



ANALYSIS OF LEGAL CERTAINTY OF HALAL PRODUCT ASSURANCE SYSTEM POST OMNIBUS LAW

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Abstract

To be able to answer how the construction of the implementation of the halal product guarantee system should be (das sollen) as the aim of regulating halal certification which adheres to the mandatory principle and is in line with the rule of law which prioritizes the principles of justice, benefit and legal order, it is necessary to harmonize the Law on Halal Product Assurance and the regulations implementation and maintain the consistency of the application of norms. In this paper, the author will present an ideal construction idea so that legal certainty in the implementation of halal product guarantees can be realized as the goal of the Halal Product Guarantee Law by applying Aristotle's rule of law theory (grand theory), which is supported by the theory of authority and the theory of responsibility (middle range). theory) and the theory of legal certainty (applied theory). From the application of the theoretical study, several weaknesses were identified in the substance of the norms of sanctions in the Halal Product Guarantee Law which have the potential to hinder legal certainty for halal product guarantees. Setting norms for sanctions against business actors who violate the provisions of Article 4 of the Law on Halal Product Guarantee must be stated explicitly in the provisions of the Law on Halal Product Guarantee. Drugs, biological products, and medical devices that do not comply with halal requirements and are subject to stages of halal certification obligations until October 17, 2039 can still be circulated with the obligation to include non-halal information, so that the public gets clear information on the halalness of a product by emphasizing product responsibility. business actors (product liability). In the field of supervision,

Keywords: *Legal Certainty, Halal Certification, Omnibus Law*

1. INTRODUCTION

The Job Creation Law was drafted and enacted in a relatively very short period of time and seemed rushed. The reason for the government changing 82 (eighty two) laws and revoking 2 (two) laws into 1 (one) one law through the Omnibus Law system in the midst of the Covid-19 pandemic, is because: First, the issue of competitiveness low. Based on a number of world studies and rankings such as S & P Global Ratings, Fitch Ratings, and Moody's which compare Indonesia's ease of doing business and competitiveness with other countries in the world, it shows that Indonesia is still relatively behind compared to several neighboring countries, especially Singapore, Malaysia, and Thailand. Second, there is a slowdown in economic growth, and third, economic growth between regions is uneven. The essence of the reason is, that it is necessary to improve the system for ease of doing business services, especially ease of licensing. The substance of the Law on Halal Product Guarantee is included in one of the clusters of ease of doing business licensing.

After being tested on the material and annulled by the Constitutional Court on November 25 2021 in the Decision on Case Number 91/PUU-XVIII/2020, the Job Creation Law was finally re-enacted. On December 30, 2022, the Government issued Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. On March 31, 2023, it was followed by the issuance of Law Number 6 of 2023 concerning the Stipulation of Government Regulation in lieu of Law Number 2 of 2022 concerning Job Creation to Become a Law. This study aims to analyze the

transformation of the implementation of halal certification at the Halal Guarantee Organizing Agency (BPJPH) after the enactment of Law Number 6 of 2023 concerning Job Creation and to find the ideal construction of a halal product guarantee implementation system that guarantees legal certainty for halal product guarantees for consumers.

2. IMPLEMENTATION METHOD

This research is legal research (Legal Research). Legal research is a know-how activity in legal science, not just know-about. As a know-how activity, legal research is conducted to solve legal issues at hand. This is where the ability to identify legal problems is needed, do legal reasoning, analyze the problems faced and then provide solutions to these problems.

Referring to the definition given by Black's Law Dictionary, Legal Research is:

1. *The finding and assembling of authorities that bear on a question of law.* (findings and assembly of officials in charge of legal matters).
2. *The field of study is concerned with the effective marshalling of authorities that bear on a question of law.* (Field of study related to the effectiveness of officials in charge of legal issues).

Legal research will be carried out aiming to find coherence truths, produce legal arguments, legal theories or new concepts, so that prescriptions in resolving legal issues that have been formulated. Therefore, the type of research conducted is normative legal research.

3. RESULTS AND DISCUSSION

Construction of Amendments to the Job Creation Law for the Field of Halal Product Assurance

Construction of very basic changes in the Job Creation Law for the Halal Product Assurance Sector related to the recognition of the halalness of a product issued by BPJPH based on a written halal fatwa or determination of product halalness by MUI, Provincial MUI, City Regency MUI, Aceh Ulama Consultative Assembly, or Fatwa Committee Halal Products. The addition of an institution authorized to issue a halal fatwa relates to changes in the halal certification obligations that apply to micro and small business actors through a self-declared halal statement by micro and small business actors. For micro and small business actors' halal statements, determination of halal fatwa is carried out by the Halal Product Fatwa Committee which is formed by and is responsible to the Minister of Religion. In terms of halal auditor certification and LPH accreditation, BPJPH has been working closely with MUI. Halal auditor certification and LPH accreditation in the Job Creation Law were withdrawn from the MUI and became the full authority of BPJPH to further work with institutions that carry out accreditation authority. In the case of the establishment of LPH, both private and public universities are also given space to participate in establishing LPH, where the appointment of a halal auditor by LPH no longer requires MUI certification. Then for cooperation in terms of outreach, education, and publication of halal products, BPJPH can cooperate with universities.

Halal Product Process, hereinafter abbreviated as PPH, is defined as a series of activities to ensure product halalness includes the provision of materials, processing, storage, packaging, distribution, sales and product presentation. This aims to provide convenience, security, safety and certainty of the availability of halal products for the public in consuming and using products, in addition to increasing added value for business actors to produce and sell their products. In carrying



out its authority, BPJPH cooperates with related Ministries and/or institutions, the Halal Inspection Agency (LPH and the Indonesian Ulema Council (MUI). The cooperation between BPJPH and LPH is carried out for product inspection and/or testing. The cooperation between BPJPH and MUI is carried out in the form of determinations product halalness To assist BPJPH in carrying out inspections and/or halal testing of products, the government and the community can establish an LPH Requirements for establishing an LPH include: a. Having its own office and its equipment; b. Having accreditation from BPJPH; c. Having at least 3 Halal Auditors (three) people, and d. Has a laboratory or cooperation agreement with other institutions that have laboratories.

To guarantee the halal production process (PPH) the location, place and equipment of PPH must be separated from the location, place and equipment for slaughtering, processing, storage, packaging, distribution, sales and presentation of non-halal products. PPH locations, places, and tools must be kept clean and hygienic, free from uncleanness; and free from non-halal materials. Business actors are no longer subject to administrative fines if they violate these provisions, but are only subject to administrative sanctions. Business Actors who have obtained Halal Certificates must: a. Attaching Halal Labels to Products that have received Halal Certificates; b. Maintain the halalness of Products that have obtained Halal Certificates; c. Separating the location, place and slaughter, processing tools, storage, packaging, distribution, sales and presentation between Halal and non-halal Products; d. Updating the Halal Certificate if there is a change in material composition and/or PPH; and e. Report changes in the composition of Materials and/or PPH to BPJPH. Halal Certificate in this case can be interpreted as valid for life as long as there is no change in the composition or process of Halal Production. Violation of the provisions of Article 27 is only subject to administrative sanctions.

The Halal Supervisor is appointed by the company leadership and reported to BPJPH. For micro and small business actors, the government facilitates the provision of Halal Supervisors, by recruiting those from Islamic religious community organizations and then providing training. The procedure for obtaining a Halal Certificate begins with submitting an application for a Halal Certificate by Business Actors to BPJPH. Furthermore, BPJPH will verify documents no later than 1 (one) working day. Product halal inspection and/or testing is carried out by the LPH Halal Auditor no later than 15 (fifteen) working days. If it requires additional inspection and/or testing time, LPH may apply for an extension of time to BPJPH. If the LPH cannot carry out the time limit specified in the inspection process, the LPH will be evaluated and/or subject to administrative sanctions by BPJPH. To smooth the inspection process, business actors must provide correct information to the Halal Auditor. Furthermore, the LPH submits the results of the inspection directly to the MUI with an electronic copy to BPJPH to request a fatwa. The MUI halal fatwa meeting must be decided within no more than 3 (three) working days after the inspection results from the LPH are received by the MUI. If after the deadline of 3 (three) working days the MUI has not made a halal fatwa, the Halal Fatwa Committee of BPJPH will issue a halal fatwa within a maximum of 2 (two) days.

In the event that the application for halal certification is carried out by micro and small business actors through a halal statement, the determination of product halalness is carried out by the Halal Product Fatwa Committee based on the provisions of the Halal Fatwa. Determination of product halalness by the Halal Product Fatwa Committee is carried out no later than 1 (one) working day after receiving the results of PPH assistance. PPH assistance is completed no later than 10 (ten) working days after the application for halal certification is submitted by the micro and small business actor. The Halal Fatwa Committee formed by BPJPH is responsible to the Minister

of Religion. The Halal Fatwa Committee consists of elements of scholars and academics. The Halal Fatwa Committee must have been formed no later than 1 (one) year after the Job Creation Law became a law as of March 31, 2023. Before the Fatwa Committee is formed,

Identification of Legal Certainty Regulation of Halal Product Guarantee System

In order to realize Indonesia as a rule of law state, the state is obliged to carry out the development of national law which is carried out in a planned, integrated and sustainable manner within the national legal system which guarantees the protection of the rights and obligations of all Indonesian people based on the 1945 Constitution of the Republic of Indonesia. The formation of laws must always be based on the principles of forming laws and regulations. Apart from being based on the principles of forming statutory regulations, the contents of statutory regulations must also reflect the principles of order and legal certainty. In examining the aspects of legal certainty regarding the implementation of the JPH Law and its changes in the Job Creation Law, several provisions have been identified that have the potential to cause disharmony and inconsistency in the application of mandatory norms in the JPH Law which can be analyzed descriptively qualitatively as follows:

1. In the provisions of Article 4 of the Halal Product Guarantee Law, it is stated:

"Products that enter, circulate, and are traded in the territory of Indonesia must be halal certified."

The word "mandatory" in Article 4 of the Halal Product Assurance Law has changed the principle of the halal certification policy which was originally voluntary to become mandatory. The formulation of the word "mandatory" contains the consequence of the norm of sanctions if it is not fulfilled, both administrative sanctions and criminal sanctions. The problem is, in the construction of articles that contain administrative and criminal sanctions, there is no single sanction norm that can be applied if a business actor distributes and trades their products without first having a halal certificate. The case that recently emerged around the end of 2022 is about the issue of the halalness of the ice cream product from China, Mixue. In its release, Mixue, which already has hundreds of outlets throughout Indonesia, stated that its products are not non-halal. but only because they don't have a halal certificate from BPJPH. This statement is actually no different from Mixue's management's unilateral claim that Mixue's ice cream is halal so that it is free to enter, distribute, and trade in Indonesian territory even though it does not have a halal certification. According to data from BPJPH, Mixue only registered halal certification on November 14, 2022 under the name PT. Zhisheng Pacific Trading. This producer registered 37 (thirty seven) products. In fact, the number of outlets registered by this food and beverage manufacturer from China in all regions of Indonesia is 617, and Mixue itself has been operating since 2020 with its first outlet in Cihampelas, Bandung. Mixue's management also clarified that it was true that Mixue did not yet have a halal certificate. and not having a halal certificate is not the same as not being halal. Mixue Indonesia further explained that it had registered halal certification at LPOM MUI since 2021, the reason for the lengthy process for halal certificates was because 90 percent of the raw materials they used were imported from China. So that all checking processes must be carried out directly by the authorities there (Shanghai Al-Amin). The Indonesian Ulema Council (MUI) finally determined that the product [Mixue Halal Ice Cream & Tea](#) at the fatwa meeting which was held on Wednesday, 15 February 2023.

The Mixue case is just one of many products that are free to enter, circulate, and trade in Indonesian territory that do not have halal certification. This situation really endangers consumers



of halal products in Indonesia, especially if it turns out that the product in its application is not declared halal by BPJPH. Learning from this issue, what can BPJPH do to prevent or take legal action with circulation and trade like the Mixue case? The answer is none. Because BPJPH has no legal basis to be able to take action against this Mixue model business actor. Threats of sanctions can only be applied to products that have pocketed halal certification but do not maintain the halalness of their products. From this case it can be clearly seen that the construction of Article 4 of the JPH Law has no legal consequences for the violators. because there are no sanction norms that can be applied to products that enter, circulate, and trade in Indonesian territory even though they do not have a halal certificate. From this issue a lesson can be drawn, that legal certainty for violating Article 4 of the JPH Law cannot yet be realized.

2. In the provisions of Article 56 of the Halal Product Guarantee Law, it is stated:

"Businesses that do not maintain the halalness of products that have obtained Halal Certificates as referred to in Article 25 letter b shall be subject to imprisonment for a maximum of 5 (five) years or a fine of a maximum of Rp. 2,000,000,000.00 (two billion rupiahs)". In the Law on Halal Product Guarantee, the application of criminal sanctions is not due to non-certification of products circulating and traded by business actors, but due to business actors not maintaining the halalness of their products after obtaining halal certificates from BPJPH. Business actors who do not have a halal certificate can still distribute their products widely as long as they do not claim that their products are halal. This is because in the construction of regulations on Halal Product Assurance, there is not a single rule of sanction for threats to the distribution and trade of products that are not halal certified.

3. In the provisions of Article 67 of the Halal Product Guarantee Law, it is stated:

- (1) "The obligation to be halal-certified for Products circulating and traded in the territory of Indonesia as referred to in Article 4 shall take effect 5 (five) years from the promulgation of this Law."
- (2) "Before the obligation to be halal-certified as referred to in paragraph (1) applies, the types of products that are halal-certified are regulated in stages."

The construction of article 67 paragraph (1) is explicitly clear that all products that enter, circulate and trade in the territory of Indonesia have been subject to the obligation to be halal certified since October 17, 2019, without exception. The problem of phasing as referred to in Article 67 paragraph (2) also leaves problems. The JPH Law already stipulates that prior to the mandatory halal certification for products that enter, circulate and trade in Indonesian territory, it will be enforced starting on October 17, 2019 (a five-year transition period since the JPH Law was promulgated). The phasing of the obligation to be halal certified should have been completed during this transition period. So starting October 17, 2019, all products that enter, circulate and trade in the territory of Indonesia are subject to the obligation to be halal certified. But the reality of the implementation is not like that. Government Regulation Number 31/2019 concerning the Implementation of the JPH Law, which should have regulated the phasing of mandatory halal-certified products, was only issued on May 31 2019 and delegated the periodization of the phasing of halal-certified obligations to the Minister of Religion after coordinating with relevant ministries/agencies.

The issuance of Government Regulation Number 39 of 2021 concerning the Implementation of the Halal Product Assurance Field as a follow-up to the Job Creation Law regulates in such a way that the phasing of the obligation to be halal certified for products that enter, circulate and are traded in the territory of Indonesia. The phasing period is retroactive from 17 October 2019 to 17

October 2024 for food products, beverages, slaughter products and slaughter services. The next phases apart from food and beverage products, slaughter products and slaughter services will start from October 17 2021 to October 17 2034. Furthermore, Presidential Regulation Number 6 of 2023 concerning Halal Certification of Medicines, Biological Products and Medical Devices again contains the stages of halal certification. For medical devices at risk class category D, Halal certification is mandatory until October 17, 2039. The implementation of a longer phasing period, even up to 20 years since the mandatory halal certification, which should have started on October 17, 2019, adds to the long list and has the potential to cause legal uncertainty regarding the availability of drugs, biological products and medical devices. guaranteed halal. After studying the construction of the application of sanctions related to the rules for the obligation of halal certificates based on the phasing period, in the transitional provisions of the JPH Law, the Job Creation Law and PP 39/2021 there is also no construction of the application of sanctions after the completion of the phasing period or after the obligation to become halal certified applies according to the due date. has been determined.

4. In the provisions of Article 142 paragraph (2) PP Number 39 of 2021 concerning the Implementation of the Halal Product Guarantee Sector, it is stated:

(2) In the case of Products in the form of drugs, biological products, and medical devices whose raw materials have not been sourced from halal materials and/or the manufacturing methods are not halal, they can be circulated by including information on the origin of the materials until halal materials and/or halal manufacturing methods are found. .

Article 142 paragraph (2) PP 39/2021 turns out to be out of sync or contains disharmony with Article 2 paragraph (3) PP Number 39 of 2021, as stated:

(2) Products originating from prohibited materials are exempted from the obligation to be halal certified.

(3) Products as referred to in paragraph (2) must be given non-halal information.

The phrase "include information on the origin of the ingredients" is of course different from the phrase "obligation to provide non-halal information". Article 2 paragraph (3) clearly states that business actors are required to provide non-halal information, this means that consumers who use the product can immediately read clearly the information that the product is not halal. This is different from Article 142 paragraph (2) where business actors are only burdened with including information on the origin of the ingredients, in which case consumers do not necessarily understand whether the origin of the ingredients is halal or not, especially with information on the origin of medicinal ingredients, biological products and medical devices that usually use medical/medical language and not easily understood by the general public. The two provisions that contain disharmony also have the potential to cause legal uncertainty that can harm consumer interests.

5. In the provisions of Article 18 paragraph (1) Presidential Regulation Number 6 of 2023 concerning Halal Certification of Drugs, Biological Products and Medical Devices, it is stated:

(1) "Medicines, biological products, and medical devices that have not been halal certified on October 17, 2021 can still enter, circulate, and be traded in Indonesian territory according to the stages of the types of products that must be halal certified."

The construction of Article 18 paragraph (1) of Presidential Regulation Number 6 of 2023 concerning Halal Certification of Drugs, Biological Products and Medical Devices contains



disharmony both with Article 2 paragraph (3) and with Article 142 paragraph (2) PP Number 39 of 2021 concerning Implementation Field of Halal Product Assurance. In addition, when referring to the considerations of Supreme Court Decision Number 31 P/HUM/2022 regarding the obligation to have a halal certificate for the COVID-19 vaccine, that the phasing carried out by the government for medicinal products and biological products that require special expertise in testing their halal status, in distribution, must still be based on on halal standards. If the government has not been able to ensure the availability of halal-certified drugs, then they may be used as long as there are no halal products available while still paying attention to the emergency.

Based on these considerations, to provide legal certainty for consumers, it is necessary to revise the provisions of Article 18 paragraph (1) of Presidential Decree Number 6 of 2023 which originally read:

"Medicines, biological products, and medical devices that have not been halal certified on October 17, 2021 can still enter, circulate, and be traded in Indonesian territory according to the stages of the types of products that must be halal certified."

Thus becoming :

"Medicines, Biological Products and Medical Devices that have not been halal-certified on October 17 2021 can still enter, circulate and be traded in the territory of Indonesia. They must be given non-halal information as long as they have not been found and the drugs, biological products and halal medical devices have not been available. in accordance with the stages of the type of product that must be halal certified.

Analysis of Legal Certainty in the Implementation of the Halal Product Guarantee System

Before entering into the discussion of the rule-of-law theory of the halal product guarantee system in Indonesia, we will first briefly mention the status of halal certification with the conditions formulated by Jeremy Bentham, that in order to explain the concept of welfare, if it is based on the utilitarian principle he developed, something that can cause happiness and comfort for the people is something good. There has been a lot of research on the conception of the welfare state in the halal product administration system with all its dynamics in the application of the Halal Product Guarantee Law. The majority of researchers agree that the context of a welfare state which carries the concept of protection in the implementation of halal product guarantees for the majority of Indonesia's Muslim population is appropriate. The concept of protection is the basic interest of the nation which is then withdrawn as the state interest.

As a rule of law, in implementing the concept of protection, has the Halal Product Guarantee Law effectively applied the principles of legal objectives, namely justice, utility and legal certainty? In the Law on Halal Product Guarantee, the obligation to be halal certified for products that enter, circulate and trade in Indonesia is not solely aimed at realizing legal certainty. However, as the goal of a rule of law state is, there are aspects of justice and benefit that cannot be ruled out in the process of realizing legal certainty.

In the Halal Product Guarantee Law, the legal obligation of business actors (obligatores) can be identified in several provisions as follows:

1. Article 4: Products that enter, circulate and trade in the territory of Indonesia must be halal certified.
2. Article 21: PPH locations, places and tools must be separated from locations, places and tools for slaughtering, processing, storing, packaging, distributing, selling and presenting

non-halal Products. PPH locations, places, and tools must be kept clean and hygienic, free from uncleanness, and free from non-halal materials.

3. Article 24: Business actors applying for a halal certificate are required to: provide correct, clear and honest information, separate locations, places and equipment for slaughter, processing, storage, packaging, distribution, sales and presentation of Halal and non-halal Products, have Halal Supervisor, and report changes in the composition of ingredients and/or PPH to BPJPH.
4. Article 25: Business actors who have obtained halal certificates are required to: put a Halal Label on Products that have received Halal Certificates, maintain the halalness of Products that have obtained Halal Certificates, separate locations, places and slaughtering, processing equipment, storage, packaging, distribution, sales, and presentation between Halal and non-halal Products, renewing the Halal Certificate if there is a composition of ingredients and/or PPH, and reporting changes to the composition of ingredients and/or PPH to BPJPH.
5. Article 26: Entrepreneurs who produce products from materials originating from materials that are haraam are required to include non-halal information on the product.
6. Article 38: Business actors who obtain halal certificates are required to put a halal label on the product packaging, certain parts of the product, and/or certain places on the product.

Of the 6 (six) provisions governing the obligations of business actors, there is still 1 (one) provision which is at the core of the spirit of the JPH Law, which is brief and has not yet identified its legal certainty, namely Article 4 of the JPH Law. As stated by AV Dicey, that the principle of rule of law is the principle of legality (due process of law), so the government's actions, in this case BPJPH, to uphold legal certainty must be based on written norms. In order to enforce the norms of violation of products that enter, circulate and trade in the territory of Indonesia, the norms of sanctions for Article 4 must be real as per the principle of legality. If these norms do not exist, law enforcement cannot be carried out either.

4. CONCLUSION

1. The implementation of halal certification at BPJPH is effectively carried out starting October 17, 2019. BPJPH has 3 (three) roles as regulator, operator and also monitoring/supervision which in its implementation must cooperate with a number of relevant ministry/agency stakeholders, both in the product inspection process, stipulation of halal fatwas and in terms of supervision. The implementation of halal certification obligations for all products that enter, circulate and trade within the territory of Indonesia as Article 4 of the Law on Halal Product Assurance cannot be implemented in practice on 17 October 2019. There has been a tug-of-war of interests between ministry/agency stakeholders, especially in enforcing halal certification obligations in the pharmaceutical and healthcare industries.
2. There has been a fundamental change in the construction of implementing halal product guarantees after the Omnibus Law where there are several rules that are identified as disharmony and there is the potential for inconsistencies in the application of norms which can lead to legal uncertainty in implementing halal product guarantees. Article 4 of the JPH Law does not have consequences for sanctions if it is violated by business actors, because the imposition of sanctions is not caused by the circulation of products that are not halal certified but on business actors who do not maintain the halalness of their products after having a halal certificate. Besides that, there is disharmony of article norms in the contents of Government Regulation Number 39 of 2021 concerning Implementation of the Halal Product



Guarantee Field and also the contents of Presidential Regulation Number 6 of 2023 concerning Halal Certification of Medicines, Biological Products,

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