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Food Safety Legal Issues in Home-Based Food Business

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Abstract

Food safety in home-based food business play an important role in preventing foodborne disease in the community. However, poor hygiene standards of preparation, process and food serving among the home-based food business is endangering the health of consumers. The aims of this study are to are to examine the food safety issues in the home-based food business in the legal perspective and secondly is to propose amendment to food safety legislations for home-based food business in Malaysia. This research will employ qualitative analysis by way of semi-structured interviews with officers from the Food Safety and Quality Division Ministry of Health Malaysia and home-based food business owners to obtain their perspectives on the food safety legislations. It is found that issues surrounding food safety regulations on home-based food business in Malaysia are firstly on the absence of the regulations include the category of home-kitchen as one of which has resulted home-based food business operators to be excluded from the food safety standard of procedure. Secondly, home-based food business owners are reluctant to register their business on the ground to save cost in business. It is suggested to include the category of home-based food business in the regulations and to organise awareness campaign for business owners to spread awareness on importance of business registration and food safety practice in their business.

Keywords: Home-based Food Business, Food Safety, Food, Disease, Food Handlers

Introduction

Statistics by Malaysian Ministry of Health shows that incidence case reports on foodborne disease (FBD) arises every year (Ministry of Health, 2019). FBD are foods contaminated with pathogen that may lead to illness or even death. Specifically, in Malaysia, cholera, dysentery, food poisoning, Hepatitis A, and typhoid fever have been categorized as food and waterborne diseases that are flagged under the Prevention and Control of Infectious Diseases Act 1988 (Act 342). One of the most common ways in which FBD and cross-contamination spreads in the food industry is poor food handling and hygiene by the food service providers. Currently, due to the low cost of business start-up and the technology advancement of online order and delivery, home-based food business (HBFB) has become prevalent in Malaysia (Packierisamy et al., 2018). HBFB is known as business of selling food where the food is prepared at home-kitchen of the food handler rather than at the restaurant or business premise (Kapasi &

Galloway, 2016). The enforcement of movement control order by Malaysian government to curb the effect of COVID-19 pandemic has resulted to the closure of food production facilities, food factories, restriction on dining in the restaurant or café and closure of restaurants. Due to this situation, HBFB has become a platform for food operators to sustain their business. However, poor hygiene standards of preparation, process and food serving among the HBFB is endangering the health of customers.

Currently, the food safety legal framework of HBFB in Malaysia is still in development stage. In legal viewpoint, the issue in HBFB is that the law on food safety in Malaysia does not provide clear guideline on the food safety procedure for HBFB. This has caused the HBFB owners to conduct their business without following standard procedure and directly, it will affect the quality of food served to the customers. For instance, in Terengganu, customers were affected by 'puding buih' which they bought from a HBFB owner. It was reported that the food handler had used expired eggs in the process of making the dessert which was based at her home-kitchen (Yeoh, 2020). Additionally, it is reported that some HBFB owners refuse to register their businesses with Companies Commission Malaysia and have a licence to operate (Musa, 2020). These situations coupled with weak enforcements allowed the HBFB owners to avoid the obligation to comply with the regulation. Therefore, a comprehensive legislation for food safety is important to support the food industry, specifically the HBFB owners and to protect consumers from unsafe food. Thus, the aims of this study are to examine the food safety issues in the HBFB in the legal perspective and secondly is to propose amendment to food safety legislations for HBFB in Malaysia.

Literature Review

Home-Based Food Business Defined

Home-based business (HBB) is described by Mason, Carter and Tagg (2011) as any business entity involved in selling products or services by utilising the owners' home as a basis to conduct their businesses. In addition to location, HBB is operated by a self-employed person, with or without workers (Dahari et al., 2019). The definition is consistent with Felstead and Jewson's (2000) definition of HBB as a household that engages in a business activity from their home, either full-time or part-time, and considers the business income as a second or supplementary source of income. Since the late 1980s, HBB has been the subject of extensive research in a number of nations across the world, owing to the rapid development in their appeal as a business choice. The causes for the rapid growth in the number of HBB are frequently linked to the advancement of ICT usage, which allows for more flexible modes of working, and the establishment of HBB in reaction to the "down-shifting" phenomenon (Sayer, 2012). The HBB trend is also popular in Malaysia. The Malaysian government viewed the HBB concept as one of several new focal initiatives to encourage Malaysian residents, particularly women, to pursue a career or start a business of their choice while working from home (Rosnafisah & Siti, 2012). The Malaysian government, business groups, and non-governmental organisations (NGOs) have started to practice and demonstrate their support in encouraging the use of information and communications technology (ICT) among small and micro firms, such as the HBB (Rosnafisah & Siti, 2012). Consistently based on the HBB's definition in the literature (Kapasi & Galloway, 2016), a home-based food business (HBFB) in the context of this research is referred to as a business that operates from the owner's kitchen and home residence. HBFB owners have ownership of the business and are responsible for the inherent risks and results of the business which makes all its activity entrepreneurial in

nature. HBFB is a relatively popular type of entrepreneurial start-up business, with many extremely successful companies having their origins in the kitchen of the founder's home.

Food Safety Legal Compliance in Home-Based Food Business

HBFB has been gaining vast options in the society especially during the Covid-19 pandemic period. The selling of food that is produced at own convenience of home kitchen without having to rent a premise are good for business start-up. However, food safety is also important factor in the production of food as food that is badly handled by food operators will cause food contamination and foodborne disease in the society. For instance, it was reported that buyers of 'puding buih' in Terengganu were sick after they consumed the food which they bought online (Yeoh, 2020) and there was a food poisoning outbreak that occurred in a residential school which caused by the food prepared by the school canteen (Packierasamy et al., 2018). While Hamat et al (2019) assesses the microbiological status of keropok lekor and its production premises in Kuala Terengganu and Marang had found out that hygiene practices were not well implemented by the food handlers in the production premise.

Studies had been conducted on the issue of food safety and hygiene of food handler recently. Mustaffa et al (2018) assess the knowledge, attitude and practices (KAP) of food handlers in campus cafeteria. While Dora-Liyana et al (2018) assess the KAP of food handlers at boarding schools and Daru et al (2017) assess the knowledge of food hygiene of the food handlers in hospital kitchen. Recent study by Tirmizi et al (2018) had conducted a study on the effectiveness of the food handler training programme in Malaysia, focusing on the food handlers in business premise. These studies involve different types of food service establishments such as schools, hospital, restaurants and catering and different types of kitchen system however, the study on KAP of home-based food handler in Malaysia is still lacking. According to Byrd-Bredbenner et al (2013), home is the primary location where foodborne illness occurs in his study on consumers' perceptions and attitudes towards food safety and their susceptibility to foodborne illness. On the issue of standard procedure of food safety in preventing the spread of coronavirus, Shahbaz et al (2020) examines the possibility of food handlers failing to follow the standard procedure or precautionary measures in preparing food which will increase the spreading of coronavirus at food production. According to Charis (2020), precautions related to food handling and preparation practices suggested by the WHO is significant in order to avoid the spreading of the virus between producers, retailers and consumers especially in avoiding cross-contamination between cooked and uncooked meat. Income of the food business owner is one of the factors that determines the food safety practice of the food handlers in Brazil food handler with better income will have proper utensils and space to produce the food at their home kitchen (Adenilma et al., 2020). Jayson et al (2018) in his study found out that government policy plays a prominent role in shaping the food safety system for the nation. While according to Elissa et al (2019), managing for food safety and sustainability goals requires clear regulations to be implemented. Additionally, Razman et al (2015) states that the local authority council should refer to various laws such as Food Regulations 1985, Food Hygiene Regulations 2009 and the Prevention and Control of Infectious Diseases Act 1988 in order to strengthen the implementation in controlling the safety of packaged food. Based on the above literatures, it can be observed that study on the issues and challenges in food safety in the context of Malaysian HBFB are still lacking.

Research Methodology

The research used a qualitative approach through real-time, synchronous, video interviews. This method was chosen because it allows explorative flexibility and enables the researcher “to see reality from a client’s point of view” (Krueger, 1994). It also allows the researcher to collect data with an open willingness to learn from the participants and to explore new questions that are likely to emerge from the study (Lederer, 2010). This enables the generation of ideas and thoughts linked to the objects and concepts under analysis (Brito, 2011). It also enables taking a holistic perspective on an issue and gaining a contextual understanding of the research issues. The aim of the interviews, therefore, was “to avoid predetermined outcomes, that is to say, using a less obtrusive means for attaining data” (Patton, 1990). Apart from that, this study conducted a qualitative contextual analysis to analyse the relevant statutory provisions. Contextual analysis is applied in reading the statutory provisions in order to uncover any underlying meanings behind a text (Krippendorff, 2018).

Additionally, this study employed a descriptive method to investigate the food safety challenges in view of home-based food business in Malaysia, which involved semi-structured interviews with officers from the Food Safety and Quality Division Ministry of Health Malaysia as this division involves in the enforcement of food safety among the HBFB operators in Malaysia. Additionally, HBFB operators who operated their independently owned business in Malaysia were also selected as the respondents for the interviews. The selection of these operators was based on the following reasons. Firstly, the respondents are operating their businesses by selling food which is prepared at home-kitchen rather than at the restaurant or business premises. The hygiene standards of preparation, process and food serving done at home-kitchen are hard to be monitored as they are they are not subjected to the Food Hygiene Regulations 2009. Secondly, they are selling the food through e-commerce or directly from their home. Six HBFB operators were contacted via Zoom application to obtain their permission to conduct the personal interview. According to Boddy (2016), the number of samples to reach data saturation depends on the scientific paradigm under which the investigation taken into place. Therefore, in this study, 6 respondents from HBFB and 1 respondent from government representatives are sufficient to answer research questions. All interviews lasted between 30 and 60 minutes. Before the start of the interview, the HBFB operators (R1, R2, R3, R4, R5, R6) and the representative from Food Safety and Quality Division Ministry of Health (R7) were briefed on the objective of the interview.

Results and Discussion

Food Hygiene Regulations 2009

The main legislation regulating food safety in Malaysia is the Food Act 1983 and the Food Hygiene Regulations 2009 (the Regulations) are regulations enacted according to Section 34 of the Food Act 1983. The objectives of the Regulations are to ensure food premises are hygienic and satisfactory in terms of design and building, to ensure food handlers maintain personal hygiene and avoid practices that can contaminate food, to ensure equipment and appliances used are suitable, clean and easy-to-clean, to facilitate, strengthen and harmonize the enforcement activities in food premises including those conducted by the Local Authorities and to provide for requirement of mandatory food safety assurance program. According to the Regulations, food premises listed under First Schedule must be registered with Ministry of Health Malaysia. Once the food premise is registered, the owner of food

premise is obligated to perform his duty according to the Regulations, such as displaying certificate of registration and hygiene practice notice, to provide food traceability system from production to distribution, to ensure premise is hygienic and clean for food preparation. Apart from that, owner of food premise must prove that the food handlers have undergone a food handler's training and been medically examined and vaccinated accordingly. Any action that contravene the Regulations will subject the food premise owner not more than RM10,000 or imprisonment for a term not exceeding two (2) years. The Regulations is important to be implemented to protect consumers from food-borne diseases and to ensure consumers can enjoy the safe and quality food. The issue arises in the context of this discussion is whether HBFB is a covered under the Regulations? If HBFB is covered under the Regulations, therefore it is mandatory for HBFB to perform duties as stated under the Regulations.

Regulation 3 provides that no person shall use any food premises specified in the First Schedule for the purposes of, or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of any food or the relabelling, reprocessing or reconditioning of any food except the premises is registered under there Regulations. The First Schedule of the Regulations listed the types of food premises as premises engaged in the manufacturing of food, premises involved in food catering and food delivering for mass-produced food, premises where food is prepared, processed, stored and made available for sale and readily made food sold by vehicles. Therefore, the Regulations make it mandatory for food manufacturing factory, restaurants, catering services, hostel kitchen, hotel kitchen, school or hospital canteen, transport carrying food, food truck and food warehouse. However, the issues arise in the context of HBFB as home kitchen does not falls under the First Schedule of the Regulations. Therefore, this loophole has caused the HBFB operators to conduct their businesses without the supervision of the Ministry of Health and directly exposed consumers to the risk of food-borne disease as the food premise owners are not obligated to perform duties as stipulated under the Regulations. This view is shared by Respondent R7:

"The problem with controlling HBFB is that home-kitchen is not clearly defined under the Food Hygiene Regulations 2009 and due to this issue, we cannot impose food safety measures on the HBFB operators."

Despite the law is currently silent on the obligation of the HBFB to be registered as food premise, however, MOH has released a guideline for HBFB owners to adhere to food safety rules, among others, requiring them to register their business with CCM, register their business under MOH registration, to obtain food handlers certificate, to get Typhoid vaccination, to label their food products, to provide MOH with the photo of their home-kitchen and to list their food products. The introduction of this guideline shows that Malaysian government is recognising HBFB as a form of food premise. However, it is vital to ensure that HBFB is inserted under the list of First Schedule as the Regulations carry more weights than a mere guideline is in view of the enforcement. Interview conducted demonstrates that respondents R1, R2, R3, R4, R5 and R6 does not know the existence of the guideline and currently does not register their HBFB as required under the guideline released by MOH.

Registration of Home-Based Food Business

HBFB has been gaining popularity and demand in the society in recent years due to its convenience and feasibility. It can be observed that one of the main reasons for establishing HBFB is due to cost-saving factor. Respondent R1 stated that HBFB can save cost as he does not have to pay rental payment in conducting his business. In Malaysia, traders who carry out

profitable business must register their business with Companies Commission of Malaysia (CCM) regardless the business is conducted physically or online, with premise or without premise. According to Registration of Business Act 1956, traders that did not register and if convicted, may be punished with imprisonment and or fine. Similarly, HBFB operators are obligated to register their business and comply with the guideline given. One of the issues in HBFB is on the low number of HBFB registered with CCM. The interview conducted in this research finds that only one respondent registered their business out of six respondents. According to Respondent R1

"I don't think I have to register my business as I only prepare food if there is a demand from customer. Other than that, I can save my budget on rental payment."

Meanwhile, Respondent R2 stated

"I do not consider what I am doing is completely business, I will only prepare food on order basis"

Based on the data collected, it can be observed respondent R1 and respondent R2 believes that their actions on providing food for customer on order basis is not considered as business and therefore they are reluctant to register their business with CCM. According to Respondent R6 his main reason for not complying with the procedures to register his business with CCM is due to his insufficient budget and time constraint. The nature of HBFB has enabled the food operators to operate without complying the law that requires them to register their business. Lack of awareness among the HBFB operators on the obligation to register their business with CCM contributes to the low number of registered HBFB operators in Malaysia. Perhaps awareness on the procedures and the benefits of registering business must be shared across the HBFB community in order to promote understanding on the importance of registering their business.

According to Respondent R7

"The main issue in HBFB is in tracing the operators because majority of the sellers are not registered with CCM and when they can operate or prepare their food from home, they do not apply for licence from city council. Therefore, it is difficult for us to conduct inspection of the home-kitchen business if we don't have proper record of the owners."

From the Respondent R7 statement, it is important for the HBFB operators to register their business with CCM so that their business can be monitored for regulatory compliance and at the same time, Ministry of Health (MOH) can cross check with CCM on the record of HBFB operators in Malaysia. Particularly, this will help MOH to conduct regular check on the HBFB food safety compliance and trace the sources in case of food-borne disease as a consequence to HBFB.

Food Safety in Home-Based Food Business

Food in preparation in home kitchen is questionable in its quality due to the fact that a home kitchen may be used for a variety of activities other than cooking (Nur Izyan et al., 2019). According to Wills et al. (2015), the home kitchen may also be a socialising area and room for other activities such as work and school activities. It is also common that the kitchen is sharing the common area with laundry and there is no restriction to pets from roaming freely in that area. Because of this, foods prepared by HBFB are susceptible to food safety hazards and cross-contamination with other substances (Wills et al., 2015). It is found that unregistered home-based food handlers are not practicing hygiene practice in accordance to the standard set by MOH. This can be inferred through the statement given by respondents in the interview conducted in this research.

According to Respondent R2

"I am sure that the food I prepare safe to be consumed as whatever I prepare for my family is similar to what I deliver to my customers."

While according to Respondent R4

"I will check the expiry date of ingredients, wear mask and glove, wash all the ingredients and be hygiene all the time when I bake"

Respondent R5 states that

"I always ensure the ingredients used in my cooking is clean. I always believe that food preparation in home-based food business is safer and hygienic compared to food prepared in the restaurants"

According to Respondent R6

"I will make sure my home kitchen is clean and the ingredients that I use in food preparation is in good quality."

Besides that, the interview result shows that all respondents involved never receive food poisoning complaint from customers. Based on these statements, it is observed that respondents have moderate awareness on the importance and practice of food safety in HBFB however, the knowledge on food safety regulation is low. None of the respondents mention on the importance of food handlers to be get typhoid vaccination. Therefore, it is important for the HBFB owners to be regulated and properly categorised under the Regulations. HBFB owners must be informed that vaccination against typhoid can strengthens their customers' confidence that the food they purchase has been prepared under safe and hygienic terms.

Conclusion

In summary, the results show that there are issues surrounding food safety regulations of HBFB in Malaysia. Firstly, on the absence of Food Hygiene Regulations 2009 to include the category of home-kitchen under the First Schedule which has resulted HBFB operators to be excluded from the food safety standard of procedure. Secondly, it is identified that HBFB owners in this research are still reluctant to register their business with CCM on the ground to save cost and with the believe that they don't have the obligation to register due to their nature of conducting business from home. It is proposed to include the word 'home-based food business' under the definitions of the Regulations. Apart from that, it is suggested to include a provision under the Regulations that impose the duty to HBFB owner or the home-kitchen owner to practice food safety and failure to perform these duties will subject the HBFB owner or home-kitchen owner to fine not more than RM10,000 or imprisonment not more than two years. Apart from that, it is also suggested that more awareness campaign should be organized in order to expose HBFB owners on their duties to register their business with CCM and MOH and the proper way to ensure food hygiene is practiced in HBFB.

Theoretical and Practical Implications

Food manufacturing sector play an important part in development of nation economic growth. Therefore, in line with the technology development and current trend, HBFB should be recognised and regulated. As HBFB is showing potential in Malaysian business environment, refining the food safety laws for HBFB is important to ensure that food hub can

preserve the wellbeing of the society. Therefore, understanding food safety issues in HBFB and the loopholes in the current laws will help the government in developing policy and amend the Food Hygiene Regulations 2009 to further improve HBFB ecosystem in Malaysia. Additionally, through this study, HBFB will benefit in a way that their position as food business provider is recognised under the law and any protection and benefits will be extended to the HBFB. Society benefits from this study in the form of their well-being as ensuring customers of HBFB is protected from any disease resulted from improper food hygiene practice. Overall, this study contributes to the food safety theory and its relation to HBFB. This study will also contribute to the food safety policies and law of the nation.

Limitations and Future Scope of Research

This study has certain limitations. There is still much work to be done in identifying the issues in food safety surrounding HBFB environment. It only analyses using the qualitative method with limited respondents. Future research should examine the knowledge, awareness and perception of HBFB on food safety regulations in Malaysia using quantitative method.

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