



Civil Liability Against Business Actors Committing Violations of Halal Labeling Based on Law no. 8 of 1999 Concerning Consumer Protection

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Abstract

The plurality of products traded in the market are suspected of not having halal certificates. This condition is very concerning, especially for Indonesian Muslims. Indonesia's market share is flooded with not only domestic products, but also imported products, as an implication of the implementation of AFTA (ASEAN Free Trade Area) and MEA (Asean Economic Community). For Muslims, the halalness of a product is very urgent. The inclusion of halal food labels is a form of protection to consumers that halal products are consumed. Law Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK) regulates civil sanctions for business actors violating the halal label. Law Number 33 of 2014 concerning Guaranteed Halal Products (hereinafter referred to as the JPH Law) also regulates sanctions for business actors who do not maintain product halalness and do not include halal certificates on products already labeled as halal. The presence of UU JPH and PP No. 31 of 2019 is expected to bring fresh air to change the procedure and registration system for halal certification from voluntary to mandatory. This journal uses normative juridical research, namely analyzing legal products such as laws and regulations. The data used are secondary data, namely books relevant to the research. The research uses qualitative analysis, where the problem is described in the form of sentences.

Keywords: Business actors, Halal Label, Consumer Protection Law.

1. Introduction

The estuary of the birth of the UUPK aims to bring a new nuance to protect consumer rights. Especially the most basic consumer rights, namely to get halal food according to the teachings of their religion. For Muslims, halal food is very urgent and non-negotiable. This is because Allah SWT directly ordered it in the Qur'an, so that Muslims consume halal food, which the manufacturing process must also be based on the halal process and according to the guidance of Islam. In protecting Muslim consumers, from non-halal products, the UUPK prohibits actions that producers

should not do, namely producing a product or service, where the production process contradicts the halal statement as contained in the label.

In creating honest business behavior, awareness of the attitudes and responsibilities of producers in producing goods is required, in accordance with the legal rules stipulated in the UUPK. On the other hand, the attitude of prudence and responsibility of business actors to produce goods, in order to avoid lawsuits by consumers, because they feel disadvantaged by consuming non-halal products. Consumers can ask for civil liability to business actors. This is regulated in a limited manner in the UUPK. This is very relevant, because business actors must take absolute responsibility for the products they produce. The principle of absolute responsibility or known as the principle of strict liability, is one of the principles of responsibility that needs to be introduced in the UUPK. So it is no longer based on the principle of product liability or product responsibility. The reason is that if the strict liability principle is adopted by UUPK, it can provide optimal protection to consumers. There is no need for product accountability, where producers can argue with the best evidence, as contained in Article 27.

In connection with the above, if a product service user feels disadvantaged as a result of consuming the non-halal product, according to the articles contained in the UUPK, business actors are obliged to provide compensation to consumers. Based on 19 Paragraph (2) UUPK, compensation is given by business actors to consumers in the form of refunds, compensation, and health care for consumers suffering from illness due to consuming unhygienic products.

Business actors who carry out non-halal production processes, which are not in accordance with the halal statement of products produced by producers, are subject to sanctions in Article 60 (2) of the UUPK. Namely being subject to administrative sanctions to pay compensation in the amount of Rp. 200,000,000.00 (two hundred million rupiahs).

In the context of consumer protection, UUPK also regulates the rights of users and product users, namely the right to obtain correct, clear and honest information about the condition and guarantee of goods. The goal is for consumers, especially Muslim consumers, to know for sure the composition of food products, whether they contain elements that are forbidden for consumption or not.

The regulation of halal products is specifically regulated through the JPH Law. The JPH Law was passed on April 17, 2014 aimed at protecting product users, especially Muslim consumers. At the same time, it provides legal certainty regarding the regulation of the halalness of a product in statutory instruments.

The rise of products circulating in the market that do not have a halal certificate is an undeniable validity. This is troubling not only for Muslim consumers, but for all consumers in general. Because food is not halal, it can be said to be unhygienic, and not good for consumption, because it affects health. For this reason, strict supervision from the government is needed, involving related elements. Supervision carried out on business actors who violate the halal label, must not be seasonal, but must be continuous and not selective. If the supervision carried out by the government is very weak, imported products will flood Indonesia's market share. This is unavoidable due to the implications of globalization, free trade and the implementation of AFTA and MEA. Indonesia already has a legal umbrella through the JPH Law which confirms that

all products circulating in the territory of Indonesia must be certified halal. The enactment of the JPH Law and Government Regulation Number 31 of 2019 concerning implementing regulations of Law no. 33 of 2014, it is hoped that it will bring fresh air to change the system of procedures and registration of halal certificates from voluntary to mandatory.

Unfortunately, the awareness and responsibility of business actors is still very minimal, marked by products circulating in the market, it is suspected that there are still many who have not been certified halal, as reported by the grid. Id, that is;¹White Rabbit Candy, Xing Fu Tang, J. Co, Chatime, and Garret Popcorn. Then Sushi Mentai restaurant, as a restaurant that provides Japanese specialties, is located on Jl. Dr. Cipto, Aggrung Village, Medan Polonia District is also suspected of not having a halal certificate.²

The phenomenon above is a small sample of products that have not been certified halal, which is also a form of violation of the JPH Law and UUPK. Halal label violations can occur where the halal logo is listed on products that are not from the Food, Drug and Cosmetics Assessment Institute of the Indonesian Ulema Council (LPPOM MUI) and are not certified by BPJH. In other words, the halal label is suspected of being manipulated by unscrupulous producers to find shortcuts to gain profits. Halal label violations also occur, through products traded in the market, but not yet certified as halal. Violation of the guarantee of halal products is caused by the lack of honesty of business actors in providing services

correct information regarding the composition and process of food production.

Cases of violation of the halal label have occurred and are very detrimental to Muslims in Indonesia, among others, the case of PT. Ajinomoto in 2001. Ajinomoto added or changed enzymes in their products, by including unlawful elements containing pork enzymes in their products, and did not report the changes to these enzymes to authorized institutions such as the Indonesian Ulema Council (MUI). This certainly indicates the Ajinomoto party's carelessness to maintain a sense of justice for Indonesian Muslims. The changes made by Ajinomoto on the product are by using bacto-soytone bacteria which are used in the fermentation process of making monosodium glutamate which contains porcine (lard).³ Cases of violations against halal label products also occurred in Samyang Instant noodles in 2017. The instant

¹ Lena Astari, "These 5 Famous and Delicious Snacks Don't Have a Halal Label yet! Number 3 Even though Donuts are Everyone's Favorite", <https://sajisedap.grid.id/read/101852852/5/-jajanan-terkenal-dan-enak-ini-belum-punya-label-halal-nomor-3-padahal-donat-kesukaan-all-orang>, 15/9/2019. accessed 28/6/2021.

² Cbud/cpb, "Shusi Mentai Restaurant Allegedly Not Having Halal Certificate", National Daily Newspaper WAPADA, edition, Monday, 7/6/2021, p. B1.

³ YYT, "The Best Way Court of Ajinomoto Case Settlement", <https://m.liputan6.com/news/read/6307/pengadilan-jalan-terbaik-pembelesian-case-ajinomoto>, 13/1/2001, accessed 16/6/2021.

noodles from South Korea contained pig-specific DNA fragments.⁴The circulation of Mie Samyang from the ginseng country was due to the negligence of the Food and Drug Supervisory Agency (BPOM) which issued a product regulatory permit. The negligence carried out by BPOM is just like what happened recently, BPOM is considered negligent towards 60% of Nestle's food products which are considered unhealthy.⁵

The Mi Samyang case also shows a lack of coordination between the Institute for the Assessment of Food and Drugs Cosmetics (LPPOM MUI) and BPOM. Cases of violation of the halal label also occurred in beef jerky or shredded products containing pork or wild boar in 2009.⁶

2. Research methods

To obtain good research results, accuracy, accuracy with research topics focuses on analysis, so in collecting and processing data or materials in this study, the authors use the following methods or methods:

2.1 Research Material

Research material is sourced from secondary data, namely by carrying out reference collection related to research material including:

- a. Primary legal materials, in the form of legal materials include: laws and regulations relating to articles, namely Law no. 8 of 1999 concerning Consumer Protection, PP No. 69 of 1999 concerning Food Labels and Advertisements, Law no. 18 of 2012 concerning Food, and Law no. 33 of 2014 concerning Guarantees Halal Products.
- b. Secondary legal materials, namely materials that explain primary legal materials in the form of books, scientific journals, articles, and other posts related to research.
- c. Tertiary legal materials, namely materials explaining materials primary law and secondary legal materials, namely legal dictionaries, encyclopedias and other materials provide an explanation of the material primary law and secondary law materials.

2.2 Data Collection Tool

Considering this type of research is normative law, the data collection tools used in journal making are document studies or literature studies.

2.3 Data analysis

The data analysis used is qualitative analysis, where the main problem is described in the form of sentences that are regular and effective.

⁴ Ihsanuddin,, "MUI Asks Police to Investigate Mi Samyang Case Containing Pork," <https://amp.kompas.com/national/read/2017/06/19/12042841/mui.minta.polisi.usut.case.mi.samyang.containing.babi>, 19/6/2017, accessed 16/6/2021.

⁵ cni, "BPOM Negligent, 60 Percent of Nestle Food is Unhealthy", National Daily Newspaper WASPADA, Monday, 17/6/2021, p. A6.

⁶ OMI/Team Liputan 6 SCTV, "In circulation, Beef Jerky Mixed with Pork" <https://m.liputan6.com/news/read/176207/dendeng-babi-masih-edar>, 17/4/2009, accessed

2.4 Research Benefits

The benefits/benefits expected from this research are as follows:

- a. a. Theoretically, this research is expected to contribute to science in general and to the science of law in particular, regarding sanctions against business actors committing violation of halal label and halal certificate.
- b. Practically, the research is expected to increase knowledge and valuable input for the community and other relevant agencies on products that are not halal certified.

2.5 Research purposes

The purpose of this study is to determine the responsibility for business actors who do not include halal certificates according to Law no. 8 of 1999.

3. Results and Discussion

3.1 Consumer Protection Against Halal Label Violations by Business Actors

In the Consumer Protection Act. Article 1 Number 1, consumer protection is all efforts that guarantee legal certainty to provide protection to consumers. Consumer protection aims to create a healthy business climate, and a balanced position between business actors and consumers. As is known, the slogan that says consumers are kings has not been sold absolutely in Indonesia. The position of consumers is still considered very weak with the position of business actors. This is because producers are stronger than consumers, both financially, knowledge and other factors, which in principle are more profitable for business actors.

Legal legitimacy is given to consumers for violations of the halal label, not only regulated by sanctions through UUPK. Rather, it is a direct mandate of Article 29 of the Constitution. The state is responsible for guaranteeing the independence of each resident to embrace their own religion and to worship according to their religion and belief.

The state's obligation to guarantee the basic rights of its citizens should be considered as a whip for business actors not to play with their product labels. For this reason, it is appropriate that the violation of the halal label by business actors is a tendentious act and should not be considered a joke. This is because, on the other hand, halal food and beverage products are very urgent for Muslims. Something is non-negotiable, because Allah SWT directly commands it through the Qur'an as stated in Surah Al-Maidah verse 88 and Surah Al-Baqarah Verse 178.⁷

The actions of business actors who violate the halal label are considered to injure and ignore the sense of justice for Muslims, with the orientation of pursuing profit. Without thinking about the impact on Muslims consuming these haram products. For this reason, it is hoped that the good faith of business actors will comply with the legal rules as stipulated in the UUPK. As Article 7 states, one of the obligations of business actors is to provide correct information, guarantee the quality of goods, and provide compensation.⁸

⁷ Arfan Adha Lubis, "The Urgency of the Halal Label", WASPADA National Newspaper, 17 October 2019, p. B3.

⁸ Mukhlis Ibrahim et al, "Critical Review of Consumer Protection Laws", Media Hukum Volume X Number: January 1 - June 2001.

Consumers who use goods or services produced by producers should receive protection against the food offered and traded by business actors. This is not only related to health, but also related to certain religious beliefs or *aqidah*. On the other hand, the need for legal protection to consumers, due to the plurality of consumers who are still lay. Do not know their rights and obligations as consumers. Especially to find out which foods are halal and non-halal, which have been processed by business actors. It takes education and understanding to the public, so that they become smart, careful and critical consumers before consuming the product. And not being a silent victim, being silent and resigned when their rights are violated.

Consumers must know that the UUPK itself has provided a means of resolving consumer disputes in Article 45 Paragraph (2). Both through the courts and dispute resolution outside the court through mediation.

The legal protection provided by UUPK to consumers from violations of the halal label requires direct government regulation and supervision. Article 30 is regulated in this matter. Government supervision as referred to in Article 30 paragraph (1) is carried out by the relevant minister and/or technical minister.

Supervision of halal label violations can also be done by involving the public and consumer protection institutions, such as YLKI (Indonesian Consumers Foundation), LAPK (Consumer Protection Advocacy Institute) and other non-governmental organizations engaged in consumer advocacy. Thus, the community plays an active role as well as being trained to become smart consumers to choose and sort out halal food that is suitable for consumption and based on Islamic law.

Other policies are implemented to protect consumers from unscrupulous business actors, as described previously educating the public to be smart consumers, not to give up when their rights as consumers are violated.

3.2 Civil Liability Against Business Actors Committing Violations of Halal Labeling According to Law no. 8 of 1999

Sanctions for business actors violating the halal label in the UUPK can be prosecuted both civilly and criminally. Civil liability is that business actors provide compensation to consumers, as a result of consuming these non-halal products. The compensation referred to in Paragraph (2) is in the form of returning or replacing goods, as well as health care and the provision of compensation. The Consumer Dispute Settlement Agency (BPSK) has the authority to impose administrative sanctions on business actors proven to have violated Article 19 Paragraph (2).

The authority of BPSK to impose administrative sanctions on business actors is regulated in Article 60 Paragraph (2). The business actor compensates the consumer for a maximum of Rp. 200,000,000.00 (two hundred million rupiah).

It is worth noting that the administrative sanctions imposed by BPSK on producers are civil sanctions. This is because BPSK is not an agency or institution given the authority to issue permits. So if the meaning is that administrative sanctions are imposed by BPSK on business actors violating the provisions of Article 19 Paragraph (2), it automatically has no legal basis. However, in terms of the substance of the decision, the definition of administrative sanctions imposed by BPSK is a civil sanction.

The maximum compensation of Rp. 200,000,000.00, given by business actors to consumers, is called "limited subjective" compensation.⁹This is considering the condition of Indonesia which is still developing. The limitation on limited compensation adopted by UUPK is considered very suitable. On the one hand, it provides protection to consumers and on the other hand protects business actors, avoiding bankruptcy. The problem is what if the consumer suffers quite a lot of losses? Things like this are not further regulated in Article 60 Paragraph (2). So it requires further regulation, whether to revise Law no. 8 of 1999 by including compensation or a separate law regulates the matter of compensation.

In addition to the UUPK which regulates sanctions for business actors violating the halal label, in other laws and regulations, such as the JPH Law, PP Advertising Labels and Law no. 18 of 2012 also regulates administrative sanctions against producers violating the halal label. The context of the violation of the halal label according to the JPH Law. If the business actor does not maintain the halalness of the product, while the product has obtained a halal certificate, as referred to in Article 25 letter b. Or business actors make changes to the composition of product ingredients by including haram elements and do not report changes in composition to BPJPH as the agency authorized to issue and revoke halal certificates. Article 27 Paragraph (1) Business actors who do not perform the obligations as referred to in Article 25 are subject to administrative sanctions in the form of a written warning, administrative fines up to the revocation of the halal certificate permit. Business actors do not fulfill the obligations of Article 26 paragraph (2), are subject to administrative sanctions in the form of verbal warnings, written warnings, and administrative fines.

The Food Law states that business actors who do not fulfill the obligations of Article 97 paragraph (1) are subject to administrative sanctions. Administrative sanctions in the form of fines, temporary cessation of production activities, withdrawal of food from business actors, compensation to revocation of permits. This is intended to protect consumers from the plurality of food products entering and circulating in the territory of Indonesia, which are not necessarily all halal certified.

In PP Labels and Food Advertisements, it is said that Halal Food is food that does not contain elements or materials that are forbidden or prohibited for consumption by Muslims, both concerning food raw materials, food additives, auxiliary materials and other auxiliary materials, including food ingredients that are processed through an engineering process. genetics and food irradiation, and whose management is carried out in accordance with the provisions of Islamic religious law.

In view of the provisions on the definition of halal food, it is stated in Article 1 letter e PP No. 69 of 1999, it is understandable that business actors in producing goods/services are responsible from food raw materials to processed food. This is very relevant, because for ordinary consumers it is very difficult to distinguish between processed foods, which are halal and non-halal. It is different if it is still in the form of raw materials, it is easier to distinguish between halal and non-halal foods. So this is where the honesty of business actors is demanded, not merely profit-oriented which may only be temporary. Producers must comply with the provisions

⁹ Ahmadi Miru & Sutarman Yodo, Consumer Protection Law (Jakarta:PT Raja Grafindo Persada, 2010), p. 276.

for halal production. Proof that the production process is carried out in a halal manner, followed up by registering the product with BPJH. Then BPJPH will research the product, and form a team. After the halal auditor team inspects the product, the report is returned to BPJPH. Then BPJH submitted the results of the report to the MUI Fatwa Commission to obtain a halal fatwa. If the MUI Fatwa Commission through its session determines that the product is halal, then a fatwa is issued. Then BPJPH based on the MUI Fatwa in written form issues a halal certificate. From this description, it can be concluded that the halalness of the product is proven by halal certification from the authorized institution.

3.3 Accountability of Business Actor Who Does Not Include Halal Certificate According to Law no. 8 of 1999

The Consumer Protection Law does not regulate sanctions for business actors who do not include halal certificates on products. UUPK only regulates sanctions for business actors who violate the halal label. Sanctions for business actors violating Article 8 can not only be prosecuted but also criminally liable. Criminal sanctions can be imposed if the violation is committed by a business actor resulting in a consumer being disabled, seriously ill or dead.

The responsibility of business actors does not include halal certificates on products labeled halal, contained in the JPH Law, Article 27 Paragraph (1). It is said that administrative sanctions consist of written warnings, administrative fines to revocation of halal certificates.

In addition to administrative sanctions, the JPH Law contains criminal provisions for business actors not maintaining the halalness of products that have obtained a halal certificate with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

The birth of the JPH Law is expected to introduce not only the relationship with legal certainty regarding halal products, but also the substance of justice which is actually the main purpose of the law. Law is a concrete embodiment of the law must be able to protect various levels of society. Especially for Muslims as the biggest consumers not only in Indonesia, but also throughout the world. For this reason, it is recommended that business actors do not need to be allergic to bear and include halal labels on their food and beverage products that have passed the halal certificate from LPPOM MUI and authorized institutions such as BPJPH.

Business actors who have not submitted an application for registration of their products to an authorized institution are urged to carry out the mandate of the JPH Law concerning the obligation to be certified halal for all products circulating and traded in the territory of Indonesia

The profit will be very large if the business actor has used the halal label recognized by an official institution. Because it will invite Muslim customers to buy these food products. On the other hand, business actors who do not have halal certificates for their food and beverage products may be excluded from business competition because Muslim consumers will be left behind.

4. Conclusion

Based on the discussion above, this study concludes that sanctions for business actors do not include a halal certificate as regulated in the Halal Product Guarantee

Act. Meanwhile, sanctions for business actors who violate the halal label are regulated in the UUPK and the JPH Law. Sanctions against business actors who do not maintain the halalness of products that have been certified halal are regulated in Law no. 33 of 2014 in the form of administrative sanctions as well as imprisonment or fines.

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