

## Job Creation Law and Consequences in Determining *Halâl* Products: Analysis of the *Halâl* Product Fatwa Committee

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**Abstract:** The *Halâl* Product Fatwa Committee is a new institution constructed in the Job Creation Law. Its authority is to determine whether consumer goods are *halâl* or *harâm*. This role has received two views: on the one hand, it is an attempt to negate the authority of the Ulema Council Indonesia (MUI), on the other hand, it shows that the government is interfering in religious affairs. This article attempts to present a review of the conception of government power, followed by regulations regarding the determination of *halâl* status in the Job Creation Law including its implications on institutional arrangements for administering *halâl* products. This research uses a combination of normative legal approaches with conceptual and statutory approaches. The research results show that: First, government power is an institution that is obliged to carry out governance issues. Second, the *Halâl* Product Fatwa Committee and its authority have the potential to eliminate the role of the MUI. Third, structuring can be done by unifying institutions administering *Halâl* guarantees or forming non-structural government institutions. This aims to create legal order and at the same time ensure that the MUI's institutional role is not lost.

**Keywords:** The Fatwa Committee of *Halâl* Product, *Halâl* Products, Job Creations Law

**Abstrak:** Komite Fatwa Produk Halal merupakan institusi baru yang dikonstruksikan dalam Undang-Undang Cipta Kerja. Kewenangannya berupa menetapkan halal haram suatu barang konsumsi. Peranan tersebut memperoleh dua pandangan: pada satu sisi ia merupakan usaha untuk menegasi kewenangan Majelis Ulama Indonesia (MUI), pada sisi lain hal itu menunjukkan bahwa pemerintah ikut campur dalam urusan keagamaan. Artikel ini berupaya menyajikan konsepsi soal kekuasaan pemerintah, dilanjutkan pengaturan tentang penetapan status halal dalam Undang-Undang Cipta Kerja, implikasi, dan penataan kelembagaan penyelenggara produk halal. Penelitian ini menggunakan kombinasi pendekatan hukum normatif dengan konseptual dan perundang-undangan. Hasil penelitian menunjukkan bahwa: Pertama, kekuasaan pemerintah merupakan lembaga yang wajib bertugas menjalankan isu-isu pemerintahan. Kedua, Komite Fatwa Produk Halal berikut kewenangannya berpotensi menghilangkan peranan MUI. Ketiga, penataan dapat dilakukan dengan cara penyatuan institusi penyelenggara jaminan halal atau membentuk lembaga pemerintah non-stuktural. Hal demikian bertujuan agar tercipta tertib hukum sekaligus agar peranan MUI secara kelembagaan tidak hilang.

**Kata kunci:** Komisi Fatwa, Produk Halal, Undang-Undang Cipta Kerja

## Introduction

Ensuring the circulation of *halâl* products does not merely follow the spirit of religious teachings, but also triggers a turnaround in economic power. Abdul Aziz Nugraha Pratama's research, for example, shows that *halâl* awareness makes the intensity of sales and purchases, and even service, very high.<sup>1</sup> He explained that the *halâl* industry has triggered a new lifestyle where people, especially Muslims, tend to transact with products that are guaranteed to be *halâl*, such as *halâl* travel, *halâl* fashion, Islamic hotels, and so on. Indeed, *halâl* is not always influenced by religious beliefs, but because products that contain *halâl* information are believed to be healthier than product packaging without a *halâl* logo.<sup>2</sup> This indicates that information about the Halâlness of a particular product, even though it does not always come from a religious spirit, contributes to the turnover of buying and selling.

Furthermore, not surprisingly, the state is obliged to ensure that *halâl* products are well distributed. Based on Law Number 33 of 2014 concerning *Halâl* Product Guarantees (UU 33/2014), there are three institutions authorized during the *halâl* certification process, including *Halâl* Product Guarantee Administering Body (BPJH), *Halâl* Inspection Institute (LPH) and Ulema Council Indonesia (MUI). In short, *halâl* certificates never existed before the three institutions in question were actively involved in the process. In its development, a Government Regulation in place of Law Number 2 of 2022 concerning Job Creation (Perpu 2/2022) was issued which was then ratified as Law Number 6 of 2023 concerning the Determination of Government Regulation in place of Law Number 2 of 2022 concerning Job Creation Law (Law 6/2023). Something is interesting about Law 6/2023, namely the introduction of a new institution in the *halâl* certification process: the *Halâl* Product Fatwa Committee (KFPH). This institution has the authority to determine

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<sup>1</sup> Abdul Aziz Nugraha Pratama et.al, 'The Effect of *Halâl* Brand Awareness on Purchase Intention in Indonesia: The Mediating Role of Attitude', *Cogent Business and Management*, 10.1 (2023): 14 <<https://doi.org/10.1080/23311975.2023.2168510>>.

<sup>2</sup> Nur Rizqi Febriandika et.al, 'Gen-Z Muslims' Purchase Intention of *Halâl* Food: Evidence from Indonesia', *Innovative Marketing*, 19.1 (2023): 13–25 <[https://doi.org/10.21511/im.19\(1\).2023.02](https://doi.org/10.21511/im.19(1).2023.02)>.

whether a product is *halâl* or not and is located under the government. Therefore, the institutions that play a role in determining the issuance of *halâl* certificates have increased to four.

Even though it will be formed one year after Law 6/2023 was born, the presence of KFPH has received a negative note from many parties. A *halâl* practitioner, Elvina A. Rahayu, for example, believes that the presence of KFPH will take over the MUI's function in determining the *halâlness* of products, which in turn, will have a negative impact on public beliefs.<sup>3</sup> In addition, some believe that the presence of this institution will reduce the role of the MUI, and will cause many problems with the *halâl* quality of products.<sup>4</sup> From the MUI itself, there is concern that KFPH will result in inaccuracies in determining whether a product is *halâl* or not as is the case with the concept of self-declaring *halâl*.<sup>5</sup> The purpose of the KFPH is actually to accommodate if, within the specified time, the MUI has not decided on the *halâlness* of a product. In such conditions, KFPH will take over this task so that *halâl* certification can be issued immediately—this is as conveyed by the BPJH of the Ministry of Religion.<sup>6</sup>

The existence of special laws that regulate *halâl* certification causes the issue of *halâl* and *harâm* in a product to become urgent among

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<sup>3</sup> Elvina A Rahayu, 'Halal dan Perppu Cipta Kerja', *Republika*, 2023 <<https://www.republika.id/posts/36295/halal-dan-perppu-cipta-kerja>> [accessed 5 March 2023].

<sup>4</sup> Rosseno, 'PKS Soroti Pengaturan Sertifikasi Halal di Perpu Cipta Kerja', *Tempo*, 2023 <<https://nasional.tempo.co/read/1694194/pks-soroti-pengaturan-sertifikasi-halal-di-perpu-cipta-kerja>> [accessed 5 March 2023].

<sup>5</sup> 'Komisi Fatwa MUI: Sertifikasi Halal Tak Sekadar Kecepatan, Tapi Ketepatan', *LPPOM MUI*, 2023 <<https://halalmui.org/komisi-fatwa-mui-sertifikasi-halal-tak-sekadar-kecepatan-tapi-ketepatan/>> [accessed 5 March 2023]. 'Komite Halal di Perppu Cipta Kerja: Akankah Indonesia Jadi Negara Agama?', *MUI*, 2023 <<https://mui.or.id/berita/49587/komite-halal-di-perppu-cipta-kerja-akankah-indonesia-jadi-negara-agama/>> [accessed 5 March 2023]. 'Soroti Perppu Cipta Kerja, Dirut LPPOM: Jangan Ada Standard Ganda Sertifikasi Halal', *MUI*, 2023 <<https://mui.or.id/berita/46504/soroti-perppu-cipta-kerja-dirut-lppom-jangan-ada-standard-ganda-sertifikasi-halal/>> [accessed 5 March 2023].

<sup>6</sup> Indah, 'Perpu Ciptaker, BPJPH: Sertifikasi Halal Bagi UMK Lebih Cepat', *Kementerian Agama* <<https://kemenag.go.id/nasional/perpu-ciptaker-bpjph-sertifikasi-halal-bagi-umk-lebih-cepat-1tt6h4>> [accessed 5 March 2023]. Fauzi Hilman, 'Perpu Cipta Kerja Disahkan Jadi UU, UMKM Makin Mudah Proses Sertifikasi Halal', *Kementerian Agama* <<https://kemenag.go.id/nasional/perpu-cipta-kerja-disahkan-jadi-uu-umkm-makin-mudah-proses-sertifikasi-halal-ogl7m0>> [accessed 5 March 2023].

consumers and producers.<sup>7</sup> On the part of business actors, the urgency of a *halâl* certificate can provide a very significant level of trust in the products being traded, while for consumers themselves the existence of a *halâl* certificate will be useful in ensuring the fulfillment of their spiritual peace.<sup>8</sup> These two things show that *halâl* certification can influence consumers in deciding to buy a product.<sup>9</sup>

This article aims to answer the following question: Are there efforts from the government to ensure that all human rights of consumers of *halâl* products are guaranteed to be protected? Does the existence of KFPH have the potential to reduce or even eliminate the authority of the MUI? Is there a goal to eliminate the role of ulama in determining the *halâl* status of products? The thesis proposed in this research is: there is an effort to design a one-stop *halâl* certification permit management within the government sphere. Such is what will be tested in this study. For this reason, in the discussion, this article will present the concept of executive power, regulations for determining *halâl* products, and their implications, and continue with a comprehensive analysis of the idea of carrying out institutional arrangements related to the *halâl* product certification process. The author hopes that this study will further enrich the discourse on *halâl* certification in Indonesia to bring maximum benefits to all parties, especially Muslim consumers.

## Research Methods

This article is classified as a type of normative legal research, where the analysis stage will use a statutory and conceptual approach. Primary legal materials are obtained from many statutory products including Law Number 33 of 2014 concerning *Halâl* Product Guarantees, Law Number

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<sup>7</sup> May Lim Charity, 'Jaminan Produk Halal di Indonesia', *Jurnal Legislasi Indonesia*, 14.1 (2017): 99–108.

<sup>8</sup> Warto dan Samsusi, 'Sertifikasi Halal dan Implikasinya Bagi Bisnis Produk Halal di Indonesia', *Al Maal: Journal of Islamic Economics and Banking*, 2.1 (2020): 98 <<https://doi.org/10.31000/almaal.v2i1.2803>>.

<sup>9</sup> Raihan Mohd Isa et.al, 'Determinants of Consumer Adoption of Halal Cosmetics: A Systematic Literature Review', *Journal of Cosmetic Dermatology*, 22.3 (2023): 752–62 <<https://doi.org/10.1111/jocd.15486>>.

39 of 2008 concerning State Ministries, Law Number 6 of 2023 concerning the Determination of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation Becoming Law, Law Number 39 of 2008 concerning State Ministries, Law 11 of 2020 concerning Job Creation, Law Number 30 of 2014 concerning Government Administration, Law Number 17 of 2013 concerning Community Organizations. Meanwhile, secondary legal materials are obtained from literature, books, journals, research results, and other information materials that are relevant to the problem being studied. The collected data will, then, be selected, processed, validated, and finally analyzed to reach conclusions.

## Results and Discussion

### Executive Power Theory

Executive power was originally always associated with a king. The king is the only entity that drives how the country will be run. It is in his hands to determine the direction in which the government will be enforced. That is why, the king is the one who makes the rules, executors, and judges. In its development, such absolute power began to attract negative responses. The peak was marked by the emergence of a parliamentary system of government which promoted the idea that the party holding government power and the head of state should be separated. The king is only the head of state, while government power belongs to other people. In subsequent developments, a presidential system of government emerged, as the antithesis of the previous government system. In this system, the central idea proposed is that the head of state and head of government are not separated, but their powers are limited by the constitution.<sup>10</sup> Both systems of government, in essence, desire that the king no longer holds absolute power so that haphazard state administration can be prevented.

After all, executive power determines whether a state exists or not. If placed in modern law, the executive, as the main institution, must be

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<sup>10</sup> A complete reading of the two systems in question can be explored, for example, in Saldi Isra, *Sistem Pemerintahan: Pergulatan Ketatanegaraan Menuju Sistem Pemerintahan Presidensial* (Depok: Rajawali Pers, 2020), p. 67.

in the constitution. The existence of the executive determines whether or not the state exists. The main function of this institution, as stated by Alexander Hamilton, is to perform their duties as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they were entitled to by the constitution.<sup>11</sup>

The role of executive power in a country has huge consequences, especially when it is related to how to realize the ideals written in the constitution. Jimly Asshiddiqie stated that the executive is the sub-power that holds the highest administrative authority of the state government.<sup>12</sup> In a parliamentary system of government, the official who holds the highest power in the administration is called the Prime Minister. Meanwhile, in a presidential government system, the highest position is called President. In Indonesia, the administration of government is held by the president-although in certain parts it still has strong parliamentary nuances, especially concerning legislative functions.

The president, as chief executive, carries out two functions at once, namely formulating public policy as well as implementing it. Regarding the first thing, Michael E. Milakovich emphasized that to be successful in his role, apart from formulating a clear blueprint, a president must also ensure that the bureaucracy under him has a maximum capacity for professionalism.<sup>13</sup> Milakovich added a policy will not be implemented without providing a quality bureaucracy.<sup>14</sup> This means that the implementation of administrative affairs requires capable bureaucratic institutions. Without it, the mandates that have been expressly stated in the constitution, and become the responsibility of the government, will be difficult to realize. That is why services to citizens will never exist if the executive power does not distribute its authority to various levels of institutions below it.

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<sup>11</sup> Alexander Hamilton et. al, *The Federalist Papers*, (United Kingdom: Palgrave Macmillan, 2002), p. 109.

<sup>12</sup> Jimly Asshiddiqie, *Pengantar Hukum Tata Negara Jilid II* (Jakarta: Sekretarian Jenderal dan Kepaniteraan MK, 2006), p. 59.

<sup>13</sup> Michael E. Milakovich and George J. Gordon, *Public Administration in America* (Boston: Clark Baxter, 2009), p. 256.

<sup>14</sup> Michael E. Milakovich and George J. Gordon, p. 257.

The 1945 Constitution of the Republic of Indonesia has given authority to the president to carry out his duties as chief executive. Article 4 Paragraph (1) states, "The President of the Republic of Indonesia holds governmental powers according to the Constitution". In carrying out his functions, as in Article 4 Paragraph (2) and Article 17, the president is assisted by the vice president and ministers. About the latter, Law Number 39 of 2008 concerning State Ministries, especially Article 7, explains the role of ministers. It states, "Ministries have the task of carrying out certain affairs in government to assist the President in administering state government". Even as assistants, according to Milakovich, the presence of ministers determines the success or failure of the president's promises or obligations outlined in the Constitution. In short, ministries are part of the bureaucracy that must be filled by people who can administer and provide public services.<sup>15</sup>

Apart from ministries, in the area of executive power, Law 39/2008 also introduces institutions called non-ministerial government institutions. This institution, as stated in Article 25 paragraph (2) of Law 39/2008, is located under the president and is responsible to the president through the coordinating minister. Even if they are not ministers, non-ministerial government institutions are also assistants to the president. It is just that the position and responsibility lie in the area of the ministers concerned.

Furthermore, apart from non-ministerial government institutions, in the constitutional structure, the term non-structural institutions is also known. This institution is not included in the structure of ministries, non-ministerial government institutions, and departments, but can be assisted and headed by the president, vice president, or minister.<sup>16</sup> Constitutional Court Decision Number 86/PUU-X/2012 once questioned that non-structural institutions, their formation, have the status of an open legal policy whose nature is not limited to whether they are structural or not. However, added the MK, it is appropriate for non-structural institutions

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<sup>15</sup> Michael E. Milakovich and George J. Gordon, p. 257

<sup>16</sup> Zainal Arifin Mochtar, *Lembaga Negara Independen: Dinamika Perkembangan dan Urgensi Penataanya Kembali Pasca Amendemen Konstitusi* (Jakarta: Rajawali Pers, 2016), p. 57.

to be formed and responsible to the government.<sup>17</sup> Zainal Arifin Mochtar's research shows that since 2011, hundreds of non-structural institutions have been created: from the fields of law and human rights, economics, infrastructure, sports, and many others.<sup>18</sup> Paying attention to their role, non-structural institutions mean supporting institutions whose authority operates to assist the work of executive power. This means that to facilitate his service to the public, the president can form supporting institutions that are directly responsible, through the minister, for what areas of affairs will be handled.

The President, as an official who plays executive power, has the authority to do everything. As long as it is intended to carry out government functions, the president has the authority to make certain policies that lead to the function of executing a policy.<sup>19</sup> Oce Madril, when explaining the purpose of the president as head of government, emphasized that the purpose of establishing a presidential institution is to run the government in general as directly instructed by the Preamble to the Constitution, especially the fourth paragraph.<sup>20</sup> Apart from that, concerning the success of administrative work, the president can also form what are called executive agencies. These institutions are designated units of a central government department, administratively discrete, but remaining legally part of it.<sup>21</sup> So, a kind of special unit that handles certain affairs based in one of the executive departments.

Thus, everything related to government and administrative power should always have executive power, including ensuring that the products distributed are *halâl*. Because, after all, the interests of Muslims as majority citizens require the government to pay attention to the availability of *halâl* products. Moreover, Indonesia claims to be a country that does not separate religious and state affairs.

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<sup>17</sup> Constitutional Court Decision Number 86/PUU-X/2012, p. 94.

<sup>18</sup> Zainal Arifin Mochtar, pp. 58–60.

<sup>19</sup> Simon Butt and Tim Lindsey, *Indonesian Law* (United Kingdom: Oxford University Press, 2018), p. 14.

<sup>20</sup> Oce Madril, "Politik Hukum Presiden dalam Pemberantasan Korupsi di Pemerintahan" (Universitas Gadjah Mada, 2018), p. 71.

<sup>21</sup> Cabinet Office, 'Executive Agencies: A Guide for Departments', October, 2006, p. 19.



## Determination of *Halâl* Status in the Job Creation Law

Initially, providing or determining the *halâlness* of a product involved parties outside the government, namely the MUI. MUI is the sole actor in the process of determining product *halâlness*: starting from receiving applications, audits, and fatwa hearings, to issuing *halâl* certificates.<sup>22</sup> Such authority is obtained from the Decree of the Minister of Religion Number 518 of 2001 concerning Guidelines and Procedures for Inspecting and Determining *Halâl* Food (KMA 518/2001), as well as the Decree of the Minister of Religion Number 519 of 2001 concerning Implementing Institutions for *Halâl* Food Inspection (KMA 519/2001). Article 1 KMA 519/2001 explicitly states that MUI is the implementing agency for *halâl* inspection before it is widely circulated.

The MUI's authority to implement *halâl* inspection is obtained from a decree, not a regulation. Conceptually, there are differences between decisions and regulations. In terms of terminology, regulations are always associated with *regeling*, while decisions are called *beschikking*.<sup>23</sup> The nature of the two is different, for example: regulations are abstract and generally applicable, while decisions are more individual and concrete. Their validity is also different: decisions can be revoked at any time, while regulations will continue to apply unless other regulations are revoked using appropriate procedures. Thus, the legal basis that explains the MUI's authority in the process of determining the *halâl* status of a product can be removed at any time and easily.

In subsequent developments, the MUI's authority in carrying out the process of determining *halâl* products was reduced and eliminated. This

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<sup>22</sup> Devid Frastiawan Amir Sup and others, 'Dinamika Regulasi Sertifikasi Halal di Indonesia', *JESI (Jurnal Ekonomi Syariah Indonesia)*, 10.1 (2020): 36 <[https://doi.org/10.21927/jesi.2020.10\(1\).36-44](https://doi.org/10.21927/jesi.2020.10(1).36-44)>.

<sup>23</sup> Maria Farida Indrati, *Ilmu Perundang-Undangan Jilid I: Jenis, Fungsi dan Materi Muatan* (Jakarta: Kanisius, 2018), p. 78. Ridwan HR, *Hukum Administrasi Negara* (Jakarta: Rajawali Pers, 2006), p. 111. Dony Septriana Rosady, Lutfan Lazuardi, and Siswanto Sastrowijoto, 'Telekonsultasi Klinis: Etika, Disiplin, dan Hukum Kedokteran', *Jurnal Hukum Kesehatan Indonesia*, 2.01 (2022): 11 <<https://doi.org/10.53337/jhki.v2i01.17>>. Ricca Anggraeni and Indah Mutiara Sari, 'Mengungkap Materi Muatan Peraturan Presiden Nomor 38 Tahun 2015 Tentang Perjanjian Kerjasama Pemerintah dan Badan Usaha dalam Penyediaan Infrastruktur', *Masalah-Masalah Hukum*, 49.2 (2020): 128 <<https://doi.org/10.14710/mmh.49.2.2020.125-135>>.

is marked by the birth of a legal basis that is stronger than the decision, namely Law 33/2014. Essentially, the enactment of Law 33/2014 cannot be separated from the efforts and responsibility of the state (government) to ensure the *halâlness* of products circulating throughout Indonesia.<sup>24</sup> With this paradigm, Law 33/2014 designs that the *halâl* certification process involves three parties simultaneously, including the *Halâl* Product Guarantee Administering Agency (BPJH), the *Halâl* Inspection Agency (LPH), and the MUI. In terms of position, BPJH is the "right hand" of the government c.q. Minister of Religion. Therefore, BPJH is located below and is responsible to the Minister of Religion.<sup>25</sup> While, LPH, which is tasked with researching the ingredients of a product, can be independent or not.<sup>26</sup>

In short, the stages of determining the *halâlness* of a product in Law No. 33/2014 go through several processes. First, people register with BPJH. Second, after fulfilling the administrative requirements, BPJH sends the requested product to LPH. Third, LPH then carries out inspection, research, and testing (upstream-downstream) of the product. Fourth, the results of the LPH research are then sent to the MUI. Fifth, the MUI through the fatwa commission carries out *ijtihad* regarding the product- if it is *halâl*, then the results are submitted to BPJH to issue a *halâl* certificate. If the opposite applies, BPJH hands the product back to the public accompanied by an explanation of why the product is not *halâl*.<sup>27</sup>

Furthermore, in carrying out its role, BPJH based on Government Regulation Number 31 of 2019 concerning Implementing Regulations of Law Number 33 of 2014 concerning *Halâl* Product Guarantees (PP No. 31/2019) collaborates with several parties. Together with MUI, for example, cooperation is carried out in the form of *halâl* auditor certification, determining product *halâlness*, and LPH accreditation.<sup>28</sup> In

<sup>24</sup> Refer to the Explanation of the General section.

<sup>25</sup> Article 5 paragraph (3) Law No. 33/2014.

<sup>26</sup> Article 12 Law No. 33/2014.

<sup>27</sup> Maisyarah Rahmi Hasan, 'Regulasi Hukum Jaminan Produk Halal di Indonesia', *DE JURE Critical Laws Journal*, 3.1 (2022): 94–97 <<https://doi.org/10.48171/jwh.v3i1.48>>.

<sup>28</sup> Article 21 PP No. 31/2019.

carrying out its authority, BPJH also collaborates with non-ministerial government institutions in the field of drug and food control.<sup>29</sup>

One year after PP No. 31/2019 was born, in 2020, Law No. 11 of 2020 concerning Job Creation was launched. In Law No. 11/2020, the process of issuing a *halâl* certificate for a product does not have significant differences from Law No. 33/2014. But the changes target several parts. For example, the form of cooperation between BPJH and MUI, from previously covering three aspects becomes only one aspect, namely determining the *halâlness* of products.<sup>30</sup> Apart from that, the BPJH process for determining LPH, which was previously five days, has become one day. Similarly, LPH's task in researching a product, initially, is not limited by time, but in Law no. 11/2020 is limited to a maximum of fifteen days. The same thing also applies when the MUI fatwa commission carries out *ijtihad* on the *halâlness* of a product. In Law No. 33/2014, the MUI was determined to carry out its role for a maximum of thirty days. This is different from Law No. 11/2020, where the MUI works for a maximum of three days.

The large reduction in the number of days in the *halâl* certification process actually cannot be separated from the spirit surrounding Law No. 11/2020 itself. Based on government information, for example, the law in question is aimed at improving the investment atmosphere, speeding up and making business easier.<sup>31</sup> In addition, based on the authentic explanation, Law No. 11/2020 is intended to simplify licensing and create and expand job opportunities for all parties. Reading the spirit of the formation of Law No. 11/2020, the process of issuing a *halâl* certificate must also be fast and easy as it is in contact with community businesses, especially micro and medium businesses.<sup>32</sup>

<sup>29</sup> Article 15 PP No. 31/2019.

<sup>30</sup> Article 48 Law No. 11/2020.

<sup>31</sup> Sigit Riyanto et.al, *Kertas Kebijakan: Catatan Kritis Terhadap Undang-Undang 11 Tahun 2020 Tentang Cipta Kerja*, ed. by Sri Wiyanti Eddyono (Yogyakarta: Universitas Gadjah Mada, 2020), p. 4.

<sup>32</sup> Michelle Lucky Madelene and Jinner Sidauruk, 'Implementasi Undang-Undang Cipta Kerja Dalam Perizinan Usaha Bagi UMKM', *Nommense Journal of Bussiness Law*, 1.1 (2022): 32–46 <<https://www.kompas.id/baca/opini/2019/12/18/revitalisasi-hukum->>.

In reality, Law No.11/2020 received a negative response from many parties, especially around the process of its formation. Therefore, the process was tested at the Constitutional Court (MK). Through decision No. 91/PUU-XVIII/2020, the Constitutional Court stated that the process of forming Law No. 11/2020 was procedurally flawed, so it was declared invalid in its entirety and ordered to be repaired immediately for two years.<sup>33</sup> In less than two years, the government issued Perppu No. 2/2022.<sup>34</sup> The issuance of Perppu No. 2/2022 is claimed to be a corrective step as ordered by the MK.<sup>35</sup> Perppu No. 2/2022, subsequently ratified by the DPR with Law No. 6/2023. This step still gets a lot of (negative) notes from many parties.

Even though Perppu No. 2/2022 and Law No. 6/2023 are still problematic, and, therefore, are interesting to analyze in other studies, several provisions have been changed regarding *halâl* certification. Law No. 6/2023 introduces another institution named KFPH (Fatwa Committee of *Halâl* Product) as a party that also has the authority to determine the *halâlness* of a product apart from MUI. KFPH is an institution tasked with determining the *halâl-harâm* status of a product and is responsible to the Minister of Religion. Article 48 Law No. 6/2023 which changes the provisions of Article 1 number 10 of Law No. 33/2014 states, "A *halâl* certificate is an acknowledgment of the *halâlness* of a product issued by BPJH based on a written *halâl* fatwa or determination of product *halâlness* by the MUI, Provincial MUI, Regency/City MUI, Aceh Ulema Requirements Council, or Fatwa Committee of *Halâl* Product." Following the construction of the norm in question, the determination of product *halâlness* never occurs without

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<sup>33</sup> Arizona Yance, 'UU CK Mati Suri: 10 Proposisi Mengenai UUCK, Putusan MK, dan Respon Pemerintah', in *Policy Paper: Putusan MK Terkait UU Cipta Kerja* (Yogyakarta: Universitas Gadjah Mada, 2022), pp. 26–41.

<sup>34</sup> Aprilian Sumodiningrat, 'Constitutional Disobedience Putusan Mahkamah Konstitusi: Kajian Terhadap Perppu Cipta Kerja', *Constitution Journal*, 2.1 (2023): 69 <<https://doi.org/10.35719/constitution.v2i1.50>>. Melisa Ayu Azhara and Siti Ruhama Mardhatillah, 'Partisipasi Publik dalam Penyusunan Dokumen Analisis Dampak Lingkungan Pasca Berlakunya Undang-Undang/Perppu Cipta Kerja', *Jurnal Hukum Ius Quia Iustum*, 30.2 (2023): 256–76 <<https://doi.org/10.20885/iustum.vol30.iss2.art2>>.

<sup>35</sup> Sumodiningrat, p. 60.

the involvement of the MUI, the Aceh Ulama Consultative Council, or KFPH. The phrase "or" in the construction of the article in question has a facultative meaning. This means that the determination of *halâl* products may be carried out by the MUI, KFPH, or the Aceh Ulama Consultative Council.

The facultative nature as explained, if carried out further, is subject to several requirements. The authority of the MUI and the Aceh Ulama Consultative Council, for example, depends on the territorial context, especially where BPJH distributes its *halâl* determination. Meanwhile, KFPH has the authority to determine whether a product is *halâl* if requested by micro and small business actors—who have previously self-declared *halâl*.<sup>36</sup> This design has its criticism because there is a possibility that self-declaration from micro and small business actors has the potential to not follow religious *halâl* principles. However, Article 48 number 2 of Law No. 6/2023 has closed this potential, namely "The *halâl* declaration of micro and small business actors as intended in paragraph (1) is carried out based on *halâl* standards set by BPJH". This means that micro and small business actors must be careful in implementing self-declaration. The article in question raises separate statements, such as: how does BPJH guarantee and control self-declaration by business actors? What is the standard? What is the "procedural law"?

Furthermore, not only does it determine the *halâl* status of micro and small business actors, but KFPH can also take over the *halâl* determination previously held by the MUI, on the condition that for more than three days the MUI has not been able to determine the *halâl* status of a product in writing. In this case, Article 48 of Law No. 6/2023 which changes the provisions of Article 33 paragraph (5) of Law No. 33/2014 states, "If the time limit as intended in paragraph (3) is exceeded, the determination of product *halâl*ness is carried out

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<sup>36</sup> *Halâl* Self-declaration is the ability of micro and small businesses to claim the halal status of their products. Istianah Istianah and Gemala Dewi, 'Analisis Mashlahah Pada Konsep Halal Self-Declare Sebelum dan Pascaenachment Undang-Undang Cipta Kerja', *Al-Adl : Jurnal Hukum*, 14.1 (2022): 87 <<https://doi.org/10.31602/al-adl.v14i1.5870>>.

by the Fatwa Committee of *Halâl* Product, based on the provisions of the *Halâl* Fatwa." This means that if a request comes from any business actor—across levels—which was originally submitted to the MUI according to territorial boundaries if it passes within the stipulated time, KFPH is the one who has the authority to determine the *halâlness* of a product in writing.

Even though this institution has not yet been established, and will be established one year after this law is enacted, the authority of the KFPH is exercised by the Government through the Minister of Religion. In short, currently, the determination of *halâl-harâm* will be transferred to the government with the note: MUI carries out its duties beyond the deadline. If it is established in the future, according to Article 48 of Law No. 6/2023 which adds Article 33B to Law No. 33/2014, KFPH will be assigned below and responsible to the Minister of Religion. In contrast to the MUI which consists of ulama (religious scholars), KFPH members consist of two elements: ulama and academicans. This construction, apart from ensuring that the MUI is on time in carrying out its duties, also ensures that business actors immediately receive certainty regarding the fate of their products that will be distributed on the market.

## The Implications

Referring to the final regulations, normatively, there are at least four institutions in the process of issuing *halâl* certification, namely: BPJH, LPH, MUI, and KFPH. In this way, we can be sure that any process of *halâl* certification without going through these four institutions, will never be validated. In addition, KFPH's authority will be exercised at any time on condition that the MUI is not to be timely in determining the *halâl* status of a product. Apart from that, KFPH's authority will be implemented in the context of self-declaration from micro and small business actors.

Regarding the determination of *halâl-harâm*, Law No. 6/2023 has implications for two institutions that have the same authority-MUI as a deliberative association for many ulama and KFPH as a unit of the

government (Ministry of Religion). These differences have consequences for the products released. The MUI fatwa explaining *halâl* and *harâm* cannot be questioned before the State Administrative Court (PTUN), while the fatwa from KFPH can be challenged at the PTUN. This is because this committee's fatwa can be categorized as a State Administrative Decision (KTUN). Referring to Perppu No. 2/2022, this committee will be responsible to the Minister, which means that its position is that of the Minister of Religion.

Apart from that, products that were explained as *halâl* and *harâm* by KFPH are made in the form of a determination. Based on Law No. 30 of 2014 concerning Government Administration, KTUN is a written decision issued by a government agency or official in administering government. KFPH's *halâl-harâm* determination is carried out in writing. This determination is the basis for BPJH issuing *halâl* certificates. If at any time an error is found in the KFPH determination (for example, the product is *harâm*), the determination can be submitted to the PTUN by the business actor. This potential is a separate note-on the one hand, we want to speed up public services, on the other hand, however, there may be efforts to take disagreement to court for business actors who are not satisfied with this determination.

Another consequence, KFPH also has the potential to reduce the authority of the MUI, especially regarding determining whether a product is *halâl* or *harâm*. Even though Law No. 6/2023 explicitly distributes the authority to determine product *halâl*ness to regional MUIs, however, because the time provided is very limited (three days), this task is difficult to complete. This was confirmed by the MUI itself which criticized that determining *halâl* products is not a matter of speed, but also determination. The reduction in question became even more visible when *halâl* determination was transferred to KFPH.<sup>37</sup>

This reduction—even elimination—raises issues of distrust. It is even considered to be shifting or taking on the religious role that should be

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<sup>37</sup> Muhimatul Umami, Shofwatun Nada, and Nur Lulu, 'Implementation Halal Product Certification through Self-Declare Program for MSEs Products in Cirebon Regency', *Journal of Community Service and Empowerment*, 4.2 (2023): 300–307.



carried out by the MUI. Strictly speaking, there is religious authority taken by the state. In fact, including KFPH (and its authority) is considered legal smuggling in Law No. 6/2023 which should not have happened. The various implications that have been described invite the question of how to design the process of determining *halâl-harâm* in an institutional context in a way that does not eliminate the role of ulama, while at the same time complying with the law and orderly. This will be explored in the following description.

### **Ius Constituendum of Determination of *Halâl* Products**

The implementation of *halâl* product guarantees is solely aimed at providing security, comfort, safety, and certainty of the availability of *halâl* products in Indonesia. Apart from that, providing *halâl* product guarantees can also be said to be a form of state action—in this case the government—to carry out the mandate ordered by the constitution, especially regarding guarantees for practicing religion. Article 29 paragraph (2) of the Constitution of the Republic of Indonesia states, "The State guarantees the freedom of every citizen to embrace their religion and to worship according to their religion and beliefs." Meanwhile, according to Article 28I paragraph (1), religious rights are one of the rights that cannot be revoked or reduced under any circumstances (non-derogable rights). Using a systematic interpretation, the existence of *halâl* products is an obligation for the state as well as a right that must be obtained by citizens as a form of guarantee for the right to follow a religion that cannot be reduced in the slightest.

Following the paradigm above, the certainty of implementing *halâl* product guarantees cannot be suspended, except when the country is in a state of emergency.<sup>38</sup> Regarding a country in a state of emergency, as stated by Jimly Asshiddiqie, the legal model used is not in a normal state, but rather a law in a state of danger. If the country is in a state of danger, added Jimly, there is a tendency for the state to carry out

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<sup>38</sup> Jimly Asshiddiqie, "Diktator Konstitusional dan Hukum Pengecualian, (makalah disampaikan pada Kuliah Umum Perkembangan Hukum Tata Negara Darurat di Indonesia." (2020), p. 4.



what is called a constitutional dictatorship.<sup>39</sup> Even though the state is in danger of opening up gaps in authoritarian state administration, in its development this concept has begun to be abandoned, in favor of the concept of constitutionalism, such as limits by law and supervision between state institutions.<sup>40</sup> Therefore, article 4 of the International Covenant on Civil and Political Rights outlines that, as long as it does not conflict with religious rights, acts of deviation beyond reasonable limits can be justified.

*“In a time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin”.*

Regardless of whether the country is in a state of emergency or not, Muslims' right to enjoy *halâl* products (food, cosmetics, medicines, and other products) must be maximally implemented by the state (government). The birth of Law 33/2014 has become clear evidence that the state is committed to carrying out its obligations. In the regulation in question, as previously stated, there is a shift in the implementation of *halâl* product guarantees: from the MUI in full to the government in full-provided that determining whether *halâl* or not remains in the authority of the MUI.

The author is of the view that because the guarantee of religious fulfillment in the constitution is an obligation to the government, while Muslims have the right to do so, and one of the guarantees for practicing

<sup>39</sup> Jimly Asshiddiqie, "Diktator Konstitusional dan Hukum Pengecualian, p. 4.

<sup>40</sup> Agus Adhari, 'Kewenangan Penanggulangan Keadaan Bahaya Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945' (Universitas Gadjah Mada, 2022), p. 106. Tomy Michael, 'Hukum Tata Negara Darurat Corona Di Indonesia', *Mimbar Keadilan*, 13.2 (2020): 168 <<https://doi.org/10.30996/mk.v13i2.3468>>. Rizki Bagus Prasetio, 'Pandemi Covid-19: Perspektif Hukum Tata Negara Darurat dan Perlindungan HAM', *Jurnal Ilmiah Kebijakan Hukum*, 15.2 (2021): 327 <<https://doi.org/10.30641/kebijakan.2021.v15.327-346>>.

their religion is certainty about *halâl* products, then all processes for implementing *halâl* guaranteed products should be handed over to the government. The reason is, that apart from enforcing the function of executive power, the dualism of institutions that determine the *halâl* status of a product tends to prolong bureaucracy, even though the idea of integration is important.<sup>41</sup> This means that compliance with the constitution as the highest law, on the one hand, and efforts to maintain the authority and role of the MUI, on the other hand, require a middle way which can be implemented through efforts to unify the process of issuing *halâl* certification in the executive environment.

For this purpose, several alternatives can be made. *First*, removing the authority of the MUI. Because this article puts the concept of executive power in implementing *halâl* product guarantees, negating MUI institutionally is a very logical step. This choice, however, could be very extreme, although not completely reject the involvement of ulama. Moreover, from a historical perspective, the MUI has been actively involved in ensuring the *halâlness* of products before they are widely circulated for quite a long time. However, for legal and constitutional order, this option is important to think about, discuss, and examine.

If we trace it back, MUI was founded on July 26 1975 in Jakarta. The birth of MUI in its history was under a situation of ideological struggle between Islam and the government. This tug-of-war caused unstable relations between religion, especially Islam, and the state. This happened, for example, in the constituent sessions. To make the story short, in the New Order era, with the spirit of economic development, the struggle in question wanted to be reconciled. At the same time, in many areas, there began to be many associations of ulama. Concerned that this association would reach the central level, and because there was a perception that it would endanger government programs (this assumption was due to the DI/TII trauma), there was a push for the

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<sup>41</sup> For example, the government's efforts in the environmental sector include the idea of licensing integration. Andri G. Wibisono, 'Pengelolaan Lingkungan Melalui Izin Terintegrasi dan Berantai: Sebuah Perbandingan Atas Perizinan Lingkungan di Berbagai Negara', *Jurnal Hukum dan Pembangunan*, 48.2 (2018): 224–26.

role of religion to only be in the private sphere, while state affairs were a separate matter. As a result, negative suspicions arose, both from the government and religious groups. In this atmosphere, to reduce suspicion, the government proposed that the MUI be formed. Therefore, within the MUI many mass organizations are combined into one.<sup>42</sup>

Referring to the history of the MUI, it is not very clear whether the MUI can be regarded as a mass organization or not. This is because the existing regulations only state that the MUI is a forum for deliberation for ulama.<sup>43</sup> If we use the construction of Law No. 17 of 2013 concerning Community Organizations, certainly, the MUI is not a mass organization, as it was not established by the community. MUI was not formed by the community but by the government. Placed in the constitutional structure, the MUI's position is also not clear: is it, for example, an independent state institution, a non-structural institution, or an executive agency? The difficulty in answering this question is what causes only a vague conclusion that the MUI is nothing more than a gathering place for ulama to help the government's missionary movement.

Despite the difficulty in determining the MUI's position in the state structure, the role of this institution remains very important, for example in terms of the formation of the National Sharia Council (DSN). Even though the DSN fatwa, in the context of state law, has no binding force it is still effective in many ways, such as the role of the MUI fatwa in legalizing the existence of the stock market. Moreover, in the context of determining *halâl* products, the involvement of the MUI was also necessary because state-owned enterprises at that time could not determine the *halâl*ness of a product. Apart from that, referring to Article 11 of Government Regulation No 69 of 1999 concerning Food Labels and Advertisements, which is the basis for the birth of KMA 519/2001, it seems clear that there must be a *halâl* inspection institution appointed by the Minister of Religion which has competence in this

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<sup>42</sup> Wildan Insan Fauzi, 'Hamka Sebagai Ketua Umum MUI (Majelis Ulama Indonesia) dalam Menghadapi Masalah Sosial Politik pada Masa Orde Baru 1975-1981', *Factum*, 6.2 (2017): 278-295.

<sup>43</sup> 'Sejarah MUI' <<https://mui.or.id/sejarah-mui/>>.

field. Interpreting these normative regulations, because at that time no institution worked specifically in the *halâl* sector, while this need was very urgent, and the Minister of Religion had the obligation to ensure this, the MUI through a decision of the minister of religion was given the authority to carry out *halâl* certification. This means, that if one day the minister of religion revokes his decision, then that authority will no longer exist.

Even though it is difficult to find a place where the MUI is located, the role of this institution is still very important, for example in terms of giving fatwas regarding the national Sharia council. Even though the fatwa, if placed in a state context, has no legal binding force it is effective in many ways, one example is the role of the MUI fatwa in legalizing the existence of the stock market. Apart from that, in the context of determining *halâl* products, the involvement of the MUI was also necessary because state-owned enterprises at that time could not determine the *halâl*ness of consumer products.<sup>44</sup> Apart from that, referring to Article 11 of Government Regulation No. 69 of 1999 concerning Food Labels and Advertisements, which is the basis for the birth of KMA 519/2001, it seems very clear that there must be a *halâl* inspection institution appointed by the Minister of Religion which has competence in interpreting these normative regulations. At that time no institution worked specifically in the *halâl* sector and the Minister of Religion had the obligation to ensure this, the MUI, therefore, was given the authority to carry out *halâl* certification under a decision of the Minister of Religion. This means, that if one day the minister of religion revokes his decision, then that authority will no longer exist.

Thus, because in the current developments, the Minister of Religion no longer has the authority to appoint a body to determine the *halâl*ness of a product, the state, in this case the DPR together with the President, therefore, formed a special law (UU 33/2014) regulating the authority of the Minister of Religion to provide *halâl* guarantees. In that context, the process of determining whether a product is *halâl* must be shifted

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<sup>44</sup> See the complete preamble of KMA 518/2001

completely to the government, namely the Minister of Religion, and remove the MUI's authority-leaving other authorities only such as the DSN fatwa.

*Secondly*, as a consequence of the point above, the existence of a one-stop service institution that will serve the process of issuing *halâl* certification under the Ministry of Religion is a necessity. Unifying the roof of the *halâl* guarantee institution under the Ministry of Religion (government) can be carried out as what has been done by the Malaysian Government with the Jabatan Progress Islam Malaysia (JAKIM) which is placed under the government and has many affairs, one of which is the process of issuing *halâl* certification.<sup>45</sup> Similar to the above, the government can also form a kind of executive agency in the area of the Ministry of Religion which has a special task in administering *halâl* guarantees.

Moreover, when referring to the Constitutional Court Decision No. 8/PUU-XVII/2019, the obligation to ensure *halâl* products is not carried out by institutions whose position in the country is unclear, but rather by government elements.

*“Sociologically, Law 33/2014 aims to provide legal protection in the form of guaranteeing the Halâlness of products consumed or used by Muslims by the teachings of their religion...Constitutionally, the enactment of Law 33/2014 is a manifestation of the state's responsibility in providing protection for people's rights or guaranteeing a healthy life and protected in worshipping by the teachings of their religion as stipulated in the 1945 Constitution”.*<sup>46</sup>

The state's responsibility in providing public protection for the consumption of *halâl* products has been carried out by establishing the BPJH institution whose position is directly under the Ministry of Religion. However, if further investigation is carried out, its authority is only administrative, namely, is limited to accepting requests from

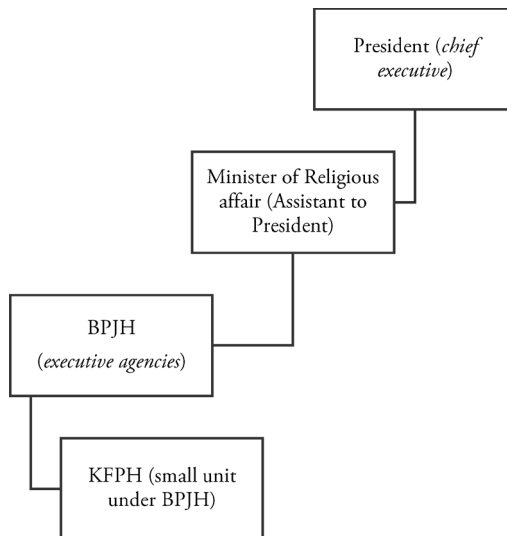
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<sup>45</sup> ‘Profil Sejarah Jakim’, 2022 <<https://www.islam.gov.my/ms/info-korporat/profil-jakim/sejarah>. <https://www.halal.gov.my/v4/>>.

<sup>46</sup> Refer to Decision *a quo*, 54-55.

business actors, appointing LPH, and issuing *halâl* certificates based on MUI fatwas. Such construction is not relevant to the aim of providing a one-stop service. For this reason, expanding BPJH's authority is a necessity.

The expansion of BPJH's authority, by increasing its authority from being limited to an administrative actor to being a party with the authority to determine the *halâlness* of a product has been constructed in Law 6/2023, namely through the birth of KFPH. KFPH, as previously explained, is located under the Minister of Religion. Meanwhile, according to Law 33/2014, BPJH is also located and responsible to the Minister of Religion. This means that two institutions have the same position. Therefore, in the future, to campaign for the idea of integrated services, KFPH should not be located under the Minister of Religion but instead become a small unit part of the BPJH institution. In this way, there will be an uncomplicated arrangement of executive agencies' functions. The construction can be depicted in the chart below:



Criticism will come when the MUI's authority to determine *halâl* products is removed and then shifted to BPJH via KFPH. The negative response, as explained in the initial chapter, is around distrust. This is because the composition of those who joined the committee in

question did not entirely come from ulama, but rather from academics whose competence was not explained. To erode the issue of distrust, the academic element in KFPH must be eliminated. Considering that its function concerns religious matters, the committee should be filled with ulama. Because they are the ones who best understand *halâl* and *harâm* issues in Islam. The most extreme idea is to place clerics who have experience in deciding *halâl* fatwas at the MUI into the KFPH element.<sup>47</sup> Thus, these ulama will work not on behalf of the MUI, but BPJH as part of the executive power. The involvement of ulama in government bodies must be seen not only as a consequence of rejecting the teachings of secularism but also as upholding the supremacy of the constitution.

Such an affirmation is implicitly included in the Constitutional Court Decision Number 67/PUU-XX/2022. In this decision, the Constitutional Court firmly stated that the function of administering *halâl* product guarantees belonged to the Ministry of Religion, and then its implementation was handed over to BPJH as a supporting element.<sup>48</sup> Therefore, there is no question of constitutionality in it. Obeying the Constitutional Court's decision means obeying the supremacy of the Constitution because apart from being the guardian of the Constitution, the nature of the decision is also final and binding.

*Third*, apart from expanding BPJH's authority, another alternative that can be developed in administering *halâl* guarantees is by establishing non-structural government institutions. In this conception, BPJH will not be within the ministry of religion but will be formed separately by law which aims to support the functions of the state and government in carrying out their duties and obligations. This option can involve all stakeholders from government, civil society, and the private sector. For consideration, several countries have implemented this variant. Singapore, for example, introduced the Majlis Ugama Islam Singapura (MUIS). The authority of MUIS, apart from processing *halâl* certification, is also

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<sup>47</sup> Such thinking is not without risks but has the potential to create a tug-of-war between political interests. This question can be explored in other studies

<sup>48</sup> Refer to the Decision *a quo*, 73.

to provide *halâl-harâm* fatwas regarding a product. The management structure in it is called the Council whose chief executive and members are appointed directly by the President.<sup>49</sup> In Australia, even though Islam is not the majority religion, the government pays special attention to product distribution. There is an institution called the Australian *Halâl* Authority. Just like MUIS, the Australian *Halâl* Authority is also given one-stop authority in determining whether consumer goods are *halâl* or *harâm*.

Non-structural government institutions operating in the religious sector are nothing new in Indonesia. Referring to Law Number 23 of 2011 concerning Zakat Management, for example, designing Baznas as a non-structural government institution tasked with utilizing Zakat-from the collection process, and distribution to utilization. In Law 23/2011, the Baznas institution is an independent institution and is responsible to the President through its minister of religion. Baznas members are appointed and dismissed by the President on the recommendation of the minister of religion. Within Baznas some units have their respective duties and authorities, such as collection, distribution, and utilization.

Baznas construction can be applied to provide *halâl* guarantees. There is BPJH which is designed as a non-structural government institution, where its members are appointed and dismissed by the president. To support the function of BPJH, special units can be formed, such as auditors and KFPH as agencies that determine whether goods are *halâl* or *harâm*. If it is deemed necessary, the formation of non-structural institutions is a logical consequence. Moreover, non-structural institutions have the status of open legal policy for forming laws, because their nature is not limited by the constitution, in terms of form, place, and position. As long as the government considers ensuring *halâl* product guarantees to be very important, plus this obligation is borne by the state, its establishment becomes a necessity. With the existence of non-structural institutions, the process of issuing *halâl* certificates will be easier, a one-stop service under the president.

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<sup>49</sup> 'COUNCIL OF MUIS', *Majelis Ugama Singapura*, 2020 <<https://www.muis.gov.sg/About-MUIS/Council-of-Muis>> [accessed 5 March 2023].



Non-structural government institutions operating in the religious sector are nothing new in Indonesia. Referring to Law Number 23 of 2011 concerning Zakat Management (UU 23/2011), for example, the Government has designed Baznas as a non-structural government institution tasked with utilizing zakat—from the collection process, distribution to utilization. In Law 23/2011, the Baznas institution is an independent institution and is responsible to the President through the Minister of Religion. Baznas members are appointed and dismissed by the President on the recommendation of the Minister of Religion. Within Baznas some units have their respective duties and authorities, such as collection, distribution, and utilization.

Baznas construction can be applied in implementing *halâl* guarantees. There is BPJH which is designed as a non-structural government institution, where its members are appointed and dismissed by the president. Furthermore, to support the function of BPJH, special units can be formed, such as auditors and KFPH<sup>50</sup> as agencies that determine whether goods are *halâl* or *harâm*. If it is considered a necessity, then the formation of non-structural institutions is a logical consequence. Moreover, non-structural institutions have the status of open legal policy for forming laws, because their nature is not limited by the Constitution, both in terms of form, place, and position.<sup>51</sup> As long as the government considers guaranteeing *halâl* products to be very important, plus this obligation is borne by the state, then its establishment becomes a necessity. With the existence of this non-structural institution, the process of issuing *halâl* certificates will be easier through a one-stop service under the president.

## Conclusion

Based on the discussion above, it can be concluded that in its capacity as a constitutional democratic country, Indonesia must guarantee *halâl* products for its citizens. After the work copyright law came into

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<sup>50</sup> The composition of the committee must come from scholars who are very familiar with halal and haram issues, not academics.

<sup>51</sup> See Decision of MK No. 86/PUU-X/2012, 93-94.

effect, there was a new institution (KFPH) that also had the authority to determine *halâl* and *harâm*. The implication is that there are four institutions in the process of issuing *halâl* certification, which has the potential to reduce the role of the MUI. In the future, the management of *halâl* certification should be integrated into the Ministry of Religion or by establishing a non-structural government institution that is given special authority in administering *halâl* product guarantees with the consequence that the MUI's authority, specifically in the field of *halâl-harâm* fatwas, will be lost, and the state as one. The only one who has the authority to guarantee *halâl* products.

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