

Research Article

Legal Analysis of the Responsibility of Business Actors in Fulfilling Obligations for Halal Certification and BPOM Distribution Permits for Food Products

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Abstract: This study aims to analyze the legal liability of business actors in fulfilling the obligation of halal certification and distribution permits from the National Agency of Drug and Food Control (BPOM) for food products distributed in Indonesia. Halal certification and distribution permits are two essential instruments to ensure the safety, quality, and halal status of products in circulation. Using a normative juridical approach and literature study, this research examines the legal provisions regulating these obligations, including Law Number 33 of 2014 on Halal Product Assurance, Law Number 36 of 2009 on Health, and other implementing regulations. The results indicate that business actors bear both preventive and repressive responsibilities in ensuring that their products are safe and halal for consumption. Failure to fulfill these obligations may lead to administrative or criminal sanctions and negatively impact consumer rights. Therefore, active roles from the government and relevant institutions are necessary to promote awareness, supervision, and legal enforcement to increase business compliance with the applicable regulations.

Keywords: consumer protection; distribution permit; halal certification; legal liability.

1. Introduction

The food industry is a very vital sector in people's lives because it is directly related to consumer health and safety. Therefore, consumer protection is an aspect that cannot be ignored in running a business in this field. Consumers have the right to obtain correct, clear, and honest information regarding the condition and guarantee of the food products they consume, including the halalness of the product and safety in terms of health (Law Number 8 of 1999 concerning Consumer Protection, Article 4). Food products that do not meet safety standards or do not have clear halal status have the potential to cause negative impacts both physically and psychologically for consumers, especially for Muslims who make the halal aspect an important part of their religious beliefs. In this case, the state has an obligation to ensure that every food product in circulation has met the provisions of halal certification and distribution permits from the Food and Drug Supervisory Agency (BPOM), as stipulated in Law Number 33 of 2014 concerning Halal Product Assurance and Law Number 36 of 2009 concerning Health. Non-compliance by business actors with these obligations not only harms consumers, but also creates injustice in business competition and threatens the integrity of the national food product market. Therefore, a legal analysis of the responsibility of business actors in fulfilling the obligations of halal certification and BPOM distribution permits is important to study in order to strengthen the consumer protection system in Indonesia.

Halal certification and BPOM distribution permits have a very high urgency in ensuring the quality, safety, and halalness of food products circulating in Indonesia. For the Indonesian

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people, the majority of whom are Muslim, the existence of a halal label on food products is not just a consumer preference, but a religious obligation that must be obeyed. Therefore, the state through Law Number 33 of 2014 concerning Halal Product Assurance (UU JPH) requires every food product, beverage, medicine, cosmetic, chemical product, biological product, and genetically engineered product that enters, circulates, and is traded in the territory of Indonesia to be halal certified (Article 4). On the other hand, the aspect of food safety is also very crucial because it concerns the protection of public health. Law Number 36 of 2009 concerning Health And Government Regulation Number 86 of 2019 concerning Food Safety requires every food business actor to apply for a distribution permit to the Food and Drug Supervisory Agency (BPOM) to ensure that the products consumed have undergone laboratory tests and are safe for consumption. Without these two aspects—halal and safety—food products can cause public unrest, trigger violations of consumer rights, and have serious legal implications for business actors. Thus, halal certification and BPOM distribution permits are not only administrative obligations, but also important instruments in efforts to provide protection for consumers, fulfill basic rights to safe and sharia-compliant food, and increase the competitiveness of national products in domestic and international markets.

Legal issues that arise in the practice of implementing halal certification obligations and BPOM distribution permits are closely related to the non-compliance of some business actors with applicable regulations. Many business actors, especially from the Micro, Small, and Medium Enterprises (MSMEs) sector, have not fully understood or implemented these obligations, either due to limited information, costs, or procedures that are considered complicated (bureaucracy). In fact, according to Article 4 of Law Number 33 of 2014, all food products circulating in Indonesia must be halal certified no later than 2024. On the other hand, the circulation of food products without a BPOM distribution permit is also a serious problem because it violates the provisions of Article 142 of Law Number 36 of 2009 concerning Health, which states that "any person who distributes pharmaceutical preparations and/or medical devices without a distribution permit shall be subject to a maximum imprisonment of 15 years and a maximum fine of IDR 1.5 billion". This problem creates a legal dilemma, especially when the violation is committed by a small business actor who is still in the growing stage, but is still considered to have violated the law. This raises questions about how the state should balance consumer protection, business development, and fair law enforcement. In addition, there is still overlapping authority between institutions such as BPOM, MUI, and the Halal Product Guarantee Agency (BPJPH) which can cause legal uncertainty for business actors.

This study aims to analyze the legal responsibilities of business actors in fulfilling the obligations of halal certification and BPOM distribution permits, as regulated in applicable laws and regulations. Specifically, this study aims to examine how the implementation of legal provisions regarding halal certification and BPOM distribution permits is applied in practice, as well as identifying the obstacles and legal consequences faced by business actors when these obligations are not fulfilled. In addition, this study also aims to provide an overview of the effectiveness of supervision by relevant authorities and the role of the state in ensuring consumer protection in the food sector.

2. Previous Research

According to research conducted by Aisyah et al. (2021), the inclusion of halal certification on packaging has legal consequences for business actors, namely that business actors are responsible for ensuring that all products marketed are products that have been certified halal by the MUI. In providing legal protection and guarantees for the products produced, the company gives responsibility to each employee for the halalness of the products served, and the halal certificates displayed in every corner of their restaurants. According to research conducted by Parningotan Malau and Irene Svinarky (2020), it shows that the major role of the MUI in issuing fatwas on the halalness of a product is very important because before BPJPH was formed, the handling of halal certificates was carried out by LPPOM and MUI. MUI currently does not have the authority to monitor the circulation of non-halal food.

Based on the results of research conducted by Sri Lestari Poernomo (2020), it shows that all parties involved have synergistically functioned in protecting consumers, especially

the community who consume the product, however, this research has not been able to effectively satisfy consumer expectations because it was found that there was still low legal awareness of business actors and consumer awareness itself.

3. Theoretical Framework

The theory of legal responsibility (liability) explains that every legal subject who commits an unlawful act or negligence, resulting in losses for other parties, is obliged to be responsible for his actions, either civilly, criminally, or administratively. In the context of consumer protection law, business actors have the responsibility to ensure that the products marketed are safe, of good quality, and in accordance with applicable legal provisions, including those related to halal and food safety aspects. If these obligations are ignored, business actors can be held accountable for the legal consequences that arise. This theory is the basis for assessing the extent to which a violation of laws and regulations, such as not having halal certification or BPOM distribution permits, can be subject to sanctions that are proportional and fair according to law.

The precautionary principle is a fundamental principle in consumer protection that requires business actors to be vigilant, responsible, and not harm other parties in carrying out their business activities. In the context of food products, this principle requires business actors to ensure that every product produced and distributed has met the safety and halal standards set by laws and regulations. The application of the precautionary principle not only reflects legal compliance, but also becomes a form of business ethics that guarantees the safety and rights of consumers. Violation of this principle can be considered negligence that gives rise to legal liability, especially if consumers suffer losses due to consuming products that are unsafe or do not comply with halal provisions. This principle is implicitly reflected in Article 7 letters a and c of Law Number 8 of 1999 concerning Consumer Protection, which requires business actors to act in good faith and provide correct, clear, and honest information regarding the condition of goods and/or services.

The implementation of the obligation of halal certification and BPOM distribution permits for food business actors in Indonesia is based on several interrelated laws and regulations. Law Number 33 of 2014 concerning Halal Product Assurance stipulates that every product that enters, circulates, and is traded in the territory of Indonesia must be halal certified, with the provision that business actors must first submit an application for certification to the Halal Product Assurance Organizing Agency (BPJPH). Meanwhile, the safety and quality aspects of food products are regulated in Law Number 36 of 2009 concerning Health, which requires every food product to meet health standards before being distributed to consumers. In terms of consumer rights protection, Law Number 8 of 1999 concerning Consumer Protection provides a legal basis that consumers have the right to correct, clear, and honest information about the products consumed, as well as the right to a sense of security and safety. For technical aspects, the Regulation of the Food and Drug Supervisory Agency (BPOM) such as PerBPOM No. 27 of 2017 concerning Processed Food Registration, regulates the procedure for submitting distribution permits and the food safety standards that must be met. In addition, Government Regulations and Ministerial Regulations such as PP No. 39 of 2021 concerning the Implementation of the Halal Product Assurance Sector and Permendag No. 69 of 2018 concerning Supervision of Circulating Goods and/or Services, provide the basis for administrative and criminal sanctions for business actors who violate. All of these regulations form a legal framework that aims to guarantee consumer protection, as well as encourage business actors to act responsibly and transparently in their business activities.

4. Research Methods

The type of research is normative legal research. Normative Legal Research is legal research that utilizes case studies in the form of positive legal studies as contained in the Law (Zainuddin, 2003). The things studied in normative legal research include: legal principles, legal systematics, the level of legal synchronization, comparative law and legal history. (Prasetyo Sulisyanto et al., 2023). Normative legal research is research by examining document studies, namely by using various secondary data such as Legislation, court decisions, legal theories, and can be in the form of opinions of scholars (Soekanto 2007)..

5. Analysis and Discussion

5.1 Halal Certification Obligations

The obligation to obtain halal certification for business actors in Indonesia is a constitutional mandate that aims to protect consumers, especially Muslims, in consuming products that comply with Islamic law. This obligation is regulated in Law Number 33 of 2014 concerning Halal Product Assurance (UU JPH), which states that: "every product that enters, circulates, and is traded in the territory of Indonesia must be halal certified, except for products that are indeed exempted based on legal provisions". The products in question include food, beverages, medicines, cosmetics, chemical products, biological products, and goods that are directly related to human consumption. The halal certification procedure begins with the submission of an application by a business actor to the Halal Product Assurance Organizing Agency (BPJPH) through an online or face-to-face system. After the application is received, BPJPH will appoint a Halal Inspection Institution (LPH) to conduct an audit of the materials, production process, and halal assurance system of the business actor. Furthermore, the audit results will be submitted to the Indonesian Ulama Council (MUI) to obtain a valid halal fatwa. If approved, BPJPH will issue a halal certificate valid for 4 (four) years, with the provision that business actors must maintain the consistency of their materials and production processes in accordance with those audited.

Further technical provisions are regulated in Government Regulation Number 39 of 2021 concerning the Implementation of Halal Product Guarantee and Regulation of the Minister of Religious Affairs Number 20 of 2021 which specifically regulates the certification scheme for Micro and Small Enterprises (MSMEs), including a simpler self-declare pathway. The government has set a gradual phase-in period for halal certification obligations. For food and beverage products, the deadline for halal certification obligations falls on October 17, 2024. After that date, business actors who do not yet have a halal certificate are prohibited from distributing their products in the Indonesian market, and may be subject to administrative and even criminal sanctions. The provisions for these sanctions are regulated in Article 56 of the JPH Law which includes written warnings, administrative fines, and revocation of business licenses. In practice, violations are still found, such as business actors who unilaterally include halal labels without an official certification process. This violation not only harms consumers in terms of belief and religion, but also violates applicable positive law. Therefore, the obligation to have halal certification is not merely an administrative procedure, but rather a form of moral, social and legal responsibility of business actors in providing certainty to consumers regarding the halal status of the products they consume.

5.2 BPOM Distribution Permit Obligations

The obligation to obtain a distribution permit from the Food and Drug Supervisory Agency (BPOM) is the main requirement for every business actor who wants to distribute processed food products, medicines, cosmetics, health supplements, or other products that have an impact on public health. The legal basis for this obligation is regulated in Law Number 36 of 2009 concerning Health, specifically Article 98 paragraphs (2) and (3), which states that: "Food and beverage products may only be distributed after going through an assessment process and obtaining a distribution permit from an authorized institution". This provision is reinforced by Law Number 8 of 1999 concerning Consumer Protection, which requires business actors to provide correct, clear, and honest information to consumers, including aspects of product safety and quality. The process of obtaining BPOM distribution permits is carried out through the e-Registration online system, where business actors are required to submit technical documents such as product composition, raw material specifications, laboratory test results, product labels, and company legality documents such as Business Identification Number (NIB) and Household Industry Food Production Certificate (SPP-IRT) or Good Processed Food Production Methods (CPPOB) certificate according to the type of business.

Once the files are declared complete and appropriate, BPOM will evaluate the safety, quality, and nutrition of the product. If all requirements are met, the product will receive a valid Distribution Permit Number (NIE) and must be listed on the product label. This distribution permit is legal proof that the product is safe for consumption and has met applicable national and international standards. Without a distribution permit, the product is considered illegal and can be subject to administrative and criminal sanctions, in accordance with the

provisions of Government Regulation Number 72 of 1998 concerning the Security of Pharmaceutical Preparations and Medical Devices and the Regulation of the Head of BPOM, such as PerBPOM No. 27 of 2017 concerning Processed Food Registration. In practice, there are still business actors who distribute products without a distribution permit, including snack products, herbal medicines, and cosmetics that have the potential to endanger consumer health. This shows the importance of the role of supervision and increasing legal awareness of business actors in fulfilling product distribution provisions. By obtaining a BPOM distribution permit, business actors not only comply with the law, but also build public trust in the quality and safety of their products on the market.

5.3 Responsibilities of Business Actors

Business actors have inherent legal responsibilities towards the products they produce and distribute, especially in terms of product safety, quality, and halalness, as regulated in various laws and regulations in Indonesia. In this context, the responsibility of business actors is not only moral, but also legal, namely an obligation that can be held legally accountable if a violation or negligence occurs. Law Number 8 of 1999 concerning Consumer Protection states that business actors are required to provide correct, clear, and honest information regarding the condition and guarantee of the product, including the composition, benefits, side effects, and legal status of the product. In addition, the law also stipulates that if the product being distributed is proven to be detrimental to consumers, business actors can be subject to sanctions in the form of compensation, product withdrawal from circulation, or even criminal charges.

In terms of halal certification, business actors are obliged to ensure that all materials, production processes, and distribution of their products comply with the halal standards set by BPJPH and the Indonesian Ulema Council (MUI). This obligation has been emphasized in Law Number 33 of 2014 concerning Halal Product Assurance, where business actors who do not comply with this provision after the transition period (October 17, 2024) will be subject to administrative and criminal sanctions. Meanwhile, in the context of BPOM distribution permits, business actors are required to register their products and ensure that the products have undergone safety and quality testing according to the established standards. If it is found that the product is circulating without a permit, the business actor can be subject to sanctions based on the Health Law and BPOM technical regulations.

The responsibilities of business actors include compliance with applicable legal procedures, transparency of information to consumers, and commitment to maintaining product quality and safety standards. Failure to fulfill these responsibilities not only results in consumer losses, but also has legal implications for the sustainability of the business itself. Therefore, business actors are required to apply the principle of caution and legal compliance in every stage of product production and distribution, as a form of protection of consumer rights and enforcement of sustainable business ethics.

6. Conclusion

6.1 Conclusion

Halal Certification Obligations and BPOM Distribution Permits, Business actors have a legal obligation to ensure that marketed food products are halal certified and have a distribution permit from BPOM. This is in accordance with the provisions of Law Number 33 of 2014 concerning Halal Product Assurance and Law Number 36 of 2009 concerning Health. The responsibilities of business actors include administrative, ethical, and legal aspects. In practice, there are still many business actors, especially MSMEs, who have not carried out this obligation optimally due to limited information, costs, or legal understanding.

Legal Implications of Violations, Business actors who distribute products without halal certificates (for required products) and/or without distribution permits from BPOM can be subject to administrative and criminal sanctions in accordance with applicable laws and regulations. The Role of the Government and Related Institutions, The government, through BPJPH, BPOM, and related agencies, has a strategic role in supervising, fostering, and facilitating the certification and licensing process so that business actors can comply with legal provisions.

6.2 Suggestion

Improving legal socialization and education is essential, as intensive efforts are needed from the government to socialize the importance of halal certification and BPOM distribution permits, particularly to micro and small business actors who often have limited access to information. Additionally, the simplification of the certification and permit process, along with associated costs, should be prioritized; the government should provide incentives or facilitation mechanisms, such as cost subsidies and process digitalization, to ensure that business actors are not burdened when managing halal certification and distribution permits. Furthermore, strengthening supervision and law enforcement is crucial; strict but proportional law enforcement must be implemented to deter business actors who ignore legal obligations while simultaneously protecting consumers. Lastly, multi-party collaboration is necessary, as synergy between business actors, government, society, and non-governmental organizations is vital in creating a safe, halal, and healthy food business ecosystem in accordance with applicable legal principles.

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