

LEGAL CERTAINTY OF PRODUCTS SMEs GET FREE HALAL CERTIFICATES DURING THE COVID19 PANDEMIC

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Abstract

Halal certification is an obligation (mandatory) for business actors without distinguishing between large, medium, small and micro entrepreneurs. Article 4 UUUJPH states that products that enter, circulate, and trade in the territory of Indonesia must be halal certified. "Business actors are required to put a halal label on their products that have been certified halal by the MUI and if they do not heed this provision, consequences will apply in the form of administrative sanctions and even criminal sanctions for violations with a maximum imprisonment of 5 years or a maximum fine of Rp. 2,000,000,000.00 (Articles 41 and 56 of the UUUJPH). Many MSMEs engaged in the food and beverage sector have experienced an increase in sales amid the pandemic. This research was conducted using normative juridical research (normative legal research method). The normative juridical research method is library law research which is carried out by examining library materials or secondary data. Certification will be carried out in stages. At this early stage, certification is more focused on food and beverages first. Then just penetrated into cosmetic products, drugs, and medical devices. During this five-year period, BPJPH will be more persuasive in conducting outreach and coaching to business actors. Providing opportunities for business actors to take care of halal certification.

Keywords: *Halal, Products, SMEs*

A. Introduction

Since being mandated by Law 33 of 2014 concerning Halal Product Guarantees (JPH) it will take effect immediately on October 17, 2019. This provision will have a major impact on business actors because it is required that every goods and service product regulated in the Law must have halal certification. With the issuance of PP No. 31 of 2019 concerning Regulations for Implementing the JPH Law, the implementation of halal product guarantees is only a matter of months away, but the readiness of implementing halal product guarantees is still being questioned, especially from business actors. Readiness from human resources (HR) such as auditors to the mechanism for obtaining the halal guarantee label. Apart from that, there is also an opinion that this policy is burdensome for micro, small and medium enterprises (MSMEs) who have to pay for their products to get a halal stamp. Food (food and drink) whether processed or unprocessed is one of the basic needs of the Muslim community which must comply with halal standards, with or without additives

In the near future several devices such as HR, the Halal Guarantee Agency (LPH) and the harmonization of rules between ministries and institutions are being prepared by the government through the Halal Product Assurance Organizing Agency (BPJPH). BPJPH is also preparing LPH as a place for business

actors to submit their products to ensure their halal status. This institution consists of a government LPH and a private LPH submitted by a legal entity Islamic religious institution. Then, universities can also register to become LPHs.

In the past, unlike now, food processing was still simple, and communication between consumers and producers could still be carried out directly. However, nowadays, food processing is very complex. Manufacturers use various forms of technology to carry out production.¹ Along with technological developments, additional ingredients, including coloring agents, cannot be separated from processed food and beverages.² It will start from the procurement of raw materials and additional materials, processing, packaging, distribution, transportation and sales. As a result, consumer communication access to producers is far away and it is difficult to find out the halalness of a food product.³ Halal certificate apart from protecting consumers from various kinds of food that are considered inappropriate according to Islamic law, especially Indonesia, which is predominantly Muslim, also encourages competition and becomes an advantage. Halal certificates are currently one of the points for competitiveness in international trade.

In fact, halal certification is an obligation (mandatory) for business actors without distinguishing between large, medium, small and micro entrepreneurs. Article 4 UUJPH states that products that enter, circulate, and trade in the territory of Indonesia must be halal certified. "Business actors are required to put a halal label on their products that have been certified halal by the MUI and if they do not heed this provision, consequences will apply in the form of administrative sanctions and even criminal sanctions for violations with a maximum imprisonment of 5 years or a maximum fine of Rp. 2,000,000,000.00 (Articles 41 and 56 UUJPH)".

The implementation of the certification process requires costs to be charged to producers with the amount according to the type of product, which is around Rp. 2,500,000.00 up to more for small and medium businesses. The size of the fee depends on the size of the company, the complexity of the process, the number of products, the amount of raw materials, and the number of factories or outlets.⁴ This certification obligation will certainly be burdensome for business actors who fall into the category of Micro, Small and Medium Enterprises (hereinafter abbreviated as UMKM). As explained in Article 44 UUJPH, for Micro, Small and Medium Enterprises (MSMEs) the cost of halal certification can be facilitated from other legitimate sources or parties, one of which is the regional government. The word "can" in Article 44 does not yet provide legal certainty on how this facilitation is carried out.

As a result of the Covid-19 pandemic, many business actors are adapting and innovating products that will become a moment of awakening for MSMEs in Indonesia. Many MSMEs engaged in the food and beverage sector have experienced an increase in sales amid the pandemic. This is because there are many requests online to homes.

- 1 Ma'ruf Amin, "Produk Halal dan Peran Teknologi", *Jurnal Halal*, No. 100 Th. XVI 2013, Jakarta: LPPOM MUI, hlm. 50
- 2 Muti Arintawati, "Hati-Hati Memilih Bahan Pewarna", *Jurnal Halal*, No.94 Th. XV Tahun 2012, Jakarta: LPPOM MUI, hlm. 14
- 3 Sandiango Uno, "Agar UKM Semakin Berdaya Saing Tinggi" *Jurnal Halal*, No. 91 Th. XIV Tahun 2011, Jakarta: LPPOM MUI, hlm. 8
- 4 5. Disampaikan oleh Muti Arintawati (Wakil Direktur Lembaga Pengkajian Pangan Obat-obatan dan Kosmetika (LPPOM) Majelis Ulama Indonesia). <https://kabar24.bisnis.com/read/20190226/15/893745/ini-biaya-bikin-sertifikat-halal-dari-mui>

The following are examples of consumer goods which are categorized as clothing, head coverings and accessories covering food and beverage packaging, household health supplies, Muslim worship equipment, household appliances, stationery and office supplies. Examples of clothing items include clothes, underwear, socks and jackets that contain and/or originate from animals. Examples of head coverings include caps, hats, veils and helmets that contain and/or originate from animals. Serving, selling, distributing, packaging, storing, processing, slaughtering are types of services that must be halal certified. From this description, it can be deduced that the following problem formulation is how to arrange free halal certificates for MSMEs for legal certainty in its implementation? and What are the conditions for MSMEs to get free halal certificates?

B. Research Methods

To answer the writing questions that have been formulated above, the authors will use the normative research method.⁵ The normative juridical research method is library law research which is carried out by examining library materials or mere secondary data.⁶ The research specifications used in this study used descriptive analytical.⁷

C. Results and Discussion

For consumers, halal certificates have several functions. First, the protection of Muslim consumers from consuming non-halal food, drugs and cosmetics; second, psychologically the feelings of the consumer's heart and mind will be calm; third, defending the body and soul from adversity due to illicit products; and fourth, will provide certainty and legal protection. For producers, halal certificates have several important roles. First, as the responsibility of producers to Muslim consumers, bearing in mind that halal issues are part of the principles of Muslim life; second, increasing consumer trust and satisfaction; third, improve the company's image and competitiveness; and fourth, as a marketing tool and to expand the marketing network area; and fifth, giving profits to producers by increasing competitiveness and production and sales turnover.⁸

With the passing of the Job Creation Law, micro-business actors will be given halal certification for free, subsidized by the government. This is the rise of SMEs. Halal certification is a burden for MSMEs, because it is considered difficult and expensive in terms of processing. This has an impact, the micro business sector rarely has halal certification. This label is very important to provide added value and competitiveness for MSMEs. Specifically for MSMEs in the health and safety sector, in addition to halal certificates, an Indonesian National Standard (SNI) is required.

5 Bimo Bayu Aji Kiswanto, and Anis Mashdurohatun, The Legal Protection Against Children Through A Restorative Justice Approach, *Law Development Journal*, Volume 3 Issue 2, June 2021, Page 223-231

6 Soerjono Soekanto dan Sri Mahmudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, (Jakarta: Raja Grafindo Persada, 2003), hlm. 13.

7 Julizar Bimo Perdana Suka, Bambang Tri Bawono, and Andri Winjaya Laksana, The Implementation of Code of Conduct for Members of Police as Accurators of Murder, *Law Development Journal*, Vol 4 No 2, June 2022, Page 197-204

8 Lihat Muhammad Ibnu Elmi As Pelu, 2009, *Label Halal: Antara Spiritualitas Bisnis dan Komoditas Agama*, Ma- lang: Madani, hlm. 31-55

It is undeniable, for MSME players, in the past to obtain halal certification it was necessary to struggle with the sacrifice of time, energy and costs. However, the birth of the Job Creation Law has become a new hope for MSMEs. The ease of halal certification brings new opportunities. It's no longer a secret, MSME actors often complain about the matter of halal certification because it is considered a burden. They complained that it was difficult and expensive to manage. As a result, micro businesses rarely have halal certification. In fact, especially for food products, the requirement for halal certification is absolutely necessary if the product is intended for the market, both domestic and export markets. The sector being explored is mainly food and beverage products, because 60 percent of MSMEs are in the food and beverage business. Many business actors carry out product innovations, for example frozen food that is delivered online to homes. People are now more used to online shopping, which helps drive product adaptation”.

1. Umkm Becomes the Backbone and Arrangements for Free Halal Certification of Umkm Products

As an illustration, the backbone of the national economy is the MSME sector. In fact, much of the absorption of labor in Indonesia comes from the MSME sector. For this reason, the passage of the Job Creation Law will strengthen MSMEs to grow and develop and have strong competitiveness.

However, the government provides specialization for micro and small business actors (“UMK”) in fulfilling the obligation to halal certify the products they produce, as stated in Article 48 point 1 of Law Number 11 of 2020 concerning Job Creation (“Job Creation Law”) which contains only Article 4A of the JPH Law”:

- a. For Micro and Small Business Actors, the obligation to obtain a halal certificate as referred to in Article 4 is based on the statements of Micro and Small business actors.
- b. Statements of Micro and Small Business Actors as referred to in paragraph (1) are carried out based on halal standards set by BPJPH.

Provisions regarding the halal declaration for MSE actors are also regulated in Article 12 of Government Regulation Number 5 of 2021 concerning Risk-Based Business Licensing (“PP 5/2021”) which reads:

Business Permits for business activities with a low level of Risk as referred to in Article 10 paragraph (1) letter a in the form of NIB which is the identity of Business Actors as well as the legality to carry out NIB as referred to in paragraph (1) for business activities with a low level of Risk carried out by UMK , also applies as:

- a. Indonesian National Standard (SNI) as referred to in laws and regulations in the field of standardization and conformity assessment; and/or
- b. Halal guarantee statement as referred to in laws and regulations in the field of halal product guarantees.

According to the government, the workforce will be absorbed even more, it can be trusted from the MSME sector. In the midst of a pandemic outbreak that is still ongoing today and an economy that is still affected and is now on its way to recovery, it has had an extraordinary impact on this country. Until now, the unemployment rate is recorded at more than seven million people. That has not been

added to the new layoffs which reached three million people. “The nation’s economic condition is not easy. The hope is that with the birth of the Job Creation Law which regulates from upstream to downstream, starting from MSME licensing, financing, market access, and improving the supply chain, it will certainly raise optimism that MSMEs can grow and develop by absorbing an even greater workforce.”

The Covid-19 pandemic is expected to be a moment of awakening for MSMEs in Indonesia, because many business actors are adapting and innovating products. As an illustration, now as many as 60 percent of MSMEs engaged in the food and beverage sector have experienced an increase in sales amid the pandemic.

Whereas the strict regulation by the relevant government regarding MSME products receiving free halal certification is not yet clear, so it is still possible for payment quotations to be unknown, especially for MSMEs in the regions. Especially where the local government does not have a halal certification assistance program for reasons:

- a. The budget division allocated is limited and unbalanced for several fields as a result of changes in the nomenclature 3 times of three ministries in one institution.
- b. Reducing the budget for handling the Covid-19 outbreak, which was originally allocated to hold the MSME market.

In addition to being waived the cost of the certification process to obtain a halal certificate, MSMEs that meet these requirements can also get free of charge in terms of renewing the certificate. This government policy is in line with Law number 33 of 2014 concerning Halal Product Guarantee (JPH) which requires all business actors to have a halal certificate. This policy was taken by the government to accelerate the halal product certification program, especially for micro and small businesses in the food and beverage sector. This is because the government has scheduled food and beverage products to be fully certified by the deadline, which is October 17, 2024.

2. Requirements for Umkm to Get Free Halal Certificates

Requirements for free Halal Certification selected micro businesses will get registration facilities free of charge by fulfilling the requirements, namely:

- a. Have a Business Identification Number (NIB)
- b. Have a Resident Identification Number (NIK)
- c. Have a clear domicile address
- d. Fill out the online registration form at the following link bit.ly/Sertifikat_Halal_UMI
- e. Micro business criteria, namely business capital of less than Rp. 1 billion (excluding land and buildings for business premises) and annual sales of less than Rp. 2 billion
- f. Have at least 1 type of product and already have a market that has been produced continuously for 1 year
- g. Have a website/social media
- h. Follow the procedures set out in accordance with applicable regulations
- i. Include the product name

- j. Have SPP-IRT Certificate
- k. List of products and materials used
- l. Product processing
- m. Statement of UMI actors which contains a pledge/contract of halal products and materials used as well as PPH (Halal Product Process)

It should be noted that business licenses and certification are very important for micro-entrepreneurs to upgrade, so they can enter the supply chain and have wider market access. However, so far there have been challenges in the management process and costs. Therefore, the government makes it easier and facilitates so that quality micro business products can be more competitive

In a rule of law (rechtstaat/the role of law/) legal protection is a must to ensure the creation of justice, benefits and legal certainty for every community, especially those who are in a weak position socially, economically and politically. In its implementation, it must be based on the philosophy of Pancasila and the 1945 Constitution and be loaded with recognition of the dignity and worth of every individual and community group within the Unitary State of the Republic of Indonesia. "Legal protection is very closely related to the fulfillment of human rights (HAM), of which 270 human rights have been enshrined in the Indonesian constitution and then set forth in Law Number 39 of 1999 concerning Human Rights (UU HAM)". As for them, there are two very relevant points to become the legal basis for protection for MSMEs related to the obligation of halal certification in the halal assurance system in Indonesia. First, that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law (Article 40 paragraph (7) of the Human Rights Law in accordance with Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia). "Second, that the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government (the second amendment to the 1945 Constitution Article 28J paragraph (4) and Article 71 of the Human Rights Law)"

MSMEs are categorized as in an economically weak position so that they must receive special attention from the government as the executive power holder of the state. In line with the opinion of Sidarta who shares the same opinion as John Rawls, that the weak position of MSMEs in competition for opportunities (trying) to live better may be caused by unfairness in society, not because they are lazy to try but are not given the opportunity to improve their destiny.⁹

D. Conclusion

In Indonesia, matters regarding halal certificates have developed, both regarding the regulation and the level of awareness of the halal community in Indonesia. Changes in regulations regarding halal certificates have also undergone changes where Law Number 33 of 2014 concerning Halal Product Assurance mandates the establishment of a Halal Product Guarantee Organizing Agency (BPJPH).

Obligation for halal certification in accordance with the JPH Law began on October 17, 2019. Certification will be carried out in stages. At this early stage, certification is more focused on food and beverages first. Then just penetrated into cosmetic products, drugs, and medical devices. During this

⁹ Sidarta, "Konsep Diskriminasi Dalam Perspektif Filsafat Hukum", dalam *Butir-Butir Pemikiran Dalam Hukum*; Memperingati 70 Tahun Prof. Dr. Arief Sidharta, S.H., Penerbit Refika Aditama, Cet. II, Jakarta, 2011, hlm. 117.

five-year period, BPJPH will be more persuasive in conducting outreach and coaching to business actors. Providing opportunities for business actors to take care of halal certification. Products that do not yet have halal certification will not be immediately punished, but they will still be given the opportunity to apply for halal certification until October 17, 2024.

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