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**Food and Consumer Protection: A Study on  
Food Legislation of Selected Countries**

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# FOOD AND CONSUMER PROTECTION: A STUDY ON FOOD LEGISLATION OF SELECTED COUNTRIES

RAHMAH ISMAIL

## ABSTRACT:

Safe food is fundamental to all consumers. Getting safe food is the right of every consumer as recognised by the Food and Agriculture Organisation (FAO) and the World Health Organisation (WHO) in 1992. Although the proverb ‘You are what you eat’ implies that consumers must be responsible for what they eat, consumers alone are not able to ensure that what they eat is safe. Legislation is needed to ensure that food supplied to consumers meets safety standards. Comprehensive legal provisions are needed to protect consumers from risks associated with food due to the fact that there is a serious health risks relationship between food intake and illness. To overcome problems associated with unsafe food, most of the ASEAN countries have enacted their own legislation. Malaysia, for example has the Food Act 1983 and Food Regulations 1985 to protect Malaysian consumers from unsafe food. Singapore has the Sale of Food Act and Food Regulations to secure the wholesomeness and purity of food and to fix standards for food. Indonesia has Act No 7 of 1996 on Food to ensure safe food is supplied to the consumers and Thailand has the Food Act 1979 to handle unsafe food. This paper focuses on the legislation in these jurisdictions, analysing the way in which consumers are protected from unsafe food. These countries have been chosen because the writer would like to see how both the common law countries (Malaysia and Singapore) and the civil law countries (Indonesia and Thailand) protect consumers from unsafe food.

## I. INTRODUCTION

Food safety is increasingly becoming a global challenge both by virtue of its public health impact as well as its economic implications. The importance of food safety has increased significantly in recent years following a series of global tragedies associated with incidents of contamination and outbreaks, such as milk contaminated with melamine.

Every consumer has the right to get safe food for their consumption. Food is one of the basic needs and is essential to consumers. Therefore it is important to ensure that only safe food is supplied to consumers. In 1992, the Food and Agriculture Organisation (FAO) and the World Health Organisation (WHO) recognised that access to safe and adequate food in terms of nutritional values is the right of each individual.<sup>1</sup> In relation to this, comprehensive legal provisions are needed to protect consumers from risks associated with food because there is a serious health risks relationship between food intake and illness, where food that is unsafe for consumption will pose a health risk to consumers.<sup>2</sup>

Most of the world’s countries have their own food legislation to ensure that food supplied to consumers is safe. Similarly, ASEAN countries also have legislation in relation to food, for example: Malaysia, Singapore, Indonesia and Thailand.

<sup>1</sup> “Food Safety”, online: < <http://who.int/fsf>>. On the World Health Organisation’s food safety programme.

<sup>2</sup> Geraint Howells & Stephen Weatherill, *Consumer Protection Law* (United Kingdom: Dartmouth Publishing Company Limited, 1995) at 400.

## II. FOOD LAW AND CONSUMER PROTECTION

In the consumer protection regime, there are three legal instruments normally applied. They are the criminal law instrument, civil law instrument and administrative law instrument. The criminal law instrument involves the state involvement in enforcing the law. In consumer protection, the state involvement can be seen when there is a market failure to protect consumers. The government will intervene by enacting relevant laws to balance the rights of traders and the rights of the consumers. This criminal law instrument is used in all food legislation of the studied countries except for Indonesia. In Indonesia, Act No 7 of 1996 on Food provides for criminal penalties as well as civil remedies. The Act allows consumers whose health has been affected as a result of consuming unsafe food to claim damages from the food producer.

## III. FOOD LEGISLATION IN MALAYSIA, SINGAPORE, INDONESIA AND THAILAND

### A. *Malaysia*

In Malaysia, there are six pieces of legislation which deal with food. These are the Food Act 1983, Food Regulations 1985, Food (extensions of the Food Act 1983 to Tobacco and others) Regulations 1993, Control of Tobacco Product Regulations 2004, Food (Issuance of Health Certificate For Export of Fish and Fish Product to the European Union) Regulations 2009 and Food Hygiene Regulations 2009.

The Food Act 1983 is the parent act. The other five pieces of legislation were enacted by the Minister of Health under the power given in section 34 of the Food Act 1983. The objective of the Food Act 1983 is to protect the public against health hazards and fraud in the preparation, sale and use of food, and for matters incidental thereto or connected therewith. The Act has thirty six sections divided into five parts. Part I deals with preliminary matters such as the definitions of basic concepts. Part II provides for the administration and enforcement of the Act. The protection of consumers against unsafe food in respect of composition, false labelling and misleading advertisement is provided in Part III. Part IV on other hand, deals with importation, warranties and defences. The provisions in Part IV show that the Food Act 1983 controls not only the local food industry but also imported food. Lastly, all miscellaneous matters are incorporated in Part V.

The Food Regulations 1985 contains provisions regarding procedures for taking samples, labelling, food additives and nutrient supplement, food packaging, incidental constituent, food standard and particular labelling requirements for food and miscellaneous matters. The Food Regulations has 399 provisions divided into ten parts. The Food (Extensions of The Food Act 1983 To Tobacco And Others) Regulations 1993 was enacted to extend the application of the Food Act 1983 to tobacco, cigars and cigarettes. The Control of Tobacco Product Regulations 2004 regulates tobacco products in terms of advertisement, sale, smoking prohibition, labelling and packaging and others. The Food (Issuance of Health Certificate For Export of Fish and Fish Product to the European Union) Regulations 2009 is meant for the issuance of health care certificates for export of fish and fish products to the European Union, whereby any person who intends to export any fish product to the European Union needs to apply for a health care certificate in writing to the competent authority, and the exporter must comply with European Union requirements.

The Food Hygiene Regulations 2009 regulate sanitary measures for the food handler and food premises.

### B. *Singapore*

In Singapore, the main act which regulates food is the Sale of Food Act. Various subsidiary legislations have been enacted under the Sale of Food Act, namely, Food Regulations, Sale of Food (Prohibition of Chewing Gum) Regulations, Sale of Food (Composition of Offences) Regulations, Sale of Food (Fees) Regulations and Sale of Food (Food Establishment) Regulations.

The objective of the Sale of Food Act is to secure the wholesomeness and purity of food, fix standards for food and to prevent the sale of articles which are dangerous or injurious to health. The Act defines food, prohibits the sale of foods which are contaminated, unsafe or unfit for human consumption, as well as pre packed foods which are not properly labelled or labelled in a misleading manner. The Act also requires food manufacturers in Singapore to be licensed. There are fifty six sections divided into seven parts. On the other hand, Food Regulations stipulate food safety and specification standards, permitted additives and their maximum limits, tolerable limits for chemical residue and standards for labelling and advertising. The Food Regulations have two hundred and sixty one provisions divided into five parts.

The Sale of Food (Prohibition of Chewing Gum) Regulations prohibits the sale or advertisement for sale of any chewing gum.<sup>3</sup> However, this prohibition does not apply to the sale and advertisement of any chewing gum where the product licence has been granted under the Medicine Act.<sup>4</sup> The Sale of Food (Composition of Offences) Regulations provides for the offences that can be compounded under the Regulations, such as offences under section 5, 6, 7 of the Sale of Food Act. The Sale of Food (Fees) Regulations regulates the fees for food establishment, artificial sweetener agent licence, food irradiation licence and copy of analysis result. On the other hand, the Sale of Food (Food Establishment) Regulations focuses on the procedural matters for food establishments, the cleanliness of food establishments and food handlers.

The Sale of Food Act, Food Regulations and Sale of Food (Food Establishment) Regulations contain various provisions that protect consumers from unsafe food.

### C. *Indonesia*

Act Number 7 of 1996 on Food (Act No. 7 of 1996) governs the food industry in Indonesia. It has sixty five articles divided into fourteen chapters. The objectives of the Act are stated in article 3. The objectives are:

- a. to ensure food availability which fulfils the requirements on safety, quality and nutrition for the interest of human health;
- b. to create an honest and responsible food trade; and
- c. to create food sufficiency with reasonable prices and in accordance with the need of the community.

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<sup>3</sup> Sale of Food (Prohibition of Chewing Gum) Regulations, regulation 2(1).

<sup>4</sup> Sale of Food (Prohibition of Chewing Gum) Regulations, regulation 2(2).

The significant difference between Act No. 7 of 1996 and other food legislations in the studied countries is that Act No 7 of 1996 has a specific chapter on food safety. This is in Chapter II and also defines ‘food safety’. Chapter II on food safety is further divided into food sanitation, food additives, genetic engineering and food irradiation, food package and food contamination. The Act is supported by Government Regulation No. 69, 1999 on Labels and Food Advertisement and Government Regulation No 28, 2004 on Food Safety, Quality and Food Nutrition. Various consumer protection provisions are provided in Chapter II of Act No. 7 of 1996.

#### D. *Thailand*

In Thailand, the Food Act 1979 governs the food industry. Its objective is to protect consumers from hazards occurring from food consumption. It has seventy eight sections divided into eight chapters and transitory provisions. This Act is supported by twelve Ministerial Regulations which describe the procedures for applications for manufacturing licences, importation licences and registration including fees, the identification cards of the competent officers and the labelling of food products for export. The Food Act 1979 has seventy sections divided into eight chapters. The Food Act 1979 has created various offences in order to protect consumers from unsafe food, such as offences in relation to impure food, adulterated food and substandard food.

Although the food legislations of these four countries do not have a specific provision on consumer protection, the elements of consumer protection can be seen in the offences created by these legislations. These offences are created in order to ensure that safe food is supplied to consumers.

##### i. *The definition of ‘food’*

All the studied countries have defined ‘food’ in their legislation.

##### a. *Malaysia*

In Malaysia, ‘food’ is defined in section 2 of the Food Act 1983 to include-  
Every article manufactured, sold or represented for use as food or drink for human consumption or which enters into or is used in the composition, preparation and preservation, of any food or drink and includes confectionary, chewing substances and any ingredient of such food, drink, confectionary or chewing substances.

The meaning of food does not include live animals. This was decided in *Chuang Hock Meng @ Chung Hock Meng v Pegawai Kesihatan Daerah Hulu Langat Kajang, Selangor Darul Ehsan & Anor*.<sup>5</sup> In this case, the defendant seized live pigs of the plaintiff. The seizure was made on a belief that the defendant had contravened section 14 of the Food Act 1983 and regulation 40(5) of the Food Regulations 1985. The crucial issue in this case was whether live pigs were ‘food’ under section 2 of the Food Act 1983. It was

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<sup>5</sup> *Chuang Hock Meng @ Chung Hock Meng v. Pegawai Kesihatan Daerah Hulu Langat Kajang, Selangor Darul Ehsan & Anor* [2002] 4 M.L.J 27.

decided that live pigs could not be accepted as an article that could be used in the composition, preparation or preservation of any food as defined under section 2 of the Act as `food`. Furthermore, Parliament had also seen fit to include the definition of `animal` under section 2 of the Act. That separate inclusion of the definition of `animal` must mean that animals, dead or alive, are distinct from ingredients mentioned under the definition of `food`.

b. Singapore

In Singapore, the definition of `food` is provided in section 2 of the Sale of Food Act. `Food` includes:

- drinks, chewing gum and other products of a like nature and use, and articles and substance used as ingredients in the preparation of food or drink or of such products, but does not include-
- (a) live animals or birds;
- (b) fodder or feeding stuffs for animals, birds or fish; or
- (c) articles or substances used only as drugs.

The definition of `food` in section 2 covers food for human consumption. It expressly excludes live animals or birds, feeding stuff for animals, birds or fish and drugs.

c. Indonesia

Article 1 (1) of Act No. 7 of 1996 gives the following definition for food:

Food shall be everything originating from biological sources and water, whether processed or not, which is designated as cattalos and beverages for human consumption, including food additive material, food raw material and other materials used in the process of preparation, processing and or the making of cattalos or beverages.

Although the definition does not exclude live animals, birds or fish, the wording of article 1(1) implicitly excludes live animals, birds and fish from the definition because it refers to everything originating from biological sources or water.

Act No. 7 of 1996 on Food contains a definition of `food safety` which the other three countries do not have. Food safety is defined in article 1(4) of Act No. 7 of 1996 as follows:

Food safety is the condition and efforts required to prevent food from possible biological, chemical-contamination and contamination by other objects which may disturb, harm and endanger the human health.

d. Thailand

Section 4 of the Thai Food Act 1979 defines food as:

edible items and those, which sustain life:

- (1) Substance can be eaten, drunk, sucked or gotten into the body either by mouth or by other means, no matter in what form, but not including medicine, psychotropic substances, narcotic under the law as the case may be,

- (2) Substance intended for use or to be used as ingredients in the production of food including food additive, colouring matter and flavouring.

ii. *The elements of consumer protection in the offences created by the food legislations*

The food legislations of the studied countries have created various offences to ensure safe food is supplied to consumers. The offences created can be grouped into five categories. They are food adulteration, food containing substances injurious to health, food unfit for human consumption, insanitary conditions and false labelling and deceptive advertising.

a. Food adulteration

Food adulteration is mixing cheap, low quality and generally undesirable substances into the food for economic gain. Food adulteration is dangerous. Adulteration diminishes food nutritional values. The worst effect of food adulteration is that it will result in bad health and cause various diseases to consumers. Food adulteration also may deceive consumers as to the nature and quality of the food. The addition of foreign matter in food has been practised by food producers for a long time. Historical records show that food adulteration has existed since the second century in countries such as the United Kingdom, United States of America, and India.<sup>6</sup> The adulteration is done by greedy and inhumane traders who want to get rich quickly.<sup>7</sup> Due to the danger of food adulteration, all the food legislations of the studied countries provide for this offence.

1. Malaysia

In Malaysia, food adulteration receives serious attention from the Government. The offence of food adulteration is provided not only in the Food Act 1983 but also in the Penal Code. Section 272 of the Penal Code provides that-

Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand ringgit, or with both.

Section 13B(1) prohibits any person from preparing or selling any adulterated food. This is an absolute prohibition. Food shall be deemed to be adulterated if<sup>8</sup>-

- (a) it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure, normal or specified state and in an undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer;<sup>9</sup>

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<sup>6</sup> Rajendra Kumar Nayak, *Consumer Protection Law in India* (Bombay: N.M TriparthiPrivated Limited, 1991) at 209.

<sup>7</sup> P. K. Majnum Dar, *Law of Consumer Protection in India*, 3<sup>rd</sup> ed., (New Delhi: Orient Publishing Company, 1999) at 1487.

<sup>8</sup> Food Act 1983, section 13B(2).

<sup>9</sup> An example of this adulteration is adding water to fresh milk or to soya sauce.



- (b) any substance or ingredient has been extracted, wholly or in part, or omitted, from the food and by reason of such extraction or omission, and nutritive or other beneficial properties of the food are less than those of the food in its specified state, or the food operates or may operate to the prejudice or disadvantage of the purchaser or consumer;<sup>10</sup>
- (c) it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure, normal or specified state and in an undeteriorated and sound condition;<sup>11</sup>
- (d) it contains any substance the addition of which is not permitted by this Act or any regulations made under this Act;<sup>12</sup>
- (e) it does not comply with the standard or specification prescribed by any regulations made under this Act;<sup>13</sup>
- (f) it contains a greater proportion of any substance than is permitted by this Act or any regulations made under this Act;
- (g) it is mixed, coloured, powdered, coated, stained, prepared or otherwise treated in a manner whereby damage or inferiority may be concealed;<sup>14</sup>  
or
- (h) it is in a package, and the contents of the package as originally packaged have been removed in whole or in part and other contents have been placed in the package.

Based on the provisions in paragraphs (a) to (h), food adulteration does not only cover the act of mixing the food with unsafe substances or prohibited substances, but also covers the act of mixing the food with permitted substances in greater proportions than is permitted by the Food Act 1983 or Food Regulations 1985. For example, cocoa butter contains two percentage of fatty acid, more than 0.25 percent over the permitted amount under the Food Regulations 1985.<sup>15</sup> In *National Foods Ltd v Pars Ram Brothers (Pte) Ltd*,<sup>16</sup> a case decided in Singapore on the application of section 13 of the Singapore Sale of Food Act,<sup>17</sup> the respondents, a Singaporean Company, did not comply with the compositional standards prescribed under regulation 227 of the Food Regulations for ginger. Regulation 227 prescribes that ginger shall contain not more than 7 percent of total ash. In this case, the ginger powder and ginger slices supplied by the respondents contained 14.34 percent and 19.02 percent ash respectively. The Court of Appeal held that there was a breach of regulation 227 and this breach rendered the ginger unsafe for human consumption.

Food adulteration also occurs when the original food package has been opened and part of it or all food contained in the package is transferred and the original package is

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<sup>10</sup> One example that can be given is when coconut milk has been extracted from fresh coconut and the latter is sold as fresh coconut.

<sup>11</sup> This can happen when rice is mixed with stone or sand.

<sup>12</sup> Ice-cream containing colours not permitted by Food Regulations is an example of this adulteration.

<sup>13</sup> The Food Regulations 1985 have prescribed compositional standards for food. If these standards have not been complied with, the food can be considered as adulterated food.

<sup>14</sup> Cheaper oil mixed with costly oil is one example.

<sup>15</sup> Food Regulations 1985, regulation 277(2)(b).

<sup>16</sup> *National Foods Ltd v. Pars Ram Brothers (Pte) Ltd* [2007] 2 Sing. L.R. 1048.

<sup>17</sup> Section 13 of the Singapore Sale of Food Act is similar to section 13B(2)(f) of the Malaysian Food Act 1983.

filled with other substance.<sup>18</sup> The addition of any substance which is not permitted by food standards prescribed under the Food Regulations is an offence of food adulteration.<sup>19</sup>

## 2. Singapore

Section 11 of the Sale of Food Act prohibits any person from selling any adulterated food without fully informing the purchaser at the time of the sale of the nature of the adulteration. According to section 25 of the Act, food is deemed to be adulterated if-

- (a) it contains or is mixed with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure and normal state and in an undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer.;
- (b) any substance or ingredient has been extracted or omitted there from, and by reason of such extraction or omission the nutritive or other beneficial properties of the food as sold are less than those of the food in its pure and normal state or the purchaser or consumer is or may be in any manner prejudiced;
- (c) it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure and normal state and in an undeteriorated and sound condition;
- (d) it does not comply with the prescribed standard; or
- (e) it contains any substance which renders the food injurious to health.

The categories of food that are deemed to be adulterated under section 25 of the Sale of Food Act are quite similar to section 13B(2) of the Malaysian Food Act 1983. Paragraphs (a) to (d) are the same as section 13B(2) of the Malaysian Food Act 1983. Only paragraph (e) is not in the category of adulterated food under the Malaysian Food Act 1983. Another difference between these two Acts is that the Singapore Sale of Food Act has less categories of adulterated food compared to the Malaysian Food Act 1983. This is because the Singapore Sale of Food Act creates different types of offences for food containing substances prohibited by regulations, which is under section 12 of the Act, and for food containing substances in excess of permitted proportions, which is in section 13. In the Malaysian Food Act, these offences come under the categories of adulterated food.

## 3. Indonesia

Act No 7 of 1996 on Food of Indonesia does not use the term of food adulteration or adulterated food. They use the term “contaminated food”. The provision on contaminated food is provided in article 21. Article 21 prohibits any person from circulating:

- a. food containing materials which are toxic, dangerous or which may harm or endanger the health or life of humans;
- b. food containing pollutants exceeding the determined maximum threshold limit;

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<sup>18</sup> Food Act 1983, section 13B(2)(b).

<sup>19</sup> Food Act 1983, section 13B(3).

- c. food containing materials prohibited to be used in the food production activities or process;
- d. food containing materials which are dirty, spoiled, putrid, decomposed or containing infected vegetable or animal material or originating from a carcass so that the food becomes not fit to be consumed by humans; and
- e. food of which the time limit has expired.

In order to supervise and prevent food contamination, the government may take measures provided under article 22, whereby the government may:

- a. determine the materials prohibited to be used in the food production activities as well as the maximum threshold limit of pollutants allowed;
- b. regulate and/or determine the requirements for using certain manners, methods and or materials in the food production activities, storage, transportation and or circulation which may have the risk that is harmful or endangering human health;
- c. determine the materials prohibited to be used in the production of food processing, preparing, marketing and or equipment presentation.

#### 4. Thailand

Section 25(2) of the Thai Food Act 1979 makes it an offence to produce, import for sale or distribute adulterated food. The following food descriptions shall be deemed adulterated under section 27:

- (1) Food for which other substances are partly substituted or in which valuable substances are wholly or partly removed and which is sold as or under the name of genuine food.
- (2) Substances or food produced as substitutes for any food and distributed as being genuine food.
- (3) Food that is mixed or prepared in any way to conceal defects or inferior quality of the food.
- (4) Food labelled in order to deceive or try to deceive the purchasers in matters of quality, quantity, usefulness or special nature or place or country of production.
- (5) Food not up to the quality or standard prescribed by the Minister under section 6(2) or section 6(3) and the quality or standard of that food deviates from the upper or lower specified limit by more than thirty percent or where its deviation may harmful to the consumer.

These categories are quite similar to the Malaysian Food Act 1983 and the Singapore Sale of Food Act. However, under the Thai Food Act 1979, food which is labelled deceptively as to its quality, quantity, usefulness or special nature of place or country of production is considered adulterated food. In Malaysia, Singapore and Indonesia, this is an offence of false labelling.

#### b. Food containing substances injurious to health

##### 1. Malaysia

Section 13(1) provides that any person who prepares or sells any food that has in or upon it any substance which is poisonous, harmful or otherwise injurious to health commits an offence. In determining whether the food is injurious to health, section 13(2) states that regard shall be had not only to the probable effect of that food on the health of a person consuming it but also to the probable cumulative effect of a person consuming the food in ordinary quantities. According to Bradgate and Howells, in reality, the cumulative effect is difficult to prove. Most probably this provision will not be fully utilised.<sup>20</sup>

The application of section 13(1) by the Malaysian courts has yet to be seen since there is no case on the application of this provision. However, United Kingdom cases can be used as a guide in order to see how this provision is applied since section 13(1) is similar to section 3 of the United Kingdom Food and Drugs Act 1875. In *Cullen v Mc Nair*,<sup>21</sup> it was decided that in order for the food to be injurious to health, the food must not be injurious to all persons. It was sufficient if the food was injurious to a particular group. The appellant in this case was charged with an offence selling cream which had boric acid, an offence under section 3 of the Food and Drugs Act 1875. Although the percentage of this acid was small, if the cream was given to children or retarded people, it was injurious to them. The appellant argued that the cream was not injurious to health because it was safe if taken by normal adults. The argument was not accepted by the court. The court held that the cream was injurious to health since it was injurious to some part of the community.

## 2. Singapore

In Singapore this offence is covered under the offence of adulterated food in sections 11 and 25(e) of the Sale of Food Act. Section 25(e) deals with food containing any substance which renders the food injurious to health. There is also no Singapore case on the interpretation of section 25(e). It is submitted that there is a tendency that the Singapore court will rely on the case of *Cullen v Mc Nair* since the provision in section 3 of the United Kingdom Food and Drugs Act 1875 is similar to section 25(e) of the Sale of Food Act as well.

## 3. Indonesia

This offence is covered under the offence of contaminated food in article 21. The categories of contaminated food in article 21(a) can be recategorised as food containing substances injurious to health. Article 21(a) deals with food containing materials which are toxic, dangerous or which may harm or endanger the health or life of humans.

## 4. Thailand

In Thailand food containing substances injurious to health comes under the category of impure food. Section 25 of the Food Act 1979 prohibits any person from producing, importing for sale or distributing impure food. According to section 26, food of the following descriptions shall be deemed impure:

- (1) Food which contains anything likely to be dangerous to health.

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<sup>20</sup> J. Robert Bradgate & Geraint Howells, "Food safety – An appraisal of the new law" [1991] *Journal of Business Law* 320 2 322. See also Dominique Lauterburg, *Food Law: Policy and Ethics* (United Kingdom: Cavendish Publishing Limited, 2001) at 58.

<sup>21</sup> *Cullen v. Mc Nair* (1908) 99 L.T. 358.

- (2) Food in which a substance or chemical substance has been mixed which could deteriorate the quality unless such admixture is necessary to the process of production, and the production has been authorised by the competent officer.
- (3) Food unhygienically produced, packed or stored.
- (4) Food produced from animals having disease, which might be communicated to man.
- (5) Food in containers made of materials which are likely to be dangerous to health.

Categories (1) and (5) are food injurious to health. Section 25 of the Act gives due consideration to the containers used. Any food packed in containers which are likely to be injurious to health is considered as impure food although the food does not contain anything likely to be dangerous to health. This shows that section 25 does not only focus on the food itself but also on the container used to pack the food. Categories (2) to (4) are other categories of impure food according to the Thai Food Act 1979.

### c. Food unfit for human consumption

#### 1. Malaysia

Section 13A refers to an offence of preparing and selling food unfit for human consumption. There is a presumption in section 25(1) that when any food is sold or exposed or offered for sale, unless the contrary is proved, be deemed to be sold or exposed or offered for sale for human consumption. According to section 13A(1), food is unfit for human consumption if it consists wholly or in part of-

- (a) any diseased, filthy, decomposed or putrid animal or vegetable substance;
- (b) any portion of an animal unfit for food; or
- (c) the product of an animal which has died otherwise than by slaughter or as game.

An example of the offence of food unfit for human consumption is food containing a decomposed snail such as in the case of *Donoghue v Stevenson*.<sup>22</sup> If the case of *Donoghue v Stevenson* happened in Malaysia, the manufacturer of the ginger beer drink could be prosecuted under section 13A of the Food Act 1983.

The offence relating to foreign matter in food which is unfit for human consumption is provided in section 13A(2). To create an offence in section 13A(2), the prosecution must prove that not only the existence of foreign matter in food but also the existence of the foreign matter has caused the food to be unfit for human consumption. The issue of whether the existence of the foreign matter has caused the food to be unfit for human consumption is a question of fact. The court in *J. Miller Limited v Battersea Borough Council*<sup>23</sup> decided that metal found in a bun did not cause the bun to be unfit for human consumption. Lord Goddard said that:

...How can one say that food becomes unsound, that is to say, rotten or putrid, merely because there is some piece of extraneous matter in the food which has no effect on the general consumption.

<sup>22</sup> *Donoghue v. Stevenson* [1932] A.C. 562.

<sup>23</sup> *J. Miller Limited v. Battersea Borough Council* [1955] 3 All E.R. 279.

The same stand was adopted by Lord Goddard in *Turner & Sons Limited v Owen*<sup>24</sup> which involved thread in a bun.

The United Kingdom court adopted a different stand when decomposed mice and a piece of glass existed in milk. The presence of these foreign matters showed that the milk was unfit for human consumption. This was held in *Barton v Unigate*.<sup>25</sup> In *Barton*, the court distinguished the facts of the case from the case of *J. Miller*. The presence of metal and thread did not make the food unfit for human consumption. However, the presence of decomposed mice deteriorated the milk and caused it to be unfit for human consumption. According to the court, the relevant question to be asked was, if the foreign matter could be extracted from the food, was the food still suitable for human consumption? If the answer was YES, then the food was legally fit for human consumption. Since there are no Malaysian cases on the application of section 13A(1) or 13A(2), there is a tendency of the Malaysian courts to rely on the United Kingdom cases when interpreting these provisions.

Section 13A(3) provides for an offence of preparing or selling food in sealed packages which have been damaged and can no longer ensure protection to its contents from contamination or deterioration.

## 2. Singapore

Section 15 of the Sale of Food Act prohibits selling food which is unfit for human consumption. Types of food deemed to be unfit for human consumption are not further regulated or determined by the Sale of Food Act. It is submitted that the offence under section 15 is wide enough to cover offences under sections 11 (food adulteration), 12 (food containing substances prohibited by regulations) and 13 (food containing substances in excess of permitted proportions).

The presumption of human consumption is provided in section 28(1) where it is said that when any food or appliance is sold or exposed or offered for sale, it shall, unless the contrary is proved, be deemed to be sold or exposed or offered for sale for human consumption.

## 3. Indonesia

In Indonesia, food unfit for human consumption is covered under the offence of contaminated food in article 21(d) of Act No 7 of 1996 on Food. One of the categories of contaminated food is food containing materials which are dirty, spoiled, putrid, decomposed or containing infected vegetable or animal material or origin from a carcass so that the food becomes unfit to be consumed by humans.

## 4. Thailand

The Thai Food Act 1979 treats food unfit for human consumption under the offence of impure food in section 26 of the Act. Section 26(4) deals with food produced from diseased animals, the diseases which might be communicated to man. This category of food can also fall under the category of food unfit for human consumption.

<sup>24</sup> *Turner & Sons Limited v. Owen* [1955] 3 All E.R. 565.

<sup>25</sup> *Barton v. Unigate* [1987] Crim L.R. 121.

#### d. Insanitary conditions

Sanitation is very important when it involves food. All aspects of food preparation must be done in sanitary conditions. Due to the importance of sanitary conditions, the food legislation of the studied countries all provide for it.

##### 1. Malaysia

The sanitary conditions are regulated in the Food Act 1983 and the Food Hygiene Regulations 2009. The Food Hygiene Regulations 2009 provides that food premises must be registered. The sanitary requirements in the Food Hygiene Regulations 2009 apply to the food premises, proprietor or owner of food premises and food handlers. The food premises must be maintained at all times in a good, clean and tidy condition.<sup>26</sup> The food handlers are required to undergo food handlers training<sup>27</sup> and must be medically examined and vaccinated by a registered medical practitioner.<sup>28</sup> The food handlers are not allowed to enter food premises or handle food if they are suffering from or are a carrier of food-borne diseases until they are certified cured from the disease and medically fit to work by a registered medical practitioner.<sup>29</sup> This requirement is to ensure that the disease suffered by the food handlers does not pass to consumers through food.

Section 10 of the Food Act 1983 empowers the Deputy Director General of Public Health of the Ministry of Health to order the food premises or the appliances used in food preparation to be put in sanitary conditions if he is of the opinion that the premises or appliances fail to comply with any hygiene or sanitary requirements specified in the Food Hygiene Regulations 2009.<sup>30</sup> If the condition of the food premises is likely to be hazardous to health, the Deputy Director may order the closure of the premises.<sup>31</sup>

##### 2. Singapore

The Sale of Food Act does not allow any person to sell any food which is manufactured, prepared, preserved, packaged or stored under unhygienic or insanitary conditions. 'Insanitary conditions' is defined in section 2 of the Sale of Food Act as conditions or circumstances that might contaminate any food with dirt or filth or render the same injurious to health or unfit for human consumption. The requirements of these sanitary conditions do not only focus on the manufacturing or preparing process but the also apply to the people involved in the food manufacturing or preparing process. Section 22 of the Sale of Food Act gives power to the Director General to order those who are engaging in the food manufacturing or preparing process to undergo treatment if they are found suffering from an infectious disease or are suspected to be a carrier of any infectious disease. On the other hand, the Director General may require any licensee or any assistant or employee of the licensee to submit to immunisation against any infectious disease.<sup>32</sup> The

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<sup>26</sup> Food Hygiene Regulations 2009, regulation 15(1).

<sup>27</sup> Food Hygiene Regulations 2009, regulation 30(1).

<sup>28</sup> Food Hygiene Regulations 2009, regulation 31(1).

<sup>29</sup> Food Hygiene Regulations 2009, regulation 31(2).

<sup>30</sup> Food Act 1983, section 10.

<sup>31</sup> Food Act 1983, section 11.

<sup>32</sup> Sale of Food Act 2002, section 22(4).

failure to comply with any sanitary requirement may result in the revocation or suspension of the licence to operate food establishments issued under Part IV of the Sale of Food Act.

In addition, hygiene or sanitary requirements also apply to the vehicles used for transportation of food. Section 23 provides that any person who uses a vehicle for the transportation of food shall ensure that the surface of the vehicle with which the food is likely to come into contact is kept in a state of cleanliness, good order and condition so as to prevent any risk of food contamination. The sanitary requirements are further regulated by the Sale of Food (Food Establishment) Regulations.

### 3. Indonesia

Article 1(9) of Act No. 7 gives the definition of food sanitation. Food sanitation is defined as:

the efforts to prevent the possibility for the growth and propagation of purifying and pathogenic microorganism in cattalos, beverages, equipment and building capable of spoiling food and endangering humans.

Article 4(1) empowers the government to determine the sanitation requirements in food production activities or processes, storage, transportation and/or circulation. When the requirements have been determined, they will constitute the minimum requirements which must be met and applied gradually in the food system.<sup>33</sup> The food sanitation requirements apply to the facilities and infrastructure which are used directly or indirectly in the food production activities or processes, storage, transportation and circulation.<sup>34</sup> The food sanitation requirements also apply to any person who is responsible in food production activities, storage, transportation and circulation.<sup>35</sup> Article 8 prohibits the performing of food production activities or processes, storage, transportation and circulation which do not meet the sanitation requirements. The sanitation requirements are further regulated in Government Regulation No 28, 2004 on Food Safety, Quality and Food Nutrition.

### 4. Thailand

The Food Act 1979 treats food produced unhygienically or under insanitary conditions as impure food under section 25. Section 25(3) categorises food unhygienically produced, packed or stored as impure food. The detailed provisions on sanitation requirements can be found in the Ministerial Regulation No. 1 B.E. 2522 (1979) and the Ministerial Regulation No.2 B.E. 2522 (1979). The Ministerial Regulation No. 1 provides for procedures to apply for a license for food establishments. Clause 4 of the Ministerial Regulation No. 1 requires licensees to observe sanitation requirements in relation to food establishments, equipment and food handlers. Those who wish to apply for a license for importation of food for sale, must observe the sanitation requirements imposed by the Ministerial Regulation No.2.

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<sup>33</sup> Act No. 7 1996, article 4(2).

<sup>34</sup> Act No. 7 of 1999, article 4(1).

<sup>35</sup> Act No. 7 of 1999, article 6.



e. False labelling and deceptive advertising

Labelling and advertisements are a very important source of information to consumers, particularly when these labels and advertisements deal with food. Most consumers will rely on these two sources of information to learn more about the food that they are buying. The importance of labels to consumers is undeniable because it provides information to consumers when purchasing goods. In relation to food, labels contain information about the ingredients used, expiry date, manufacturer and others. Labels are capable of protecting consumers from taking food which is dangerous to their health.

1. Malaysia

Section 16 of the Food Act 1983 states that preparing, packaging, labelling or selling food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, strength, purity weight, origin, age or proportion or in contravention of the Food Regulations 1985 is an offence. Food Regulations 1985 has a specific part for labelling. Part IV deals with labelling in respect of the general requirements, language, particulars, form and manner, size and colour and others. When there are standards prescribed for labelling in the Food Regulations 1985, manufacturers need to comply with the standards. Non-compliance with the labelling standards will attract criminal liability under regulation 397 of the 1985 Regulations.

Section 17, on the other hand, deals with advertisement. No one is allowed to advertise food which is inconsistent with the provisions of the Food Act 1983 and the Food Regulations 1985. Advertisements which are likely to deceive a purchaser are also prohibited.

2. Singapore

The Sale of Food Act protects consumers from false labelling or advertising in section 17 by providing that no person shall sell any food which is labelled or advertised in a manner that is false, misleading or deceptive which is likely to create an erroneous impression regarding its value, merit or safety.

Part III of the Food Regulations deals with general requirements for labelling, whereas Part IV deals with standards and particular labelling requirements for food.

3. Indonesia

Article 33(1) of Act No. 7 of 1996 states that information on food labels and advertisements concerning food must give correct and not misleading information. Article 33(2) prohibits any person from giving incorrect and misleading information or statements on food traded in the food label or advertisement. The Government shall regulate, supervise and take necessary measures in ensuring that food labels and advertisements do not contain misleading information.<sup>36</sup> These provisions aim to protect consumers from misleading information.

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<sup>36</sup> Act No. 7 of 1996, articles 33(3) & 35.

Strict food labelling requirements are imposed on food sold for babies, children below 5 years and pregnant or nursing mothers in which the label must contain information regarding the impact of the food on human health.<sup>37</sup> Since the duration of food life is important to consumers, article 32 prohibits any person from tampering with the date, month and year of expiry of the food circulated. Food labelling and advertisement is further regulated in Government Regulation No. 69, 1999 on Labels and Food Advertisement.

#### 4. Thailand

Section 40 of the Food Act 1979 prohibits false or deceptive advertising of the quality or usefulness of a food. The Food Act 1979 controls false or deceptive advertising by requiring anyone who wishes to advertise the qualities or usefulness of a food through radio, television, film, newspapers or other permitted medium or by other means for business purposes to submit the sound, pictures, films or text of the advertisement to the authority<sup>38</sup> for consideration and can only be advertised after receiving permission.<sup>39</sup> If it is found that the advertisement is false or deceptive, the authority may order the advertisement to be stopped or the production, importation, distribution or advertisement of the food to be stopped.<sup>40</sup> This is done for the interest and safety of consumers.

The requirement that the draft of the advertisements be submitted to the authority concerned is not found in the Malaysian, Singaporean and Indonesian legislation. It is recommended that this requirement be implemented in the other three countries so that any misleading or deceptive information can be sifted through by the authority and consumers can be protected from misleading information in the advertisements before the advertisement is advertised or published.

#### f. Special features of Indonesian Food Legislation

##### 1. Genetic engineering

Act No 7 of 1996 on Food keeps pace with technological advancements since there is a provision on genetically engineered food products. According to article 13(1), any person who produces food or uses raw material, food additives or other auxiliary material which is produced through the genetic engineering method must first examine the safety of the food to human health. Article 13(2) empowers the government to lay down requirements for the testing of food which is produced through the genetic engineering process. Detailed provisions on genetic engineering are provided in Government Regulations No 28 on Food Safety, Quality and Food Nutrition.

##### 2. Imported and exported food

Act No 7 of 1996 has specific provisions for imported and exported food. For the safety of Indonesian consumers, the government may determine the requirements for imported food.<sup>41</sup> The government may determine that:

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<sup>37</sup> Act No. 7 of 1996, article 34(2).

<sup>38</sup> Food Act 1979, section 4 defines 'Authority' to mean the Secretary General of the Food and Drug Administration or a person authorized by him.

<sup>39</sup> Food Act 1979, section 41.

<sup>40</sup> Food Act 1979, section 42.

<sup>41</sup> Act No. 7 of 1996.

- a. the imported food has been tested or examined and declared passed by the authorised agency of the country of origin regarding safety, quality and nutrition;
- b. the declaration by the authorised agency of the country of origin must be supported with a document showing the testing or examination results; and/or
- c. the food shall first be tested or examined in Indonesia for safety, quality and nutrition before being circulated.

Although the Malaysian Food Act 1983 states in section 29 that the importation of any food which does not comply with the provisions of this Act or any regulation made thereunder is prohibited, the Sale of Food Act of Singapore imposes the requirement of registration with the Director General for imported food and the Thai Food Act 1979 requires those who want to import food for sale to obtain a license from the Secretary General of the Food and Drug Administration or a person authorised by him, none of these legislations require the imported food to be tested before it is sold to the public. The testing requirement imposed by the Indonesian Act can ensure that the food is safe before it is circulated to the public.

Act No 7 of 1996 also gives due attention to food exported to other countries from Indonesia. According to article 39, the government may determine that food exported from Indonesia be tested or examined for its safety, quality, labelling and nutrition before the food is circulated. There is no similar provision in the Malaysian, Singapore and Thai food legislations. However, in Malaysia, fish and fish products to be exported to the European Union must obtain a health certificate before it can be exported to the European Union.

#### IV. CONCLUSION

The above discussion reveals that all the studied countries have their own measures to protect consumers from unsafe food through food legislation. The offences created by the food legislation of the studied countries are quite similar regardless of whether they are common law countries (Malaysia and Singapore) or civil law countries (Indonesia and Thailand). Although there are differences in the offences categories, these are not really significant. What is important is that the food legislations must be able to provide protection to consumers from unsafe food.

Act No 7 of 1996 on Food and Government Regulations No. 28 on Food safety, Quality and Food Nutrition of Indonesia have given due consideration to the development in food technologies. Only the Indonesian legislation have provisions on genetically engineered food. There is no such provision in the food legislation of the other studied countries. Since the safety of genetically engineered food remains controversial, legal measures must be taken by the other three countries for the safety of consumers. Apart from this, the testing requirement imposed by Act No 7 on Food of Indonesia for imported food must be followed by the other three countries. This requirement can help prevent food borne diseases among local consumers. The testing requirement for exported food by Act No 7 shows that the Indonesian government does not only care for local consumers but also consumers in other countries.

In relation to food advertisement, the Food Act 1979 of Thailand has better provisions compared to the other studied countries. The Food Act 1979 requires anyone

who intends to advertise the qualities or usefulness of a food through radio, television, film, newspapers or other permitted mediums or by other means for business purposes to submit the sound, pictures, films or text of the advertisement to the authority for consideration and can only be advertised after receiving permission. The authority can act as an advertisement controller by controlling the information that can be used in food advertisements. The requirement that the draft of the advertisements be submitted to the authority is not found in the Malaysian, Singaporean and Indonesian legislation. It is recommended that this requirement be implemented in these three countries so that any misleading or deceptive information can be sifted through by the authority and consumers can be protected from misleading information in the advertisements before the advertisement is advertised.

Since all the studied countries have comprehensive food legislation to ensure safe food is supplied to the consumers, what is needed now is the effective enforcement of the legislation. If legislation is enforced effectively, the problems of unsafe food which still exist can be overcome and consumer safety can be guaranteed.