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Legal Compliance of Small and Medium Industry in the Regulation of Halal Product Guarantee

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Abstract The growing number of small and medium industries, especially in food products, cannot be separated from the importance of halal control and food safety. Law No. 33 of 2014 on Halal Product Guarantee is a form of legal certainty from the government regarding the guarantee of halal products in Indonesia. With the new regulation, it is expected that all products circulating in Indonesia have a halal certificate. Field research using this qualitative approach can be seen that not all small and medium industries have complied with the regulation of halal product guarantee for about four years the rule is valid, while halal certification obligation will be valid in 2019 and sanctions will be applied to the violators. The small and medium-sized industries still consider that the halal certificate is a certificate issued by the MUI and obtaining it is not an obligation. This is due to the lack of socialization and information in most small and medium industries, especially those who are less active in obtaining the latest information.

Keywords Legal Compliance, Small and Medium Industry, Regulation of Halal Product Guarantee

INTRODUCTION

The need for halal food products is fundamental to all Moslems[1] because consuming halal product is the basic right of every Moslem and a form of Shari'a obligation. The availability of adequate, safe, nutritious food has many variation based on societies' purchasing capacity and it is not contrary to religious values, culture values and beliefs are the rights of Indonesian guaranteed by 1945 Constitution[2].

Food safety is an international issue marked by many barriers to trade done by countries on food products because it is indicated a threat to people who will consume it[3] including in Indonesia. Exactly, the rightfulness of a product is questionable. This is supported by a research conducted by Dr. Ir. Trisusanto which discovered the element of pork fat in several food and beverages around society[4].

Moreover, reports about food poisoning seriously increase from 48 to 61 cases in 34 provinces on 2013-2015[5].

Nowdays, we cannot deny that business development in the field of food has increased significantly. This business is very promising to be a business with a large turnover, then many business actors prefer to cultivate this business. Consequently, it makes labelling halal is important for every food product, because halal products are not only demanded by moslem society but also non moslem[6]. Halal products are believed to be more qualified and healthy. In addition, halal products are able to compete in obtaining consumer confidence, then they are interested to buy the product[7]. The massive of products that have not been certified halal resulting in consumers' purchasing capacity, especially moslem consumers who are difficult to distinguish whether the product is truly halal and can be consumed based on Islamic Shari'a or not.

Therefore, to overcome the problem, integrated food control system is needed to provide consumer protection and ensure the food during production, distribution and other process should be appropriate with the requirements of food quality, especially in the case of halal product. The issue of halal products requires a stronger and more comprehensive legal. A research conducted by May Lim Charity explains many rules about halal products[8], they are:

Law number 18, 2012 regarding food which is a lieu of law number 7, 1996 concerning food, law number 36, 2009 on health[9], consumer protection act number 8, 1999 concerning consumer protection, government regulation no. 69/1999 on food label and advertisement[10], and presidential instruction number 2/1991 issued on June 12, 1991. Beside that legislation, there are at least 3 (three) ministerial decrees and joint ministerial decisions stipulates the inclusion of halal on food, namely: Joint

Decree of the Minister of Health and Minister of Religious Affairs Number: 427/Menkes/SKB/VIII/1985, Number 68, 1985 on inclusion of "Halal" on Food Label Decree of the Minister of Health of Republic of Indonesia Number: 82/MENKES/SK/I/1996 on the inclusion of "Halal" on food label, as amended by Decree of the Minister of Health Number 924/MENKES/SK/VIII/1996 concerning the amendment to Kepmenkes RI Number 82/Menkes/SK/1996, Joint Decree (SKB) of the Minister of Religious Affairs and Minister of Health Number 472/MENKES/SKB/VIII/1985 and Number 68/1985 on the regulation of "halal" on food labels. Based on the Decree of the Minister of Religious Affairs and Minister of Health Number 472/MENKES/SKB/VIII/1985 and Number 68/1985 on the regulation of "halal" on the food label above, then formed LPPOM MUI established MUI in 1989 as a party issuing halal certificates[11].

The regulations have been published related to food and halal products. However, various laws and regulations that are related to the regulation of halal products have provided legal certainty and guaranteed to moslem community yet. Therefore, the arrangement regarding halal product guarantee needs to be regulated in a law which comprehensively regulates all products that must be halal certified as well as its terms[12], [13]. Because the rightfulness of a product is not only on the label attached to the product, but also must be seen from the materials, processes, and distribution to the consumer[14]. Therefore, it is required standard and special institutions that deal with halal certificate[15].

The enactment of Law Number 33, 2014 on halal product guarantee is a new hope and challenge for moslems regarding halal product guarantee system in Indonesia. This halal product warranty act is also a representation of the government's responsibility to protect and provide a sense of security for consumers, especially moslem consumers in consuming products based on Islamic Shari'ah that is halal and tayyib (good). The existing of halal product guarantee act is expected to be a reference for governments and producers to provide guarantees of halal products and to be legal that ensures consumers based on principles of protection, justice, legal certainty, accountability and transparency, effectiveness and efficiency as well as professionalism[16].

Furthermore, related to provisions of the halal product safety act, article 4 which reads "Incoming, circulated and traded products in the territory of Indonesia should be halal certified", explaining halal certificate for products circulated in Indonesia should be a liability for producers. Article 12 of halal products guarantee act also states that halal certified obligations for products circulated and traded in the territory of Indonesia as referred to article 4 act as 5 (five) years since the date of enactment of this

law. This confirms that halal certificate on all products circulate in Indonesia must be realized immediately. The high percentage of food products have been certified halal yet, especially in small towns, and the rise of cases of counterfeit halal labels, all indication prove that the implementation of halal product guarantee act have been applied maximum yet. Whereas in 2019, after halal obligations for all products are enacted, there will be sanctions for business actors who do not have halal certificate or halal certificate which valid for 4 (four years) has expired.

The development of food industry increase day by day, especially small and medium industries. Small industry, there is a number of other term uses having the same meaning, that is small business, small enterprise or small firm, small scale business, and others[17] has several criterias including[18]: *First*, the business management itself. *Second*, definite of business capital. *Third*, most of the employees are locals. *Fourth*, it is a family business. *Fifth*, the key position is held by the owner. *Sixth*, business capital comes from family finances. *Seventh*, use simple technology in production process. In addition, it is not only in big cities, but also in small towns. Few criterias are still very simple without such an orderly management shows how the importance of business actor awareness in ensuring halal products.

Moreover, in Law Number 33, 2014 on halal product guarantee article 23, it is mentioned that business actors are entitled to obtain; information, education and dissemination of the halal product guarantee system, the establishment of halal products, and services to obtain halal certificates in a fast, efficient, affordable, and non-discriminatory manner.

It confirms that every business actor has the same rights in terms of socialization, coaching and service. The question is whether businesses including small and medium enterprises have received socialization and guidance as mentioned in the law, then they have awareness to obtain halal certificate of their products.

Related to this case, it should be understood that the obedience or compliance to the law according to Satjipto Rahardjo basically involves two variables, each of which is law and human being the object of the law arrangement. Thus, obedience to the law is not only seen as a function of the rule of law, but also the function of man as a target of the arrangement. Legal obedience is not only explained from the presence of the law itself, but also from the willingness of human to obey it[19].

In fact, obedience to the law is different from other social obedience, legal obedience is a duty that must be implemented and if it is not implemented well, it will cause sanctions, in contrast to social obedience, if it is not implemented then the social sanctions prevailing in this community become the judgment. Thus, it makes obedience in the law tends

to be enforced[20]. Such these rules on halal products. It takes decisive action in its implementation.

In this study, the researchers focus on how the perception of business actor of food product business of small medium industry product to the regulation of halal product guarantee and how the obedience of business actor of small medium food product to the regulation of halal product guarantee.

II. METHOD

The approach used in this research conducted in Tulungagung is qualitative approach. This research produces descriptive data. The type of this research is seen from the object is included data source of this research consists of primary data source that is person, place, paper and secondary data source. Procedure of data collection uses interview method, observation, and documentation. While data analysis of this research uses qualitative data analysis, through data reduction, display data, taking conclusion and verification. Then, checking the validity of data uses extension of participation, triangulation and peer examination through discussion.

III. RESULT

Regulations related to the guarantee of halal products have been largely formed by the government. It shows how important the rightfulness of product, especially for moslem community. The latest legislation governing the guarantee of halal products is Law Number 33, 2014 on halal product guarantee.

Law Number 33, 2014 on halal product guarantee presents to ensure legal certainty of halal products in Indonesia. It is comprehensively covered products covering goods and/or services related to food, beverages, medicines, cosmetics, chemical products, biological products, and genetically engineered products and goods used, used or utilized by the society. Imam Ghazali explains that moslems should ensure that food and products used by them are halal in terms of production, inventory, management and storage that need to be guaranteed status[21].

Regarding to law number 33, 2014 on halal product guarantee, small medium industry practitioners are only few of them who understand it. Some of small medium industries, assume that halal product guarantee is marked by the existence of halal certificate written by Indonesian Ulama Council (MUI) instruction (fatwa) stating the rightfulness of product suitable with Islamic law. The halal certificate is a requirement to include halal labels on products that meet halal requirements in accordance with Islamic law, namely: no pork and pork derived ingredients; does not contain unlawful materials; all materials are derived from halal animals slaughtered based on Islamic legal procedures; all storage, place of sale, processing, place of management and transportation separated by illicit goods, if ever used

for illicit goods, it must be cleaned first based on Islamic law; all food and drinks that do not contain khamr.

Therefore, this existence of halal product warranty act is intended to integrate halal concepts of product that can be consumed or used by moslem consumers based on Islamic law into a material legal and formal law in the law as a sub-system of national law.

The presence of halal certificate is actually accepted by society. Especially for the perpetrators of small medium industries who realize that halal certificate is important. The Indonesian Ulama Council (MUI) is considered as a legitimate and credible religious institution in representing the interests of moslems. Supervision conducted by Indonesian Ulama Council (MUI) includes food products and beverages, medicines, and cosmetics, through LP-POM. Moreover, in its development, halal certificate is a piece of paper containing recognition from Indonesian Ulama Council (MUI), followed by the inclusion of "halal label" in its product packaging. Meanwhile, "halal certificate" is a written instruction (fatwa) of Indonesian Ulama Council (MUI) which states the rightfulness of a product based on Islamic Shari'a. This is based on the previous regulation of Joint Ministerial Decree (SKB) of the Minister of Religious Affairs and Minister of Health 472/MENKES/SKB/VIII/1985 and Number 68/1985 on the regulation of "halal" on food label.

Regarding the process of guaranteeing halal products, Indonesian Ulama Council (MUI) actually has its own institution authorized in reviewing the issue of materials produced for distribution, namely institute for assessment of food, drugs and cosmetics of Indonesian Ulama Council (LPPOM MUI). When it is associated with the existence of the consumer protection act that had been promulgated in 1999, the role of Indonesian Ulama Council (MUI) is already protected the consumers from the circulation of products that are considered dangerous. In the beginning 1994, LPPOM MUI has succeeded in issuing the first halal certificate as a protection for consumers and producers, and now it can be felt by the society.

Then, according to the latest law regarding the guarantee of halal products, namely law number 33, 2014 on halal product guarantee, the implementation of halal product guarantee is based on halal product security organization (BPJPH) related to halal fatwa issued by the Indonesian Ulama Council. BPJH is under and responsible to the Minister of Religious Affairs. BPJH has several authorities, among others, establishing standards, procedures and criteria of halal product warranty, revoking and issuing certificate and halal label on the product. In addition, conducting guidance on halal auditors[21]. The Indonesian Ulama Council (MUI), originally the organizer of halal certificate, turned its role of

determining fatwa of halal or forbidden of a product and could also be Halal Inspection Agency (LPH). To ensure law enforcement against violators of this act, administrative sanctions and criminal sanctions are imposed.

Furthermore, so far, Indonesian Ulama Council (MUI) through LP-POMMUI has established the Code of Professional Halal Auditor (LPPOM staff) as a guideline and guidelines for auditors to carry out their activities with full responsibility, and based on the spirit of ethics and professionalism[23].

There are also those who understand about the new rules on the guarantee of halal products, namely the shift of halal certificate institution from Indonesian Ulama Council (MUI) to BPJPH after getting socialization from LP-POM MUI which is usually done after registering its products to get halal certificate.

Nevertheless, halal product warranty act has stated in several articles on the transitional provisions that are as follows:

The certificate issued by Indonesian Ulama Council (MUI) is still valid for the period of time. It is suitable with the article 58 states halal certificate set by Indonesian Ulama Council (MUI) prior to this law shall remain valid until the period of the halal certificate expires.

The previous rules is as a reference in filing of halal certificate is still applied. Article 59 states that before BPJPH is established, application or renewal of halal certificate is done based on the procedure of obtaining halal certificate which is valid before this law is enacted.

The flexibility of Indonesian Ulama Council (MUI) with its LPPOM-MUI in the authority of halal certificate still applies based on Article 60 of Law Number 33, 2014 on halal product guarantee in issuing halal certificate.

Other institution which has halal certificate authority also applied it, but with certain conditions. It is mentioned in article 61 that halal inspection agency as has been done by the LPPOM-MUI before this act will be acknowledged as Halal Inspection Agency should comply with the provisions of article 13 around 2 (two) years since the establishment of BPJPH.

Thus, the authority of Indonesian Ulama Council (MUI) up to the establishment of BPJPH will be continued, and the time constraint is stipulated by halal product warranty act itself in article 64 that BPJPH must be established at least 3 (three) years from the date of promulgation of the act.

There are 2 (two) paradigms regarding the enactment of halal product certificate law to face of modernization or the process of shifting from "old" law to "new" law. The first paradigm is *voluntary*, where certificate requires only the awareness of business actors, while the institution authorized in halal certificate is passive and it is not a binding

obligation. This paradigm is still valid today. The problem is, if this voluntary paradigm is still maintained, many parties become victims of violations of the norms of business actors, especially consumers. Based on the results of research, almost evenly on every business actors tend to commit violations, mainly in the use of addictive substances are reckless. This is a violation of business actors against the legal norms regarding halal products that exist even though still partial. The second paradigm is *mandatory*, where the law on halal products that are still scattered and partial imbued with the way of legal construction through the law of halal product guarantee. The problem, it also brings the consequence that law must have a new foundation. For this purpose, it is necessary to lay down the rules as a new basis for the law of halal product certificate[24], namely the issuance of law number 33, 2014 on halal product guarantee.

The perpetrators of small medium industry still consider that halal certificate is *voluntary*. This is due to the lack of information obtained by the perpetrators of small and medium industry related to law number 33, 2014 on halal product guarantee, even though the obligation of halal certificate will still be valid in 2019 or 5 (five) years. Up to approximately 4 (four) years of Law Number 33, 2014 on halal product warranty is enacted, it is still a small number of business actors who register their products to obtain halal certificate.

Moreover, in article 4 of Law Number 33, 2014 also states that "Incoming, outstanding, and trading products in the territory of Indonesia must be halal certified". The article explains that legal certainty about the halal products circulate in Indonesia will be more clear. The halal product warranty act ideally intends integrating halal concepts of products to be consumed or used by muslim consumers based on Islamic law, being material law and formal law in the law as a sub-system of national law.

Article 67 paragraph 1 of Law Number 33, 2014 states that halal certified liability for products circulated and traded in the territory of Indonesia as referred to in Article 4 shall enter into force 5 (five) years as of the date of this law promulgated. In the period of 5 (five) years, it is the transition from the voluntary paradigm to mandatory paradigm.

It stipulates that 5 years after the act is enacted, the business actor only has two options to give information on its products, that is halal and not halal, or the business actors will get sanctions. Prior to sanctions imposed by 2019, all products must begin registering their products to obtain halal certificate.

In addition, halal certified obligations on small and medium-scale food products are made to provide certainty about inner peace for consumers is not only muslim consumers but also non-muslim consumers. Food that have been halal certified means

the food has obviously contained nothing unlawful in it, then it will feel more comfortable in consuming it[25].

Based on the research finding, halal certificate has been done recently reaches a small portion of small and medium industry food products. This is due to lack of information about halal product guarantee system.

However, at least small medium industry products that use halal label also affects the declining competitiveness of domestic products in the domestic market, nationally and internationally. Finally, it will disrupt the smooth raising of national production in improving the country's economy as it is felt today[26].

Based on the research has been done, there are several small and medium industries do not care, although it will be obliged to halal certificate, in accordance with Law Number 33, 2014 on halal product guarantee in article 4 states that "Incoming, traded in the territory of Indonesia must be halal certified ". This becomes an obstacle to implementation of Law Number 33, 2014 on halal product guarantee, because the small medium industries are difficult given understanding.

Moreover, it is important for perpetrators of small medium industry to know that food rightfulness are able to be seen from four aspects, they are, *first*, halal is seen from the way to obtain it, *second*, halal is seen from the basic material, *third*, halal is seen from the production process which is not mix with unlawful product, *fourth*, halal is seen from its packaging[27]. This is a requirement to obtain halal certificate as mentioned in halal product guarantee regulation, but perpetrators of small medium industry do not know it yet.

Small medium industry adherence to halal product guarantee regulation is still very low. Although the obligation of halal certificate in all products circulate in Indonesia will still apply in 2019 based on Law Number 33, 2014 on halal product guarantee, but as long as this act is enacted since 2014, it has not shown any significant progress on halal certificate products in circulation, especially in food products of small medium industry.

The low level of small and medium-sized industries have complied yet about halal product warranty act is due to the lack of knowledge of regulation. The social condition of society who also do not know the rules regarding the guarantee of halal products also have an influence on the adherence of the perpetrators of small and medium industries. It is because the public also plays an important role in the socialization and supervision of the products in circulation for the implementation of halal product guarantee based on law number 33, 2014 on halal product guarantee. However, the perpetrators of the small and medium industry declare to abide by th act if there is an order or socialization from the

government regarding the obligation of halal certificate. Most of the small medium industries who are lack of information about the latest rules or information they are who less actively seeking new information or they who do not follow the existing forums.

Based on the Law Number 33, 2014 regarding halal product guarantee article 23, it is mentioned that: Business actors are entitled to obtain information, education, and socialization regarding the JPH system; coaching in producing halal products; and service to obtain halal certificates in a fast, efficient, affordable, and non-discriminatory manner.

It affirms that every business actor has equal rights in terms of socialization, coaching and service. The main disadvantage of halal labeling and certificate programs has been the weak socialization of government, business and community, then, it hampers the program. it is necessary to formulate the system, information media and socialization of halal labeling and certificate programs directed at the three main objectives mentioned above.

Nowdays, the perpetrators of small medium industries who have had halal certificate, considers that halal certificate is dependent on the desire or awareness of each perpetrator of small medium industry itself. They still use the voluntary paradigm in terms of halal certificate. The small medium industries who have had halal certificates also made an extension of their certificate and did other obligations based on the existing rules. It is based on article of 25 of Law Number 33, 2014 states that: Business perpetrator who have obtained halal certificate have to include halal label on their products; maintain halal product that has obtained halal certificate; separate the location, place and slaughter, processing equipment, storage, packaging, distribution, sale and presentation between halal products and unlawful; renew the halal certificate if halal certificate expires; and report the changes of ingredient to BPJPH[29].

H.C Kelman proposed the concept of obedience or legal compliance reformulated by Achmad Ali to make it easier for students to understand it, namely[30]:

Compliance is if people obey a rule, just because they are afraid of sanctions. The weakness of this type of obedience, because it requires constant supervision.

Obedience identification is if people obey a rule, simply for fear of good relations with other parties become damaged.

Internalization adherence is if people obey a rule, really because they feel that the rule is compatible with its intrinsic values.

Therefore, from the results of research has been done known that those who have had a halal certificate are those who want to develop the industry to a wider market. The guarantee of legal certainty of

halal not only promises a very significant economic value, but also has a very strong influence on the growth and future of producer's business and also affects the expansionary force in expanding the market network[31].

The explanation above is compatible with the concept of legal obedience according to HC Kelman, that is identification compliance, because the obedience is caused by the purpose of the implementation of existing rules to obtain a wide market network and if it not implement the rule then the impact on the bad market network expanded it. In addition, the awareness of the small and medium industry in implementing the regulation on halal certificate is also an internalization compliance. The perpetrators of the small medium industry realized that halal certificate is in line with their beliefs.

The current world economic development which is not limited by time and space, circulation of goods go so fast, especially in Indonesia is needed an institution that can guarantee halal or not of a product. Since 2015 up to now has begun a regional free market Southeast Asia called Asean Economic Community (MEA). However business actors should also interpret the importance of halal labeling on their product packaging, since halal labeling contains the responsibility of business actors to maintain the quality of their products to maintain trust and provide a sense of security for consumers, then, their products are not abandoned by consumers. Thus, halal certificate in Indonesia appears to be an obligation that must be fulfilled and as a symbol to fulfill the interests of the majority of moslems[32].

Moreover, based on data obtained from the Center of Reform on Economics (CORE) research team, it is known that on 2015 spends on halal products and services reaching more than USD 1.9 trillion, or grew 6 percents of halal products higher and services in the previous year. Thus, it is expected that in the following years halal industry in Indonesia will increase. Based on data obtained from the Director General of Islamic Community guidance KEMENAG RI, the ranking of countries producing halal products according to the Global Islamic Economy Indicator (GIEI) Indonesia is in 10th rank far below the neighboring state of Malaysia where it is in first place.

Ownership of halal certificate is a requirement to be able to include halal label then, it can be known that the manufacturer holds its certificate. In addition, halal logo must be shown to the public to be known halal or not distributed products. This regulation comes after the importance of halal certificate to protect the interests of moslems in Indonesia. Products from abroad must also be selected and for those who passed should put halal label in their products.

Moreover, in the implementation of halal product warranty and the implementation of halal

certificate activities should be seen as an effort to transform the divine concepts into real life, which can be operated in real life which gives and makes grace to the worlds.

IV. CONCLUSION

The perception of small medium enterprises food product regulator concerns to regulation of halal product warranty varies from one small medium industry to another. Some of them do not understand at all about halal product warranty act, there is just know but do not comprehend comprehensively and other comprehend comprehensively both from old rule and new rule about halal certificate. There are many who understand halal certificate is a certificate issued by the Indonesian Ulama Council, it is not from halal product security organization. The transition of *Voluntary* paradigm to *Mandatory* paradigm is also largely unknown. This is due to the lack of information and socialization and they are inactivity collect information about halal product warranty act.

The obedience of business actor of small medium enterprises products to regulation of halal product guarantee has been comprehensive yet in small medium industry. Several of them have complied with the rules by registering their products for halal certificate even though there is no obligation, because they realize the importance of halal certificate. However, some are ignorant and do not want to register halal certificate despite obligations. Even, many have not registered yet because there is no orders from the government yet. Because up to 4 years of law on halal product guarantee is enacted, there is no implementing regulation so that the law will be implemented thoroughly.

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