



The Effectiveness of Halal Certification for Micro, Small, and Medium Enterprises (MSMEs) With Self-Declare Scheme

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Abstract - The establishment of obligation of halal certification for the MSMEs is based on the provisions of Law Number 11 of 2020 on Job Creation juncto the Regulation of the Minister of Religious Affairs Number 20 of 2021 on Halal Certification for Micro, Small, and Medium Enterprises. Both the regulations become the legal basis for the MSMEs to make Halal Certification. The aim of these regulations is giving legal protection to customers and encourages enterprises to produce in a halal procedure and able to have an access to retailer in marketing their products. Currently, the government, in this case BPJPH (the Halal Product Assurance Organizing Body of Indonesia), has launched a Free Halal Certification program which lasts until October 17, 2024 for the MSMEs. MSMEs who are entitled to receive this service are MSMEs with low-risk products and simple process. Whereas the model of free halal certification (Sertifikasi Halal Gratis/ SEHATI) for MSMEs is by self-declare scheme with a mechanism of application submission of halal certification through website <https://ptsp.halal.go.id/>. The process of halal registration is accompanied by P3H (the Companion of Halal Products Process) based on the document of materials and production process composed by the enterprises, then the P3H carries out verification and validation process which then it is submitted to BPJPH. For now, halal certification by self-declare is free and only intended for MSMEs with low-risk products and simple production process and also uses some natural-sourced materials and belongs to Positive List. This study uses social legal research method by retrieving some data on the MSMEs and then are analysed based on the regulations. The results of this research finds that the obligation of halal certification for MSMEs by self-declare scheme is able to give legal protection or guarantee to the rightfulness (kehalalalan) of a product, although there are some weaknesses in the submission process of halal certification, that is in supervision aspect.

Keywords - Halal Certification, Halal Product, MSMEs

I. INTRODUCTION

Sharia economy is an economic activity which is based on sharia values. The application of sharia economy in Indonesia is a necessity because it is seen from the State Foundation that is Pancasila and the Constitution of the Republic of Indonesia in the first principle of Pancasila, it is stated *Ketuhanan Yang Maha Esa* (Believe in the one and only God), which means that there are not any citizens who are not believe in God. Communicating with God can only be done through religion. One of religions in Indonesia is Islam, even the majority in number. In Islam there are some legal institutions besides other institutional system. Within the legal institution it is found some economic problems or economic law (*al-*iqitishadiyah**). It is strengthened with Article 29 of the 1945 Constitution of the Republic of Indonesia that all citizens are given with a freedom to embrace their own religion.[1]

The development of Islamic economy in the global world based on the State of Global Islamic Economic Report 19/20 shows that Indonesia belongs to the fifth position of the Top 10 Islamic Finance, the fourth position for Top 10 Moslem-Friendly travel category, the third position of the Top 10 of Modest Fashion category and the Top Ten of Halal Food. The countries which occupy these positions are UEA, Malaysia, Brazil, Australia, Sudan, Pakistan, Oman, Brunei, Turkey and Iran. It can become the evidence that in the last few years halal institutions have become a trend in some countries including Indonesia. Indonesia as country with dense population that is predominantly Muslim should more attention to over-the-counter food and beverages products, not only paying attention to the composition offered the institution medically, but also it should be noted whether the products are halal for consumption.[2]

One of the state's attentiveness and responsibility is the existence of Law Number 33 of 2014 on Halal Product Certification. In Article 4 it is stated that Products that enter, circulate, and traded in the territory of Indonesia shall be certified kosher. Halal products are also required to the MSMEs which is based on the Article 2 of the Minister of Religious Affairs Regulation Number 20 of 2021 on Halal Product Assurance for Micro and Small Enterprises. Article 2(1) states that The Products which are produced by the Micro and Small Enterprises must be halal certified. This obligation to have halal certification for MSMEs is also regulated in Article 4A of Law Number 11 of 2020 on Job Creation that For Micro and Small Enterprises, the obligation of halal certified as well as referred to Article 4 is based on self-declare Micro and Small Enterprises. The purpose of the regulation to obligate the MSMEs have halal certification is to accelerate the national economic growth. This halal certification acceleration of course should be accompanied by a high quality of products testing and inspection in order to avoid any haram materials or contaminated by haram or Najis materials and process.

Product processing by utilizing the advances of science and technology makes the mixing between halal and haram material possible to occur either intentionally or unintentionally. Currently, by the presence of *BPJPH* program of free halal certification (SEHATI program) for MSMEs in food and beverages sector whose products have low risk and simple production process, where its program will end on October 17, 2024 as if it forces acceleration of halal certification without any accuracy and quality control on the process of testing and examination of MSMEs products. According to the aforementioned, the writer is going to review on how the legal certainty of halal food product with Self Declare Scheme in protecting customers is.

II. LITERATURE REVIEW

The term legal effectiveness theory comes from the English translation, namely Effectiveness of The Legal Theory, in Dutch it is called *Effectiviteit van de Juridische Theorie*, in German it is called *Wirksamkeit der Rechtlichen Theorie*. Legal effectiveness according to Hans Kelsen is whether people actually act in a way to avoid sanctions threatened by legal norms or not, and whether these sanctions are properly implemented if the conditions are met or not fulfilled. The theory of legal effectiveness is a theory that examines and analyzes success and failure. and factors that influence the implementation and implementation of the law. There are three studies of legal effectiveness theory which include: a. Success in implementing the law b. Failure in implementation c. influence factor.[3]

Factors that influence legal effectiveness according to Soerjono Soekanto include the following.[4]

- a. Legal Factors, Law contains elements of justice, certainty and benefit. In practice, it is not uncommon for conflicts to occur between legal certainty and justice. Legal certainty is concrete and tangible in nature, while justice is abstract, so that when a judge decides a case by applying the law alone, there are times when the value of justice is not achieved.
- b. Law Enforcement Factors, Law enforcement is related to the parties who form and apply the law (law enforcement). The parts of law enforcement are law enforcement officers who are capable of providing certainty, justice and proportional legal benefits.
- c. Legal Means or Facilities Factor, Supporting facilities can simply be formulated as a means to achieve goals. The scope is primarily physical facilities that function as supporting factors. Supporting facilities include educated and skilled human power, good organization, adequate equipment, sufficient finances, and so on.
- d. Community Factors, Society has certain opinions regarding the law. This means that the effectiveness of the law also depends on the will and legal awareness of the community. Low awareness of the community will make it difficult to enforce the law. Steps that can be taken are socialization involving social layers, power holders and law enforcers themselves.
- e. Cultural Factors, Laws can be effective if the role played by law enforcement officials is closer to what is expected by law and conversely, it will be ineffective if the role played by law enforcers is far from what is expected by law.[5]

Halal product guarantee is legal certainty regarding the halalness of a product as proven by a Halal Certificate. Meanwhile, halal certification recognizes the halal status of a product issued by BPJPH based on a written halal fatwa issued by the MUI. In Indonesia, halal is regulated in legislation, namely Law Number 33 of 2014 article 4. Products entering, circulating and traded in Indonesian territory must be certified halal. The government currently has a program to encourage business actors, especially MSMEs, to carry out legislation on their products. through Law Number 11 of 2020 concerning job creation in Article 4A of Law 11/2020 that for Micro and Small Business Actors, the obligation to be halal certified as referred to in Article 4 is based on the statement of Micro and Small Business Actors. And it is also explained in Article 79. The obligation to be certified halal for micro and small business actors is based on statements made by micro and small business actors and is also regulated in the Minister of Religion Regulation Number 20 of 2021 concerning halal certification for micro and small business actors, article 2 that products are produced by micro and small business actors must be certified.

The implementation of halal certification for MSME Business Actors is based on self-declaration that the products being traded are halal products which are carried out based on halal standards set by BPJPH. "the background of the birth of destination development for Halal Tourism in the West Nusa Tenggara Province is based on three things, the philosophical foundation which shows in the development of the economic field in order to support the realisation of the acceleration of people's welfare, equitable distribution of business opportunities, other economic benefits and the ability to face the challenges of life changes while still paying attention to the cultural value system prevailing in this society in accordance with the noble values of Pancasila (Foundational Philosophy Theory of Indonesia). Second, the sociological foundation of the development of halal tourism is the demographic and geographical aspects of the Indonesia".[6]

III. METHOD

Research methodology used in this study is empirical normative approach which describes the effectiveness of halal certification for MSMEs by self-declare scheme. Empirical-normative research is a type of research which uses primary data and supported by secondary data based on some field studies, including observation, interviews and surveys. [3]

IV. RESULTS AND DISCUSSION

MSME is a unit of business which supports the national economic growth. In order to encourage the national economic growth, MSMEs need some help at marketing and capital aspects, and also on how MSMEs are able to reach either global or domestic market. From the side of regulation, government has issued a policy through the Law of halal product assurance which gives guarantee that all products which enter, circulate, and traded in Indonesia have to be halal certified. Likewise, Government Regulations Number 39 of 2021 which states that it is compulsory to Micro and Small Enterprises to have halal certification based on self-declare scheme. Self-declare Micro and Small Enterprises is a statement which is issued by the Micro and Small Enterprises upon a certain product. Self-declare scheme of Micro and Small Enterprises is administered in accordance to halal standardization which is determined by the Halal Product Assurance Organizing Body (*BPPJPH*). In the submission process of halal certification for MSMEs, there are several provisions according to the Minister of Religious Affairs Regulation Number 21 of 2021 on the Statement of Micro and Small Enterprises. Based on the halal standardization which is determined by *BPPJPH*.

This statement of enterprises is delivered to *BPJPH* which then forwarded to MUI (Indonesia Ulema Council). After receiving document from *BPJPH*, the next process is MUI administers an institution trial of halal fatwa to determine the rightfulness (*kehalalan*) of the product. *BPJPH* then publishes Halal Certificate based on the fatwa, whereas in mentoring activities by *PPH*, the mentor verifies and validate the statement of rightfulness (*kehalalan*) from the enterprises. The *PPH* assistance is administered by Islamic community organizations or incorporated Islamic religious institutions and/ or University. This assistance also can be carried out by governmental institutions or business entities as long as they are partnering with Islamic community organization or incorporated Islamic religious institutions and/or university. Based on the authority, community organizations, governmental institutions, and university are competing to do some training to the assistance personals. This training of *P3H* last for 3 days from various capacity of trainees' educational background, including bachelor graduates, high school graduates, and also housewives. The educational qualification for the assistance personals does not become a priority scale remembering due to the target being determined by the government for halal certification stage on food and material beverage product, food additives, and food and beverages aids materials. The first stage of this program is livestock slaughter products and livestock slaughter services on October 17, 2019 until October 17, 2024.[7] Based on this situation, Government through *BPJPH* creates a general policy program of halal product assurance (*JPH*). An acceleration of a million free halal certificate is retrieved through Free Halal Certificate Program (*SEHATI*) for MSMEs.

Basically, this halal certification principle is as follows: 1) Assuring that the resulted product is in accordance to halal terms, 2) Assuring the rightfulness (*kehalalan*) of product in the entire Halal Product Process (*PPH*), 3) Assuring that there are not any contaminations of haram materials occurred, either in the facilities/ equipment, workers, or environments, 4) Maintaining the sustainability of halal production process. Halal Certification Preparation: Personals, Halal Management team consist of halal supervisor (Muslim), where as the process: Product and materials, Facilities and Equipment, and Procedures.

The procedure of Halal Certification through Regular Line: 1) Enterprises registers for halal certification in Sihalala, <http://ptsp.halal.go.id>, 2) Enterprises complete the requirement documents, 3) *BPJPH* checks the completeness of the document and determines the Halal Inspection Agency (*LPH*), 4) *LPH* does inspection and/ or testing the product rightfulness (*kehalalan*), 5) MUI issues the determination of product rightfulness (*kehalalan*) through Halal Fatwa Trial. *BPJPH* issues halal certification. The criteria of Micro and Small Enterprises who can propose Free Halal Certification Submission (*SEHATI*) is that the Micro and Small Enterprises have business capital or have annual sales results in accordance to the provisions of regulations.

Halal assistance personals is a community organization or an incorporated Islamic religious institution or University which can give some training during 3 or 4 days with such a material of halal certification, which then followed up with a training of verification and validation (*Verval*) of materials and process of the product whose document has been determined by *BPJPH*. This process of assistance, actually is not easy as the practice in the field. One of the problems is the non-conformance of type KBLI with name of the product determined by *BPJPH*. Sometimes it makes the Assistants find some difficulties in finding product suitability with the *BPJPH* standardized product name. At the validation process, sometimes there are any assistance personals who are not doing verification and validation and direct visits to MSMEs location. All process is done without any on site verification and validation. Therefore, it is doubting the validity of the production process. In technological era, when there are so many products which is processed and produced by enterprises, especially in the material aids, then the critical point of production process needs scientific background, whereas the assistance personals are not from the bachelors of agricultural product, farm, or fishery technology.

Then this situation makes there are many parties are doubting upon the rightfulness (*kehalalan*) of products by Self-Declare process. The development of times and technology has created Mass Production and Mass Consumption. [8] For example, social media world is shocked again with the viral phenomenon of wine or khmar (kinds of beverage which contains alcohol) photograph in media social which includes halal logo of the Ministry of Religious Affairs of the Republic of Indonesia version. It makes the netizens feel awkward and are questioning why Wine whose raw materials are intoxicating substance gets halal certification. The wine with Nabidz brand becomes viral in the internet because of halal logo on its packaging. The institution who issues halal fatwa under the Ministry of Religious Affairs through self-declare halal process (without any audit process).[9] This moment has become a momentum for the Ministry of Religious Affairs, especially *BPJPH* and fatwa committee of the Ministry of Religious Affairs to be more careful and cautious in issuing halal certificate to low-scaled risk products.[10]

One of the factors which influence the effectiveness of law according to Soerjono Soekanto is the Law Enforcers. Law enforcement relates to some parties who form or apply the law (law enforcers). The elements of the enforcers themselves are law enforcement apparatus who are able to give a certainty, justice, and legal expediency proportionally. That government, at this situation is BPJPH, gives more attention to halal certification acceleration in order to achieve the quantity but does not give attention to the quality as well as the result of an interview with the chief of East Borneo LPH MUI, Mr. drh. Sumarsongo that because of the will to achieve a target, then halal certification acceleration is carried out without a precision and quality control of the halal product process.[9] From the aspects of facility factor and legal facility, the halal assistance personals who carry out an assistance still have limited knowledge because they only get 3 days training and they do not get enough support of knowledge on chemical and biological process of a certain product of food and beverage as the result of genetic engineering, such as in the case of grape essence whose halal certificate has been released by the BPJPH. But it is found that it contains wine substance. Even though conceptionally the application of halal certification through self-declare scheme seems simple, but in it is different its practice because within it there are some relation to the commitment, the responsibility of MSMEs, Halal Assistance Personals (P3H), and the supervision from the authorized stake holders. Therefore, in order that the application of halal certification through self-declare scheme by the MSMEs does not deviate from its purposes, even used as an engineering tool for getting good imaging in society, it needs an appropriate supervision to the implementation of halal certification through self-declare scheme in MSMEs.

V. CONCLUSION

Conceptionally, the application of halal certification through self-declare scheme for the MSMEs looks simply but in it is different in its practice because within it there are some relations to the commitment, the responsibility of MSMEs, Halal Assistance Personals (P3H), and the supervision from the authorized stake holders.

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