



Dualism Of Halal Fatwa Institutions On The *Self-Declare Mechanism*

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Abstract

Halal Product Guarantee in Indonesia has gone through various of regulation changes starting from KMA No. 518 and 519 of 2001 to Law No. 33 of 2014 then updated in the cluster of law No. 11 of 2020 on Job Creation and most recently is Government Regulation no. 39 of 2021 as the basis for the halal certification *self-declaration* mechanism for micro and small enterprises (MSEs). However, this rule change and creates the impression of dualism institution between the Fatwa Committee and MUI Fatwa Commission in the process of determining the halal fatwa of a product. So this paper focuses on the study of institutional dualism in issuing halal fatwa statements on the halal certification self-declaration mechanism. This research is classified as a library study (*library research*) with the main source a document of Himpunan Hasil Ijtima' Ulama Fatwa Commission throughout Indonesia VIII -2024. The results of this study show that the existence of the Fatwa Committee in the *self-declaration* mechanism makes institutional dualism in issuing halal fatwa. Where previously halal fatwa was only issued by MUI then certified by BPJPH.

Keywords: *Dualisms, Halal Fatwa, MUI, Self Declare.*

Abstrak

Jaminan Produk Halal di Indonesia telah melewati berbagai perubahan aturan dimulai dari KMA Nomor 518 dan 519 Tahun 2001 menjadi UU No. 33 tahun 2014, diperbaharui dalam klaster UU No. 11 Tahun 2020 Tentang Cipta Kerja dan terakhir Peraturan Pemerintah no. 39 tahun 2021 sebagai dasar mekanisme self declare sertifikasi halal bagi usaha mikro dan kecil (UMK). Namun perubahan aturan ini menimbulkan kesan dualisme kelembagaan antara Komite Fatwa Kemenag dengan Komisi Fatwa MUI dalam proses penetapan fatwa halal. Maka tulisan ini berfokus pada kajian dualisme kelembagaan dalam pernyataan fatwa halal self declare sertifikasi halal. Penelitian ini termasuk dalam kategori studi kepustakaan (*library reseach*) dengan sumber utama dokumen Himpunan Hasil Ijtima' Ulama Komisi Fatwa se-Indonesia VIII Tahun 2024. Hasil dari penelitian ini menunjukkan bahwa keberadaan Komite Fatwa dalam mekanisme self declare membuat dualisme kelembagaan dalam mengeluarkan fatwa halal. Dimana sebelumnya fatwa halal hanya di keluarkan oleh MUI melalui sidang fatwa MUI yang kemudian di sertifikasi oleh Kemenag melalui BPJPH.

Kata Kunci : Dualisme, Fatwa Halal, MUI, Self Declare

Introduction

Halal certification or Halal product guarantee is an important requirement for every Muslim related to food, beverage, and even cosmetic products. The terms *halal* and *tayyiba* are used in Islam to refer to the guarantee of food, drink, and product use for Muslims (*halalan tayyiba*).¹ Indonesia as a country with a majority Muslim population, there must be rules that protect them, especially in the products they consume without setting aside or ignoring the interests of other non-Muslim communities.² This is where the Indonesian government plays an essential role in protecting its Muslim population by ensuring that all products consumed especially food, beverages, cosmetics, and pharmaceuticals meet halal standards.³ This involvement is manifested through both the Ministry of Religious Affairs (Kementerian Agama) and other relevant government bodies that collaboratively establish and enforce regulations. Key frameworks include Law No. 33 of 2014 on Halal Product Assurance, which mandates halal certification for products circulating in Indonesia, as well as supporting regulations issued by the Halal Product Assurance Agency (BPJPH). These legal instruments aim to provide clarity, legal certainty, and consumer protection regarding the halal status of products.⁴ Through this institutional presence, the government not only upholds religious values but also strengthens public trust and the competitiveness of halal products in domestic and global markets.

Initially, the Ministry of Religious Affairs was authorized to regulate halal certification examinations based on Decree of the Minister of Religious Affairs Number 518 of 2001 concerning Guidelines and Procedures for Examining and Determining Halal Food. Furthermore, through Decree of the Minister of Religion Number 519 of 2001 concerning the Implementing Agency for the Examination of Halal Food which appoints

¹ Rafif Alviadi and Tatty Aryani Ramli, 'Efektivitas Ketentuan Tentang Sertifikasi Halal Dalam Undang-Undang Jaminan Produk Halal Untuk Mewujudkan Produk Pangan Home Industry Yang Bersertifikat Halal', *Prosiding Ilmu Hukum*, 7.2 (2021), pp. 619–22, doi:<http://dx.doi.org/10.29313/.v0i0.27365>.

² Zahranissa Putri Faizal and Jeane Neltje Saly, 'Kajian Terhadap Pelaksanaan Self Declare Sertifikasi Halal Pada Produk Pangan Bagi Konsumen Berdasarkan Hukum Positif Di Indonesia', *Jurnal Hukum Adigama*, 5.2 (2022), pp. 450–65.

³ Ayu Safitri and Mukhamad Yazid Afandi, 'Trends of Halal Industry Research: A Bibliometric Analysis', *Jurnal Ekonomi Syariah Teori Dan Terapan*, 10.6 (2023), pp. 605–19, doi:[10.20473/vol10iss20236pp605-619](https://doi.org/10.20473/vol10iss20236pp605-619).

⁴ Hisam Ahyani and others, 'Standardization of Companies and The Islamic Business Environment in Indonesia', *Jurnal Ilmiah Ekonomi Islam*, 8.1 (2022), p. 10, doi:[10.29040/jiei.v8i1.3795](https://doi.org/10.29040/jiei.v8i1.3795).

and delegates the implementation of halal certification to Lembaga Pengkajian Pangan Obat-obatan dan Kosmetika Majelis Ulama Indonesia or known as (LPPOM-MUI).⁵ Along with its development, halal certification regulations are still considered sectoral, incomplete, inconsistent, non-systemic and voluntary. In addition, there are still many products in society that have not been guaranteed halal,⁶ such as in the market which is increasingly difficult to control due to an increase in food innovation, design innovation, biotechnology and natural synthesis cycles so that a comprehensive regulatory agreement is needed.⁷ In order to ensure the need for halal products for the people of Indonesia, the government then made Law No. 33 of 2014 concerning Halal Product Guarantee (JPH Law) as a substitute for previous regulations.

Seeing the conditions of this evolving era, the government took steps to reform. The government included several changes in the JPH Law but without creating a new law. Changes to a number of articles that are no longer relevant to the current situation and conditions are then included in the Omnibus Law cluster (Job Creation Law No. 11 of 2020). The articles in Law No. 33 of 2014 concerning Halal Product Guarantee (JPH Law) that get renewal changes through Law No. 11 of 2020 concerning copyright work, there are 24 articles. The changed articles are listed in Paragraph 8 concerning Trade, Legal Metrology, Halal Product Guarantee, and Standardization and Conformity Assessment precisely in article 48.⁸ This is done to provide legal certainty to a product's halalness as evidenced by halal certification.⁹

However, it seems that the renewal of this regulation has also not been able to increase the number of applications for halal certification, especially for micro, small and medium enterprises (MSMEs). Some of the obstacles faced by MSMEs in applying for

⁵ Susilowati Suparto and others, 'Harmonisasi Dan Sinkronisasi Pengaturan Kelembagaan Sertifikasi Halal Terkait Perlindungan Konsumen Muslim Indonesia', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 28.3 (2016), p. 427, doi:10.22146/jmh.16674.

⁶ Faizal and Saly, 'Kajian Terhadap Pelaksanaan Self Declare Sertifikasi Halal Pada Produk Pangan Bagi Konsumen Berdasarkan Hukum Positif Di Indonesia'.

⁷ Melissa Aulia Hosanna and Susanti Adi Nugroho, 'Pelaksanaan Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal Terhadap Pendaftaran Sertifikat Halal Pada Produk Makanan', *Jurnal Hukum Adigama*, 1.1 (2018), p. 511, doi:10.24912/adigama.v1i1.2155.

⁸ Pemerintah Pusat, *Undang Undang Republik Indonesia Nomor 11 Tahun 2020 Tentang Cipta Kerja, Peraturan.Bpk.Go.Id* (2020).

⁹ Fajaruddin Fajaruddin, 'Efektivitas Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal Dalam Perlindungan Konsumen', *DE LEGA LATA: Jurnal Ilmu Hukum*, 3.2 (2018), pp. 204–16, doi:10.30596/dll.v3i2.3151.

halal certification are budget availability and lack of knowledge and understanding of MSME players about halal and the halal certification process.¹⁰ To overcome the existing obstacles, the government issued regulation number 39 of 2021. Government Regulation no. 39 of 2021 states that halal certification for micro and small businesses (MSEs) is based on the statement of business actors (*self-declaration*). Unfortunately, the *self-declaration* mechanism itself raises new problems, namely the loss of several processes or stages in the process of applying for halal certification. The most obvious thing is the loss of the role of MUI (Fatwa Commission) in the *self-declaration* mechanism, where previously the determination of Product halalness was carried out by MUI through the MUI Halal Fatwa Session. The results of the trial were submitted by MUI to BPJPH as the basis for issuing a Halal Certificate.¹¹ On the other hand, in the self-declaration mechanism, the halal fatwa can be decided individually by members of the Fatwa Committee (Ministry of Religion). This creates the impression of institutional dualism in the process of issuing halal certification, namely between the Fatwa Committee of the Ministry of Religion and the MUI Fatwa Commission.

Reflecting on the data and facts above, the author feels interested in further researching the impression of institutional dualism in the halal certification *self-declaration* mechanism. Especially with the results of the MUI study on the rejection of the self-declaration mechanism in the appendix of decisions No. 3 and 4 in the Decision Document of the Ijtima 'Ulama Fatwa Commission throughout Indonesia Number 15 / Ijtima 'Ulama / VIII / 2024 on Halal Product Guarantee Issues.

Literature Review

Halal and Halal Certification

Halal in language means "release" and "not bound", while etymologically the word halal means things that can and can be done because they are free or not related to the provisions that prohibit it.¹² Halal can also be interpreted as any object or activity that is permitted to be carried out. Halal in everyday life is more often used to indicate food and drinks that are permitted to be consumed according to Islam, according to the

¹⁰ Tiur Arlofa', Nina. Elysabeth, 'Meningkatkan Kepercayaan Konsumen Pada Produk Lokal Melalui Pendampingan Proses Produk Halal Self Declare Bagi Pelaku Umk Di Desa Cibetik Kota Serang Banten', *Jurnal Kuat*, 5.2 (2023), pp. 127–30.

¹¹ (Pasal 33 Ayat 1-4, Menteri Hukum dan Hak Asasi Manusia, 2014)

¹² Yusuf Shofie, *Hukum Perlindungan Konsumen* (Kencana, 2013).

type of food and how it is obtained. However, basically all food and drinks derived from plants, vegetables and animals are halal, except those that are poisonous and endanger human life.¹³ Meanwhile, certification is a special recognition given by a credentialing agency to certain parties for recognition of expertise or fulfillment of certain standards. Likewise with the certification process for the halalness of a product which is the recognition of the halal guarantor institution (MUI). So that Halal Certificate is a written fatwa from Indonesian Ulema Council (MUI) which states the halalness of a product in accordance with Islamic Sharia. This Halal Certificate is a requirement to obtain permission to include a halal label on product packaging from the authorized government agency.¹⁴

Dualism of Authority

Dualism comes from the Latin word *duo* which means two. Dualism states that reality is controlled by two principles, namely strength and power. dualism in a philosophical view is defined as affirming the existence of two separate fields.¹⁵ Dualism is also interpreted as an understanding that has a teaching that everything comes from two substances or substances that stand on their own. In addition, dualism in the legal dictionary is a condition where opinions/understandings/functions contradict each other.¹⁶ Authority in the Indonesian dictionary is defined as authority, the right and power to do something.¹⁷ While in general, authority can be interpreted as the power of the Agency and / or Government Officials or other State administrators to act in the realm of public law, or that a right and obligation owned by an official or an institution and / or organization to achieve a goal by acting in accordance with applicable laws.

Research Methods

This research is included in the category of *library studies* (*library research*), namely research that aims to collect and analyze official documents, documents that are guaranteed validity and validity, legal and political documents or research reports.¹⁸ The

¹³ Farid Wajdi, *Kebijakan Produk Halal Di Indonesia* (Sinar Grafika, 2021).

¹⁴ LPPOM MUI, *Pengukir Sejarah Sertifikasi Halal* (LPPOM MUI, 2005). 18.

¹⁵ Lorens Bagus, *Kamus Filsafat* (Gramedia Pustaka Utama, 2002). 33.

¹⁶ J.C.T Simorangkir, *Kamus Hukum* (Sinar Grafika, 2006). 27.

¹⁷ Dendy Sugeno, *Kamus Besar Bahasa Indonesia* (Gramedia Pustaka Utama, 2012). 51.

¹⁸ Hardani, *Buku Metode Penelitian Kualitatif & Kuantitatif* (Pustaka Ilmu, 2020). 49.

focus of this research will be directed at various literatures that discuss the mechanism for applying for halal certification, especially the self-declaration mechanism. While in the process of collecting data the author uses two sources of documents, namely primary sources in the form of documents of the Indonesian Fatwa Ulama Consensus, the Set of Results of the Ijtima' Ulama Fatwa Commission throughout Indonesia VIII Year 2024.

While the secondary sources are records in the form of journals, research results and other documents that discuss the mechanism for applying for halal certification, especially the self-declaration mechanism. Meanwhile, the analysis of the data obtained in this study will be carried out descriptively qualitative. So that the data that can be explained well in detail and in depth but still focus on the main objectives of the research.

Research Result

Halal Certification in Indonesia

In Indonesia, halal certification of food products has been implicitly recognized since November 1976 by the Ministry of Health of the Republic of Indonesia. This is evidenced by the Decree of the Minister of Health of the Republic of Indonesia Number 280/Men.Kes/Per/XI/76.¹⁹ The Minister of Health (Menkes) cooperated with the organization of the Association of Food and Beverage Entrepreneurs throughout Indonesia (GAPMMI) to disseminate a special logo to businesses that needed it.²⁰ Initially, the stamp that was given read "contains pork" for food producers who used pork or its derivatives. But as time went by, further studies were carried out on the label, until precisely on August 12, 1985 there was a change in the label which originally attached the label "CONTAINING PIGS" changed to a label that read "HALAL". At the same time, the government issued a Joint Decree of the Minister of Health and the Minister of Religion No.42/Men.Kes/SKB/VIII/1985 and No. 68 of 1985 concerning the Inclusion of Halal Writing on Food Labels.²¹

¹⁹ Istianah Istianah and Gemala Dewi, 'Analisis Masalah Pada Konsep Halal Self-Declare Sebelum Dan Pascaenachment Undang-Undang Cipta Kerja', *Al-Adl: Jurnal Hukum*, 14.1 (2022), p. 85, doi:10.31602/al-adl.v14i1.5870.

²⁰ Hayyun Durrotul Faridah, 'Halal Certification in Indonesia; History, Development, and Implementation', *Journal of Halal Product and Research*, 2.2 (2019), p. 68, doi:10.20473/jhpr.vol.2-issue.2.68-78.

²¹ Faridah, 'Halal Certification in Indonesia; History, Development, and Implementation'.

One of the moments that finally shaped the awareness of the government and society regarding the urgency of halal certification was the issue of using *gelatin*²², *lard*²³, and *shortening*²⁴ in food products in 1988. So the government formed the Indonesian Ulema Council Food, Drug and Cosmetic Assessment Institute (LPPOM MUI) whose establishment was based on the Decree of the Indonesian Ulema Council No. Kep./18/MUI/1989. LPPOM MUI is authorized to conduct product inspection and halal certification. But over time, it was felt that this regulation was too bureaucratic and caused institutional dualism. So in an effort to cut the bureaucratic procedures, in 1996 with the charter of cooperation between the Ministry of Health, the Ministry of Religion (Depag), and MUI, it was agreed that the halal labeling process on food products would be handled jointly by the three agencies.

The synchronization of policies between the Ministry of Religious Affairs, the Ministry of Health, and MUI began with the signing of a Cooperation Charter on June 21, 1996 regarding the inclusion of the halal logo on food. The Ministry of Health issued Decree No. 924/Menkes/SK/VIII/1996 as an amendment to Decree No. 82/Menkes/SK/I/1996. Initially, the halal label was given based on unilateral information from the company regarding the composition of the ingredients used. This policy is considered ineffective to ensure the halalness of the product, with the issuance of Decree Number 924/Menkes/SK/VIII/1996, there was a change in the flow of labeling. Before the company writes the halal label on its product, it must first go through the approval of the Directorate General of Food and Drug Control (Dirjen POM) based on the fatwa issued by the MUI Fatwa Commission. However, MUI can only issue halal certification starting with food products in 1994, the issuance of which is based on the results of the MUI LPPOM examination.²⁵

The government issued Government Regulation No. 69 of 1999 concerning food labels and advertisements explaining the installation of a Halal Label on packaging which must first go through an examination by an accredited inspection agency based

²² Iriane Sumpe Dewi Hastuti, 'Pengenalan Dan Proses Pembuatan Gelatin', *MEDLAGRO*, 3.1 (2007), pp. 39–48.

²³ Lemak Babi (terutama lemak bagian dalam perut). Dictionary.com, 'Lard', *Dictionary.Com*, 2024.

²⁴ Maya Safira, 'Roti Juga Bisa Mengandung Shortening Dari Babi', *Detik.Food.Com*, 2015.

²⁵ Asep Syarifuddin Hidayat, Mustolih Siradj, and Jakarta Selatan, 'Sertifikat Halal Dan Non Halal Pada Produk Pangan Industri', *Jurnal Abkam*, XV.2 (2015), pp. 199–210.

on the guidelines and procedures set by the Minister of Religion.²⁶ So that in 2000, the Director General of POM changed its name to the Food and Drug Supervisory Agency (BPOM), even halal labeling which was originally carried out by MUI switched to BPOM. In order to follow up on these provisions, a Decree of the Minister of Religion (KMA) 518 of 2001 and KMA 519 of 2001 was issued which explained that the Minister of Religion appointed MUI as a halal certification agency that examines, processes, and determines Halal Certification. As for the installation of the halal logo on the packaging, MUI cooperates with BPOM.

Initially, the Ministry of Religious Affairs was authorized to regulate halal certification examinations based on Decree of the Minister of Religious Affairs Number 518 of 2001 concerning Guidelines and Procedures for Examining and Determining Halal Food. Furthermore, through Decree of the Minister of Religion Number 519 of 2001 concerning the Implementing Agency for the Examination of Halal Food, which appoints and delegates the implementation of halal certification to the Institute for the Assessment of Food, Drugs and Cosmetics of the Indonesian Ulema Council or known as (LPPOM-MUI).²⁷

Along with its development, halal certification regulations are still sectoral, incomplete, inconsistent, and non-systemic and voluntary.²⁸ So that in order to guarantee the need for halal products for the people of Indonesia, the government then enacted Law No. 33 of 2014 concerning Halal Product Guarantee (JPH Law) as a substitute for previous regulations. The JPH Law aims to provide legal certainty for a halal product as evidenced by halal certification.²⁹ As mandated in the JPH Law, the obligation of halal certification for all products circulating and traded in Indonesia has been enforced since October 17, 2019. Even the government is responsible for the implementation of product halal assurance, which in this case is carried out by the Ministry of Religion through the Halal Product Guarantee Organizing Agency (BPJPH).

²⁶ Lies Afroniyati, 'Analisis Ekonomi Politik Sertifikasi Halal Oleh Majelis Ulama Indonesia', *Jurnal Kebijakan & Administrasi Publik*, 18.1 (2014), pp. 37–52.

²⁷ Suparto and others, 'Harmonisasi Dan Sinkronisasi Pengaturan Kelembagaan Sertifikasi Halal Terkait Perlindungan Konsumen Muslim Indonesia'.

²⁸ Hosanna and Nugroho, 'Pelaksanaan Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal Terhadap Pendaftaran Sertifikat Halal Pada Produk Makanan'.

²⁹ Fajaruddin, 'Efektivitas Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal Dalam Perlindungan Konsumen'.

But in fact the JPH Law is also not strong enough to guarantee halal products for all people. So the government then made changes to several articles in the JPH Law, but without making a new law. One of the government's efforts is to include several articles that are considered ambiguous and less uptodate with current conditions into the *cluster* of Law No. 11 of 2020 concerning Job Creation. The inclusion of the JPH Law in the structure of the Job Creation Law is essentially an encouragement to overcome the problem of unimplemented halal product guarantees circulating in the community. One of the main strengths of the JPH Law after Law No. 11 of 2020 concerning Job Creation is the nature of halal certification, which was previously voluntary, has changed to mandatory. Meanwhile, some provisions in the JPH Law that have changed after the presence of the Job Creation Law include provisions for product certification from MSEs, authority for LHP accreditation and Halal Auditor certification, involvement of legal Islamic organizations in the Halal certification process, simplification of bureaucracy, and time for issuing halal certification, including changes in norms of punishment / law enforcement.³⁰

Halal Certification Regulation

Submission of Halal Certificate Application is submitted by business actors to BPJPH.³¹ Then BPJPH establishes LPH (Halal Examining Agency) to conduct an examination and / or testing of the halalness of the Product based on the application of the business actor.³² LPH itself can be submitted by incorporated Islamic religious institutions, and private universities under the auspices of incorporated Islamic religious institutions or incorporated Islamic foundations.³³ The next step is the examination and / or testing of the halalness of the Product carried out by the Halal Auditor who comes from the designated LPH for a maximum of 15 (fifteen) working days.³⁴ The results of the Halal Auditor examination are then officially submitted to LPH, then submit the results of the examination and testing of the halalness of the Product to MUI with a copy

³⁰ E. F. Kamila, 'Peran Industri Halal Dalam Mengdongkrak Pertumbuhan Ekonomi Indonesia Di Era New Normal', *Jurnal Likuid*, 1.1 (2021), pp. 33–42.

³¹ Pusat, *Undang Undang Republik Indonesia Nomor 11 Tahun 2020 Tentang Cipta Kerja*.

³² (Pasal 30 Ayat 1; Menteri Hukum dan Hak Asasi Manusia, 2014)

³³ (Pasal 13 Ayat 1; Menteri Hukum dan Hak Asasi Manusia, 2014)

³⁴ (Pasal 31 Ayat 1; Menteri Hukum dan Hak Asasi Manusia, 2014)

sent to BPJPH.³⁵ Determination of Product halalness is carried out by MUI through the MUI Halal Fatwa Session. The results of the trial were submitted by MUI to BPJPH as the basis for issuing a Halal Certificate.³⁶ Then the Halal Certificate is issued by BPJPH no later than 1 (one) working day from the fatwa of Product halalness.³⁷ With the current flow, the clarity of the administrative system for the halal certificate application process is easy to understand. In addition, the efficiency of the process time until the issuance of a halal certificate is much shorter than the previous regulation.

Decision of the MUI Fatwa Commission VIII

MUI is a non-governmental organization that is tasked with providing fatwa on a religious event, especially Islam. MUI's fatwa generally appears as a response to questions coming from the public or government policies. MUI's fatwa is considered to represent the views of Indonesian Muslims because in MUI there are many representatives from various Islamic organizations in Indonesia.³⁸ Unfortunately, MUI's fatwa until now does not have strong legal legality to force every fatwa to be obeyed by all Indonesian Muslims. While MUI fatwas that do not yet exist regarding a case that has no law, will usually be discussed and studied in the forum of Ijtima' Ulama Fatwa Commission throughout Indonesia.

Ijtima' Ulama of the Fatwa Commission throughout Indonesia is a forum for collective ijtihad (ijtihad jama'i) carried out by scholars, zu'ama, and Muslim scholars throughout Indonesia in order to provide answers to new matters in the religious life of Muslims in Indonesia. One of them is the 8th Ijtima' Ulama Fatwa Commission throughout Indonesia which was held at Bahrul Ulum Sungailiat Islamic Boarding School Bangka Regency, Bangka Belitung Province on May 28 to 31, 2024. One of the interesting decisions is related to the *self-declaration* mechanism in the guarantee of halal products, which is contained in the book Consensus of Indonesian Fatwa Ulama Set of Results of Ijtima' Ulama Fatwa Commission throughout Indonesia VIII Year 2024.³⁹ In

³⁵ (Pasal 32 Ayat 1; Menteri Hukum dan Hak Asasi Manusia, 2014)

³⁶ (Pasal 33 Ayat 1-4; Menteri Hukum dan Hak Asasi Manusia, 2014)

³⁷ (Pasal 35; Menteri Hukum dan Hak Asasi Manusia, 2014)

³⁸ Ahmad Badrut Tamam, 'Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dan Fatwa Dewan Syariah Nasional (DSN) Dalam Sistem Hukum Indonesia', *Al-Musthofa: Journal of Sharia Economics*, 04.01 (2021), pp. 1–25.

³⁹ MUI, *Himpunan Hasil Ijtima' Ulama Komisi Fatwa Se-Indonesia VIII Tahun 2024* (Komisi Fatwa Majelis Ulama Indonesia, 2024).

the fourth section related to Legal and Legislative Issues (*Masail Qanuniyyah*) in one of its subchapters discusses issues related to Halal Product Guarantee. And the most striking problem is related to the *self-declaration* mechanism found in Decision no. 3 and 4 of the Decision Document of the Ijtima' Ulama Fatwa Commission throughout Indonesia 15 / Ijtima' Ulama / VIII / 2024 concerning Issues of Halal Product Guarantee.

Decision No. 3

Ijtima' Ulama of the 8th Indonesian Fatwa Commission doubts the implementation of halal certification through Self Declare (Business Actor Statement) for Micro and Small Enterprises (MSEs). Ijtima' Ulama views that the implementation of halal certification with the Self Declare mechanism is not credible, not accountable, and has a high potential for errors / errors in determining halal on certified products.

Decision No. 4

The Ijtima' Ulama of the Fatwa Commission cannot trust the results of halal determinations made by the Fatwa Committee (an institution that has been established by the Ministry of Religious Affairs and is responsible to the Minister of Religious Affairs for determining the halalness of products).

Discussion

Dualism Of Halal Fatwa Institutions On The Self-Declare Mechanism

In accordance with the JPH Law that all products must be halal certified starting October 17, 2019. Meanwhile, some of the provisions in the JPH Law after the presence of the Job Creation Law include the provisions for product certification from MSEs, the authority for LHP accreditation and certification of Halal Auditors, the involvement of legal Islamic organizations in the Halal certification process, simplification of bureaucracy, and the timing of issuing halal certification, including changes in norms of punishment / law enforcement.⁴⁰ With this regulation, the position of the nature of halal certification, which was previously voluntary, has become mandatory.⁴¹ On the

⁴⁰ Kamila, 'Peran Industri Halal Dalam Mengdongkrak Pertumbuhan Ekonomi Indonesia Di Era New Normal'.

⁴¹ Ananda Natasya and Sugito, 'Pendampingan Pembuatan Sertifikasi Halal Sebagai Upaya Peningkatan Daya Saing Penjualan UMKM Sarlee Bu Tin Kelurahan Sumber Rejo , Kecamatan Pakal , Kota Surabaya', *Jurnal Inovasi Pengabdian Dan Pemberdayaan Masyarakat*, 4.2 (2024), pp. 445–50.

other hand, the existence of criminal sanctions and administrative sanctions will make the government's hope to provide halal guarantees for every product circulating in the community can be achieved immediately.⁴²

Administratively, the flow of filing a Halal Certificate Application can be submitted by Business Actors to BPJPH, which previously directly submitted to LPPOM-MUI as stated in article 29 paragraph 1. Then BPJPH establishes LPH (Halal Examining Agency) to conduct examination and / or testing of halalness of Products based on the application of Business Actors. LPH itself can be submitted by incorporated Islamic religious institutions, and private universities under the auspices of incorporated Islamic religious institutions or incorporated Islamic foundations. The next step is the examination and / or testing of the halalness of the Product carried out by the Halal Auditor from the designated LPH for a maximum of 15 (fifteen) working days. The results of the Halal Auditor examination are then officially submitted to LPH, then submit the results of the examination and testing of the halalness of the Product to MUI with a copy sent to BPJPH. Determination of Product halalness is carried out by MUI through the MUI Halal Fatwa Session. The results of the trial were submitted by MUI to BPJPH as a basis for issuing a Halal Certificate.⁴³ Then the Halal Certificate is issued by BPJPH no later than 1 (one) working day from the fatwa of Product halalness. Meanwhile, the government has also prepared another path in applying for halal certification, namely the *self-declaration* mechanism.

Self Declare is an independent declaration of the halal status of MSE products. If they meet certain conditions, namely having through assistance from a registered Halal Process Assistance (PPH), business actors can carry out self-declaration with the assistance of a halal product process assistant (PPH). The

⁴² Iqbal Rafiqi and others, 'Typology Of Sharia-Compliant Business Capital Services to Support The Economic Development of Rural Communities', *Assyrikah : Journal of Islamic Economic Business*, 5.2 (2024), pp. 272–85.

⁴³ Elfira Maya Adiba and Faizal Amir, 'Prediction of MSMEs Interest for Halal Certification in Indonesia: Logistic Regression Approach', *Falah: Jurnal Ekonomi Syariah*, 8.2 (2023), pp. 18–31, doi:10.22219/jes.v8i2.24192.

regulation that is the legal basis for the implementation of *self-declaration of halal* certification is currently regulation number 39 of 2021. Government Regulation no. 39 of 2021 states that halal certification for micro and small businesses (MSEs) is based on the statement of business actors (Self Declare). In addition, Regulation of the Minister of Religion Number 20 of 2021 concerning Halal Certification for Micro and Small Business Actors, and Decree of the Head of the Halal Product Guarantee Agency Number 33 of 2022 concerning Technical Guidelines for Assisting the Halal Product Process in Determining Halal Certified Obligations for Micro and Small Business Actors based on Business Actor Statements.

Self declare halal certification is purely an effort to submit the process to obtain halal certification based only on the statement of business actors. Unfortunately, in the self-declaration mechanism, the function of MUI is replaced by the decision taken individually by members of the Fatwa Committee (an institution owned and formed by the Ministry of Religion and responsible to the Minister of Religion to determine the halalness of products). Where previously administratively there was no mention of the Fatwa Committee in the process of applying for halal certification. So this raises concerns about the dualism of tasks and institutional functions between MUI which has a fatwa session and the Ministry of Religion through the Fatwa Committee in the process of determining halal certification. This concern is seen in Decision No. 3 and 4 in the Decision Document of the Ijtima' Ulama of the Indonesian Fatwa Commission Number 15 / Ijtima' Ulama / VIII / 2024 concerning Issues of Halal Product Guarantee.

Important points related to this concern are then detailed into several important points such as the presence of Fatwa commitments is a form of government intervention into religious decisions that should be carried out through musyarawah or a trial of scholars, not a decision to attack. More details can be found in Decision No. 4 (d) and (e);

Decision No. 4 (d)

The Fatwa Committee formed by the Government on the basis of Law Number 6 of 2023 on Job Creation, creates dualism of institutions authorized to issue fatwas which results in legal uncertainty.

Decision No. 4 (e)

In the mechanism of determining halal Self Declare by the Fatwa Committee, it is not done through a fatwa session, but is decided individually by each Committee member. In determining the fatwa, the reference is not clear, there is no method (Manhaj) fatwa, as well as the system mechanism and procedure for determining the fatwa.

These two points textually state their rejection of the existence of a separate system in the *self-declaration* mechanism, namely the halal fatwa statement from the Fatwa Committee not through MUI with the Fatwa Session. The fatwa committee, which is purely formed by the Ministry of Religion, does not have a halal testing system and procedure, but only refers to the halal standards of BPJPH. While BPJPH halal standards in the *self-declaration* process also do not go through scientific testing but only through reviewing BPJPH halal standard documents. So that the ingredients and products produced only refer to document standards alone (*self claim*). Meanwhile, if through the MUI fatwa session, the MUI Fatwa Commission has a standard fatwa determination system and procedure as well as a clear, tested, and scientifically recognized *manhaj al-ifta'*. The determination of halal fatwa in the MUI Fatwa Commission is also carried out through a mechanism of fatwa hearing that can be accounted for, where the problem to be fatwa has been studied and explored in depth before being fatwa.

Concerns about *conflict of interest* must also be an important concentration in the case of self-declaration, because. The existence of the Fatwa Committee can be said to be mal-administration or simplification of the halal process of a product. testing a product until it gets halal certification should pay attention to several things: *first*, Decree of the Minister of Religion Number 519 of 2001

concerning the Implementing Agency for the Examination of Food Halal which appoints and delegates the implementation of halal certification to the Institute for the Assessment of Food, Drugs and Cosmetics of the Indonesian Ulema Council or known as (LPPOM-MUI).⁴⁴ *second, the determination of halal products is carried out by MUI through the MUI Halal Fatwa Session.*

The results of the trial were submitted by MUI to BPJPH as the basis for issuing a Halal Certificate. This is in line with the Halal Product Guarantee Law Number 33 of 2014 in article 33 paragraphs 1-4, where the halalness of a product issued by BPJPH is based on a written fatwa issued by the Indonesian Ulema Council. And *third*, there was document fraud in the process of applying for halal certification with a self-declaration mechanism.⁴⁵ This is due to the limitations of the Fatwa Committee expert team who only audits the ingredients and production process without a scientific testing process. So that the existence of the Fatwa Committee which is appointed and dismissed by the Minister of Religion and its position under the Ministry of Religion is not independent in making fatwa decisions.

Closing

Halal Certification as a process of guaranteeing the halalness of a product is the government's best effort to ensure the need for halal products for Indonesian Muslims. The existence of Law No. 11 of 2020 concerning Job Creation, Government Regulation no. 39 of 2021 and Minister of Religion Regulation No. 20 of 2021 concerning Halal Certification for Micro and Small Business Actors is clear evidence of the government's efforts in guaranteeing halal products in Indonesia. However, the presence of a *self-declaration* mechanism in applying for halal certification for MSEs and MSMEs seems to have to be reviewed, because the process of determining halal certification in it

⁴⁴ Suparto and others, 'Harmonisasi Dan Sinkronisasi Pengaturan Kelembagaan Sertifikasi Halal Terkait Perlindungan Konsumen Muslim Indonesia'.

⁴⁵ Saipul Rohman and Amoury Adi Sudiro, 'Efektivitas Dan Jaminan Hukum Sertifikat Halal Self Declare Di Indonesia', 6.2 (2023), pp. 5792–5801, doi:<https://doi.org/10.31933/unesrev.v6i2>.

is considered to raise concerns and institutional conflicts. This is in line with the Decision of the Ijtima 'Ulama of the Indonesian Fatwa Commission Number 15 of 2024 concerning Halal Product Guarantee Issues. The presence of the fatwa committee in the process of the *self-declaration* mechanism makes the duties and functions of fatwa inherent in MUI change into individual decisions by the fatwa committee of the ministry of religion. So that institutional dualism in carrying out the same tupoksi, namely the determination of halal fatwa (hahal certification) is inevitable. Therefore, in the future, further studies should be carried out regarding the mechanism for issuing fatwas for the self-declaration process, so as not to cause *conflicts of interest* or *trust issues* between institutions that both have one goal, namely providing guarantees of halal products. One of the most relevant things to do is to make halal certification applications entirely through one door (one regulation).

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