



## *Self Declaration* Halal Inside Omnibus Law on Job Creation

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### **Abstract**

This study aims to determine the implementation and achievement of self-declaration halal based on Islamic sharia law and find out that halal self-declaration provides a sense of trust, comfort and legal certainty for Muslim. This research method uses normative descriptive or normative legal approach to construct an argument for the subject of the study. Legal basis for the study of the existed problems in this research is Omnibus Law on Job Creation, which will be implemented from many perspectives, such as other laws and regulations, articles, books, the internet/websites and other library sources. The results of this research can be concluded that in its application, small and micro business actors use easily recognizable ingredients such as rice, sago, cassava therefore it is easier to differentiate halal and haram products. The mixture of halal and haram in a halal product happen because it excludes the role of independent institutions and fields experts (food engineering, chemistry, etc.) in tracing the integral process of determining the halalness of a product by technology. The factor of public awareness about halal products is significantly correlated with the behavior of seeking information on halal food among Muslim people. Muslim consumer brand awareness of a product is influenced by halal logo which is based on education either through the closest people such as family or friends and information from the media. The Muslim community understands that halal fatwa cannot be issued by anyone. The declaration should be issued by a party or institution that has the competence to do.

**Keywords:** *Self Declaration; Halal and Job Creation Law; Halal products*

### **Introduction**

Halal in Arabic means legal within the regulation of Islamic law. Operationally, the meaning of halal is informing every processes needed to achieve legal objectives of halal assurance, therefore every Muslim can carry out a proper worship (Rahayuningsih & Ghozali, 2021). Halal can be mean liberating, releasing, breaking and allowing. In sharia law, halal has two meanings, namely: (1) everything that is not included as sin; and (2) everything that has been allowed by islamic teaching either to do it or make use of it. The first definition indicates that halal has an aim to allow to use any objects such as cosmetics,

perfumes and others. The second definition aims to allow using and doing something, all of which are determined based on Islamic determination such as eating, drinking, including taking medicine (Asnawi & Ibrahim, 2018).

Therefore, halal products have a chain *from farm to fork*. Thus, what if halal only declared by business subject? (A. Yusuf, 2020). This question provokes a polemic, not only against the halal product clusters inside Job Creation law, however Job Creation law also becomes a separate polemic, which is presumed to be pragmatic in nature, it has the potential to exceed the provisions in constitution due to limited participation and lack of prudence in discussing the material of law inside (Anggono, 2020). Although the intent and purpose of Job Creation Omnibus Law was as an approach in the framework of simplifying regulations due to hyper regulations that cause an overlapping, conflicts and harmonized the regulations (Setiadi, 2020). However, legal principle in Indonesian legal system, which is known as the principle of *lex posterior derogat legi priori* is not necessarily adaptive to the concept of Omnibus Law, therefore Omnibus Law approach which originally intended as a legal protection to harmonize other laws will still be able to be set aside if the contents of Omnibus Law are different, therefore it has implications that weak law enforcement happen due to the difficulty of law officers on taking authority (Sodikin, 2020).

Omnibus law on Job creation article 4a (paragraph 1), stated that small and micro business subject can declare themselves (self-declaration) regarding the halalness of the products, (paragraph 2), stated that based on halal standards that have been set by BPJPH (Halal Product Assurance Organizing Agency) it is contrary to Law Number 33/2014 concerning on Halal Product Guarantee, where halal certification is the authority of BPJPH. As written inside Article 4 which stated that "Products that enter, circulate, and traded in Indonesia should be certified as halal", except for non-halal products, they are not required to apply halal certification, as stated in Article 26 paragraph (1) it should include non-halal information on their products (Abduh, 2021). The mechanism for self-declaring halal for small and micro business entrepreneur has received an agreement from House of Representatives. Precisely inside the discussion of Omnibus Law on Job Creation (Priyanka, 2020).

The halal self-declaration inside Job Creation Law has implications for the problem of (1) Halal Value Chain (HVC), namely the integral process of testing halal products, starting from input, production, marketing and distribution which can be carried out by business entrepreneur themselves. How they responsible over the methodology. How is the level of Muslim consumer confidence in self-declaration halal? What is the definition and meaning of halal in Job Creation Omnibus Law, whether it is the domain of licensing problems by lawmakers or the domain of Islamic law and scholars? Considering that the main objective of Job Creation Law is to build economic strength through the investment growth and ease of business (Ansari, 2020). This debate is quite massive and serious considering that self-declaration halal considered as untrustworthy and the halalness is unclear, especially when it comes to the use of various artificial materials which still needs to be clarified. The inspection of a product by auditor from competent authority before the determination of MUI declaration still considered as necessary therefore halal certification and labeling are related to the sharia maqosid (guidelines for maintaining religion, protecting souls, reason, future children, and property) (Sari, 2008). and to fulfills the main objective of principle on consumer protection.

Several points in Job Creation Law apart from halal self-declaration are: (1) Removing halal auditor standards and expanding halal auditor qualifications. Public can participate to determine whether the product is halal or not before halal certificate is issued (article 15 paragraph 2 of Job Creation Law). Previously, there were a number of requirements for the appointment of halal auditor by Halal Inspection Agency, such as: (a) Indonesian Citizen; (b) Muslim; (c) has minimum education of undergraduate in field of food, chemistry, biochemistry, industrial engineering, biology, or pharmacy; (d) Understand and have broad insight regarding the legal products (halal) according to Islamic law; (e) Putting people interest above personal and/or group interests; (f) obtain certification from MUI (article 14 Halal product

guarantee act); (Dewi, 2020) (2) The period of application verification for halal certificate by maximum a day of working (Article 29 of Job Creation Law) and if micro and small enterprises did not change the process of Halal production and its ingredients, they can continue to obtain the extension of halal certification period (Article 43 paragraph 3 of Job Creation Law). Halal certificate renewal does not require inspection and re-testing; (Widiyani, 2020) (3) beside cooperating with halal certifier bodies, also can cooperate with all Islamic organizations that has legal entities (article 7 paragraph 2 of Job Creation Law); (4) Halal certificates are issued by BPJH involving other Islamic organizations that has legal entities other than MUI (Article 32 paragraph 2 of Job Creation Law), the products that made from ingredients that have been certified halal and meet the standards of halal by halal certifier, can be certified as halal (Article 34A Job Creation Law); (5) The sanction for the withdrawal that are not registered as halal is abolished in Job Creation Law which was previously obtain the administrative sanctions until the withdrawal of goods (Article 48 of the JPH Law).

Paying attention to the debate of self-declaration halal by Omnibus Law on Job Creation that was conveyed in the discussion above, therefore, this research has a purpose to understand the implementation and achievement of self declaration halal based on islamic law, furthermore, it also has purpose to understand self declaration halal to build trust, comfort and halal legal certainty to the Muslim consumer.

### ***Research Methodology***

Halal self-declarations analyzed by descriptive normative or with normative legal approach to construct arguments for the studied subject matter (Hadjon & Djamiati, 2005). Therefore, self declaration halal is discussed and analyzed as stated in Omnibus Law on Job Creation as legal rule that has been established and applies (Amiruddin & Asikin, 2018) on analyzes which included in the construction of normative arguments and the application of legal rules for halal products based on self-declaration halal according to Job Creation Law, are the primary of this studies (Rasjidi & Rasjidi, 2009) to clarify several argument from the previous studies based on the applied law (Magnar, 2006) . The legal basis for the study of the problems of this research is Omnibus Law on Job Creation, which will be implemented from many perspectives, such as other laws and regulations, articles, books, and internet/websites sources and other library sources (Soekanto & Mamudji, 1994).

### ***Result and Discussion***

#### **The Implementation and Purposes of Self Declaration Halal based on the Islamic Law**

Allah SWT stated that Islam is the most completed religion (Al Maaidah:3), it means that, every human activities has been regulated therefore nothing can escapes the provisions of Islamic law. Therefore, Islamic law essentially a gift to achieve salvation and glory in human life. Islam as religion taught that business is not just producing something to sell and obtain a profit but also as an effort to develop factors that can improve people's welfare, build existence of individual high standard (At-Tariqi, 2004), and all of that should be done in a certain way that is allowed according to Islamic law, legal way and not forbidden way (Nukeriana, 2018). Business in Islam defined as a series of activities in various forms (unlimited) however, it is limited in how to acquire and utilize their assets (halal and haram rules). It means that the implementation of business should be in accordance with Islamic law (that contains inside of Quran and Hadist). In the other words, sharia is the main value that becomes a strategic and tactical regulation for business entrepreneur (Rivai, Nuruddin, & Arfa, 2012).

Halal and haram are a matter of principles that should be upheld in carrying out a good life based on Islamic legal entities, it is known as the doctrine of halalan toyyib. This doctrine aims to create an established, central, humanist, progressive, accommodating and not discriminate legal institution towards

Halal Product Guarantee (Permata, 2019). it is related to the life command of Allah SWT which stated that every muslim should eat, wear and choose halal product and avoid haram product as written inside the provision inside An-Nahl:114; Al-Baqarah: 172; Al-Maidah: 88; Al-Baqarah: 168. The consumed food and drinks are guaranteed to be halal and the thayyib is a condition for the acceptance of Muslim worship and prayers (Agus, 2017). The importance of halal and haram matter make every muslim needs to be careful on implementing the principle of Halalan Thayyiban in their life.

It needs to be admitted that, self-declaration halal for small and micro business actors does not mean that it is auto-halal and it should go through a mechanism and be implemented with certain criteria. For example, a self-declare product have no risk and only contains the ingredient that can be verified as halal (Kementrian Agama Republik Indonesia, 2021). Several characters of small and micro businesses with simple products are likely to be easier to determine halal and haram because the ingredients are easy to identify, such as rice flour, sago, cassava, corn and others, furthermore, the ingredients are not complicated in the processing.

The food auditing process is quite complicated, it requires accuracy and detail, in-depth knowledge, especially on biotechnology products because it will have an impact on greater non-halal risks. The critical point of a product can also be found in small and micro business enterprise that use food ingredients, such as cheese, yogurt, soy sauce and microbial products, especially enzymes (biotechnology). The critical point occurs in the coagulation of cheese, the critical point in yogurt in total solids and the addition of starter and additives. the critical point of soy sauce is in the taste component. Microbial products is declared as the critical point of food. A microbial product that often produced are enzymes. After being studied, it is known that the critical point risks during enzyme production with biotechnology principles include media used for growth or refreshment, foreign genes inserted into microbes, chromatographic resins used for purification and additives added for enzyme stability (Atma, Taufik, & Seftiono, 2018).

It is very likely that there will be a mix of halal and haram in halal product because it overrides the role of independent institutions and fields experts (food engineering, chemistry, etc.) in tracing the integral process on determining the halalness of product by technology. Furthermore, the development of food engineering progress, determining whether the product is halal or not is increasingly difficult (Rahmadani, 2015). *self declaration* halal will be argumentatively weak (not an auditor who understands the guidelines and rules of Islamic law) and is weak in halal process due to the limited facilities and infrastructure. It can be said that the self declared halal product is not suitable from what have been declared. This resistance has been reminded in Islamic teachings, which stated that the determination of halal or haram cannot be based on assumptions or likes and dislikes. Because, the action is include as making up the law.

Government role number 39/2021 concerning on the Implementation of Halal Product Assurance Sector as a derivative rule of Law number 11/2020 concerning on Job Creation Law has been stipulated on February 2, 2021 which automatically replaces Presidential decree number 31/2019 concerning on Implementing Regulations of Law Number 33/2014 concerning on Halal Product Guarantee (JPH). The main points of the policy in Presidential decree number 39/2021 regarding the Implementation of Halal Product Assurance are: (1) the implementation of halal public guarantee by Halal Product Guarantee Agency; (2) separation of locations, places, and PPH that should be separated from non-halal processing equipment, which includes the processes of slaughtering, processing, storing, packaging, distributing, selling, and presenting products; (3) procedures for establishment, accreditation, scope of activities, and revocation of approval for the establishment of Halal Auditor Institution, the appointment and dismissal of Halal Auditors; (4) rights and obligations of business entrepreneur and procedures for the determination, duties, and facilitation of Halal product Supervisor; (5) procedure for submitting application, extension, and determination of Halal Certificate by Halal Product Guarantee Agency; (6) the

ease of halal certification for micro and small business entrepreneur that meet the halal standards set by Halal Product Guarantee Agency; (7) inclusion of Halal Label and non-halal information; supervision of halal product guarantee by Halal Product Guarantee Agency (BPJPH); (8) Cooperation in the implementation of Halal product guarantees with ministries that manage the government affairs in fields of industry, trade, health, agriculture, cooperatives, small and medium-sized enterprises, domestically, abroad, and non-ministerial government agencies or non-structural institutions that carry out government duties in field of drug and food supervision, standardization and conformity assessment, and accreditation by Halal Product Institution and MUI; (8) Product certification and registration of Halal Certificate for foreign Products; Products that own halal certification and the stages of halal certification Products after the mandatory implementation of Halal Certificates for circulating and traded in Indonesia (Presidential Decree, 2021).

Halal declaration by business entrepreneur in Presidential Decree Number 39/2021 considered as not sufficient to guarantee the halalness of a product. Furthermore, in reapplication for the renewal of halal certificate, article 83, Presidential decree number 39/2021 stipulates that the renewal of halal certificate does not need to include as a report of halal supervisor which stated that there is no change in the process of Halal Product Process and the composition of a product. In fact, halal supervisor's report actually becomes a document which confirms that it is correct that there has been no change in Halal Product Process and its composition. Halal Product Process is defined as a series of activities to ensure the halalness of products including the provision of materials, processing, storage, packaging, distribution, sales, and product presentation. It has an aim to provide comfort, security, safety, and certainty from the availability of halal products for public in consuming and using products, it is also help to increase more value for business entrepreneur to produce and sell their products (Charity, 2017).

Moreover, if there is an error in early declaration of business entrepreneur, the error can be repeated again without any correction in halal certification. Halal supervisor is an officer appointed to investigate business entrepreneur who apply for halal certification. The supervisor have an occupation to supervise the process of halal products and ensuring that every aspects of production process are not contaminated with non-halal ingredients and reporting whether there is a change in the composition of ingredients.

Substantially, what makes is self-declaration halal before to be questioned? Indonesian Ulama Council (MUI) considers the Job Creation Act related to Halal Product Guarantee (JPH) make confusion for Muslims. Example on Article 35A paragraph 2, Halal Product Guarantee Bodies can issue a halal fatwa, if MUI is late to make an issue regarding the fatwa of halal product. In Islamic tradition, fatwas (declaration) are full authority of ulama, therefore MUI will not be responsible when there are problems regarding halal and haram results. As what has been going on, before MUI stipulates the halal product, they appoints a witness called halal auditor, who has the job to examine and audit the producer of a product. Halal auditor reported the results of his testimony which was discussed in a meeting at MUI Fatwa Commission. After that, MUI Fatwa Commission decided that a product whose originally not clear (syubhat) was clarified as halal or haram. If the results of halal auditor report are received with no haram items in a product, the status is halal. Thus, halal certification can be made. Not all reports given by MUI are immediately approved by MUI Fatwa Commission. Sometimes, rejection occurs because it does not meet the requirements. In its work, it can be analogized that LPPOM MUI is the prosecutor that bring cases to court and MUI is the one who decides the legal decisions (Hamberi & Saputra, 2016).

MUI auditors are equipped with 11 criteria listed in Halal Assurance System (HAS). One of the important points in 11 criteria is traceability. Business entrepreneur who apply for halal certification should have written procedures to ensure the traceability of products that certified from materials that meet the criteria and produced in production facilities which meet the criteria, also free from pork and its derivatives. Therefore, halal certification should be related to the rules stipulated in the determination of

the halal food product, in this case it will be related to the competence of institution that makes halal standard certificate used, the personnel involved in certification and auditing, and another important factor is the halal certification mechanism itself (Ilyas, 2018).

The position of halal certification in national legal system of Indonesia has central position, therefore it is not appropriate using halal self-declaration method, where the method is unable to achieve the goal of consumer protection in Islamic law. Meanwhile, halal declaration produced by MUI has been adhered and obeyed by government and Muslims. Government can comply with it as reflected in the existing laws and regulations. The government's adherence to MUI halal declaration can be seen in current laws and regulations and the policies made by government related to the problem of halal food. It is reflected in Law Number 36/2009 concerning on Health, Constitution Number 18/2012 concerning on Food, Concerning Number 8/1999 concerning on Consumer Protection and Constitution Number 33/2014 concerning on Guaranteed Halal Products (Agus, 2017).

When a unilateral halal declaration becomes polemic, violations of halal and non-halal labeling also become a problem because Halal Guarantee Bodies did not have adequate authority in carrying out its functions to impose strict sanctions, except, it only have a purpose to give written warnings to business entrepreneur that did not include non-halal information on their products. Business entrepreneur who did not maintain the halalness of their products after obtaining halal certificate in Presidential decree Number 31/2019, can be threatened with imprisonment for maximum 5 (five) years or maximum fine of Rp. 2 billion, while Presidential decree Number 39/2021 Article 149 paragraph (6), stated that there is no difference between an administrative sanction in form of a fine and a criminal fine, it is stated that an administrative with maximum fine of 2 billion rupiahs (B. Yusuf, 2021).

Regarding the cost of halal certification for small and micro business enterprise in Job Creation Law, Article 44, it is said to be financed by Halal Guarantee Bodies however the constitution consider as biased because the ease of financing is not related to the Articles number 81 and 86 of Presidential Decree number 39/2021. Article 81 paragraph (1) stated that in the application for Halal Certificate is submitted by micro and small Business Enterprise as referred in Article 79, without any charge considering state's financial capacity. It requires the existence of state financial capacity, therefore if there is a fiscal difficulties, micro and small business enterprise may not be able to obtain financial factor for halal certification. Article 86 stated that: In the application for Halal Certificate is submitted by micro and small Business enterprise as referred in Article 81 paragraph (1), financing can also be done by: (a) regional revenue and expenditure budget; (b) alternative financing for micro and small businesses; (c) financial of partnership funds; (d) a help from government or other institutions; (e) revolving fund; or (f) other legal and non-binding sources. The weakness of article 81 above has the potential to develop the certification process required by Muslim and article 86 does not regulate how technical financing happen. Therefore, it has the potential to be happen without clarity in its implementation.

Meanwhile, the opening of public participation in determining halal product as an extension of halal auditor function (article 55 of Job Creation Law), it is stated that the procedures for community participation are regulated in Government Regulation. However, the explanation was not found in Presidential decree Number 39/2021.

## **Self Declaration of Halal and Public Trust**

Halal certification in food is urgently needed by Muslim consumers to provide guarantees in order to stop consuming and use non-halal product or services to avoid a mistake. Therefore, it is government's duty to provide guarantees to Muslim consumers regarding the product or services distributing in society consider as halal. The halal label itself provides benefits for business entrepreneur such as increasing consumer confidence, reaching global halal food market, increasing product *marketability* in the market and low-cost investment. Muslim consumers must be smart before buying a

product or service for security and safety. Muslim consumers should be smart before buying a product or service for their security and safety. Halal certification is urgently needed by Muslim consumers to provide guarantees whether they are consume halal product or not. Therefore it is government's duty to provide guarantees for Muslim consumers therefore the goods or services circulating in society are truly halal. Halal label itself provides benefits for business entry such as increasing consumer confidence, reaching the global halal food market, increasing product marketability in the market and low-cost investment. Muslim consumers should be smart before buying a product or service for the sake of security and safety.

Currently, the awareness of Muslim society towards the implementation of halal lifestyle is quite high, State of Global Islamic Economy report 2019/2020 stated that Indonesia now ranked 1<sup>st</sup> in halal consumer of halal food, ranked 2<sup>nd</sup> as halal cosmetic consumer, and 4<sup>th</sup> as halal medicine consumer (Sukoco, Wiryawan, Kusnadi, & Sucipto, 2020). Those fact is in line with the research on high public interest of halal products based on google trend analysis which concludes that Google Trends data from search engine keywords "halal products" and "halal labels" in 2016-2019 which indicated that public enthusiasm for halal products and labels continues to increase from 70 % to 92.2%. In the same year, there was also an increase in the application of halal certification at Food, Drug and Cosmetic Research Institute from 10,550 products to 21,837 (Nurbaiti, 2019). Muslim society requires halal certification in their every choice of a product to ensure that the product they purchase guaranteed to avoid every product that is haram and they will feel comfortable in carrying out their worship. The government's task is to provide a sense of security for the enforcement of the law on guaranteeing halal products that distributing in the middle of majority Muslim community. halal label itself actually provides benefits to producers because their products can be trusted and help to increase the marketability.

Halal certification is the state's obligation to protect the rights of Muslim consumers from consuming non-halal products. Therefore, a stricter regulation is needed to be able to obtain the rights for Muslim consumers. It is important point, considering that not every Muslims understand that what they consume is not halal according to sharia law. Determination of halal and haram is not an easy matter, it requires expertise in tracing the origin of material which can be complicated, even in some cases it is difficult to determine the origin of ingredients. Therefore, it requires specific expertise of scientists who also understand Islamic law, ushul fiqh and the methodology for determining halal or haram of a product (Ramlan & Nahrowi, 2014). From the conducted research related to the public level of trust in halal labels, it was concluded that halal labels and halal guarantor authority institutions are one of variables that determine every Muslim consumer to buy a product that supported by consumer knowledge or information obtained by regarding the production process. It was carried out through press releases or displayed product advertisements (Novagusda & Deriawan, 2019), it means that halal self-declaration has big challenge on the level of public trust in order to be able to accept it.

The factor of public awareness regarding halal products is significantly correlated with the behavior of seeking information on halal food among Muslim families. It proves that the perspective public awareness on the importance of halal products is the main point in maintaining Halal Value Chain (HVC) (Yusoff & Adzharuddin, 2017). Thus, Muslim consumer brand awareness of a product is influenced by halal logo which is based on education either through the closest people such as family or friends and information from the media. The increase in halal awareness is related to the data on increasing certification results for halal products carried out by LPPOM MUI by 300 percent from 2011 to 2018 which is more influenced by halal awareness than certified halal logo (Nofianti & Rofiqoh, 2019). Muslim consumers willing to pay more for halal product than the normal price when they already know the process of halal production (Alfikri, Baga, & Suprehatin, 2019).

Muslim society understands that halal fatwa cannot be issued by just anyone. The fatwa should be issued by an institution that has the competence to do. The fatwa institution has characteristic of

independent, competent and has adequate authority to give scientific decisions by adhering to the main sources of Islam (Al Quran and Sunnah) it is also considering the opinions of previous ulama scholars. The process of determining fatwa for halal products is similar as general determination of other fatwa, the difference is only in fatwa determination meeting process between fatwa commission and MUI decision (Akib, 2020).

### Conclusion

Based on the research discussion above, it can be concluded that the implementation and achievement of self-declaration halal based on Islamic sharia law and whether self-declaration halal provides a sense of trust, comfort and legal certainty for Muslim consumers. In its implementation, small and micro business enterprise use ingredients that can be easily recognize such as rice, sago, cassava therefore it is easier to decide halal-haram of products. The mixture of halal and haram product happen because they excludes the role of independent institutions and fields expert such as (food engineering, chemistry, etc.) in tracing the integral process of determining halalness by technology. *self declaration* halal most likely to be argumentatively weak (not an auditor who understands the guidelines and rules of Islamic shari'ah) it is weak in halal test process due to the limited facilities and infrastructure. It means that self declared halal product can be different from what has been declared. The public awareness factor of halal products is significantly correlated with the behavior of seeking information on halal food in muslim society. Muslim consumer brand awareness of a product is influenced by halal logo based on education either through the closest people such as family or friends and information from the media. The Muslim society understands that halal fatwas cannot be issued by just anyone. The fatwa (declaration) should be issued by a party or institution that has the competence to do it.

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