

Disclosure of Public Information on Food Safety as Consumer Protection

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ABSTRACT: The demands for reform changed the political system and paved the way for the return of democracy in its truest sense. A democratic government is a government that provides space for the people to take part and participate in all forms of state problems. Law Number 14 of 2008 concerning Public Information Disclosure guarantees the public to obtain the widest possible information as a form of supervision from the power owner. Obstructing and covering the disclosure of public information is a violation of human rights, including transparency in food safety supervision. Community involvement in obtaining information on food safety is not taboo because the community as consumers has the right to supervise and monitor food suitability. The purpose of this paper is to describe the importance of public information disclosure on food safety, especially in Indonesia, which is a Muslim majority country, food labeled Halal is very important. So that public information disclosure provides information and can also be used to evaluate the future direction of food feasibility. From this paper, implementing information disclosure in terms of food is essential because the consumer guarantees food safety. Then the problem that often occurs in the implementation of exposure is the absence of regulatory guarantees that can provide legal certainty for business actors who do not implement public information disclosure. This paper concludes that public information disclosure in the democratic era is essential. The existence of public information disclosure can protect and guarantee the public in obtaining food safety as consumers. What needs to be done regarding food safety is establishing regulations regarding the obligation to open up for every business actor.

KEYWORDS: Food Security, Public Information, Consumer Protection.

I. INTRODUCTION

The demands for reform changed the political system and paved the way for the return of democracy in its truest sense. Democracy places humans as owners of sovereignty, which is known as the principle of popular sovereignty. So every regulation that is formed is not intended to guarantee the interests of some people but to guarantee the interests of justice for all. So that a developing legal state is not absolute *rechtstaat*, but *demokratische rechtsstaat*. (Jimly Asshiddiqie, 2005: 152-162) Thus, a democratic state is limited to individual freedom and independence and provides space for the people to take part and participate in all things form of state problems. In addition, democracy in the true sense if a country can guarantee and protect human rights. (Suparman Marzuki, 2014: 4)

Law Number 39 of 1999 concerning Human Rights states that one of the fundamental human rights is the right to a sense of security. The context of a sense of security means that every individual has the right to be protected from dangerous threats, including the protection of hazard threats in food safety. Food security then becomes a crucial thing in Indonesian society with many business actors in the food sector, not to mention food safety for consumers in the religious sector. So there needs to be openness of public information to protect consumer food safety. Based on Law Number 8 of 1999 concerning Consumer Protection, the right of consumers to obtain correct, transparent, and honest information is described as a preventive measure to prevent an unhealthy economy from occurring. However, this law does not explain in detail how the obligations of business actors to the disclosure of public information.

The rise of business actors in the food sector makes consumers have to be selective for choosing food because the influence of food will negatively impact health and even death. Based on BPOM data until 2019, it has been found that from 769 distributor warehouse facilities, 170,199 food product packaging is damaged, expired and illegal. (Lestari, 2020:49) Food that is not fit for consumption has caused various cases of poisoning. According to BPOM records, there are about 20 million cases of food poisoning per year. All countries in the world experience food safety problems. According to WHO, it is estimated that 70% of the 1.5 billion

diseases are transmitted through food. This indicates that the regulation on food safety in Indonesia is still weak. However, formally, food security efforts in Indonesia have received attention from the government with the issuance of Law Number 36 of 2009 concerning Health and Law Number 18 of 2012 concerning food and its implementing regulations.

On the other hand, conditions that endanger the health and lives of consumers after consuming unsafe food show that society's position as consumers is still weak. This is due to the lack of information and knowledge about unsafe food for consumption and the impact of consuming unsafe food. For this reason, people need to get guaranteed protection every time they buy food products. The guarantee of the safety of the public as consumers is an integral part of every business activity. For every good business activity, there must be balanced legal protection for consumers and business actors. If the legal protection efforts are not balanced, it will harm one party (usually the consumer). The imbalance in legal protection can cause business actors to abuse their monopolistic position, and ultimately it is the consumers who suffer a lot. For this reason, it is necessary to increase consumer protection efforts so that consumer rights can be enforced. (Hura et al., 2016: 3)

Then in Law 14 of 2008 concerning Openness of Public Information, it provides guarantees for the public to obtain the widest possible information as a form of supervision from the power owner. Obstructing and covering the disclosure of public information is a violation of human rights, including transparency in food safety supervision. Community involvement in obtaining information on food safety is not a taboo subject because the community as consumers has the right to supervise and monitor the feasibility of food. Based on this description, public information disclosure in a democracy is very important, especially information disclosure in terms of food. This is because food security will ensure the survival of a nation and is part of human rights. It is essential to describe how the disclosure of public information on food safety is an effort to protect consumers.

II. CONSUMER PROTECTION AGAINST FOOD SAFETY

Food problems have become a global concern, starting with the increasing food industry not matched by consumer protection regulations. This inequality then triggers commodity business actors to seek as much profit as possible, regardless of losses on consumers. Such as the case in the United States, which is estimated at 48 million cases of food poisoning society per year. In 1998, food poisoning resulted in 128,000 people being hospitalized and 3,000 people dying in America. Likewise, in 2000 in Japan, there was also a case of food poisoning which resulted in more than 14,000 people being poisoned. In Indonesia, based on BPOM data in the 2009-2013 period, it was estimated that there were 10,700 cases of extraordinary food poisoning events. During that period, 411,500 people were sick, and 2,500 died due to poisoning. (Surono S et al., 2018: 19)

The attention of significant world institutions such as the United Nations on consumer protection carried out for a long time. It is evidenced by the issuance of United Nations Resolution No. 39/248 of 1985. The main points in this resolution are none other than protecting the interests of consumers (Doly, 2012), which include:

- a. protection of consumers from harm to their health and safety;
- b. Promotion and protection of the economic interests of consumers;
- c. availability of sufficient information so that it is possible to make choices as desired;
- d. consumer education;
- e. there are effective ways of redress;
- f. freedom to form consumer organizations and express their opinions from the decision-making process related to consumer interests.

Consumer protection in Indonesia has also been long to consider. It is evidenced by the ratification of the "Agreement Establishing the World Trade Organization," which includes the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which was then followed by Law Number 8 of 1999 concerning Consumer Protection. As a consequence, of course, committed in its implementation will always pay attention to consumer protection.

Law No. 8 of 1999 on Consumer Protection aims to realize a healthy economy, regulate consumer rights and protection. There are four fundamental consumer rights: the right to security, the right to information, the right to vote, and the right to be heard. (Sinaga, 2015:84) Then the consumer rights that must be protected according to Zoemrotin K. Susilo, 1996:4) namely: the right to obtain safety and security, the right to get correct, transparent, and honest information, the right to choose goods, the right to be heard, the right to compensation, and the right to a clean and healthy environment.

Food safety then becomes very important for life. So that business actors and consumers must be selective in determining healthy and quality food products. On the other hand, the government also forms clear and firm regulations to protect business actors and the public as consumers. Law 18 of 2012 concerning food as amended in Law Number 11 of 2020, concerning Job Creation states food safety in general provisions that, "Food safety is a condition and effort required to prevent food from possible biological, chemical, and other objects that can interfere, harm and endanger human health and do not conflict with the religion, beliefs, and culture of the community so that it is safe for consumption." This provision describes the condition of food that is proper, safe, and halal to consume. It is very influential on the community safety as consumers and the compliance of consumer rights in terms of health, faith, culture, and religion.

Article 86 paragraph 1 of Law 18 of 2012 emphasizes that the government must establish food safety and food quality standards to ensure food safety. The food safety standard in question fulfills food safety requirements by business actors throughout the food supply chain, from on-farm to consumer. (Lukman, 2015) This requirement stated in article 69 includes food sanitation, food additives, genetically engineered products, food irradiation, packaging, and guarantee of halal products for those required. Then the provisions of Article 91 in terms of supervision of safety, quality, and nutrition, every processed food made domestically or imported for trading in retail packaging, food business actors are required to have a

distribution permit. However, this permit's mandatory provisions exempted specific food processing produced by micro and small businesses.

Then in Law No. 36 of 2009 concerning health was amended in Law No. 11 of 2020 concerning Job Creation, articles 109 to 112 explain the security of food and beverages. The article emphasizes that the production of food and beverages must pay attention to the safety and health of its products. The production of food and beverages marketed must meet the standards of health requirements to not endanger or pose a risk to consumers' health. Then in this regulation also applies strict sanctions against food and beverages that can harm consumers, can be revoked the distribution permit, confiscated, and even destroyed.

Various institutions that focus on food protection and safety under the auspices of the government also take part in the process as an effort to protect consumer food safety, such as BPOM, BP JPH, and BPKN. These three institutions have direct responsibilities to the government in terms of food protection. Organizations such as BPOM (Food and Drug Supervisory Agency) and BP JPH (Halal Product Guarantee Agency) are authorized to issue food safety and halal permits. In addition, the task of BPOM is to supervise before, after drugs and food are circulated to maintain the safety of medicines and food. Furthermore, BPKN or (National Consumer Protection Agency), which was born on the orders of Law Number 8 of 1999 concerning Consumer Protection, is an institution tasked with conducting research on goods or services concerning consumer safety. In addition, it becomes a place for complaints about consumer protection from the public, LPKSM (Non-Governmental Consumer Protection Agency), or business actors.

BPOM-licensed products and BP JPH Halal Certification cannot be issued immediately for distribution licenses. Business actors must register their products first to get permission from the two institutions. Then, it will be led to the rise of KLB (Extraordinary Events) of food poisoning because BPOM and BP JPH did not check the feasibility and safety of food before the food circulated. However, the agency studies the feasibility of food if the business actor wants to get a permit from one or both institutions. In

this case, the presence of the BPOM and BP JPH institutions cannot provide security guarantees for all types of drugs and food circulating in the community, except those that registered and obtained permission from the institution.

Consumer safety to food safety is essential. Strict legal action needs to be taken to protect consumer safety. According to Johanes Gunawan (Johanes Gunawan, 1999: 3), legal protection for consumers can be done before and after the transaction.

1. Protection before transactions can be carried out by protecting consumers through the laws and regulations that have been made. So that with this regulation, it is expected that consumers will get protection before the occurrence of transactions because some limits and provisions regulate transactions between consumers and business actors.
2. Then with Voluntary self-regulation, namely legal protection for consumers, business actors are expected to voluntarily make regulations for themselves to be careful in running their business.

Meanwhile, protection after the transaction can be carried out through the PN (District Court) or out of court by BPSK (Consumer Dispute Settlement Agency). Protection of consumers is needed because consumers are in a weak position. This is based on differences in interests between business actors and consumers. (Sinaga, 2015:83)

Concerning the implementation of consumer protection, Law Number 8 of 1999 concerning Consumer Protection mandates business actors to be responsible for solving problems that occur to consumers. The responsibilities of business actors include public accountability, where producers as business actors have the duty and obligation to create and maintain a supportive business climate for the national economy's development. Violations committed by business actors will be subject to liability in the form of sanctions, either administratively or criminally.

Private liability, in the form of providing compensation for damage, pollution, and consumer losses due to consumer goods or services produced or traded. This responsibility is civil, both contractual and outside the contractual relationship. (Pantouw, 2016)

III. PUBLIC INFORMATION DISCLOSURE IN FOOD SAFETY

Information is an essential component in today's modern era. Globalization factors also affect the development of the needs of human life, which continues to increase and develop, including the need for information that impacts the development of personal quality. The principles of transparency and accountability are the basic principles in carrying out activities that involve many people because if this is far from openness and lack of understanding and is contrary to these basic principles. It is feared that it will cause unrest and do not rule out the possibility of revealing and leading to social conflict. (Toni, 2017)

Transparency is the principle of opening oneself to the public's right to obtain access to correct, honest, and non-discriminatory information regarding the organization by taking into account the protection of personal, group, and state secrets. Disclosure of information will provide important social benefits and provide a foundation for democracy, boosting the ability of citizens to participate effectively and hold governments to account. Disclosure of public information is a means of optimizing public supervision of all forms of state administration and other public bodies and everything that results in the public interest. In addition, the disclosure of public information is a hallmark of a democratic country that upholds the people's sovereignty to realize good governance. (Yuliadi, 2020)

The attention of major world institutions such as UNESCO (United Nations Educational, Scientific and Cultural Organization), which is under the auspices of the United Nations on the Openness of Public Information, has imposed the principles of international standards in freedom of information. At least in implementing freedom of information, nine principles must be fulfilled, those are: (Tobi Mendel, 2008)

1. **Maximum Disclosure.** It means that freedom of information comprehensively includes four types of rights to information: (a) the right to know, (b) the right to obtain information (physical acquisition), (c) the right to be informed, and (d) the right to utilize and disseminate information.

2. **Obligation To Publish.** It is necessary to emphasize that public information is a fundamental right of everyone. Therefore, the need for information must always be available.
3. **Promotion of Open Government.** The obligation of public bodies as subjects of the Law on Freedom of Information to have an adequate information management system and public services.
4. **Limited Scope Of Exceptions.** Recognize the principle of maximum access limited exemption. This principle requires two things: (1) Enforcement of exclusion of information (which is confidential or access-restrictive). (2) This exception must be based on the precautionary principle
5. **Processes To Facilitate Access.** Dispute resolution is cheap, fast, competent, independent, and comprehensive (Not only relying on adjudication but also available for dispute resolution through a consensual approach).
6. **Costs.** Access to information takes into account the principles of cheap, fast, accurate, and timely.
7. **Open Meetings.** The scope of application of public bodies as providers of access is not limited to state institutions but also institutions outside the state that receive and use the state budget (including state/regional-owned enterprises)
8. **Disclosure Takes Precedence.** This means that it is necessary to confirm in the regulations that laws and regulations that are contrary to the contents of the Freedom of Information Act must be declared invalid
9. **Protection For Whistleblowers.** The threat of punishment is aimed not only at perpetrators of abuse of the exclusion provisions (Confidentiality) but also at individuals and legal entities that hinder public access.

Public information disclosure in Indonesia is regulated in Law Number 14 of 2008 concerning Public Information Disclosure. This law is motivated by several considerations that led to the formation of an information society. (1) Information is the basic need of every individual for personal and social development. (2) Obtaining information is a human right and

the disclosure of public information is a form of democratic government whose sovereignty is in the hands of the people. (3) Freedom to obtain information means monitoring everything that may result in the public interest. (4) Management of public information is one of the efforts to develop an information society. (Rifai, 2008)

In Article 3 of Law Number 14 of 2008 concerning Openness of Public Information, several objectives are stated as follows: (1) Guarantee the right of citizens to know about public policy-making plans, public policy programs, and public decision-making processes, as well as the reasons for making a public decision. ; (2) Encouraging public participation in the process of public policy-making; (3) Increasing the active role of the community in public policy-making and good management of public bodies; (4) Realizing good state administration, which is transparent, effective, and efficient, accountable and accountable; (5) Knowing the reasons for public policies that affect the lives of many people; (6) Developing science and educating the nation's life; and/or (7) Improving the management and service of information within the Public Agency to produce quality information services.

This regulation emphasizes the importance of public information disclosure in all matters concerning the needs of many people. With openness, it will provide public participation to realize public transparency, especially including public information sources through an active participation process with a high degree of political awareness. Through the guarantee of public access and participation, policies can influence public reasoning to have strong legitimacy as implied by the democratization scheme of public decision-making. (Pratikno, 2012)

The implementation of public information disclosure in Law 14 of 2008 is only limited to state institutions or institutions whose sources of funds come from the APBN, APBD, and donations from the public or abroad. So beyond that, by using personal funds, it is not required to disclose public information. In fact, in the food sector, private companies dominate more than state-funded institutions. Then this has become an imbalance where food is a daily need for the community, and the guarantee and safety of the

community should have the right to be accessed openly even though it is privately owned.

The guarantee of openness should not only be limited to public spaces. This guarantee of information disclosure should be comprehensive on everything that concerns many people's lives, including information disclosure on food safety. As mentioned above, it is the right of consumers to obtain information and the obligation of business actors to provide information. The Consumer Protection Act indirectly states that disclosing public information is very important to avoid anything that can harm consumers.

The feasibility and safety of food are very influential on the survival of consumers. Disclosure of public information in terms of food provides broad benefits to the community. The community is not only wasteful but can also monitor the feasibility and safety of its food. Thus the community can assess and be a supervisor of food safety.

Community involvement in obtaining food information is something that needs to be done. The presence of institutions, such as BPOM and BP JPH does not guarantee that all types of food are suitable and halal for consumption because these institutions tend to 'wait' and become commodities to obtain proper and halal permits for consumption; as explained above that these institutions are authorized to issue BPOM and Halal permits by Islamic law, if this is the case, then it is not surprising that the number of cases of food poisoning outbreaks continues to increase. As an effort to protect consumer food safety, public information disclosure is very important. There would be at least 6 (six) benefits if the disclosure of public information applied to food.

1. Transparency and accountability of business actors;
2. Increase public (consumer) trust in goods/services;
3. Protecting the community in the suitability and halalness of food;
4. Community involvement as food safety supervisor as a protection;
5. Creating a healthy economy; and
6. Evaluation of future food suitability.

While the regulation on public information disclosure on food safety is still not regulated, the absence of clear rules and sanctions against business actors in implementing disclosure will impact the lack of information about food safety in the community. So that people's rights to protect themselves are ignored. (Cahyani Saddu, 2016:3-8) The regulation of public information disclosure in food safety will increase the feasibility and quality of halal food. However, the disclosure must also pay attention to Intellectual Property Rights as excluded information. (Sastro et al., 2010:24-28)

IV. CONCLUSION

All countries in the world experienced the problem of food safety. Differences in interests between business actors and consumers trigger imbalances that lead to losses for consumers. Various regulations in Indonesia have been set with the hope that they can protect and ensure food safety for the community, as stated in Law Number 8 of 1999 concerning Consumer Protection. In general, there are four fundamental consumer rights, namely the right to security, the right to information, the right to vote, and the right to be heard. To ensure the creation of rights from consumers, institutions under the auspices of the government were formed, such as BPOM, BP JPH, and BPKN. The presence of these institutions aims to help ensure the achievement of the rights of consumers.

One of the rights of consumers is the right to obtain information. Based on Law Number 14 of 2008 concerning Public Information Disclosure, its implementation is limited to institutions or agencies funded by the state. In fact, in the food sector, private companies dominate more than state-financed companies. Openness should not only be limited to public spaces. The guarantee of information disclosure should be comprehensive on everything that concerns many people's lives, including information disclosure on food safety. With the disclosure of public information on food, the public is wasteful and involved in monitoring food safety to protect themselves.

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