

LEGAL CONSEQUENCES OF MICRO AND SMALL ENTERPRISES ON HALAL CERTIFICATION OBLIGATIONS

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Abstract

Islam provides guidance and guidance for humans in all aspects, one of which is the command to eat halal and good food. As a country that has a majority Muslim population, consumer protection in the form of guarantees of halal products is carried out. The Halal Product Guarantee Law has regulated the obligation to carry out halal certification, including micro and small business actors, so there is an obligation to carry out halal certification for their products. The research method used in this research is normative legal research using a statutory approach and a normative theological approach to study the obligation of halal certification based on the provisions of applicable laws and regulations and based on sources of Islamic law. The implementation of halal product guarantees has been regulated in such a way in statutory regulations that require all business actors to carry out halal certification, including micro and small business actors, by providing an easy halal certification process in the form of a statement (self-declare) with the provisions on the type of product and business actor that has been implemented. regulated in BPJPH regulations. Sanctions against micro and small business actors who do not carry out halal certification are not regulated so violations of this obligation are interpreted based on the provisions for violations of halal product guarantees which carry the threat of sanctions in the form of administrative sanctions, but the form of violation of halal product guarantees which is threatened with sanctions is not clearly stated. administratively, but if you look at the provisions of statutory regulations, sanctions can be in the form of written warnings, fines, and even withdrawal of goods from circulation. in the context of halal certification, micro, and small business actors need to implement regulations from Law 6 of 2023 regarding halal product guarantees

Keywords: Halal Product, Self Declare, Micro and Small Enterprises

A. Introduction

Indonesia is one of the countries with the largest percentage of the population who embrace Islam in the world. Islam as a religion that has the majority of adherents in Indonesia does not make Islamic law its law considering the plurality of the Indonesian nation which consists of many tribes, nations, religions, languages, etc. Indonesia does not adhere to Islamic law, but its adherents still follow the guidance contained in the Al-Qur'an and Hadith as religious norms even though they are not legal norms that apply in Indonesia, so it returns to the obedience of its adherents.

Data obtained from the Ministry of Religion in 2022 shows that the number of people who adhere to Islam is 241,699,189 people out of a total population of 276,534,400 or if presented in percentage form, it is 87.02% of the population who adhere to Islam.¹ The population of Muslims is large, so regulations regarding legal protection for Muslim consumers need to be regulated in such a way that it does not mean discriminating against adherents of other religions, and consumer protection in general protects every Indonesian citizen without exception.

Islam as the religion of rahmatan lil alamin has regulated almost all aspects of human life, both in the form of worship and in the form of muamalah. The fundamental legal principle of muamalah (social transactions) is permissibility (mubah), except when there is clear, authentic, and explicit textual evidence that prohibits and forbids it. This becomes the main principle that the default legal status of all acts of muamalah is permissible.² which has been regulated in such a way that it has become a religious norm for followers of the Islamic religion. The source of Islamic law is a guide for Muslims even though it is not a legal norm that applies in Indonesia, several religious norms are included in legal norms such as Law Number 1 of 1974 concerning Marriage, the Law concerning Sharia Financial Institutions, and statutory regulations. -other invitations that are influenced by the provisions of Islamic Law, the meaning of Islamic law here is closer to the meaning of fiqh.³

Humans have been ordered to eat halal and good food and drink as Allah says in Q.S Al Baqarah 2:168 which commands humans to eat halal and good food on earth and forbids following the steps of Satan. In this verse, it is stated, that O people and not O believers, so the command to eat halal food is not only for believers. Halal food here is not only limited to substances but also to processes that have been regulated in Islamic law so that the public's perception of halal, which up to now has only been about substances, can no longer be used, so the concept of halal and haram needs to be clarified.⁴

The government has made various efforts to provide a sense of security and comfort to the Muslim community in consuming food and drinks by promulgating Law Number 33 of 2014 concerning Halal Product Guarantees , accompanied by implementing regulations. The Halal Product Guarantees Law is the basis for guaranteeing halal products in Indonesia, although as of this writing, there are still many products that are not certified halal. The implementation of halal product

¹ Ministry of Religion of The Republic of Indonesia,
<https://satudata.kemenag.go.id/dataset/detail/jumlah-penduduk-menurut-agama> 30th Sept 2023

² Yusuf al-Qardhawi, 7 *Kaidah utama fikih muamalat*, Terj. Fedrian Hasmand, (Jakarta Timur: Pustaka al – kautsar, 2010), h. 10.

³ Mardani (2016), *Hukum Islam : Kumpulan Pertauran Tentang Hukum Islam di Indonesia*, Jakarta: Kencana.

⁴ Muhamad Nazari, N. N. A. ., Abu Bakar, E. . and Muhammad Arif, A. M. . (2023) “CONSUMER PROTECTION AGAINST THE FALSE DESCRIPTION OF HALAL IN E-COMMERCE”, *UUM Journal of Legal Studies*, 14(2), pp. 657–675. doi: 10.32890/uumjls2023.14.2.10.

guarantees will be maximized if there is synergy between various parties such as the government, business actors, and consumers.

In 2020 the government issued a law called “Cipta Kerja” (Law Number 11 of 2020) which changed several provisions of the law, one of which was the Halal Product Guarantees Law, where one of the articles emphasized the obligation to halal certification, including micro and small business actors. . In its development, Perpu 2 of 2022 concerning Cipta Kerja was then enacted into law with Law Number 6 of 2023 which added several articles regarding halal product guarantees, one of which was regarding the obligation to halal certification for micro and small business actors. The obligation for halal certification is not excluded for micro, small, medium, and large business actors except for the form and method so it has become an obligation for business actors to carry out the orders of the law.

The obligation of micro and small business actors to carry out halal certification for their products is an order from the law, but as of mid-2023 it has not been fully implemented due to several factors, so it becomes a question about the legal consequences of the halal certification obligations of micro and small business actors in the context of implementing halal product guarantees considering that micro and small business actors are often difficult to monitor and these business actors have a lot of direct contact with consumers.

B. Method

This type of research is legal research using 2, namely a statutory approach (statute approach) by examining halal product guarantees based on legislation and a normative theology (syar'i) approach examining halal product guarantees based on Islamic law. Sources of legal materials consist of primary sources (legislation & and sources of Islamic law) and secondary legal sources in the form of journals, dictionaries, books, etc. In conducting legal research, the steps taken are identifying legal issues, collecting materials, reviewing the issues, and then drawing conclusions in the form of arguments.⁵

C. Result and Discussion

Obligations for Halal Food and Drinks in Islam

Islam as a religion rahmatan lil alamin basically regulates all aspects of human life, both in relation to the creator, relationships with nature, and relationships between humans and other humans, which are regulated in the holy book Al-Quran as the main source of law, the Hadith originating from the Prophet Muhammad S.A.W, as well as other legal sources such as Ijma and Qiyas. This law is a guide to life for humans who adhere to Islam as their religion, providing guidance and prohibitions on certain things that have been determined based on the Shari'a. The concept of halal comes from Islamic law mentioned in the Al-Qur'an and Hadith which states that a Muslim is obliged to eat halal and clean

⁵ Peter Mahmud Marzuki (2019), *Penelitian Hukum (edisi revisi)*, Jakarta: Kencana. h.

food (tayyib) while abstaining from food that is said to be forbidden based on Q.S Al-Baqarah 2:173.⁶

Food and drinks that are halal, both in terms of their substances and processes, are basically regulated in the Shari'a. It is not without reason that this will also have an impact on the health of those who consume them. Whether a food is halal or not, we must examine the substances contained in it and the process the product goes through so that a conclusion can be drawn about whether a product is declared halal or not. Halal, haram, mubah, syubhat, and makruh are terms that have different meanings and can be punished for something. In Islam, the boundaries between halal and haram are clear, even though there are halal and haram, which are called syubhat. In the Hadith of Riwayat Bukhari, it is stated, "Anyone who avoids doubts because he is afraid of sin means he is serious about avoiding haram things, and whoever dares to have doubts, he will almost fall into haram things."

Something that is considered doubtful is possible because of the condition of a person who does not know for sure whether food is halal or haram (ignorance). If that person does not find in the Al-Quran and Hadith whether it is haram or not, then one must try their best to then consider and make their own decisions. If a decision is made based on an understanding of the source's arguments, which give rise to doubt, then this can be called masybuuh, syubhat, or masykhuk.⁷

There are several verses in the Al-Qur'an that clearly state the obligation for Muslims to consume halal food, including in Q.S Al-Baqarah 2:168. "... Eat of the halal and good (food) found on earth, and do not follow the steps of Satan. Indeed, Satan is a real enemy for you."

The verse above regulates the command that we eat halal food on earth, that not everything in nature is halal to eat, but there are foods that are forbidden to consume either because their substances are haram or haram because they are not. According to Al Misbah's interpretation, it is stated that the command in Q.S. Al Baqarah Verse 168 is a command addressed to all humans, whether they believe in Allah or not, so at the beginning of the verse it says O people, and in the continuation of the verse there is a prohibition "and do not follow the steps of Satan" because Satan has traces of steps and he leads humans step by step, stage by stage. Satan will initially start inviting humans to take one step and then follow another step until they finally enter hell.⁸

The haraam of something is not only seen from the substance alone but also from other things, such as the process that is carried out in violation of Islamic law related to the haraam substances for consumption, which can be seen in Q.S. Al-Baqarah 2:173. "Indeed, He has only forbidden you carrion, blood, pork, and

⁶ Mostafa, M.M., 2020. *A knowledge domain visualization review of thirty years of halal food research: Themes, trends and knowledge structure*. Trends in Food Science & Technology, 99, pp.660-677.

⁷ Diana Susanti, S.H. and Kn, M., (2021). *Kebijakan hukum produk halal di Indonesia*. Sinar Grafika. h. 45

⁸ M. Quraish Shihab (2005), *Tafsir Al-Misbah (Pesan, Kesan dan Keserasian Al-Qur'an) Vol 1*, Jakarta: Lentera Hati, h. 379-380

meat of animals slaughtered by (mentioning the name of) others than Allah. But whoever is forced to eat it, not because he wants it but also because it is beyond the limit, then there is no sin for him. Indeed, Allah is Forgiving, Most Merciful.”

From the verse above, several prohibited substances are mentioned, which are stated explicitly and described below:⁹

- 1 such as carrion (which comes from animals that died due to strangulation, being hit, falling, being gored, or being torn by wild animals where the animal did not have time to slaughter), carrion also, in this case, includes animals that were slaughtered for idols. There are exceptions regarding carcasses here, such as aquatic animals such as fish and so on.
- 2 blood; the blood in question is flowing blood, excluding blood whose original substance is frozen, such as liver and liver;
- 3 Pork covers the whole body of the pig.
- 4 animals that, when slaughtered, are not called by any name other than Allah;

The above describes several haram substances that are prohibited in the Qur'an so that it is legal not to consume them even though in the continuation of the verse it is stated regarding an emergency that "but whoever is forced to eat it and does not want it and has not exceeded the limit then there is no sin on him" This is only for truly emergency conditions. Apart from those mentioned in Q.S Al Baqarah Verse 173, other substances are haram as in Q.S Al-Maidah 5:90 "... Indeed, drinking alcohol, gambling, (sacrificing to) idols, and drawing lots of fortunes with arrows, are heinous acts and are among the acts of Satan. So stay away from those (actions) so that you will be lucky."

The verse above states that it is forbidden to drink or consume khamr which is referred to as an intoxicating substance, regarding the word Khamr Abu Hanifah limits it to grape water which is processed by cooking it until it boils and produces foam whereas according to the majority of scholars it is stated that anything drunk or used in normal levels by a normal person then intoxicating is Khamr and every Khamr is haram, HR. Ibn Majah through Jabir Ibn Abdillah "anything intoxicating if taken in large amounts, then even a small amount is haram" so based on this, alcohol and drugs such as narcotics and psychotropic substances are included in the khamr category.¹⁰

It is essential for each product to have a halal label to facilitate consumers in selecting halal products. Therefore, certification and labeling of products are necessary (Warto & Samsuri, 2020)

If you look at the verses described above, in the market all food and drinks, whether derived from plants (plants, fruit, vegetables) or animals, are halal, but there are exceptions for poisonous plants or animals that can cause harm to humans. . Apart from the foods that are mentioned in the Qur'an as haram food for consumption, humans can consume them if it is clear which ones are haram and

⁹ *Ibid*, h. 35

¹⁰ M. Quraish Shihab (2005), *Tafsir Al Misbah (Pesan, Kesan dan Keserasian Al-Qur'an)*, Volume 3, Jakarta: Lentera Hati. h. 190-193

which are halal. There are several rules for determining halal and haram food in Islam, namely:

1 As long as all food is halal until there is proof that declares it haram;

2 Manhaj (clear and clear path) of Islam in halal and haram food;

The halal issue is not an issue that is merely regional in scope, but rather a global issue, especially because halal here is not only limited to "food that does not contain pork elements" as has been ingrained in the mindset of many people. The understanding of haram food which is only limited to the presence of pork substances in a product is only one of the things that are haram because this concept is only seen in a narrow sense so Muslims must have a clear understanding of the concept of halal.¹¹

If we examine it in general, Islam has established halal rules, firstly regarding ingredients that must be halal, secondly, all halal animals must be slaughtered by Islamic law, thirdly, during storage, transportation, preparation, or serving, halal ingredients must not be mixed with haram substances (pork). , dogs, wine, etc.).¹²

The Indonesian Ulema Council has established a fatwa regarding the standardization of halal fatwas issued through the MUI Fatwa Number 4 of 2003 concerning the Standardization of Halal Fatwas which in outline is as follows:

- 1 Khamr, as any intoxicant, both food and drink, for example, drinks containing at least 1% ethanol (C₂H₅OH);
- 2 Ethanol, Fusel oil, Yeast, and Vinegar (use is permitted in cases that have been regulated)
- 3 Animal Slaughter (slaughter procedures based on Islamic law)
- 4 Use of Names and Materials
- 5 Growth Media
- 6 The Frog Problem
- 7 Miscellaneous problems,

Islamic Sharia has clearly explained about halal and haram so that there are clear boundaries between what is permissible and what is not permissible, even though something that is not permissible is given a gap to be permissible under certain emergency conditions. Narrated by al-Bukhari and Muslim, Abu 'Abdillah Nu'man bin Bashir Radhiyallahu anhum said "I heard the Messenger of Allah sallallahu 'alaihi wa sallam say "indeed what is halal is clear and what is haram is also clear, while in between there are matters which syubhat (vague) that most people do not know (the law). Whoever avoids doubtful matters has purified his religion and honor. Whoever falls into something unclear has fallen into something that is haram.

¹¹ Muhamad Nazari, N. N. A. ., Abu Bakar, E. . and Muhammad Arif, A. M. . (2023) "CONSUMER PROTECTION AGAINST THE FALSE DESCRIPTION OF HALAL IN E-COMMERCE", *UUM Journal of Legal Studies*, 14(2), pp. 657–675. doi: 10.32890/uujls2023.14.2.10.

¹² Samori, Z., Ishak, A.H. and Kassan, N.H., 2014. *Understanding the development of halal food standard: Suggestion for future research. International Journal of Social Science and Humanity*, 4(6), pp.482-486.

Implementing the provisions of the law regarding the sale of halal products in Indonesia, considering that implementing, and accommodating the needs and desires of many parties is a big challenge.¹³ If you look at what is happening in countries where Muslims are a religious minority, the market value of halal products has grown significantly, the behavioral patterns of non-Muslim consumers also accept and consume halal food based on safety, nutrition, and food quality.¹⁴

Supervision of Halal Certification for Micro and Small Enterprises

In Indonesia, business actors are classified into several categories based on income or turnover based on statutory regulations which divide business actors into micro, small, medium, and large. In Europe, the standards set to classify small and medium business actors are the category of micro business actors with less than 10 staff, small business actors with a staff of 10-50 people, and medium business actors with a staff of 50-250 people.¹⁵ The division of types of business actors determines the government's treatment in terms of policy, be it taxes, permits, incentives etc. Challenges for global MSMEs in developed and developing countries in this era of globalization are related to the instability of capital, innovation, permits, regulations, taxes, workers' rights and competitiveness.¹⁶

Halal certification as an obligation for business actors, as previously mentioned, is the government's effort to provide certainty, comfort, and security for Muslim consumers. Submission/request for halal certification to guarantee halal products does not end with the issuance of a halal certificate for the product proposed by the business actor, but after that, it is necessary to monitor products circulating in the community, both supervision of products that have not been certified halal and products that have get halal certification.

Supervision of halal products is an inseparable part of halal product guarantees, and the issuance of a halal certificate is not the end of the halal product guarantee process but is carried out continuously by carrying out supervision. The authority to supervise halal product guarantees is basically regulated in Law 33 of 2014 which states that the BPJPH institution is an institution that has the duty and authority to supervise halal product guarantees. Law 33 of 2014 also basically states the scope of supervision carried out by BPJPH, namely:

1 Supervision of Halal Inspection Institutions;

¹³ Susetyo, H., Prihatini, F., Karimah, I. and Khozi, A., (2019). *Regulating Halal Products in Indonesia: Between Religious Needs and Socio-Economic Challenges*. Mazahib, pp.1-43.

¹⁴ Nardi, V.A.M., Jardim, W.C., Ladeira, W. and Santini, F., (2019). *Predicting food choice: a meta-analysis based on the theory of planned behavior*. *British Food Journal*, 121(10), pp.2250-2264.

¹⁵ Hansen, E.B. and Bøgh, S., (2021). *Artificial intelligence and internet of things in small and medium-sized enterprises: A survey*. *Journal of Manufacturing Systems*, 58, pp.362-372.

¹⁶ Naradda Gamage, S.K., Ekanayake, E.M.S., Abeyrathne, G.A.K.N.J., Prasanna, R.P.I.R., Jayasundara, J.M.S.B. and Rajapakshe, P.S.K., (2020) . *A review of global challenges and survival strategies of small and medium enterprises (SMEs)*. *Economies*, 8(4), p.79.

- 2 Supervision of the validity period of halal certificates;
- 3 Supervision of the halalness of a product;
- 4 Supervision of halal labels on a product;
- 5 Supervision of non-halal goods related to the inclusion of non-halal information;
- 6 Supervision the location of business actors related to the production process of a product (separation of location, place and time of slaughter, processing, storage, packaging, distribution, sale, and presentation between halal products and non-halal products;
- 7 Supervision of the presence of halal supervisors;
- 8 Other activities related to halal product guarantees.

Supervision carried out by BPJPH is said to be carried out individually or together with other institutions besides the community, of course, they also have a role in supervision even though the form is different from BPJPH, namely by making complaints or reporting to BPJPH. BPJPH carries out training for Halal Product Guarantee Supervisors (HALAL PRODUCT GUARANTEEESupervisors) who are appointed from the State Civil Apparatus (come from units that have supervisory duties and functions) and understand the halalness of products based on Islamic law.¹⁷

Sanctions Against Micro and Small Business Actors for Halal Certification Requirements

Violations of obligations that are ordered by laws and regulations are regulated in such a way that there are not only preventive efforts but also repressive efforts in guaranteeing halal products. Halal certification is no longer an appeal but rather an obligation for business actors who run their businesses in Indonesia so that if business actors do not carry out their halal certification obligations, they can be given sanctions. Business actors' halal certification obligations are not excluded for micro and small business actors even though the certification method is different so if the obligation is not carried out it will result in legal consequences.

The forms of sanctions regulated in laws and regulations regarding halal product guarantees consist of administrative sanctions and even criminal sanctions, although more threats to violations of halal product guarantees are threatened with administrative sanctions. Business actors who do not carry out halal certification (except business actors whose products are declared halal and include non-halal logos) may be subject to administrative sanctions and this is stated in Article 149 PP 39 of 2021 even though the regulation does not explicitly mention sanctions for non-compliance. carrying out halal certification but states generally in Paragraph (1) "violations of the implementation of halal product guarantees are subject to administrative sanctions". The meaning of the phrase "violation of JPH..." in Article 149 Paragraph 1 PP NO. 39 of 2021 is too general in nature because it covers all violations of halal product guarantees so this can

¹⁷ See Article 98 of Government Regulation no. 39 of 2021 concerning the Implementation of the Halal Product Guarantee Sector

mean that if the halal certification obligation is not carried out then this is included in the violation of halal product guarantees.

The general meaning in Article 149 Paragraph 1 PP 39 of 2021 provides an opportunity for interpretation of the sanctions regulated in Paragraph 2 which states the form of administrative sanctions that can be imposed on business actors such as written warnings, administrative fines, revocation of halal certificates and/or withdrawal of goods from circulation. If we look at the forms of sanctions, because of the general nature of the phrase in Article 149 Paragraph 1, it can give rise to interpretations of the form of sanctions for non-fulfillment of halal certification obligations by business actors, except for the sanction of revocation of halal certificates, even though Paragraph 4 states that the imposition of administrative sanctions is carried out according to the level of the violation committed.

Sanctions in administering halal product guarantees are not only aimed at business actors but include sanctions against parties involved in administering halal product guarantees such as the Halal Inspection Institute (LPH). However, in this provision, there are no sanctions against BPJPH itself but only include sanctions against business actors and their LPH. Law 8 of 1999 concerning Consumer Protection itself does not regulate sanctions against business actors who do not carry out halal certification obligations but only regulates business actors who display a halal label but it turns out that the products they produce are not halal as stipulated in Article 8 Paragraph 1 letter h which states that "Business actors are prohibited from producing and/or trading goods and/or services that do not comply with the provisions for halal production as stated in the halal statement in halal", this provision does not state that the obligation for halal certification is only related to the truth of the statement (halal label) included in the product.

As well as guaranteeing halal products, in addition to administrative sanctions, there are also criminal sanctions contained in Article 56 of Law 33 of 2014 which states that business actors who do not maintain the halal status of their products (especially for business actors who have obtained a halal certificate) are threatened with imprisonment for a maximum of 5 years. and a maximum fine of Rp. 5 Billion. The threat in Article 56 of Law 33 of 2014 is not a threat to the act of not carrying out halal certification but rather that products that have been certified as halal are not maintained as halal by business actors.

Sanctions against micro and small business actors who do not carry out halal certification by 2023 have not yet been implemented with several considerations in mind, with the government targeting that by 2024 all business actors will be obliged to carry out halal certification for their products. To achieve the 2024 target, all business actors have carried out halal certification, including micro and small business actors, so efforts such as free halal certification are carried out by BPJPH.

It is hoped that the convenience provided by the government for micro and small business actors in the halal certification process will be utilized well by business actors because there is a threat of sanctions

D. Conclusion

The government has made efforts to provide convenience to micro and small businesses in the halal certification process in the form of a halal statement (self-declaration). Sanctions against micro and small business actors who have not carried out halal certification have basically not been given as of this writing, although several provisions regulate threats to business actors who do not carry out halal certification in the form of administrative sanctions, but the statutory provisions do not yet clearly regulate regarding the form of administrative sanctions given to business actors who have not carried out halal certification obligations.

Business actors are obliged to carry out halal certification, including micro and small business actors (except non-halal products that carry non-halal labels); Micro and small businesses need to take advantage of the facilities provided by the government in halal certification because the halal label is done in order to provide a sense of comfort and security to consumers in consuming their products and besides that the halal label can attract consumers considering the large number of Muslim consumers.

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