

An Improvement of Law and Policy for the Reliability Assurance of Food Safety

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Food Safety problem has been a matter of prime importance relating to human wholesomeness for a long time. But, consumers' interest in food safety in Korea has been growing yearly, the government's policies and legal systems have been unable to support it. To cope with that kind of risk, regulatory response comes out due to government having more powerful authority, information, and chasing the risk-spot easier than consumer. This study was intended to harmonized food safety management system and laws. For this purpose, this study was carried out through analysis of the present situation of laws and regulations relevant to domestic food safety and introduction of scientific management technology. This improved system will finally lead that consumer have a proper and correct information for selected food and security of safety for food.

Key Words: food safety, food laws, consumer protection, Korea Food and Drug Administration(KFDA)

I. Introduction

The most basic thing for our living is food, clothing and shelter. In particular, food is directly related to humans' life and death so it is considered to be more important than others. In the traditional society, each family performed from gathering to cooking and eating in a lump. However, in the modern society, such processes of various food processing are conducted by food operators and the foods go through several steps of distribution. Therefore, the priority of the modern society is securing safety of the foods.

The recent state of melamine in China, pandemic and Avian influenza and mad cow disease that spread to the whole world not only threaten our health and life but also cause anxiety and terrors in the society as a whole. In regard to such importance of food, there are two important tasks. The first is stable provision of required amount of food and the second is provision of safe food. Providing safe food is as important as

providing required amount of food. Unsafe food threatens individual's life and health, bringing great sensations to the society.

While consumers' interest in food safety in Korea has been growing yearly, the government's policies and legal systems have been unable to support it. Consumers' complains on the danger of substandard or unclean food may pass to the government. Therefore, we require securing consumers' trust on food in Korea and implementing systemic administration on food safety.¹⁾ This presentation intends to help consumers to take safe food though legislative improvement by analyzing food safety legal system to establish measures to overcome the crisis of food safety after examining the causes and characteristics of food accidents.

II. Causes and Characteristics of Food Accidents

1. Causes of Food Accidents

The causes of food accidents include manufacture and sales of food required approval without permission, differences between details in labelling and components of products, exaggerative and false advertisements lack of facilities caused by small sized food manufacturers and managers, use of cheap raw materials to maximize profits, food producers or sellers' carelessness in managing hygiene, preference to cheap food and lack of

mind to disclosure, uncertainty of food examination, and hazard of thorough supervision and permissions of the authorities concerned.

2. Characteristic of Food Accidents

The characteristics of food accidents can be summarized as follows:²⁾

Firstly, it is difficult to identify the connections between causes and effects. In particular, when the food that had caused problems has already been consumed or when the consumers have taken several foods at the same time, it is difficult to explain which food caused the accident. Food is changeable according to microorganisms and conditions so it is difficult to verify in the same condition as when eating the foods. Secondly, some food incidents are occurred by consumers' physical constitutions although there is no problem in food products like allergy. Thirdly, there are increasing numbers of black consumers³⁾ who raise vicious complaints intentionally because we take food every day and it is essential and indispensable part of our life. Fourthly, most damages are caused by flaws of products and it is less likely to be extended to physical damages. Nevertheless, once a food incident occurs, it incurs wider damages than other products and tends to incur serious damages. Fifthly, people tend to sensitively react to the incident as they are more likely to react to it psychologically and emotionally because they perceive that food is directly related

1) Kim, Jae-Su, Current Situations and Suggestions of Food Safety Management System in the U.S., Rural Economic Studies Vol.28, No.4, KOREA RURAL ECONOMIC INSTITUTE, 2005, p.74.

2) Lee Young-Gyu, Food Accidents and Product Liability, Law and Policy Studies Vol.7, No.1, 2007. 6, p.147.

3) A combination of Black meaning malignant and Consumer, black consumers refers to consumers raising intentional malignant civil appeals.

to their health and safety.⁴⁾

III. Legal Foundation of Korean Food Safety Legal System

1. Current Situations of Food Safety Legal System

Korea has already enacted and implemented Food Sanitation Law⁵⁾ in 1962 and Food Safety Fundamental Law in 2008 in order to regulate food hygiene for execution of the task of securing food safety the while.

The evaluation of the implementation of food safety legal system is positive since it has enabled to prevent problems of threatening life and health of food consumers by producing unlawful or substandard food thoughtlessly to the root and consumers can purchase and take food without concerns by distributing food through thorough hygiene examinations.⁶⁾

4) Lee, Man Jong · Choi, Eun Hi, A Study on Penal and Legal Issue of Food Crimes, *Corruption Studies* vol.13, No.2, 2008, The Korean Association for Corruption Studies, p.61-62 summarizes the characteristics of food incident (crime) as follows: i) safety of the public, ii) harmful directly to humans, iii) characteristics of corporate and business crime, iv) technicality · professionalism, v) notableness and urgentness of danger of infringing the benefit and protection of the law, and vi) international distribution.

5) Food Sanitation Law is the most closely related to food safety and sanitation life and the fundamental law for food sanitation management. In addition, it is one of the general administrative laws regulating duty and rights between the government and people and is distinguished from stock farm processing law regulating special items.

6) Yi, Se-Jeong, A Comparative Study on the Health Functional Food Laws, *Issues Analysis* 2006-31, Korea Legislation Research Institute, 2006, p.15.

Although there have been revisions of several clauses of food safety laws in the meantime, with implementation of individual laws, in order to solve essential problems, I think that we need to protect food consumers' safety and health by reflecting on the conditions of operating practical laws and readjusting the law to be suitable to the reality based on comparative studies on advanced countries' laws. The primary responsibility of such food safety lies in the government that is responsible for protecting people's life. In regard with securing food safety, the role of the government is significantly important.⁷⁾

2. The Government's Duty of Protecting Food Consumers

The government has responsibility of protecting citizens' rights of life and health that are regulated in the constitution from other individuals, and in order to conduct such duty, the government enacted Food Safety Fundamental Law, Food Sanitation Law, Consumer Fundamental Law, and Product Liability Law so that it has grounds to limit food operators' basic rights of working freely. In other words, regulating food operators secures food safety.⁸⁾ Enactment of food safety laws is justified constitutionally because regulations to food operators basic rights allow to sentence between the benefit and protection of the law of protecting food consumers' constitutional right of

7) Kim, Jong Duk, NGO's Initiatives the Food Safety in Korea, *Rural Society Studies* vol.11, No.2. KOREA RURAL ECONOMIC INSTITUTE, 2001, p.195.

8) Yi, Jong-Yeoung, A system to secure food safety in the revised Food Hygiene Law, *CHUNG-ANG LAW REVIEW* vol.7, No.2, Chung-Ang Law Association, Aug. 2005, p.44.

health and of food operators basic rights on executing their businesses so in the law, food consumers' rights of life and health are more valuable than food operators' rights of freedom in business.⁹⁾

In conclusion, the order assigned to legislators by the constitution is that to protect food consumers' life and health that are more valuable than food operators' basic rights even though their basic rights are restricted.

Food Sanitation Law aims at preventing danger and damages by food, promoting improvement of quality of food nutrition, and contributing improvement of citizens' health by providing correct information on food. By regulating food that damages the public's health, and by banning harmful food in advance, the health of the citizens can be protected. Restrictions to producing, manufacturing, and selling food that damages consumers' health and ban of those products by Food Sanitation Law are reasonable.

IV. Problems and Improvements of Food Safety Law System

1. Problems

The table of below shows in Korea current situations of the legal system of food safety management.

<Table 1 . The Present Condition of Current Food Safety Management Legal System¹⁰⁾>

Areas of food	Departments and agencies concerned	Related laws	Main contents
Agricultural Products	The Ministry for Food, Agriculture, Forestry and Fisheries	<ul style="list-style-type: none"> Quality Control Law for Agricultural and Marine Products Agrichemicals Management Law 	<ul style="list-style-type: none"> setting standards of pollutants in producing centers labelling the origin
Stock farm Products	The Ministry for Food, Agriculture, Forestry and Fisheries	<ul style="list-style-type: none"> Processing Law for Livestock Products 	<ul style="list-style-type: none"> hygiene management for stock farm setting standard of stock farm collecting test, guidance and supervision
Marine Products	The Ministry for Food, Agriculture, Forestry and Fisheries	<ul style="list-style-type: none"> Quality Control Law for Agricultural and Marine Products Marine Products Management Law 	<ul style="list-style-type: none"> quality of marine products and hygiene test setting standard of test
Drinking Waters	Ministry of Environment	<ul style="list-style-type: none"> Drinking Water Management Law 	<ul style="list-style-type: none"> water quality and hygiene management for drinking water
Alcoholic Beverages	National Tax Service	<ul style="list-style-type: none"> Alcoholic Beverage Taxation Law 	<ul style="list-style-type: none"> setting standard of alcoholic beverages guidance and control of alcoholic beverage businesses
Salt	Ministry of Knowledge Economy	<ul style="list-style-type: none"> Salt Management Law 	<ul style="list-style-type: none"> setting the standard, and quality test sun-dried salt target
School Lunch	Ministry of Education, Science and Technology	<ul style="list-style-type: none"> School Lunch Law 	<ul style="list-style-type: none"> school lunch
Foods other than the food above	Korea Food and Drug Administration, Ministry for Health, Welfare and Family Affairs	<ul style="list-style-type: none"> Food Sanitation Law Food Safety Fundamental Law 	<ul style="list-style-type: none"> full responsibility for collecting test for harmful food, guidance, control, pre-and post-management
Synthesis	Each city and province (City · Gun · Gu)	<ul style="list-style-type: none"> Laws above 	<ul style="list-style-type: none"> permission to run a business, guidance, and supervision for food execution businesses with all the regulations

As appeared in the table, the problems include that food safety management system is difficult to be effectively adjusted in terms of departments and agencies concerned for food safety management according to classification of food and diversification of laws, that the responsibility for

9) Yi, Jong-yeoung, Improvement of the Food Sanitation Act, Research Report 97-6, Korea Legislation Research Institute, 1997. p.13-17

10) Ryu, Chang-Ho, A Study on Systematization of Food Safety Laws, Korea Legislation Research Institute, 2004. 11, p.17-18.

the blank area of safety management is not clear, and that fast and consistent national emergency system is difficult to be operated when a harmful food incident occurs.¹¹⁾

In addition, management departments and agencies by food, imported food quarantine departments and agencies and related laws are all dispersed so it is difficult to plan speed, consistency and unity of food management policy and management and supervision system, leads to loss of efficiency of management and supervision system caused by duplicated regulations and producers' economic loss and inconvenience and brings confusions to consumers.¹²⁾

In order to resolve such problems, the government enacts Food Safety Fundamental Law, establishes systemic implementation system of food safety policy such as food safety management basic plan and prepared a system that can quickly respond to appearances of harmful food.

However, regardless of the relations between a series of process related to legislative procedure and political dynamics, it is doubtful that resolving the problems of current food safety legal system pointed out above can contribute to securing food safety at root.¹³⁾

2. Improvements

We require to dealing with food damage relief in terms of public policy including the company

and consumers at the same time rather than individual food consumers' damage relief. It is because it is necessary to support consumers after having damages but such damages before the accidents require to be prevented in advance. For this, laws related to protection of food consumers are needed to be revised and it is required to be organized and managed synthetically.

Laws according to regulations on treatment to food consumers' damages are complicatedly regulated with different laws by item of food, and the institutions are connected differently according to items of food. Complicated regulations and classification of item form blank areas that the law cannot be applied or make the procedure of damage relief itself difficult. We need to enact a law that can aid consumers in damage with only simple procedures.¹⁴⁾ In most of countries, for effective operation of food safety management system, consolidate the system, devise a risk oriented scientific food safety system and change the system from localized to centralized system. Those countries that have sticked to a centralized system strengthen the organization and those countries that have clung to a localized system such as the U.S., the U.K., Canada, Denmark, and EU gradually turn to a centralized system.¹⁵⁾ The effort of each country to consolidate the functions

11) *ibid.*, p.18.

12) *ibid.*

13) Kwon Bae Keun, Measures for systemic improvement for securing safety of food, *Han-Yang Law Review* vol. 21, Han-Yang Law Association, 2007. 8, p.209-210.

14) Choi, Suk-Hi, Corporate environment change and response according to strength of a legal system for consumers and the measures, *Consumer Issues Research* No.27, The Korea Consumer Agency, 2004. 12, p.168-169.

15) Lee, Won-Woo, General principles of food safety regulation and current legal system required improvement, *Studies on Food Safety Law I - Current Issues in Food Safety Law: A Proposal for Improvement*, Kyung-In Publishing Co. 2008, p.31.

is for improvement of transparency and efficiency of consumer protection and food safety.

V. Conclusion

Now that the problem of food safety reveals problems in general such as food safety legal system, food safety policy, and food safety management system whenever a food incident occurs, ineffective measures make repeated similar food incidents which show its low efficiency.

In particular, food safety legal system is scattered by items, departments and agencies by being separated from food sanitation law that is in the position of general law on food in the system and there are blank or duplication of law in terms of system between laws, scope of application and unity. Therefore, legal system maintenance should be performed to the food laws as a whole. Among them, notable area of legislative lack is food consumers' protection and regulations on damage relief.¹⁶⁾

Food that contains harmful and poisonous materials incurs danger in people's life, body, and health and as the public who have not recognized the danger take the food, the damage can quickly and widely occur. In addition, if a damage occurs, post relief is not very effective in most cases,¹⁷⁾ preventing food incidents in advance is the best way.

There is a possibility of having a big problem in the society as a whole like bring harm to consumers' life, body and health because food

operators' false and exaggerative advertisement are more likely to increase as food industry grows. Therefore, the government should control labelling and advertisement strictly and need to plan to improve the system legislatively to secure functions and safety of products.

In conclusion, even though food has to be safe and reliable to eat as food as a fundamental element of people's health is essential to maintain their life, there are always some elements in food that threaten people's life. The government requires throughly supervising and managing food safety to protect people's life.¹⁸⁾

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16) Ryu, Chang-Ho, *ibid*, p.45.

17) Supreme Court of Korea, 1997. 7. 25. Sentence 95도 2471.

18) Lee, Jung-Ho · Kim Si-Guan, A Study on the Food Safety and Development measures of HACCP in Korea under the WTO Structure, Regional development studies vol. 11 No.1, Chosun University The Institute of Community Development, 2006, p.21.

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金瑛宇: 충북대학교에서 법학 석사학위를 취득하였으며, 현재 충북대학교 법학과 박사과정을 수료하고, 충북대학교 생명윤리 및 안전법제 연구사업팀의 연구원으로 있다. 주요관심분야는 식품안전법, 소비자보호법, 부패방지법, 과학기술법 등이며, 주요경력으로는 국민권익위원회 부패방지부 전문위원을 거쳐 한국소비자학회 회원, 한국비교공법학회 회원으로 활동하고 있다(pasch7@hanmail.net).

접수번호: #091030-02

접수일자: 2009. 10. 30.

심사완료: 2008. 12. 4.