

Construction of the Legal Framework..

by Rodliyah Prof

Submission date: 18-Jun-2020 12:42PM (UTC+0700)

Submission ID: 1345792127

File name: Construction_of_the_Legal_Framework...pdf (591.88K)

Word count: 6597

Character count: 35561



Construction of the Legal Framework for Strengthening the Halal Industry in Indonesia

Hamzan Wahyudi¹; Zainal Asikin²; Rodliyah²; Hayanul Haq²

¹ Student of Magister Law Study Program, Postgraduate Program, Mataram University, Indonesia

² Lecture of Law Faculty Mataram University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v7i1.1321>

Abstract

This study discusses: (i) The existence of a halal certification regime in strengthening the halal industry in Indonesia (ii) Problems in the regulation, implementation and supervision, as well as governance of the halal certificate regime given in strengthening the halal industry in Indonesia, (iii) Model of strengthening certificates halal given in strengthening the halal industry in Indonesia.

This type of research is normative legal research and is assisted / strengthened by empirical legal materials that examine the principles of law, legal systematics, synchronization of legal norms, history and comparative law using methods of approach to legislation, conceptual philosophy, and comparative compared to Malaysia and Singapore, (Common Law system) Japan and Francis (with a civil law system), The theoretical framework used as a knife for analysis in this dissertation are: Natural Theory of Natural Law, Theory of Problems (Problems of Problems), Theory of Formation of Legislation, Theory of Order Legislation (Hierarchy Theory of Legal Norms), Theory of the Legal System (Law System Theory) Theory of Authority (Authority Theory), Theory of Public Policy (Public Policy Theory) and Theory of Organs of Legal Entities.

The results of the analysis of the three main issues are that: The results of the study are as follows: (I) The existence of a halal certification regime in strengthening the halal industry in Indonesia: Philosophically, normative juridical has been regulated and is in doubt, sociologist not functioning, the JPH Law weakens what was good before; (II) Problems in the regulation, implementation and supervision as well as governance of the halal certificate regime given in the strengthening of the halal industry in Indonesia, the Norms contained in the provisions of the JPH Law, Article 5 UUJPH is officially taken over by the government by forming BPJPH, articles 6 and 7 (mutual tug of authority, confusion in the implementation of authority between the government and MUI), Article 47 UUJPH (paragraphs 2 and 3) delineates the authority of MUI, article 14 UUJPH is not yet clear standardization of operational performance, article 4 UUJPH has not been implemented, PP 29 of 2019 Regulation of the Minister of Trade is in conflict with JPH Law, In the case of KMA No. 982, it contradicts the JPH Law, (III) Model of strengthening halal certificates given in strengthening the halal industry in Indonesia Institutional Reform, Institutional Construction, Strengthening Legal Duties in Halal Product Certification, Strengthening Halal Certification Protection on Human Rights, Strengthening the Legal Configuration, Halal Nationalization, realized through zones Halal, Halal harmonization with Islamic economists, (legitimacy, interpretation. Sanctions, jurisdictions) which are expected to be able to give birth to

Compliance of producers; Consumer awareness and wisdom; Government attention in the form of supervision and law enforcement; Avoid the halal globalization practice of religious fundamentalism, food which is essentially halal and thayib (good); The achievement of legal ideals; The legal culture of the community is good; ultimately realizes the legal certainty of halal products.

Keywords: *Model of Strengthening Halal Certificates; Strengthening Halal Industry; Indonesia*

Introduction

Halal lifestyle or halal life style¹ The halal lifestyle or halal life style is not only related to consuming halal food products, halal cosmetics, or clothing for Muslims, the halal lifestyle also includes hygiene in production, fairness, and comfort.² Halal as a lifestyle is a lifestyle of someone expressed in halal activities or activities, interests and income in spending their money to eat, drink and other pleasures lawfully and how to allocate their time also halally.³

The majority of Indonesia's population is Muslim. For Muslims that the halal of an industrial halal product becomes a very basic / fundamental requirement The word halal comes from Arabic which means to release, not be bound, allowed.⁴ Etymologically halal means things that can and can be done because they are free or not bound by the provisions that prohibit them. Whereas in the encyclopaedia of Islamic law as a set of rules based on the provisions of Allah SWT on human behavior that is recognized and believed to be valid and binding for all Muslims.⁵

The basis of religious law contained in the Qur'an which underlies the halal problem is (1). QS. Al-Baqarah: 29, 168, 172 and 188, (2) QS. Al-Maidah: 5 and 188, QS.al-An'am: 145, (3) QS. al-Nahl: 144, (4) QS. al-A'raf: 157, QS. Abasa 24-32, QS. At-Taubah: 109, (5) QS.al-Mu'minun: The verses above, are the reasons that become the legal basis for the validation of halal certification of products (goods and / or services), in the hadith of the Prophet SAW, in addition, the ability to do jihad which can be developed through a series of practices in giving legal decisions and conducting studies on various opinions that develop relating to the criteria of halal and haram something.⁶

Philosophical problems in this dissertation, the construction of laws / regulations on the guarantee of the halal product industry in Indonesia is voluntary and does not reflect the ideas set forth in the philosophical foundation (Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD) in Article 28 Letter E paragraph (1)), although the regulation on Halal Product Guarantee has been legislated in RI Law No. 33 of 2014 so that halal products before the JPH (Halal Product Guarantee) law are no longer voluntary but are already voluntary mandatory (mandatory), even though Government Regulation PP No. 31 of 2019 has been established but it invites pros and cons such as 1). The PP has the potential to burden the community, especially the business world (mandatory halal certification has the potential to burden SMEs) therefore the state must subsidize halal certification for SMEs 2). PP No 31/2019 reduces or delays the authority of the Indonesian Ulama Council (MUI) as a stakeholder according to the JPH law, MUI is an institution that gives authority to determine the halal of a product. 3) there is a conflicting norm between article 22 paragraph (2) which reads "Auditor certification education and training as referred to in paragraph (1) is held by BPJPH and can be held by other educational and training institutions in accordance with statutory provisions" while PP no 31/2019 with article 14 paragraph (2) letter F of the JPH Law reads "that the appointment of a Halal Auditor by the

¹ Lifestyle (lifestyle) is a matter that shows how people live, work patterns of behavior, interests and how to spend money, and how to allocate time, lifestyle also reflects the whole person who interacts with the environment (<https://www.islampos.com> Indonesia and halal life style, accessed on 23 March 2019)

² <https://ekonomi.kompas.com>, syariah economy and Life style, accessed March 23

³ Ibid

⁴ Aisjah Girindra, Pengukir Sejarah Sertifikasi Halal, (Jakarta: LP POM MUI, 2005), p. 20

⁵ Abdul Azis Dahlan, Ensiklopedi Hukum Islam, (Jakarta: Ikhtiar Baru, 1996), p. 505

⁶ Ibid, p. 4

LPH must obtain certification from the MUI" 4). Article 25 of PP No. 31/2019 states that international cooperation does not involve MUI, in relation to the recognition of halal certification issued by foreign institutions, this condition has the potential to facilitate the entry of imported products so that Indonesia will be flooded with imported products because of the halal label without going through the MUI standard even though the role and function of the MUI Fatwa among others namely preventing the entry of foreign goods whose halal status is not clear 5). The soul of PP No. 31 of 2019 takes the authority of other stakeholders and does not build a spirit of cooperation that will adversely affect the growth of halal products and the halal industry in Indonesia,⁷ so that the provisions regarding the obligations of business actors to produce halal must be implemented as it should, so that Muslim consumers who are the majority consumers in Indonesia are entitled to comfort, security, and safety in consuming goods and or services that do not conflict with their religious norms.

Result

a. Theoretical Framework

1.1 *The Natural Theory of Natural Law*

Thomas Aquinas explained the law of God as the basis for validating positive law because Aquinas had an interest in introducing canonical law and reinforcing that positive law originated or originated in the Bible,⁸ but the principle of how Aquinas integrates the concepts of God into positive law, but the substance of the Thomas Aquinas framework is different from the concept of halal in Islamic law, how to keep aqeedah, Islam and faith in every muamalah activity, therefore we need to give birth to ideas for strengthen people's lives in accordance with aqidah, one of them in the most concrete terms and bring impact in public life is on national halal economic and industrial issues.⁹

In this study the authors also limit the theories above to the recognition of values / divine norms, which are compared to the form of governance of rules, and the construction of ways of thinking. This theory is taken to strengthen the understanding of Industrial halal products that originate from the laws of the Qur'an, hadith, ijtihad of the scholars, which are revelations from Allah SWT.

1.2 *Theory of Benefit (Maslahah Mursalah)*

The urgency of the maslahah or maslahah mursalah exists in all forms of law, both laws based on the revelations of Islamic law and laws that are not based on revelation, although the emphasis of each law is different. The difference is related to Islamic law and the special features of Islamic law itself. The differences and features of Islamic law are:¹⁰

- a) The effect of the benefit of Islamic law is not limited to time in the world, but also gives effect to the afterlife. This is due, Islamic law itself was created for the happiness of the world and the hereafter.
- b) The benefit contained in Islamic law, not only the material dimension (maddi) but also immaterial (ruhi) to humans.
- c) In Islamic law, the benefit of religion is the basis for other benefits. This implies that if there is a conflict between the benefit of others with the benefit of religion, the benefit of religion must not be sacrificed (ignored).

⁷ SindoNEWS.com Indonesia Halal Watch Passes Test Material PP No. 31/2019 to MA

⁸ Book revealed to the prophet isa a.s in ancient jewish language (hebrew)

<https://cahayaimancahayakebospelislam.wordpress.com/2012/03/02/menalis-sejarah-bible-from-the-actual-version/>, accessed on March 8, 2019

⁹ Study Guidance Hayanul Haq, SH (Lingsar Learning of Law of "Valey for Truth and Justice" West Lombok) on Monday, March 4, 2019, Hayyan ul Haq, legal epistemology in constructing and strengthenin, Material presented in panel discussion, Resent Development of legal epistemology of Halal Economy, the Supreme Court on 4 September 2015.

¹⁰ Asafri Jaya Bakri, Konsep Maqasid asy-Syariah Menurut as-Syatibi, Jakarta: Raja Grafindo Persada, 1996, p. 142-143.

1.3 Theory of Formation of Legislation

Bentham is of the view that imperfections that affect statutes in 2 (two) levels, first are due to ambiguity, obscurity and over bulkiness. Second, it is caused by the inaccuracy of expression (unsteadiness in respect of inaccuracy about the importance of something (unsteadiness in respect of import), redundancy, long-windedness, entanglement, without a tent that facilitates understanding (nakedness respect of helps to intellection) and disorderliness.¹¹

Therefore, if the norms in the laws and regulations do not fulfill the matters described by the two figures, then the norms in the laws and regulations become invalid (imperfect), so that these norms can be categorized into defective legal norms.

Legislative Order Theory (Hierarchical Theory of Legal Norms) Hans Kelsen through his *stufentheori* argues that legal norms are tiered and layered in a hierarchical arrangement of structures, where a lower norm applies, sourced and based on higher norms, thus so on the norm that cannot be traced further and is hypothetical and fictitious, namely the basic norm (*Grundnorm*). Basic norms, which are the highest norm in the norm system, are no longer formed by a higher norm, but the norm was established in advance by the community as a basic norm that is a hanger for the norms below.¹² Normatively the law has explicitly regulated the hierarchy of the legal order, but in practice it is often found that there is a legal vacuum (*leemten in het recht*), conflicts between legal norms (legal antinomy), and fuzzy norms (*mage normen*) or unclear norm.¹³ The existence of a conflict between norms (conflict of norm) contained in various laws and regulations. The solution taken is to apply 3 (three) principles of legal preference.¹⁴ The three principles are *lex posterior derogat legi priori*, meaning the new rules (legislation) defeating (paralyzing) the old rules, *lex superior derogat legi inferioris*, means the rules (legislation) which are higher in level beat (paralyze) the rules in underneath it, and *lex specialist derogat legi generalis*, means specific rules (legislation) which defeat (paralyze) general rules. Settlement by using the principle of legal preference can be in the form of disavowal reinterpretation, invalidation, and remedy.¹⁵ In addition to the discovery of conflicting legal norms, in the laws and regulations there are also often blur and void norms.¹⁶ When there is a blurred or unclear norm or legal norm, a judge interprets the law to find the law. The interpretation by the judge is an explanation that must lead to an acceptable implementation by the public regarding the rule of law for concrete events. The method of interpretation is a means or tool to find out the meaning of the law.¹⁶ According to Sudikno, interpreting the law to find the law was not only done by judges, but also by legal scholars.¹⁷

¹¹ Ibid., p. 325.

¹² Some authors claim that the norm hierarchy theory is influenced by Adolf Merkl's theory, or at least Merkl has been the first to write a theory called *Juliae* with the Stairwell structure of legal order. Merkl's theory is about the stages of law, namely that law is a hierarchical system, a system of norms that is conditioned and conditioned and legal actions. Conditioning norms contain conditions for making other norms or actions. Hierarchical making manifests itself in the form of revisions from the system to the lower legal system. This process is always a process of concretization and individualization. See: Jimly Assiddiqie & M. Ali Saifuddin, *Hans Kelsen's Theory of Law*, (Jakarta: Constitution Press, 2006), p. 109. See also: Maria Farida I, *Op.cit.*, p. 25.

¹³ Ahmad Rifai, *Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif*, Cetakan Kedua, (Jakarta: Sinar Grafika, 2011), p. 90.

¹⁴ Preference comes from English *preferent* or *preferentie* which is interpreted as the main right. See: Yan Pramadya Puspa, *Legal Dictionary*, (Semarang: Various Sciences, 1977), p. 679. Sudikno's three principles of legal preference are also said to be an adage used when in a legal system conflicts of legal norms occur. See: Sudikno Mertokusumo II, *Op.cit.*, p. 85-87. Lihat juga: Ahmad Rifai, *Loc.cit.*

¹⁵ Disavowal is to maintain that there is no norm conflict. For example: norm conflicts occur in the fields of private law and public law, but with the argument that the two fields are applied separately so that there is no conflict. Reinterpretation is done in a dug way, which is a more flexible way of reinterpretation by setting aside other norms. Cancellation (invalidation), carried out formally (carried out by a special authorized institution) and in practice, (not applying the norm in practice). recovery (remedy) that is, with consideration of the recovery can be canceled. See: P.W. Brower, et.al, *Conflict and Conflictin Law*, (Zwolle: W.E.J Tjeenk Willink, 1992), hlm. 217-223. Sebagaimana dijelaskan kembali dalam: Philipus M. Hadjon and Tatiek Sri Djantiati, *Argumentasi Hukum*, (Yogyakarta: Gajah Mada University Press, 2011), hlm. 31-32.

¹⁶ Sudikno Mertokusumo & A. Pitio, *Bab-Bab Tentang Penemuan Hukum*, (Jakarta: PT. Citra Aditya Bakti, 1993), p. 13. Sudikno interpreted the interpretation or interpretation with the legal discovery method which gave a clear explanation of the text

1.4 Law System Theory

The legal system not only refers to the rules (codes of rules) and regulations, but includes a broad field, including the structure of institutions (structure) and processes that fill them out and in empirical studies are also related to the law that lives in society (living law) and legal culture.¹⁸ Friedmann argues:

A Legal system in actual operation is complex organism in which structure, substance, and culture interact.¹⁹ (The legal system in its actualization is a complex relationship between the structure, substance and culture that interact with each other). The legal system consists of illegal structure, substance / legal substance and legal culture.²⁰

A similar opinion was expressed by Donald Black, who in essence explained that the law is the social control of the government (law is governmental social control), so that the legal system is a system of social control that is fairly regulated in the structure, institutions, and social control processes.²¹

The essence that can be taken is the element of legal culture including the views, habits, and behavior of the community regarding the thought of the values and expectations of the applicable legal system. In other words, the culture of law is the climate of social thought about how the law is applied, whether it is violated or what is implemented.

1.5 Authority Theory

Authority or authority is the legitimation (ratification) of the power of an office through legislation to carry out an action in a particular legal field (can be in the form of an act in criminal law, civil law or state administration law) which must be obeyed by a person or legal organ the other. Because the concept of authority (authority is closely related to power, then in the theoretical level of Montesquieu through his trias politica theory separates the power (separation or power) of the state into three branches, namely the legislative (unction) as legislators, executives "the executive or administrative function) as the executor of the law or the administrative and judicial functions (the judicial (unction,) as the power to judge.²²

The construction of the authority theory above is used to analyze the problem of conflict between norms that causes the dualism of the regulatory and supervisory authority of the institutions governed in the Halal Product Guarantee Act.

1.6 Public Policy Theory

- a. Public policy can be assessed for success in achieving its objectives by evaluating: 1). Administrative evaluation (budget, efficiency, cost of the policy process within the government relating to: a) effort evaluation, b) performance evaluation, c) adequacy of performance evaluation, d) efficiency evaluation, and e) Process evaluation. 2) Judicial Evaluation, which is an evaluation

of the law so that the scope of the rules could be determined in connection with certain events. See: Sudikno Mertokusumo II, *Op.Cit.*, hlm. 154.

¹⁷ Sudikno Mertokusumo II, *Ibid.*, hlm. 155.

¹⁸ Syafruddin Kalo, Paper: Law Enforcement that Guarantees Legal Certainty and Sense of Community Justice a Contribution of Thought, delivered at the Inauguration Ceremony of the Indonesian Coordinating Board of North Sumatra Regional Coordinator", on Friday, April 27, 2007, at Gayo Room (Garuda Plaza Hotel, Sisingamangaraja Street No. 48 Medan.

¹⁹ Lawrence M. Friedmann (Friedmann I), *The Legal System: A Social Science Perspective*, (New York: Russel Sage Foundation, 1969), p. 16. Lihat juga dalam Lawrence M. Friedmann (Friedmann, II), *American Law*, (New York City: W.W. Norton & Company, 1984), p. 5-7.

²⁰ Achmad Ali, *Keterpurukan Hukum di Indonesia penyebab dan solusinya* (Bogor: Ghalia Indonesia, 2005), p. 1.

²¹ Donald Black, *The Behaviour of Law*, (New York, USA: Academic Press, 1976), p. 5-14.

²² Hood Philips, Paul Jackson, and Patricia Leopold, *Constitutional and Administrative Law*, (London: Sweet&Maxwell, 2011), p.10-11, in Jimly Asshiddiqie (Jimly Asshiddiqie III), *Pengantar Ilmu Hukum Tata Negara*, (Jakarta: Rajawali Pers, 2009), p. 283. Also loaded inside Jimly Asshiddiqie (Jimly Asshiddiqie Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006), p. 13.

relating to the issue of legal validity where the policy is implemented, including possible violations of the constitution, legal system, ethics, state administrative rules, to human rights. 3) Poilitic evaluation, i.e. the extent to which the acceptance of poilitic constituents on public policy is implemented.

- b. Public policy is a series of activities of the state through its organs that have the legitimacy (based on the legislation) to do or not take action (decide or determine) relating to the interests of the community with the aim of realizing public welfare, not individuals or groups.

1.7 Legal Entity Organ Theory

In connection with the focus of this research, the JPH Law regulates in Article 6 (Part Two) there will be a Halal Product Guarantee Agency that involves cooperation between the government and the private / community BPJPH collaboration with LPH is carried out for inspection and / or product testing, as described. in the Republic of Indonesia Government Regulation Number 31 of 2019 concerning "Regulation of the implementation of Law Number 33 of 2014 concerning Halal Product Guarantee" Part one General Article 4 governing Cooperation in the implementation of halal Product Guarantee that In exercising the authority as referred to in paragraph (3) BPJPH in collaboration with: (relevant ministries and / or institutions, LPH, MUI) in article 32 paragraph (1) LPH established by the community as referred to in article 30 must be submitted by Islamic religious institutions that have legal status; and verse (2) State the Islamic Legal Institution as a Legal Entity as referred to in paragraph (1) includes associations or foundations.

Discussion

1. The existence of the halal certification regime in strengthening the halal industry in Indonesia. Philosophically, juridical normative has been fulfilled and regulated in doubt, sosilogically the newly created Institution has not been able to carry out its functions and authorities empirically and in a practical level (institutions / agencies that work integrated and able to work together) it is clear that BPJPH (agency halal product guarantee provider) a new formation body born from the provisions of law number 33 of 2014, has been formed and was formalized on October 10, 2017 but until now it has not functioned properly in the author's view, the JPH Law weakens what has already been well before, so that the existence of the halal product guarantee law can be said to be not ideal and not in accordance with what is aspired in realizing the implementation of halal product guarantees to the public.
In the writer's view the most powerful substance requirements in building the existence of a halal industry regime are: it must be substantially strong (the norm must be strong, the institution must be strong and ready, the procedures and models in building the halal industry are also clear that the norm does not occur,
2. Problems with regulation, implementation and supervision, as well as governance of the halal certificate regime given in the strengthening of the halal industry in Indonesia. Can be summarized. The JPH Law basically only reaffirms the legal substance that has been regulated in the existing laws and regulations with an emphasis on in legal efforts specifically providing legal protection to the public, in article 5 UUJPH (Halal certification is taken over completely by a government institution under the ministry of religion by forming the BPJPH body; articles 6 and 7 UUJPH (mutual attraction of authority, confusion in the implementation of authority between the government and the MUI), Article 47 UUJPH (paragraphs 2 and 3) delays the authority of the MUI in providing halal

fatwa), article 14 UUJPH (The establishment of an LPH must first have a Halal Auditor who has obtained certification from the MUI, it is not clear the standardization of operational performance because There isn't any LPH yet As established, article 4 of the UUJPH explains that products that are imported, circulating and traded in the territory of Indonesia must be halal-certified, resulting from the performance of the Institutions that are approved by UUJPH, the implementation of the provisions must be carried out on 17 October 2019, but until now the theory has not been implemented. Kelsen's legal hierarchy explains that legal norms at the lower levels must not conflict with higher law. That is why, if the legal institution is understood as a system, then all the rules in it must not conflict with each other. In fact, more than that, in the formation and enforcement of law as a system, it always receives input from other fields which in turn produce outputs that are channeled into society.

Minister of Trade, Drs. Enggartiaso Lukita, who has issued a regulation of the Minister of Trade (Permendag number 56 th 1995) by revoking article 7 through PP 29 of 2019 concerning import requirements which no longer have halal requirements and / or halal conditions, halal conditions are only in the form of halal recommendations. This is very contradictory to Article 4 of the Halal Product Guarantee Act number 33 of 2014, so what the Minister of Religion Fahrul Razi did with his policy of returning part of the authority of Halal certification to LPPOM MUI as stipulated in the Minister of Religion decree number 982 issued on Thursday the 5th / December / 2019 Whereas the appointment of LPPOM MUI is in conflict with Law number 33 of 2014 where halal testing institutions should be made by any institution as long as it has a qualified laboratory, contrary to articles 12 paragraph 1 and 2 of the JPH Law, violating Lex superior derogate law legislation inferior (higher regulations must not contradict lower regulations), the Minister of Religion's decision also opposes the existence of Article 12 paragraph 2 of the JPH Law that LPH can be formed by the community, both campus-based and Islamic mass organizations. Philosophical, sociological, and juridical aspects are very contradictory to the rule of law, all are allowed unless there is an unlawful proposition.

3. Model of strengthening the halal certificate given in strengthening the halal industry in Indonesia. First, the Institutional Reform of Halal Certification as a model for strengthening Halal certification by re-establishing the ideals of the Pancasila Law as the Foundation for the Establishment of Legal Rules in Indonesia as an aspect of the nation's philosophy as stipulated in Article 28 letter E paragraph (1) and Article 29 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia which requires the state constitutionally.

Reformulation of Article Dictum in UUJPH by restructuring its methodological aspects by applying sanctions that are adjusted to the behavior of business actors, implementing halal certification, and community culture, enacting the law by using active and repressive systems, not just passive and not carrying out efforts to supervise and enforce sanctions / and or pinify. Re-formulate the improvement of the laws and regulations in this case the halal product guarantee law, its implementing regulations, as well as other regulations which constitute the mandate for implementing the halal product guarantee (JPH) law, which can be used as a special legal umbrella for the enforcement and strengthening of production certification halal food, drinks, medicines and cosmetics.

Second, the construction of law on halal certification reformulation of laws in a systematic, basic and valid manner. Legal construction of halal product certification that is good and ideal according to the author, is must meet three main principles that are very basic to be achieved, namely: Justice, Certainty and Utilization, The main points contained in the Preamble are "legal ideals" (Rechtsidee) in the form ideas, tastes, copyrights, and thoughts, The highest source of law in the State of Indonesia is Pancasila, therefore legal products or laws must be positioned as technical explanations from the main sources rather than the opposite.

The legal substance of halal product certification will also work ideally if it is supported with a structure that really functions as it should. Where the main function is pursued is the realization of food, medicine, and cosmetics which are maintained in their halal status. Talcott Parsons argues that theoretically structural functionalism begins with four important functions for all systems of action. The practice of the four functions of the structure are: 1). Adaptation. Halal product certification must be able to be a concrete answer to the products on the market that are doubtful of halal status, and at the same time be responsible for the halal of the product. 2). Goal attainment. Halal product certification is allocated as the main guideline for efforts to achieve the goals of production and consumption goals; 3). Integration. Halal product certification must be able to regulate the relationship between the parts that become components ranging from raw materials, storage methods, auxiliaries and other preservatives. 4). Latency or maintenance of halal product certification patterns must be able to equip, maintain and improve products and ward off the gap in relations between consumers and producers, realizing it must be with, First, Construction Analogy (*argumentum per analogian*).

Interpretation is the interpretation of legal regulations by giving the equivalent of these words in accordance with the legal principle; Second, Legal Refinement Construction (*rechtsverfijning*). Treat the law in such a way that it is as if no party is blamed. Third, Argumentum a Contrario. Conflicting disclosure, namely the interpretation of the law based on denial. That is, contrary to the understanding between the problems faced by the problems regulated in an article in the Act. Can also be summarized several things in order to realize the model of constructing halal certification given to the community, among others: 1). Strengthening Legal Duties in Certification of Halal Products, 2). Strengthening the Protection of Halal Certification on Human Rights, 3). Strengthening the Legal Configuration in Halal Product Certification is a pattern in which all elements or parts are interrelated, 4). Legal Working Process on Halal Product Certification guarantee, To realize the legal work on product certification guarantee, it is necessary to emphasize three aspects of zero limit, zero doctrine and zero risk. With the emphasis on the 3 (three) zeros, no prohibited goods must be used, no processes that cause product blackness, and do not pose a risk with this application; 5). Certification Institution Authorities must have the following criteria: First, it must represent the aspirations of Muslims Second, it has two groups of expertise, namely: a) a group of expertise related to food technology such as food technology, chemistry, biochemistry, nutrition and others. b) expertise groups in the field of Islamic law (ulama / fatwa institutions). Third, it is nonprofit oriented (not looking for profit). Fourth, it has a wide network covering all regions of Indonesia in order to be able to serve all producers that are spread throughout Indonesia, Fifth, is independent. Not representing or influenced by producers or the government; 6). Halal indigenization produces at least 2 (two) possibilities, namely: a) halal values which are indoctrinated, understood, internalized and practiced; b) halal values are applied in life based on one's own awareness. So, there will be a paradigm shift (shifting paradigm), in the stretch of legal institutions from voluntary action (voluntary action) to an inherent obligation (mandatory action). can be realized through a). Halal zone is a certain place, region, or region that is used to market halal products; b) Halal Harmony is an effort to synergize the idea of halal gathering in an integrated manner, a vehicle to bring together food producers who have received MUI Halal Certificates with sharia economists, such as banking, insurance, marketing, and the Islamic economic community. Harmonization will also be successful if the legal system can function properly.

That is why Parsons also offers 4 (four) things that must be resolved first, namely: First, legitimacy. Namely all institutions that form the basis for compliance with the rules. Second, interpretation. Namely the meaning that will involve the matter of determining the rights and obligations of the subject through the process of applying certain rules. Third, sanctions. Namely all institutions that emphasize what sanctions, how they are applied, and who applies them. Fourth, jurisdiction. Namely institutions that establish the line of authority that has the power to uphold legal norms, and what groups the norms want to regulate.

Success parameters for Halal Nativism, 1) Producer compliance; 2) Consumer awareness and wisdom; 3) Government attention in the form of supervision and law enforcement; 4) Avoidance of the practice of halal globalization from religious fundamentalism, meaning that the fulfillment of halal targets

is not only labeled as halal or seems halal, but food which is essentially halal and *thayib* (good); 5) The achievement of legal ideals, concerning halal products; 6) The realization of the legal culture of the community both producers and consumers about halal products; 6) There is a harmonization of legal institutions regarding halal products; 7) Halal zoning is carried out despite using a gradualism approach with a priority scale system; 8) The form and enactment of the Halal Product Guarantee Law which has legal certainty.

Conclusion

In the author's view the most powerful substance requirements in building the existence of a halal industry regime are: it must be substantial in substance (the norm must be strong, the institution must be strong and ready, the procedures and models in building the halal industry are also clear the norm does not occur in conflict with the JPH Law No. 33 of 2014 basically only reaffirms the substance of the law that has been regulated in the existing legislation with an emphasis on specific legal efforts to provide guarantees of legal protection to the public, but governance has not fulfilled the ideals that are expected to require improvement.

The model of strengthening the halal certificate given in strengthening the halal industry in Indonesia is the fulfillment of the state constitution contained in Pancasila as an embodiment of the construction of halal product certification which is divinely based on originating from divine revelation.

Recommendation

Improving / normative reconstruction of Law number 33 of 2014, namely article 5, article 6, article 47 paragraph 2 of the JPH Law and regulations for implementing law number 33 of 2014, namely article 62 and article 63, in relation to financing for other parties must be prepared in a manner conference. Recommend to the government to:

1. revoke PP 29 of 2019 issued by the Minister of trade Drs. Enggartiaso Lukita, regarding import requirements that no longer have halal requirements and / or conditions in meat import, this is very contrary to Article 4 of the Halal Product Guarantee Law number 33 of 2014;
2. Revoke the decree of the Minister of Religion number 982 issued on Thursday 5 / December / 2019 regarding halal certification services including: a) Testing of halal certification requests; b). Inspection and / or product halal testing; c). Scientific assessment of the results of examination and or testing of the halal product; d). Holding halal fatwa hearings;
3. Revoke the decree of the Minister of Religion number 982 regarding the Appointment of LPPOM MUI because it is contrary to Law number 33 of 2014 where a halal examiner should be made by any Institution as long as it has a qualified laboratory, very contrary to article 12 paragraph 1 and 2 of the JPH Law, violating the principle of law *Lex superior derogate legi inferior* (higher regulations must not conflict with lower regulations), the decision of the Minister of Religion also opposes the existence of the norms of article 12 paragraph 2 of the JPH Law That LPH can be formed by the community, both those based on universities or Islamic organizations. . Philosophical, sociological, and juridical aspects are very contrary to the rule of law.

References

Books

- Aisjah Girindra. 2005. Pengukir Sejarah Sertifikasi Halal. Jakarta: LP POM MUI.
- Abdul Azis Dahlan. 1996. Ensiklopedi Hukum Islam. Jakarta: Ikhtiar Baru.
- Study Guidance Hayanul Haq, SH (tutor of Lingsar's learning learning "Valey for Truth and Justice" West Lombok) on Monday 4 March 2019, Hayyan ul Haq, legal epistemology in constructing and strengthening, Material presented in panel discussion, Resent Development of legal epistemology of Halal Economy, the Supreme Court on 4 September 2015.
- Asafri Jaya Bakri. 1996. Konsep Maqasid asy-Syariah Menurut as-Syatibi. Jakarta: Raja Grafindo Persada.
- Jimly Assiddiqie & M. Ali Safa'at. 2006. Teori Hans Kelsen Tentang Hukum. Jakarta: Konstitusi Press.
- Ahmad Rifai. 2011. Penemuan Hukum Oleh Hakim Dalam Perspektif Hukum Progresif. Second edition. Jakarta: Sinar Grafika.
- Pramadya Puspa. 1977. Kamus Hukum. Semarang: Aneka Ilmu.
- J.W. Brower, et. Al. 1992. Coherence and Conflict in Law. Zwolle: W.E.J Tjeenk Willink, p. 217-223, As explained again in: Philipus M. Hadjon and Tatiek Sri Djamtiati, Argumentasi Hukum. Yogyakarta: Gajah Mada University Press.
- Sudikno Mertokusumo & A. Pitio. 1993. Bab-Bab Tentang Penemuan Hukum. Jakarta: PT. Citra Aditya Bakti.
- Syafruddin Kalo, Paper: Law Enforcement that Guarantees Legal Certainty and A Sense of Community Justice a Contribution of Thought, delivered at the Inauguration of the North Sumatra Regional Coordinator Board of Management", on Friday, April 27, 2007, at Gayo Room (Garuda Plaza Hotel, Jl. Sisingamangaraja No. 48 Medan.
- Lawrence M. Friedmann (Friedmann I). 1969. The Legal System: A Social Science Perspective, (New York: Russel Sage Foundation, p. 16. See at Lawrence M. Friedmann (Friedmann, II), American Law, (New York City: W.W. Norton & Company, 1984).
- Achmad Ali. 2005. Keterpurukan Hukum di Indonesia penyebab dan solusinya. Bogor: Ghalia Indonesia.
- Jimly Asshiddiqie (Jimly Asshiddiqie III). 2006. Pengantar Ilmu Hukum Tata Negara. Jakarta: Rajawali Pers, p. 283. Also loaded inside Jimly Asshiddiqie (Jimly Asshiddiqie Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006).

Regulations

- The 1945 Constitution of the Republic of Indonesia.
- Law Number 33 guarantee for Halal products number 33 of 2014.
- PP No. 31 of 2019 challenges the implementation regulations of law number 33 of 2014.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).

Construction of the Legal Framework..

ORIGINALITY REPORT

5%

SIMILARITY INDEX

5%

INTERNET SOURCES

2%

PUBLICATIONS

6%

STUDENT PAPERS

PRIMARY SOURCES

1

Submitted to Universitas Sebelas Maret

Student Paper

2%

2

Submitted to Universitas 17 Agustus 1945
Surabaya

Student Paper

1%

3

etheses.uin-malang.ac.id

Internet Source

1%

4

Muslim Andi Yusuf, Dharma Fidyansari.
"Interpretation Of Judges In Supreme Court
Decision Number: 46 P/HUM/2018", Substantive
Justice International Journal of Law, 2019

Publication

1%

5

Submitted to Universitas Sultan Ageng
Tirtayasa

Student Paper

1%

6

repository.ubaya.ac.id

Internet Source

1%

Exclude quotes On

Exclude bibliography On

Exclude matches < 1%