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**JURIDICAL ANALYSIS OF THE OBLIGATION TO APPLY THE HALAL LABEL AND ASSURANCE OF INFORMATION ON MARKETED HALAL PRODUCTS: A STUDY OF CONSTITUTIONAL COURT DECISION NO: 8/PUU-XVII/2019**

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**ABSTRACT**

Current technological developments often create confusion between halal and haram, such as genetic engineering technology. Muslim consumers face two choices: products that are labeled halal and products that are not labeled halal. Regarding to product labeling, the Halal Product Guarantee Law requires business actors to include halal labels and non-halal information on products as regulated in Article 25 and Article 26. Legally, the halal label is a norm that must be met by business actors and must comply with it, p. This indirectly raises the issue of conflicting norms regarding halal labels on products being marketed for both producers and the public as consumers. The imposition of administrative sanctions for violations of the obligation of business actors to include non-halal information on products in Article 26 paragraph (2) of the Halal Product Guarantee Law is also considered less strict than the imposition of criminal sanctions for actions that are prohibited for business actors in Article 8 paragraph (1). letter i of the Consumer Protection Law which has the same material substance. So this legal issue is interesting to carry out research using research study materials from Constitutional Court Decision No: 8/PUU-XVII/2019.

**KEY WORDS**

Halal, halal label, halal product guarantee, public service.

Indonesia is a country with a majority Muslim population; Muslim consumers should receive more attention from the government for the protection of products that will be consumed by Muslims, especially food products because Islamic teachings recognize halal and haram. Halal is something that if used does not result in torment or sin, while haram is something that Allah Subhanahu Wata'ala (hereinafter referred to as SWT) is prohibited from doing with strict prohibitions where those who violate it are threatened with punishment by Allah in the Hereafter. The halal status of a product is a non-negotiable condition.<sup>1</sup>

People's knowledge is still lacking in selecting a product and sometimes people often do not pay close attention to the contents of the product to be consumed, so it is necessary to have assistance from institutions that are concerned and have the authority to determine halal or haram products. The Muslim community has the right to know the halalness of a product so on the other hand; some parties are required to provide information regarding the halalness of a product. To guarantee that every adherent of a religion worships and carries out the teachings of their respective religions, as stipulated in Article 29 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) that: The state guarantees the independence of each resident to embrace their respective religions and to worship according to their religion and beliefs.<sup>2</sup>

The government has passed a new regulation, namely Law Number 33 of 2014 concerning Halal Product Guarantees (hereinafter referred to as the Halal Product Guarantee Law) which consists of 68 articles. The Halal Product Guarantee Law was passed by President Susilo Bambang Yudhoyono on October 17 2014 and promulgated on the same date by the Minister of Law and Human Rights. The enactment of the Halal Product

<sup>1</sup> Alimin, M., *Etika and Pelindungan Konsumen dalam Ekonomi Islam*, Fakultas Ekonomi UGM, Yogyakarta, 2014, hlm 21

<sup>2</sup> Ahmad Miru, *Pinsip-Prinsip Perlindungan Hukum bagi Konsumen Indonesia*, Raja Grafindo Persada, Jakarta, 2014, hlm 17.



Guarantee Law provides a breath of fresh air regarding the protection and guarantee of the halalness of products consumed and used by Muslim communities in Indonesia because this regulation adds to the obligation of business actors to have halal certificates as regulated in Article 4, namely: "products entering, circulating, and traded in the territory of Indonesia must be halal certified."<sup>3</sup>

The handling of halal certificates in Indonesia so far has been carried out by the Indonesian Ulama Food and Drug Research and Assessment Institute (hereinafter referred to as LLPOM-MUI), a non-governmental organization that is a forum for Indonesian scholars from various elements of Islam in Indonesia, but with the enactment of the Law -Halal product guarantee law, halal certification becomes the authority of the Halal Product Assurance Organizing Body (hereinafter referred to as BPJPH) which is a state institution. The MUI still has the authority to determine halal and haram, but the formal process, both the scientific examination and the issuance of certificates, is under the authority of BPJPH.

Muslim consumers face two choices. Products that are labeled halal and products that are not labeled halal, so the decision to purchase a product that is labeled halal or not is completely in the hands of the consumer himself. About product labeling, the Halal Product Guarantee Law requires business actors to include halal labels and non-halal information on products regulated in:<sup>4</sup>

Article 25 letter a: "Business actors who have obtained halal certificates are required to include halal labels on products that have received halal certificates".

Article 26:

- Business actors who produce products from materials originating from prohibited materials as intended in Article 18 and Article 20 are excluded from applying for a halal certificate;
- Entrepreneurs as referred to in paragraph (1) are required to include halal information on the product.

Violation of these obligations will be subject to administrative sanctions regulated in Article 27 namely:

1. Business actors who do not carry out the obligations as intended in Article 25 are subject to administrative sanctions in the form of:
  - Written warning;
  - Administrative fines;
  - Revocation of halal certificate.
2. Business actors who do not carry out the obligations as referred to in Article 26 paragraph (2) are subject to administrative sanctions in the form of:
  - Verbal warning;
  - Written warning;
  - Administrative fine.

Violation of the obligation of business actors to include non-halal information on products in Article 26 paragraph (2) of the Halal Product Guarantee Law, has the same material substance as one of the acts prohibited for business actors in Article 8 paragraph (1) letter I of the Protection Law Consumers, namely: "business actors are prohibited from producing and/or trading goods and/or services that: do not put a label or make a description of the goods containing the name of the goods, size, net or net weight/content, composition, instructions for use, date of manufacture, consequences side, the name and address of the business actor and other information for the use which according to the provisions must be installed/made".<sup>5</sup>

The sanctions imposed on these business actors are in the form of criminal sanctions, regulated in Article 62 paragraph (1) of the Consumer Protection Act in the form of a maximum imprisonment of 5 (five) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah). Punishments in the form of administrative sanctions for violating the

<sup>3</sup> Alimin, M. 2014. *Op,Cit*, hlm 26

<sup>4</sup> Undang-Undang Republik Indonesia Nomor 33 Tahun 2014. *Tentang Jaminan Produk Halal*.

<sup>5</sup> Ahmad Miru, 2014. *Op, Cit*, hlm 28.



obligations of business actors to include non-halal information on products in Article 25 paragraph (2) of the Law on Halal Product Guarantees, give the author's view that these regulations are light and less stringent. The mild sanctions imposed on business actors in the Halal Product Guarantee Act seem to assume that the evil deeds committed by these business actors have no significant impact on the Muslim community in Indonesia.<sup>6</sup>

In comparative studies of legal systems, legal systems are usually divided into civil law and common law legal systems. Countries with the influence of a civil law legal system make legislation (statutory law) the main source of formal law. This legal system originates from the ancient Roman legal system which was developed by most countries on the European continent (continental Europe) such as Germany, France and the Netherlands. Meanwhile, the country with the influence of this legal system originates from the United Kingdom and is implemented by the state. Anglo-Saxons like England, America and Australia. Both Statutory Law and Case Law have advantages and disadvantages.

The importance of information on the clarity of food products, will provide a sense of comfort and security to consumers who are Muslim or Muslims in Indonesia, as the aim of implementing halal product guarantees, according to Article 3 letter of the Halal Product Guarantee Law it states that: "providing convenience, security, safety, and certainty of the availability of halal products for the community in consuming and using the product".

The presence of Law Number 33 of 2014 concerning Halal Product Guarantees represents the state's responsibility, especially towards Muslims, to protect and provide a sense of calm and security in consuming and using products that are by Islamic law, namely halal and good. Before the issuance of Law Number 33 of 2014, halal certification was carried out voluntarily at the request of business actors who wanted to have a halal certificate. MUI is the main institution that has authority in the halal certification process, halal certification processes and procedures are fully implemented by MUI, apart from that, MUI also supervises products in circulation. After the issuance of Law Number 33 of 2014, the government was responsible for implementing halal certification, namely with the establishment of BPJPH, certification was no longer voluntary but became mandatory.

## METHODS OF RESEARCH

This research uses a type of normative legal research in the form of library research which uses 3 legal materials, namely primary legal materials, secondary legal materials, and tertiary legal materials. Normative legal research is a process of discovering legal rules, legal principles, and legal doctrines to answer legal issues faced so that new arguments, theories or concepts can be obtained as prescriptions for solving problems.<sup>7</sup>

Judging from its substance, Peter Mahmud Marzuki differentiates legal research into normative and doctrinal research<sup>8</sup>:

1. Normative research in the form of research on legal regulations, jurisprudence, contracts and legal values that exist in society;
2. Doctrinal legal research is research on legal principles, legal literature, views of high-quality legal scholars and comparative legal activities.

Based on this idea, the type used in this study is normative juridical legal research, namely research conducted on secondary data, which consists of legal materials, namely provisions or legal norms in applicable legislation and various literature and laws. which are seen as positive principles that apply at a certain time, or a certain place and are published as an explicit product of certain legitimized political powers. This research wants to examine what is the urgency of implementing Law Number 33 of 2014 concerning Guarantees for Halal Products, especially in Articles 25 and Article 26 related to the effectiveness and

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<sup>6</sup> Rina Rahmawati, *Kehalalan Produk Makanan Dalam Upaya Perlindungan Konsumen Bagi Umat Muslim. Jurnal Kajian Hukum and Keadilan, Vol V No.2 Th 2019, hlm 3.*

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum, Kencana, Jakarta, 2005, hlm. 35*

<sup>8</sup> Soetandyo Wignjosoebroto. *Hukum: Paradigma, Metode and Dinamika Masalahnya, Elsam and Hukum, Jakarta. 2002, hlm 152*



efficiency of the inclusion of the halal label on products marketed in the community, and as material for research studies will examine the Decision MK No: 8/PUU-XVII/2019.

In writing this legal research, the authors used 3 (three) research approaches namely:

- Legislative Approach (Statute Approach).

The approach taken is to analyze and understand laws and regulations that are related to the legal issue being faced. The results of this study will be used by the author as an argument in answering and solving the legal issues being researched.<sup>9</sup>

The author uses this approach by examining Law Number 33 of 2014 concerning Halal Product Guarantees and statutory regulations related to the issue of regulating halal products.

- Conceptual Approach.

This approach departs from the views and doctrines that develop in legal science. This approach is important because understanding the views/doctrines that develop in legal science can be a basis for building legal arguments when resolving the legal problems or issues faced.

This conceptual approach is used to analyze the thinking framework or conceptual framework that is appropriate to the research. Examining further the approach that is used as the basis for implementing a Halal Product Guarantee that is marketed in the community by requiring labeling on these products.

- Case Study Approach (Case Law).

Through a case approach, the author will examine cases related to the legal issues being faced. The cases reviewed are cases that have received court decisions that have permanent legal force.

The legal materials used in this research include:

- Norms (basics) or basic rules, namely the Preamble to the 1945 Constitution;
- Law Number 33 of 2014 concerning Halal Product Guarantees;
- Law Number 41 of 2014 concerning Amendments to Law Number 18 of 2009 concerning Animal Husbandry and Animal Health;
- Law Number 18 of 2012 concerning Food;
- Law Number 8 of 1999 concerning Consumer Protection;
- Law Number 36 of 2009 concerning Health;
- Law Number 11 of 2020 concerning Job Creation;
- Jurisprudence: Regulations and court decisions used as guidelines as study material using Constitutional Court Decision No: 8/PUU-XVII/2019.

Secondary legal materials, in the form of explanations of statutory regulations as contained in primary legal materials. Research results, related journals, work from legal circles, literature studies, study of documents such as Government Regulations, Government Decrees, Ministerial Regulations and Regional Regulations related to the Halal Product Guarantee Law:

- Government Regulation Number 39 of 2021 concerning Implementation of the Halal Product Guarantee Sector;
- Government Regulation Number 31 of 2019 concerning Implementing Regulations of Law Number 33 of 2014 concerning Halal Product Guarantees;
- Government Regulation Number 69 of 1999 concerning Food Labels and Advertisements (hereinafter referred to as Government Regulations concerning Food Labels and Advertisements).

Tertiary legal materials used include legal dictionaries, scientific journals and papers that examine regulations related to the Halal Product Guarantee Law, both in library materials and on the Internet.

Primary, secondary and tertiary legal materials are obtained through literature, print media, electronic media and cyberspace (internet). The legal materials were collected using documentation studies and literature studies.

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<sup>9</sup> *Ibid*, hlm. 20



The method of processing legal materials is carried out inductively, namely concluding a concrete problem of a specific nature to an abstract problem of a general nature.<sup>10</sup> The technique for analyzing this research uses systematic interpretation techniques from research findings and then interpreting statutory regulations by connecting them with legal regulations or other laws or with the entire legal system, so that they cannot deviate or leave the statutory system or legal system.

To avoid interpretation in the research, a conceptual definition will be given as follows:

- Halal is something that if used does not result in torment or sin, while haram is something that Allah Subhanahu Wata'ala (hereinafter referred to as Allah SWT) prohibits from being carried out with a strict prohibition where people who violate it are threatened with torture by Allah in the afterlife. The halal status of a product is a non-negotiable condition<sup>11</sup>;
- Halal Product Guarantee is legal certainty for products as proven by a halal certificate;
- Halal products are products that have been declared halal according to the provisions of Islamic law, namely from the provision of ingredients to the presentation of the product to be marketed. The Halal label is a sign of the halal status of a product, which is usually in the form of a halal logo whose shape has been determined. This halal label is also a sign that it is guaranteed halal and has a halal certificate issued by BPJPH.

## RESULTS AND DISCUSSION

One of the things that are very visible in the Law on Halal Product Assurance is its mandatory nature. Business actors can include a halal label on product packaging that will be marketed to the public after obtaining a halal certificate from BPJPH.

Products that enter, circulate, and are traded in the territory of Indonesia must be halal certified. Before to the existence of the Halal Product Guarantee Act, material arrangements related to halal products were still partial, namely regulated in various laws.

For example, halal regulations in Law Number 8 of 1999 concerning Consumer Protection:

- The scope of halal products is made wider, apart from goods, services are also included in halal provisions;
- The emphasis on halal provisions is only on the provisions of halal production;
- There are no provisions that explicitly state the definition of halal;
- Violation of provisions (including halal provisions) is declared a criminal offense.

The provisions governing halal are contained in Article 8 paragraph 1 point (h), Article 62.

Law Number 18 of 2009 concerning Animal Husbandry and Animal Health: the halal provisions in the law can be seen in one of the preambles, stating that to achieve this aim it is necessary to provide animal health which protects the health of humans and animals and their ecosystems as a prerequisite for the implementation of advanced, competitive and sustainable animal husbandry and the provision of safe, healthy food., intact and halal so it needs to be utilized for the prosperity and welfare of society. The provisions governing halal are contained in Article 56 and Article 95.

Law number 36 of 2009 concerning Health: the regulation of halal obligations in this law states that health development must be based on religious norms. The obligation to label every product that contains information, one of which is a list of ingredients used, so that every consumer gets information about whether a product is classified as halal or not. The halal provisions are contained in Article 2, Article 49 paragraph (2), Article 111 paragraph (1), and Article 111 paragraph (3) point b.

<sup>10</sup> Bahder Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2008, hlm 166

<sup>11</sup> Alimin, M. *Etika and Perlindungan Konsumen dalam Ekonomi Islam* Fakultas, Ekonomi UGM, Yogyakarta, 2014, hlm 21.



Law Number 18 of 2012 concerning Food: the provisions governing halal in this law can be seen from the regulations on the obligation to label halal on food products as well as the provisions that give regional governments the authority to supervise the implementation of the halal product guarantee system. These provisions are contained in Article 69 paragraph (3) point b, Article 58, and Article 105 paragraph (1).

Job Creation Perppu Number 2 of 2022 which replaces Law Number 11 of 2020 concerning Job Creation: it is hoped that this regulation will improve Law Number 33 of 2014 concerning Halal Product Guarantees. Fundamental changes related to halal product guarantees contained in Article 48, include:

- Determination of product halalness;
- Halal certification with a halal statement;
- Implementation of a halal product fatwa committee;
- The validity period of the halal certificate;
- Assistance with halal production processes;
- Halal product guarantee services.

The existence of this regulation regarding halal product guarantees is expected to accelerate halal certification for micro and small enterprises (UMK), apart from that, BPJPH also has the task of socializing, educating and publishing halal products. Article 1 Number 10 concerning the Halal Product Guarantee Law is stated: " Halal certification is an acknowledgment of the halalness of a product issued by BPJPH based on a written halal fatwa issued by the MUI".

BPJPH has the task of establishing rules or regulations, receiving and verifying applications for products to be certified halal from business actors, and issuing halal certificates along with halal labels. Meanwhile, the Halal Inspection Agency (LPH) has the task of carrying out inspections and/or testing the halalness of products submitted for halal certification, this inspection is carried out by halal auditors owned by LPH, inspections by LPH include reviewing and inspecting the materials used, checking and reviewing the processing process products, checking and reviewing the slaughtering system, examining product locations, examining equipment, production and storage space, checking distribution and presentation of products, checking the halal guarantee system of business actors and reporting inspections and/or tests to LPH. Meanwhile, the MUI has the authority to determine halal through a halal fatwa trial. It can be understood that the halal decree from the MUI is a fulfillment of aspects of religious law or aspects of Islamic sharia, while the halal certificate issued by BPJPH is a form of fulfillment of the administration of religious law in the form of state law.

A halal certificate is a certificate containing a written fatwa issued by the MUI through the decision of the fatwa commission, auditors and experts which states the halalness of an audit product carried out by LPPOM MUI.<sup>12</sup>

Article 4 of Law 33/2014 states in full, "*Products entering, circulating and traded in Indonesian territory must be halal certified.*" The definition of "product" in Article 4 of Law 33/2014 cannot be separated from the provisions of Article 1 number 1 of Law 33/2014 which in full states, "*Products are goods and/or services related to food, drinks, medicines, cosmetics, chemical products, biological products, genetically engineered products, as well as consumer goods that are worn, utilized or exploited by society.*" Thus, the word "service" in the a quo norm must be associated with food, drink, medicine, cosmetics, chemical products, biological products, genetically engineered products, as well as utility goods that are used, applied or exploited by the community as a unified understanding. This means that services related to the various products mentioned above are not part of the definition of "product" in Article 1 point 1 of Law 33/2014.

To explain the meaning of "services" in the context of Law 33/2014, for example, if a restaurant sells haram goods then the restaurant will not get halal certification. There is no relation between services in the context of Law 33/2014 with services in carrying out the profession, for example legal services (advocates), as argued by the Petitioners. As has

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<sup>12</sup> Pedoman and prosedur Penetapan fatwa Majelis Ulama Indonesia, Pasal 1 ayat (19)



been emphasized above, the meaning of "service" must be understood in the context related to food, drink, medicine, cosmetics, chemical products, biological products, genetic engineering products and consumer goods. In this case the advocate profession is not an element of the definition of incoming, circulating and traded products according to Article 4 of Law 33/2014. Therefore, halal or haram is not seen by the person who consumes or uses the product, but by the product that enters, circulates and is traded in the territory of Indonesia.

The provisions of Article 26 constitute an exception rule for business actors who produce a product originating from prohibited materials, they are required to explicitly state non-halal information on certain parts of the product packaging that are easy to see, read, not easily erased, and are parts that are not easily separated from the product, as explained in the General Explanation section of Law 33/2014. That is, products that have been clear from the start that they are not halal, they do not need to be certified as halal, but it is enough to be marked "not halal".

*The principle of justice in the obligation to include a halal label.* The application of Articles 25 and 26 must reflect proportional justice for every citizen. The implementation of the obligations in this Article seems to have harmed or caused injustice to followers of religions other than Islam or non-Muslims who do not recognize and are limited by halal and non-halal, and should only be aimed at followers of the Islamic religion or the Muslim community. The aim of establishing Law 33/2014 as specified in Article 3 paragraph (1) of Law 33/2014 is to provide comfort, security, safety and certainty of the availability of halal products for the public in consuming and using products. About this goal, the enactment of Law 33/2014 by itself does protect the Muslim community. Moreover, Indonesia has the largest Muslim population, so their constitutional rights need to be protected. However, it also needs to be realized that people who use halal products are not only limited to Muslim communities. Therefore, it is impossible to restrict that the Halal Product Guarantee Law only applies to Muslim communities or Islamic communities. Apart from that, this provision does not prevent non-Muslim people from obtaining goods or products that use non-halal elements.

More than that, the enactment of Law Number 33 of 2014 does not prohibit business actors or producers from producing non-halal products as long as these products are tagged as "non-halal information" by the provisions of Article 26 paragraph (2). Law Number 33 of 2014 does not adhere to "mandatory halal" but adheres to "mandatory halal certification" which is followed by a halal labeling process. This means that halal products must include a halal logo by the provisions of the Halal Product Guarantee Act. So that Anyone who will consume or use products circulating in the community no longer needs to feel doubtful, worried, or even afraid because it will be clear and clear which products are guaranteed to be halal and which products are not halal according to the label as a marker. So the existence of halal products in no way harms, reduces, eliminates, limits, or complicates the rights of non-Muslims.

*The principle of effectiveness and efficiency of the obligation to include the halal label.* The effectiveness of the inclusion of this halal label according to regulations is to the demands and developments of the halal product itself which globally has been implemented by many countries, considering that Indonesia is a country with the largest Muslim population in the world, of course it has a large market share as well.

Article 26 of the Halal Product Guarantee Law is an obligation of business actors, with the existence of Government Regulation Number 31 of 2019 concerning Implementing Regulations of Law Number 33 of 2014 concerning Halal Product Guarantees, it certainly makes it easier to implement the obligation to include halal products to include a halal label on the product and the information are not halal, however, there is a perception that there will be potential harm if the information is not halal in the product packaging or on certain parts of the product. Not halal information on the product packaging or the product indicates that the product in question is not permitted or prohibited. This understanding is certainly not correct because the existence of a halal label makes it easier for the public, for products that are not halal from the start do not need to be certified halal, but can simply be marked "not halal".



The inclusion of the "not halal" sign is intended to inform the wider public so that people can choose between halal and non-halal products.

Norms are a means used by society to regulate, demand and direct the behavior of members of society in their relationships with each other. To be able to carry out such a function, of course he must have coercive power. This coercion is directed at the members of society to obey them.<sup>13</sup> Law is a norm that invites people to achieve certain ideals and circumstances, but without ignoring the real world. Friedman cites Austin's opinion that what is called a law is a type of commandment. However, because it is called a commandment, every real law flows from one definite source. When an order is stated or announced, one party expresses a will for the other party to carry it out or let it be carried out.<sup>14</sup>

The obligation for halal certification for all food and beverage products is clearly stated in Article 4 of Law Number 33 of 2014 concerning Halal Product Guarantees, which states "products entering, circulating and traded in Indonesian territory must be halal certified." This means that it is clear that business actors who produce and trade food products in Indonesia are required to be halal certified and display the halal logo on their packaging and this is also necessary as a strong legal umbrella for the government which has the authority to regulate halal products in Indonesia.

Article 1 Number 10 of Law Number 33 of 2014 concerning Guarantees for Halal Products states: "Halal certificates are an acknowledgment of the halalness of a product issued by BPJPH based on a written halal fatwa issued by the MUI". Law Number 33 of 2014 concerning Halal Product Guarantee, has been amended by Law Number 11 of 2020 concerning Job Creation, wherein the amended Articles insert an Article which requires micro and small business actors to have a halal certificate for their processed products.

Regrading charging fees, with the issuance of Law Number 11 of 2020 concerning Job Creation, at this time it is not a problem because Article 44 of Law Number 33 of 2014 concerning Halal Product Guarantees has been amended by Law Number 11 of 2020 concerning Job creation. "Article 44 paragraph (2) "In the case of an application for a Halal Certificate submitted by a Micro and Small Business Actor, there is no fee". With the issuance of this Law, there are no more obstacles in terms of charging fees.

The inclusion of Halal labels and non-halal information on products marketed to the public is an obligation for business actors as regulated in Article 25 and Article 26 of Law Number 33 of 2014 concerning Halal Product Guarantees. If there is a conflict of norms or a lack of harmonization between one legal product and another, both vertically and horizontally, it is certain that this will cause chaos, so that it is no longer in line with the objectives to be achieved and realized from the application of the rules that have been implemented, and according to the Director General of Legislation, the implications of the inconsistency of Legislation, among others:

- There are differences in interpretation in its implementation;
- The emergence of legal uncertainty;
- Legislative regulations are not implemented effectively and efficiently;
- Legal dysfunction, meaning that the law cannot function to guide behavior towards society, social control, dispute resolution and as an orderly and regular means.<sup>15</sup>

The chaos that has arisen because there has been an inconsistency in the application of the principles of forming good laws and regulations, but furthermore has become a trigger for various tensions and conflicts in the realm of practice, to overcome this can be done in 3 (three) ways, namely:

1. Amend or revoke certain articles that experience disharmony or all articles of the relevant laws and regulations, by the institution or agency authorized to form them;
2. Submit a request for judicial review to the judicial institution as follows:
  - For reviewing laws against the Constitution at the Constitutional Court;
  - For testing statutory regulations under the law against the law to the Supreme

<sup>13</sup> Satjipto Raharjo, *Ilmu Hukum*, PT. Citra Aditya Bhakti, Bandung, 2000, hlm. 3

<sup>14</sup> *Ibid*, hlm. 28

<sup>15</sup> <http://dijenpp.kemenkumham.go.id/htrn-dan-puu/421-harmonisasi-peraturan-perundang-undangan.html>, diakses pada: 01 Mei 2019, Pukul 10.24 WITA.





Court.

3. Applying legal principles or legal doctrine.

In the case of reviewing a law against the 1945 Constitution, the Constitutional Court may declare that words, phrases, articles in the law or the entire contents of the law do not have binding legal force. Therefore, the Constitutional Court is also often referred to as a negative legislator. If in a statutory regulation, there are provisions in it that are declared to have no binding legal force, then those provisions or articles can no longer be used as a legal basis. If there are state officials or citizens who still use the article or law that has been declared non-binding, it means that their actions have no legal basis.

The existence of the Constitutional Court decision Number 8/PUU-XVII/2019 is one of the resolutions of the conflict of norms that requires a review of Law Number 33 of 2014 concerning Halal Product Guarantees against the 1945 Constitution. According to the applicant's arguments in proposing a material review of the Law -Halal Product Guarantee Law, namely:

1. Thus the use of the word "product" in Article 4 of the Law on Guarantee of Halal Products, as defined in Article 1 point 1 of the Law on Guarantee of Halal Products is contrary to the 1945 Constitution. The Panel of Constitutional Justices must state that the use of the word "product" in Article 4 does not have binding legal force;
2. Whereas from the quote, halal refers to food and drink. Therefore, product definitions should be limited to food and beverages only;
3. Food is divided into two, namely fresh food and processed food. Article 1 point 18 of the Food Law defines fresh food as food that has not undergone processing which can be consumed directly and/or which can be used as raw material for food processing. Meanwhile, processed food is food or drink processed in a certain way or method with or without additives (Article 1 number 19 of the Food Law);
4. Whereas in the applicant's view, only processed food should be required to be halal certified;
5. Whereas the applicant proposes to state that the use of the word "product" in Article 4 does not have binding legal force as long as the word "product" is not interpreted as processed food;
6. Article 26 of the Halal Product Guarantee Law is an obligation of business actors. However, as a consumer, the applicant has the potential to be harmed by including non-halal information on the product packaging or certain parts of the product. Not halal information on the product packaging or the product indicates that the product in question is not permitted or prohibited;
7. Thus the obligation to provide information "not halal" on product packaging or on products as referred to in Article 26 paragraph (2) of the Halal Product Guarantee Law is contrary to the 1945 Constitution;
8. Whereas Article 65 is contrary to Article 5 paragraph (2) of the 1945 Constitution and is contrary to Article 28D of the 1945 Constitution;
9. Whereas Article 65 empowers the phrase 'Implementing regulations'. It is stated in the Halal Product Guarantee Law what is meant by Implementing Regulations.

Based on the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court as amended by Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court (State Gazette of the Republic of Indonesia of 2011 Number 70, Supplement to the State Gazette of the Republic of Indonesia Number 5226), and Law Number 48 of 2009 concerning Judicial Power (State Gazette of the Republic of Indonesia Number 5076). As for Decision Number 8/PUU-XVII/2019, namely: Rejecting the Petitioner's petition in its entirety.

The sanctions imposed on business actors are in the form of criminal sanctions, regulated in Article 62 paragraph (1) of the Consumer Protection Law in the form of imprisonment for a maximum of 5 (five) years or a maximum fine of IDR 2,000,000,000.00 (two billion rupiah).

In the law on halal product guarantees, violations of these obligations will be subject to administrative sanctions as regulated in Article 27, namely:



1. Business actors who do not carry out the obligations as intended in Article 25 are subject to administrative sanctions in the form of:
  - Written warning;
  - Administrative fines;
  - Revocation of halal certificate.
2. Business actors who do not carry out the obligations as intended in Article 26 paragraph (2) will be subject to administrative sanctions in the form of:
  - Verbal warning;
  - Written warning;
  - Administrative fines.

Government Regulation Number 39 of 2021 confirms that violations of the inclusion of a halal label will be subject to administrative sanctions, administrative sanctions against business actors, namely in the form of:

- Written warning;
- Administrative fines of up to 2 billion;
- Halal certificate revocation; and/or
- Withdrawal of goods from circulation.

Meanwhile, administrative sanctions imposed on halal inspection institutions include:

- Written warning;
- Administrative fines of up to 2 billion; and/or
- Operational freeze.

Administrative sanctions will be given according to the level of the violation committed. The imposition of sanctions can be given in stages, alternatives and/or cumulatively.

## **CONCLUSION**

Constitutionally the enactment of the Halal Product Guarantee Law is a manifestation of the state's responsibility in protecting people's rights to guarantee a healthy and protected life in worship according to their religious teachings as stipulated in the 1945 Constitution. The existence of halal products all not harm, reduce, eliminate, limit, or complicate the rights of non-Muslims.

The existence of a halal label makes it easier for the public, for products that have been not halal from the start, they do not need to be certified halal, but only need to be marked "not halal". The inclusion of the "non-halal" sign is intended to inform the general public so that people can choose between halal and non-halal products. Apart from that, from an economic perspective, it should be added that if Muslims, as consumers with the largest number, feel that their constitutional rights have not been fulfilled, and then it will have a broad impact on the national economy, including not implementing the supply of food and other products because there is no consumer demand for these products. It is in this context that the existence of Law 22/2014 will protect national manufacturers and producers of goods and services (entrepreneurs) to be able to protect the "Indonesian domestic market" so that it is not flooded with products from abroad whose halal status is not guaranteed.

## **SUGGESTIONS**

The development and implementation of halal products globally have been implemented in many countries. To avoid being left behind regarding this matter, the Government must immediately form more complete implementing regulations.

Wider socialization is needed to provide insight to the public and business actors regarding the objectives and benefits of the Halal Product Guarantee Law; this is to avoid misinterpretation which can lead to conflict of norms in society.

There should to be a review of stricter sanctions against violations of the obligation to include halal labels and non-halal information on products being marketed.



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