



Pemberlakuan Wajib Sertifikasi Halal Pada Produk Luar Negeri Di Indonesia Berdasarkan Peraturan Pemerintah Nomor 39 Tahun 2021 Terhadap *Technical Barrier To Trade Agreement*

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Abstract

Received:

Revised:

Accepted:

Cross-border trade has existed for a long time and is growing rapidly. The World Trade Organization (WTO), founded in 1995, regulates international trade with principles inherited from GATT. Indonesia, as a member of the WTO, implements halal certification obligations for foreign products in accordance with Government Regulation no. 39 of 2021. However, this implementation can create trade barriers involving differences in requirements, costs, infrastructure limitations and consumer trust. This research aims to find out how the implementation of mandatory halal certification in Government Regulation no. 39 of 2021 on foreign products in Indonesia and to find out whether the implementation of mandatory halal certification in this regulation is an obstacle to trade from the perspective of the Technical Barrier to Trade Agreement.

This research uses a type of normative juridical research which is also known as a literature approach. In addition, this research uses a comparative legal research model in which in this research there are two legal sources that are compared, namely Government Regulation no. 39 of 2021 and Technical Barrier to Trade Agreement.

The research results show that the implementation of mandatory halal certification on foreign products through Government Regulation no. 39 of 2021 does not constitute an obstacle to trade from the perspective of the Technical Barrier to Trade Agreement because it aims to protect human health and protection for the Indonesian Muslim community as stated in article XX (b) of the TBT Agreement. The existence of Government Regulation no. 39 of 2021 which regulates halal certification obligations and its implementation for foreign products in Indonesia is actually in line with the principles of the TBT Agreement (Technical Barriers to Trade). In the context of the TBT Agreement, the government has the right to regulate products to maintain public health and safety and to ensure compliance with halal principles which are a religious requirement in Indonesia.

Keywords: *Halal Certification, Foreign Products, TBT Agreement*

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How to Cite: XXXXX. (2018). XXXX. *Jurnal Ilmiah Wahana Pendidikan*, XX (x): x-xx.

INTRODUCTION

Cross-border trade has long been carried out by people around the world, in fact this activity was carried out long before the colonial period. In today's modern era, trade activities between countries are developing very quickly and are becoming more free. However, fast and free trade between countries still requires paying attention to existing regulations in each country. The World Trade Organization (WTO) is a world organization that was formed as an effort by countries to regulate trade traffic. The WTO was founded on January 1, 1995 through the Marrakesh Agreement Establishing the World Trade Organization and as a successor to the General Agreement on Tariffs and Trade (GATT) which was

founded in 1947.¹ The transition from GATT to the WTO occurred as a result of the Uruguay Round of negotiations that took place between 1986 and 1994. During the round, GATT member countries agreed to form a new organization that would replace GATT and expand its role and responsibilities in regulating international trade. The WTO is a broader and more comprehensive global trade regulatory body, with a scope that includes trade in goods, services and intellectual property. This transition brought about several significant changes in international trade regulations.²

However, the WTO still inherits and continues the principles existing in GATT. The principles of non-discrimination, such as Most Favored Nation (MFN) and National Treatment, which apply under GATT, also remain in effect in the WTO system. Therefore, the fundamental GATT principles remain an integral part of the WTO framework.³

Countries that are members of the WTO have the consequence that all trade rules in their national regulations must be in line with the rules in the WTO and implement all agreements contained in the WTO legal provisions. In reality, one country has different interests and needs which are influenced by geographical environmental conditions, social culture and even religion. The result of these interests and needs then results in regulations that sometimes inhibit trade between WTO members. Harmonization of national regulations with WTO rules is very important in order to facilitate trade and not become trade barriers (Trade Barriers).⁴ Indonesia is one of the WTO member countries which has the largest Muslim population in the world and as explained, religion can influence the rules in a country. One example of religious influence is the provision of consuming or using a product that is certified or has a halal label. A halal label is a label placed on food packaging which indicates that a product has undergone a halal inspection process and has been declared halal (has been certified halal).⁵

Problems related to halal products have occurred between Indonesia and Brazil regarding imports of chicken meat. In 2018, Indonesia decided to block imports of chicken meat from Brazil due to concerns regarding the halalness of the product. Indonesia has strict requirements for importing chicken meat which requires the country of origin to meet established halal standards. Indonesia requires exporting countries to have halal certification issued by a recognized halal authority. However, Brazil cannot fulfill this requirement because it does not have a halal certification system recognized by Indonesia.⁶

¹ Peter van den Bossche, Daniar Natakusumah & Joseph Wira Koesnaidi, *Pengantar Hukum WTO (World Trade Organization)*, Yayasan Obor Indonesia, Jakarta, 2010, hlm. 3.

² AE Appleton, MG Plummer, *The World Trade Organization: Legal, Economic and Political Analysis*. Springer US, 2007, hlm. 536

³ AF Lowenfeld., *International Economic Law*, Oxford University Press, 2008, hlm. 47

⁴ FL Banser, *Kewajiban Sertifikasi Halal Ditinjau Dari Standar Moral Publik Berdasarkan Pasal Xx The General Agreement On Tariffs And Trade (GATT) (Doctoral Dissertation, Universitas Gadjah Mada)*, 2010, hlm. 21

⁵ A, Kawila., & M, Astuti., *Kebijakan Pemberlakuan Sertifikasi Halal Terhadap Produk Asing Yang Masuk Ke Suatu Negara Menurut Hukum Internasional* (Doctoral dissertation, UMSU), 2021, hlm. 5

⁶ <https://www.cnbcindonesia.com/news/20210531141748-4-249567/gara-gara-daging-ayam-impor-ri-dan-brasil-bertarung-di-wto>, diakses tanggal 16 Juli 2023

In 2020, the WTO decided that Indonesia violated international trade rules by blocking imports of chicken meat from Brazil. The WTO concluded that Indonesia does not provide the same treatment to chicken meat imports from Brazil compared to other countries that have recognized halal certification. This WTO decision has the potential to have a significant impact on chicken meat import policies and halal requirements in Indonesia. Indonesia may have to review halal requirements for chicken meat imports and ensure consistency with international trade regulations.⁷

Problem Formulation

Based on the background described previously, the problem formulation in this research is:

1. How is the implementation of mandatory halal certification in Government Regulation no. 39 of 2021 on foreign products in Indonesia?
2. Is the implementation of mandatory halal certification in Government Regulation Number 39 of 2021 on foreign products in Indonesia an obstacle to trade from the perspective of the Technical Barrier to Trade Agreement?

Research Objectives and Uses

1. Research Objectives

The objectives that the author wants to achieve in conducting this research are as follows:

- a. To find out about the implementation of mandatory halal certification in Government Regulation no. 39 of 2021 on foreign products in Indonesia
- b. To find out about the implementation of mandatory halal certification in Government Regulation no. 39 of 2021 on foreign products in Indonesia becomes an obstacle to trade from the perspective of the Technical Barrier to Trade Agreement.

2. Usefulness of Research

It is hoped that this research will be useful and valuable, including:

- a. This research is useful for the author as a requirement for obtaining a bachelor's degree in law (S1) at the Faculty of Law, University of Riau.
- b. This research is expected to provide additional knowledge in the field of International Law, especially in International Trade Law.
- c. It is hoped that this research will be useful for parties related to the title of this research, the Ministry of Religion, the Indonesian Ministry of Trade, the Indonesian Ulema Council, academics and law students.

Theoretical framework

1. Principle of Pacta Sunt Servanda

International agreements are one source of international law. It can be said that within the body of international law there are international agreements. Nowadays international agreements play an important role in international relations. Because, almost all of the results of relations between countries or international relations are outlined in international treaty instruments. Through international agreements they formulate rights and obligations.⁸

⁷ *Ibid*

⁸ I. G. A. A, Utama, *Asas Pacta Sunt Servanda Dalam Perspektif Hukum Perjanjian Internasional*. Ganesha Civic Education Journal, 1(1), 2019, hlm. 37- 38

The principle of *Pacta Sunt Servanda* is one of the general legal principles recognized by civilized countries in the world within the framework of international relations. This principle is universally recognized. Schmitthof and Goldstajn consider this principle (along with the principle of freedom of contract) to be an important principle. Recognition in the world's legal systems is not too difficult to find. Even countries in the world include this provision in their national legislation.⁹

In general, *pacta sunt servanda* is defined as the binding of a country to an international agreement due to the agreement of that country to bind itself to the international agreement. When a country becomes a party to an international agreement, it expresses its will to be bound by the provisions stipulated in the agreement. This has the effect that the provisions stipulated in the agreement apply within the territory of the state that declares it.¹⁰

The principle of *pacta sunt servanda* is one of the basic norms in contract law, and is closely related to the principle of good faith to respect or obey the provisions of the agreement. Hugo de Groot or better known as Grotius said that among the principles of natural law that underlie the international legal system, *pacta sunt servanda* is the most fundamental principle. *Pacta sunt servanda* which is part of natural law which is the basis for consensus. Anzilotti, an Italian adherent of dualism, strengthened Grotius' views and laid the basis for the binding force of international law on the principle of *pacta sunt servanda*.¹¹

2. Basic Principles in the WTO

In principle, the World Trade Organization (WTO) is a means of encouraging orderly and fair free trade in the world of international trade. In carrying out its duties to encourage the creation of fair and peaceful free trade, the WTO applies several principles which are the pillars of the WTO, some of which are; Most Favored Nations (MFN) and National Treatment (NT) principles.¹²

The principle on which GATT is based is the principle of non-discrimination which in GATT is known as the Most-favored-nation or MFN principle. In summary, MFN is the principle that international trade between GATT members must be carried out in a non-discriminatory manner. Thus, the main principle is that concessions granted to a trading partner country must also apply to all other countries. One country must not be treated better or worse than another country, thus all countries are placed on the same position, and all countries must accept to enjoy the opportunities achieved in international trade liberalization and assume the same obligations.¹³

⁹ H Adolf, *Dasar-dasar Hukum Kontrak Internasional*, Refika Aditama, Bandung, 2006, hlm. 23

¹⁰ D.A Situngkir, *Asas Pacta Sunt Servanda Dalam Penegakan Hukum Pidana Internasional*. JCH (Jurnal Cendekia Hukum), 3(2), 2018, hlm. 153-165

¹¹ Y. B, Ardhiwisastra, *Hukum Internasional*, PT. Alumni, Bandung, 2003. hlm. 72

¹² B Linda, *Kajian Hukum Internasional Terhadap Negara Yang Melanggar Prinsip-Prinsip WTO (World Trade Organization)*. Lex Privatum, 10(4), 2022. hlm 31

¹³ Suardi. B.Dg, Mallawa, *Pengaturan World Trade Organization Dalam Hukum Internasional Serta Konflik Kepentingan Antara Negara Maju Dan Negara Berkembang*, Jurnal Inspirasi No. XIII, 2012, Hal. 6

The Most Favored Nations (MFN) principle is a basic principle that contains quite a lot of WTO provisions and is specifically contained in Article I of the GATT. This principle requires that provisions that have been agreed upon by member countries must be treated equally by all WTO member countries or implemented based on the principle of non-discrimination. The same treatment must be carried out immediately and without conditions (immediately and unconditionally) on products originating from or submitted to all GATT members.¹⁴

In the context of halal certification obligations for foreign products, the MFN principle means that if a country requires imported products from one particular country to have halal certification, then that country must also apply the same requirements to imported products from all other WTO member countries. In other words, countries cannot differentiate imported products from various countries based on halal certification requirements. If a product meets the halal certification requirements of its country of origin and meets the same requirements as domestic products, then the product may not be subject to additional or discriminatory requirements when imported into another country that is a member of the WTO.

Conceptual Framework

The conceptual framework contains the limits of understanding and/or definitions of the main terms contained within the scope of the research, namely as follows:

1. Enforcement is the process, method, act of enforcing.¹⁵
2. Halal certification is a process to obtain a halal certificate through several stages to prove that the materials, production process and Halal Guarantee System (SJH) meet halal standards. Halal certification is also defined as a series of processes that must be passed by business actors, both individuals and business entities in the form of legal entities or non-legal entities, to obtain a halal certificate. Halal certificates are obtained through several stages of inspection to prove that a company's raw materials, production process and halal product guarantee system comply with established standards.¹⁶
3. Technical Barriers to Trade Agreement The Agreement on Technical Barriers to Trade (The TBT Agreement) is an international agreement under the framework of the World Trade Organization (WTO). Technical Barriers to Trade are non-tariff barriers to international trade in the practices and agreements of various countries.¹⁷

Research methods

1. Type of Research

¹⁴ Part II Chapter 1 Most-Favored-Nation Treatment Principle

¹⁵ <https://kbbi.lektur.id/pemberlakuan>, diakses pada 5 Juni 2022

¹⁶ W Wardo, & S Samsuri, *Sertifikasi Halal Dan Implikasinya Bagi Bisnis Produk Halal Di Indonesia*, Al Maal: Journal of Islamic Economics and Banking, 2(1), 2020, hlm. 101

¹⁷ <https://www.dictio.id/v/apa-yang-dimaksud-dengan-technical-barriers-to-trade/161016>, diakses pada tanggal 5 Juni 2022

This type of research is a process of solving or resolving problems through predetermined stages so as to achieve the research or writing objectives.¹⁸ This research uses a type of normative juridical research which is also known as a bibliographic approach, namely an approach based on primary legal material by examining theories, concepts, legal principles and statutory regulations related to this research.¹⁹ This approach views law as identical to written norms created and promulgated by authorized institutions or officials.²⁰

In addition, this research uses a comparative legal research model. Comparative legal research is a research method that compares various legal systems or certain aspects of different legal systems in different countries. The aim of this research is to understand the differences, similarities, and general patterns in the laws of different countries. In comparative legal research, researchers study and analyze legal regulations, court decisions, and overall legal systems to identify differences in laws, legal implementation, and legal effects of different countries.²¹

2. Data Collection Techniques

The data collection technique used in this research is the library research model. Literature study is the study of written information about law that comes from various sources and is widely published and is needed in normative legal research, then reviewed and compiled in a comprehensive, systematic manner.²²

3. Data Analysis Techniques

The data analysis technique in this research was carried out in a qualitative descriptive manner, namely the selection of theories, principles, norms, doctrine and articles in the law. Activities carried out in normative legal research data analysis involve the data obtained being analyzed descriptively qualitatively, namely the analysis of data that cannot be calculated. The legal materials obtained are then discussed, examined and grouped into certain sections to be processed into information data

LITERATURE REVIEW

General Overview of the WTO (World Trade Organization)

1. History of the WTO (World Trade Organization)

The World Trade Organization (WTO) is the only international body that regulates international trade. Founded in 1995, the WTO operates based on a series of agreements that have been negotiated and agreed to by many countries around the world and then passed through national legislative processes. The aim

¹⁸ Muhammad Abdulkadir, *Hukum dan Penelitian Hukum*, Bandung, Citra Aditya Bakti, 2004, hlm. 112

¹⁹ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta, Rajawali Pers, 1985, hlm. 52

²⁰ Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, 1998, hlm. 13-14

²¹ Bachtiar, *Mendesain Penelitian Hukum*, Deepublish, 2021, hlm. 94

²² Jhony Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malan., Bayumedia, 2006, hlm. 392

of the WTO agreements is to support producers of goods and services, exporters and importers in carrying out their trade activities.²³

The founding of the WTO began with a series of negotiations known as the "Uruguay Round" which took place from 1986 to 1994. Previously, there were also negotiations under the General Agreement on Tariffs and Trade (GATT). The main principles that form the basis for the establishment and operation of the WTO are to promote openness of cross-border trade, guarantee the Most Favored Nation (MFN) principle, which means providing the most favorable treatment to all members, and promote non-discrimination among member countries. . In addition, the WTO is committed to transparency in all aspects of its activities.²⁴

Opening national markets to international trade, with reasonable exceptions or adequate flexibility, is considered to encourage and support sustainable development, increase prosperity, reduce poverty levels, and promote peace and stability. At the same time, market openness needs to be supported by appropriate national and international policies, which can contribute to economic growth and development in accordance with the needs and aspirations of each member country. Currently, WTO members consist of 159 countries.

2. Functions & Principles of the WTO

The World Trade Organization (WTO) has several functions in international trade, namely:²⁵

- a. WTO trade agreement
- b. Forum for trade negotiations
- c. Handling trade disputes
- d. Monitoring national trade policies
- e. Technical assistance and training for developing countries
- f. Collaboration with other international organizations.

Apart from that, the World Trade Organization (WTO) has principles in carrying out its duties, namely:²⁶

a. Non Discrimination

A country should not differentiate between trading partners and should not differentiate between its own and foreign products, services or citizens.

b. More open

Lowering trade barriers is one of the most obvious ways to encourage trade; These barriers include import duties (or tariffs) and measures, such as import bans or quotas that limit selective quantities.

c. Predictable and transparent

Foreign companies, investors, and governments must be confident that trade barriers should not be raised arbitrarily. With stability and predictability,

²³ Aprita, S., & Adhitya, R, *Hukum Perdagangan Internasional*, Depok: Rajawali Pers, 2020, hlm. 186

²⁴ *Ibid*

²⁵ AB Kurniawardhani, *Sejarah Organisasi Ekonomi Internasional: World Trade Organization (WTO)*, Widya Winayata: Jurnal Pendidikan Sejarah, 9(1),2021, hlm. 49-53

²⁶ NF Hassanah, *Kajian Yuridis Perjanjian Perdagangan Internasional Terkait Aturan Pembatasan Dan Larangan Ekspor Oleh World Trade Organization (WTO)(Studi Perjanjian Antara Indonesia Dan Uni Eropa)*. Jurnal Ilmiah Mahasiswa Hukum [JIMHUM], 1(4), 2021, hlm. 236

investment is encouraged, jobs are created, and consumers can fully enjoy the benefits of competitive choice and lower prices.

d. More competitive

Prevent “unfair” practices, such as export subsidies and dumping products below cost to gain market share; complex issues, and the rules try to define what is fair or unfair, and how governments can respond, particularly by charging additional import duties calculated to offset the damage caused by unfair trade.

e. More beneficial for developing countries

Giving them more time to adjust, greater flexibility, and privileges; more than three-quarters of WTO members are developing countries and countries in transition to market economies. The WTO Agreement provides a transition period to adjust to more unfamiliar, and perhaps, difficult WTO provisions.

3. WTO Decision Making and Dispute Resolution

In making decisions, the WTO applies a one country one vote consensus. Based on a simple majority of members present, in practice there is rarely an opportunity to implement voting in formal, but informal meetings through consensus. For a country that disagrees to be able to submit a formal objection when a consensus decision is being made, the country must gather the support of the majority of members present.²⁷

Dispute resolution in the WTO has been agreed upon by member countries using the principles of the multilateral system rather than taking unilateral action. This means that these countries must comply with agreed procedures and respect the decisions taken. Dispute resolution is the responsibility of the Dispute Settlement Body (DSB), which is an incarnation of the General Council (GC). DSB is the only body that has the authority to form a panel consisting of experts tasked with reviewing cases. The DSB may also accept or reject the panel's decision or decision on appeal. The DSB monitors the implementation of decisions and recommendations and has the power or authority to authorize retaliation if a country does not comply with a decision.²⁸

General Overview of GATT 1947

One of the important sources of law in international trade law is the General Agreement on Tariffs and Trade (GATT). The content in it is not only important in regulating trade policies between countries, but also to a certain extent the rules also concern trade rules between entrepreneurs. An example of the latter is the regulation of counterfeit goods or customs. GATT was formed in October 1947. The birth of the WTO in 1994 brought two quite important changes to GATT. First, the WTO took over GATT and made it an annex to the WTO rules. Second, the GATT principles become the regulatory framework for new areas in the WTO agreement, especially the Agreement on Services (GATS), Capital Investment (TRIMS), and also in the Agreement on Trade Related to Intellectual Property Rights (TRIPS).²⁹

²⁷ Sasmita, S, Reformasi Struktur Perdagangan Internasional dalam WTO: Perspektif Joseph E. Stiglitz, *Jurnal Hubungan Internasional*, 4(2), 2016, hlm. 192-203

²⁸ NLDA Lestari, C Damayanti, H Haqqi, *Prinsip National Treatment Wto (Studi Kasus Sengketa Dagang WTO DS477/DS478 Indonesia–Importation of Horticultural Products, Animals and Animal Products)*, Solidaritas: Jurnal Ilmu-Ilmu Sosial, 2(1), 2018, hlm. 110

²⁹ H Adolf, *Hukum perdagangan internasional*, PT Raja Grafindo Persada, 2006, hlm 80

The purpose of establishing GATT is to create a safe and clear international trade climate for the business community, as well as to create sustainable trade liberalization, employment opportunities and a healthy trade climate. To achieve this goal, the international trade system that GATT is pursuing is a system that can increase economic growth and development throughout the world.³⁰

The main purpose of GATT can be seen clearly in its preamble. In essence, there are four important goals that GATT wants to achieve:³¹

1. Improve the standard of living of mankind
2. Increase job opportunities
3. Increase the use of the world's natural resources
4. Increase production and exchange of goods

There are three main functions of GATT in achieving its objectives: first, as a set of multilateral provisions (rules) that regulate trade transactions carried out by GATT member countries by providing a set of trade conditions (the 'rules of the road' for trade). Second, as a forum for trade negotiations. Here efforts are made so that trade practices can be freed from disturbing obstacles (trade liberalization). Third, GATT seeks to make such trade rules or practices clear (predictable), either through opening national markets or through enforcing and disseminating the application of its regulations.³²

Overview of TBT (Technical Barriers to Trade Agreement)

The Agreement on Technical Barriers to Trade (TBT Agreement) is one of the main agreements within the framework of the World Trade Organization (WTO) which regulates technical barriers in international trade. To understand the history of the TBT Agreement, it is important to look back at the General Agreement on Tariffs and Trade (GATT), an international trade agreement established in 1947. GATT first focused on reducing import duties, but as time passed, technical barriers to trade is also a concern.³³

In 1979, GATT adopted the "First TBT Agreement" which regulated technical requirements in trade. However, this agreement is still provisional and does not have provisions for effective dispute resolution. In 1986, Uruguay Round negotiations began in the context of GATT. The main aim of this round is to expand international trade agreements and introduce a more comprehensive framework. One of the main outcomes of this round was the establishment of the World Trade Organization (WTO).³⁴

The TBT Agreement is one of the agreements included in the Uruguay Round agreement package. It was officially adopted on April 15, 1994, along with the founding of the WTO. The TBT Agreement expands and clarifies previous

³⁰ M Sidiq, *Analisis Hukum Internasional terhadap Liberalisasi Perdagangan Bebas Oleh Negara-Negara Global* (Doctoral dissertation, Fakultas Hukum UNISSULA), 2016, hlm 45

³¹ *Op.cit.* hlm. 48

³² B Satrianto, *Aspek Hukum Importasi Barang dalam Transaksi Perdagangan Internasional General Agreement on Tariffs and Trade/World Trade Organization Dikaitkan dengan Syarat Sahnya Perjanjian Kontrak (Sales Contract) Impor Barang*, *Jurnal Panji Keadilan: Jurnal Ilmiah Nasional Mahasiswa Hukum*, 4(2), 2021, hlm. 210-228

³³ AM Suherman, *Hukum Perdagangan Internasional: Lembaga Penyelesaian Sengketa WTO dan Negara Berkembang*. Sinar Grafika, 2022, hlm. 23

³⁴ *Ibid*

provisions on technical barriers in international trade and provides a stronger dispute resolution mechanism. The TBT Agreement brings significant changes in international trade regulations. It encourages member states to adopt international standards when establishing their national technical requirements, provides further clarity on conformity assessment procedures, and encourages harmonization of international standards.³⁵

Since the entry into force of the TBT Agreement, international trade regulation in the context of technical barriers has become more coordinated and transparent. These agreements play an important role in ensuring that technical barriers are not used as a tool of protectionism and that access to international markets remains open and fair for all parties.³⁶

Overview of Halal Certification

Definition of Halal Certification

Halal certification is the process of assessing and granting a certificate by an authorized authority or body stating that a product or service meets certain requirements and standards in accordance with halal principles in Islam. This halal certificate confirms that the product or service is halal, which means it is declared as “permissible” or “in accordance with Islamic law.”³⁷

The halal certification process involves a thorough examination of the ingredients, production, and processes used in manufacturing a product or providing a service. This includes aspects such as:³⁸

- a. services to ensure that they do not contain ingredients that are forbidden in Islam, such as alcohol, pork, or other non-halal ingredients.
- b. Production Process: Monitoring and inspection of the production process, including the way products are processed, prepared and handled, to ensure that there is no contamination with prohibited substances.
- c. Devices and Equipment: Inspection of equipment and devices used in production or provision of services to ensure that they are clean and do not contain prohibited residues.
- d. Sanitation Monitoring Ingredients: Inspection of components and ingredients used in products or Ensuring that production or service provision facilities meet high standards of cleanliness to prevent contamination.

Purpose of Halal Certification

The purpose of halal certification is to ensure that a product or service meets certain standards and requirements in accordance with halal principles in Islam. Following are some of the main objectives of halal certification:³⁹

³⁵ Hidayatullah, S. Agreement Technical Barriers To Trade And Indonesia Law Of Halal Product Assurance, An Overview Of Technical Barriers Within International Trade. In *3rd Internasional Conference On Islamic Law In Indonesia*, 2021, hlm 6

³⁶ AM Suherman, *Hukum Perdagangan Internasional: Lembaga Penyelesaian Sengketa WTO dan Negara Berkembang*. Sinar Grafika, 2022, hlm. 24

³⁷ DP Rini, *Sertifikasi halal pada hewan atau daging impor menurut UU No. 41 tahun 2014 tentang peternakan dan kesehatan hewan* (Bachelor's thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta), 2019, hlm. 108

³⁸ NA Habibi, CT Utami, *Panduan Praktis Sukses Sertifikasi Halal (Jilid 1)*, Penerbit NEM, 2022, hlm. 19

³⁹ RR Maulayati, *Model pengembangan produk halal*. *Jurnal Investasi Islam*, 4(1), 2019, hlm. 19-32

- a. **Religious Compliance:** The main aim of halal certification is to ensure that the product or service complies with the principles of the Islamic religion. This is important because Muslim consumers believe that they should consume or use products that are "halal" or "permissible" in Islam. Halal certification provides a guarantee that the product complies with their religious beliefs.
- b. **Consumer Protection:** Halal certification protects Muslim consumers from products or services that may contain ingredients that are forbidden in Islam, such as alcohol, pork, or other non-halal ingredients. This helps consumers to make choices that are in line with their religious beliefs.
- c. **Wider Market:** Halal certification also allows manufacturers and service providers to market their products to a wider market, namely Muslim consumers around the world. This can help increase sales and access to global markets.
- d. **Quality Monitoring:** The halal certification process involves monitoring and supervision of ingredients, production processes, and facilities. This helps ensure the quality of the product or service and prevents contamination or use of prohibited substances.

Legal Basis for Halal Certification in Indonesia

The legal basis for halal certification in Indonesia is mainly found in several laws and regulations that regulate halal certification procedures, namely:⁴⁰

- a. **Law of the Republic of Indonesia Number 33 of 2014 concerning Halal Product Guarantees:** This law is the main legal basis that regulates halal product guarantees in Indonesia. This law gives authority to the Halal Product Guarantee Organizing Agency (BPJPH) as the body responsible for halal certification in Indonesia.
- b. **Government Regulation Number 31 of 2019 concerning Halal Product Guarantees:** This regulation further regulates the implementation of Law Number 33 of 2014. This regulation includes halal certification procedures, requirements that must be met by producers or service providers, and the role of BPJPH and Halal Inspection Institutions (LPH) in the certification process.
- c. **BPJPH Regulation Number 1 of 2020 concerning Guidelines for Implementing Halal Product Certification:** This BPJPH Regulation regulates in more detail the certification procedures, including technical and administrative requirements that must be fulfilled by applicants for halal certification.
- d. **BPJPH Regulation Number 2 of 2020 concerning Guidelines for Implementing Halal Inspection Institutions:** This regulation regulates the duties, authority and operational procedures of LPH, which is tasked with carrying out halal-related inspections and audits on products or services.

Flow of the Halal Certification Process for Foreign Products in Indonesia

The halal certification process for foreign products in Indonesia follows a series of steps regulated by the Halal Product Guarantee Organizing Agency (BPJPH) based on Republic of Indonesia Government Regulation No. 39 of 2021

⁴⁰ PA Agus, *Kedudukan sertifikasi halal dalam sistem hukum nasional sebagai upaya perlindungan konsumen dalam hukum Islam*. Amwaluna: Jurnal Ekonomi dan Keuangan Syariah, 1(1), 2017, hlm. 149-165

concerning Implementation of Halal Product Guarantees. Here is the general flow:⁴¹

- a. Registration and Accreditation of Foreign Halal Inspection Institutions (LPH) Foreign halal inspection institutions (LPH) that will carry out halal certification of foreign products must register and be accredited by BPJPH. This LPH will carry out halal inspections in the country of origin of the product producer or exporter.
- b. Halal Inspection in Country of Origin Foreign LPHs recognized by BPJPH will carry out halal inspection of products in the country of origin of the producer or exporter. This inspection covers raw materials, production processes and final products to ensure that the product meets the halal standards applicable in Indonesia
- c. Halal Certificate If the product passes the halal inspection, the foreign LPH will issue a halal certificate confirming that the product is halal. This certificate must include clear information about the product being certified and must be translated into Indonesian.
- d. Sending Products to Indonesia Foreign products that have been certified halal by foreign LPHs can be sent to Indonesia to be sold on the Indonesian market.

RESEARCH RESULTS AND DISCUSSION

Implementation of Mandatory Halal Certification in Government Regulation no. 39 of 2021 for Foreign Products in Indonesia

Law no. 33 of 2014 regulates the legal basis for guaranteeing halal products in Indonesia. This creates a basic framework for administering halal product assurance. This law provides a general framework regarding halal product guarantees and provisions for the establishment of the Halal Product Guarantee Organizing Agency (BPJPH) as the institution responsible for implementing halal product guarantees.

In Government regulation no. 39 of 2021 This regulation regulates the implementation issued based on Law no. 33 of 2014. This describes in detail the procedures and technical requirements for implementing halal guarantees, both for domestic and foreign products. This regulation regulates technical requirements, inspection procedures, supervision, sanctions and other practical aspects related to halal certification. The practical implementation of Law no. 33 of 2014 gives permission to BPJPH to regulate further implementing regulations, while Government Regulation no. 39 of 2021 outlines in more detail the steps and requirements that must be followed by business actors in obtaining halal certification.

For foreign products, the process begins with the registration of a single LPH which will carry out halal inspections in the country of origin of the product

⁴¹ SN Dwi, *Implementasi Pasal 79 Peraturan Pemerintah Nomor 39 Tahun 2021 Tentang Penyelenggaraan Bidang Jaminan Produk Halal Perspektif Fiqh Siyasah (Studi Pada Pelaku UMK di Kelurahan Labuhan Dalam Kecamatan Tanjung Senang Kota Bandar Lampung)* (Doctoral dissertation, Uin Raden Intan Lampung), 2023, hlm 20

producer or exporter. The Indonesian government will assess and recognize foreign LPHs that meet the specified requirements.⁴²

Foreign products to be imported and sold in Indonesia must undergo halal inspection in their country of origin by an LPH recognized by the Indonesian government. The LPH will check and ensure that the product meets the halal standards applicable in Indonesia. Once the product passes the halal inspection, the recognized LPH will issue a halal certificate confirming that the product is halal. This certificate must include clear information about the product being certified and must be translated into Indonesian.⁴³

This inspection aims to verify that the product does not contain ingredients that are forbidden in Islam, such as pork or alcohol, as well as ensuring that the production process complies with strict hygiene and hygiene principles. LPH will also check all product labels and packaging to ensure that the information required by consumers is provided clearly and accurately.

If the product successfully passes all inspection stages and meets all requirements, the recognized LPH will issue a valid halal certificate. This certificate is proof that the product has passed the halal test and meets the standards set by the Indonesian halal authority. This certificate must also include detailed information about the product being certified, such as product name, manufacturer, certificate number, and expiration date.

Additionally, it is important to note that this halal certificate must be translated into Indonesian. This is important so that consumers in Indonesia can understand and verify the halal status of products easily. With a strong halal certification system like this in place, the Indonesian government aims to provide better protection to Muslim consumers in the country and ensure that they have access to high-quality halal products. Apart from that, this also supports the Indonesian economy by creating confidence in the trade of halal products, both at the national and international levels.

When the product arrives at an Indonesian port, it will undergo further inspection by quarantine and health authorities. This inspection aims to ensure completeness of documents, including halal certificates, and check physical products if necessary. Foreign products that have been declared halal and are allowed to circulate in Indonesia will still be monitored and supervised by BPJPH (Halal Product Guarantee Organizing Agency) and related authorities. This monitoring aims to ensure that products continue to meet halal standards while circulating in the Indonesian market.⁴⁴

Products that do not have a valid halal certificate or are found not to comply with halal standards may be prohibited from circulating in Indonesia. The Indonesian government has the right to take action and impose sanctions if violations related to halal certification are found. Government Regulation no. 39 of 2021 aims to ensure that foreign products sold in Indonesia comply with halal

⁴² IF Sukri, *Implementasi Undang-Undang Cipta Kerja terhadap Penyelenggaraan Sertifikasi Halal dan Produk Halal di Indonesia*. *Majalah Hukum Nasional*, 51(1), 2021, hlm. 73-94

⁴³ Diana Susanti, *Kebijakan hukum produk halal di Indonesia*. *Sinar Grafika*, 2021, hlm. 12

⁴⁴ P Halal, *Perlindungan Hukum Bagi Konsumen terhadap Produk Pangan yang Tidak Bersertifikat Halal*, 2016, hlm. 18

principles, which is important for the majority of Indonesia's Muslim population. This is also a step to protect consumers' rights to consume products that comply with their religious beliefs.⁴⁵

Government Regulation no. 39 of 2021 Regarding Halal Certification Obligations and Obstacles in Implementing It for Foreign Products According to the TBT Agreement

International economic activities do not always run well even though there are legal rules governing international trade activities. Very often there are differences of opinion which ultimately lead to trade disputes⁴⁶

Government Regulation no. 39 of 2021 concerning the Implementation of Halal Product Guarantees will impose halal certification obligations on all products circulating in Indonesia, including products from other countries imported into Indonesia. The legal provisions for halal certification obligations for products circulating in Indonesia are contained in Article 2 paragraph 1 of Government Regulation no. 39 of 2021 which states that products entering, circulating and being traded in Indonesian territory must be certified halal. Government Regulation no. 39 of 2021 is the basis for implementing mandatory (obligation) for all halal certified products in Indonesia, where previously the provisions for halal certification were only voluntary, although there are exceptions to the obligation to be certified halal which are aimed at business actors who actually produce products from materials that are prohibited by law. the requirement that business actors who produce products from haram materials are still required to include non-halal information on their products.⁴⁷

These legitimate objectives are, among others: national security requirements; prevention of fraudulent practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology, or the intended end use of the product.⁴⁸

Legal provisions in Government Regulation no. 39 of 2021 must be consistent with the TBT Agreement so that UUJPH is not opposed and sued to the WTO Dispute Settlement Body or what is called the WTO Dispute Settlement Body by other member countries if it is deemed to be one of the obstacles to trade that is not in accordance with existing provisions in WTO law. Many countries are

⁴⁵ N Ridhiyah, *Sertifikasi Halal Oleh Badan Penyelenggara Jaminan Produk Halal Pasca Diterbitkannya Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal* (Bachelor's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta), 2019, hlm. 44

⁴⁶ DSB Sianipar, ZJ Kusuma, L Diana. *Analisis Yuridis Sengketa Perdagangan Antara Amerika Serikat Dan China Dikaitkan Dengan Eksistensi World Trade Organization Sebagai Organisasi Perdagangan Internasional*. Jurnal Online Mahasiswa (JOM) Bidang Ilmu Hukum, 6(2), 2022, hlm. 1-15

⁴⁷ NM Jannah, *Validitas Hukum Permendag Nomor 29 Tahun 2019 Tentang Ketentuan Ekspor Dan Impor Hewan Dan Produk Hewan Terhadap Undang-Undang Jaminan Produk Halal* (Bachelor's thesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta), 2021, hlm. 39

⁴⁸ H Hambali, *Pemberlakuan Sertifikasi Halal Secara Wajib Terhadap Produk Asing Menurut Persetujuan Tentang Hambatan Teknis dalam Perdagangan (Technical Barrier To Trade Agreement)*. Nurani Hukum, 2(2), 2020, hlm. 48-61

very concerned about this halal certification arrangement. The article which is the main key to the legal regulation of Government Regulation no. 39 of 2021, namely Article 2 paragraph 1, is considered too broad and complex, many parties are asking for Government Regulation no. 39 of 2021 to be revised.

Halal obligations contained in Article 2 paragraph 1 of Government Regulation no. 39 of 2021 states that products entering, circulating and being traded in Indonesian territory must be certified halal. This provision means that all products, not only foreign products/foreign products, but domestic/domestic products, circulating in Indonesia are also required to be halal certified. This legal rule is a regulation that is legally neutral or does not involve discrimination, however, looking at further provisions as contained in Article 124 paragraph 2 of Government Regulation no. 39 of 2021 which states that in the event that there is no accreditation institution in the local country as intended in Article 123 paragraph (4), foreign halal institutions are accredited by the LPH Accreditation Team.⁴⁹

At first glance, the provisions of this article can be interpreted as discrimination because even though the incoming product has been certified and labeled halal issued by the official authority of a WTO member country, it has not been certified in Indonesia or the halal product does not come from a member country that has mutual recognition cooperation with Indonesia. These halal products cannot enter circulation in Indonesia. Such actions will give the impression that there is a distinction between halal products originating from one country and another, while halal provisions should be the same between countries because they are based on the legal rules contained in the Al-Quran and Sunnah.

The implementation of the general principles in the TBT Agreement rules must be fulfilled by the Indonesian Government. These principles are grouped into 3 (three) main principles contained in the articles in the legal framework of the TBT Agreement and have been discussed in the description of letter A CHAPTER IV, namely: first, obligations fulfillment of the principle of non-discrimination as contained in Article 2.1, Article 5.1, Article 5.2 and Paragraph D of attachment 3 of the TBT Agreement. Second, avoid unnecessary trade barriers contained in Article 2.1, Article 5.1, Article 5.2 and Paragraph E of attachment 3 of the TBT Agreement. Third, the use of international standards in Article 2.4, Article 5.4 and Paragraph F of attachment 3 of the TBT Agreement.⁵⁰

CLOSING

Conclusion

The conclusions of this research are as follows:

1. Halal certification of foreign products in Indonesia in accordance with Government Regulation Number 39 of 2021 begins with the registration of foreign Product Holding Institutions (LPH) at the Halal Product Guarantee Organizing Agency (BPJPH). Once recognized, LPH carries out halal

⁴⁹ D Hudaefi, M Roestamy, AJS Adiwijaya, *Kepastian Hukum Sertifikasi Halal Pada Obat-Obatan Dikaitkan Dengan Jaminan Produk Halal*. *Jurnal Ilmiah Living Law*, 13(2), 2021, hlm. 122-131

⁵⁰ Hambali, *Compulsory Enforcement of Halal Certification on Foreign Products according to the Agreement on Technical Barriers to Trade Agreement*. *Nurani Hukum*, 2, 2019, hlm. 46

inspections in the producer's country of origin. If the product meets Indonesian halal standards, LPH issues a halal certificate translated into Indonesian. Furthermore, the product holder registers the product at BPJPH including a halal certificate, undergoes further inspection at the port by quarantine and health authorities. BPJPH monitors products that pass inspection to ensure compliance with halal standards while circulating on the Indonesian market. Products without a halal certificate or that do not comply with standards may be prohibited from circulating with the government having the authority to impose sanctions and law enforcement, aimed at ensuring compliance of foreign products with halal principles in accordance with the teachings of the Islamic religion in Indonesia.

2. The implementation of mandatory halal certification on foreign products in Indonesia in accordance with Government Regulation Number 39 of 2021 does not hinder trade according to the Technical Barrier to Trade Agreement. This regulation aims to protect human health and the Indonesian Muslim community, in accordance with article XX (b) of the TBT Agreement. This regulation is in line with the principles of the TBT Agreement, allowing foreign products to enter the Indonesian market by complying with strict halal standards. By regulating halal certification, the Government safeguards public health and ensures compliance with halal principles, without violating the TBT Agreement commitments.

Suggestions

The suggestions for this research are as follows:

1. The government must provide clear guidance to foreign producers and LPH regarding halal certification requirements and procedures. This includes establishing responsive procedures, facilitating legitimate foreign LPH access, and improving communication between Indonesian halal authorities and overseas producers. This ensures compliance with halal standards while maintaining positive international trade relations.
2. Increasing mutual understanding with trading partner countries regarding compliance with halal principles in Indonesia can be done through effective economic dialogue and diplomacy. This ensures that the rules not only maintain the integrity of halal principles, but also maintain positive trade relations. Expanding access and cooperation with qualified foreign LPHs can facilitate the halal certification process for foreign products, minimize trade barriers, and promote fair and quality trade in the Indonesian market.

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