Authoritarianism in the Halal Product Guarantee Act of Indonesia: A Contribution to An Ongoing Debate

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AUTHORITARIANISM IN THE HALAL PRODUCT GUARANTEE ACT OF INDONESIA: A CONTRIBUTION TO AN ONGOING DEBATE

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Abstract

This study aims to examine the discourse on authoritarianism in the Halal Product Guarantee Act of Indonesia. The issue raised concerns opinions on or accusations of the Halal Product Guarantee Act of Indonesia reflecting authoritarianism and threatening human rights, specifically, religious beliefs. Furthermore, the discourse on authoritarianism in the Halal Product Guarantee Act of Indonesia states efforts to impose a single interpretation of the provisions in Islamic law. In this study, we investigate the validity of these allegations using a statute and conceptual approach. In this research, we determine that the claim of authoritarianism in the Halal Product Guarantee Law of Indonesia is false. In principle, the Halal Product Guarantee Act does not prohibit the circulation of haram products and thus does not violate the rights of nonMuslims. In addition, centralization of the Indonesian Ulema Council’s authority on the interpretation of halal provisions for a product is necessary to realize the principle of legal certainty.

Keywords: Authoritarianism; Halal provisions; Islamic law; Product; Religious beliefs

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I. INTRODUCTION

Law no. 33 of 2014 on halal product guarantee is a strategic act concerning halal certification in Indonesia. This regulation marked the new era in halal product guarantee in the country and is considered as the most congressional and comprehensive legislation regarding halal product certification. Before the existence of Law no. 33 of 2014 on halal product guarantee (i.e., the Halal Product Guarantee Act), regulations regarding halal product guarantee were not integrated in a single law but fragmented and addressed in several regulations, such as Presidential Decree no. 69 of 1999 on food labels and advertisements, Law no. 8 of 1999 on consumer protection, and Law no. 18 of 2012 on foods, which implicitly contains rules on halal labels for marketed products.

However, in providing legal guarantees to Muslims regarding halal products, such regulations are inadequate. This idea was confirmed by KN Sofyan Hasan, who found that regulations on halal certification before the Halal Product Guarantee Act are inadequate in providing legal guarantees and certainty to Indonesian Muslim consumers regarding halal products. This inadequacy is due to the absence of mandatory provisions for business actors (producers) to obtain halal certification and label food products.

In addition, Law no. 33 of 2014 on halal product guarantee fulfills the need for an appropriate legal construction regarding the certification of halal products in Indonesia. Mashudi determined that Indonesian society requires a legal construction regarding the certification of ideal halal products, specifically, regulations built on the principle of certainty, justice, and expediency by prioritizing the principle of legal certainty and designating the ulama as the authority responsible for determining the halal status of a product, thereby strengthening the halal way of life, which was originally voluntary, through regulations and mandates.

Nevertheless, the formulation and development of this halal product guarantee encountered numerous problems, which is reflected in the long discourse on the regulation lasting eight years. The JPH Bill was once rejected by the House of Representatives at the discussion stage during the period of 2004–2009. Before being passed by the parliament on October 17, 2014, the JPH Bill reaped support from and met with opposition in parliament and the community. Community groups against the JPH Bill included the Indonesian Halal Products Association, the Association of Meat Importers, the Food and Beverage Industry Product Information Center, and the Indonesian Food and Beverage Entrepreneurs Association.

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7 Mashudi, “Konstruksi Hukum Dan Respon Masyarakat Terhadap Sertifikasi Produk Halal (Studi Socio-Legal Terhadap Lembaga Pengkajian Pangan Obat-Obatan Dan Kosmetika Majelis Ulama Indonesia)” (Disertasi, Program Pascasarjana Universitas Diponegoro, 2011).
Meanwhile, in parliament, one of the criticisms against the JPH Bill is based on the assumption that the regulation of halal products is a sensitive religious issue. Thus, the implementation of the law might cause “religious offense.” Moreover, an assumption exists that the regulation of halal products is solely a matter of religion; thus, the government should not interfere10.

The concern over religious offense emerged after the passage of the JPH Bill into law. Several parties demanded a material test for the provisions in the Halal Product Guarantee Act, citing that they are detrimental to non-Muslims in Indonesia, because the act requires all consumers to consider the interests of Muslims regarding product halalness11. This argument indicates that certain parties believe that the Halal Product Guarantee Act contains an element of injustice or discrimination.

Thus, the Halal Product Guarantee Act, as a legal product adopting the provisions of Islamic law, is considered as a statutory regulation that can potentially lead to authoritarianism. The Halal Product Guarantee Act may be used as a tool by the majority group (Muslims) to impose their will or interests on other groups (non-Muslims). In other words, this law is believed to be the product of regulations made by the majority group and represents their hegemony. Furthermore, this law appears to place the interests of the majority above those of other groups and ignores their rights.

The accusations of authoritarianism on the Halal Product Guarantee Act further reinforce the negative sentiments toward the formalization of Sharia. Rejection of the formalization of Sharia is based on various arguments, including that the formalization of Islamic law is a form of state intervention on private and individual issues12. Some individuals believe that the formalization of Sharia will hinder the realization of a peaceful, just, and equal society in a democratic setting, because the formalization of Sharia is antipluralism, antihuman rights, and antigender literacy13. Meanwhile, others firmly believe that making Islamic law a positive law will give birth to authoritarianism, because formalizing Islamic law will encourage the realization of rigid, binding, absolute, and authoritarian Islamic laws14.

If this accusation is true, then it will be counterproductive to democratic order and national policy development, which should be oriented toward nationalism. In other words, to realize the national law, Indonesia must consider national unity and integrity while preventing opportunities for the emergence of national disintegration. According to the concept of equality, every citizen has the same position in the eyes of the law regardless of ethnicity, race, and religion15.

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Based on the issues stated above, this study discusses the arguments underlying the allegations of authoritarianism in the Halal Product Guarantee Act. Furthermore, this study examines the arguments on accusations of authoritarianism and the lack of equality among citizens in the eyes of the law.

Therefore, this study investigates the following problems. 1) Why is the essence of the Halal Product Guarantee Act considered to represent authoritarianism and threaten human rights, specifically, religious beliefs? 2) Does the claim of authoritarianism in the Halal Product Guarantee Act have a proper basis?

To answer the questions above, this study used normative legal research methods, namely, a statute and conceptual approach. The statute approach was used to analyze the essence of the Halal Product Guarantee Act, especially the provisions related to the concept of authoritarianism and religious freedom. Meanwhile, the conceptual approach was employed to analyze the conceptual basis of the claim of authoritarianism from various perspectives. The materials used in this study were obtained from primary and secondary legal sources. The primary legal sources included actual laws in the form of constitutions, court cases, and statutes relating to the implementation of halal product guarantees, specifically, Law no. 33 of 2014 and other regulations. The secondary legal materials involved research results and scientific articles on the implementation of halal product guarantees and the concept of authoritarianism. The data were classified according to their relevance and analyzed to answer the research questions.

II. AUTHORITARIANISM, RULE OF LAW, AND RELIGION: A THEORETICAL REVIEW

The term “authoritarianism” derives from the Latin word “auctoritas.” Authoritarianism is generally used in the political sphere to refer to a totalitarian mode of leadership. According to the Encyclopedia Britannica, in the formal sense, authoritarianism in the political sphere is a political system that concentrates power to a leader or small elite group that is not constitutionally responsible for the people. Authoritarian leaders typically use power arbitrarily. In authoritarian regimes, freedom and opposition or alternative political forces are limited or nonexistent. Thus, authoritarianism conceptually contradicts democratic values.

Authoritarianism in politics is characterized by the absence of pluralism, insufficient democratic institutions, the violation of the fundamental rights of citizens, the lack of constitutional balance, and the oppression of nongovernment organizations.

Such a form of authoritarianism can reach extreme levels, such as the Nazi regime in Germany and Stalin in Russia, or intermediate levels, such as the McCarthy era in the United States. Authoritarianism during the McCarthy era emerged as a result of extreme fear, hatred, and nationalism, with the government using the law to persecute and punish citizens categorized as “nonAmericans,” most of whom were blacks or...
alleged communists.20

On the one hand, the term “authoritarianism” can be understood in the substantive sense, that is, as all forms of deviation or abuse of authority. On the other hand, the term can also be interpreted as blind obedience to authority or compliance through the use of coercion and punishment. Based on this understanding, authoritarianism also substantively contradicts the values of freedom, tolerance, and differences. In certain contexts, authoritarianism is generally associated with extreme nationalism, ethnocentrism, xenophobia, racism, anti-Semitism, and patriarchy. Thus, substantive authoritarianism is used to describe all forms of knowledge systems, structures, and political practices that directly oppress and deprive citizens of their basic rights and threaten freedom and human dignity.21

In this sense, authoritarianism is also related to the law. As an element in the political structure, the law and its instruments conceptually play a role in authoritarianism in formal and substantive terms. Lynne Henderson described experts’ views on the relationship between authoritarianism and the law and noted the paradox in the understanding of the law in relation to authoritarianism. On the one hand, the rule of law is believed to be a guarantee against tyranny or an authoritarian government or a form of authoritarianism in the substantive sense. On the other hand, the law can also be a source of authority or tool for the state to demand compliance from its citizens regardless of the pattern of government.22

The argument that the law is a bastion of authoritarianism stems from the fact that the law can regulate the allocation of power to institutions and elements of power in the state, thereby abolishing absolute power. In addition, the law has a mechanism to ensure that the rights of every citizen are protected, as stated in the constitutions of various countries.

However, the law and legality can also be a source of authority and thus be at risk of becoming authoritarian in the substantive sense, because the law is related to state power. The law is the government’s main instrument for legitimizing itself and achieving its goals. Therefore, the law is vulnerable to “manipulation” for substantive authoritarian purposes. Authoritarianism takes the form of constant insistence on obedience and punishment for those who disobey. Thus, similar to all forms of normative authority, the law can easily carry the seeds of oppression, intolerance, and demand for obedience.

Critical legal studies (CLS) also see this possibility. The fundamental principle of CLS states that the law consists of uncertain rules that can be used by political forces to advance their ideological goals. CLS presented a critique on the view of liberal law by considering the law as a hegemonic tool of the state and the power of the majority to oppress minorities.23

Moreover, the law and all its processes can play an active role in supporting authoritarianism. Authoritarianism can be seen clearly in courts as constitutionally available places to seek justice, because courts play an important role in determining

22 Ibid., 398.
who loses his/her freedom, property, children, or life.24

Thus, legal construction is undoubtedly closely related to politics. Mahfud MD concluded that legal products are strongly influenced by their political configuration. If the political configuration is democratic, then the legal product will demonstrate a responsive character. However, if the political configuration is authoritarian, then the legal product will exhibit a conservative nature. In other words, legal products are strongly colored by the dominant political power or those with the most control over the legislative body.25

In this context, the law must also be understood as the normative and interpretive commitment of a community. This interpretation is also accompanied by a strong commitment, thereby leading to the contestation of other interpretations.26 Thus, we can understand why friction or conflicts arise in the formulation and determination of legislative products in legislative bodies and other institutions.

The contestation of this interpretation can also lead to authoritarianism in another perspective. Khaled Abou el-Fadl argued that if authoritarianism as described above is related to the abuse of political authority or the state authority system, then authoritarianism is related to the abuse of God’s authority in Islamic law. Abou el-Fadl claimed that authoritarianism involves the belief of being the most correct in interpreting the sacred texts that are the source of Islamic law, namely, the al-Qur’an and sunnah. The results of the interpretation are then forcibly carried out without regard to the existence of different opinions.27 Thus, according to Abou el-Fadl, authoritarianism in Islamic legal discourse emerges when certain people, groups, or institutions believe that they have the authority, which should be possessed only by God, to determine which religious views are right and wrong while denying interpretation or other views. Abou el-Fadl exemplified this attitude of authoritarianism in the practice of fatwa by institutions in Saudi Arabia, namely, the Council for Scientific Research and Legal Opinion, whose fatwas tend to marginalize women.28

From the descriptions of the meanings of authoritarianism, we conclude that two meanings can be used as perspectives to examine the element of authoritarianism in the Halal Product Guarantee Act.

The first meaning is authoritarianism as a construct of thought, structure, and political practice, including the law and legislation, threatening human rights, freedom, and dignity. The Halal Product Guarantee Act can be considered as a law or legal product reflecting authoritarianism if it includes provisions that threaten citizens’ basic rights.

The second meaning is authoritarianism as an effort to impose a single interpretation of the provisions in Islamic law, as stated by Abou el-Fadl. In this case, the creation of the Halal Product Guarantee Act, as a legal product adopted from the provisions in Islamic law, is related to a variety and wide spectrum of interpretations of Islamic law (Sharia).

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28 Ibid., 385–425.
III. AUTHORITARIANISM DISCOURSE ON THE IMPLEMENTATION OF THE HALAL PRODUCT GUARANTEE ACT OF INDONESIA

As mentioned above, some parties believe that the Halal Product Guarantee Act is a legal product reflecting authoritarianism and representing the majority hegemony. This law is believed to contain an element of injustice, because it places the interests of one group above those of other groups.

To determine the accuracy of this argument, paying close attention to the theoretical construction of and argumentative basis for the existence of authoritarianism in the Halal Product Guarantee Act is important. This attention is necessary to determine whether the accusations of authoritarianism against the Halal Product Guarantee Act have adequate theoretical bases or are merely baseless assumptions and concerns.

The two authoritarianism perspectives can be used as theoretical bases to explain the possibility of an element of authoritarianism in the Halal Product Guarantee Act. Our choice of the two perspectives is based on not only the fact that both have theoretical support but also the existence of empirical data indicating that certain parties use these perspectives to view the Halal Product Guarantee Act.

A. Authoritarianism and Identity Politics in the Implementation of the Halal Product Guarantee Act of Indonesia

The first perspective involves the meaning of authoritarianism based on the substantive understanding of the concept mentioned above. That is, as a construct of thought, structure, and political practice, including the law, threatening human rights, freedom, and dignity. From this perspective, the presence or absence of the element of authoritarianism in the Halal Product Guarantee Act can be measured by the presence or absence of provisions threatening the freedom or basic rights of citizens.

With this perspective, we argue that the Halal Product Guarantee Act has a high likelihood of being misunderstood as a product of authoritarian legislation. This possibility is mainly triggered by the provisions in the Halal Product Guarantee Act stating that halal certification for products in Indonesia is mandatory rather than voluntary.

This provision can be understood as a rule requiring all products in Indonesia to be halal certified. Thus, some believe that the provision will result in products that are not halal, such as liquor or pork, to not be sold freely. However, such nonhalal products may be used by nonMuslims or a necessity in certain cultural traditions. Hence, the provisions in the Halal Product Guarantee Act are considered detrimental to nonMuslims and threaten their freedom and beliefs. In other words, this law is believed to rob the rights and freedom of nonMuslims to practice their beliefs.

Authoritarianism in the form of threats to nonMuslim rights posed by the Halal Product Guarantee Act is expressed in a judicial review suit against the act by Paustinus Siburian, who is an advocate in Jakarta. As stated in his lawsuit, Siburian felt that his constitutional rights were impaired by the enactment of the Halal Product Guarantee Act. As a Catholic, he is not restricted by the issue of halalness in materials and production processes. However, the Halal Product Guarantee Act is intended for

30 Indonesia, See submission guide: References to Indonesian Law, UU No. 33 Tahun 2014 (Law no. 33 Year 2014)" (2014) article 4.
everyone regardless of religion. The issuance of this law for all religious adherents necessitates him and other nonMuslims to follow the Muslim community’s concerns and commitment.

Thus, Siburian argued that the Halal Product Guarantee Act forces nonMuslims with no interest in halal and haram issues to follow the Muslim community’s concerns or commitments and provisions that are nonexistent in their religious teachings. The law is seen as an effort by the government to enforce Islamic law to all the citizens of Indonesia, including nonMuslims. Therefore, the law is considered unfair, discriminatory, and contradictory to Article 28 E and Article 29 paragraph (2) of the 1945 Constitution.

Furthermore, Siburian was concerned about the possibility of community groups engaging in acts of violence in the name of “law enforcement,” such as raiding batak and papuan traditional parties serving dishes with nonhalal ingredients.

Siburian considered the aims and objectives of the legal subject of the Halal Product Guarantee Act inaccurate and thus had to be changed. Given that this law is an attempt by the government to protect the interests and commitment of Muslims, this legal product should apply only to Muslims. Therefore, in the purpose of the Halal Product Guarantee Act mentioned in the dictum, under letter (b), Siburian proposed replacing the word “religion” with “religion of Islam” and “community” with “Muslims.” Thus, the intended purpose of the Halal Product Guarantee Act, which initially reads as “To ensure that every religion adheres to worship and practice its religious teachings, the state is obliged to provide protection and guarantee regarding the halal of products consumed and used by the people,” should be changed to “In order to guarantee that all followers of the religion of Islam are to worship and practice the teachings of their religion, the state is obliged to provide protection and guarantee regarding the legality of the products consumed and used by Muslims.”

The argument presented by Siburian in the judicial review of the Halal Product Guarantee Act can be read as the minority groups’ outrage and concern about the dominance of the majority group supported by the state. Minority groups, in this case, nonMuslims, feel that their rights and interests are being sidelined while those of Muslims, as the majority, are being prioritized.

If this concern is true, then it also means that the state failed to guarantee and protect the rights of minority groups, which is mandated by the constitution. Thus, the Halal Product Guarantee Act is seen as a rule made by the state, which is a representation of the majority group, to protect the interests of the majority group. At the same time, the rule would override minority interests and rights. This situation is what political scientists call majority tyranny, that is, a situation illustrating the irony in a democratic system. In a democratic country, political power (the state) becomes a tool and representation of the majority; thus, every element in the government, including regulations and laws, will prioritize the interests of the majority.

31 The Constitutional Court of Indonesia, Decision No. 8/PUU-XVII/2019 PERIHAL PENGUJIAN UNDANG UNDANG NOMOR 33 TAHUN 2014 TENTANG JAMINAN PRODUK HALAL, 13.
32 The Constitutional Court of Indonesia, Decision No. 8/PUU-XVII/2019 PERIHAL PENGUJIAN UNDANG UNDANG NOMOR 33 TAHUN 2014 TENTANG JAMINAN PRODUK HALAL, 11.
Stuart Mill broadens this concept as “social tyranny of the majority.” According to Mill, what is meant by “the will of the people” or the interests of the people is actually the will of most people (majority).³⁴

B. Authoritarianism of the Indonesian Ulema Council (MUI) Fatwa Product as the Sole Interpretation of the Halal Product Guarantee Act

The second perspective that can be used theoretically to observe the element of authoritarianism in the Halal Product Guarantee Act is authoritarianism in the sense adopted from Abou el-Fadl, that is, the practice of standardizing a religious view related to Islamic legal products, which is basically the result of interpretation and *ijtihad*, and imposing that view on others without regard to the existence of different opinions.³⁵

Provisions in Islamic law, including those on halal and haram, are basically interpretations of authoritative Islamic texts. Although such provisions are “certain” (*qhod’i*), many are “relative” (*zhanni*) and likely to be included in the *khilafiyah* case. In such cases, the legal status is under debate among Islamic jurists (*fuqoha*). This *ikhtilaf* (differences of opinion) is possible owing to the different methods for understanding, and interpretations of the texts (Qur’an and Hadith). If this *khilafiyah* case is forced by individuals and institutions on other parties with different views on the legal status of a problem, then the coercion is an act of authoritarianism.

Authoritarianism in this perspective will likely emerge in an effort to make Islamic law a positive law or formal legislation (positzivization of Islamic law). Islamic law, which is a positive law, exerts considerable force, because it is supported by the state. Muttaqin Labib considered the effort to make Islamic law a positive law tantamount to closing the door to *ijtihad*, thereby giving birth to rigid, binding, absolute, and authoritarian Islamic law.³⁶

With this perspective, the Halal Product Guarantee Act can be assessed as a law with an element of authoritarianism, because it gives the MUI sole authority to issue a fatwa regarding the determination of halal citizenship.³⁷ In other words, in Indonesia, the MUI is the only institution whose opinion or *ijtihad* about the legal status of a product is considered valid and true and thus must be followed by all Indonesian Muslims. According to Muzayyin, the position of the MUI has the potential to generate authoritarianism. Furthermore, Muzayyin stated that in certain cases, the MUI demonstrates an authoritarian attitude or acts arbitrarily in the determination of fatwas.³⁸

A single standard for the determination of halal–haram will certainly cause problems. Owing to the wide scope of this law and increasing development of food

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³⁵ Abou el Fadl, *Atas Nama Tuhan: Dari Fikih Otoriter Ke Fikih Otoritatif*.
processing technologies, drugs, and goods, substantial problems requiring legal status may emerge. These problems may fall into the realm of khilafiyah or differences of opinion among Islamic jurists.

This possibility is not without reason, because currently, many differences of opinion regarding the legal status of a problem exist among Islamic jurists and between the MUI and Islamic groups in the country. Examples are the MUI fatwas for the slaughtering of animals and cigarettes.

Stunning is one of the most controversial technologies in the halal meat industry. This method is not known in Islamic tradition and not mentioned in the Qur'an or Hadith. Slaughter by stunning violates the requirements and principles of halal slaughter in Islam. This concern is related to the fact that most animals are not alive when slaughtered, and blood loss is minimal when stunning. According to most ulamas, death must be ensured in animals by cutting their food and breathing channels and blood vessels. Therefore, animals must have the mark of life (hayah mustaqqirroh) before being slaughtered. However, stunning before slaughter is a legal requirement in European countries.

These provisions are regulated in Council Regulation no. 1099/2009. In Islam, the controversy over preslaughter stunning reached a global scale. Moreover, agencies in different countries addressing halal certification failed to reach an agreement regarding this issue.

The European Halal Certification Institute, which handles halal certification in Germany, is tolerant of mechanical slaughter and stunning. However, the Halal Monitoring Committee in the United Kingdom rejects stunning in all aspects of production, similar to Russia and Poland.

In Indonesia, the MUI stated that stunning is generally prohibited but allowed in the slaughter process under certain conditions.

Meanwhile, consuming tobacco (smoking) has long been a problem among Indonesian Muslims. Differences of opinion regarding the legal status of smoking exist among scholars and fatwa institutions. The two largest Islamic mass organizations in Indonesia, namely, the Muhammadiyah and Nahdlatul Ulama (NU), issued different fatwas on smoking. In 2005, the Tarjih and Tajdid Muhammadiyah assemblies issued a fatwa stating that legal ruling is permissible (mubah). However, this fatwa was updated in March 2010, stating that smoking is prohibited (haram). Moreover, the NU stated that smoking is mubah or at most, reprehensible (makruh).

Meanwhile, the MUI expressed that smoking by children and pregnant women

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and in public places is prohibited (haram)\(^{45}\). However, the MUI fatwa was criticized within the MUI. The MUI Madura, which is a branch of the MUI in East Java, deplored the fatwa, because tobacco is a priority crop for most Madurese people. Thus, the prohibition of cigarettes will have an impact on the lives of Madurese citizens. The MUI Madura also argued that differences of opinion in Islam regarding the status of cigarettes exist\(^{46}\).

As mentioned above, differences of opinion currently do not cause problems, because fatwas do not have binding and compelling characteristics. Indonesian Muslims are free to follow any fatwa they believe. However, after the implementation of the Halal Product Guarantee Act, the MUI fatwa assumed a “coercive” characteristic. In the Halal Product Guarantee Act, the MUI is designated as the only institution with the right to determine the halal status of a product. Problems may arise when products or goods whose legal status is under debate or in the \(khilafiyah\) stage, such as cigarettes, are certified halal.

In such instances, differences in fatwas or interpretations among Islamic jurists may be overlooked by the MUI owing to its status as the only institution recognized by the law that can issue a fatwa on the halalness of a product, thereby reflecting the authoritarianism of the JPH Law in the interpretation of Islamic law. Thus, this law on halal product guarantee, which gives absolute authority to the MUI to stipulate halal fatwas, has the potential to generate authoritarianism.

IV. UNRAVELING THE DISCOURSE ON AUTHORITARIANISM IN THE IMPLEMENTATION OF THE HALAL PRODUCT GUARANTEE ACT OF INDONESIA

Regarding the first question, “Does the Halal Product Guarantee Act represent authoritarianism?” as explained above, the Halal Product Guarantee Act can theoretically reflect authoritarianism and be misunderstood as an authoritarian regulation, because it can be seen as prioritizing the interests of Muslims and ignoring the rights of non-Muslims. This law can also be judged as espousing authoritarian reasoning, because it supports the idea of a single interpretation of the provisions in the Islamic Sharia by ruling out other interpretations or understanding outside the MUI.

However, the assumption or accusation of authoritarianism related to the violation of non-Muslim rights is incorrect. The alleged authoritarianism of the Halal Product Guarantee Act relating to the violation of non-Muslim rights is basically a misunderstanding, because the act does not substantially prohibit the circulation of non-halal products or prevent non-Muslims from consuming goods or products that are not halal.

This understanding was also confirmed by expert witnesses during the judicial review of Law no. 33 of 2014 concerning halal product guarantee requested by Paustinus Siburian at the Constitutional Court. According to Sukoso, chair of the Toyib Halal Study Center, Malang, the mandatory provisions in the Halal Product Guarantee Act state “halal certification mandatory” rather than “halal mandatory” (2017


Constitutional Court). In other words, products that must be halal certified are those whose status is unclear (mutasyabihat). Moreover, Article 26 of the Halal Product Guarantee Act states that products that are clearly haram need not be certified. Thus, individuals need not fear or be concerned about consuming or using different products in the market, as products that are guaranteed halal and those that are not will be labeled accordingly.

The provision to guarantee halal products is not an attempt by the government to apply Islamic law to everyone, including nonMuslims. Thus, Sukoso emphasized that the Halal Product Guarantee Act does not require nonMuslim producers or consumers to follow Islam or Islamization rules. In his statement to the media, Sukoso stated the following:

So, if you want to consume products that do not have halal certification, please consume products that are not labeled halal. With the certification, it will be clear whether it contains pork or not. Those who need pork can go ahead and look for other products, but there is no prohibition on that.

Therefore, the Halal Product Guarantee Act does not harm, diminish, limit, or hassle nonMuslims and prevent them from conducting their daily activities or enjoying hobbies related to consumption and others. Business actors or producers may produce nonhalal products as long as they are labeled “nonhalal” in accordance with Article 26 paragraph (2) of Law no. 33 of 2014 on halal product guarantee.

Sanctions or punishments are imposed only on products that violate these provisions, which means that nonhalal products without nonhalal information or labels will be subject to sanctions. Sanctions involve administrative penalties ranging from verbal warnings to administrative fines.

Furthermore, the enactment of the Halal Product Guarantee Act is constitutionally a manifestation of the state’s responsibility to protect the rights of Muslims and guarantee their healthy and protected lives in worship in accordance with the teachings of their religion, as determined in the 1945 Constitution, specifically, Article 29. Meanwhile, the consumption of halal products is very important in Islamic teachings. Therefore, the absence of a law regulating the demand for this need will cause difficulties for Muslims in fulfilling the mandate of their religious teachings. Thus, no link exists between the enactment of Law no. 33 of 2014 concerning halal product guarantee and efforts by the government to apply Islamic law to every community, including nonMuslim communities.

In addition, the provision on halal certification is not solely a religious matter but involves economic issues, because halal certification is related to product competitiveness at the international level. Halal certification is widely implemented in numerous countries, even in those where Muslims are a minority.

This practice is observed, because the halal industry garnered interest worldwide,

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47 The Constitutional Court of Indonesia, Decision no. 8/PUU-XVII/2019 PERIHAL PENGUJIAN UNDANG UNDANG NOMOR 33 TAHUN 2014 TENTANG JAMINAN PRODUK HALAL, 57.
50 See Article 27 of the Halal Product Guarantee Act (UU no. 33 Tahun 2014) and Article 199 of the Peraturan Menteri Agama Republik Indonesia Nomor 26 Tahun 2019.
including in nonMuslim countries. Muslim and nonMuslim consumers around the world are interested in buying halal products, because they indicate the safe and hygienic process of food production for consumption. Halal certification is also seen as a marketing tool and competitive advantage to producers, along with other benefits, such as consumer trust and compliance with Islam and hygiene and safety requirements. Furthermore, a study by Asnidar Hanim Yusuf found that halal certification is relevant to the growth of the food industry in Malaysia. Values that spur the growth of the industry and attract Muslim tourists include belief in the safety and cleanliness of the process and the foods produced, thereby attracting other consumers, producing improved market signals, and encouraging wide business expansion.

On the macroscale, halal certification can also contribute positively to a country’s economy. For example, Singapore benefited from the halal certification system, with an increase in its revenue turnover of 20% to 25%. A similar situation occurred in Australia, which, despite not being a Muslim country, has six halal certification bodies, including the Australian Halal Authority. With halal certification, meat exported from Australia can enter Muslim-populated countries.

This shows that Muslim countries are a huge market for the halal industry, which can be utilized to develop national economies. Bergeaud-Blackler mentioned that halal certification and standards function as “tools of economic development in Muslim countries.”

Unfortunately, compared with other Muslim countries, Indonesia is late in regulating the procedure for guaranteeing halal products. According to a 2018–2019 global economic report, the Sharia economy in Indonesia ranked 10th in the world. Indonesia, as a country with the largest Muslim population in the world, is a major consumer of halal products rather than a producer.

Thus, the assumption that halal certification serves only the interests of Muslims is not entirely true, because people who use halal products are not limited to Muslims. In addition, producers and economic actors in the halal industry are not only Muslims. In fact, most producers and economic actors are nonMuslims, such as food and medicine manufacturers Indofood, Garuda Food, Siantar Food, Sido Muncul, and other companies owned by nonMuslim entrepreneurs.

As for the accusations of authoritarianism relating to the existence of a single authority for halal fatwas, namely, the MUI, we argue that they are reasonable, because the Halal Product Guarantee Act gives exclusive authority to the MUI to issue a fatwa, which can be used as a basis for issuing halal certification to a product, as stated in Article 33 of Law no. 33 of 2014 concerning halal product guarantee. In other words, the government recognizes and accommodates only fatwas or the results of MUI *ijtihad* regarding the legal status of a product’s halalness. Thus, in accordance with

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the provisions in the Halal Product Guarantee Act, other fatwas outside the MUI, such as those from Islamic mass organizations, are not recognized and cannot be used as a reference for establishing halal products. Based on the perspective of Abou el-Fadl, the existence of a single authority in determining this fatwa is considered as a form of authoritarianism.

However, we agree with the appointment of a sole authority in the determination of fatwas. In this way, legal provisions relating to the halal and haram status of products will be clear and certain, and no differences will exist in views leading to doubts and uncertainty.

This is important to ensure that the Halal Product Guarantee Act, as a form of Islamic legislation, meets the principles of formal law and Islamic legal principles, specifically, the principle of legal certainty. The principle of legal certainty (rechtssicherheit) is one of the three basic values in the law besides the principle of justice (gerechtigkeit) and the principle of expediency (zweckmassigkeit)55. These principles are known as not only the basic values of modern law but also the main principles of Islamic law56.

In a rule of law, such as that in Indonesia, every policy implemented by the government must be based on the law. Likewise, the people protected by a law must act in accordance with clear rules and are expected to guide and implement the law without hesitation57. A law, which aims, among others, to bring order to a community, must be clear and can be used as a definitive guideline by the community. Moreover, prohibitions in the regulation must be clearly stated. Furthermore, sanctions for prohibition should also be stated explicitly.

According to Muhammad Alim, in Islamic law, the principle of legal certainty is demonstrated by Allah SWT. The law originating from Allah, as viewed in Islam as the highest authority that should be followed by the community, must be conveyed as clearly as possible to be followed and implemented. As mentioned in Al-Qashash verse 59 and Al-Israa verse 15, a messenger was sent to clearly convey the verses (laws) of Allah to the people so that they may know for certain the applicable laws58.

Thus, the existence of a single authority to determine the halal fatwa regulated in the Halal Product Guarantee Act can be seen as an effort by the government to cover all possible legal uncertainties. Such uncertainties can cause doubt and are counterproductive to the principle of legal certainty and the purpose of the law to bring order; because the problem of determining the halal or haram status of a product is mostly *ijtihadi*, which can create opportunities for differences in conclusion or the determination of legal status. Differences that occur among fatwa institutions can cause public confusion and legal uncertainty.

In addition, from the perspective of public benefit, the halal or haram status of a product in the market is an issue with a wide-ranging impact on society. Thus, the determination of a product’s halal status is no longer a personal *ijtihad* (*ijtihad infiradi*), which refers to an individual’s relationship with God, but a socially patterned *ijtihad* (*ijtihad ijtima’i*), which is related to horizontal aspects and general benefits. Therefore, government intervention (*ulil amri*) is necessary to achieve this general

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benefit. As stated in the fiqh principle, “Tasharruful Imam ala ar-Ra’iyah Manuthun bil Mashalahah” (the government policy toward its people must be in accordance with the benefit or welfare of its people)⁵⁹.

Differences of opinion regarding the legal status of a product and halal standardization should be resolved by referring to the fiqh principle, stating “ḥukmul hakim ilzam wa yarfaul khila’f,” which means that the government’s decision (the judge) is binding for its citizens and eliminates differences⁶⁰. Imam al-Qurafi explained that the principle actually shows that the government’s decision regarding the issue of ijtihadiyah can eliminate dissent, and those who disagree should follow the government school and change their fatwas according to government regulations⁶¹.

In this context, the MUI can be positioned as a representative of the government or judge, as it is an institution designated by the government through legislation to determine the legal status of a product. In addition, the MUI consists of Islamic leaders from various circles and Islamic mass organizations in Indonesia. Thus, the MUI can be considered as a fatwa institution representing various Islamic mass organizations in the country.

Moreover, historically, the MUI is a representation of ulamas throughout Indonesia. The MUI was established as a follow up to the results of deliberations by ulamas from various circles, specifically, 26 ulamas representing 26 provinces in Indonesia at the time; 10 ulamas from Islamic mass organizations at the central level, namely, the NU, Muhammadiyah, Syarikat Islam, Perti Al Washliyah, Math’laul Anwar, GUPPI, PTDI, DMI, and Al Ittihadiyyah; 4 scholars from the Islamic Spiritual Service TNI and POLRI; and 13 scholars who are individual figures⁶².

However, though the MUI is composed of representatives from various groups and Islamic organizations, the possibility of differences of opinion exists. For this reason, the MUI must be open and proactive in bringing together and discussing existing opinions to reach an agreement, thereby minimizing concerns of authoritarianism from a fatwa or opinion in Islamic law forced on all parties.

V. CONCLUSION

The accusation that the Halal Product Guarantee Act reflects authoritarianism is grounded and can be seen from two theoretical perspectives.

The threat is caused by the provisions in the Halal Product Guarantee Act requiring mandatory halal certification for products circulating in the Indonesian market. This requirement gave rise to the notion that nonMuslims with no interest in the halal status of products may be forced to consider the interests of Muslims in consuming halal products. Thus, the Halal Product Guarantee Act is considered as an effort by the government to force nonMuslims to participate in Islamic teachings.

However, we prove this accusation to be untrue, because in principle, the Halal Product Guarantee Act does not prohibit the circulation of haram products. Rather, products that are clearly not halal must be labeled to indicate their nonhalalness. Thus, the Halal Product Guarantee Act does not diminish, eliminate, or limit the rights

⁶⁰ Ibid., 154.
of nonMuslims to follow the teachings of their religion.

The second perspective involves the meaning of authoritarianism as an attempt to impose a single interpretation of the provisions in Islamic law. This perspective relates to the provision on the centralization of halal fatwas in Indonesia, which is given solely to the MUI. With the Halal Product Guarantee Act, fatwas on the legal status of a product are binding, because they are supported by the government. Therefore, *ijtihad* or fatwas regarding the status of a product from institutions other than the MUI are not recognized. Meanwhile, the issue of determining the halal or haram status of a product is mostly *ijtihadi*, which can create opportunities for dissent.

However, fatwa centralization is necessary to ensure the determination of the law caused by various fatwas, which in turn is necessary to realize the principle of legal certainty. In addition, the MUI can be positioned as a judge and ulil amri who can decide and resolve differences of opinion (*ihktilaf*), as it is an institution recognized by the government and represents various Islamic organizations in Indonesia.
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