



BALTIC JOURNAL OF LAW & POLITICS

A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 2 (2022)
ISSN 2029-0454



Cite: *Baltic Journal of Law & Politics* 15:2 (2022): 842-862
DOI: 10.2478/bjlp-2022-001051

ANALYSIS OF SELF DECLARE SETTINGS ON HALAL CERTIFICATION FOR SME IN INDONESIA

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Received: July 21, 2022; reviews: 2; accepted: October 22, 2022.

Abstract

The principle of regulation of halal certification in the Halal Product Guarantee Act (UUJPH) is mandatory halal certification, applicable to all products circulating and entering all parts of Indonesia. The obligation to be certified halal is based on the statement of SME actors following the establishment of the Omnibus Law on Job Creation, the insertion of new provisions on the obligation of being halal-certified for Micro and Small Business (SME) actors (self declare). Some people misunderstand the definition of self-declaration as it is defined in the Omnibus Law on Creating Jobs. Its goals include establishing the Omnibus Law on Job Creation to facilitate and simplify all types of regulations that impede job creation, as well as Micro, Small, and Medium Enterprises (MSMEs). In line with this goal, the principle of self-declaration is viewed as facilitating and simplifying MSEs' access to halal certificates for their products. The purpose of this research is to discuss the construction of the principle of halal-certified obligations for MSE actors in the Omnibus Law on Job Creation. To obtain these answers, this paper was researched using the juridical-normative method to investigate the depth of the principles underlying the norms for regulating the obligation to be certified halal for SME actors, using secondary data sources and a statutory approach. This paper concludes that the application of the self-declaration principle for halal-certified obligations only applies to some SME actors who have met the criteria. Finally, this paper recommends strengthening the control of misleading information on halal

Keywords

Self Declaration, Halal Certificate, SMEs

Introduction

In Indonesia, halal certification is governed by several laws, including "(1) Law Number 8 of 1999 concerning Consumer Protection;¹ (2) Law No. 18 of 2009 on Livestock and Animal Health;² (3) Food Law Number 18 of 2012; and finally regulated by (4) Halal Product Guarantee Law Number 33 of 2014;³ as amended by (5) Law No. 11 of 2020 on Job Creation."⁴ All of the laws mentioned above are still in effect today, but all of them regulate halal certification using different principles.

The Consumer Protection Act (UUPK) stipulates that; "Enterprise performers are prohibited from creating and/or trading goods and/or services that do not comply with the halal output provisions stated on the label. Although the provision is in the form of a prohibition for enterprises to protect consumers, it is clear that the principle of regulating halal certification in the UUPK is voluntary. Where the prohibition on producing and trading products that do not follow the provisions for producing halal products only applies to business actors who include halal labels. However, if the business actor does not include a halal label, then he doesn't need to follow the provisions for producing halal."⁵

The focus of the regulation of the Animal Husbandry Law is only on animal products stating that "Animal products made in and/or imported into the Unitary State of the Republic of Indonesia for distribution must be accompanied by an animal health certificate as well as a halal license."⁶ The regulation as intended contains a mandatory principle because the phrase "must be accompanied by a halal certificate" is applied to all animal products and their derivatives produced in and/or imported into the territory of Indonesia,⁷ more strictly, this provision only regulates the obligation of halal certificates only for animal products that are indeed legalized.⁸

The principle of regulation of halal certification is different from the Food Law, which stipulates that "(1) Everyone who provides food domestic market for trade is required to include a label inside and/or on packaged foods; (2) Everyone who imports goods food for trade is required to include a label inside and/or on

¹Hereinafter referred to as UUPK, promulgated in the State Gazette of the Republic of Indonesia (1999, No. 42) and Supplement to the State Gazette of the Republic of Indonesia No. 3821.

²Hereinafter referred to as the Animal Husbandry Law, promulgated in the State Gazette of the Republic of Indonesia (2009, No.84), and an additional Sheet of the Republic of Indonesia No. 5015.

³Hereinafter referred to as UUJPH, promulgated in the State Gazette of the Republic of Indonesia (2014, No. 295), and an additional Sheet of the Republic of Indonesia No. 5604.

⁴Hereinafter referred to as the Omnibus Law on Job Creation, promulgated in the State Gazette of the Republic of Indonesia (2020, No. 245), and an additional Sheet of the Republic of Indonesia Number 6573.

⁵Zulham, *Peran Negara dalam Perlindungan Konsumen Muslim terhadap Produk Halal*, (Jakarta: Prenada Media, 2018): 326.

⁶Law on Livestock and Animal Health (2009, No. 18), art. 58, sec. 4.

⁷Zulham, *Op. Cit.*, 327.

⁸See the Decision of the Constitutional Court of the Republic of Indonesia No. 2/PUU-IX/2011.

packaging materials when entering the territory of the Unitary State of the Republic of Indonesia; and (3) Inclusion of labels inside and/or on packaged food as referred to in paragraphs (1) and (2) written or printed in Indonesian language and containing at least one of the accompanying."⁹ After reading the regulation in its entirety, it is clear that the principle of regulation of halal certification in the Food Law is mandatory if the required animal.¹⁰

UUJPH regulates halal certification more strictly than the previous law, stipulating that; Products entering, circulating, and being traded in Indonesia must be halal certified.¹¹ It is clear that this provision requires that every product that is sourced from halal ingredients must have a halal certificate, this provision contains the principle of mandatory halal certification.¹² The obligation to be certified halal in the regulations as intended has not taken into account the aspect of the ability of business actors to certify halal products.

The provisions of the UUJPH as referred to until now have not been implemented perfectly by the Halal Product Guarantee Agency (BPJPH),¹³ whereas UUJPH has stipulated that; The duty to be certificated halal for brands circulating and traded in Indonesian territory, as referred to in Article 4, will take effect 5 (five) years after the passage of this Law.¹⁴

Not to mention the provisions of Article 4 of the UUJPH are implemented perfectly based on the time frame, but the Omnibus Law on Job Creation has inserted the provisions of Article 4A in the UUJPH. Based on the above provisions, the author is of the view that the regulation of halal certification in the Omnibus Law on Job Creation has taken into account the aspects of business actors, namely Micro and Small Enterprises (SMEs), so that the obligation to be certified halal for MSEs is based on the principle of self-declaring/declaratory of halal products. It is understood that the obligation to be certified halal for MSE actors aims to avoid the occurrence of inadequate, incomplete, non-objective, and even misleading information on halal consumers.¹⁵

Although the UUPK, Animal Husbandry Law, and Food Law are still in effect, the author believes that the government oversight of the halal logo in Indonesia is as regulated in the UUJPH. According to UUJPH, "at the time this law comes into force, all laws and regulations governing Halal Product Guarantee (JPH) are

⁹*Law on Food* (2012, No. 18), art. 97.

¹⁰Zulham, *Op. Cit.*, 332.

¹¹*Law on Guaranteed Halal Products* (2014, No. 33), art. 4.

¹²Zulham, *Op. Cit.*, 367.

¹³This is evidenced by the official page of the Halal Product Assurance Agency of the Ministry of Religion of the Republic of Indonesia, it is noted that: Application for Certification 0, Processed 0, New Certificate 0, Extended Certificate 0 (September 2021) // <http://halal.go.id/>.

¹⁴*Law on Halal Product Guarantee* (2014, No. 33), art. 67, sec. 1.

¹⁵As Rühl explains, "Information asymmetries occur when one party to a transaction knows more about the quality of the product or services offered than the other. These asymmetries are usually regarded as reasons for regulating transactions if the less-informed party is not in a position to acquire the relevant information, or if acquisition of relevant information is too costly." Giesela Rühl, *Consumer Protection in Choice of Law*, (Cornell University, *Cornell International Law Journal*, Vol. 44, 2011): 573.

declared still valid as long as they don't yet conflict with the provisions of the Act."¹⁶ Thus, the author believes that UUJPH is the legal umbrella (umbrella act) for the implementation of the Halal Product Guarantee in Indonesia, in addition to being a later law superseded by an earlier one (*lex posterior derogat legi priori*).¹⁷

Broadly speaking, shifts and changes in the construction of the principle of halal certification arrangements in the UUPK, the Animal Husbandry Law, the Food Law, and the JPH Law as amended by the Omnibus Law on Job Creation can be seen in the table as follows.

Table 1. Changes in the Basic Construction of Halal Certification Arrangements

Constitution	Year	Principle	Rule Aspect	
			Product	Producer
Consumer protection	1999	Voluntary	Total	Total
Livestock and Animal Health	2009	Mandatory	Animal	Total
Food	2012	Mandatory if Required	Required	Required
Halal Product Guarantee	2014	Mandatory Halal Certification	Total	Total
Job Creation	2020	Self Declare	Based on Criteria	UMK

Source: Data processed, 2022

The obligation to be certified halal in Indonesia applies to all products, except for products that are sourced from haram ingredients. This is what is called mandatory information, both information on halal products and information on haram products, both of which are required in the Indonesian legal system, namely the Halal Product Guarantee system.¹⁸ To provide legal certainty regarding the halalness of products circulating in the community, the JPH system without exception also enforces mandatory information on MSEs. The obligation to be certified halal based on self-declaration by SME actors does not apply to all SME actors but only applies to SME actors who have met the criteria.¹⁹

Based on the above background, this paper will analyze the regulation of the obligation to be certified halal for SME actors using the principle of self-declaring/declaration of halal products. Furthermore, this paper will also discuss and analyze product typologies and product characteristics that are mandatory and not

¹⁶Law on Halal Product Guarantee (2014, No. 33), Art. 67 No. 1.

¹⁷Ake Frandberg, "The Legal Order: Studies in the Foundations of Juridical Thinking," (Berlin: Springer, 2018): 197.

¹⁸Hery Purwanto, Sumunar Jati, and Ahmad Rofiq, "Policy Analysis of Enforcement of Halal Product Guarantee Regulations Through The Regulatory Impact Analysis (RIA) Approach," *Journal of Digital Marketing and Halal Industry* 3.2 (2021): 149-164.

¹⁹H. Oemar, et al., "Halal awareness, halal certification issues, and challenges for micro businesses in Bandung." *Islam, Media and Education in the Digital Era*. Routledge, 2022. 63-69.

mandatory for halal certification, because understanding the typology and product characteristics can affect the perspective on the mandatory and non-mandatory SMEs criteria for halal certification (Daswani & Khan, 2021).

1. METHODOLOGY AND SCOPE OF RESEARCH

Based on the objectives to be achieved, this paper uses the juridical-normative method²⁰ to analyze the principles behind the legal norms written in the legislation using the statute approach,²¹ namely the principle of regulating the obligation to be certified halal for MSE actors based on self-declaring/declaratory halal products as regulated in the Omnibus Law on Job Creation (Joshua et al., 2020; Kartini et al., 2021).

The data sources for this paper are only supplementary data in the form of principal materials, relevant secondary materials, and tertiary judicial materials, according to the method used.²² Secondary information obtained was discussed and analyzed in depth to examine the considerations and the principle of regulating the obligation to be certified halal for SME actors. The data referred to are analyzed qualitatively, critically, and argumentatively and presented with descriptive analysis techniques, so that they answer the purpose of this paper.

2. RESULT AND DISCUSSION

This paper aims to respond to the regulation of the duty to be halal-certified for microenterprise actors based on the principle of self-declaring/declaratory halal products, as discussed below:

2.1 TYPES AND CHARACTERISTICS OF PRODUCTS REQUIRED FOR HALAL CERTIFICATION

In general, the types of products based on their products can be divided into two parts, namely: (1) massive products; and (2) non-massive products. Both have an important role to meet consumer needs in the market, but both create different market shares, massive products will create mass consumers²³ while non-massive products will also create limited consumers (non-mass consumers). In simple terms, it can be said that the product will affect the formation of the number of consumers, of course, the types of products will also influence the formation of consumers.

Mass production is always related to increasing product standardization, as well as being one of the company's strategies because of its ideal efficiency

²⁰Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum; Normatif dan Empiris*, (Yogyakarta: Pustaka Pelajar, 2010): 34

²¹Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia, 2007): 302.

²²Soejono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif*, (Jakarta: Raja Grafindo Perkasa, 2010): 13

²³Charles F. Sabel & Jonathan Zeitlin, *World of Possibilities, Flexibilities and Mass Production in Western Industrialization, Studi in Modern Capitalism*, (Cambridge: Cambridge University Press, 1997): 8. Suresh Kotha, "From Mass Production to Mass Customization: The Case of the National Industrial Bicycle Company of Japan," *European Management Journal*, Vol. 14, No. 5 (October 1996): 442-443.

principle.²⁴ However, massive products have the potential to cause the risk of defective products that do not meet the standards (substandard), and even dangerous (hazardous products), as well as the occurrence of an unbalanced relationship between producers and consumers.²⁵

In contrast, non-massive products are produced traditionally and manually without the help of machines or with the help of simple production machines²⁶ Due to its limitations, non-massive products are marketed in a simple and limited way. Therefore, in non-massive products between producers and consumers, it is still possible to meet face to face directly, as Menrad explained that one of the criteria for non-massive products is local.²⁷ Unlike the case with massive products, where producers and consumers never meet face to face.²⁸

Meanwhile, product characteristics (product characteristics) are influenced by consumer efforts to detect, test, evaluate, and validate products, which can be divided into three categories: (1) search attributes; (2) experience character traits; and (3) credence characteristics.²⁹

Browse features are followed by a description that can be accurately and efficiently evaluated, tested, confirmed, and identified by consumers before they buy the product.³⁰ Consumers can test the identity of a product like this individually and manually using only their five senses. On this basis, it is referred to as search criteria, because consumers can independently search for and conduct tests accurately and efficiently.

Knowledge character traits are followed by a description that can be accurately and efficiently assessed, evaluated, confirmed, and identified by consumers after they purchase and use the item.³¹ within a certain period, based on his experience using the product.³² The ability of consumers to test, evaluate and validate products based on their experience using similar products, is referred to as experience characteristics because products can be tested with consumer experience.

Finally, credence characteristics are product characteristics that cannot be evaluated, tested, validated, and detected accurately and efficiently by consumers,

²⁴Ray Batchelor, *Henry Ford: Mass Production, Modernism and Design*, (Manchester: Manchester University Press, 1994): 124.

²⁵Inosentius Samsul, *Perlindungan Konsumen, Kemungkinan Penerapan Tanggung Jawab Mutlak*, (Jakarta, Universitas Indonesia, 2004): 30

²⁶Pasi Koski, *Learning at Work in Traditional Manufacturing: Analysing Organizational Learning Processes in a Tyre Factory*, (Finland: University of Tampere, Work Research Centre, 2002): 6

²⁷Klaus Menrad, *Traditional Products and the Economic Impact of Innovation*, (Straubing: Zentrum Straubing, 2007): 5.

²⁸Zulham, *Op. Cit.*, h181.

²⁹Gilles Grolleau and Sandos BenAbid, "Fair Trading in Markets for Credence Goods, An Analysis Applied to Agri-Food Products," *Intereconomics* Vol. 36, No. 4(2001): 208.

³⁰Luke Garrod, et al., *Competition Remedies in Consumer Markets*, *Loyola Consumer Law Review*, *Loyola University of Chicago School of Law* Vol. 21(2009): 451.

³¹Jonathan M. Barnett, "Intermediaries Revisited: Is Efficient Certification Consistent with Profit Maximization?," *Journal of Corporation Law* Vol. 37, Spring (2012): 487.

³²Henry N. Butler & Jason S. Johnston, "Reforming State Consumer Protection Liability: an Economic Approach," *Columbia Business Law Review* Vol. 1 (2010): 62-64.

even after consumers buy and use the product in question.³³ The inability of these consumers is because they do not have the technical expertise to test, evaluate and validate them, even though the product has been widely used.³⁴ It is called credence characteristics because consumers do not have the technical expertise to differentiate, test, and evaluate products,³⁵ then consumers only rely on their trust and confidence by accepting that the products offered by producers are true and as they should be.

If the characteristics of the product are associated with halal products, it can be explained as follows: (1) Products with search characteristics that are still intact in origin and authenticity and processed at all, such as guava or a live cow, consumers can test and validate directly, accurately and efficiently based on his visibility and knowledge. (2) Products with experience character traits that were processed but whose origins and authenticity are still recognized, and have not been added to foods, even if they have been mixed with other ingredients, such as guava being processed into rujak already mixed with other ingredients but the origin is still known (the author makes an exception for animal products from this characteristic, which will be discussed later). (3) Meanwhile, products with credence characteristics have been processed with other ingredients without further knowing the origin and authenticity of the raw materials, such as guava juice, raw material from guava, processed with other materials such as sugar, soda, mineral water and packaged to make it more durable, in product characteristics like this, consumers simply cannot test, evaluate and validate their halalness because they do not have technical expertise. Regarding animal products, whether their origins are known or not, the author agrees with Cranston's opinion that animal products are credence goods,³⁶ as long as consumers cannot directly evaluate and validate their halalness.³⁷

Predicated on this clarification, it is clear that the experience and credibility character traits do not provide correct info³⁸ regarding the halalness of the product, even after the consumer buys and uses it, then halal certification and labeling as product identification, consumer information, and product marketing³⁹ is a vital communication tool for consumers to find out the halalness of the product. Certification and labeling play an important role in shifting consumer perceptions

³³Nicole J. Olynk, "Labeling of Credence Attributes in Livestock Production: Verifying Attributes which are more than "Meet the Eye," *Journal of Food Law and Policy* Vol. 5(2009): 184. Omari Scott Simmons, "Corporate Reform as a Credence Service," *Journal of Business and Technology Law, Early Reflections on the Financial Crisis* Vol. 5(2010): 114.

³⁴Jim Hawkins, "Financing Fertility," *Harvard Journal on Legislation* Vol. 47, Winter (2010): 128.

³⁵Tracey M. Roberts, "Innovations in Governance: A Functional Typology of Private Governance Institutions," *Duke Environmental Law and Policy Forum* Vol. 22(2011): 108.

³⁶Sarah Cranston, "So Sue Me: How Consumer Fraud, Antitrust Litigation, and Other Kinds of Litigation Can Effect Change in the Treatment of Egg-Laying Hens Where Legislation Fails," *Rutgers Journal of Law and Public Policy* Vol. 9, Spring (2012): 78

³⁷Zulham, *Op. Cit.*, 187.

³⁸Jeremy N. Sheff, "Biasing Brands," *Cardozo Law Review* Vol. 32(Maret 2011): 1303.

³⁹Raymond O'Rourke, "Food Safety and Product Liability," (Bembridge: Palladian Law Publishing, 2000): 59-73.

from experience characteristics to search qualities, and from content, and validity characteristics to search character traits.⁴⁰ Thereby also, product halalness on experience and credence qualities can be evaluated and validated by consumers through visible labels (search characteristics), allowing consumers to select products based on honest and factual information.

The authors combine the analysis and validation of the types of products, characteristics of products, and halal certification as well as to prove which products must be certified halal. First, for massive products with (1) search characteristics that do not need halal certification and labeling; (2) experience characteristics mandatory halal certification and labeling, because massive and experiential characteristics are credence characteristics; and (3) credence characteristics mandatory halal certification and labeling. Second, for non-massive products with (1) search characteristics that do not need halal certification and labeling; (2) experience characteristics, as long as producers and consumers can still meet face-to-face, not mandatory halal certification and labeling, only need market supervision; and (3) the credence characteristics are actually non-massive and experiential products and do not require halal certification and labeling, only need market supervision, except for animal products which are mandatory for halal certification.

Based on the description of the typology and product characteristics above, the author is of the view that not all products must be certified halal, both from the product aspect and from the producer aspect. The obligation to be certified halal is only for products with certain types and characteristics. The analysis of the types of products, characteristics of products, and the obligation to be certified halal above can be seen in the following table:

Table 2. Analysis of Product Types and Characteristics for Halal Certification

Types of Products	Product Characteristics	Halal Certification
Massive Products	Search Characteristics	None
	Experience Characteristics	Mandatory
	Credence Characteristics	Mandatory
Non-Massive Products	Search Characteristics	None
	Experience Characteristics	Voluntary, Control
	Credence Characteristics	Voluntary, Control

Source: Data processed, 2022

2.2 OBLIGATION TO BE HALAL CERTIFIED FOR UMK ACTORS BASED ON SELF DECLARATION

Previously, the Indonesian legal system was not familiar with the terminology of omnibus law,⁴¹ as regulated in Law No. 12 of significant Impact on

⁴⁰Gilles Grolleau and Sandos BenAbid, *Fair Trading in Markets for Credence Goods, An Analysis Applied to Agri-Food Products, Op. Cit.*, 214.

⁴¹Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, "Omnibus Law in Indonesia: A Comparison to the United States and Ireland," *Lentera Hukum* Vol. 7 Issue 3 (2020): 322

students Legislation Establishment.⁴² The idea of omnibus law entered the academic world of Indonesian law and legal politics, after President Joko Widodo's Inaugural Speech on October 20, 2019, stated:

"We have to simplify all forms of regulatory obstacles, we have to cut them, have to trim them. The government will invite the DPR to issue 2 major laws. First, is the Employment Creation Act. Second, is the MSMEs Empowerment Law. Each of these laws will become an omnibus law, which is one law that simultaneously revises several laws, even dozens of laws. Dozens of laws that hinder job creation were immediately revised at once. Dozens of laws that hinder the development of MSMEs will also be immediately revised at once."⁴³

Functionally, An omnibus law, as according Jimmy, seems to be a rule that can cover a large amount of material or the entire material of other laws that are interrelated, either directly or indirectly. This type of practice is certainly not common in the civil law system, but it is deemed good for the time being and is still practiced today as the Omnibus Law or the Omnibus Law.⁴⁴

Returning to President Joko Widodo's Inauguration Speech, it is clear that the goal of the omnibus law is to simplify regulations in the field of job creation and SME development. The President also firmly stated that all laws that hinder job creation and hinder the development of SME were immediately revised (changed) at once, and that was in the omnibus law.⁴⁵ Based on President Joko Widodo's statement and related to the regulation of the obligation to be certified halal for SME actors based on self declare/self-claim, it can be concluded that the Omnibus Law on Job Creation aims to facilitate SME with halal certificates. However, some people have different views on this provision, that self-declaration/declaration of halal products is not accompanied by assistance, verification, and validation to prove the halalness of the product.

As Saleh Partaonan Daulay, the Daily Executive of the Chair of the National Mandate Party (PAN) Faction in the House of Representatives (DPR) of the Republic of Indonesia, conveyed a critical note on the Omnibus Law on Job Creation. The PAN faction considers that the provisions in Article 49 concerning Halal Product Guarantee, particularly in Article 4A that the obligation to be certified halal for UMK actors is based on a statement by UMK actors (self-declaring), even if it is carried out based on halal standards set by BPJPH, has a high chance of giving birth to moral hazard practices. what is done by UMK, whose truth cannot be verified?⁴⁶

⁴²*Promulgated in the State Gazette of the Republic of Indonesia* (2011, No. 82), and an additional Sheet of the Republic of Indonesia No. 5234.

⁴³Joko Widodo, "Transkrip Pidato Masa Awal Jabatan Presiden Republik Indonesia Masa Jabatan 2019-2024, di Gedung Nusantara Jakarta," (20 October 2019), Official Page Presiden Republik Indonesia.

⁴⁴Jimly Asshiddiqie, "Omnibus Law Penyederhanaan Legislasi dan Kodifikasi Administratif," (Jimly School Law and Government, Desember 2019) <https://www.jimlyschool.com/baca/34/uu-omnibus-omnibus-law-penyederhanaan-legislasi-dan-kodifikasi-administratif>, diakses pada tanggal 17 September 2021.

⁴⁵Bayu Dwi, Anggono and Fahmi Ramadhan Firdaus, "Omnibus law in Indonesia: A comparison to the United States and Ireland," *Op. Cit.*, 319.

⁴⁶Saleh Partaonan Daulay, "Oke News, Kritik Fraksi PAN Terkait Pengesahan RUU Cipta

Halal Watch (IHW) Executive Director Ikhsan Abdullah said the Omnibus Law on Job Creation allows producers to declare that their products are halal. That way, the ministry or institution that deals with halal certification can be easily sidelined. If it is only halal by self-declaring, then it will be unclear what halal is, and the main problem is, that halal is not a licensing issue which in the Omnibus Law is included in the licensing and ease of doing business cluster. But halal is Islamic sharia law which is the domain and authority of scholars.⁴⁷

Likewise, Khaswar Syamsu, Head of the Center for Halal Science Studies, Bogor Agricultural University (IPB), after describing the provisions of Article 4A paragraphs (1) and (2) of the UUJPH, then explained that halal certification should not be based on self-declaration by business actors without any evidence and verification. If everything can be declared halal by business actors themselves (although not necessarily halal), then there is no point in halal certification. Based on the author's observations, Khaswar Syamsu published this article on April 1, 2021, while Government Regulation Number 39 of 2021 concerning the Implementation of the Halal Product Guarantee Sector was previously promulgated, namely on February 2, 2021.

This view is sufficient to prove qualitatively, that there are indeed differences of opinion regarding the self declare. The author argues that the difference between the two views above occurs because of the response to avoid information asymmetries between MSEs and consumers, which in turn can lead to market failure,⁴⁸ because of consumer doubts about the market mechanism. Because of that, the author does not criticize the two views, but the author understands that both views are trapped in the self-declaration principle contained in the Omnibus Law on Job Creation. Indeed, reading the provisions of Article 4A UUJPH, cannot be separated from the provisions of Article 4 UUJPH.

After reading the provisions of Article 48 of the Job Creation Omnibus Law, the author concludes that this provision is an inseparable part of the UUJPH, because Article 48 of the Job Creation Omnibus Law changes and/or inserts 24 new articles in the UUJPH. Thus, the provisions of Article 4 UUJPH and Article 4A as referred to in Article 48 of the Omnibus Law on Job Creation, are mutually bound to each other. The explanation of the two articles must be carried out in parallel too because their position is under the legal umbrella (umbrella act) UUJPH.

Before actually discussing the obligation for SME actors to be certified halal founded on the assumption of self-declaration/declaratory of halal products, the

Kerja,"(6 October 2021)//<https://nasional.okezone.com/read/2020/10/06/337/2288979/kritik-fraksi-pan-terkait-pengesahan-ruu-cipta-kerja>.

⁴⁷Ikhsan Abdullah, Antara News, "Halal Watches: UU Cipta Kerja Berpotensi Lemahkan MUI dan Kemenag,"(7 October 2020) //<https://www.antaraneews.com/berita/1770561/halal-watch-uu-cipta-kerja-berpotensi-lemahkan-mui-dan-kemenag>.

⁴⁸Anthony I. Ogus, *Regulation Legal Form and Economic Theory*, (Oregon: Hart Publishing, 2004): 30. Myriam Senn, *Non-State Regulatory Regimes, Understanding Institutional Transformation*, (Berlin: Springer, 2011): 7

SME criteria should be established first. Article 6 of Law No. 20 of 2008 Concerning Micro, Small, and Medium Enterprises⁴⁹ as amended by the Omnibus Law on Job Creation states that "(1) Requirements for Micro, Small, and Medium Enterprises may include business capital, turnover, total wealth indicators, annual sales results, or financial value, incentives and disincentives, application of efficient technologies, local content, or several workers by business sector; (2) Even farther system level the criteria for Micro, Small, and Medium Enterprises shall be regulated in a Government Oversight."

Furthermore, Government Regulation Number 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises establishes SME criteria based on capital or annual sales results.⁵⁰ The explanation of the comparison of the SMEs criteria above, in more detail, is described in the following table:

Table 3. Criteria for Micro and Small Enterprises (SMEs)

Type of business	Capital (IDR)	Annual Sales Result (IDR)
Micro	1.000.000.000 does not include land and buildings for business premises	2.000.000.000
Small	1.000.000.000 – 5.000.000.000 does not include land and buildings for business premises	2.000.000.000 – 15.000.000.000

Source: Data processed, 2022

State Regulation No. 39 of 2021 Relating to the Application of the Halal Standards Assurance Sector⁵¹ stipulates that the obligation to be certified halal for SME actors is based on a statement by SME actors. However, PP JPH limits the criteria for SME actors who have the right to self-declare namely, "(1) the product wasn't at risk or uses ingredients that have been confirmed to be halal; and (2) Muslim consumers and simple production process." More detailed criteria for SME actors to get the right to self-declare will then be regulated by BPJPH Regulations."

PP JPH specifies that the statement of SMEs actors (self-declaration) is made by the halal standards established by BPJPH and that it at least (at least) consists of: (1) a statement from enterprises in the form of a contract/pledge containing: a) the halalness of materials and products used; and b) Halal Product Process (PPH); and (2) the presence of PPH assistance. The Halal Product Process, as it is known, is a series of activities that ensure the halalness of the product, including

⁴⁹Hereinafter referred to as the MSME Law, promulgated in the State Gazette of the Republic of Indonesia (2008, No.93), and Supplement to the State Gazette of the Republic of Indonesia No. 4866.

⁵⁰Government Regulation on Ease, Protection, and Empowerment of Cooperatives and Micro, Small and Medium Enterprises (2021, No. 7), art. 35.

⁵¹Hereinafter referred to as PP JPH, promulgated in the State Gazette of the Republic of Indonesia (2021, No. 49), and an additional Sheet of the Republic of Indonesia No. 6651.

material supply, preparation, stockpiling, packaged foods, distribution, sales, and display of products. Moreover, the declaration of the Hereinafter regarded as PP JPH, codified in the Government Gazette of the Republic of Indonesia Year 2021 Number 49 and an additional Sheet of the Republic of Indonesia Number 6651 actors is submitted to the BPJPH for transmission to the MUI (Indonesian Religious Leader). MUI held a Halal Fatwa Session after receiving the document from BPJPH to determine the halalness of the brand. Finally, BPJPH issued a halal logo, of course, based on MUI's Halal Fatwa.⁵²

PPH assistance is provided by Islamic community organizations or Islamic religious institutions that are legal entities and/or universities, and it can also be provided by government agencies or collaborating business entities. The goal is for SMEs to verify and ratify self-declaratory/declaratory halal products. However, the implementation of further PPH assistance is regulated in the BPJPH regulations.⁵³

The application for a halal certificate submitted by SME actors based on self-declaration is free of charge (free), even though it takes into account the state's financial capacity. Again PP JPH stipulates that the criteria and procedures for determining SME actors who are not subject to a fee for applying for halal certification will be regulated later in the BPJPH Regulation.⁵⁴

After elaborating on the above provisions, it can be seen that the allegations against the obligation to be halal certified for SME actors based on self-declaring/declaratory halal products without going through proof, verification, and assistance are not true. On the contrary, the provisions above require that the principle of self-declaration or declaration of halal products must comply with the production process in a halal manner, through proof, verification, and even assistance to ensure the halalness of the product. So self-declare referred to in the Omnibus Law on Job Creation, is not a principle that is not responsible for the halalness of its products, but is accounted for by certain mechanisms as regulated in PP JPH, to create symmetric information in turn fair trading.⁵⁵

After examining the provisions governing halal certification for SME actors, the author is of the view that self-declaring or declaratory halal products do not cancel or exclude mandatory halal certification. Self-declaring or declaratory halal products cannot stand alone, if they stand alone they will certainly produce asymmetries of information that can harm the market. Because also, actually self-declaring or declaratory halal products as regulated in Article 4A UUJPH and Article 79 PP JPH, are an inseparable part of mandatory halal certification as regulated in Article 4 UUJPH.⁵⁶ Thus, it can be explained that UUJPH wants the creation of

⁵²Government Regulation on the Implementation of the Halal Product Assurance Sector (2021, No. 39), Art. 79.

⁵³Government Regulation on the Implementation of the Halal Product Guarantee Sector (2021, No. 39), Art. 80.

⁵⁴Government Regulation on the Implementation of the Halal Product Guarantee Sector (2021, No. 39), art. 81.

⁵⁵Siti Nur Azizah, "Self Declaration Halal Inside Omnibus Law on Job Creation." International Journal of Social Science Research and Review 5.4 (2022): 138-147.

⁵⁶Muhammad Anwar Fathoni, "Potret Industri Halal Indonesia: Peluang dan

mandatory information, including for SMEs, both information on halal products and information on haram products, by using labels to create fair trading.

It is true, that the Omnibus Law on Job Creation makes it easy for MSEs to get a halal certification, which is easy. Called easy because of the elements of the criteria: the product is not risky; using ingredients that have been confirmed to be halal; a production process that is confirmed to be halal; and simple. This means that the Omnibus Law on Job Creation builds the convenience of the self-declaring principle starting from the principle of certainty for guaranteeing halal products, namely: product certainty, material certainty, process certainty, and simplicity certainty, all of which must be halal first, after which SMEs actors get the right to self declare or declare halal products.⁵⁷ After that, although MSE actors have self-declared or declared halal products based on predetermined criteria, this does not necessarily eliminate the SME actors' obligation to obtain halal certification if the product is indeed halal, as referred to in mandatory information, more specifically in mandatory halal certification. Based on this argument, the author questions whether all SME products must be halal certified, seeing the simplicity of the products, materials, and production processes that are very easy to ensure that they are halal, this question will be answered next.

2.3 ANALYSIS OF TYPES AND CHARACTERISTICS OF PRODUCTS ON THE OBLIGATION TO BE HALAL CERTIFIED FOR SMES ACTORS

As previously explained, the Omnibus Law on job creation makes it easy for MSEs to get halal certificates for their products, which are easy to validate. Only self-declaring MSE actors can apply for a halal logo, criteria that have been determined, namely: a product that is not at risk; the use of ingredients that were confirmed to be halal; the production process is confirmed to be shariah-compliant; and simple production. However, if the elements of these provisions are parsed and analyzed using the types of products and characteristics of products as previously explained, the results will be:

- a. Product is not risky (*haram*/forbidden): Search Characteristics;
- b. Using ingredients that have been confirmed to be halal: Search Characteristics;
- c. Halal-assured production process: Experience Characteristics;
- d. Simple⁵⁸: *Non-Massive Products*.

Tantangan," *Jurnal Ilmiah Ekonomi Islam* Vol. 6 No. 3 (2020): 428-435.

⁵⁷ Nevey Varida Ariani, Maria Lamria, and Fuzi Narindrani, "Legal Aspect of Individual Company for Micro and Small Business in Omnibus Law on Job Creation," *2nd International Conference on Law and Human Rights 2021 (ICLHR 2021)*. Atlantis Press, 2021.

⁵⁸ Anne Gunawati, Dede Agus, and Muhamad Muslih, "Food Security Innovation In Halal Certification Regulation On Food Products," *Madinah: Jurnal Studi Islam* Vol. 8

No⁵⁸ Muhammad Anwar Fathoni, "Potret Industri Halal Indonesia: Peluang dan Tantangan," *Jurnal Ilmiah Ekonomi Islam* Vol. 6 No. 3 (2020): 428-435.

⁵⁸ Nevey Varida Ariani, Maria Lamria, and Fuzi Narindrani, "Legal Aspect of Individual Company for Micro and Small Business in Omnibus Law on Job Creation," *2nd International Conference on Law and Human Rights 2021 (ICLHR 2021)*. Atlantis Press, 2021.

⁵⁸ Anne Gunawati, Dede Agus, and Muhamad Muslih, "Food Security Innovation In Halal. 2

Whereas previously the author has explained that products with search characteristics do not need halal certification, because consumers can prove, evaluate, test, and validate their halalness by using the five senses before buying. As for products with experience characteristics, if they are produced massively then certification is mandatory, because there is no direct meeting between producers and consumers, besides actually massive and experiential characteristics, are credence characteristics, but if they are produced non-massively then halal certification is not mandatory, only requires market supervision, where there is a direct meeting between producers and consumers. As for non-massive products, it depends on the types of products, if non-massive products are animal products, then halal certification is mandatory because of the difficulty of consumers to validate the halalness of animal products, such as slaughtered animals.⁵⁹

Looking at the criteria for microbusiness actors with a capital amount of up to IDR. 1,000,000,000, - (one billion rupiahs) exclusive of capital assets for business property, the limitation of these standards also sees microbusiness actors with capital far below that. Based on market experience in Indonesia, many micro-entrepreneurs operate with as little as IDR 10,000,000.- (ten million rupiahs). Among them are rujak traders, fried food traders, and satay traders, all of these traders are included in the criteria for SME actors who must be certified halal according to Article 4A UUJPH. If the merchandise of such a micro-enterprise is tested and analyzed using types of products and characteristics of products, it can be described as follows.⁶⁰

Rujak trade, for example, with a capital of ten million rupiahs, of course, is produced simply and traditionally, so based on the type, they are non-massive products. In general, the raw materials consist of fruits and spices (sauce), the fruits are cut and processed in front of the buyer, while the spices are processed at the merchant's house. Of course, consumers can validate the halalness of the fruits that are cut and processed in a visible way (search characteristics), while the spices that are processed at the merchant's house contain the following compositions: water, chili, tamarind, salt, and brown sugar. Water, chili, and tamarind in principle are search characteristics if they are still intact, but if they have been processed they will turn into experience characteristics because they can be validated sensory after consumption. However, salt and brown sugar are credence characteristics, while rujak traders get salt and brown sugar from the market which is massively produced. The author thinks that salt and brown sugar, which are massive and credentials products, must be certified halal so that they change the view from credence characteristics to search characteristics. Thus, rujak traders have already

(2021): 235-250.

⁵⁹ Muhamad Muslih, "Prospects for the Development of Halal, Thoyib, and Hygienic Food Production During the New Normal Covid-19 Period as Supporting Pillars of National Food Security." *Unram Law Review* Vol. 5 No. 2 (2021): 1-23

⁶⁰ Fitri Rafianti, Robi Krisna, and Erwin Radityo, "Dinamika Pendampingan Manajemen Halal Bagi Usaha Mikro dan Kecil Melalui Program Self Declare," *Jurnal Sains Sosio Humaniora* Vol. 6 No.1 (2022): 636-643.

obtained halal salt and brown sugar, because only halal salt and brown sugar are available in the market. Then the rujak traders process water, chili, tamarind, salt, and brown sugar into a rujak spice at home, and consumers don't see it visually. In this position, rujak seasoning is a product with experience characteristics, because consumers can test the composition of rujak seasoning after consumption, plus direct meetings between traders and consumers (even close acquaintances) so that they can correct the product on the spot.⁶¹ Thus, the authors conclude that the unit of fruit, salad dressing, and business capital are non-massive experiential products that do not have to be certified halal, and only need market supervision to test their halalness using periodic rapid tests, so that consumers get information.

In general, micro business traders in Indonesia, sell their products based on seasonal harvests and market demand, so the trading business has changed. Call it a fried banana trader, because of changes in the banana harvest season, the sword can change its merchandise into fried rice, and that can happen again and again in the Indonesian market. If using the principle of mandatory halal certification, even though micro traders can use self-declaration, then halal certification will be carried out repeatedly for the same micro business traders, due to changes in the type of merchandise. In this position, the author questions the effectiveness and efficiency of halal certification, both for producers, consumers, and markets, where consumers can validate their halalness based on their experience and introduction to traders, even between producers and consumers in the same market, where both of them know each other's origins product raw.

Judging from the subjective aspect of very micro business actors to enforce the obligation to be certified halal, the derivation of the regulation (BPJPH Regulation) will have to look at the ability of micro business actors to access the market. In remote and remote areas, in general, micro-enterprises live in the same market with their consumers, and even know each other based on one another's religion, or have a family with their consumers, where the recognition and sense of trust between the two have been built for a long time. Both of them already know each other about the origin of the raw materials for the products being traded, perhaps because there is only one market in the village, and that is weekly.⁶² The author is still questioning the effectiveness and efficiency of the obligation to be certified halal, the perspective of the subjective ability of this very micro-business actor.

Unlike the case with micro business actors who are in remote places (remote areas), but are often visited by migrants for certain purposes. Although business actors have limitations in accessing the market and getting to know each other with residents, it is different for newcomers who do not know these micro business actors. To increase public (visitors) trust in the halalness of their merchandise, halal

⁶¹ Mary Ann Maslak, "Women Learning About Entrepreneurship: The Case of Indonesia," *Education and Female Entrepreneurship in Asia*. Palgrave Macmillan, New York, 2018. 155-176.

⁶² Nelsye Lumanaw, "Pengembangan Makanan Tradisional Bali pada Pasar Malam di Pasar Sindu, Sanur, Bali." *Jurnal Ilmiah Hospitality Management* Vol. 9 No.1 (2018): 83-92.

certification is mandatory even though it is against non-massive experiential characteristics of products.⁶³

The author is of the view that the clause "taking into account the state's financial capacity" proves that not all SMEs based on self-declaration are exempt from applying for a halal certificate. At the same time, it proves that the state can perform financial efficiency, by establishing criteria for SME actors which are free of charge in the application for halal certificates. Parallel to these provisions, as the author's opinion above, based on the type of products and characteristics of products, not all products of SME actors must be certified halal, some only need the supervision of market mechanisms. If using these criteria, the state can make an efficiency⁶⁴ report on the burden of mandatory halal certification which is not necessary for some SME products based on the type and characteristics of the product.

Whereas the provisions of Article 67 paragraphs (2) and (3) of the UUJPH have stipulated that types and products.⁶⁵ Based on the types and characteristics of products, the author believes that this provision should be able to exempt products and service performers from the obligation to be certified halal as a whole, as alluded to in Article 4 UUJPH. For some products that do not need to be halal certified, the ability of consumers to validate their halalness based on their experience only requires strengthening the control of misleading information.⁶⁶

However, according to the provisions of PP JPH, the stages of the obligation to be certified halal for the first time are carried out to (1) foods and beverages; (2) materials, food ingredients, and intermediate products for food and beverage products; and (3) slaughter products and butchering services. The stages of the halal certification requirement begin on October 17, 2019, and end on October 17, 2024.⁶⁷

Concerning the stages of the halal certification obligation, the author believes that this provision does not formulate a product based on the type, characteristics, and subject of the business actor. For food and beverage products, for example, as previously explained, only credential products must be certified halal, while the rest can be measured by the ability of consumers to validate their halalness, and coupled with market supervision. Regarding raw materials (raw materials), it should also be measured by the ability of consumers to test their halalness, such as rice that is still intact, it does not need halal certification, it is different if it has been processed into rice and flour, although the origin is still known, but because it has been produced legally. massive already must be certified

⁶³ Dina Melita, and Romi Apriyadi. "Intention to Halal Certification: Challenges in Increasing the Value Added of the Culinary SMEs." *3rd Global Conference On Business, Management, and Entrepreneurship (GCBME 2018)*. Atlantis Press, 2020.

⁶⁴ Richard A. Posner, *Economic Analysis of Law*, (Canada: Little, Brown and Company, 1986): 11-15

⁶⁵ *Law on Guarantee of Halal Products* (2014, No. 33).

⁶⁶ Anthony I. Ogus, *Op. Cit.*, 144-149. Zulham, *Op. Cit.*, 430-431

⁶⁷ *Government Regulation on the Implementation of the Halal Product Guarantee Sector* (2021, No. 39), art. 139 and 140.

halal, massive and experiential characteristics are credence characteristics. For additional materials and auxiliary materials, it is mandatory to be certified halal because of their types and characteristics at the same time. Likewise, the results of slaughter and slaughtering services must be certified halal even though they are non-massive products because animal products are credence goods.

The author is of the view that the provisions on the stages of the halal-certified obligation have not fully categorized products based on their types and characteristics. The provisions of these stages only focus on product output, namely the stages of halal-certified obligations for food and beverage products, without paying attention to and using the types of products (massive and non-massive) and characteristics of products (search, experience, credence) in detail.

Conclusion

The results of the study concluded that the Omnibus Law on Job Creation in principle provides convenience for SMEs, one of which is to provide opportunities for self-declaring or declaratory halal products. The principle of obligation to be certified halal for MSEs based on self declare does not eliminate the verification and validation of the Halal Production Process (PPH) to create symmetric information and fair trading, although some people do not fully understand the purpose of the cell declaration principle. Based on the analysis of types and characteristics of products on the obligation to be certified halal for MSE actors, it turns out that not all MSE products are required to be halal certified.

Finally, this paper recommends that the obligation to be certified halal for MSE actors be tested using the types and characteristics of products. The stages of the obligation to be certified halal focus on products with characteristic credentials, even if only for food and beverage products for the first stage. Finally, this paper recommends BPJPH periodically strengthen control of misleading information on halal products in the market, even for products that have not been certified halal, to ensure mandatory information and symmetric information.

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