

## STATE RESPONSIBILITY TO THE OBLIGATION OF HALAL CERTIFICATION IN INDONESIAN LEGAL SYSTEM

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### ABSTRACT

Indonesia is the first country to enforce the Mandatory Halal Certification through the Law No. 33 of 2014 on Halal Product Assurance in order to provide certainty for the availability of halal products for the State's citizens, especially Muslims, as stipulated in the 1945 Constitution. The change of the halal certification system from voluntary to mandatory is to ensure the citizens to obtain halal products assurance, by requiring all products to be certified halal, and unlawful products to be labeled as unlawful. Pursuant to the Halal Product Assurance Act, halal certification is conducted by the Board of Halal Product Assurance Organizer (BPJPH) after obtaining a fatwa from MUI on halal product and passed from Halal Inspection Agency (LPH). However, BPJPH has not been able to perform its functions and authority, thus the certification of halal products is performed by LPPOM MUI. The change of the halal certification system provides legal consequences for business actors and industrial world to perform halal certification as a liability for their goods and/or services. MSMEs need to obtain opportunities, financial support, protection, and business development as a form of alignment from the Government, which regulated in a separate Government Regulation. BPJPH, MUI and LPH should be strengthened by the government in every aspect. The Government Regulation as an implementation regulation of the Halal Product Assurance Act shall be issued immediately, in order for the halal product assurance system to be properly implemented.

**Keywords:** Halal Product Assurance, Halal Certification, State Responsibility

## INTRODUCTION

The development of Science and Technology as well as rapid social changes cause changes in consumer consumption patterns as well. With the current global trends, consumer patterns shift to the fulfillment of halal products, because it is believed halal products is healthy and contain blessings and goodness (wholesome) as well. Now there has emerged a movement called Halal is My Lifestyle (Healthy and Halal Lifestyle Movement).

ASEAN countries have begun to establish their halal certification bodies to provide halal certification services for halal products. In Malaysia, halal certification is mandatory for halal products, using the halal certification system of the Jabatan Kemajuan Islam Malaysia (JAKIM) as a halal certification body<sup>1</sup>. In Singapore, halal certification is voluntary and implemented by Majlis Ugama Islam Singapura (MUIS)<sup>2</sup>. Asian countries such as Japan, Taiwan, and Korea have also begun to establish halal certification bodies to provide halal certification services for products. The development of halal industry also occurs in countries in continental Europe and America and the halal certification is voluntary for business actors who want their products to be halal certified.

In Indonesia, normatively halal products are regulated in Law No. 33 of 2014 on Halal Product Assurance. Since the enactment of Law No. 33 of 2014 on Halal Product Assurance, halal certification is a must for every product in circulation. By law, halal certification undergoes a very fundamental change from voluntary to mandatory. The Halal Product Assurance Act embraces the mandatory principle of halal certification, as in Article 4 of Halal Product Assurance Act stating, "Incoming, outstanding, and trading products in the territory of Indonesia shall be halal certified."

<sup>1</sup> Muhammad Tambrin, , *Implementasi Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal*, presented at the Gathering Event with Perkosmi dated June 28, 2016.

<sup>2</sup><https://www.eramuslim.com/berita/lindungi-umat-islam-brunei-wajibkan-pedagang-makanan-miliki-sertifikat-halal.htm>, accessed on September 15, 2017

Currently, Board of Halal Products Assurance Organizer (BPJPH) has been established and launched on October 17, 2017, but BPJPH has not been able to perform its functions, duties and authorities as mandated by the law. Therefore, the function, duties and authority of BPJPH, are temporarily done by LPPOM-MUI until BPJPH can perform its functions, duties, and authorities, as stated in Article 60 of Law No. 33 of 2014 on Halal Product Assurance that, "MUI continues to perform its duties in the field of Halal Certification until BPJPH is established".

The research for this dissertation will propose the system adopted by Law No. 33 of 2014 on Halal Product Assurance which adheres to "Halal Certification Law" followed by halal labeling process (halal product obligation include halal logo), but not mandatory halal, which means that all products and services circulated in Indonesia must be halal. Changes in the principle of law from the voluntary to mandatory of halal certification is interesting to be observed because only Indonesia that requires halal certification for products made and circulated in Indonesia.

There are some fundamental issues since to certify the product is not free, the cost required is very expensive, and it requires considerable time, especially for Micro, Small and Medium Enterprises (MSMEs) which can be a problem that is not easy and an obstacle. Therefore, this issue needs to be studied more deeply in a philosophical and comprehensive study.

The main problem in this research is about halal certification system from voluntary to be mandatory halal certification. Based on the subject matter, the problems can be formulated as follows:

1. What are the basic philosophical changes of the Halal Product Certification system from voluntary to become mandatory halal certification?;
2. How is the State's responsibility in halal certification of halal products of Micro, Small and Medium Enterprises (MSMEs) in Indonesia?; and

### 3. What is the ideal arrangement of halal certification in the Indonesian legal system?

The aims of this research are to understand and describe the things that become the philosophical basis of changes in Halal Product Certification system; to find the form of State responsibility in halal certification of halal products of Micro, Small and Medium Enterprises (MSMEs) in Indonesia; and to find out whether the halal certification arrangements set under the Halal Products Assurance Act have been deemed appropriate (ideal) with the Indonesian legal system.

The theories used in this research are the theories of legal protection (*rechtsbecherming*) which explains about the meaning of legal protection and the principle of legal protection; the theory of state responsibility which explains about the obligation of states to comply with a legal obligation, and the halal certification theory which examines the product based on *fiqih* approach (according to *syar'i*) and technological approach.

## LITERATURE REVIEW

### Al-Qur'an

In the teachings of Islam, there are commands to consume halal food and ban on consuming unlawful (haram) food. The command of consuming halal food is contained in Al Qur'an Surat Al Baqarah: 168 which means:

*“O mankind, eat the lawful and good things of the earth, and do not follow the steps of the devil; because the devil is indeed a real enemy to you.”*<sup>1</sup>

Muslims believe that the command of halal and haram is not only for Muslims, but for all humans.<sup>2</sup>

<sup>1</sup> Al Qur'an, Surat Al Baqarah: 168

<sup>2</sup> Lukmanul Hakim, Description of Expert from the Director of the Institute for Assessment of Food, Drugs and Cosmetics of the Majelis Ulama Indonesia (LPPOM MUI), was presented at the

Allah has given guidance to humans to consume and use something halal (which means something that can be done, used or consumed under Islamic law) and thayyib (which means good, including safety, health, environment, justice, and natural balance). In consuming things is not only to eliminate hunger or meet the physical needs, but also needs to be considered whether they contain haram things or not. Allah SWT prohibits consuming, eating, and using the haram things, as described in the Al Qur'an Surat Al Baqarah: 173 which means:

*“Allah only forbids you carcasses, blood, pork, and animals that (when slaughtered) is called (name) besides Allah. But whosoever is compelled (eating) while he does not want it and does not exceed the limit, then there is no sin for him. Allah is Forgiving, Merciful.”<sup>1</sup>*

For Muslims, eating halal is a part of worship. But the halal things itself is not just for Muslims.<sup>2</sup>

## Legal Protection

Legal protection according to Black's Law Dictionary, is the act of protecting.<sup>3</sup> While according to Harjono, is a protection by using legal means or protection provided by law, aimed at the protection of certain interests, by making the interests that need to be protected in a legal right.<sup>4</sup> Philipus M. Hadjon argues that:

*“The principle of legal protection for the people against government action rests on the concept of recognition and protection of human rights because historically in the West the birth of concepts of*

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Session of Case Number 5 / PUU-XV / 2017 regarding Testing of Law No. 33 of 2014 on Halal Product Assurance to the Constitution The Republic of Indonesia Year 1945 on July 20, 2017

<sup>1</sup> Al Qur'an Surat Al Baqarah: 173

<sup>2</sup> Lukmanul Hakim, M.Si., Description of Expert from the Director of the Institute for Assessment of Food, Drugs and Cosmetics of the Majelis Ulama Indonesia (LPPOM MUI), (n.3)

<sup>3</sup> Bryan A. Garner, Black's Law Dictionary, ninth edition, (St. paul: West, 2009).

<sup>4</sup> Harjono, 2008, Konstitusi sebagai Rumah Bangsa, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi

*recognition and protection of human rights is directed to the limitations and laying obligations to the public and the government."*<sup>1</sup>

Legal protection for each and every Indonesian citizen is stipulated in the 1945 Constitution of the Republic of Indonesia (1945 Costitution), therefore every legislation should always be able to guarantee legal protection for all people, the aspirations of law and justice that develops in society. Law No. 33 of 2014 on Halal Product Assurance is a form of State protection to its citizens which relates to state responsibility as well.

### **State Responsibility**

The definition of state responsibility referred to the Dictionary of Law is "the obligation of states to make reparations arising from the failure to comply with a legal obligation under international law". Whereas in Black's Law Dictionary there is only a narrow sense of responsibility that is answerability or accountability<sup>2</sup>. The state responsibility related to Law No. 33 of 2014 on Halal Product Assurance is to provide state protection to the citizens to obtain certainty of halal product assurance and obtain halal products, so there has been a paradigm shift, which initially the halal certification was voluntary becomes mandatory (mandatory halal certification).

### **Halal Certification Theory**

Halal Certification theory is used to check and examine a product based on *fiqih* approach (according to *syar'i*) and technology approach (in addition to the use of modern laboratory parameter), so the *fiqih* and technological approach are mutually supportive, considering the increasing complexity of food processing technology using science and technology based. The theory is applied in accordance with the principles of protection, justice, legal certainty, accountability and transparency, effectiveness and efficiency, and professionalism.

<sup>1</sup> Hadjon, Philipus M. 2005. Pengantar Hukum Administrasi Indonesia. Gadjah Mada University Press, Yogyakarta.

<sup>2</sup> Black's Law Dictionary (9th ed. 2009)

## Halal Labeling Concept

Food label means any information concerning food in the form of drawings, writings, combinations of both or other forms included on food, inserted into, affixed to or constituting part of food packaging<sup>1</sup>. Label is different from Mark.

A mark is a sign in the form of a picture, name, word, letters, figures, composition of colours, or a combination of said elements, having distinguishing features and used in the activities of trade in goods and services.<sup>2</sup> It can be used as a sign that can differentiate the results of one company with another.<sup>3</sup>

Marks are more simply functioned as identification, differentiators, promotional tools of a product, while the label as a source of a complete information for consumers because it includes the representation, warning, or instructions of a product.

Information is a stimulus that consistently drives behavior between the sender and receiver of information. Furthermore, Vincent Gaspersz said that information is a data that has been processed into something useful for the recipient and has real or perceived value in current decisions and future decisions.

## Law of the Republic of Indonesia No. 33 of 2014 on Halal Product Assurance as an Umbrella Provision

The Law of the Republic of Indonesia Number 33 of 2014 on Halal Product Assurance (Halal Product Assurance Act) promulgated on October 17, 2014 based on the State Gazette Number 295, provides the constitutional basis for all Indonesian citizens in living the life, both

<sup>1</sup> Article 1 Sub-Article 3 in General Provisions of Government Regulation Number 69 of 1999 on Food Label and Advertisement (The same notion is also stipulated in the provisions of article 1 number 15 of Law No. 7 of 1996 on Food)

<sup>2</sup> Article 1 number 1 of Law No. 15 of 2001 on Marks

<sup>3</sup> Rachmad Usman. *Hukum Hak Atas Kekayaan Intelektual: Perlindungan dan Dimensi Hukumnya di Indonesia*. (Bandung: PT. Citra Aditya Bakti, 20013), p. 48.

worldly and *ukhrowi*<sup>1</sup>, and the state guarantees the rights of citizens to obtain the availability of halal products through this Act. Constitution such as human rights, religious and belief rights, legal protection rights and equal rights and position in law, as well as the right to a decent life including the right to consume food and to use other products can guarantee the quality of life and human life.<sup>2</sup>

Muslims around the world are very concerned about halal assurance not only on food, beverage and other products, but also on genetically engineered production processes. The products and genetic engineering as mentioned need normative responses from the state to fulfill the citizen's constitutional rights demand guaranteed by the 1945 Constitution and the state philosophical norm, Pancasila.

As a science and technology development, food is processed through various processing techniques and new methods by utilizing technological advances so the product is ready to be consumed by people around the world. Most of the world food technology products do not implement halal certification system.<sup>3</sup>

Halal Product Assurance Act is expected to be the law that becomes the umbrella of all provisions of the law relating to the previous halal products, both Consumer Protection Laws, Government Regulations on Labels and Food Ads, Laws Animal Husbandry and Animal Health, Food Law (as an umbrella provision).

Products shall means goods and/or services related to food, beverages, medicines, cosmetics, chemical products, biological products, genetic engineering products, and goods used, used or utilized by the public<sup>4</sup>, while Halal Product is a product that has been declared halal in

<sup>1</sup> Academic Manuscript of Halal Product Assurance Act, quoted from the official website of the National Legal Development Board of the Ministry of Justice and Human Rights of the Republic of Indonesia, <http://www.bphn.go.id/news/45/Naskah-Akademis-Rancangan-Undang-undang-Jaminan-Produk-Halal>

<sup>2</sup> ibid

<sup>3</sup> ibid

<sup>4</sup> Article 1 number 1 of Halal Product Assurance Act



accordance with Islamic Shari'a<sup>1</sup>. Halal Product traded must go through a process to guarantee halal product<sup>2</sup> so that the product gets guarantee of halal product proved by halal certificate<sup>3</sup>. The purpose of the implementation of halal guarantee on a product is as follows:<sup>4</sup>

1. Provide comfort, safety, safety, and certainty of halal product availability for the community in consuming and using the product.
2. Increase added value for business actors to produce and sell halal products.

According to this act, business actors in applying for halal certification are entitled to obtain:<sup>5</sup>

1. Information, education, and socialization of halal assurance system.
2. Coaching in producing Halal Products.
3. Services to obtain Halal Certificate quickly, efficiently, affordable, and non-discriminatory.

The guarantee of halal products as an inseparable part of a series of processes to obtain halal certification. Companies seeking halal certificates and halal certificates must establish, develop and implement a Halal Assurance System (SJH) to complete a halal certificate that is required or owned.

## **Legal Consequences for Business Executors on Halal Uncerminated Food Products**

Mandatory halal certification for products circulated and traded in the territory of Indonesia shall be valid for 5 (five) years from the date of enactment of this law<sup>6</sup>. This means, halal certificate is mandatory for

<sup>1</sup> Article 1 number 2 of Halal Product Assurance Act

<sup>2</sup> Article 1 number 3 of Halal Product Assurance Act

<sup>3</sup> Article 1 number 5 of Halal Product Assurance Act

<sup>4</sup> Article 3 of Halal Product Assurance Act

<sup>5</sup> Ibid., Article 23 of Halal Product Assurance Act

<sup>6</sup> Article 4 of Halal Product Assurance Act

importers and business actors in the country. Later, there will be only 2 (two) types of products circulating in Indonesia; Halal Products and Non Halal Products. Business actors producing products of material derived from prohibited substances<sup>1</sup> shall be exempted from applying for a halal certificate<sup>2</sup>, and is obliged to include non halal information on the product<sup>3</sup>, i.e. the haram statement as an integral part of the product, can be images, signs, and/or writing<sup>4</sup>. Business actors who have obtained Halal certificates must include Halal Label on the product packaging, certain parts of the product and / or certain place on the product<sup>5</sup>.

Business actors who do not undertake obligations for business actors who have obtained halal<sup>6</sup> are subject to administrative sanctions in the form of written warnings, administrative penalties or halal certification revocation, as well as for business actors who do not undertake the obligation to manufacture products from materials originating from items threatened under Article 26 shall be subject to administrative sanctions in the form of verbal reprimand, written reprimand or administrative penalties.

Criminal provisions for business actor who do not maintain halal products that have obtained halal certificate as referred to in Article 25 letter b shall be punished with imprisonment of maximum 5 (five) year or a fine of not more than Rp. 2,000,000,000.00 (two billion rupiahs)".<sup>7</sup> Ensurance of the confidentiality of the formula submitted by business actors applying for halal certification is stipulated in Article 43 of the Halal Product Assurance Act, that "Every person involved in the implementation of the JPH process shall maintain the confidentiality of the formula contained in the information submitted by the business actor". In case of violation, the perpetrator shall be imprisoned for a

<sup>1</sup> Prohibited substances as referred to in Article 18 and Article 20 of Halal Product Assurance

<sup>2</sup> Article 26 Paragraph (1) of Halal Product Assurance Act

<sup>3</sup> Article 26 paragraph (2) of Halal Product Assurance Act

<sup>4</sup> Article 26 Paragraph (2), of Explanation on Halal Product Assurance Act

<sup>5</sup> Article 38 of Halal Product Assurance Act

<sup>6</sup> As set forth in Article 25 of the Halal Product Assurance Act

<sup>7</sup> Article 56 of Halal Product Assurance

maximum of 2 (two) years or a maximum fine of Rp. 2,000,000,000 (two billion rupiah).<sup>1</sup>

## RESEARCH METHOD

This research used the Normative Juridical research method, a research based on the main legal material by examining the theories, concepts, principles of law as well as legislation related to this research.

The jurisprudential approach was used, which is later developed in a theoretical result of The Theory of Law (*Rechts Theorie*) in the form of the Doctrine of Law Method. The methodologically intended results is the original legal conception in relation to the answer to the problem formulation and the fulfillment of the targets on the research objectives. The approach is done through the Act, Historical, Case and Comparison.

The Source of Law Material used is Primary Legal Material. The materials used in a legal research activity include two types; primary legal materials and secondary legal materials. Primary legal material is based on an authority such as statutory regulations and court decisions in the form of official documents.

## RESULT AND DISCUSSION

### Basic Philosophical Changes of Halal Product Certification System from Voluntary to Mandatory Halal Certification

The behavior of the world society that will only choose halal products become the basis of awareness of the Indonesian Nation to make changes through the locomotive legislation. As Roscoe Pound argues that “Law is a tool of social engineering is not excessive, because the law must be an agent of change”. So it is appropriate that Indonesia is one of the main countries that has a Halal Product Assurance Act, and the first country in the world to enforce the Halal Certification Law

<sup>1</sup> Article 57 Halal Product Assurance Act

through the Law No. 33 of 2014 which was enacted on October 17, 2014 through the State Gazette Number 295.

The mandatory policy of halal certification in the framework of constitutional guarantee from the State to the citizens is clearly stated in the consideration of Halal Product Assurance Act, that *to guarantee every religious person to worship and practice his religion, the state is obliged to provide protection and guarantees about halal products that are consumed and used by the community.*

Similarly, Article 67 paragraph (1) of the Halal Products Assurance Act states that Halal certified obligation for Products circulated and traded in the territory of Indonesia as referred to in Article 4 shall enter into force 5 (five) years as from the date of enactment of the Act. With the philosophical foundation referred to in the article, the provision or system of mandatory certification for halal products is absolutely conducted by the State in the form of prosecution through the Act. Changes in the halal certification system have consequences, that all products in circulation must be halal certified.

Nevertheless, there are some issues in the implementation of the Halal Product Assurance Act. BPJPH faces a formidable challenge in carrying out its duties just like a new institution that takes time to organize and consolidate. Some things that need immediate special attention in order to implement the Halal Product Assurance Act.

### **1. No Government Regulation and Ministerial Regulation of the Implementation of Halal Product Assurance Act as Asserted in the Halal Product Assurance Act**

The regulation of the implementation of the Halal Product Assurance Act shall be fixed no later than 2 (two) years since the enactment of the Act<sup>1</sup>. The Halal Product Assurance Act mandates the establishment of Government Regulation for the operational foundation or

<sup>1</sup> Article 65 of Halal Product Assurance Act

implementation of the law. The implementing regulation of the Halal Product Assurance Act has not yet been published.

The Author became part of the team that formulated the harmonization of the Government Regulation of Halal Product Assurance Act. This situation led to the ineffectiveness of the implementation of the Halal Product Assurance Act, thereby enacting the Halal Product Assurance Act into an ineffective law since its birth. We all know that the Halal Product Assurance Act has entered 4 years. However, some of the mandates in the act underscore the need for the 8 Government Regulations and 11 Regulations for the law to be enforced, but the fact is to date none of them can be published.

Given that the Government Regulation and the Regulation of the Ministry of Religious Affairs that underpin the operational groundwork for BPJPH has not yet been established, makes BPJPH become ineffective. This situation led to the implementation of halal product certification and the halal product assurance system that was still conducted by MUI through LPPOM MUI. This is in line with Article 50 of the Halal Product Assurance Act on Surveillance of Halal Product Assurance, and Article 60 that states "MUI still perform its duties in the field of Halal Certification up until BPJPH is formed." This condition shows a picture that the government is not serious to implement the Halal Product Assurance Act.

## **2. Building Harmonious Relationships between BPJPH and MUI**

In relation to the authority granted by Halal Product Assurance Act to accredit the Halal Inspection Agency (LPH) and the authority to perform the Auditor Certification, a harmonious relationship between BPJPH and MUI is required.

The authority of BPJPH in the act only regulates the issuance of halal certificates, while the inspection of halal products is conducted by LPH, as stated in Article 12 of the Halal Product Assurance Act, that "LPH as meant in sub-article (1) has equal opportunity in assisting BPJPH to conduct inspection and/or Product Halal Test".

The harmonious relationship between the two institutions is very important, because the basic essence of the Halal Product Assurance Act is obliged to provide convenience and certainty in accordance with the principles of protection, fairness, certainty, accountability and transparency, effectiveness, professionalism.

Another cooperation is to formulate standardization for LPH certification. Harmonization of both institutions is needed to build and provide encouragement to business actors and the industrial world, because otherwise if there is disharmonization will complicate the business world while the mandatory obligation to certify will soon be due in 2019 where the law requires that all products outstanding shall be halal certified<sup>1</sup>.

Up until now, there has not been any cooperation and harmonization relationship that set forth in the form of a commitment, but only as a law order which should be from the law order that is created a cooperation in the form of common provisions made as the basis of reference of the work of both institutions.

The existence of Halal Inspection Agency (hereinafter referred to as LPH) shall be accredited by BPJPH and MUI. Therefore, LPH which is a halal examiner institution is confirmed to have been accredited by its existence.<sup>2</sup> Furthermore, BPJPH does not have Halal Auditor yet up until this day. More than 1.057 auditors currently available are halal auditors who have been owned by LPPOM MUI. Halal Auditor is a person who has the ability to perform Halal Inspection of Products<sup>3</sup>, which means a person who has received accreditation by both LPPOM MUI and other halal auditor accreditation agencies.

In the future, accreditation becomes the joint authority between BPJPH and MUI. This is where the provision of cooperation, training and accreditation arrangements between the two institutions should be

<sup>1</sup> As stipulated in Article 4 of the Halal Product Assurance Act.

<sup>2</sup> As set forth in the Halal Product Assurance Act Article 12 through Article 15 on the Halal Inspectio Agency

<sup>3</sup> Article 1 point 9 of the Halal Product Assurance Act

established, so that with the inclusion of mandatory halal certification in 2019, BPJPH must be prepared with the necessary auditor staff because with mandatory system, the need for a bigger Halal Auditor the amount. Taking into account the vast area of Indonesia which consists of 34 provinces, 415 districts and 93 municipalities, as well as the increasing number of business actors.

### **3. Establishment of Representative of the Board of Halal Products Assurance Organizer at the Provincial Level in Immediate Time**

Article 6 through Article 11 of Halal Product Assurance Act on Board of Halal Products Assurance Organizer (BPJPH) stipulates that the organizer of halal product guarantee shall be conducted by an agency called BPJPH, so on October 17, 2017 has been launched BPJPH. BPJPH has been established under the provisions of Article 60 of Halal Product Assurance Act and has been announced to the public. However, it will lead to a fundamental question of whether BPJPH is centralized (located in the capital city of Jakarta alone), which serves halal certification applications throughout Indonesia, or BPJPH is established at the provincial level to facilitate business at district and city levels.

According to the author's opinion, BPJPH must be established at least at the provincial level. This is in line with the the principles of the implementation of Halal Product Assurance, which are protection, fairness, legal certainty, accountability and transparency; effectiveness and efficiency, and professionalism. The existence of BPJPH at the provincial level can make it easier for businesses at district and city level to apply for halal certification, considering effectiveness and efficiency, so that halal certification applicant won't need to come to Jakarta to do certification, because it will cause high cost and takes a long time, and then reduce the competitiveness of business and industry. To avoid such problems, BPJPH needs to be established at the provincial level as soon as possible.

Compared to LPPOM MUI as a halal certification agency, with the voluntary principle or only by certification request, LPPOM MUI has 34 offices at the provincial level throughout Indonesia and 1,057 competent

auditors. LPPOM MUI is also supported by Halal Laboratory which has obtained ISO 17025 Certificate from National Accreditation Committee (KAN). This kind of representation owned by LPPOM MUI is very helpful for the service for producers who want to do halal certification, so that the accuracy and speed of inspection of the product submitted can be guaranteed, as well as for examination of easily expired product samples that can be done immediately.

BPJPH should be able to cooperate together with LPPOM MUI both at central and regional levels. This is the purpose of Halal Product Assurance Act, where the arrangement is in line with the services that must be provided by the Government (BPJPH), as a consequence of the state's regulations which is providing services for the community.

### **State Responsibility in Halal Certification of Halal Products of Small and Medium Enterprises (MSMEs) in Indonesia**

MSMEs have very strategic functions, both socio-economic, including in providing goods and services for low-to-moderate consumers, contributing more than a portion of economic growth; and socio-political, especially in the absorption of manpower and efforts to overcome poverty due to the nature of its distribution and the close relationship with the culinary sector, in order to encourage the progress of the rural economy<sup>1</sup>.

Mandatory halal certification for products in Indonesia shall be effective five years after the Halal Products Assurance Act is enacted<sup>2</sup>, hence, it shall enter into force in 2019. Therefore, the type of halal certified products must be regulated gradually.<sup>3</sup>

Halal certification is still considered a burden for MSMEs because the socialization and education on halal certification for halal products is very minimal, also the cost is not cheap. Halal certification can be a

<sup>1</sup> Candra Purnama, Socialisation and Promotion Material Lembaga Pengkajian Pangan, Obat-obatan, dan Kosmetik Majelis Ulama Indonesia Jawa Tengah (LPPOM MUI Jawa Tengah)

<sup>2</sup> Article 67 paragraph (1) of Halal Product Assurance

<sup>3</sup> Article 67 paragraph (2) of Halal Product Assurance



capital for the business, also strengthen the value added for MSMEs. The cost of halal certification shall be charged to business actors applying for halal certificate<sup>1</sup>. This provision makes it impossible for MSMEs to get free halal certification. Then Paragraph (2) states that "In the case of a Business Actor constituting a micro and small business, the cost of Halal Certification may be facilitated by another party." The term 'other party' means, such as the Government through the Income Budget and State Expenditure (APBN), local governments through the Regional Budget (APBD), companies through their CSR funds, social institutions, religious institutions, associations, and communities.

Another issue occurs in extending halal certificates is the extension of the halal certificate that have been obtained by MSMEs for free. They might be not able to extend their own halal certificate, because of their ungrowing business.

For MSMEs, the halal certification cost is still considered a very heavy cost to bear, so this surely requires the Government role to undertake or regulate in the specific regulations on how the state provides convenience, generosity and financing schemes for MSMEs to obtain halal certification. The financing reference for MSMEs can be modeled on what has been done by LPPOM MUI of East Java and LPPOM MUI of DKI Jakarta, which provides convenience and cost for MSMEs applying halal certification.

Another option is halal certification cost is done in stages, which means for the product of Multi National Corporation is charged certification fee greater than the normal cost. For local or national companies classified as Multi National Corporation middle and upper enterprises are charged in the normal cost, while for MSMEs are charged cheaper than the Multi National Corporation as well as middle and upper enterprises. The fundings for MSMEs can be allocated from halal certification cost of Multi National Corporation and medium scale products, added with subsidy cost from the country, so if UMKM has to pay for halal certification application it will be much cheaper and light.

<sup>1</sup> Article 44 Paragraph (1) of the Halal Products Assurance Act

Ideally, the state would free the cost of halal certification for MSMEs as a consequence of the implementation of mandatory halal certification system. Some countries such as South Korea and Taiwan provide full subsidy for businessmen who will do halal certification, especially for export destinations to Southeast Asian countries especially Indonesia, Malaysia and Brunei Darussalam. At least the South Korean government is subsidizing about 80,000 Won or equivalent to Rp 80,000,000, - (eighty million rupiahs) for the cost of halal certification per year per businessman. Seeing the Taiwan State whose government also provides subsidies to entrepreneurs who will obtain halal certificates, in accordance with Taiwan government regulations, namely the New Southbound Policy (prioritizing exports to the countries of Southeast Asia Region), especially for the purpose of export to Indonesia is given 100,000 NT or equivalent Rp 44,000,000, - (forty four million) per year per businessman.

### **The Ideal Halal Certification Concept in Indonesia's Legal System**

Halal certification was first performed by the Indonesian Council of Ulema through LPPOM MUI in 1988. LPPOM MUI in halal certification process must ensure the consistency of the halalness of a product which has obtained halal certificate. This condition is then addressed by the LPPOM MUI by issuing a Halal Assurance System policy.

Halal assurance system is a system created to maintain the continuity of the halal production process so that the resulting product can be guaranteed halal according to the rules outlined by LPPOM MUI. Until now in accordance with the demands of technological development and food processing technology, MUI has been adapted to equip LPPOM with modern and accredited laboratories, by National Accreditation Institution, as well as fatwa committee consisting of jurists, fiqh and religions. That means the review of halal product was done through approach of technology and laboratory study. For companies wishing to register halal certification to LPPOM MUI must fulfill the halal

certification requirement written in HAS (Halal Assurance System) 23000.

Basically, the certification system by LPPOM MUI has met the ideal standards for halal product certification, and this is the importance of the state to strengthen the improvement of halal certification institution.

In the author's view, the halal certification body is an institution that is born and grows and is trusted by the community with all its tools; institution that has done its work in the field of halal product certification, which has long experience and gain the trust of society and people, because its professional performance and trusted by its fatwa.

Halal certification gives benefit to the producers and consumers, and to encourage the progress of the industry in the country. The principles of halal certification should be an important part that must be the basis for halal certification institutions such as LPPOM MUI (now) and BPJPH (in the future which will come). These principles are the principles of protection, fairness, legal certainty, accountability and transparency, effectiveness and efficiency, and professionalism.

### **The Role of the Government in Conducting Surveillance on Circulation of Uncertified-Halal Products**

The synergy of surveillance by producers, consumers and the government will provide certainty of protection to consumers in ensuring the consumption of halal food products. After Halal Product Assurance Act is enacted, the authority to manage halal certification becomes the authority of the Board of Halal Products Assurance Organizer (BPJPH). However, the authority is still conducted by LPPOM MUI in registration process and renewal of halal certification.

The government should maximize surveillance at all levels, from the materials used, the process of processing its products, inspect and review its slaughtering systems, research product locations, examine equipment, production space and storage, examine the distribution and presentation

of products, guarantees lawful business actors and reports on inspection and/or testing results.

In addition to surveillance aspects, the government should also conduct socialization and advocacy to business actors to product labeling, mediation of business actors and consumers, to provide information about halal understanding, to socialize about Halal Product Assurance, to surveil the halal product in circulation and to manage halal certification if there are manufacturers who falsely use halal certificate or no longer valid.

### **Discussion Process of Government Regulation (RPP) Law No. 33 of 2014 on Halal Product Assurance**

The Government Regulation draft (RPP) on Halal Products has not been published. Discussion has been held, from the level of material design to harmonization at the ministry level. Halal Products are linked with various related ministries, such as Ministry of Religious Affairs, Ministry of Agriculture, Ministry of Health and Ministry of Industry and BPOM (Food and Drug Supervisory Agency), as well as the participation of Indonesian Council of Ulama (MUI) which is mandated by Law No. 33 of 2014 on Halal Product Assurance.

The discussion now has already entered the stage of harmonization in the discussion of the Director of Harmonization of the Ministry of Law and Legislation. Crucial points discussed are things as follows:

1. Regarding to the interests of the Ministry of Health reliance that medicines and vaccines shall be given exceptions not to be included in the regulation of Law No. 33 of 2014 on Halal Product Assurance. Considering that there are various objections from the pharmaceutical and drug industry community by reason of industry and medicine that difficult to adjust to the Law No. 33 of 2014 on Halal Product Assurance.

Hereinafter, as the activist of Indonesian Halal Watch, the Author has voiced that the Government Regulation (RPP) shall be published,

in which regulates the interests of the health industry and has been accommodated by the acceptance of Article 62 stating that, "In the case of any drugs and vaccines whose raw materials have not been sourced from halal materials and if its not be consumed could threaten the safety of the soul, may be circulated and traded until it is found halal material.

2. In relation to the interest of MUI that has not been accommodated of its interests so far, on the following matters:
  - a. Problems of Fatwa Halal Product Meeting
  - b. Halal Auditor Training and Certification
  - c. Accreditation of Halal Inspection Agency or LPH
  - d. Recognition halal certification agency of other countries (cooperation of halal certification body with other countries).

These interests that have not been accommodated make this RPP has not been signed by the President (while the demand for industry and the business world to certify should not be neglected, and the Government must ensure the availability of Halal Products).

So while waiting for the Government Regulation draft (RPP) to become Government Regulation (PP), halal certification will still be held by MUI through LPPOM MUI. On the other hand, this situation creates the uncertainty for the BPJPH to perform its functions and authorities.

The delay of the PP publishing could make it difficult for the Ministry of Religious Affairs in this matter BPJPH to implement the law. Due to delayed Regulatory, instruments have to wait for PP, i.e.:

1. The provisions of the Halal Certification Tariff
2. Regulations of the Minister of Religious Affairs
3. Halal Certification Logo

#### 4. Application System for Halal Certification

The delay results in the ineffectiveness of the Law No. 33 of 2014 on Halal Product Assurance.

#### **Public Participation in the Implementation of Halal Product Assurance Act**

The public may also participate in the surveiling role in the implementation of Halal Product Assurance, such as socialization of Halal Product Assurance and surveil the halal products in circulation. The community is also required to be active in making complaints or reporting related products to BPJPH.

Halal Product Assurance Act, under Article 53, opens the role for the community to conduct socialization, education and advocacy. Involvement of the people in the policy process and halal regulation is to maintain the integrity of Indonesia, as well as in the context of the rule of law.

There are several non-governmental organizations concerned about this matter; one of them is Indonesia Halal Watch. Indonesia Halal Watch is present in the midst of the community as a bridge that connects consumers, Business Actors and the government in the implementation and law enforcement on Halal Product Assurance Act. Since its establishment, Indonesia Halal Watch has been actively advocating for consumers, especially Muslim consumers and assisting producers.

#### **CONCLUSION**

Indonesia is one of the major countries that has a Halal Product Assurance Act, making Indonesia the first country in the world to enforce the Halal Certification Law through the Law of the Republic of Indonesia No. 33 of 2014 which was enacted on October 17, 2014 announced through State Gazette Number 295.

Halal certification for MSMEs is still considered a burden because the socialization of halal products and education how to do halal

certification is very minimal and the cost is not cheap, so it shall be financed by the state through the state budget, and for MSMEs in the region, halal certification becomes the obligation of local government through APBD, for medium and large companies and Multi National Corporation through its CSR fund. The role of the Government is required to undertake or regulate the halal certification financing scheme for MSME products in specific regulations. As a consequence, the state must provide subsidy in halal certification financing to the business world, especially domestic businessmen to strengthen competitiveness.

With the issuance of Halal Product Assurance Act, halal certification shall be conducted by BPJPH after obtaining a halal fatwa from MUI on halal product and has passed from Halal Inspection Agency. However, BPJPH has not been able to perform its functions and authority, so it is still carried out by the LPPOM MUI. The goal of ideal halal certification should be to ensure the principles of protection, justice, legal certainty, accountability and transparency, effectiveness and efficiency, and professionalism.

### **Suggestion**

BPJPH, MUI and the LPH as an institution authorized by law to process halal certification must be strengthened by the government, both in terms of organization, resources, financing and modern laboratory facilities. The change of halal certification system from voluntary to mandatory gives consequence to BPJPH to immediately print halal auditor spread all over Indonesia, taking into consideration the requirements in accordance with the industry distribution in the country. Similarly, BPJPH to immediately establish a Halal Inspection Agency and make accreditation with MUI.

Because the state regulates the halal certification obligations for the products circulating in the community, considering that the ability of MSMEs in Indonesia with weak capital structure, and this group has a very large amount, the state must provide subsidies for the financing of halal certification, with a financing scheme that must be regulated in its own regulation in the form of a Government Regulation.

In order for the halal product guarantee system to be properly implemented, the Government Regulation as the implementing regulation on the Halal Product Security Act shall be issued.

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