



# Dynamics of Halal Certification Application in Medicinal Products: Comparative Study of Islamic Law and Positive Law

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## Article Info

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## Abstract

**Introduction:** This article wants to explain the dynamics of halal certification and labeling in Indonesia in a review of positive law and Islamic law.

**Purposes of the Research:** The research objective is to answer the dynamics of halal certification and labeling from the perspective of positive law and Islamic law.

**Methods of the Research:** This research uses a qualitative method with a normative legal approach. Data is obtained through observations, in-depth interviews, literature reviews, and documentation.

**Results of the Research:** This research shows that the implementation of halal certification according to Law Number 33 of 2014 on various products, including medication, cannot be separated from the role of political will and synergy among various parties. From the perspective of positive law, halal certification is a legal obligation, while from the perspective of Islamic law, halal certification is part of the obligation to ensure that products consumed by Muslims are guaranteed halal.

## 1. INTRODUCTION

In this era of globalization, consumers are becoming more aware of the halal status of products they consume. This has led to an increasing demand for halal products. Therefore, halal certification and labeling have become important for producers and traders to meet the growing demand of consumers. However, it should be noted that halal certification and labeling do not only involve technical and administrative aspects, but also have a very important legal dimension. In this regard, there are two perspectives that must be considered, namely the perspective of positive law and the perspective of Islamic law.<sup>1</sup> From the perspective of positive law, halal certification and labeling must comply with the standards and regulations established by relevant government agencies. Meanwhile, from the perspective of Islamic law, halal certification and labeling must meet the criteria established by Islamic Shariah.<sup>2</sup> The demand for halal food is increasing, both by Muslim

<sup>1</sup> Desi Indah Sari, "Perlindungan Hukum Atas Label Halal Produk Pangan Menurut Undang-Undang," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 7, no. 1 (2018): 1-14.

<sup>2</sup> Muhammad Syarif Hidayatullah, "Sertifikasi dan Labelisasi Halal Pada Makanan Dalam Perspektif Hukum Islam (Perspektif Ayat Ahkam)," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* 11, no. 2 (2020): 251-69.

and non-Muslim communities. Therefore, halal certification has become an important requirement in the food and beverage industry. However, in the context of positive law, there is still debate about the validity of halal certification and the role of the government in regulating such certification.<sup>3</sup>

This journal article will discuss halal certification from the perspectives of positive law and Islamic law, including the definition of halal certification, relevant regulations regarding halal certification, and the role of the government in regulating halal certification. Additionally, some controversial issues related to halal certification in the context of positive law will be explained, such as the issue of government authority and responsibility in regulating halal certification, as well as the impact of halal certification on the food and beverage industry. In the context of food and beverage, halal refers to the principles established by the Islamic religion regarding what can and cannot be consumed by Muslims. Halal certification has become increasingly important in the era of globalization due to the increasing demand for halal products worldwide.

From the perspective of Islamic law, halal certification has a strong foundation, as Islamic law provides guidance on the halal and good way of life for Muslims. Therefore, halal certification is important to ensure that products consumed by Muslims meet the halal standards and requirements set by Islamic religion.<sup>4</sup> Therefore, this research aims to examine the dynamics of halal certification and labeling from the perspectives of both positive law and Islamic law. Through this research, it is hoped that a more comprehensive understanding of halal certification and labeling and their implications in the context of positive law and Islamic law can be gained.

This journal article will deeply discuss halal certification from the perspective of Islamic law. It will cover legal aspects related to halal certification, such as Islamic laws on food and drinks, the halal certification process, and criteria that must be met for a product to be certified as halal. Additionally, this article will also address challenges faced in implementing halal certification and efforts that can be made to improve the effectiveness of halal certification.<sup>5</sup> It is hoped that this article can provide a deeper understanding of halal certification from the perspective of positive law, so that it can be a useful reference for governments, entrepreneurs, and the general public in understanding the role of halal certification in the food and beverage industry.

## 2. METHOD

This research is a literature study with qualitative methods.<sup>6</sup> The main object of this research is halal certification for medicinal products reviewed based on Law no. 33 of 2014 and the perspective of Islamic law. In the context of this research, researchers act as the instruments as well as data collectors. Source of data obtained through literature review.

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<sup>3</sup> Asep Syarifuddin Hidayat and Mustolih Siradj, "Argumentasi Hukum Jaminan Produk Halal," *Jurnal Bimas Islam* 8, no. 1 (2015): 31–66.

<sup>4</sup> Eka Rahayuningsih and M. Lathoif Ghazali, "Sertifikasi Produk Halal Dalam Perspektif Mashlahah Mursalah," *Jurnal Ilmiah Ekonomi Islam* 7, no. 1 (2021): 135–45.

<sup>5</sup> Panji Adam Agus, "Kedudukan Sertifikasi Halal Dalam Sistem Hukum Nasional Sebagai Upaya Perlindungan Konsumen Dalam Hukum Islam," *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah* 1, no. 1 (January 31, 2017): 150–65, <https://doi.org/10.29313/amwaluna.v1i1.2172>.

<sup>6</sup> Faisar Ananda Arfa and Watni Marpuang, *Metodologi Penelitian Hukum Islam* (Jakarta: Prenada Media, 2016).

The data in this study consisted of primary and secondary data.<sup>7</sup> Primary data is literature, both books, journals, research reports that discuss the guarantee of halal medicine and Law No. 3 of 2014. Meanwhile, secondary data was obtained from related research that touches on this research theme. Then these data were analyzed using the method initiated by Miles and Huberman, namely through four stages: data collection, data reduction, data presentation, drawing conclusions.<sup>8</sup>

### 3. RESULTS AND DISCUSSION

#### 3.1 Dynamics of Halal Certification and Labeling in Indonesia

Halal certification is an acknowledgment of the halalness of a product issued by BPJPH based on a written fatwa issued by the Indonesian Ulema Council.<sup>9</sup> In addition, the halal fatwa issued by the MUI must be abided and obeyed by the government and all Muslims.<sup>10</sup> At first, halal labeling in Indonesia for food products was established in 1976 by the Ministry of Health. Namely regulated in the Decree of the Minister of Health of the Republic of Indonesia Number 280/Men.Kes/Per/XI/76 concerning Provisions for Circulation and Marking of Foods Containing Ingredients Derived from Pigs.<sup>11</sup> In its development, the halal status of a product is not only the authority of the minister of health, but also the territory of the ministry of religion. In 1985, for example, the government issued a Joint Decree (SKB) between the Minister of Health and Minister of Religion No. 42/Men.Kes/SKB/VIII/1985 and No. 68 of 1985 concerning Inclusion of Halal Writing on Food Labels. The label may be included after the producer reports the composition of the ingredients and the method of processing the product to the Ministry of Health (Depkes).<sup>12</sup> Thus, since the decree was issued, there has been a change in the label from the original label "CONTAINING PORK" to a label reading "HALAL".

Supervision of the halal status of a product since the issuance of the SKB becomes a joint authority between the Ministry of Health and the Ministry of Religion through the Food Registration Assessment Team Directorate General of Medicine and Food Depkes.<sup>13</sup> The handling of halal certification by these two institutions is considered successful, because the majority of Muslim people feel guaranteed to consume a product that has been declared halal by the two institutions. However, in 1988, a researcher from Universitas Brawijaya (UB) conducted a research on food products circulating in markets, supermarkets and grocery stores. The results of his research surprised the Indonesian Muslim community, because according to his findings there were indications that there were around 34 types of

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<sup>7</sup> Irwansyah, *Penelitian Hukum; Pilihan Metode Dan Praktik Penulisan Arikel* (Yogyakarta: Mitra Buana Media, 2020).

<sup>8</sup> Sofyan A. P. Kau, *Metode Penelitian Hukum Islam* (Yogyakarta: Mitra Pustaka, 2013).

<sup>9</sup> Musyifikah Ilyas, 'Sertifikasi dan Labelisasi Produk Halal Perspektif Masalahat', *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam*, 4.2 (2018), 357 <<https://doi.org/10.24252/al-qadau.v4i2.5682>>.

<sup>10</sup> UU No.33 Tahun 2014 Tentang Jaminan Produk Halal

<sup>11</sup> Istianah Istianah and Gemala Dewi, 'Analisis Masalahah Pada Konsep Halal Self-Declare Sebelum Dan Pascaenachment Undang-Undang Cipta Kerja', *Al-Adl: Jurnal Hukum*, 14.1 (2022), 85 <<https://doi.org/10.31602/al-adl.v14i1.5870>>.

<sup>12</sup> R Tanzil Fawaiq Sayyaf and Ashfa Afkarina, 'Peningkatan Kesadaran Makanan Halal Melalui Pendampingan Fikih Halal Dan Sosialisasi Self Declare Muhammadiyah', *Jurnal Aplikasi Dan Inovasi Ipteks 'SOLIDITAS' (J-SOLID)*, 5.1 (2022), 92 <<https://doi.org/10.31328/js.v5i1.3502>>.

<sup>13</sup> Panji Adam Agus, 'Kedudukan Sertifikasi Halal Dalam Sistem Hukum Nasional Sebagai Upaya Perlindungan Konsumen Dalam Hukum Islam', *Amwaluna: Jurnal Ekonomi Dan Keuangan Syariah*, 1.1 (2017), 150-65 <<https://doi.org/10.29313/amwaluna.v1i1.2172>>.

products containing shortening, lard, and gelatin. Shortening (white margarine) is a plastic solid fat indicated to come from lard, while lard is an oil derived from pigs, and gelatin is animal protein extracted from pig body parts.<sup>14</sup> The results of the research were then published in the Canopy Bulletin, the bulletin of the Student Senate of the Faculty of Animal Husbandry UB. Those findings then make people restless and worried, so they are very selective in choosing products on the market. As a result, consumer purchasing power decreased for several types of food products, this ultimately impacted several food and beverage companies such as PT Food Specialties Indonesia, PT Tri Fabig, and Siong Hoe Biscuits.<sup>15</sup>

To respond the research findings, in 1988 the Institute for the Assessment of Food, Medicines and Cosmetics was formed by the Indonesian Ulema Council (LPPOM MUI). This institution was established on the basis of MUI Decree No. Kep./18/MUI/I/1989 on January 6, 1989. The task of this institution is to carry out inspections of circulating products and carry out halal certification. In its implementation, it turned out that the MUI was only able to issue halal certificates in 1994, meaning that it had taken five years since the formation of LPPOM. Halal certificates are issued based on the results of inspections that have been carried out by LPPOM. So since 1989, halal certification has been under the authority of the Indonesian Ulema Council (MUI).<sup>16</sup>

The incident regarding the controversy over the halal status of food is not a trivial matter in Indonesia, it is actually very urgent for the Muslim community in this country. Because it concerns the relationship between the community and the government regarding the urgency of halal certification. Because the existence of halal food is a primary need for Muslims, and a state policy is needed to properly regulate this problem. The existence of the MUI as an institution where Muslim scholars, *zuama*, and muslim intellectuals gather is expected to be able to carry out studies on the halal status of a product. Furthermore, there is a need for policy synchronization between the Ministry of Religion, Ministry of Health, and MUI. The example such in the cooperation with the signing of the Cooperation Charter on June 21, 1996 concerning the inclusion of the halal logo on food. The Ministry of Health issued Decree Number 924/Menkes/SK/VIII/1996 as an amendment to the Decree of the Minister of Health Number 82/Menkes/SK/I/1996.<sup>17</sup>

Initially, the halal label could be given based on a unilateral statement from the company regarding the composition of the ingredients used to produce a food product. For example, a company reports that their product does not contain non-halal ingredients, so the company can immediately use the halal label. However, this policy was deemed ineffective in guaranteeing product halalness. Because maybe the company is dishonest in

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<sup>14</sup> Sodiman Sodiman, 'Sertifikasi Halal Produk Makanan Sebagai Perlindungan Konsumen Muslim; Studi Di Lembaga Pengkajian Pangan Obat-Obatan Dan Kosmetika-Majelis Ulama Indonesia Sulawesi Tenggara', *Li Falah: Jurnal Studi Ekonomi Dan Bisnis Islam*, 3.1 (2018), 85 <<https://doi.org/10.31332/lifalah.v3i1.1190>>.

<sup>15</sup> Leliya Leliya, 'Perlindungan Konsumen Melalui Sertifikasi dan Labelisasi Halal Atas Industri Rumah Tangga Pangan', *Al-Mustashfa: Jurnal Penelitian Hukum Ekonomi Syariah*, 3.1 (2018), 42 <<https://doi.org/10.24235/jm.v3i1.2937>>.

<sup>16</sup> Mutimmatul Faidah, 'Sertifikasi Halal Di Indonesia Dari Civil Society Menuju Relasi Kuasa Antara Negara Dan Agama', *ISLAMICA: Jurnal Studi Keislaman*, 11.2 (2017), 449 <<https://doi.org/10.15642/islamica.2017.11.2.449-476>>.

<sup>17</sup> Leni Yuliana and Aris Risdiana, 'Pengambilan Keputusan Lembaga Pengkajian Pangan, Obat-obatan, dan Kosmetika Majelis Ulama Indonesia (LPPOM MUI) Dalam Penerbitan Sertifikasi Halal', *Jurnal MD*, 4.1 (2018), 101-14 <<https://doi.org/10.14421/jmd.2018.41-07>>.



reporting its raw materials for a product that is created. So it's still vulnerable to dishonesty in reporting. Therefore, the government conducted an evaluation and issued Decree Number 924/Menkes/SK/VIII/1996. The decree is related to changes the flow or procedures in the inclusion of halal labels on a product. Namely, companies are not allowed to write halal labels on their products, before going through the approval of the Directorate General of Medicine and Food Control (Dirjen POM) and based on a fatwa issued by the MUI Fatwa Commission.<sup>18</sup> After the certification is carried out and it is stated that the product is free from non-halal ingredients, a halal certificate will be issued by the MUI.<sup>19</sup> The MUI will then write down the number of the halal certificate. The regulation on the inclusion of the halal logo is the authority of BPOM RI. In 2000, the Director General of POM changed to the Food and Medicine Supervisory Agency (BPOM), so that the halal labeling also switched to BPOM.<sup>2021</sup>

In 1999, the Government issued Republic of Indonesia Government Regulation Number 69 of 1999 concerning Food Labels and Advertisements explaining that the installation of Halal Labels on packages must first go through inspection by an accredited inspection agency based on guidelines and procedures stipulated by the Minister of Religion.<sup>22</sup> Food label is an information that contains detail about food and can be in the form of pictures, writing, or a combination of both that is affixed or included on the package.<sup>23</sup> In order to follow up on these provisions, Minister of Religion Decree (KMA) 518 of 2001 and KMA 519 of 2001 was issued which explained that the Minister of Religion appointed MUI as a halal certification body <sup>24</sup> who conducts inspection, processing, and determination of Halal Certification. Meanwhile regarding the installation of the halal logo on the packaging, MUI cooperates with BPOM.<sup>25</sup>

The large amount of Indonesia population has an effect on the need for the amount of products circulating in Indonesia, both a variety of local products and imported products. Therefore, Indonesian consumers, who are mostly Muslim, need halal markers on every product. Legally positive, the product certification and labeling program is a guarantee for the community, especially Muslims in choosing the products they consume. Certification and labeling are two different things but are interrelated.<sup>26</sup> Halal certification is the process

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<sup>18</sup> KN Sofyan Hasan, 'Pengawasan Dan Penegakan Hukum Terhadap Sertifikasi dan Labelisasi Halal Produk Pangan', *Jurnal Hukum IUS QUIA IUSTUM*, 22.2 (2015), 290-307 <<https://doi.org/10.20885/iustum.vol22.iss2.art7>>.

<sup>19</sup> Renny Supriyatni, 'Eksistensi Dan Tanggung Jawab Majelis Ulama Indonesia Dalam Penerapan Sertifikasi Dan Labelisasi Halal Produk Pangan Di Indonesia', *Al-Iqtishad: Journal of Islamic Economics*, 3.2 (2015) <<https://doi.org/10.15408/aiq.v3i2.2140>>.

<sup>20</sup> Ilyas.

<sup>21</sup> Hasan.

<sup>22</sup> Tutik Nurul Janah, 'Upaya Perlindungan Konsumen Muslim Dan Non-Muslim Melalui Sertifikasi Halal Dan Transparansi Komposisi Produk Makanan', *Islamic Review : Jurnal Riset Dan Kajian Keislaman*, 9.1 (2020), 65-85 <<https://doi.org/10.35878/islamicreview.v9i1.186>>.

<sup>23</sup> Galuh Widitya Qomaro, 'Sertifikasi Halal Dalam Persepsi Konsumen Pada Produk Pangan Di Kabupaten Bangkalan', *KABILAH: Journal of Social Community*, 3.2 (2018), 241-51 <<https://doi.org/10.35127/kbl.v3i2.3412>>.

<sup>24</sup> Renny Supriyatni, 'Eksistensi Dan Tanggung Jawab Majelis Ulama Indonesia Dalam Penerapan Sertifikasi Dan Labelisasi Halal Produk Pangan Di Indonesia', *Al-Iqtishad: Journal of Islamic Economics*, 3.2 (2015) <<https://doi.org/10.15408/aiq.v3i2.2140>>.

<sup>25</sup> Susilowati Suparto and others, 'Harmonisasi Dan Sinkronisasi Pengaturan Kelembagaan Sertifikasi Halal Terkait Perlindungan Konsumen Muslim Indonesia', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 28.3 (2016), 427 <<https://doi.org/10.22146/jmh.16674>>.

<sup>26</sup> Ilyas.

of obtaining a halal certificate by going through several stages of inspection to prove that raw materials, production processes, and product halal assurance systems in a company comply with established standards.<sup>27</sup> Halal certification is carried out with a series of checks carried out by competent auditors in their fields to determine the halal status in a written MUI fatwa which confirms the halalness of the product in the form of a halal certificate.<sup>28</sup> Halal certificates have a validity period of four years, then can be extended. The company periodically every six months must report the implementation of the Halal Assurance System (SJH) to the company.<sup>29</sup> While halal labeling is the inclusion of a halal label or logo on halal product packaging. This label serves to show consumers that the product is a product with halal status. The agency authorized to issue permits for the inclusion of halal labels is the Food and Drug Supervisory Agency (BPOM).<sup>30</sup> Certification and labeling are two things that are interrelated. A halal certificate issued by the MUI is a requirement to include a halal logo or label on a product.<sup>31</sup>

### 3.2 Application of halal certification on medicinal products in positive law

As a country with a majority of Muslim population, halal certification is a necessity in order to guarantee a sense of security for Indonesian Muslim consumers in consuming food or medicine. Since 2014 the government has launched halal certification with the Halal Product Guarantee Law (UU JPH), namely Law Number 33 of 2014 concerning Halal Product Guarantees. This law confirms that products in circulation must be halal certified. In the context of this article, the discussion focuses on halal certification of medicines.<sup>32</sup> In relation to this, the pharmaceutical industry as a medicine producer experiences problems in guaranteeing the halal raw materials for the manufacture of medicines. Because not all medicine can be created with materials that are halal according to Islam. There are several types of medicine that contain non-halal ingredients. Apart from that, pharmaceutical companies also experience obstacles in determining halal criteria and poor halal management in the Indonesian Pharmaceutical Industry. Meanwhile, obtaining and using halal medicine for every Muslim is a right guaranteed by the constitution. The reality of guaranteeing halal products for medicines is still very concerning. For example vaccine products, based on MUI data (MUI Fatwa No. 06 of 2010) there are only three vaccines that have received halal certification, namely three types of vaccines for meningitis vaccination.<sup>33</sup>

Even from LPPOM MUI data, out of 30 thousands of types of medicines registered with BPPOM and circulating in the community, only 34 medicines are halal certified<sup>34</sup>. The

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<sup>27</sup> Qomaro.

<sup>28</sup> Faidah.

<sup>29</sup> Susilowati Suparto and others, 'Harmonisasi Dan Sinkronisasi Pengaturan Kelembagaan Sertifikasi Halal Terkait Perlindungan Konsumen Muslim Indonesia', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 28.3 (2016), 427 <<https://doi.org/10.22146/jmh.16674>>.

<sup>30</sup> Achmad Jaka Santos Adiwijaya, 'Menyongsong Pemberlakuan Kewajiban Sertifikasi Halal Di Indonesia', *Jurnal Ilmiah Living Law*, 11.1 (2019), 1 <<https://doi.org/10.30997/jill.v11i1.1641>>.

<sup>31</sup> Akim Akim and others, 'The Shifting of Halal Certification System in Indonesia: From Society-Centric To State-Centric', *MIMBAR: Jurnal Sosial Dan Pembangunan*, 35.1 (2019), 115-26 <<https://doi.org/10.29313/mimbar.v35i1.4223>>.

<sup>32</sup> Yulia and Susandri.

<sup>33</sup> Hijrah Lahaling, Kindom Makkulawuzar, and Singkeru Rukka, 'Hakikat Labelisasi Halal Terhadap Perlindungan Konsumen Di Indonesia', *Hasanuddin Law Review*, 1.2 (2015), 282 <<https://doi.org/10.20956/halrev.v1i2.84>>.

<sup>34</sup> 2013. "Obat-obatan banyak tidak halal". <http://poskotanews.com/2013/05/23/obat-obatan-banyak-tidakhalal/> diakses tanggal 6 Mei 2018

number of halal medicines is very small when compared to the number of Muslim majority consumers in Indonesia.<sup>35</sup> Therefore, this is a big problem in the social and religious life of the Indonesian people. The implementation and guarantee of Law No. 33 of 2014 is still far from being hot. There is a huge gap between the number of drug consumers (Muslim communities) and the types of halal-certified medicines. This is the problem with halal guarantees for medicines, in contrast to food, where the halal certification process is rather easy and relatively fast. This reality certainly requires the Muslim community, especially scientists in the field of medicine and pharmacy to carry out research in order to find medicines that are halal and pure, so it fulfill syar'i standards for use by Muslims.<sup>36</sup>

Based on the Halal Product Guarantee Law, the obligation to obtain halal certification for all products circulated and traded in Indonesia will be implemented five years after the promulgation of the 2019 JPH Law. In that connection, pharmaceutical efforts in helping to implement the law, there needs to be an idea about designing halal production guidelines for the pharmaceutical industry that are compatible with CPOB (Good Drug Use)<sup>37</sup>. This aims to facilitate the production process of halal drugs in the pharmaceutical industry.<sup>38</sup> Before being marketed, drugs produced by the pharmaceutical industry must be guaranteed to be safe, efficacious and of good quality. This can be proven by evidence of research data conducted by the related pharmaceutical industry and reported regularly to BPOM as the food and drug regulatory agency of the Republic of Indonesia. However, this process does not necessarily guarantee the halalness of a product. A product is said to be halal if it can be proven to be free from the critical point of medicine halalness.<sup>39</sup>

The technological development of the medicine manufacturing process is now increasingly advanced and makes consumers unaware of the ingredients of the medicine ingredients on the market, therefore it is necessary to pay attention to the critical points of medicine halalness, such as: (1) Ensuring the halalness of the active ingredients, excipients and auxiliary materials used; (2) Ensuring that the production facilities used are specific to only halal products; (3) Ensure that there is no chance of mixing and contamination with illicit materials from additives, auxiliary materials or from the facilities used; (4) Ensuring the halalness of the packaging materials used; (5) Carry out the process of washing and purifying equipment according to the syariat; (6) Allowing Halal Auditors to carry out the process of being directly audited and determining their Halalness.<sup>40</sup>

Critical points for product halalness can be a reference in producing halal products before submitting a product halal certification process to BPJPH. If the pharmaceutical industry says that as long as it is an illegal substance it is a good medicine and its use can still be tolerated, quoted from Dr. Yusuf Qordhowi in his book *Halam Haram fil Islam*, this

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<sup>35</sup> Asri Wahyuningrum, H. Anasom, and Thohir Yuli Kusmanto, 'Strategi Dakwah Mui (Majelis Ulama Indonesia) Jawa Tengah Melalui Sertifikasi Halal', *Jurnal Ilmu Dakwah*, 35.2 (2017), 186 <<https://doi.org/10.21580/jid.v35.2.1618>>.

<sup>36</sup> Lsy Aprilia, Ni Luh Made Mahendrawati, and Ni Made Jaya Senastri, 'Perlindungan Hukum Terhadap Konsumen Melalui Sertifikasi Halal Pada Produk Obat-Obatan Berdasarkan Undang-undang No 33 Tahun 2014 Tentang Jaminan Produk Halal', *Jurnal Preferensi Hukum*, 2.2 (2021), 288-93 <<https://doi.org/10.22225/jph.2.2.3324.288-293>>.

<sup>37</sup> Alif Ulfa Afifah and Dradjad Irianto, 'Perancangan Standar Integrasi Sistem Jaminan Halal Dan Cara Pembuatan Obat Yang Baik', *Inaque: Journal of Industrial and Quality Engineering*, 9.1 (2021), 63-80 <<https://doi.org/10.34010/iqe.v9i1.3946>>.

<sup>38</sup> Aprilia, Mahendrawati, and Senastri.

<sup>39</sup> Lahaling, Makkulawuzar, and Rukka.

<sup>40</sup> Sayyaf and Afkarina.

cannot be corrected, because "as long as there is a substance that has the same properties as the haram substance, then the substance is still declared haram", maybe this is the principle that must be applied in enforcing the JPH Law in medicine products.<sup>41</sup>

The pharmaceutical industry that wants to produce halal pharmaceutical preparations is required to prepare a halal management system to ensure the continuity of the halal production process in a consistent manner. The halal management system is an integrated management system that is developed, implemented and maintained to manage materials, production processes, products, human resources and procedures in maintaining the continuity of the halal production process in accordance with predetermined requirements. If it's compared to the cosmetic industry, it seems that the cosmetic industry in Indonesia is faster and more responsive in the process of obtaining halal certification, so we can see how cosmetic products in circulation have a halal logo.<sup>42,43</sup> So that the world cosmetics market is so strong in attracting consumers, especially Muslim women. This shows that the halal logo has a big role in boosting the market for a product, including cosmetics.<sup>44</sup> *Halal by Design* (HbD) is a concept approach to produce halal medicines in accordance with Islamic syariat. HbD has the basis that product halalness can be built-in to product. This concept is inspired by the concept of Quality by Design (QbD), which is a systematic and scientific approach to the development of halal products that begins with planning, selecting materials, halal production and guaranteeing halal products based on halal management. Following up on this draft, it is necessary to prepare a halal certification tool for medicines, such as: (1) Halal medicine standards/requirements (Halal Management System) by the authorized party (BPJPH in collaboration with other interested parties); (2) Applying the concept of Halal by Design for the pharmaceutical industry; (3) Train Halal Supervisors in the Pharmaceutical Industry.<sup>45</sup>

Meanwhile, a halal supervisor is a person or a halal management team appointed by the leader of the business actor (Pharmaceutical Industry) <sup>46</sup> and reported to BPJPH. Halal supervisors are in charge of: (1) Supervising the process of halal products (PPH) in companies (pharmaceutical industry); (2) Determine corrective and preventive actions; (3) Coordinate the process of halal products; (4) Accompanying the Halal Auditor during the inspection (visit) in order of halal certification; (5) Providing Halal Active Ingredients and Excipients Index Book.<sup>47</sup>

### 3.3 Application of Halal Certification on Medicine Products from an Islamic Law Perspective

From an Islamic perspective, halal contains elements such as eligibility and health standards. Because the concept of health in Islam is not only physical, but also

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<sup>41</sup> Yulia and Susandri.

<sup>42</sup> Muniaty Aisyah, 'Consumer Demand on Halal Cosmetics and Personal Care Products in Indonesia', *Al-Iqtishad: Journal of Islamic Economics*, 9.1 (2016) <<https://doi.org/10.15408/aiq.v9i1.1867>>.

<sup>43</sup> Ilyas.

<sup>44</sup> Amalina Maharani, 'The Relationship Between Halal Labeling and Product Design on Consumer Purchase Interest (Marketing Management Literature Review)', *International Journal of Advanced Multidisciplinary*, 1.2 (2022), 123-32 <<https://doi.org/10.38035/ijam.v1i2.68>>.

<sup>45</sup> Adiwijaya.

<sup>46</sup> Norisca Aliza Putriana, 'Apakah Obat Yang Kita Konsumsi Saat Ini Sudah Halal?', *Farmasetika.Com (Online)*, 1.4 (2016), 12 <<https://doi.org/10.24198/farmasetika.v1i4.10370>>.

<sup>47</sup> , Maghfirotun and , Wirdyaningsih, 'Kedudukan Penyelia Halal Dalam Sertifikasi Halal Setelah Berlakunya Undang-Undang Cipta Kerja Pada Sektor UMK', *PALAR | PAKUAN LAW REVIEW*, 8.1 (2022), 463-72 <<https://doi.org/10.33751/palar.v8i1.5073>>.



psychological. Therefore, in terms of maintaining health, Islam emphasizes the concept that prevention is better than cure. Because prevention will close the opportunity for the harmful effects of the disease to occur. Thus, the prevention of legal disease is mandatory for the realization of a larger goal, namely benefit and health. This is in accordance with the basic principles of *maqasid syari'ah*, one of which is guarding the soul (*hifzu-nafs*).<sup>4849</sup> In this regard, one of the early prevention efforts against the possibility of disease attacks, namely taking drugs. That is either for prevention or for the healing process.<sup>50</sup> From the point of view of Islamic *fiqh*, consuming medicines and vaccines is the same as the law on consuming other food products, which must be *halal*. This is based on the *hadith* of the Prophet Muhammad narrated by Abu Daud from Abu Darda which reads: "*Allah has sent down disease and medicine and made medicine for every disease; then seek treatment and do not seek treatment with things that are haram*". The above *hadith* confirms that the Prophet advised to seek treatment with *halal* medicine, not *haram* ones. As long as there are medicines made from *halal* materials, it is not permissible to use medicines made from *haram* ingredients. Except for diseases that can be fatal, then with an emergency reason it is permissible to consume medicines made from ingredients that are *haram*. Academic evidence regarding this, for example regarding the permissibility of using unclean or forbidden objects for medicine when there are no sacred objects that can replace them.

This *hadith* conveys the message that there is a condition in which it is permissible to seek treatment with unclean and *haram* things in Islam. Because in this case the Islamic principle applies which states that saving the soul is more important than avoiding uncleanness. As a normative basis, the *hadith* above can be used in consuming medicines whose *halal* certification is unclear in Indonesia<sup>51</sup>, but its benefits have been proven. There are many medicines circulating in Indonesia whose basic ingredients are unclean objects, so the argument is based on the *hadith* above. The principle that strengthens this is also found in the words of Prophet messenger, which then is also used in the basic formulation in *ni'dang ushul fiqh*, meaning: "Emergency conditions allow things that are prohibited (*haram*)". So if the disease kills, and a cure has not been found other than medicine made from *haram* ingredients, then it is permissible to seek treatment with these illegal medicines. Because in other rules are also explained: *Dharar* (danger) must be eliminated. In this context, disease is *dharar*, so it must be removed to heal humans. Furthermore, because sick people really need medicine that can cure them, the rule applies that the *hajjah* condition (desperate need) occupies (the same) as the emergency condition.

According to the *madzhab* *Syafi'i*, as explained by an-Nawawi in *al-Majmu'*, it is permissible to treat medicine with unclean substances other than *khamr*, provided that: (1) there is no **medicine** derived from holy materials that can replace it, if there is medicine made from that is holy, it is forbidden to treat with unclean objects; (2) if indeed the unclean object is known –according to medical science– to have medicinal properties and there is no other medicine made from holy materials that can replace it. In connection with this, it is interesting to quote al-Syarbaini in his work *Mughni al-Muhtaj* explain: "Treatment with unclean objects is permissible when there is no holy object that can replace it".<sup>52</sup> Even so,

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<sup>48</sup> Nofialdi Nofialdi, 'Maqasid Al-Syari'ah Dalam Perspektif Syatibi', *Al-Fikra : Jurnal Ilmiah Keislaman*, 8.1 (2017), 128 <<https://doi.org/10.24014/af.v8i1.3807>>.

<sup>49</sup> Istianah and Dewi.

<sup>50</sup> Yulia and Susandri.

<sup>51</sup> Aliza Putriana.

<sup>52</sup> Muhammad al-Khathib al-Syarbaini, *Mughni alMuhtaj*, (Beirut: Dar al-Fikr, t.th.), juz I, h. 79).

what was explained by Imam Izzudin Abd al-Salam in *Qawa'id al-Ahkam fi Mashalih al-Anam*: "It is permissible to seek treatment with unclean objects if you have not found a holy object that can replace it, because the benefits of health and safety are prioritized over the benefits of staying away from unclean objects"<sup>53</sup>

This understanding was taken from the hadith narrated by al-Bukhari and Muslim about people from 'Urainah who were treated with camel urine, and camel urine according to the madzhab Syafi'i was unclean. And they understand the hadith 'Surely Allah does not make your recovery from anything that is forbidden to you'<sup>54</sup> Indeed, Allah has sent down disease and medicine, and made every disease have a cure, so seek treatment, and do not seek treatment with what is unlawful<sup>55</sup> Regarding the exception of khamr from the permissibility of treating with unclean substances in an emergency, this is a valid opinion according to the majority of 'Syafi'iyah muslim scholars, as mentioned by an-Nawawi and ar-Rafi'i. They argue with a hadith narrated by Muslim, from Wail ibn Hujr radhiyallahu 'anhu, that Tariq ibn Suwaid al-Ju'fi asked the Prophet sallallahu 'alaihi wa sallam about khamr, and the Messenger of Allah forbade it and hated its manufacture, Tariq then said, 'I made it as medicine', the Messenger of Allah then replied 'It is not a medicine, but a disease.

The MUI specifically issued a fatwa on medicines on 20 July 2013. The fatwa appeared as a response or to provide certainty for the Muslim community in Indonesia. The fatwa contains six dictums of legal provisions and four recommendations. The complete fatwa is as follows: (1) Islam prescribes treatment because it is part of the protection and health care which is part of maintaining *Al-Dharuriyat Al-Khams*;<sup>56</sup> (2) In an effort to seek healing, it is obligatory to use treatment methods that do not violate the syari'a; (3) Medicines used for medical purposes must use pure and halal ingredients; (4) The use of unclean or haram substances in medicines is illegal; (5) The use of medicines made from unclean or haram ingredients for treatment is illegal except in conditions of compulsion (*al-dlarurat*) or a condition of urgency which is equivalent to an emergency condition (*al-hajat allatitanzilu manzilah al-dlarurat*), i.e. if not done it will be threatening human life. The medicine may also be used as long as there is no halal and holy material found; and there are recommendations from competent and trusted paramedics that there are no halal medicines; (6) The use of medicines made from unclean or unlawful ingredients for treatment outside the law is permissible on condition that purification is carried out.

In the fatwa, in general it is described that there are two conditions, each of which gives rise to different laws. The first condition, general and normal conditions (*fi halat al-ikhtiyar*). The first four dictums in the fatwa above are set in general and normal conditions. The second condition is a special and abnormal condition (*fi halat al-idhtirar*). The legal provisions in the fifth dictum provide this explanation. The use of medicines made from unclean or haram ingredients for treatment is basically haram. However, this prohibition is excluded under two conditions, the first is under compulsion (*al-dlarurat*), namely conditions of compulsion which if not carried out can threaten human life, and 'Rasulullah shallallahu 'alaihi wa sallam forbade treatment with dirty medicines (khabits)<sup>57</sup> is if you get

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<sup>53</sup> al-'Izz bin 'Abd al-Salam, *Qawa'id al-Ahkam fi Mashalih al-Anam*, Kairo: Mathba'ah al-Istiqamah, t.th.), juz I, h. 81

<sup>54</sup> Disebutkan oleh al-Bukhari dalam Shahih al-Bukhari (7/110) tanpa sanad, dan dinisbahkan pada Ibn Mas'ud radhiyallahu 'anhu. Demikian juga disebutkan oleh al-Baihaqi dalam as-Sunan ash-Shaghir

<sup>55</sup> Riwayat Abu Dawud No. 3874.

<sup>56</sup> Nofialdi.

<sup>57</sup> Riwayat Ahmad No. 8048, 9756, 10194, Abu Dawud No. 3870, dan at-Tirmidzi No. 2045

medicine from holy materials, and if you don't have the medicine, then you can treat it with unclean things, other than khamr, the law is permissible. Al-Baihaqi, as quoted by an-Nawawi, emphasized that the last two hadiths mentioned, if authentic, they are the prohibition of taking medication with something that is intoxicating and treating with something that is haram without any emergency conditions, as a plural form between the two hadiths and the hadith about the people of 'Urainah. Second, conditions of urgency which are equivalent to emergency conditions (*al-hajat allatitanzilu manzilah al-dlarurat*), namely the condition of urgency which if it is not carried out it will be able to threaten the existence of the human soul in the future. These two conditions are not enough to allow consumption of drugs made from unclean or unclean ingredients.

#### 4. CONCLUSION

The implementation of halal certification on various products, including medication, cannot be separated from the role of political will and synergy among various parties. From the perspective of positive law, halal certification is a legal obligation, while from the perspective of Islamic law, halal certification is part of the obligation to ensure that products consumed by Muslims are guaranteed halal. Stakeholders such as the Ministry of Health, the Ministry of Religion, and the MUI (Indonesian Council of Ulama) should make more efforts to facilitate the obligation of halal certification by building management systems and regulations to reduce costs and improve the efficiency of halal certification implementation. Regarding the issue of halal certification in Indonesia, it is still not optimal. Alternative steps need to be taken to create Halal by Design, so that the guarantee of halal certification can be implemented and provide benefits for the Muslim community in Indonesia.

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