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RESEARCH ARTICLE

THE ROLE AND AUTHORITY OF THE HALAL PRODUCT ASSURANCE IMPLEMENTING AGENCY (BPJPH) ACCORDING TO LAW NUMBER 33 OF 2014

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Abstract

The purpose of this study are to understand the legal protection of the halal product label as the role and authority of the Halal Product Assurance Agency (BPJPH) according to Law No.33 of 2014 and the advantages and disadvantages of Halal Product Guarantee after the enactment of Law No. 11 of 2020 concerning Job Creation which has changed some of the provisions of the JPH Law. That the enactment of Law no. 33 of 2014 concerning Halal Product Guarantee requires all products circulating in Indonesia to be halal certified. The presence of Law Number 11 of 2020 concerning Job Creation which changes some of the provisions in the JPH Law. Namely, Micro, Small and Medium Enterprises can get halal certification for free with an effective registration process. The drawback of the Job Creation Law are that the authority to inspect halal products is no longer monopolized by the Indonesian Ulema Council but also the Halal Product Guarantee Agency, there is the elimination of the halal auditor requirement, Article 4A of the Job Creation Law has the potential to violate consumer protection if it does not have strong derivative rules, and the lack of clarity on the administrative sanctions given along with the types of violations.

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Introduction:-

Freedom to embrace and practice one's religion is a human right that is guaranteed to be implemented in the 1945 Constitution of the Republic of Indonesia "The state is obliged to protect the entire Indonesian nation and the entire homeland of Indonesia and to realize the general welfare".¹This foundation is also emphasized in Article 29 paragraph 2 of the 1945 Constitution of the Republic of Indonesia which states that "The State guarantees the independence of each resident to embrace their respective religions and to worship according to that religion and belief". For Muslims, choosing halal products is an obligation that is worth worship. The government is responsible for this by providing protection and guarantees for halal products for the Muslim community. The certainty of halal products can be reassuring for people who consume or use them.²

¹Saan, *Penyelenggaraan Jaminan Produk Halal berdasarkan Undang-Undang Republik Indonesia nomor 33 Tahun 2014 Tentang Jaminan Produk Halal*, Jurnal Hukum Replik, Vol. 6 No.1, 2018, h. 44

²Chairunnisyah S, "Peran Majelis Ulama Indonesia dalam Menerbitkan Sertifikat Halal pada Produk Makanan dan Kosmetika", Jurnal EduTech, Vol. 3, No. 2, 2017, h. 64-75

Based on data followed from the World Population Review, the number of Muslim population in Indonesia in 2020 reached 229 million people or 87.2% of the total population of 273.5 million people. The halal product industry is one of the Indonesian government's programs which is part of the Sharia economy. Islam regulates in the Qur'an and Hadith regarding halal and haram. So that halal becomes a very important point in Islam.³ It is not only a relationship between human beings but also involves a relationship with God. Consuming what is halal and avoiding what is haram is part of the worship of a Muslim and shows obedience to the religion he adheres to.⁴

Therefore, in this study the researchers tried to identify the role and authority of the Halal Product Assurance Agency (BPJPH) according to Law No. 33 of 2014 which some of its provisions have been amended by Law No. 11 of 2020 concerning Job Creation.

Research Methods:-

The type of research used is normative juridical. This study examines written legal norms from various aspects such as from the theoretical aspect, formality, binding power of a law and the legal language used. Normative research is research that refers to legal norms contained in legislation and court decisions as well as norms that live and develop in society. The research approach that will be used in this thesis research uses a legal approach. This approach is used to study whether there is consistency and conformity between a law and other laws or between laws and the Constitution or between regulations and laws. techniques for collecting and processing legal materials, namely by studying books, laws and regulations, journals and other regulations related to the role and authority of the halal product assurance agency (BPJPH). The technique of analyzing legal materials in this study will be carried out deductively, namely by drawing conclusions from a general problem to the concrete problems faced.

Legal Protection for Halal Product Labels According to Law Number 33 of 2014 concerning Halal Product Guarantees (JPH Law):-

With the enactment of the JPH Law, it is hoped that consumer concerns about halal products can be resolved, where Article 4 of the JPH Law requires food and or beverage product business actors to certify the halalness of their products. The birth of the JPH Law has caused the urgency of halal certification to no longer be the responsibility of the MUI alone but is a shared responsibility between the government and MUI. The implementation of halal product guarantees is a step to share responsibility between MUI and the government. So in this case the MUI and the government have their respective roles so that there is no overlap. In the halal certification process, MUI through LPPOM MUI has the authority to check and inspect (halal audit). Meanwhile, the government through the Ministry of Religion is in the administration, supervision, and enforcement sections. In the next process, the determination of the halal fatwa is still in the domain of the MUI as before. Through this UUJPH, the government has a role to take action against the corporate sector that commits violations related to other products or food.

The enactment of the JPH Law certainly raises several consequences as well as challenges, namely:

1. There is a mandatory nature of halal certification which aims to make it clear that what is halal is what is truly halal according to halal criteria.
2. Products that are not halal must be declared non-halal. This means that all products circulating in Indonesia must be halal certified.⁵

Halal food products are products that meet the halal requirements in accordance with Islamic law, namely:

- a. Does not contain pork and ingredients derived from pork.
- b. Does not contain ingredients that are forbidden such as materials derived from human organs, blood, and feces.
- c. All materials derived from halal animals slaughtered according to Islamic law.
- d. All storage, sales, processing, and transportation places may not be used for pork and/or other non-halal goods. if it has ever been used for pork and/or other non-halal goods, it must first be cleaned according to Islamic law.
- e. All food and drinks that do not contain intoxicating khamr elements.

³Nasyi'ah I, "Pelanggaran Kewajiban Pendaftaran Sertifikat Halal; Dapatkah dibuat Sanksi ?", Jurisdictie: Jurnal Hukum dan Syariah, Vol. 9, No. 1, 2018, h. 84-108

⁴Karimah I, "Perubahan Kewenangan Lembaga-Lembaga yang Berwenang dalam Proses Sertifikasi Halal", Journal of Islamic Law Studies, Sharia Journal, Vol. 1, No.1, 2015, h. 107-131

⁵Ralang Hartati, "Peran Negara Dalam Pelaksanaan Jaminan Produk Halal", Fakultas Hukum Universitas Tama Jagakarsa, ADIL: Jurnal Hukum Vol. 10 No. 1

Business actors who produce products from materials derived from the prohibited materials mentioned above are exempt from the obligation to apply for a halal certificate, but are required to include non-halal information on the product. If this is not carried out, the business actor will be subject to administrative sanctions, the further provisions of which are regulated in a Government Regulation as previously stated.

If there are companies that claim their products are halal but are not equipped with halal documents, they can be charged with criminal acts. By obtaining a halal certificate, the company's responsibility for the halalness of the product does not mean that it stops there, but rather the company remains responsible for guaranteeing and maintaining the halalness of the products it produces consistently, in the halal assurance system and implementing it.

When discussing the application of Article 4 of Law No. 33 of 2014 concerning Guaranteed Halal Products, it is also related to the contents of several articles that regulate legal sanctions for violations of halal issues, such as:

Article 25 of Law Number 33 of 2014, states: ⁶

Business Actors who have obtained Halal Certificate are obliged to:

- a. Attaching Halal Labels to Products that have received Halal Certificates
- b. Maintain the halalness of Products that have obtained Halal Certificates;
- c. Separating the location, place and slaughter, processing equipment, storage, packaging, distribution, sale, and presentation between Halal and non-halal Products;
- d. Renew the Halal Certificate if the validity period of the Halal Certificate expires; and
- e. Report changes in the composition of materials to BPJPH

Article 22 of Law Number 33 of 2014, there are three types of penalties given to violators, namely: ⁷

- a. In the form of a written warning
- b. Administrative fine
- c. Halal certificate revocation.

The regulation on criminal sanctions in the JPH Law is contained in Article 56 and Article 57 of the JPH Law. ⁸

Article 56 "Business actors who do not maintain the halalness of Products that have obtained Halal Certificates as referred to in Article 25 letter b shall be punished with imprisonment for a maximum of 5 (five) years or a fine for a maximum of Rp. 2,000,000,000.00 (two billion rupiah) ".

This article is intended for entrepreneurs who have obtained halal certification and then do not maintain and supervise the halalness of their products on the market, then Article based on 56 will be imposed on the entrepreneur.

Article 57 "Everyone involved in the implementation of the JPH process who does not maintain the confidentiality of the formula contained in the information submitted by the Business Actor as referred to in Article 43 shall be subject to a maximum imprisonment of 2 (two) years or a maximum fine of Rp. 2,000,000,000. ,00 (two billion rupiah)".

Advantages and Disadvantages of Halal Product Guarantee After the enactment of Law Number 11 of 2020 concerning Job Creation which has partially changed the provisions of Law Number 33 of 2014:-

1. Advantages

- a Halal certification for Micro, Small and Medium Enterprises for Free

As for the problem related to how to apply Article 4 of Law No. 33 of 2014 concerning Halal Product Guarantee which reads "Products that enter, circulate, and trade in Indonesian territory must be certified halal" in that case, of course, clarity is needed on the process of making halal certificates against home-based business food and beverage products or more precisely referred to as Small Micro Enterprises (UMK).

In terms of tackling these problems, the government issued Law Number 11 of 2020 concerning Job Creation Article 48 containing changes/additions to several provisions in Law Number 33 of 2014 concerning Guaranteed Halal Products which revised article 44 of Law Number 33 of 2014 concerning Guarantees of Halal Products. in paragraph (2) "In the event that the Business Actor is a micro and small business, the cost of Halal Certification can be facilitated by another party". Now it is revised in Article 44 of Law No. 11 of 2020 with the following sound:

- 1) Halal Certification fees are charged to Business Actors who apply for Halal Certificates.

⁶Law No. 33 of 2014 concerning Guarantee of Halal Products, Article 25

⁷Law No. 33 of 2014 concerning Guarantee of Halal Products, Article 22

⁸Law No. 33 of 2014 concerning Guarantee of Halal Products, Articles 56 and 57

- 2) In the event that the application for Halal Certification as referred to in paragraph (1) is submitted by Micro and Small Business Actors, no fee will be charged.
- b. Accelerate the licensing process
In halal certification there are many facilities provided to MSMEs. Besides being free, its management is also quite easy. Registration can also be done online and one of the simplifications is that the overall halal certification process is cut to 21 days from the previous 97 days for domestic processes and 117 working days for overseas processes.
2. Disadvantages
- a. The Authority to Inspect Halal Products is No Longer Monopolized by the Indonesian Ulema Council) MUI
Revise Law No. 33 of 2014 article 10 that paragraph (2) Determination of product halalness as referred to in paragraph (1) letter b is issued by MUI in the form of a Decision on Determination of Halal Products. By Law No. 11 of 2020 concerning Job Creation, it is stated in Article 10 that "The cooperation between BPJPH and MUI as referred to in Article 7 letter c is carried out in terms of determining the halalness of Products". MUI is no longer the only institution authorized to examine and test the halalness of a product. The authority was given to all Islamic organizations such as NU, Muhammadiyah, and educational institutions. If previously halal certificates were only issued by the Indonesian Ulema Council (MUI), the Job Creation Law provides an alternative certificate that can be given by the Halal Product Guarantee Agency (BPJPH).
- b. Removing some of the requirements for halal auditors
As we know that a Halal Auditor is a person who has the ability to perform a product halal inspection. Halal auditors work within the Halal Inspection Agency (LPH) and obtain a certificate from the MUI in charge of reviewing, materials, processes, purchasing systems, locations, equipment, production rooms, storage and distribution of products. Therefore, it is necessary to include the proper Halal Auditor requirements so that the halal product process runs optimally.
- c. Related to Halal Product Process (PPH)
Business actors are required to separate locations, places, and tools used for PPH. The rules in Law No. 33 of 2014 on Halal Product Guarantee provide administrative sanctions in the form of written warnings or fines if they do not do so. This provision was changed in the Copyright Bill to become only an administrative sanction without being explained in more detail. In addition, the rules of Law No. 33 of 2014 concerning Halal Product Guarantee explain the types of administrative sanctions according to violations committed related to halal certification. In the Omnibus Law, administrative sanctions are not further explained as well as the types of violations. So, regarding the Omnibus Law on Job Creation, administrative sanctions still need to be completed so that it is able to provide certainty, justice and legal protection for the Muslim community in Indonesia.
- d. Article 4A of the Job Creation Law has the potential to violate consumer protection if it does not have strong derivative rules.
Article 4A which reads:⁹
- 1) For Micro and Small Business Actors, the obligation to be certified halal as referred to in Article 4 is based on the statement of Micro and Small Business actors.
 - 2) The statement of Micro and Small Business Actors as referred to in paragraph (1) is based on the halal standard set by BPJPH.
self declaration very risky violating consumer rights. In Law No. 11 of 2020, the Government seeks to provide convenience for Micro, Small and Medium Enterprises, but with a halal statement based on self-statements, it will cause a violation of consumer rights. Even though the statement is based on the halal standard set by BPJPH, how it is monitored is one of the crucial articles. For this reason, it is very necessary to have good cooperation between business actors and ask all parties to oversee the formulation of regulations that must have strong derivative rules, accompanied by strong articles.

Conclusion:-

The enactment of Law no. 33 of 2014 concerning Halal Product Guarantee requires all products circulating in Indonesia to be halal certified. In an effort to protect the law, it is stated in Article 25 of Law Number 33 of 2014 "the obligation of the halal certificate holder to embed a halal label, maintain halalness, extend the validity period of the certificate, differentiate the process of making halal and non-halal products The sanctions for violating the article can be in the form of written warnings, administrative fines, and revocation of halal certificates. The presence of Law Number 11 of 2020 concerning Job Creation which changes some of the provisions in Law Number 33 of 2014.

⁹Law No. 11 of 2020 concerning Job Creation, Article 4A

Namely, Micro, Small and Medium Enterprises (MSMEs) can get halal certification for free with a very effective registration process. The shortcomings of the Job Creation Law are halal certification which is no longer controlled by the MUI but can be issued by the Indonesian Ulema Council (MUI) and the Halal Product Guarantee Agency (BPJPH). In addition, there is the abolition of the halal auditor requirement, Article 4A of the Job Creation Law has the potential to violate consumer protection if it does not have strong derivative rules and the administrative sanctions are unclear and the types of violations that need to be completed so that they can provide certainty.

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