



# The Foundation of Islamic Law and Positive Law for the Development of the Halal Product Industry in Indonesia

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largest Muslim population in the world. Halal Haram Halal Product Industry in Indonesia will always be a topic that continues to grow and interesting to talk about.

It is noted that Indonesia today occupies the position as the fourth largest population in the world, with the majority of the largest Muslim population worldwide. Of the total population of Indonesia, there are more than 87% of the population who are Muslims. According to Amir, A., Lubis, P., & Iqbal, M. (2022), this requires Indonesia to set halal product standards for all Muslim populations. Data from the *Global Islamic Economy Indicator 2017* states that Indonesia is in the top 10 as the largest halal industry consumer country in the world (Sulistiani, S. L., 2019).

Fathoni, M. A. (2020) stated that the halal industry can contribute to improving the economy, so that the halal industry should be developed in Indonesia. Apart from the great opportunities for the development of the halal industry in Indonesia, the availability of halal products has indeed become a basic need for Muslim consumers, because it is the essence of Islamic law. Since a long time ago, many people have lost their way and experienced chaos. This chaos is caused because they forbid the halal and the haram. This heresy gave rise to extremists right and left. Right-wing extremists, they torture themselves and abstain from good things, such as food or clothing. Left extremists, they allow everything with a very wide range of capabilities (Yusuf Qardhawi, 1976). Muslims have a position as a middle group (*ummatanwasathan*), neither too right nor too left, fair and balanced in accordance with the word of Allah SWT in QS. Al-Baqarah: 143. Therefore, Allah SWT that Muslims are the best people born for humans, in accordance with what Allah SWT said in QS. Ali Imran: 110.

According to Hidayat, A.S. & Siradj, M. (2015) that the issue of halal product standards should be an integral part of global economic practices that demand standards and quality

**ABSTRACT:** This article aims to examine the legal basis for the existence of the halal industry in Indonesia, both the normative basis in Islam and the juridical basis in Indonesian positive law. The type of research is normative law with *library Reasearch* method. Data sources are obtained from primary data in the form of Islamic teaching norms and positive rule norms that are associated with the views of experts who speak on this matter. Data is analyzed by stages of data collection, preparation to conclusions. The conclusion obtained is that the development of the Halal Industry in Indonesia is strongly supported by the condition and history of the Indonesian population which dominates the largest quantity of Muslims throughout the world. This encourages an increase in the need for halal products and services. However, due to public confusion in assessing halal product standards, Indonesia adopted Islamic law in MUI fatwas and positive laws along with institutions that support the government in realizing the halal industry in Indonesia. The existence of this legal basis contributes to accommodating the development of the halal industry and of course to achieve the goal of the existence of halal standards for a consumptive product.

**KEYWORDS:** Islamic Law, Positive Law, Halal Products, Indonesian Halal Industry,

## I. INTRODUCTION

The development of industry in Indonesia is very rapid, it has even touched the realm of belief. The integration of industrial development towards this belief has succeeded in building an Islamic sharia-based industrial concept. According to Maghfira, F., Fasa, M. I., & Suharto, S. (2022), the halal industry in Indonesia has even become a new lifestyle trend in Muslim society in particular, both in the consumptive lifestyle in the form of clothing, food and shelter. Indonesia is the country with the



the problem and achieve the research objectives mentioned above, this research was carried out with a type of normative legal research with the *library Reasearch* method (Astuti, M. (2020)). Data sources are obtained from primary data in the form of Islamic teaching norms and positive rule norms that are associated with the views of experts who speak on this matter. Data is analyzed by stages of data collection, preparation to conclusions.

## II. DISCUSSION

### The Concept of Halal and Haram According to Islam

Islamic teachings have two main sources, namely the Quran and the Sunnah. Islamic sharia according to scholars is complete in regulating all aspects of human life (Ratna and Meftahudin, 2018). There are postulates that regulate Islamic laws in the Qur'an and the Sunnah that regulate all aspects of human life in a clear form and some regulate all aspects of human life in the form of rules in general. In its application, postulates that regulate in the form of rules generally require *ijtihad* so that they can explore the law in *nash* while postulates that regulate in a clear form do not require *ijtihad*. *Ijtihad* in the form of earnest efforts in studying and understanding deeply from the *mujtahid* to explore the laws contained in this *nash* is called *Fiqh* (Abd. Al Wahhab Khallaf in Ratna and Meftahudin, 2018). In its journey, the role of *ijtihadis* very important in order to prove the *universality* of Islamic teachings (Ratna and Meftahudin, 2018).

*Ijtihad* has an interest in answering new problems and also reviewing problems based on the current relevant conditions to be in accordance with Islamic law. One application of this *ijtihad* is in the case of determining halal haram of a product.

Halal (حلال) comes from an Arabic term meaning "permitted" or "permissible". In terms of halal is something that is allowed, which is free from the bonds of prohibition and allowed by sharia makers to be done (Ratna and Meftahudin, 2018). In Islam, Yusuf Qardhawi (1976) explains the principles of halal and haram as follows:

1. As long as every thing is mubah, none of it is haram, except because there is a valid and unequivocal passage from the Shari'ah (Allah and the Messenger) that forbids it.

If there is no valid passage (for example because some hadiths are weak or there is no firm passage indicating haram) then it remains as it was originally, i.e. mubah. The postulate underlying this principle is QS. Al-Baqarah: 29, QS. Al-Jatsiyah: 13, and QS. Luqman: 20, QS. Al-An'am: 119. Allah

standards to gain the trust of many consumers. Consumption of halal and good food is not only a manifestation of religious compliance for Muslims, but also contributes to the dimensions of health, economy and security (Astuti, M., 2020).

There are at least two aspects that can be reviewed regarding the Halal Haram Halal Product Industry in Indonesia, namely in terms of the concept of Islamic sharia and the basis of positive law. According to the foundation of the Islamic concept, it is very clear the position and importance of paying attention to food. The Qur'an as a fundamental basis gives commands to every Muslim to maintain his consumption, in addition to being halal must also be *thayyib*. As in the Qur'an which means O people, eat what is lawful again good from what is on earth. Do not follow the steps of Satan because Satan is a real enemy to you" (QS. al-Baqarah/2:168). According to Bakar, A., &Pratami, A. (2021) that the verse gives clear instructions for Muslims in choosing foods with halal and *thayyib* criteria.

Apart from the aspect of Islamic law, in Indonesia regulations have also been established regarding the guarantee of halal products. Fatwa of the Indonesian Ulema Council Number: 26 of 2013 concerning Halal Standards for Cosmetic Products and Their Use. Fatwa Decree of the Fatwa Commission of the Indonesian Ulema Council on the Determination of Halal Products dated 13 Muharram 1431 H / 30 December 2009 A.D. In addition, it has also been established the Institute for Supervision and Circulation of Drugs and Food of the Indonesian Ulema Council (LPPOM MUI). This institution supervises products circulating in the community by giving halal labels to their products (MUI, 2016). Then in 2017, the Halal Product Assurance Organizing Agency (BPJPH) was inaugurated through the provisions of Law Number 33 of 2014 concerning Halal Product Assurance (Bakar, A., &Pratami, A. (2021).

The urgency of the existence of legal legality is important for the development of the halal industry. According to Santoso, L., & Cahyani, Y. T. (2020) that the existence of legal policies is able to accommodate developments which means that legal products are progressive, effective, work efficiently, and responsively. So that basically the legality of the law is a must as an effort to increase the development of the halal industry.

Thus, of course the purpose of this article is to examine the legal basis for the existence of the halal industry in Indonesia, both the normative basis in Islam and the juridical basis in Indonesian positive law. In order to answer the formulation of



6. Anything that leads to haram is haram

Islam has the principle that if Islam has forbidden something, then clairvoyance and any means that can lead to haram acts, the law is haram. When Islam forbids adultery, then all acts that precede it such as two-by-two and others are forbidden as well. This is in line with the rule that the sin of haram is not limited to the person of the perpetrator, but includes all people who are in association, both in the form of property and behavior. This can be reflected in the hadith of the Prophet regarding alcohol, that he condemned the drinker, the maker, the bearer, and the seller.

7. Investigating against things that are haram, the law is haram.

Just as Islam forbids all acts that lead to haram in a visible way, it also forbids all non-visible methods of strategy or policy. The Holy Prophetsa said, "Do not act like the Jews, and do not consider it lawful against Allah's prohibitions even with the smallest tactics. This also includes taking part in food matters, such as by changing names and forms. This is still haram. In the hadith narrated by Ahmad, the Holy Prophetsa said, "*Indeed it will be the tone of my people who consider it halal to drink wine by giving it another name*". In another hadith, the Holy Prophetsa said, "*There will come a time when people consider usury halal in the name of buying and selling*".

8. Good intentions cannot let go of the haram

In matters of haram, no matter how good and noble an intention may be, if it is haram then it is still considered haram. Because Islam wants a purpose and a way that is sacred in all aspects. Islam does not condone the principle of "*al-ghayahtubarrirulwasilah*" (to achieve an end, any means is justified). Islam also does not condone the principle of "*al-wshuluilalhaqbilkhaudhifilkatsiriminalbathil*" (to get something good, can be done by writhing in immorality). Islam has the principle that "every good goal must be achieved in a good way". Haram in Islamic Sharia cannot be influenced by good intentions and intentions. The Holy Prophetsa said, "Verily Allah is good, He does not want to accept except that which is good. Allah also commanded the believers as well as the Apostles."

9. Abstain from Shubhat for fear of engaging in haram.

Behind halal and haram, there is a thing that lies between halal and haram known as syubhat. This can happen because of the lack of clarity and may be because there is no clear way to apply the existing postulates to an event. To such events, Islam

Almighty did not create everything for man and He forbade it. From this principle it can be seen that the haram area is very narrow and on the contrary the halal area is very large.

2. Determining halal haram is solely Allah's right.

In Islam, there is a limitation where man is not authorized to determine halal haram and only Allah is authorized to determine halal haram. Underlying this principle is QS. As-Shura: 21 and QS. At-Tawbah: 31, QS. An-Nahl: 116, Al-An'am: 119. Even a man of the book, a pastor or pastor has no right to declare anything lawful.

3. Forbidding what is halal and legalizing what is haram is the same as shirk.

Inside QS. Al-Maidah: 87-88, Allah (swt) forbids believers to forbid what has been lawful and forbids to cross limits. Islam is a balanced religion. Islam not only denounces those who like to forbid what is haram, but Islam gives special preference to those who like to forbid something halal with a very heavy burden.

4. Forbidding what is lawful will result in crime and danger

Allah has rights over man, including determining what is lawful and haram as he pleases. But on the other hand, Allah is also Most Merciful so that He determines the lawfulness and haram of something accompanied by rational reasons for the benefit of mankind itself. Thanks to the grace of the Prophet Muhammad, the burden of haram was removed. The news of the sending of the Prophet Muhammad (peace be upon him) has been introduced to the previous people through the Torah and the Gospel which has the task of inviting virtue and forbidding evil, and justifying good and forbidding what is not good for mausia as stated in QS. Al-A'raf: 157. Based on this description, it is widely known that the prohibition of something halal will lead to evil and danger, while all forms of legal danger are haram. On the contrary, something useful is lawful.

5. Every halal does not need what is haram

All the laws in Islam, Allah has arranged them in such a way that when Allah Almighty gives a narrowness or prohibition, but there is also freedom opened in other aspects. Islam does not forbid anything unless it provides a better way out. This is because Allah (swt) does not want to make it difficult for His servants and make His servants afraid, even Allah (swt) gives ease and mercy to His servants as in accordance with the word of Allah in QS. An-Nisa: 26-27. Some examples of this are that Allah forbids adultery, but Allah replaces it with lawful marriage. Allah forbade alcohol and liquor and He replaced them with delicious drinks that were beneficial to the body and spirit.



package, repack, and/or deform food. Explicitly even in the food law it is stated; provision of food that is diverse, nutritionally balanced, safe, and does not conflict with the religion, beliefs, and culture of the community; and the development of knowledge and ability of the community in diverse, nutritionally balanced, quality, and safe food consumption patterns is the responsibility of the central and local governments.

#### 2. Law Number 36 of 2009 concerning Health

Regulation of halal products is not explicitly regulated by the Health Law. The Health Law only provides general signs in producing, processing and distributing food and beverages resulting from genetic engineering technology that are circulated guaranteed to be safe for humans, animals eaten by humans, and the environment. In addition, any person and/or legal entity that produces and promotes food and beverage products and/or that is treated as processed food and beverages is prohibited from using words that are deceptive and/or accompanied by claims that cannot be substantiated.

#### 3. Law Number 8 of 1999 concerning Consumer Protection

In the Consumer Protection Law (Consumer Law) the principles of consumer protection include the principles of benefits, fairness, balance, consumer security and safety, and legal certainty. Here consumers are explicitly entitled to legal protection guarantees from the existence of laws in Article 4 stipulating consumer rights.

#### 4. Government Regulation Number 69 of 1999 concerning Food Labels and Advertisements

In the PP, the regulation on food labels is contained in Chapter II. Chapter II consists of fifteen parts. Similar to the mandate of the Food Law, Article 2 paragraph 1 (one) of the Food Label and Advertising PP orders that everyone who produces or enters into the territory of Indonesia food packaged for trade must include labels on, inside, and or on food packaging. The inclusion of the label is done in such a way that it is not easily separated from the packaging, does not easily fade or damage, and is located on the food packaging that is easy to see and read.

#### 5. Presidential Instruction (Inpres) of 1991 concerning Increasing Development and Supervision of Production and Circulation of Processed Food

The Presidential Instruction, among others, states that the public needs to be protected against products and food circulation that do not meet the requirements, especially in terms of quality, health, safety and religious belief. In order for the

provides a line called wara', which is a cautious attitude for fear of making mistakes.

#### 10. Something haram applies to everyone.

Haram in the Islamic view has an overarching characteristic. No Muslim establishes a haram law for others, but lawful himself. The Holy Prophetsa in the hadith narrated by Bukhari said: "*By Allah! If Fatimah bint Muhammad had stolen, I would have cut off her hand.*" This principle of haram in the Islamic view also refutes the notion that Islam only defends certain groups. For example in QS. Al-Mu'minun: 19-20 which refutes the Jewish presumption that riba is only haram for a Jew if he owes it to another Jew, but is not forbidden when he owes it to another Jew.

#### 11. Compulsory circumstances allow the forbidden.

Islam narrows down the haram area and reinforces it by closing all roads that lead to the haram. Despite all these things, *Islam* has not forgotten the weakness of man in the face of his life interests. Therefore Islam allows a Muslim to do what is haram when there are compelling circumstances which if he does not do so will destroy him. Therefore, Allah (swt) closes the verse in QS. Al-Baqarah: 173, where after Allah (swt) mentions one by one the foods that He forbids by mentioning His merciful and merciful nature. In the same context Allah repeats the same thing four times in the verse about unclean foods. Based on these verses, the scholars of fiqh give the principle: "compulsory conditions allow the forbidden" but with the limitations as the verses already mentioned, namely with the words "*ghairabaghinwala 'aadin*" which means inadvertently (seeking delicacy) and not crossing the line (the limit of legal provisions). From this principle, the scholars of fiqh established a principle, "*adh-dharuratutuqaddarubiqaadriha*" (the emergency is estimated according to its size) so that although man is given relief in an emergency, he must not simply give up with the emergency and is forbidden to throw himself down in the emergency at the impulse of his passions. This is in accordance with the word of Allah in QS. Al-Baqarah: 185, QS. Al-Maidah: 6, and QS. An-Nisa: 28 where Allah (swt) does not burden man with anything heavy because Allah (swt) knows that man is weak.

#### Foundation of Halal Industry according to Positive Law

##### 1. Law Number 18 of 2012 concerning Food

The food process in the general provisions section of the Food Law clearly defines foodsafety for the community and the series of production which includes preparing, processing, making, preserve,



protect Muslim consumers from products that are not halal. Although, indeed, these rules are still scattered (sectoral) in nature.

9. Regulations Related to Halal Product Assurance  
One important means to guard the doctrine of *halal thayyibis* the presence of an established, central, humanist, progressive, accommodating and non-discriminatory legal institution, namely the presence of the Halal Product Guarantee Law. Law Number 33 of 2014 concerning Halal Product Assurance (UU-JPH) strengthens and regulates various halal regulations that have been spread in various laws and regulations, on the other hand UUJPH can be referred to as an *umbrella act* for regulating halal products. The Halal Product Guarantee (JPH) in this law covers various aspects not only medicine, food and cosmetics but more broadly than that it covers chemical products, biological products, genetically modified products, and use goods used, used, or utilized by the community.

#### Device Supporting the Implementation of the Halal Concept in Indonesia

1. Indonesian Ulema Council (MUI)  
MUI was established on 7 Rajab 1395 Hijri or on July 26, 1975 AD in Jakarta. MUI is a forum for deliberation for Muslim scholars and scholars who have a role to:

- a. Provide guidance and guidance to Indonesian Muslims in realizing religious and community life that Allah SubhanahuwaTa'ala recognizes;
- b. Provide advice and fatwas on religious and social issues to the Government and society, increase activities for the realization of *ukhwahIslamiyah* and inter-religious harmony in strengthening national unity and unity and;
- c. Become a liaison between ulama and umaro (government) and reciprocal translators between the ummah and the government in order to succeed national development;
- d. Improve relations and cooperation between organizations, Islamic institutions and Muslim scholars in providing guidance and guidance to the community, especially Muslims by holding mutual consultations and information.

2. National Sharia Council-Indonesian Ulema Council (DSN-MUI)

The National Sharia Council-Indonesian Ulema Council (DSN-MUI) was formed in order to realize the aspirations of Muslims regarding economic problems and encourage the application of Islamic teachings in the economic/financial fields carried

implementation of these instructions to be achieved, there is an increase and supervision of production, circulation and / or marketing of processed foods which is carried out continuously and coordinated.

6. Joint Decree of the Minister of Health and Minister of Religious Affairs of the Republic of Indonesia Number: 427 / MenKes / SKB / VIII / 1985, Number 68 of 1985 concerning the Inclusion of the Writing "Halal" on Food Cabinets

The inclusion of the words "Halal" is regulated by the joint decree of the Minister of Health and the Minister of Religious Affairs Number: 427/MENKES/SKB/VIII/1985. "Halal" food is any type of food that does not contain elements or ingredients that are prohibited / haram and / or processed according to Islamic religious laws. Manufacturers who include the words "halal" on the label/marketing of their food products are responsible for the halal food for followers of Islam.

7. Decree of the Minister of Health of the Republic of Indonesia Number: 82 / MENKES / SK / I / 1996 concerning the Inclusion of the writing "Halal" on Food Labels, which was amended by the Decree of the Minister of Health of the Republic of Indonesia Number: 924 / MENKES / SK / VIII / 1996 concerning Amendments to the Decree of the Minister of Health of the Republic of Indonesia No. 82 / MenKes / SK / 1996.

The words and logo "Halal" based on the Decree of the Minister of Health of the Republic of Indonesia, can be included if the food does not contain elements or ingredients that are prohibited or haram and has obtained Halal Certification from MUI (Indonesian Ulema Council) and Approval Letter for the Inclusion of Halal Writing on the Label from the Ministry of Health (now POM). Halal food (based on PERMENKES RI No. 82 of 1996) is all types of food and beverages that do not contain elements or ingredients that are prohibited / haram and / or processed / processed according to Islamic religious law.

8. Joint Decree (SKB) of the Minister of Religious Affairs and Minister of Health No. 472/MENKES/SKB/VIII/1985 and No. 68/1985 concerning the regulation of the writing "halal" on food labels. In article 4 paragraph 1 of the SKB, the issue of "halal-haram" products is handled by the Food Registration Assessment Team at the Ministry of Health of the Republic of Indonesia, in this case the Directorate of Drug and Food Control

At least, there are 17 pieces of statutory products that can be used as a legal basis to protect Muslim consumers from products that are not halal (haram). Thus, in the *normative juridical* context, the existing regulations in Indonesia are actually sufficient to



- d. has a laboratory or cooperation agreement with other institutions that have laboratories
- e. If the LPH is founded by the community, the LPH must be submitted by an Islamic religious institution with a legal entity

Based on the explanation above, in Law no. 33 of 2014, there are 3 main actors in the halal certification process, namely BPJPH, LPH, and MUI. BPJPH is in charge of setting rules, accepting and verifying *product* submissions to be halal certified, and issuing halal certificates along with halal labels. LPH is in charge of inspecting and/or testing product halalness. MUI has the authority to determine the halalness of products through halal fatwa meetings.

### III. CONCLUSION

The development of the Halal Industry in Indonesia is strongly supported by the conditions and history of the Indonesian population which dominates the largest quantity of Muslims worldwide. This encourages an increase in demand for halal products and services. However, due to public confusion in assessing halal product standards, Indonesia adopted Islamic law in the MUI fatwa and positive law along with institutions that support the government in realizing the halal industry in Indonesia. the existence of this legal basis contributes to accommodating the development of the halal industry and of course to achieve the goal of having halal standards for a consumer product.

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out in accordance with the guidance of Islamic law. The establishment of DSN-MUI is a measure of efficiency and coordination of scholars in responding to issues related to economic/financial issues. Various issues/cases that require fatwas will be accommodated and discussed together in order to obtain common views in their handling by each Sharia Supervisory Board (DPS) in Islamic financial institutions To encourage the application of Islamic teachings in economic and financial life, DSN-MUI will always and play a proactive role in responding to the dynamic development of Indonesian society in the economic and financial fields. (<https://dsnmu.or.id/kami/sekilas/>).

#### 3. Food and Drug Supervisory Agency (BPOM)

The Food and Drug Supervisory Agency (BPOM) is an institution formed by the government based on Presidential Decree Number 116 of 2000 (Presidential Decree 166/2000). BPOM has the task of carrying out research and studies on Drugs and Food. BPOM has the following functions:

- a. Formulate technical policies in the field of research and study of Drugs and Food • Conduct research and policy studies in the field of Drugs and Food.
- b. Monitor, evaluate, and make reporting in the field of research and study of Drugs and Food.
- c. Perform Central administration.
- d. Carry out other functions given by the Head of the Agency

#### 4. Halal Product Guarantee Agency (BPJPH) and Halal Inspection Agency (LPH)

BPJPH is an agency formed under the auspices of the Ministry of Religion. In accordance with the mandate in Law no. 33 of 2014 concerning Guarantee of Halal Products. Based on this Law, BPJPH has the duties and functions of halal registration, halal certification, halal verification, conducting guidance and supervising product halalness, collaborating with all relevant stakeholders, and setting halal standards for a product.

In carrying out its duties and functions, namely checking and/or testing product halalness, BPJPH is assisted by the Halal Inspection Agency (LPH). This LPH can be established by and/or the community. BPJPH and MUI work together to carry out the accreditation of the formed LPH. According to Law no. 33 of 2014 concerning Halal Product Guarantee, to establish an LPH, at least must meet the following requirements:

- a. Has its own office and equipment
- b. has accreditation from BPJPH
- c. have a Halal Auditor of at least 3 (three) people



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