” *JURNAL USM LAW REVIEW* 8, no. 2 (2025): 639–55.

¹¹ Muhammad Amin, Rukmana Amanwinata, dan I. Gde Pantja Astawa, “Politik Hukum Bidang Pangan Dan Implementasinya Dalam Mewujudkan Ketahanan Pangan Indonesia,” *Jurnal Poros Hukum Padjadjaran* 3, no. 1 (2021): 150–67.

¹² Sari dan Azmi, “Perlindungan Hukum Konsumen Terhadap Produk UMKM Yang Tidak Bersertifikat SNI dan BPOM.”

and bread flour. Many merchants open large packs (for example, 2.5 kg or 5 kg) for resale in packs of 50 grams to 250 grams without any labeling. The product is packaged in clear plastic, without the identity of the business actor, an expiration date, a marketing license, or material composition. This practice not only eliminates the label's function as a source of information but also erases distribution traces, so the product cannot be traced in the event of a food safety problem.

Within the framework of modern food supervision, the label is not just information, but a consumer protection tool that gives the right to know the quality and safety of products. Labels provide essential information, including product name, composition, marketing authorization, business name, production identification number, and expiration date. When repacking removes the label, then the consumer loses the most basic protection¹³.

Conceptually, the crisis of legal certainty in repacking prohibitions undermines the ability of legal norms to provide predictability. Business actors do not know the limits of prohibited behavior, authorities do not know exactly which actions can be criminally prosecuted, and the public does not have guarantees of product safety. Blurred norms create uncertainty at all layers of the legal system.

From the perspective of legal theory, the vagueness of norms is one form of legislative failure. Multilayered norms not only hinder law enforcement but also weaken the regulatory function as a means of social order. When there are norms that cannot be implemented, then the effectiveness of the law as a whole is affected¹⁴. In the context of repacking, this is very apparent between the law's purpose to prohibit repacking and the reality that repacking continues unhindered.

In addition to the vagueness of norm formulation, the researcher also found that the crisis of legal certainty is reinforced by the absence of a mechanism for standardizing repacking in government technical regulations. BPOM, as a supervisory institution, does not have normative instruments that set operational limits on how a product that is "commonly repackaged" should be treated. There are no regulations governing production space requirements, appliance hygiene standards, lists of foods allowed for repackaging, or procedures for determining the prevalence of a commodity. Thus, BPOM officials do not have objective test equipment to determine whether a repacking process is legal.

¹³ Desi Arisandi dan Andri Sutrisno, "Perlindungan Hukum Konsumen terhadap Makanan Kadalawarsa di Kabupaten Bogor serta peran Badan POM Berdasarkan Undang-Undang Perlindungan Konsumen," *Harmonization: Jurnal Ilmu Sosial, Ilmu Hukum, dan Ilmu Ekonomi* 2, no. 3 (2024): 214–22.

¹⁴ Afdhali dan Syahuri, "Idealitas penegakkan hukum ditinjau dari perspektif teori tujuan hukum."

One consequence of the absence of technical guidelines is the difficulty of determining whether a repacking practice falls within the food industry or is simply an informal repacking activity. In some cases in the field, repacked products are sold by small and medium enterprises (SMEs) without adequate production facilities. The repacking process is carried out in an unhygienic room, using simple utensils such as a regular spoon or a thin plastic without personal protective equipment. However, since there are no standard parameters, this act is difficult to classify as a criminal offense.

This ambiguity has also resulted in a *normative vacuum* in criminal law enforcement. Although Article 139 of the Food Law provides a serious criminal threat to perpetrators of illegal repacking, with a maximum prison term of 5 years or a fine of up to Rp10 billion, the threat cannot be realized. The authorities can only use administrative measures, such as reprimands, warnings, or license revocation, against businesses that hold permits. However, against informal companies or small businesses without a marketing license, it is challenging to apply administrative sanctions because they are not part of the formal licensing system.

Thus, the criminal norm formulated by the law's framers cannot be implemented in empirical reality. This norm becomes *lex imperfecta*, that is, a rule that contains prohibitions and threats of sanctions, but cannot be enforced due to the lack of implementative conditions. This phenomenon shows the gap between *das sollen* (what is regulated by law) and *das sein* (what happens in reality), as stated by Soerjono Soekanto that the ineffectiveness of the law is always related to the non-fulfillment of one or more factors in the legal system, both in terms of substance and enforcement structure.

Furthermore, the crisis of legal certainty is also influenced by the low level of harmonization of regulations in the field of food. The Food Law does not explicitly harmonize the repacking provisions with the Consumer Protection Law nor the health law. For example, the Consumer Protection Act emphasizes the importance of correct and clear information on product labels, while repacking, which removes labels, goes against these basic principles. However, due to a loophole in Article 84 paragraph (2), business actors can argue that the repacking they do is common so it does not violate the law¹⁵.

This disharmony is also evident in the aspect of Public Health Protection. The Health Act regulates hygiene and food safety standards, but does not directly regulate

¹⁵ Siregar, "Kepastian Hukum Perlindungan Konsumen Sesuai Dengan Ketentuan Undang-Undang Perlindungan Konsumen."

repacking. These gaps result in space overlap and emptiness. In practice, BPOM officials must decide whether to use the Food Law or the health law or the Consumer Protection Law in dealing with repacking violations. However, without a clear technical basis, this choice becomes difficult and risks *counterproductive overlapping jurisdictions*.

In the end, the crisis of legal certainty in the norms of Prohibition of repacking creates an ineffective legal system. Norms already exist and criminal threats have been established, but since they are vague, incomplete and non-operational, they cannot perform their regulatory functions. This condition reinforces the understanding that vague laws are not only unenforceable, but also create systemic harm to society in the form of loss of food security guarantees.

Implications of legal certainty crisis on Criminal Enforcement and Consumer Protection

The crisis of legal certainty in the norms of the Prohibition of repacking not only generates normative obstacles for the authorities, but also has much broader consequences for the enforcement of criminal law, the effectiveness of food supervision, as well as consumer protection. In this study, these implications can be mapped into several layers: implications for law enforcement patterns, implications for the institutional structure of BPOM, social and economic implications, and implications for consumer protection certainty.

1) Implications for Criminal Law Enforcement patterns

The most direct implication of the crisis of legal certainty is seen in the pattern of criminal law enforcement conducted by BPOM. BPOM officials have the authority to investigate as part of the task of post-market food supervision. However, in the context of repacking, this authority is never optimized. The interview results showed that BPOM prefers non-penal approaches such as socialization, education, verbal reprimands, and written warnings. This approach is taken not because BPOM does not understand the danger of repacking, but because the uncertainty of the norm makes repressive actions potentially lead to a counter lawsuit from business actors¹⁶.

One of the investigators of PPNS BPOM explained that the investigation can only be carried out if all elements of the criminal act can be proven clearly and objectively. If any aspect is unclear, criminal action may be considered invalid. In the context of repacking, the “prevalent” element is ambiguous, so repacking cannot be categorized as a criminal

¹⁶ Ramadhan Sadam Husein dan M. Sifa Fauzi Yulianis, “Tinjauan Yuridis Perlindungan Konsumen Atas Perlindungan Berdasarkan Undang-Undang Perlindungan Konsumen Dan Undang-Undang Bpom,” *JOURNAL OF LAW AND NATION* 3, no. 1 (2024): 187–202.

offense without high risk. Therefore, the law enforcement apparatus takes a more cautious position by avoiding repressive measures.

This pattern of law enforcement has implications for the weak *deterrent effect it creates*. When criminal sanctions are not enforced, businesses have no incentive to stop repacking. In fact, some companies consider repacking a standard business practice because there has never been firm legal action. This raises the public perception that *law enforcement* in the field of food is concessional and not coercive¹⁷.

2) Implications for the structure and institutional functions of BPOM

The crisis of legal certainty also has an impact on the institutional effectiveness of BPOM as a food supervisory agency. BPOM's duties include supervision of distribution facilities, supervision of circulating goods, investigation, guidance, and enforcement of administrative and criminal laws. However, because repacking norms are not clear, the role of BPOM in taking action is limited.

BPOM is basically designed as an institution that is able to supervise the circulation of food with a multidisciplinary approach: administrative, laboratory technical, and criminal. However, without technical guidelines that define "commonly repackaged food," BPOM's criminal functions become unworkable. This makes BPOM structurally function is not optimal. This weakness is evident from BPOM's annual report which shows high findings of repacking violations, but no pro-justitia action for years¹⁸.

Furthermore, due to the absence of criminal action, the capacity of PPNS BPOM investigators is not used optimally. Investigators are unable to add the empirical experience needed to handle complex food cases, so institutional competence in law enforcement aspects is stagnant. This condition causes long-term effects in the form of weakening the position of BPOM in the structure of the national food security system.

3) Social and economic implications

The practice of repacking also has a wide impact on the social and economic aspects of society. From the social aspect, repacking contains health risks for consumers because the repacking process is often carried out in unhygienic conditions. Consumers cannot be sure whether the food is still suitable for consumption or contains contaminants. Low-literate consumers are often unaware of the dangers of food without labels and only

¹⁷ Andi dkk., "Pendampingan Umkm Belopar Rempeyek Dalam Produksi Keripik Rempeyek Kacang Melalui Strategi Repackaging."

¹⁸ Ridha Kurniawan dkk., "Penegakan Hukum Badan Pengawas Obat dan Makanan (BPOM) Terhadap Perdagangan Bahan Pangan Kadaluwarsa di Pasar Tradisional Kota Jambi," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (2025): 1972–81.

prioritize low prices. This habit forms a social pattern that accepts risky food as commonplace.

From the economic aspect, repacking causes distortion in business competition. Businesses that meet food safety standards and incur costs for marketing licenses and labeling are at a disadvantage compared to illegal repacking actors who do not require *compliance costs*. This distortion creates unfair competition, so law-abiding businesses have the potential to experience market pressure¹⁹.

4) Implications for Consumer Protection

The most important aspect of the implications of the legal certainty crisis is weak consumer protection. Repacking eliminates the identity of the product, so consumers cannot access basic information such as composition, expiration date, and business identity. When poisoning or health problems occur, consumers have no mechanism to hold them accountable. In the context of consumer protection law, this is a serious violation of the consumer's right to safety and comfort in consuming goods²⁰.

In the modern legal system, consumer protection and food safety are closely interrelated. When repacking norms are vague and unenforceable, consumers are in the most vulnerable position. This shows that the crisis of legal certainty directly erodes the protection of consumer rights and endangers public Health.

5) Implications for the sustainability of the National Food Safety System

The crisis of legal certainty in repacking norms also has direct implications for the sustainability of the National Food Safety System. Food safety systems ideally work through a *from farm to table approach*, which places safety standards at every stage of production, distribution, and consumption. When one of the points of the system, namely the distribution and packaging stages, is disrupted due to uncontrolled repacking, the entire food safety system is threatened to lose its integrity²¹.

In the context of the National FOOD Surveillance System, illegal repacking leads to a loss *traceability* of product traceability function. Without an official label, the origin of the product cannot be traced back. In the event of a food poisoning incident, the authorities cannot determine the source of the problem, whether it comes from contaminated raw materials, the production process at the factory, or from an unhygienic repackaging

¹⁹ Andrew Robert Diyo, "Keamanan Pangan Sebagai Usaha Perlindungan Kesehatan Masyarakat Dan Sebagai Hak Konsumen," *JISOS: Jurnal Ilmu Sosial* 1, no. 7 (2022): 703–12.

²⁰ Desi Tirtawati dkk., "Pelaksanaan Pengawasan Keamanan Pangan pada Penerbitan Izin Edar P-IRT di Dinas Kesehatan Kabupaten Tangerang," *Jurnal Ilmiah Pangan Halal* 6, no. 1 (2024): 96–103.

²¹ Faizah Bafadhal, Evalina Alissa, dan Isran Idris, "Perlindungan Hukum Terhadap Konsumen Atas Keamanan Pangan Oleh Badan Pengawas Obat dan Makanan," *Zaaken: Journal of Civil and Business Law* 5, no. 1 (2024): 133–51.

process²². This makes the National Food Safety System unable to perform the function of rapid response to food incidents (*rapid response*). When *traceability* is lost, the risk control function becomes paralyzed.

The inability to trace the origin of food also hinders the government's ability to conduct product recalls²³. In the modern food system, *recall* is a vital mechanism for preventing health risks to society. However, repacking food cannot be withdrawn from circulation because it does not have an identity. As a result, the potential danger remains with the consumer²⁴.

This phenomenon shows that the crisis of legal certainty not only has an impact on criminal enforcement, but also threatens the foundation of the food safety system as a whole. When one small gap is left, then the entire system loses its effectiveness. This consequence is important because it shows that vague legal policies can create a domino effect that weakens aspects of Public Health on a national scale.

6) Implications for state obligations in human rights perspective

In the human rights perspective, food is part of the right to life and the right to a decent standard of Health. Article 28h of the 1945 Constitution guarantees the right of everyone to obtain a good and healthy living environment, including through food that is safe for consumption. Furthermore, the right to safe food is also affirmed in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which has been ratified by Indonesia through Law Number 11 of 2005.²⁵

Thus, when the legal norm regarding repacking cannot be enforced, it becomes not only an administrative or criminal matter, but a potential violation of the state's obligation to protect the right to Health of its citizens. The state has *an obligation to*

²² Simbala Wahongan, Gosal Wahongan, dan Gosal Simbala, "Strategi mewujudkan keamanan pangan dalam upaya perlindungan konsumen," *Lex et Societatis* 9, no. 3 (2021), <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/36435>.

²³ Angelina Angelina dan Nasar Buntu Lailita, "Pengaruh Product Failure Dan Product Recall Terhadap Purchase Intention Dengan Mediasi Customer Perception Pada Industri Otomotif," *Jurnal Administrasi dan Manajemen* 13, no. 3 (2023): 325–37.

²⁴ Nadia Safitri dan Siti Noorlena, "Strategi Efektif Dalam Penanganan Kembali Produk Dan Penarikan Kembali Produk Untuk Menjamin Kualitas Dan Kepuasan Konsumen," *Jurnal Riset Multidisiplin Edukasi* 2, no. 6 (2025): 801–16.

²⁵ Mohamad Fajri Mekka Putra dkk., *Hak asasi manusia: Landasan, perkembangan dan tantangan* (PT. Green Pustaka Indonesia, 2024), [https://books.google.com/books?hl=id&lr=&id=zXr3EAAAQBAJ&oi=fnd&pg=PA79&dq=hak+atas+pangan+yang+aman+juga+ditegaskan+dalam+International+Covenant+on+Economic,+Social,+and+Cultural+Rights+\(ICESCR\),+yang+telah+diratifikasi+oleh+Indonesia+melalui+UU+Nomor+11+Tahun+2005&ots=ET4IxUUHyb&ig=UJnbYmSgzP89eCfPIYzpyqJ68Po](https://books.google.com/books?hl=id&lr=&id=zXr3EAAAQBAJ&oi=fnd&pg=PA79&dq=hak+atas+pangan+yang+aman+juga+ditegaskan+dalam+International+Covenant+on+Economic,+Social,+and+Cultural+Rights+(ICESCR),+yang+telah+diratifikasi+oleh+Indonesia+melalui+UU+Nomor+11+Tahun+2005&ots=ET4IxUUHyb&ig=UJnbYmSgzP89eCfPIYzpyqJ68Po).

protect, that is, the obligation to protect consumers from the actions of third parties that could harm public Health²⁶.

Repacking practices that eliminate food identity, do not list expiration, and are carried out without hygiene standards are clearly a form of third party Action (business actors) that can threaten public Health. When the state, through BPOM, is unable to crack down on this practice criminally due to vague norms, then the state fails to fulfill its obligation to provide maximum legal protection to its citizens.

Thus, the issue of repacking is not just a technical or economic issue, but a constitutional and human rights issue. The vagueness of legal norms creates a space of uncertainty that has an impact on the fulfillment of citizens' rights to safe food. It is in this context that the crisis of legal certainty shows a deeper dimension than mere problems of sectoral regulation.

7) Interaction between market demand, consumer behavior, and the vagueness of norms

In addition to normative and institutional factors, the study also found that high market demand and permissive consumer behavior exacerbate the crisis of legal certainty. In behavioral economics *behavioral economics*, consumers tend to choose products that are cheap and practical, even if they are of lower quality. This trend is clearly visible in the case of repacking²⁷.

Consumers often buy margarine, cereals, or repacking meses because small packaging is more suitable for daily needs. This behavior is driven by economic factors, especially low-income people. However, when consumers do not demand fully labeled products, businesses see a gap to continue repacking.

The vagueness of the norm exacerbates this situation because business actors see that there is no real legal risk. In the concept of *opportunity structure* in criminology, the perpetrator will commit an infringing act when the legal risk is low, the profit is high, and the norm is not clear²⁸. The practice of repacking meets all three conditions:

- High profits due to repacking reduce production costs.
- Low risk because there is no criminal enforcement.

²⁶ S. H. Ruslan Renggong, Dyah Aulia Rachma Ruslan, dan M. Kn SH, *Hak Asasi Manusia Dalam Perspektif Hukum Nasional* (Prenada Media, 2021), [https://books.google.com/books?hl=id&lr=&id=OC5EEAAAQBAJ&oi=fnd&pg=PA1&dq=hak+atas+pangan+yang+aman+juga+ditegaskan+dalam+International+Covenant+on+Economic,+Social,+and+Cultural+Rights+\(IC+ESCR\),+yang+telah+diratifikasi+oleh+Indonesia+melalui+UU+Nomor+11+Tahun+2005&ots=kYQuN6t3Ox&sig=iKJOMNkCfOLm5RrFZdJ49fDQTTWA](https://books.google.com/books?hl=id&lr=&id=OC5EEAAAQBAJ&oi=fnd&pg=PA1&dq=hak+atas+pangan+yang+aman+juga+ditegaskan+dalam+International+Covenant+on+Economic,+Social,+and+Cultural+Rights+(IC+ESCR),+yang+telah+diratifikasi+oleh+Indonesia+melalui+UU+Nomor+11+Tahun+2005&ots=kYQuN6t3Ox&sig=iKJOMNkCfOLm5RrFZdJ49fDQTTWA).

²⁷ Urbanus Ura Weruin, "Kritik Behavioral Economics Terhadap Rasionalitas Ekonomi," *Prosiding SENAPENMAS* 2, no. 1 (2022): 884–92.

²⁸ Besse Patmawanti, *Kriminologi* (CV. Eureka Media Aksara, 2023),

- Norms are blurred because Article 84 paragraph (2) provides room for “prevalent” interpretation.

The interaction between consumer behavior, economic incentives of business actors, and blurred norms creates a cycle of *self-reinforcing* (mutually reinforcing). As long as the vagueness of the norm is allowed, market behavior cannot be controlled, and repacking will not decrease.

8) Crisis of legal certainty as an obstacle to the implementation of Ultimum Remedium

In criminal law Theory, Criminal Law is an ultimum remedium or last resort when administrative and civil mechanisms are unable to prevent an offense. However, the crisis condition of legal certainty causes the criminal law can not perform the role of ultimum remedium effectively²⁹.

In the context of repacking, preventive actions such as education and appeals have been carried out by BPOM, but have not succeeded in reducing the number of violations. In an ideal situation, when preventive efforts fail, the authorities can use criminal law to exert a deterrent effect. However, the vagueness of the “commonly repackaged” element makes the apparatus unable to apply Article 139 as a final remedy.

As a result, the law loses its coercive function. Criminal norms turn into rules of a declarative, not operational nature. In legal literature, this is referred to as a *non-enforceable rule*, that is, a norm that is textually hard, but implementatively weak or unenforceable.

Thus, the crisis of legal certainty led to the demise of the ultimum remedium function in the National Food Law system. Criminal law cannot be used to correct the weaknesses of other instruments, so the food surveillance system loses its most strategic component.

D. CONCLUSION

This study shows that the crisis of legal certainty is the main cause of the ineffectiveness of criminal enforcement against the practice of repacking food products. The vagueness of the norm in Article 84 paragraph (2) of Law No. 18 of 2012 on food causes ambiguity of interpretation, so that BPOM officials cannot apply the criminal provisions in Article 139 expressly. Blurred norms make repacking difficult to categorize as a criminal offense, even though the practice poses a potential threat to consumer

²⁹ Pande Komang Surya Mahesa dan Ayu Putu Laksmi Danyathi, “Penerapan Prinsip Ultimum remedium Dalam Kebijakan Kriminalisasi Di Indonesia: Tinjauan Teoritis Dan Praktis,” *Jurnal Media Akademik (JMA)* 3, no. 9 (2025), <https://jurnal.mediaakademik.com/index.php/jma/article/view/2858>.

health. This crisis of legal certainty has a wide impact on criminal law enforcement, the effectiveness of BPOM's institutional functions, business competition, the national food security system, and consumer protection. This condition can also be seen as a potential form of violation of state obligations in ensuring the right to safe food. Therefore, a clear and technical implementing regulation is needed to provide the definition of “commonly repackaged,” commodity classification, as well as operational standards of the repacking process. In addition, strengthening BPOM capacity and public education on food safety are also needed to support more effective law enforcement.

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