

Consumer Protection Against Processed Food Advertisements with Misleading Health Claims

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Abstract

This research will answer the role of the Food and Drug Supervisory Agency (BPOM) towards Indonesian citizens as consumers in supervising processed food advertisements with misleading health claims, as well as the responsibility of business actors to consumers in Indonesia as the party that is harmed by business actors' promotional activities in the form of advertisements, which is misleading. This research was conducted using normative methods. The results of the study show that business actors must be responsible for misleading advertisements produced by business actors, as well as for processed food advertisements with health claims, a regulation is required that requires advertising materials to be registered through the Ad Registration System (SIREKA) page which is managed and approved by BPOM as product category of drugs and health supplements. Processed food advertising rules for carrying out the registration can provide certainty to consumers to find out the truth of claims about food product advertisements in circulation.

Keywords: Consumer Protection; Advertisement; Processed Food; Misleading.

1. Introduction

The rule of law is not a new discussion in the running of the state, starting from the constitution to the concept of a rule of law state (Ridlwani, 2012). The constitution appeared at the beginning of the 19th century setting out the limitations of government power, which was then followed by the concept of a rule of law state. The constitution of the rule of law shifts the role of the state through the government to actively improve the welfare of its people. The concept of a rule of law is also known as a welfare state or a material rule of law state.

Indonesia, which was born in the 20th century, made it adhere to the concept of a rule of law with the principle of constitutionalism. This can be seen from the existence of the consensus (consensus) of the Indonesian nation which is realized by the existence of the 1945 Constitution (UUD 1945) which is established as the constitution of the Indonesian state (Jimly Asshiddiqie, 2010). The General Explanation of the 1945 Constitution has implicitly shown that Indonesia is a constitutional state (Hadiyono, 2010). The Indonesian state as a material legal state that adheres to the concept of a welfare state has an absolute responsibility to improve general welfare and create social justice for all citizens. This is what encourages the State of Indonesia to prosper its people through policies and laws and regulations.

The obligation of the Indonesian State to issue policies must certainly follow economic and technological developments. Today, technological advances simultaneously increase business activities globally which result in increased competition among business actors. Business actors are competing to do their best to introduce their products both in the form of goods and/or services to the public as consumers. Efforts made by business actors are usually in the form of advertisements or promotions aimed at introducing products both in the form of goods and/or services to consumers, as well as to encourage consumer awareness of the products produced by business actors.

Promotion is an activity of disseminating information on goods and or services that aims to create consumer interest in buying the goods and services that will be traded (R. Kartini, 2006). Advertising itself is one type of promotion that many businesses choose to communicate something about their products to the public as consumers (Nugroho and Chairani, 2022). Without advertising and promotion, it is difficult for business actors to inform consumers about the

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superiority, quality and benefits of their products.

This increase in business activity and information disclosure has become the concern of the state in the framework of creating statutory policies. Business activities that are growing rapidly and are supported by technology and informatics offer easy access for consumers to obtain information about goods and/or services. The progress and openness of the information media ultimately expand the actual problems to consumers. Problems that were initially limited to product quality and standardization have now expanded to issues related to promotion and advertising. This situation is like a double-edged sword for consumers, ease of access which is not followed by the development of laws and regulations regarding advertising can ultimately harm consumers, because the information received by consumers cannot be ascertained (Nugroho and Chairani M, 2022).

Advertising contains two meanings at once, the first is as information about the products being traded such as benefits and uses, but on the other hand, advertisements also contain promises from business actors for the results that consumers will receive from using the goods and/or services advertised. Citizens as consumers in this situation have the right to protection against various kinds of commercial advertisements circulating in society. Consumer comfort, safety and security are the main things that must be protected by the State as mandated in the 1945 Constitution, specifically in article 27 paragraph (1). As a welfare state, of course the Indonesian State is obliged to pay attention to the protection of its citizens against the circulation of information in the form of this advertisement. (Nugroho and Chairani M, 2022).

Advertising plays an important role as a means of marketing and means of information, as a means of information and marketing. Advertising is part of the life of the communication media, very vital for the development of the business world and must play a supporting role. Business actors' advertisements are the media needed to market their products and increase the number of sales (Widijowati, 2016). Unfortunately, this often conflicts with the interests of business actors in seeking profits. However, there are several cases of business actors carrying out excessive advertising or promotion of goods and services, even violating the provisions of laws and regulations with the aim of maximizing profits. Business actors even justify various ways to attract consumers' attention to buy their goods and services, without regard to consumers' rights to correct, clear and honest information regarding the conditions and guarantees of goods and/or services (Badrulzaman, 1986). Consumers are often considered to be objects for business actors to reap maximum profits through promotions and sales methods which ultimately harm consumers (Shofie, 2009). Business actors basically have an obligation to comply with advertising procedures in Indonesia which adhere to general principles or principles, namely; honest, responsible and does not conflict with applicable law, and imbued with the principle of fair competition (Kristiyanti, 2011), but in reality there are still advertisements that are not in accordance with these principles.

The same thing happened in processed food advertisements circulating in the community. Processed food according to Drug and Food Control Agency (BPO) is food or drink that is processed in a certain method or process (Drug and Food Control Agency, BN.2019/No.1457). Basically, processed food is allowed to have certain health claims as regulated in legislation. These health claims also include claims for reducing the risk of disease, which are further regulated in Appendix I to Appendix VII of the Drug and Food Control Agency Regulation Number 1 of 2022 concerning Supervision of Claims on Processed Food Labels and Advertisements.

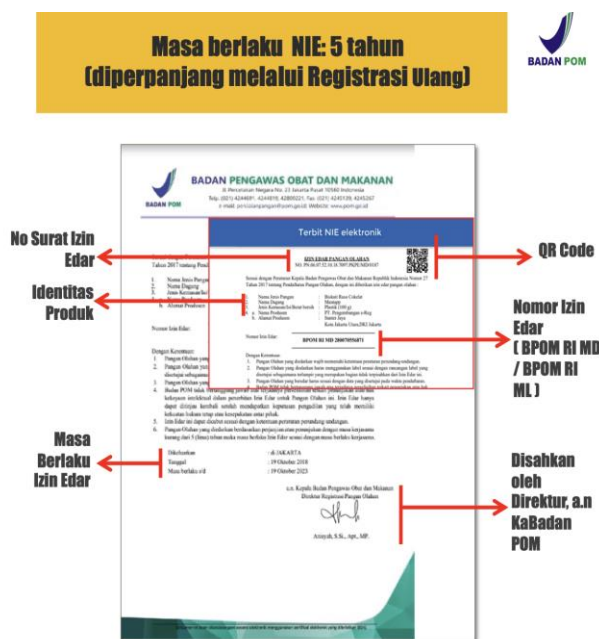
To use health justification in processed food, of course, you must still follow the applicable laws and regulations. Appendix VII Regulation of the Food and Drug Supervisory Agency No. 1 of 2022 concerning Supervision of Claims on Processed Food Labels and Advertisements requires business actors to meet the criteria in order to obtain a permit for a health claim statement, and continue to include a warning accompanied by the health claim statement. Apart from that, health claims are also required to use words or sentences that are correct and in accordance with statutory regulations regarding advertising and advertising procedures as set forth in the regulations regarding processed food advertising.

Business actors who own processed food products in practice often advertise products with the choice of sentences that seem to make the product efficacious in overcoming and/or preventing health-related diseases such as detoxification of toxins, binding fat, weight loss, reducing the risk of heart disease, increasing metabolism and helps digestive health. The classification of products that permit processed food is inappropriate when compared with the claims in the product advertisements. These advertisements give the impression that products with the description "flavored drinks", can help various kinds of health problems. These advertisements are even on several occasions not accompanied by warnings / warnings as required by laws and regulations. This further gives the impression that the product actually has the properties as advertised.

The Food and Drug Supervisory Agency in the Advertising Supervision Technical Guidelines states that advertisements

may not be linked to matters relating to health, unless there has been a claim to reduce the risk of disease. The thing that then becomes a question is about the location of approval of health claims or reduced risk of this disease. Based on Law Number 6 of 2021 concerning Supervision of Processed Food Advertising, Article 4 states that information on approved claims is in the Product Distribution Permit Number. Based on Law Number 18 of 2012 concerning Food and Government Regulation Number 86 of 2019 concerning Food Safety, it is stated that any processed food produced domestically or imported to be traded in retail packaging must have a distribution permit. Product Distribution Permit Number according to BPOM Regulation No. 13 of 2021, a Distribution Permit is a form of Registration approval to be distributed within the territory of Indonesia.

The Distribution Permit Number (NIE) itself has several parts that indicate the identity and information on a product. The following is an example of NIE edited from the Processed Food Registration Booklet circulated by the Directorate of Processed Food Registration BPOM.



Source: Drug and Food Control Agency

Figure 1. Food Registration BPOM

The NIE also contains claims approved by BPOM which are poured into approved labels, (Food and Drug Supervisory Agency, 2016) where these claims are the only ones that can be used by business actors in offering their products. The use of claims that are not approved in advance by BPOM is an act of violating the law, especially if the claim is related to health where it is possible to cause harm to consumers.

BPOM's approval of health claims aimed at providing correct and clear information to the public about every processed food product before it is consumed by consumers. (Drug and Food Control Agency, 2022). doesn't seem to have hit the spot yet. In practice, products circulating freely use various kinds of health claims, without any certainty regarding the correctness of the right to use those claims. NIE, as previously discussed, cannot be freely accessed by consumers, while these claims are only contained in NIE. This is a concern that it is not impossible that there are products circulating with health claims, without the right to use claims that have been previously approved by BPOM.

Not being able to access truthful information in advertisements regarding this claim can harm consumers in all aspects. Against these rightsless claims, it is as if consumers are being given a false promise on the consumer's hope that by consuming a product it can have a helpful effect from a health perspective. Even in practice, these products have prices that are above market prices, so it is only natural for consumers to expect the advantages offered by these products as advertised health claims. This is a concern because it becomes uncertain about the protection of the public as consumers in their rights to be protected from incorrect information about processed food as stated in the Considerations section letter D, Decree of the Minister of Health of the Republic of Indonesia 386/MENKES/SK/IV/1994.

Based on the background of this problem, researchers are interested in examining this in a study entitled "Consumer Protection Against Processed Food Advertisements with Misleading Health Claims." This discussion will analyze the

roles and responsibilities of the Food and Drug Supervisory Agency towards Indonesian citizens as consumers, in monitoring advertisements with misleading health claims, and try to outline the need for access for consumers in order to obtain truthful information on claims in processed food advertisements. Thus the final results of this study try to see a system that provides access to consumers so they can find out the truth of the claims of food products in circulation.

2. Method

The discussion of this problem will use research methods with normative research types, the approach used in answering the focus of the problem uses a statutory approach and a concept approach (Soekanto, 2012:). In this study the focus was on studying secondary data which consisted of primary legal material and secondary legal material. The data collected was then analyzed qualitatively and the results were described descriptively (Moch Andry Wikra Wardhana Mamonto, 2022).

3. Result and Discussion

3.1. Authority of the Food and Drug Supervisory Agency on the Use of Processed Food Advertisements with Misleading Health Justifications

The tendency of people to be consumptive has become a wetland for entrepreneurs to exploit people's buying interest by creating tempting advertisements for consumers. (Nugroho and Chairani, 2022). High advertising mobility with various supporting instruments is an attraction for business actors to boost sales to increase profits. Advertising is in the spotlight in the world of consumer protection, this is because advertising has a significant role in people's lives and has an influence on the business community and consumers. This advertising activity needs special attention from the government because it contains consumer interests that must be protected.

Processed food advertisements basically have criteria that are prohibited from operating in Indonesia, including as formulated in Law Number 8 of 199 concerning Consumer Protection (UUPK) Article 8 paragraph (1) letter f, Article 9 paragraph (1) and (2), Article 10, Article 12, Article 13, Article 17 paragraphs (1) and (2) and are based on Indonesian advertising procedures. This criterion is intended so that the functions and objectives of advertising can run smoothly and not harm both consumers and business actors.

Handler argues, the representation of the facts stated in the advertisement is wrong, and the merchant is expected to persuade to buy the advertised product, and the inducement to buy is not good for the buyer, this is categorized as a crime in the form of misleading advertising. (Handler, 1972). As for advertisements for consumers, they play a major role as an information tool for products, therefore it must be followed by supervision of the quality of advertisements by the authorities, in this case BPOM (Miru and Yodo, 2010).

The existence of statutory regulations as contained in the Consumer Protection Act which bind business actors in advertising and the Regulations of the Food and Drug Supervisory Agency as a supervisory agency for advertisements should be able to protect consumers against cases of similar advertisements. Every advertisement that provides information about its goods/services must be accompanied by clear information so as not to mislead consumers, especially health-related advertisements.

Nowadays, advertisements for processed food with health claims are rife in Indonesia, where the appearance and quality and qualifications are not in accordance with existing regulations. In an effort to protect citizens and at the same time provide a sense of security in obtaining processed food, the Government has issued various regulations that guarantee this, but these have not yet fully covered and provided a sense of security to the public.

Regarding the Policy for Supervision of Processed Food Advertising in Indonesia, according to Andi Leny Susyanty, et al. Supervision carried out by the local office POM in the province only takes pictures of the suitability of the advertisements in circulation. With such a monitoring system, not all processed food advertisements can be monitored, and the monitoring facilities are not perfect either. In addition, the sanctioning regime does not work well, especially for local media advertisements and household goods advertisements, because agencies with advertising regulatory authority only have regulatory authority for commercial advertisements. (Susyanty, 2014).

Regarding consumer protection regarding misleading advertisements, according to Tangkas Hadi Perwira and Atik Winanti, there are many types of marketing that exist today to manipulate advertisements for a product to increase sales. The rise of fraudulent advertising has made it easier for people to be conned. Based on these problems, Advertising is

regulated by Law Number 24 of 1997 concerning Broadcasting and Law Number 8 of 1999 concerning Consumer Protection. (Perwira and Winanti, 2020).

Even though fundamentally according to Peter Mahmud Marzuki, in his book entitled Introduction to Law, "The law aims to increase the happiness of the entire community by prohibiting actions that bring suffering" (Marzuki, 2008). Health is a human right of all levels of society that cannot be trifled with and must be maintained by protecting the right to health.

Processed food itself is defined as food or drink that has been processed in a certain way or method with or without additives. Food circulation is any activity within the scope of food distribution to the public, whether for trading or not. Regarding Food Labels (Regulation of the Government of the Republic of Indonesia No. 6 of 1999), which means all information relating to food in the form of pictures, writing, a combination of both or other forms that are affixed, affixed, affixed or form part of food. from food packaging. Supervision carried out by BPOM includes 2 forms, namely: Marketing before and after marketing. Pre-marketing, among other things, is carried out when traders/importers register at BPOM and when checking the completeness and validity of documents and goods at the port/airport gate by customs, customs and tax officers. As a form of consumer information about a food product, the government requires the use of labels.

In government regulation no. 69 of 1999 concerning Food Labels and Advertisements (PP 69/1999), Food Labels are defined as "any information relating to Food in the form of images, writing, a combination of both or other forms that are affixed, inserted into, inserted into or become part of from food packaging". Food labeling is mandatory for all traders who produce food in the domestic market, as well as for traders who import food for their own use. Meanwhile, food must be labeled as food that has undergone final packaging, processed and ready to be marketed and does not apply to packaged food before purchasing PP 69/1999, exceptions are given for: a. food packages are too small to be filled with the required information; b. food is sold and packaged directly in front of the buyer in small quantities; compared to food sold in bulk.

Food Regulations, especially Law no. 18 of 2012 concerning food and its implementing regulations, stipulates the minimum information that must be included on food labels, as stated in the article "Labels, not just stickers!". Another thing to pay attention to in the regulation is that the information written on the label must be true and not misleading. Some of the regulatory provisions related to this issue include:

1. Including halal labels. In the case of a food product labeled "halal", the commercial agent is responsible for its legitimacy. The truth of the "halal" label claim must not only be shown in terms of ingredients, food additives or additives used, but also must be shown during the manufacturing process.
2. Loading certain claims. In the case of food products with labels containing certain claims, the commercial agent is responsible for the veracity of those statements.
3. Health benefits. Inclusion of claims about the benefits of food for health can only be done if it is supported by proven scientific facts. Works like a drug. The inclusion of related foods that may act as drugs is prohibited by any means.

Furthermore, according to the provisions of article 36 paragraph (1) law number. 18 of 2012 concerning Food, stipulates that any food that is imported into the territory of the Republic of Indonesia for distribution must comply with the provisions of this law and its laws and regulations. Law of the Republic of Indonesia Number 18 of 2012 concerning Food stipulates that food advertising is any statement or statement about food in the form of pictures, writing or other forms made in various other ways to market and/or trade food. That every food advertisement that is commercialized must contain food information that is accurate and not misleading, both in visual and/or audio form, in speech and/or in other forms.

Some of the processed food products found on the sales platform are very easy to find. These products use the claims in Table 1.

Health claims advertised are not only inconsistent with applicable regulations. The ad also conveys the very simple misconception that by consuming certain food products (especially dietary supplements), health problems will be resolved. This of course has the potential to endanger the health of consumers themselves. Health claims are statements indicating a relationship between nutrients or other compounds in a food product and diseases or other health problems. However, keep in mind that food products are not drugs and should not be considered drugs. Food products cannot claim to cure disease. These health claims can be used for both conventional (conventional) food products and food supplements.

In general, regulations on food labels and advertisements state that (i) food products that are not drugs (Article 7 Chapter II PP 69), (ii) may only be used for problems that have been scientifically proven (have received approval). a lot of important scientific evidence). approval from the scientific community); (iii) for some compounds materiality must be considered to ensure health benefits and the most important thing consumers need to know is that (iv) claims are not allowed for Food products that are high in total fat, saturated fat, cholesterol and sodium. In addition, there are others depending on the case.

Table 1. Processed Food Products Using Misleading Justifications

Distribution Permit Number (disguised)	Claims in advertisements
RD-MD (8670*****)	<ul style="list-style-type: none"> • Helping to diet or help lose weight • Meet the needs of nutrition and protein • Maximize weight loss program
RI-MD 867009*****	<ul style="list-style-type: none"> • Using the word Antioxidant in product names listed in online sales media • Helps streamline the stomach • Helps lower cholesterol levels • Helps reduce the risk of heart disease • Adequate Nutrition Vitamins and Minerals for the body
RI-MD 867028*****	<ul style="list-style-type: none"> • Using the word Detox in product names listed in online sales media • Detox Supplements, Slimming • Helps maintain healthy skin • Distended stomach shrink and body weight down to the ideal figure

Source: Processed by Researchers

Based on BPOM Regulation No. 6 of 2021 Concerning Supervision of Processed Food Advertising, there are several things that can make a food advertisement Does Not Meet the Provisions (TMK). A food advertisement is said to be TMK if it contains incorrect and misleading information. Based on the Government Regulation of the Republic of Indonesia Number 69 of 1999 concerning Food Labels and Advertisements (PP No.69/1999) In Chapter I Article 5 paragraph (1) it is stated, "information and or statements regarding food on labels must be true and not misleading, both regarding writing, drawing, or any other form." This was emphasized several times in PP No. 69/1999 and even in Chapter III Article 44 the same thing was stated regarding the prohibition of misleading advertisements. The misleading statement itself is defined in the Elucidation of Article 5 paragraph (1) PP No. 69/1999 as a statement regarding matters such as the nature, price, composition, quality, composition, benefits or safety of food, which, although true, can be misinterpreted about the food concerned.



Source: Processed by Researchers

Figure 2. Advertisements of Processed Food Products with Misleading Justifications

BPOM in the booklet regarding advertising supervision provides several examples of TMK food advertisements, including:

- The advertisement contains statistical data without sources that have the potential to mislead the public
- Advertising of infant formula and subsequent formula is prohibited in the mass media, except for printed medical newspapers.

- c. Advertisements use superlative/hyperbolic/exaggerated language
- d. Advertisements contain claims that processed foods can be healthy, restorative, or restore energy and contain claims that processed foods appear to be medicinal



Source: Processed by Researchers

Figure 3. Advertisements of Processed Food Products with Misleading Justifications

- a. Advertisements that use exaggerated and potentially impersonating and harmful statements and images
- b. Advertising that contain the words "unique", "unique", "unique" or words with similar meanings, unless they have reliable data.

For labels, especially food labels, the public must have accurate, clear and complete information regarding the amount, content, quality and other factors needed related to food circulating in the market. Labels are like windows, savvy consumers can take a peek at a product from the label (Hariyadi, 2009). Based on the information on the label, consumers can make the right choice before buying and/or consuming food. Without clear information, fraud can occur. (Shofie, 2009).

There are many food problems in Indonesia. Until now, we are still experiencing a situation where food circulating in the community does not comply with label requirements, which causes people's frustration. Trade in expired food, using non-food dyes, food containing formalin, food with preservatives or other behavior that is very dangerous for society, can even pose a threat to human health and safety, especially children, is often carried out through fraud. on food labels.

Food products may not be specified, described or presented which are misleading, misleading (misleading or misleading) or give the wrong impression about the characteristics of food products. In fact, no description or representation in words, pictures or other means is intended to suggest, directly or indirectly, to impress and associate consumers with other products. The definition is precise and not misleading, meaning that the terms used on the label must be interpreted the same, both by the government (for control purposes), between producers (for the benefit of fair competition) and consumers (for the sake of their choice). The accuracy of the information stated on the label must be researched and evaluated according to scientific principles, especially based on verifiable scientific facts and data. This is very important for international trade. Please note, however, that these facts and data may change over time. It can even differ from one country to another, so there is a need for transparency and harmonization of information.

One of the benefits of including accurate information on labels and advertisements is to educate consumers about food-related issues. Important information that is often conveyed through labels and advertisements includes how to store food, how to cook it properly, the nutritional content of certain foods, the function of these nutrients for health, etc. In supervising advertisements with misleading health claims, BPOM plays an important role for Indonesian citizens as consumers, as stipulated in Regional Regulation 80 of 2017, BPOM is a non-governmental organization implementing the Government. Business entities in the field of health and food control with the task of ensuring that food products in circulation meet the standards set for safety requirements, efficacy/benefits and product quality as well as enforcement actions.

In the Decree of the Director of Drug and Food Control of the Republic of Indonesia No. HK.00.05.21.4231 of 2004 changed the Decree of the Director of Drug and Food Control No. 02001/SK/KBPOM of 2001 concerning Organization and work procedures of the Food and Drug Supervisory Agency, it is stated that the Assistant for Food Safety and Hazardous Materials is responsible for developing policies in the field of food and hazardous substance safety control. In supervising processed food, at least BPOM has several main tasks, including (1) supervising licensing and certification of the food industry based on good manufacturing practices; (2) evaluate the product before applying for a distribution permit; (3) carry out post-marketing precautions, including sampling and laboratory testing, inspection

of production and distribution facilities, and law enforcement; and (4) post-audit processed food advertisements.

While in BPOM Regulation No. 6 of 2021 concerning Supervision of Processed Food Advertising, it is stated that the Supervision of Processed Food Advertising is carried out by BPOM, which has the authority to:

- a. Examining and/or obtaining data, information and/or documents, including pictures, photos and/or videos, as well as other data, information and/or documents that are suspected of being advertising activities, including copying or citing information;
- b. Media considerations related to advertising, including advertising media;
- c. Access identity data, names and addresses of Advertisers; and or
- d. Featured Advertising review.

With BPOM's authority mentioned above, there is a responsibility assigned to supervising Processed Food advertising. By law, BPOM is in the right position to formulate policies in the field of drugs and food in the context of monitoring drugs and food circulating in the territory of Indonesia. The position of the POM Agency as a non-governmental organization in terms of laws and regulations in Indonesia, as a non-governmental organization directly responsible to the President, is formed. related to the government sector, in the health and food sectors for official adoption. This book discusses the applicable laws and regulations (Parei and Andraini, 2018).

BPOM is an independent institution, meaning that it does not side with producers as suppliers of goods and services, the government and the public as consumers of goods and services. BPOM does not only have duties and functions, but this BPOM also has a goal, which is to receive complaints related to quality and safety from the public as well as issues and legal aspects of OMKABA products (drugs, food and hazardous materials) to resolve problems quickly and precisely through regulation. and existing organizational procedures. There are two main parts of BPOM's role in consumer protection, preventive action and enforcement action. Preventive steps were taken by establishing a Drug and Food Control System (SISPOM) and establishing BPPOM in Indonesian provinces. Efforts to control were carried out by forming a BPOM Task Force in the form of a Food and Drug Monitoring, Investigation, Research and Information Agency and a UPLK (Consumer Complaint Service Unit). Thanks to this mission, BPOM is able to take decisive action against violations in the health and food sector. Actions taken may include revocation of distribution permits, removing products from circulation and conducting investigations if there are signs of criminal violations. However, during its deployment, the BPOM Temporary Task Force also encountered obstacles in taking firm action against violations in the health and food sectors.

These obstacles include the many cases of violations that have not been legally processed, even though BPOM has found evidence of violations and submitted evidence of these violations to the Attorney General's Office in the hope that action will be taken immediately on these violations. but the prosecution seemed reluctant to take immediate action. (Tambuwun, Paparang and Wahongan, 2022).

According to YLKI, legal violations in the advertising aspect are difficult to prove even though there is a consumer protection law. The requirements for processed food are much easier than for medicine, but the requirements can be said to be close to those of medicine, just like letting the word "help" mean that it can affect the body's metabolism. These factors highlight the urgent need for regulation and enforcement of advertising laws, particularly to protect society from the negative effects of excessive advertising (Susyanty, 2014). So that it becomes the responsibility of BPOM as a Non-Departmental government institution that has an important role to carry out the supervisory function in Processed Food Advertising both in terms of quality, efficacy and benefits.

The existence of drug and food supervisors by BPOM is important from the consumer side, namely to provide health insurance and a sense of security in using and consuming these food products, making it easier for consumers to choose and sort out which foods are safe for the consumers themselves and their families.

Apart from the need for active supervision, it is also based on BPOM Regulation No. 6 of 2021, BPOM accepts complaints about problematic advertisements from consumers, "The delivery mechanism is through the consumer complaint service unit, namely by telephone or coming directly to BBPOM with samples of advertisements or products that are deviant. Complaints are received by the Consumer Information Services section by filling out the form provided.

With such a monitoring system, not all processed food product advertisements can be supervised, coupled with inadequate monitoring facilities. In addition, the system of imposing sanctions also cannot run optimally, especially advertisements in local media and advertisements for household products, because the institution that has authority over advertising supervision only has the authority to supervise trade advertisements.

BPOM as an institution authorized to carry out supervision, cannot simply withdraw advertisements, this is related to the legal basis for advertising which is still weak compared to the legal basis for contracts between the media and entrepreneurs who place advertisements. If product testimonials are published in print media, BPOM will immediately issue a warning, the media may not be able to quickly and immediately stop advertising because they are bound by a contract. . Therefore, it is necessary to make regulations that can cancel the contract between the media and advertisers. Therefore, it is necessary to coordinate with the Provincial Health Office to develop local product management policies because for products registered with BPOM, the findings are reported directly to BPOM. Until now, there are no regulations regarding these processed food products. Meanwhile, violations related to processed food advertisements are increasingly widespread, along with the uncontrolled existence of internet media and advertisements in the form of embedded television programs and advertisements in the form of testimonials.

Apart from the above, BPOM also supervises advertisements for medicinal products and health supplements. The Advertising Registration System, also known as SIREKA BPOM, has been released since 2016 with the website address www.sireka.pom.go.id. BPOM in collaboration with the Center for Electronic Certificates and Online Single Submission (OSS) of the Ministry of Investment BKPM jointly built a website or page intended to support the registration process for electronic-based drug and health supplement advertisements.

SIREKA was formed based on BPOM Regulation Number 26 of 2017 which states BPOM's duties are to carry out the preparation and implementation of policies, preparation of norms, standards, procedures, criteria, implementation of technical guidance and supervision of traditional medicines, health supplements and cosmetics. Since the legalization of SIREKA, medicinal products and health supplements are required to register their advertisements on SIREKA. The advertisement will certainly be checked by BPOM. For advertisements that are in accordance with laws and regulations, BPOM approval will be sent in the form of ad designs that have been stamped by BPOM, while advertisements that are not in compliance will be sent revision input so that they are adjusted.

A system like SIREKA is actually very helpful for consumers and business actors. Consumers in this case get legal certainty regarding the advertising material they see, on the other hand, business actors also get legal certainty that advertisements that have been approved will not be withdrawn from circulation. Advertisements and similar promotions certainly take time and effort to produce, this of course also includes costs. It is very possible for business actors to suffer losses in terms of advertisements that have been created and broadcast and then ordered to be withdrawn by BPOM.

Another thing that is unfortunate is that the SIREKA page does not have the option to register advertisements related to food or processed food. SIREKA is not yet available for products with Processed Food permits, so far it only covers drugs and health supplements. In fact, SIREKA has integrated with OSS, so this integration should make it easier for various parties. Therefore, it is necessary to renew SIREKA by adding processed food as a new criterion. If the registration of processed food advertisements is deemed too difficult due to the large number of processed food products, then the categorization may be narrowed down to Processed Food with Health Claims. This system will certainly greatly help consumers to reduce possible losses, with transparent information on the truth of an advertisement, because it has passed BPOM approval beforehand.

3.2. Responsibilities of Business Actors as Parties Carrying out Promotional Activities in the Form of Misleading Advertisements, Against Consumers in Indonesia.

Labeling as a form of consumer rights to mandatory consumer product information is covered by many laws and regulations. Information regulations are referred to by various terms such as labels or labels. These terms are contained in various laws and regulations. (Kristiyanti, 2011). Legal provisions regarding labeling are scattered among various laws and regulations, including Law Number 7/1999, Law Number 8/1996 concerning Food, PP Number. 69/1999, Permendag No.22/M-DAG/PER/5/2010 regarding label obligations, UU Number. Decision No. 36 of 2009 concerning Health, Decree of the Minister of Health no. 924/Menkes/SK/VIII/1996 concerning Amendments to the Decree of the Minister of Health of the Republic of Indonesia No. 82/Menkes/SK/I/1996 Regarding Inclusion of Halal on the Label of the Minister of General Health Regulation of the Republic of Indonesia Republic of Indonesia No. 180/Menkes/Per/IV/1985 concerning Expired Food has been amended by Decree of the Director General of POM Agency No. 02591/B/SK/VIII/91.

Law 8/1999 concerning consumer protection as a legal framework does not specifically regulate labels, especially food products. More specific provisions are contained in PP no. 69 of 1999. Prior to the existence of the PP, the rules regarding labels had been set forth in Law no. 7 1996 concerning Food.

In the Regulation of the Drug and Food Control Agency Number 11 of 2019 concerning Food Additives Article 17 it is stated that labels for processed food containing food additives must meet the requirements for food labels in accordance with statutory regulations. Whereas Article 18 stipulates that advertisements for BTP and processed food containing BTP are carried out in accordance with the law. Food labels according to the provisions of Article 1 No.3 PP No.69 of 1999 are any information related to food in the form of pictures, writing, a combination of both, or other forms that are affixed, pasted, attached or are part of food packaging. The use of words attached to the meaning of labels is problematic. The word affixed gives the impression that the label can be affixed at any time, even though the label is essentially an inseparable part of the package. The use of stickers also looks different and can be faked. As well as being tamper-evident, patch-specific stickers/labels can easily be removed, replaced, and then re-labeled by fraudulent commercial actors.

The same definition is also contained in the provisions of article 1 number 15 of Law 7/1996. Furthermore, in Article 2 PP No. 69/1999 stipulates that: (1) Everyone who produces or imports packaged food into Indonesian territory for commercial purposes is required to put labels on, inside and/or food packaging. (2) The marking as referred to in paragraph (1) is carried out in such a way that the label is not easily separated from the package, is not easily discolored or damaged, and is attached to a part of the food package that is easy to see and read.

Based on Article 3 PP No. 69 of 1999, it can be seen that food advertising includes information or statements regarding food, either in the form of pictures, writing or other forms. So that from the definition given, food advertising can touch advertising done through television, radio, posters, or even on online media. Furthermore, advertising is an important means of providing information to the general public about products in the form of goods or services being marketed. In addition, advertising is also used as branding so that people recognize brands or products offered by business actors. It cannot be denied that one of the reasons for the success of selling a product is thanks to the delivery of informative and attractive advertisements so that people become "persuaded" to buy a product. However, advertising should not be done haphazardly and there are several conditions that must be obeyed, especially when you want to advertise food products.

There are several provisions that must be obeyed by business actors in food products if they want to advertise their food products. Based on Article 44 paragraph (1) PP 69/1999: "Every advertisement regarding food being traded must contain information regarding the food in a correct and not misleading manner, both in the form of images and/or sounds, statements, and/or any other forms." So that food advertisements should describe food products correctly and not be misleading. The phrase "not misleading" in the article can be interpreted that food advertising should provide true information on food products, without reducing or exaggerating the specifications of food products that are marketed only to get as many consumers as possible.

In addition, food advertisements may not conflict with the norms of decency and public order (Article 44 paragraph (2) PP 69/1999). This means that food advertisements may not be presented with elements of SARA, hoaxes, or pornography. Furthermore, in the use of media in advertising, the publisher, radio or television broadcast license holder, agent and or medium used to distribute the advertisement, are also responsible for the contents of the advertisement that are incorrect, unless the person concerned has taken the necessary steps to check the truth. the contents of the advertisement (Article 45 paragraph (2) PP 69/1999).

For food products that must be labeled halal, the business actor must be responsible and submit information stating in the advertisement that the food being traded is in accordance with the requirements of a particular religion or belief, and is responsible for the truth of the statement (Article 46 PP 69/1999). Business actors are prohibited from discrediting other food products to emphasize that their products are the best. This is contained in Article 47 paragraph (1) PP 69/1999 which reads: "Advertisements are prohibited from being made in any form for distribution and/or dissemination in society by discrediting other food products".

Advertising are prohibited from showing children under five years old unless the advertisement is intended for children under five years old (Article 47 paragraph (2) PP 69/1999). All the provisions regarding food advertising above are aimed at creating an honest and responsible food trade. Moreover, advertising as a tool in food trading activities has an important meaning, so it needs to be regulated and controlled so that the information about food conveyed to the public is correct and not misleading.

Business actors in this case have the right to run their business in order to gain profit, it's just that in carrying out their business it must be based on good faith which provides mutual benefits for both parties, namely business actors and consumers. Article 4 letter (b) of the UUPK stipulates that consumer rights are: "the right to choose goods and/or services and to obtain said goods and/or services in accordance with the exchange rate and the conditions and guarantees

promised." This article has provided certainty for consumer rights so that goods or services that have been paid for are in accordance with what has been agreed or promised. Article 4 letter (c) UUPK regarding consumer rights also states: "the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services". This article creates an obligation or obligation for sellers who sell their goods or services to provide honest and complete information, this information is needed so that consumers do not have a wrong picture of goods and services. (Kristiyanti, 2011). Furthermore, in preventing and overcoming problematic advertisements for consumers, the Consumer Protection Act has also descriptively regulated the characteristics of prohibited advertisements, namely: (Widijowati, 2016)

- a. Promote products that appear to be finished and/or have a discounted price, a special price, a certain standard of quality, a certain style or fashion, certain features, a certain history or use.
- b. Advertise products that appear to be in good condition and/or new.
- c. List of products that appear to have been accepted and that have a specific sponsorship, endorsement, device, benefits, operating features, or accessories.
- d. Product advertisements appear to be made by companies that have sponsors, endorsements, or affiliates.
- e. Advertising a product is available when it isn't.
- f. Advertise the product as if it has no potential defects.
- g. Product advertisements appear as props for some products.
- h. Advertising for products that appear to come from a particular region.
- i. Advertising products directly or indirectly denigrates other products.
- j. Product advertisements that appear to use exaggerated terms such as safe, harmless, no risk or side effects without complete information
- k. Product advertisements seem to offer something with uncertain promise

This form of regulation which contains prohibitions on advertising promotions and the sale of cosmetic products that are detrimental to consumers does not escape supervision of advertisements which includes evaluation before advertisements are aired and supervision of advertisements that have been aired, in which advertisements must be reviewed prior to publication.

Since the development of technology, product marketing in the form of advertising has also been found through internet communication technology facilities such as on marketplace platforms such as Shopee and Tokopedia. Promotions and advertisements carried out in online media are also specifically regulated by Law no. 11 of 2008 concerning Information and Electronic Transactions (UU ITE). The ITE Law itself implicitly regulates the use of misleading information and/or advertisements which result in consumer losses in electronic transactions as stipulated in article 28 of the ITE Law. Everyone who commits a violation as mentioned in Article 28 of the ITE Law above will be subject to threats as stated in Article 45 paragraph 2 of the ITE Law: or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah)."

In addition to involving internet media facilities, the promotion of a product also involves mass media (television, radio) in promoting its products through advertising. Promotional activities through mass media are protected by the Broadcasting Act. In the Broadcasting Law there are provisions that are categorized in the form of "obligations" and "prohibitions on broadcast content. There are four broadcast content obligations for broadcasting institutions in delivering their broadcast programs. In broadcasting activities, if there is a broadcasting institution that broadcasts without a broadcasting license (IPP), then the person concerned has violated the Broadcasting Law and therefore law enforcement officials are obliged to take legal action. The perpetrators of the crime of broadcasting may be subject to a maximum imprisonment of two years and a maximum fine of Rp. 500,000,000 (five hundred million rupiahs) for radio broadcasting and shall be punished with a maximum imprisonment of two years and a maximum fine of Rp. 5,000,000,000 (five billion rupiah) for television broadcasting.

In this study, in addition to regulations regarding the promotion and sale of processed food products with health claims that harm consumers, the authors also found that there is the existence of criminal law in providing implementation of criminal law sanctions against consumer rights that are violated through the promotion of product advertisements that mislead consumers. The researcher found that there are three categories of criminal acts in the field of consumer protection, namely: (Sudaryatmo, 2022).

- a. The crime of consumer protection is based on the criminal provisions in the Criminal Code
- b. The crime of consumer protection is based on the provisions in Law 8/99
- c. The crime of consumer protection is based on the existing provisions in various sectoral laws such as the Broadcasting Law, the ITE Law

Some forms of advertising promotion can be detrimental to consumers and can then be categorized as a crime. Advertising promotions that harm consumers can be in the form of: (Simorangkir, Kalo, Hamdan dan Harianto, 2016:).

- a. *Bait advertising*, is advertising that is attractive but offers to sell products that are dishonest because the advertiser has no intention of selling the advertised goods. The goal is for consumers to replace the purchase of advertised goods with other best-selling goods which are usually more expensive or more profitable for the advertiser.
- b. *Blind advertising*, is advertising that tends to persuade consumers about advertising but does not show that the main purpose of the advertisement is to sell goods or services and does not show the identity of the advertiser.
- c. *False advertising*, is the presentation of truth in advertisements that are not true, to convince buyers of advertised goods and purchase promotions that are detrimental to buyers and are carried out on the basis of fraud or deception.

Of the three forms of advertising that can harm consumers above, there is one form of action that contains elements of fraud and occurs in several cases of fraud committed by business actors, namely false advertising. Business actors describe and provide representations that are so attractive that consumers are tempted to own the product, without the consumer knowing clearly whether the product is as stated in the advertisement.

So that if there is a loss to consumers, business actors who promote Processed Food with health claims must be responsible for the advertisements they make. If the business actor violates the provisions in Article 20, the advertising business actor will only be subject to administrative sanctions in the form of a maximum compensation of Rp. 200,000,000.00 (two hundred million rupiah). Referring to the Consumer Protection Act, violations of advertising ethics are included in the violation of the law as stated in Article 17 paragraph (1) letter f of the Consumer Protection Act, namely "Advertising businesses are prohibited from producing advertisements that violate ethics and/or the provisions laws and regulations regarding advertising". Thus, based on Article 62 paragraph (2) of the Consumer Protection Act, violations of advertising ethics can be subject to criminal penalties, namely imprisonment for a maximum of two years or a fine. Then based on Article 63 of the Consumer Protection Act, even though the violators have been convicted, they can also be subject to additional penalties. So it can be said, if there is a loss to the consumer due to a testimonial advertisement, according to the Indonesian Advertising Ethics (EPI) and the Consumer Protection Act, advertising business actors only get administrative sanctions and criminal sanctions.

Not only stated in the EPI, but also emphasized in Article 36 paragraph (5) letter a of the Broadcasting Law which states, "Broadcast content is prohibited from being slanderous, incendiary, misleading and/or lying." In addition, product promotion/advertising is misleading in this case violating consumer rights under Article 4 letters a, b, and c of the PK Law. Thus, the above confirms that the influence of Processed Food advertisements with health claims is very large which causes people to believe and buy these products. Because buying these products, it causes consumers to experience both material and immaterial losses. The material loss is that consumers buy these products and experience skin diseases that cause them to have to pay for the recovery and treatment of their skin. The immaterial loss, namely the disruption of their health which causes a burden on their minds, embarrassment with problematic skin, and even stress for sufferers because of their disease.

Consumer protection is a balance point between consumers and business actors because consumers and business actors have mutually affect and beneficial relationships. 8 of 1999 concerning Consumer Protection whereby everyone is guaranteed the right to express opinions and complaints about the goods and services consumed.

In the results of this study, the authors found that consumers could not be reached through court or out-of-court channels based on the voluntary choices of the disputing parties. So that consumer opinions and complaints about the products they use can be stated in a complaint. This complaint is one way of resolving consumer disputes outside the courts which is regulated in article 45 of Law no. 8 of 1999 concerning Consumer Protection.

In addition, the legal consequences for the promotion of illegal cosmetics against consumers based on Law No. 8 of 1999 know that claims in advertisements are the provision of compensation for consumer losses through lawsuits against the law. Regarding this misleading advertisement, you can be sued for unlawful acts because it fulfills the elements of Article 1365 of the Civil Code, as follows:

- a. There is an action (passive or active action)

Action comes from the word "to do", which according to KBBI is something that is done (done). In the case discussed, as experienced by consumers who buy products from processed food with health claims made with misleading

promotions. This action is active because there is a real movement from Business Actors, namely by promoting processed food rightly or wrongly. Because the claims permitted by the Hoge Raad 1919, unlawful acts are not only violations of written rules (laws), but also actions that are contrary to the legal obligations of the perpetrator: acts that violate the subjective rights of others; acts that violate unwritten rules (decency); acts that violate "PATIHA" (decency, thoroughness, and prudence).

The act of promoting processed food with misleading health claims is certainly contrary to the precautionary and thorough principles that should be carried out by business actors in carrying out promotions. In addition to prudence and thoroughness, it is also contrary to propriety where misleading promotion is a disgraceful act because it deceives the public which business actors should carry out promotions correctly, honestly and in accordance with the facts of the product being reviewed so as not to cause harm to the public/consumers

In addition, the actions carried out by the Endorsers also conflict with the subjective rights of consumers where they are entitled to comfort, security and safety in consuming goods and/or services; and also has the right to correct, clear and honest information regarding the conditions and guarantees of goods and/or services. And there is no single reason that can eliminate the unlawful element that is fulfilled by Business Actors because the perpetrators did not carry out their actions under compulsion, emergency defense, carry out statutory provisions, and carry out orders with reasons but voluntarily.

With the actions taken by these business actors, it certainly causes the loss of the rights of consumers where they end up in an unsafe situation because the product contains substances that endanger their health. Apart from being contrary to prudence, thoroughness, compliance, and the subjective rights of consumers, the actions committed by them are contrary to Article 28 paragraph (1) jo. Article 45A paragraph (1) UU ITE.

b. There is an error

Based on the discussion above, the actions of Business Actors who carry out misleading advertisement promotions where processed food products may not have claims as stated in the distribution permit number from BPOM, and promise that the product with health claims is an act of negligence.

c. There is a loss

Losses can be experienced by consumers because consumers are the object of business activity to reap the maximum profit by business actors through promotional activities, sales methods and the application of standard agreements that are detrimental to consumers. Misleading advertisements also provide uncertain promises to consumers, resulting in consumer expectations of the product, even though the product has no claims as advertised.

d. There is a causal relationship between the error and the loss

There is a factual causal relationship (cause in fact) where the active actions of Business Actors, namely promoting processed food products with misleading health claims for consumers can cause losses that are directly felt by Consumers.

This is in accordance with Article 4 letter (h) UUPK which regulates consumer rights to obtain compensation, "the right to obtain compensation, compensation and/or reimbursement, if the goods and/or services received are not in accordance with the agreement or not as should". As a consumer who wants to make transactions and buy goods, he needs a guarantee that he will not be harmed by the goods purchased. If the consumer feels that the quantity and quality of the goods and/or services he receives are not in accordance with what he expected, then the consumer has the right to receive compensation. Based on these provisions, the seller is obliged to provide compensation if the goods or services that have been transacted are not in accordance with what has been permitted by BPOM as stated in the distribution permit number.

4. Conclusion

The Food and Drug Supervisory Agency has basically taken initial precautionary measures by requiring business actors to register their products and determine the terms of the approved claims, especially for processed food. Processed Food that has been approved for registration by BPOM will be given a Distribution Permit Number in which there is an approved label and claim. However, this action is still not optimal when faced with Processed Foods with Health Claims. Allowing Processed Foods to use health claims such as containing fiber and being able to help reduce the risk of heart disease necessitates a more focused regulation of practice. Regulations that have been made in detail and in such a way cannot protect consumers if in reality they are not carried out by parties who have obligations. It is as if

consumers who are at the end of the chain (end users) can only surrender and wait to suffer material losses so they can ask for legal protection for their rights. Meanwhile, the consumer's right to correct and honest information should be given at the outset, not waiting for the loss to appear as if it had actually occurred.

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