

Responsibility of the Food and Drug Supervisory Agency in Granting Licenses for the Distribution of Food Products Containing Pigs Sold in Minimarkets

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Abstract

The Food and Drug Supervisory Agency (BPOM) is an institution that carries out government affairs in the field of drug and food control with the aim of protecting consumers from losses. However, nowadays cases regarding food distribution that harm consumers are still occurring, one of which is food containing pork sold in minimarkets. Where the minimarket sells food products containing pork that are not in accordance with applicable regulations. This study uses a normative juridical legal research method with a law approach and a case approach. Then, using secondary data sources obtained from literature studies, then the data is processed using qualitative analysis. The results of the study show that the Government through BPOM has the responsibility to carry out supervision by providing distribution permits for foods containing pork that have met the standards in accordance with distribution permit regulations, then monitoring minimarkets to ensure food safety is maintained while circulating and taking action if there is food that is contaminated. In circulation does not comply with the applicable provisions as a form of protection for Muslim consumers. Protection of Muslim consumers has been stipulated in Law no. 8 of 1999 concerning Consumer Protection and Law no. 33 of 2014 concerning Halal Product Guarantee. Where business actors are required to meet the applicable requirements in selling food containing pork in minimarkets and provide correct and honest services to consumers in accordance with good retail guidelines. The authors suggest that BPOM can supervise food containing pork sold in Mini Markets more firmly, routinely and thoroughly through cooperation with related parties in order to prevent losses to consumers.

Keywords

BPOM; distribution permit; food products



I. Introduction

Indonesia as a developing country is a country that adheres to Bhineka Tunggalika for its diversity of culture, race, customs and religion. From early childhood to adulthood, Indonesian people are accustomed or accustomed to having tolerance for any differences that exist in people's lives, especially those related to religious differences. In terms of tolerance, society as a religious community is legally obligated to respect other religions, both according to the rules and prohibitions that exist in each of these religions.

There are six religions in Indonesia that are recognized by the state which include Islam, Christianity, Catholicism, Hinduism, Buddhism and Confucianism. Based on the results of the Central Statistics Agency (BPS) Indonesia, it is stated that Indonesia is a country with a population of 270,203,917 million in 2020. Where, the Indonesian

community who adheres to Islam reaches up to 207 million people which when viewed in percentage form reaches 87.2% of the total population in Indonesia so it can be concluded that the majority of the Indonesian population has Islamic religious beliefs. In the teachings of Islam there are separate rules for its people which must then be obeyed and implemented, one of which is regarding the prohibition of consuming food that is haram. Islam provides absolute provisions that its people are not allowed to consume food that is haram and food that is halal is a provision that is applied to its people in consuming food.

In terms of food, the State has an obligation to fulfill the availability of quality food, balanced nutrition and guaranteed food safety. Based on Chapter I Article 1 Number 4 of the Law of the Republic of Indonesia Number 18 of 2012 concerning Food states that "Food safety is a condition and effort needed to prevent food from possible biological, chemical, and other objects that can interfere, harm, and endanger human health and does not conflict with the religion, beliefs and culture of the community so that it is safe for consumption".

In reality, non-halal food is often found in Indonesia, especially food products containing pork that have been widely traded in the community without complying with several applicable regulations, for example, Oreo Cereal circulating in Bima City with the Oreo Os RED brand. Oreo cereal itself is a non-halal food product which in its composition contains pork. In circulation, this Oreo cereal product already has a distribution permit from BPOM so that it can be guaranteed that it meets the requirements before being circulated and the labeling requirements on food in the form of the inclusion of "writing and pictures containing pork + pictures of pigs", then the writing and pictures are placed in a red box which is based on the white color on food product packaging.

However, cereal food products that are sold in minimarkets when they are in circulation are based on a report from one of the people of the city of Bima as a consumer who stated that the Oreo cereal products found in one of the minimarkets in the city of Bima are placed together with food products that are Halal so that the consumer does not realize that the food products that have been purchased and consumed are food products containing pork or non-halal. Oreo cereal products found in Minimarkets have also been sold out, so it is indicated that there are many other Muslim consumers who have bought and consumed them. Of course, the existence of this case has harmed Muslim consumers who have consumed it in a food-safe manner which resulted in mental losses, namely disruption of the peace of mind of consumers whose effects were greater than financial losses even though it was not visible in real terms.

Judging from the case above, there are still retailers who neglect the circulation of non-halal food. At first glance, the arrangement of food in a retail store often deceives the eyes of every consumer because it looks neat, attractive and organized so that consumers think that the food is safe for consumption. Although, BPOM itself has issued a regulation for the head of BPOM RI number HK.03.1.23.12.11.10569 of 2011 which stipulates that the actions taken for food products containing pork are different from other halal products, because if a minimarket sells food products containing pork, it must provide special treatment by not mixing food products containing pork with other products. maintain their existence (Bharjoo, 2005). becomes increasingly important because it is the ability to develop sustainably (Burnes, 2017; Teixeira & Werther, 2013; Porter et al., 2016) so that organizations can compete and maintain their existence (Bharjoo, 2005).

II. Research Method

In this study, the author uses a normative juridical research type. Normative juridical research is defined as research that will later explain the legal teachings found in society or the principles included in the science of law by using library data. Then, in solving a problem in research, a problem approach is needed so that the research can achieve the intended goal. In this study, the authors use the legal approach method relating to BPOM and consumer protection, as well as a case approach based on consumer reports related to minimarkets that sell food containing pork that is not in accordance with applicable regulations published in the mass media. The data used in this study is secondary data, namely Presidential Regulation Number 80 of 2017 concerning the Food and Drug Supervisory Agency, Law Number 8 of 1999 concerning Consumer Protection, as well as other laws and regulations that can support this research. Where, the data that has been obtained will be processed by grouping and selecting data that is in accordance with the theme of the discussion and interpreting more deeply about the source of the material that has been obtained. Furthermore, the data will be arranged systematically and will be further analyzed and linked to the problems in this research so that conclusions can be drawn which aims to answer the problems that have been formulated as in accordance with qualitative analysis techniques.

III. Results and Discussion

3.1 Responsibilities of the Food and Drug Supervisory Agency in Granting Distribution Permits for Food Products Containing Pork Sold in Minimarkets

Based on Article 2 of the Presidential Regulation of the Republic of Indonesia Number 80 of 2017 concerning the Food and Drug Supervisory Agency, BPOM as a government agency has the responsibility in carrying out the government's role in the form of supervision in the field of medicine and food. Broadly speaking, BPOM has a function, namely to carry out tasks in the form of supervision, guidance and enforcement of drug and food distribution. Where, when carrying out its function, namely supervision of circulating food, BPOM has a supervision system consisting of a Pre Market supervision system and a Post Market supervision system. Pre-market supervision in Article 3 of Presidential Regulation Number 80 of 2017 concerning the Food and Drug Supervisory Agency is defined as supervision carried out by BPOM before food is circulated among the public. The form of supervision carried out is the issuance of a registration approval letter or a distribution permit number for food by BPOM. Then, as a form of responsibility from BPOM as the one who has the authority to issue distribution permits for each food, BPOM itself has made the provisions and requirements that have been regulated in the BPOM Regulations. With this regulation, every business actor who wants to distribute and sell food products in the Indonesian market must first meet the requirements, which include administrative requirements, checking production facilities, and product analysis of food to ensure the implementation of the rights of every consumer.

Basically, supervision before circulation or what is known as pre-market carried out by BPOM by giving a distribution permit for each product that will be circulated is the main and important form of supervision to prevent consumers from being harmed by using a food product circulating in the community. With the distribution permit for food, it can be ensured that the food is safe for consumption by consumers because it has been confirmed that it has met safety, benefits and quality. Food products containing pork that are sold in minimarkets must of course have a distribution permit granted by BPOM, the

procedure for granting distribution permits for foreign products is regulated in Article 15 paragraph 2 of BPOM Regulation Number 26 of 2018 and Attachment I to Head of Regulation Number 27 of 2017. Which, in the registration of food to be sold in the community must complete administrative documents and technical documents.

In addition to having a distribution permit for food products sold by minimarkets, even food products containing pork in circulation must include a warning label on the packaging with the words "CONTAINS PIG + the image "PIG" in red and the text and images are in a box with colored lines on the side red based on white. Regarding labeling, BPOM has regulated it in Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number HK.00.05.1.23.3516 concerning Distribution Permits for Medicinal Products, Traditional Medicines, Cosmetics, Food and Food Supplements that are Sourced, Contained, From Certain Materials and or Contains Alcohol. The size of the label on food products containing pork must also meet the applicable provisions, namely 1.5 millimeters to 12.5 millimeters adjusted to the surface area of the main part of the label, as regulated in Chapter IV of the Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number HK.00.05.1.23.3516.

Regarding the problem of distribution of a food product called Oreo O's RED which is sold at Marina Mart, BPOM has given a distribution permit for the product with the registration number of BPOM RI ML. 830509478347. Then, the Oreo Os RED product itself has put a warning label on the side of the product packaging with the words, colors and sizes that have been adjusted to the Regulation of the Head of BPOM. However, in its circulation in minimarkets, Oreo Os RED products are placed on the same shelf as halal food products. To ensure food safety is maintained, BPOM also has a focus on supervising all retailers, such as minimarkets. The government through BPOM has issued a Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number HK.03.1.23.12.11.10569 concerning Guidelines for Good Retail Practices. The regulation has stated that for every food product that contains pork, when it is circulated in minimarkets it must receive special treatment by the minimarket starting from receiving the food product at the minimarket, then storing it, until when it is presented to consumers for sale as in the form of separation of display racks for food products containing pork from other halal products.

In its circulation, products with the Oreo brand itself have several variants such as biscuits, wafers, *soft cakes*, cereals and other variants. For Oreo brand products in the types of biscuits, wafers, and *soft cakes*, they contain halal ingredients. However, in Oreos of cereal types circulating in Indonesia, there are cereals that contain pork, namely Oreo Os RED and there are also Oreos which are cereal types that contain halal ingredients. With the difference in the halal status of products that have the same brand, namely Oreo, the problem of separating halal and haram food displays in Minimarkets is an important thing to pay attention to as a way to prevent losses to consumers.

The state has guaranteed the implementation of every right of its people, including guaranteeing the right to safety and comfort for consumers when consuming food. The state through BPOM has responsibility for the distribution of food in Indonesia, including if a problem arises that harms consumers for the circulation of food that is not in accordance with regulations. Responsibility is defined as a condition that is mandatory to do in terms of bearing something that happens. According to Busyra Azheri, related to the theory of responsibility, he argues that responsibility cannot be separated from the existence of authority. This is because in the implementation of a government, every agency or institution that has the authority will give birth to accountability that will be

owned by the institution itself as in accordance with the general principle of "no authority without accountability".

Based on Article 3 of the Presidential Regulation of the Republic of Indonesia Number 80 of 2017 concerning the Food and Drug Supervisory Agency, in supervising food products, the function of BPOM is not only to grant distribution permits as its authority for circulating food products. However, BPOM after granting a distribution permit for food still has the responsibility to carry out its function, namely supervision after the food product is sold in minimarkets. Supervision of food products after they have been circulated is known as post market which is carried out in the form of supervision carried out by BPOM, namely by re-checking food production facilities and food distribution facilities. The inspection of distribution facilities carried out by BPOM to minimarkets has the aim of ensuring that nutritional quality and food product safety are maintained.

BPOM itself has taken various actions through the establishment of regulations and direct and periodic monitoring actions every month which are carried out randomly at every retail including minimarkets based on a list of distribution facilities as a form of supervision after the distribution permit is given to food with the aim of minimizing the loss experienced by consumers caused by the circulation of food products containing pork in minimarkets that are not in accordance with applicable regulations. However, in ensuring the implementation of food safety for every consumer in Indonesia, support from all parties is needed, namely business actors as well as from consumers themselves.

In order to realize the participation of business actors and the community, BPOM is also responsible for providing guidance in the form of education for minimarkets by means of socialization, training and campaigns through social media on regulations regarding guidelines for good retail practices. Then, the public as well as consumers can be given education about the rights and obligations of consumers in accordance with Law Number 8 of 1999 concerning consumer protection. Where, the education carried out aims to increase public awareness to be careful when buying food products and increase public knowledge about each product in circulation.

Not only that, for problems with the distribution of food products containing pork in Mini Markets that are reported by consumers to BPOM, BPOM is responsible for following up on problems by taking action against Mini Markets that violate when selling Oreo Os RED products. Legal action against minimarkets selling food products containing pork is not in accordance with the provisions of good retail guidelines, firstly, it must be based on evidence in the form of inspections at minimarkets and initial investigations. Based on Article 12 and Article 13 of the Regulation of the Head of BPOM Number 14 of 2014 concerning Organization and Work Procedures of UPT within BPOM, there are inspection sections and investigation sections. In the event of problems in minimarkets that sell food products containing pork, the inspection section and the investigation section have the task of examining and investigating food distribution facilities to ensure the veracity of reports submitted by the public.

In enforcing the law if there is a minimarket that sells food products containing pork that is not in accordance with the Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number HK.03.1.23.12.11.10569 concerning Guidelines for Good Retailing, namely from the time of delivery to display at the minimarket, based on follow-up examination results. Mini Markets can be subject to administrative sanctions according to the level of violation. However, due to sanctions against minimarkets that display displays that are not in accordance with the provisions, it has not been regulated. So, in this case BPOM can give a warning and technical guidance

to the minimarket. Direct technical guidance to the minimarkets referred to is related to good retail guidelines including procedures for displaying food products containing pork sold in minimarkets.

3.2 Legal Protection for Muslim Consumers on the Circulation of Food Products Containing Pigs Sold in Minimarkets

Legal protection is an inseparable part of the increase in the protection of human rights, the main core of the concept of protecting human rights, namely the enactment of restrictions which are manifested in the form of obligations from every society and government. CST Kansil defines legal protection as a way to ensure a sense of security mentally or physically obtained from the role of the government through law enforcement officials to prevent problems that are not wanted and created by other parties. The existence of legal protection aims to provide certainty that the community can enjoy the rights they have. However, if there are people whose rights are violated by other people, on the basis of legal protection, the community can take legal efforts as a form to obtain or fight for their rights again.

The 1945 Constitution guarantees that the community has the right to obtain their rights, namely in the form of work and a decent living for humanity, as well as the right of citizens to maintain life. This means that citizens have the right to work to meet their daily needs, one of which is by setting up a business. The existence of rights cannot be separated from obligations, thus, the right to establish a business contains an obligation for business actors in running their business, namely to always provide assistance in the form of correct and honest services to consumers.

The development of the birth of several types of goods or services that are used or consumed supported by free trade makes the flow of transactions of goods beyond national borders so that consumers have the right to choose the quality of goods and services offered, but this condition can actually weaken the position of consumers because consumers are objectified as a tool generate profits by business actors by carrying out promotions, marketing, and application of standard agreements that can harm consumers. Marketing is a process of planning and execution, starting from the conception stage, pricing, promotion, to the distribution of goods, ideas and services, to make exchanges that satisfy the individual and his institutions (Dianto in Asmuni *et al*, 2020).

The ignorance of consumers plus the principle of business actors to get high profits from their sales with a small initial capital source causes consumers to be at a weak point. Empowerment of consumers can be done by increasing the awareness, ability, and independence of consumers to protect themselves from various excessive negative impacts that come from the use and utilization of the needs of goods or services, so as to strengthen the position of consumers who were previously in a weak state. Consumers need protection from the state in order to avoid business actors who want to harm consumers. Various provisions on consumer protection in general in Indonesia are regulated in Law no. 39 of 1999 concerning Consumer Protection.

This consumer protection is organized based on five principles;

1. The principle of benefit, namely in implementing or enforcing consumer protection must continue to guarantee benefits for both the consumers themselves and business actors.
2. The principle of justice, namely to realize the implementation of the rights of consumers or business actors and the obligations that follow.

3. The principle of consumer security and safety, which is to always ensure the creation of security and safety for the community in using the goods or services that have been purchased.
4. The principle of legal certainty, namely in realizing consumer protection, it is necessary for the role of consumers and business actors to always comply with applicable and related regulations. Then, the state must always guarantee legal certainty.

Based on the principles mentioned above, it becomes clear that the state has the right to regulate and supervise the business operations of goods or services in order to realize the implementation of legal certainty for consumers and business actors.

As a country with a majority of people who have Islamic religious beliefs, there are several additional provisions in consumer protection for the Muslim community. Basically, everything in the form of plants, then fruits, or animals is lawful to eat, but the Al-Quran and Al-Hadith exclude certain types of food that are forbidden to eat because they are harmful to human life. Quran Surah Al-Maidah verse 88 which reads:

وَكُلُوا مِمَّا رَزَقَكُمُ اللَّهُ حَلَالًا طَيِّبًا وَاتَّقُوا اللَّهَ الَّذِي أَنْتُمْ بِهِ
 مُؤْمِنُونَ

"and eat lawful and good food from what Allah has provided for you, and fear Allah in whom you believe" is the legal basis for Muslims to apply halal food. Therefore, in matters of food, Muslims are required to consume halal food, in the sense that (1) food does not contain ingredients sourced from pigs, (2) food does not contain ingredients derived from humans such as human organs, blood, or feces. 3) food originating from animals is required to have the animal slaughtered in accordance with Islamic teachings, (4) food originating from haram ingredients must be placed separately or not combined with halal food either during storage, display for sale, then during processing. and management. Not only that, the means of transportation must also be distinguished from halal food. (5) food must not contain *khamr*.

Carrying out religious orders and worship is a right for every citizen so that the state has an obligation to ensure the implementation of protection and guarantees regarding the halalness of a product that will be enjoyed by the community. Regarding the guarantee of halal products, it is regulated in Law no. 33 of 2014. Food that is haram, i.e. sourced from animals, one of which is pork, with many imported products entering the Indonesian market, the variety of foods containing pork is increasing so that both Muslim consumers and business actors must be more careful. Recently, there was a case that caught the public's attention that occurred in the city of Bima, a mother named Annisa found Oreo brand cereal containing pork at the Marina Mart minimarket. In addition, after further inspection of the Minimarket, several other products were found that did not include the halal label from the Indonesian Ulema Council (MUI). The cereal that Annisa bought was placed mixed with other items. Marina Mart itself admitted that it did not know that the cereal being sold contained pork because the supplier did not explain the presence of pork in the food and drink products received and Marina Mart did not have time to check the content in the cereal.

There is an institution that functions to supervise drugs and food found in the community, namely the Food and Drug Supervisory Agency (BPOM). BPOM carries out a function in making and implementing policies that have been made regarding drug and food supervision of food or drugs in circulation. BPOM can also formulate and establish

norms, standards, procedures, criteria and carry out supervision both before and during the circulation of drugs and food. Consumers have the right to receive notification of true, clear, and honest information about the condition of the goods or services and their guarantees so that BPOM establishes rules that require the public to be given information on certain materials, such as alcohol content, materials originating from animals, either singly or in a mixture. or from processed products or their derivatives. Then, processed food containing ingredients sourced from pork must include a label as a special sign with the words "contains pork + (picture of pig).

"cover and are obliged to include a warning that the processed food they produce contains pork. Minimarkets are also obliged to separate non-halal food products from halal food for Muslims to avoid mistakes. BPOM has issued Regulation of the Head of the Food and Drug Supervisory Agency of the Republic of Indonesia Number HK.03.1.23.12.11.10569 concerning Guidelines for Good Retail Practices which regulates the procedures for minimarkets in selling food products containing pork, starting from receiving baked products to displaying them. Mini Markets must separate food products that contain pork from halal food products, not only on shelves in minimarkets but starting with distribution facilities, storage, transportation, and finally on shelves where food is displayed. Then, Article 24 of the JPH Law also requires business actors to do the same thing in the form of separation from the time of delivery of food products to the time of display.

The Halal Product Guarantee Act (UU JPH) was established to protect the Muslim community. Article 4 of the JPH Law stipulates that every product circulating in Indonesia, including in minimarkets, is required to have halal certification. The implementation of halal product guarantees is carried out by the Halal Product Assurance Agency (BPJPH) with the authority to register halal certificates and halal labels on products in collaboration with relevant ministries and/or institutions, the Halal Inspection Agency, and the Indonesian Ulema Council. MUI determines halal through a Decision on Determination of Halal Products. Then, after obtaining a halal certificate from MUI, then business actors are required to include a halal label on their products. It does not stop there, business actors are required to be consistent in maintaining the halalness of their products that already have a halal product certificate and renew the halal certificate that has expired. Then if there is an addition or a reduction in the ingredients contained in the food content, then the business actor is obliged to report the changes to BPJH. For every business actor who sells his food products in the territory of Indonesia and provides information that the food he makes is halal food, he is responsible for the truth of the information he provides so that it is obligatory to include a halal label. There is an obligation to register products to obtain halal certification and halal labeling is a form of protection for Muslim consumers in Indonesia. If it is later proven that there is non-halal content in a halal-certified product, then the person concerned can be subject to imprisonment for a maximum of five years or a maximum fine of Rp. 2 billion.

To obtain a distribution permit, one must follow the provisions determined by BPOM as the authorized agency. All food products must have a halal certificate to be able to include a halal label as an effort to protect consumers by providing legal certainty through information about halal food. However, non-halal products are allowed to circulate provided that they must be clearly stated on the product packaging and there is a separation between halal and non-halal food. In order to provide protection for Indonesian consumers, BPOM generally provides education to business actors to carry out this separation.

In connection with the problem of minimarkets that are negligent in displaying food products containing pork but the product has a distribution and labeling permit, the form of protection provided by BPOM is by providing guidance to minimarkets to prevent the same problems from occurring in the future which will result in losses to consumers and provide an appeal to the public about the composition of the content of the OREO Os RED brand food product with cereal variants as well as educating the public to be careful in consuming a product purchased at the minimarket by first checking the label and content of the food product. Then, the government through the Department of Industry and Trade also has a supervisory function over the course of trade transactions in the circulation of goods in Indonesia. As in the cases listed above, the settlement of cases is carried out through the Department of Industry and Trade of the City of Bima by imposing sanctions in the form of temporary closure of minimarkets.

IV. Conclusion

The form of responsibility of the Food and Drug Supervisory Agency in granting distribution permits for food containing pork sold in minimarkets is supervision by BPOM after and during the circulation of food products (post market), supervision is carried out on food distribution carried out by minimarkets starting from receipt, storage to sale to ensure that food products containing pork sold in minimarkets are treated in accordance with applicable regulations. Then BPOM's other responsibilities are to provide guidance to minimarkets regarding regulations governing good retail guidelines and provide education to the public in the form of socialization, counseling and campaigns on social media regarding the rights and obligations of consumers in accordance with Law Number 8 of 1999 concerning consumer protection. With regard to legal protection for Muslim consumers for the circulation of food products containing pork sold in minimarkets, the State has guaranteed it in Law no. 8 of 1999 concerning Consumer Protection and Law no. 33 of 2014 concerning Halal Product Guarantee. The form of protection given to consumers for the circulation of food containing pork in minimarkets is the establishment of regulations regarding the circulation of food products containing pork and supervision by the government on food containing pork sold in minimarkets through several institutions such as BPOM, LP POM, MUI, and the Department of Trade and Industry. BPOM is expected to be able to carry out supervision of food in circulation in a strict, firm and comprehensive manner by coordinating with relevant institutions in each region in Indonesia so that it can reach retailers in the regions to carry out joint supervision and establish regulations regarding sanctions imposed given to minimarkets that do not comply with the guidelines for good retail practices in selling food containing pork.

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