

The Urgency of Halal Product Guaranty
as the Citizen Protection
(Discussion of Maqashid Asy-Syar'i)

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ABSTRACT: The existence of Indonesian State based on the Pancasila values as the state and nation ideology. Pancasila has placed the First Principle of The Belief in one and the only God to give attention on the citizen right to have religion and do their religion based on the religious lesson. The function of state as protector of rights guarantee of its citizen toward food and drink products reveal in the formulation of statute related to halal product guaranty other than the Law no. 8 of 1999 on the Consumer Protection issued previously. The Halal Product Guaranty has been implemented in halal Certificate purposing to give legal certainty and protection for the consumer, especially moslem. This certificated guaranty is arranged in the Law No. 33 of 2014 on the Halal Product Guaranty. The law become necessary in the middle of free trade today. This policy hopefully eliminate food supply with vague guaranty of its halal. This protection is very relevant related to the purpose of implementing Islamic Law, to keep the religion, soul, mind, heredity, and property. This study purpose to examine five things proteted in Islamic Law. Therefore, it clearly reveal that implementation of Halal Product Guaranty needed for the human life continuity.

Keywords; Guaranty, Halal, Protection, Right

1. INTRODUCTION

Indonesia is country of moslem, christian, catholic, hindu, budhish, Kong Hu Chu and religious people. The implementation of religious praying based on each religion lesson also the responsibility of the country. The characteristics of Islamic Law called *rahmatan lil'aalamiin* cover the following parts:

- Universal/syumul-takamul, *rahmatan lil'aalamiin*, thus, Islamic Law also for all the society (plural), no matter the country form, ethnic, race, gender (al-Hujurat: 13) and skin colour and language (ar-Rum: 22).
- Harmony /tawasuth, equality of world and future life, idividual and social, heart and mind.
- Renewal/Dinamic/harokah, Islamic Law always become references in the middle of social deadlock in solving problem. Thus, Islamic Law demanded to be dinamic, but still unchange the main law in the Al-Qur'an and Hadits.

The matter of food become serious attention in Islam, as stated in the al-Quran and Hadits. Al-Qur'an stated to give attention toward foods as revealed in the Surat 'Abasa Ayat 24;

فَلْيَنْظُرِ الْإِنْسَانُ إِلَى طَعَامِهِ

Meaning: "then let man look at his Food."

This statement of Al-Qur'an to eat food with *halalan thayyiba* purpose not only for moslem only, but also to all mankind. It stated in the Surat Al-Baqarah verse 168;

يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا وَلَا تَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ ۚ إِنَّهُ لَكُمْ عَدُوٌّ مُبِينٌ

Meaning: “O ye people! Eat of what is on earth, Lawful and good; and do not follow the footsteps of Satan, for he is to you an avowed enemy.”

The use of word *yaa ayyuhannaasu* show that this verse belong to verse of *Makkiyah*, came down in Makkah. It is the truth of *rahmatan lil'aalamiin*, that Islam truly not only for religious people, but also to goodness of all universe. Mankind is advised to eat halal and good food, and forbidden to follow the satan that make the halal to forbidden and make the forbidden to be halal.

Indonesia, as the country consisted of various ethnics, religions, races and groups of people, need solution in coping with problem related to foods. As well as, this country become part of the international world in solving the food problem with halal guaranty and protected by United Nation.

The United Nation declared the Human Rights in 10 December 1948, three years after the Indonesian Independence in 17 August 1945. The regulation of human right of having religion arranged in the *Article 18 right to freedom of thought and religion*, that:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”

Indonesia as member of te United Nation, of course, has implemented the article, with keeping the Indonesian chararistic that religious and plural. Pancasila, as the *ground norm*, has become the characteristic of Indonesia in forming religious society. Te freedom of religion in the country of Pancasila always in positive conotation meaning that there is no place for *ateisme* or provoke anti-religio in Indonesia.¹ Thus, in doing the religion, the country guaranty fully to any citizen, including te guaranty of halal product for food and drink becoming the primary needs of the society.

In line with development of science and technology, the food material are produced through various new technics and methods of cooking by using the technology advance that they become ready product to be consumed by the society in all the world. Mostly, the products of world food industry and food technology do not apply system of halal certification. Thus, Indonesia in facing regional, international and global free trades that to worry about will be flooded by food and other products containing or contaminated with forbidden element. In the technic of processing, saving, managing, and packaging often used preservative ingredients that having dangerous effect on the health or additional ingredient containing forbidden element forbidden by Islam Religion.

In the International trade system, the matter of certification and marking halal product have got good attention in order to give protection toward moslem consumer in all the world as well as strategy facing te globalization challenge of applying free market system in the frame of ASEAN - AFTA, NAFTA, European Economy Society, and World Trade Organization. The international trading system has known well on halal regulation in CODEX supported by international organization that give effect on WHO, FAO, and WTO. Te producer countries will export their products to the countries with moslem citizen like Indonesia. In this International trade, the “label / halal mark” in their products has become one of necessary intruments to get market acces to strengthen competition power of their domestic product in the iternational market. Positive response toward certification interest and including halal mark on food and other products have been conducted Indonesian republic by issuing several regulations partially, inconsistent, overlapping, and non systematic related to certification and

¹ Muhammad Thahir Azahary, *Negara Hukum*, (Bogor: Kencana Prenada Medcia, 2001), hlm. 93.

halal product labeling. Thus, the regulation has not given legal certainty and guaranty to moslem to know halal food and other products.

2. MATERIAL AND METHOD

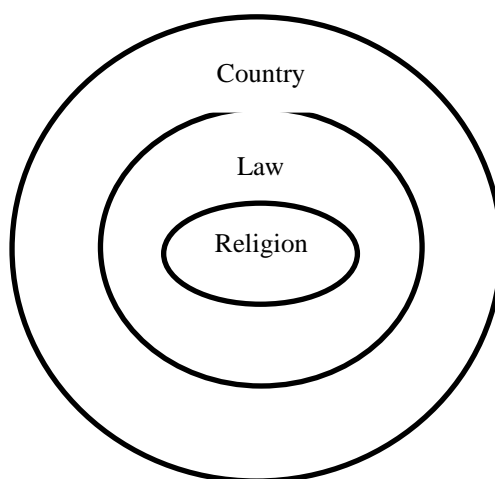
The materials used to analyze and answer the problems in the article cover using *nash* opinions in the Al-Qur'an and Hadits as well as the governmental decision (religion ministry) working with the Indonesian Religious Leader Council.

This article refer to result of normative legal research, using statute approach, namely approach using legislation an regulation; conceptual approach, especially Islamic Law discussions becoming basic of implementing halal product guranty. To discuss and analyze, it use some sources and kinds of data such as library research including primary, secondary and tertiary legal materials.

3. RESULT AND DISCUSSION

The discussion on legitimation of halal product guaranty are taken from Islamic Law values. The reason is the ilsamic law refer to one of national legal material sources other than developing Traditional Law. In this case, it need to reveal the corelation of law and religion as stated in detail by Muhammad Tahir Azhary on the relation of religion, law and country by using Theory of Concentric Circle. The three components—religion, law, and country—if being united will form concentric circle as one unity and conect each other firmly. Religion as the first component placed in the deepest circle. Then, the law placed in the following position. The effect of religion toward law is very big, for religion as the main source of the law other than ratio as the complemener. The country as the third component placed in the last circle. The position showed that in the concentric circle the country covered the two components previously, the religion and the law.²

Diagram 1
Concentric Circle



Source: Secondary Legal Material, Muhammad Tahir Azhary, 2003

² Muhammad Tahir Azhary, hlm. 67-68

The halal of food product become primary need for moslem, because the halal of food and drink made all worship of moslem accepted by Allah SWT. The decision of halal and forbidden in Islamic Law has credibility level of clear legal source, because in legal exploration, it need basic of Al-Qur'an and Al-Hadiths. As stated in the Al-Qur'an verse 59 Surat An-Nisa':

يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

“O ye who believe! Obey Allah, and obey the messenger, and those changed with authority among you. If you differ in anything among yourselves, refer it to Allah and His Messenger, if ye do believe in Allah and the Last Day: That is best, and most suitable for final determination.”

In line with social change, there are many problem needed to be solved and found its legal, such as instrument / technic of halal certification. For in the time of Prophet Muhammad sa, there was no ustant food needing halal certification. Moreover, in the practice of Prophet best friend, it happened dialouge between the Rasulullah saw. And friend of Muadz bin Jabal ra. The Rasul has pointed him as the judge (*Qadli*) in Yaman, as follow:

“The story of Mu'adz, that the Rasulullah saw. Has ordered Mu'adz bin Jabal to be qadli in Yaman,

- Rasul asked him on his behavior (Mu'adz) when there were cases gived to him?
- Mu'adz answered: I will solve it based on the book of Allah (verses of Al-Qur'an).
- Rasul asks again: when yo did not found it in the Al-Qur'an,
- Mu'adz answered: I will resolve using Sunnah Rasul
- The Rasul asked again: If you cannot find in the Sunnah?
- Mu'adz answered: I will do *ijtihad*

Then, Rasulullah pat his chest and said thanks to Allah who give *taufiq* to Rasulullah with His bless.” H.R. Abu Dawud)

When the law norms are formed using decided ways, as in the theory of *W. Zevenbergen*, based on positivism, the law will apply if it runs through process of legal formulation correctly, that formed by authorized institution. In the Islamic Law, it is known as *Ijtihad*, where a *Mujtabid* in exploring law (*istinbath*) must fullfill certain procedures and requirements. In this case, it belongs to The Board of Halal Product Guarantee (BPJPH).

Regulation Al-Qur'an and Hadits on Food and Drink

Principlely, all food and drink are halal, except anything that forbidden by Allah and His Prophet. The Prophet saw said: Truely, the halal and forbidden are clear, between the two there is something *syubhat* (vague). Mostly, among the people did not understand that. Thus, anyone who keeps himself from something syubhat, he has kept his religion and dignity. And, anyone who fall himself to it (do something) toward syubhat, meaning he has falled hiself (do something) forbidden. (HR. Bukhari)

Here are details of the above explanation:³

- Food ingredients being forbidden by Allah cover carcass, blood, pig and all animals that slaughtered without the name of Allah (QS. Al Baqarah: 173).
- The drink being forbidden by Allah are all kinds of wine, alchoholic drink (QS. Al Baqoroh: 219).
- Halal Animals will change their status becoming forbidden if they die because of choke, stumble, fallen being headlong, caught by wild animal and slaughtered for idol (QS. Al Maidah:3).

³ Direktorat Jenderal Bimbingan Masyarakat Islam, *Modul Pelatihan Auditor Internal Halal*, (Jakarta: Depag RI, 2003), hlm.138-141

- Pig and dog (blood, meat, fur, saliva, bone, and all things come out of the two).
- Disgusting animal: flea, fly, caterpillar, frog, monitor lizard, and any kind of them.
- Fanged animals including horn; such as tiger, elephant and their kinds. (Hadits Nabi saw: *Kullu dzī naabin minas_sibaa'i haroomun*, all wild animals that have fangs are forbidden).
- Animals with claws that eat by clawed or grabbed such as owl, eagle. (Hadits Nabi saw *NabaaNabiy shallalloobu 'alaibi wasallam 'an kulli dzī mikblabin minath-thoir*; the Prophet Muhammad saw forbid eating any birds with claws).
- Animals that can be killed, as the Hadits of the Prophet saw.: From Aisyah ra., that Rasulullah saw said: 5 kinds animals that dangerous, should be killed whether in halal or forbidden land: sneak, crow, mouse, harmful dog, and eagle. (HR. Muslim)
- Animals that forbidden to kill. The Hadits of Prophet saw: From Ibnu Abbas ra., the Prophet saw forbid to kill 4 animals: ants, bees, hud birds and woodpeckers. (HR. Muslim)
- Any animals that has poison and danger if being eaten.
- Animals that live in two places: frog, crab, turtle and crocodile.
- Belong to forbidden are all kind of carcass of halal animals, slaughtered without procedure of Islamic lesson, except fish and grasshopper.
- All blood of halal animals, except liver and spleen of halal animals.

The Hadits of Prophet saw, *Ibnu Abbas said that Sa'ad bin Abi Waqash said to the Prophet Muhammad SAW, " Ya Rasulullah, pray for me that I can be the one thta all my praying are blessed by Allah". What the answer of Rasulullah, "O! Sa'ad watch your foods (eat halal food) then you will be the one who always be granted all your praying. And for my soul that belong to Him, if there is someone puts forbidden food to his stomatch, his kindness will be rejected for 40 days and someone who meat grow from result of cheating and riba, hell is the proper place for him."*(HR. At-Thabrani).

Abu Hurairah told a story, *"In the past, we in front of the Rasulullah saw when he gave date palm for charity, while Hasan bin 'Ali was in his lap. After finished, the prophet saw lifted him on his shoulder, then he drooling on the Prophet shoulde, the Prophet lifted his head and found a date palm from his mouth, then the prophet put his hand to take the date palm and said, "Do you know that charity property is not halal for Muhammad family?"*(HR Ahmad)

In this Hadits, it explained that how the Rasulullah saw protected his family from eating foorbidden food although in that time Hasan ra is very young. The Rasulullah was very strict on religious law without looking at family or age.

Theory of Maqashid Asy-Syar'i

This theory is to find out the purpose of applying the law in Islam. Maqashid al-Syar'i firstly was revealed by Imam Turmudzi (dead in 296 H/908 M) in the book *ash-shalah wa maqashiduha*. This book explained the spiritual benefit and secret behind any movement of shalat. It showed submission as the maqashid/purpose behind glorification of Allah SWT through any movements of shalat. To get awareness as purpose behind glorying Allah SWT. To focus shalat as the purpose to face Ka'bah as kiblat. Then, theory of maqashid stated by Abu Zaid al-Balkhi in the book *al-ibanah ilal ad-diyana* (explaining the purposes behind praying practice) and the book of *Mashalih al-abdan wal anfus* (physical and spirit benefits).⁴

The theory keep growing with various completion and wholly by al-Syathiby in 790 H/1400 M. With his outstanding work of the book *al-muwafaqat, maqaashid asy-syar'i* became fix

⁴ Jasser Audah, hlm. 46

concept in Science of Ushul Fiqh. Before the theory of *maqashid asy-syar'i*, there were two theories of understanding method on nash; theory of general lafadz (*'umuum al-lafdz*) and theory of specification of causes (*kbushush al-sabab*).⁵ These theories are necessary used in legal country, considering the theories close related to the values of humanism, genetic, religion, social, and economy. The purpose of applying the law must concern the rprimary purpose (*dlaruriyyat*), secondary (*hajjiyyat*) and tertiary (*tahsiniyyat*) by keeping the religion (*hifdz al-diin*), keeping the soul (*hifdz al-nafs*), keeping the mind (*hifdz al-'aql*), keeping the heredity (*hifdz al-nasl*) and keeping the property (*hifdz al-maal*).

The theory of *Maqashid Al-Syar'i* pioneered by asy-Syathibi refer to biggest contribution for the world of *ushul fiqh* or phylosophy of Islamic Law. This theory tries to find out the purpose of applying Islamic Law (*spirit of Islamic Law*). The general purpose is to realize the general benefit, give benefit and avoid modesty for human being. The theory succeed to show the purposes of applying Islamic law in detail other than the general ones.

The main discussion in thie theory cover the problem of benefit and *illat* decided as a law.⁶ Thus, it will find how the principle and first purpose of applying the law that is human benefits. The benefits will reveal if the five main elements (religion, soul, mind, heredity and property) keep well. To keep the five elements, al-Syathibi divided into three:⁷

1. *Maqashid al-Dlaruriyat* (primary purpose), meaning to take care five main elements in human life. The primary purpose behind halal food for human is in order to keep his religion, and dicipline become purpose of *hifdhuddiin*. Someone worship will be accepted, if his blood stream and meat in his body fill with halal and good food. Thus, it means all the *hifdbunnafs* (body), *hifdhul'aql* (mind) are kept from drunk and forgetfull, *hifdbunnasl* (keep the heredity), because the continuity of children and grandchildren cannot be separated from halal food and drink. *Hifdhulmaal* (keep property) will not be contaminated with forbidden thing).
2. *Maqashid al-Hajjiyat* (secondary purpose), means to eliminate difficulty of five main elements in human life. The five elements (religion, body, mind, heredity and property) are protected, the citizen will be easily to keep the five elements, it need halal legalization/certification toward food needs.
3. *Maqashid al-Tahsiniyat* (tertiery purpose) means that people can do their best to complete taking care the five main elements in human life.

When the primary purpose or *dlaruriyat* cannot fulfill, it can destroy human life in this world and future life as a whole. Ignorance of aspect *hajjiyat* will not destroy the five elements, but make it difficult for *mukallaf* to perform them. When the aspect of *tahsiniyat* ignoranced, it make taking care the five elements imperfect.⁸

The Prophet saw said: that worship to Allah SWT is not to hurt the body, because the body has right that should be fulfill (HR. Al-Bukhari). This Hadits related to fasting *wishal* that continuing fasting to be close to Allah. Implicitly, this hadits suggest to human being to save his body and keep healthy.

The State Authority to protect its citizen

The state in guaranting halal product based on general social justice, as the principle of fihiyyah: *tasharruful-imaam 'alarra'iyyah manuuthun bil-mashlahah* (the governmental policy to its people based on benefit). That is protect human being by keeping save, guaranting

⁵Asafari Jaya Bakri, hlm. v

⁶Ahmad al-Raisuni, *Nadzariyat al-Maqashid 'Inda al-Syathibi*, (Dar al-Yaman, Rabath, 1991), hlm. 67.

⁷ Asafari, hlm. 71

⁸ Asy-Syathibi dalam Asafari, hlm. 72

their worship with eliminating any dangers (*adl-dlararu yuz'ahu*). The state responsibility to its people through upholding the law also stated by Salmond that the law purpose to integrate and coordinate various interest in the society because in a interest trafic, the protection toward certain interest may be conducted by limiting other interest.⁹

The legal certainty refer to manage the human right and interest, that the law has highest authority to decide what human interest needed to arrange and protect.¹⁰ According to Satjipto Rahardjo, the legal protection means giving protection toward human right being suffered by other and the protection is given to society that they can use their rights given by the law.¹¹ Then, Phillipus M. Hadjon explained that legal protectiob for the people belong to preventive and represive governmental actions.¹²

4. CONCLUSION

The Development of Islamic Law related to Halal Product Guaranty is getting great to get social attention, it happens together with implementation of word free market. The condition push the people especially moslem to ask for legal protection on food products being consumed. Islam gives close attention on food matters, because this main needs keep the body strong that he can do his worship with high spirit, for in the healthy body, there is strong spirit. For moslem, all human activities have worship values. Moreover, the worship of shalat and others are close related to the food being consumed. When we consume halal food, the worship quality (*hifdhuddin*) will be accepted by Allah, meaning all food we consumed well through our body will give physical strength (*hifdhunnafs*). As well as the quality of heredity (*hifdhunnasl*) of the moslem who keep his food, their heredity will be righteous generation, because their parents keep their livelihood halal. The clear and halal food will strengthen someone mind and avoid from lost his mind (*hifdhul'aql*). The property collected must be clear from forbidden element (*hifdhulmaal*). Clearly, it show that the apostolic of Prophet Muhammad saw as *rahmatan lil'aalamiin*, give all love to the universe. kasih sayang bagi seluruh alam. Thus, the principle of applying Syari'ah is to the benefit and continuity of human life and the universe.

⁹ Satjipto Rahardjo, Ilmu Hukum, PT.Citra Aditya Bakti, Bandung, 2000, hlm. 53

¹⁰ Ibid. hlm. 69

¹¹ Ibid. hlm. 54

¹² Phillipus M. Hadjon, Perlindungan Hukum bagi Rakyat Indonesia, PT. Bina Ilmu, Surabaya, 1987, hlm. 2