

Legal Issues for the Producers upon Existing Regulation Concerning Halal Product Guarantee

*¹Mochammad Sukkri, ²Achmad Fitriani

^{1*}Doctoral Candidate, University of Jayabaya Jakarta, Indonesia

¹Senior Lecturer, University of Jayabaya Jakarta, Indonesia

Abstract: - *The Government of Indonesia is intensively proclaiming and requiring halal labels on every product issued and traded throughout the territory of the Republic of Indonesia, as regulated concerning Halal Product Guarantee (JPH Law). In order to obtain a halal certificate, the business actor is obliged to submit an application for halal certification, by fulfilling 8 (eight) stages in the halal certification process. The research method used in this journal is descriptive research, in which the researcher will qualitatively describe the importance of the existing Halal Certificate for every producer in order to provide legal certainty for the consumers. Basically, in JPH Law creates legal problems for the business actors, because firstly, it must pass through a complicated bureaucracy, starting from the submission of halal certificate application to the process of halal certificate issuance; and secondly, the time required for the issuance of halal certificates is 62 days or more. Both issues seemingly encourage the business actors to commit a criminal act of fraud in the form of halal certificate falsification, as well as not guaranteeing halalness of a product that already has halal certificate, although they know well about the sanction given to them according to Article 56 in JPH Law, namely imprisonment at a maximum of 5 (five) years or a penalty amounting to 2 (two) billion. However, without the issuance of the Implementing Regulations of JPH Law, such Law has not been able to be functioned properly. Thus, any criminal acts of fraud committed by the business actors are subjected only to Article 386 in the Criminal Code concerning Fraud.*

Keywords: - *Legal producers, consumer, halal product guarantee*

I. Introduction

Halal, or stated completely in Arabian words as “halalan thayyiban”, means halal and good. In the case of food, for instance, halal food can also be interpreted as good food for physical and spiritual health. The halalness of food and beverage products is very dependent on the main raw materials, additional raw materials and its production process. Halal is not only limited to its substance, but also in the process of getting it [1]. The concept of halal as originating from Islam, definitely, can be applied by non-Muslims as well. Currently, halal products start to be demanded as choices in having a healthy and good life by people from various countries in the world, including Asian countries.

Indonesia as one of the Asian countries that has great potential to be a producer of halal products, in addition to the abundance of existing natural

Resources plus a majority of Muslim population, requires it to be a leader in halal products trade across Asia and must be able to penetrate the global market. For this reason, the participation from the government and business actors in Indonesia is needed in responding many challenges presented by international trade of halal products, especially food, beverages, medicine, and cosmetic products, which are very prospective for both needs of Indonesia itself and the Muslim countries, along with other countries that are starting to be interested in halal products [2].

In order to convince the consumers that the product consumed is halal, every producer is encouraged to necessarily hold Halal Certificate from MUI (under the stages of halal certification process, application scope for Halal Guarantee System [Sistem Jaminan Halal/SJH], SJH operating cycle, SJH

documentation, and stakeholders) within a validity period of 2 (two) years. During this period, the company must be able to provide guarantees to MUI and Muslim consumers that the company will always maintain the consistency of its halal products [3]. This obligation is a provision from the Assessment Institute for Foods, Medicines, and Cosmetics (LPPOM). LPPOM MUI is an institution whose task is to research, study, analyze and decide whether the products, either foods and its derivatives, medicines and cosmetic products are safe to be consumed in terms of health and for Islamic religious teachings, namely whether it is halal or permissible and good to be consumed by Muslims, especially in the territory of Indonesia. In addition, this institution also provides recommendations, formulates provisions and guidance to community services. This institution was established based on the decision to support the Indonesian Council of Ulema (MUI) pursuant to the Licensing Decree Number 018/MUI/1989, dated Jumadil Awal 26, 1409 Hijri, or January 6, 1989 [4].

In line with the business actors' (producers') obligation to submit application for halal certificates from MUI regarding any products they produce, as regulated in Articles 24 and 25 of the Law Number 33 of 2014 concerning Halal Product Guarantee, it rises a specific problem for the business actors in processing industry (foods, medicines, cosmetics), Slaughter House (Rumah Potong Hewan/RPH), as well as restaurants/catering/kitchens business, considering that halal certification process on a product must carry out the registration of halal certification and meet the requirements of halal certification, which requires such a long time, of course.

Referring to the existence of halal certificate that greatly useful for producers and consumers, as providing a legal protection for both parties (producers and consumers), it then becomes an obligation for the business actors/producers in processing industry, slaughter house, and restaurants and the like, for immediately submitting the application of Halal Certificate, as regulated in the Law Number 33 of 2014 concerning Halal

Product Guarantee, Article 24 and Article 25, as follow:

Article 24

Business Actors who submit the application for Halal Certificate shall be obliged to: a) provide true, clear, and honest information; b) separate the locations, places and equipment for slaughtering, processing, storing, and packing; c) separate the distribution, selling, and presentation of halal and non-halal products; d) own a Halal Supervisor; and e) report any changes in the Ingredients composition to BPJPH.

Article 25

Business Actors who have obtained Halal Certificate shall be obliged to: a) include Halal Label on the Product with Halal Certificate; b) maintain the halalness of Product with Halal Certificate; c) separate the locations, places and equipment for slaughtering, processing, storing, and packing, as well as the distribution, selling, and presentation of halal and non-halal products; d) renew the Halal Certificate if the validity period expires; and e) report any changes in the Ingredients composition to BPJPH.

By reviewing the materials contained in Article 24 and 25 in the Law of Halal Product Guarantee aforementioned, the producers consequently are obliged to submit their applications for halal certification from MUI relating to the products they produce, while, on the other hand, their problems emerge regarding the obligation to perform 8 (eight) stages in the registration process of halal certification. Furthermore, some crucial issues that will be also discussed in this law journal are Chapter IX in Article 56 of Halal Product Guarantee Law, concerning Criminal Provisions, and Article 1 number 1 in the Law of Halal Product Guarantee, concerning the product definition that is not clear and no limitations on the liability of a product that must be certified as halal.

From that definition, yet the target is food and beverages and others, but according to Article 1 number 1, the food products are not protected or not to be necessarily certified as halal. Therefore, in

turn, food products, beverages, medicines and cosmetics are not required to be halal-certified according to the Law of Halal Product Guarantee. To say in other words, because the Law uses the term "related goods and/or services", in which it has no relation with food products, beverages, and others, it causes a lack of clarity due to the target intended in the Law [5]. In Article 1 number 1, it states that "The products shall be goods and/or services relating to foods, beverages, medicines, cosmetics, chemical products, biological products, genetic engineering products, as well as any useful goods that beneficial, utilized, or applied by the community" [6].

The preparation process for Government Regulation Draft (RPP) on the Implementation of Law Number 33 of 2014 concerning Halal Product Guarantee (RPP JPH) is still finalized, because many stakeholders (ministries) are involved in the issuance of such Government Regulation, including, among others, Ministry of Trade, Ministry of Industry, Ministry of Health and other institutions. For example, in pharmaceutical and cosmetics industry, the determination of halal items is not only obtained from Ministry of Health, but also from Ministry of Trade and Ministry of Religion with their authorities to conduct administrative selection on the businessmen's proposals for certification.

Along with the unfinished process for Government Regulation Draft on the Implementation of Halal Product Guarantee Law that not issued yet, although the Halal Product Guarantee Law has mandated to be no later than 2 (two) years since the rules were established in October 2014, RPH JPH must be finished and issued. Certainly, this condition has an impact on the barren or non-functioned Law Number 33 of 2014 concerning Halal Product Guarantee, including the articles covered therein. For example, Article 56 in the Law of Halal Product Guarantee concerning criminal sanctions for the producers who do not comply with halal obligations is possible to be violated by any business actors/producers by, among others, falsification of halal certificate documents or not maintaining the halalness of a product that already certified as halal. They may commit a breach (fraud) in halal-certified

products by mixing it with non-halal ingredients, such as pork oil or preservatives and the like.

The definition of consumer according to the Law of Consumers Protection can be divided into 3 (three) kinds, as follows: (a) General consumers are the wearers, users and/or utilizers of goods and/or services for specific purposes; (b) Intermediate consumers are the wearers, users and/or utilizers of goods and/or services to be produced (producers) into other goods/services or to trade (distributors) for commercial purposes. This kind of consumer is the same as business actor; and (c) End consumers are the wearers, users and/or utilizers of goods and/or services of the consumers to meet the needs of themselves, families or households and not to be traded again [7].

The end consumers are, whose protection, clearly regulated in the Law of Consumers Protection.

II. Methods

The method of the research used in this journal is descriptive (developmental) research, which is a research that aims to find out the development of certain physical facilities or the frequency with which certain aspects of social phenomena occur, and to describe certain phenomena in details [8]. The connection with this research is that the researcher will describe qualitatively about the importance of existing Halal Guarantee Certificates for each producer (in the processing industry, eating houses, restaurants/cafes, or cosmetic products) in order to provide legal certainty to the consumers regarding the products (food, beverages, medicines and cosmetics) they produce, while for the consumers, in order to convince that the products they consume are safe from the religious and health aspects. Therefore, the existing Article 56 in the Law Number 33 of 2014 concerning Halal Product Guarantee (JPH) according to the researcher has been correct and appropriate to be placed in the said Law in order to provide legal protection and legal certainty for both parties. Indeed, it means that the producers have no intention or willingness to commit any breaches/frauds which certainly give bad impact for the producers themselves (subject to criminal sanctions) and for the consumers.

III. Discussion

Along with the obligation to comply with and implement 8 (eight) stages for the producers who will register in halal certification process, and with a maximum period of halal certification issuance process for 62 days (through an online system that will facilitate the businessmen in applying for halal certification) [9], such a long period does not close the possibility for the producers (in the processing industry, slaughter houses, or restaurants/cafes and the like) to commit an act that violates the law, including falsification of halal certificate documents and/or their products violate the provisions or not maintaining the halalness status for the products that already obtained halal certificate, as regulated and contained in Article 56 in the Law Number 33 of 2014 concerning Halal Product Guarantee, affirming that "Business Actors who do not maintain the halalness of the Products that already obtained Halal Certificate as referred to in Article 25 letter b, shall be sentenced to a maximum imprisonment of 5 (five) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah)." Furthermore, Article 57 confirms that "Everyone who involved in the implementation of Halal Product Guarantee (JPH) process and not maintain the confidentiality of the formulas listed in the information submitted by Business Actors as referred to in Article 43 shall be sentenced to a maximum imprisonment of 2 (two) years or a maximum fine of Rp 2,000,000,000.00 (two billion rupiah)."

From the aforementioned provisions, as regulated and contained in Article 56 and Article 57 regarding the imposition of criminal sanctions for producers/business actors who commit fraud/criminal acts aforesaid, the researcher will then judicially analyze the legal problems below.

The halal labelling for the products distributed in traditional and non-traditional markets will provide legal security and certainty for every consumer. However, in some traditional and modern markets, we still can find one product or more with halal label, but when consuming it, it contains non-halal ingredients or formulas. For example, cakes that use

clothes coloring agent and preservatives of dead bodies, and cooking rice with that mixed with cannabis leaves in order to get delicious taste and increase appetite for those who consume it.

In order to overcome this problem, the government issued the Law Number 33 of 2014 concerning Halal Product Guarantee, particularly in Article 4, stating that "Products that are entering, distributed, and traded within the territory of Indonesia must be halal-certified." These provisions gradually apply to foods, beverages, and cosmetics. In the future, in 2019, the government will also apply it for medicines that produced and distributed throughout Indonesia, including those imported from abroad.

In line with any fraudulent acts done by the producers (foods, beverages, medicines, or cosmetic products) by putting/mixing non-halal ingredients or formulas in the production process, which affecting on the losses (both materially and physically) for consumers who consume, then the actions done by the relevant producers are legally categorized as criminal acts of fraud that violate Article 386 in the Criminal Code.

Article 386 emphasizes on a case that if after the mixing, the value or benefit in related foods, beverages, or medicines is reduced, or even its value or benefit is completely lost, then this case can be included in criminal case and goods falsification. To say in another word, it may not be a criminal case if after the mixing, its value and benefit is not reduced or lost, thus it does not violate this article [10].

In addition to being categorized as a criminal act of fraud that committed by producers/business actors, halal labeling on the products with non-halal contents by the relevant business actors also violate their obligations, as they not fulfill the provisions stipulated in halal certificate. Upon this violation, business actors are subject to administrative sanctions in the form of written warnings, administrative fines, or revocation of Halal Certificates, as stipulated in Article 27 paragraph (1) and Article 25 in the Law of Halal Product Guarantee. However, this regulation does not only apply administrative sanctions, but also criminal sanctions for business actors who cannot maintain

halalness status on their products (foods, beverages, medicines or cosmetics that contain mercury ingredients), even though they have obtained Halal Certificate [11]. In addition to administrative sanctions for fraudulent business actors, the government through LPPOM MUI will also impose criminal sanctions, with the maximum imprisonment of 5 (five) years or a fine amounting to Rp 2,000,000,000 (two billion rupiah).

Relating to the aforementioned problems, viewed from food and beverage safety, it is according to Article 111 paragraph (1) in the Law Number 36 of 2009 concerning Health, stating that "food and beverage used for the community must be based on the health standards and/or requirements. It is also regulated in Article 86 paragraph (1) and (2) in the Law Number 18 of 2012 concerning Food. Paragraph (1) states that "Government shall determine the standards of Food Safety and Quality." Furthermore, paragraph (2) explains that "Every person who manufactures and trades Food must meet the standards of Food Safety and Quality."

The regulations of criminal acts as stated above apply to business actors/producers who commit acts of violating the halalness status of their products which already obtained halal certificates as contained in Article 56 in the Law of Halal Product Guarantee, even though the government has implemented the regulations of halal certification for food products.

After the issuance of halal certificate from LPPOM –MUI, the validity period shall be for 2 (two) years. This differs from the provision set in Article 42 paragraph (1) in the Law of Halal Product Guarantee, specifying that halal certificate issued by BPJPH is valid for 4 (four) years.

Meanwhile, the business actors must extend the validity of halal certificate by submitting the renewal of halal certificate no later than 3 (three) months prior to the expiration of related halal certificate's validity period. Supervision in the guarantee of halal products by MUI includes supervision on the business actors (producers) and distribution of halal products. Supervision that has

been carried out by MUI is only limited to the compliance of business actors (producers) in implementing halal guarantee systems. In addition, the supervision is also carried out partially and temporarily through a sampling method. This weak supervision is mostly associated with the expired halal certificate and falsification of halal logo.

The practice of implementing halal certification in Indonesia related to the enacted Law of Halal Product Guarantee stipulates that as long as BPJPH has not been established, halal certification will continue to be carried out by LPPOM-MUI. The implementation of halal certification that carried out by LPPOM-MUI is basically not mandatory. The regulations of halal certification for a product are basically the business actors' obligation, by including halal label on the product packaging. Before the enactment of the Law on Halal Product Guarantee, halal certification for business actors is not obliged. All this time, the objects of halal certification have not included all goods and services, but it is only specified for goods. Such conditions certainly cannot provide legal certainty regarding the guarantee of halal products for Muslim consumers in Indonesia.

However, from all regulations concerning the criminal acts of falsifying halal certificate document and not maintaining the halalness status of a product which already obtained halal certificate, in judicial aspect, it does not give the expected contribution due to the absence of the implementing regulations (PP) from the Law of Halal Product Guarantee. Therefore, the absence of said implementing regulations has an impact on the implementation of the Law on Halal Product Guarantee.

The following is the matrix of contained materials that included in Implementing Regulations (PP) of the Law of Halal Product Guarantee, which have not been finished yet until now.

The Law of Halal Product Guarantee itself has a weakness that precisely lies in the core norm, namely in Article 4, requiring the products imported, distributed and sold in Indonesia to have halal certificates. This provision is then questioned, whether non-halal products can be imported,

distributed and sold in Indonesia, while on the other hand, the Law of Halal Product Guarantee does not regulate any sanctions against those who import, distribute, and sell products without halal certificates. Therefore, the distribution and sale of non-halal products in Indonesia is, as if, not illegal.

IV. Conclusion

Article 56 in the Law of Halal Product Guarantee regulates the absolute criminal prosecution, which is by a maximum imprisonment of 5 years or a maximum fine of 2 (two) billion rupiahs for the business actors/ producers (in the processing industry, slaughter houses, and cosmetics) who labeling halal on the products with non-halal contents, although the said products already obtained halal certificate. This act is similar to a fraudulent act to the public. Upon this violation, the business actors are subject to administrative sanctions in the form of written warnings, administrative fines, or revocation of Halal Certificates, as stipulated in Article 27 paragraph (1) and Article 25 in the Law of Halal Product Guarantee. Nevertheless, by considering that the implementing regulations for the Law of Halal Product Guarantee have not been issued yet, this Law cannot be used properly. The unissued implementing regulations is due to lot of ministries involved, such as Ministry of Health, Ministry of Trade, Ministry of Religion, and MUI, which is the latter has the authority to determine, whether a product is halal or non-halal.

Preferably, After the business actors hold halal certificates, the relevant producers must maintain the halalness status of their products, as regulated and contained in Article 25 in the Law of Halal Product Guarantee, which, among others, obliged to protect the halalness of any halal-certified products, as well as to separate locations, slaughter houses, processing equipment, storage, packaging, distribution, selling, and presentation of halal and non-halal products.

The producers who have held halal certificates must be more careful, because the Law of Halal Product Guarantee stipulates strict sanctions for their negligence in maintaining halal products that have

obtained Halal Certificates from the Assessment Institute for Foods, Medicines, and Cosmetics (LPPOM).

References

1. Warta Ekspor, "Hidup Sehat dengan Produk Halal", Ditjen PEN/WRT/56/VII/2015, July edition.
2. Warta Ekspor, "Hidup Sehat dengan Produk Halal", Ditjen PEN/WRT/56/VII/2015, July edition.
3. LPPOM MUI, "Panduan Umum Sistem Jaminan Halal (LPPOM MUI)", Lembaga Pengkajian Pangan Obat-Obatan dan Kosmetika, Majelis Ulama Indonesia, 2018.
4. <http://www.halalmuibali.or.id/tentang-kami/>. Accessed on 3 November 2019.
5. Klik.Legal.com, "Definisi Tak Jelas Jadi Alasan Advokat Gugat UU Jaminan Produk Halal", in <https://kliklegal.com/definisi-tak-jelas-jadi-alasan-advokat-gugat-uu-jaminan-produk-halal/>. Accessed on 3 November 2019.
6. State Gazette of the Republic of Indonesia Number 33 of 2014 concerning Halal Product Guarantee, Article 1 number 1.
7. <http://arifpoetryunar.blogspot.com/2013/04/pengertian-konsumen-menurut-uu.html>. accessed on 20 November 2019. Prof.
8. Dr. Suryana, M.Si, Metodologi Penelitian: Model Praktis Penelitian Kuantitatif dan Kualitatif (e-book), Universitas Pendidikan Indonesia, 2010
9. <https://www.republika.co.id/berita/dunia-islam/islam-nusantara/18/03/07/p58aev335-kemenag-proses-penerbitan-sertifikasi-halal-62-hari>. Accessed on 21 November 2019.
10. <http://makalah-hukum-pidana.blogspot.com/2011/04/tindak-pidana-penipuan.html> accessed on 21 November 2019.
11. <http://www.hukumonline.com/berita/baca/lt57a9d34e79c47/ada-kandungan-non-halal-pada-produk-bersertifikat-halal--ini-sanksinya>. Accessed on 21 November 2019.