

TECHNICAL AND REGULATORY ASPECTS OF ALCOHOL USE IN HALAL CERTIFICATION FOR COSMETICS PRODUCTS

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ABSTRACT

The demand for halal cosmetics is increasing worldwide. In 2004, Indonesia issued Law No.33 Year 2014 regarding Halal Products Assurance as amended by Law No.11 Yar 2020 regarding Work Creation. However, certification for halal cosmetics will only be implemented starting on 17 October 2021. This research aims to prove that the certificate of halal cosmetics must consider technological and regulatory aspects. This research is normative, descriptive-analytical research with a qualitative approach. Data were obtained by literature search with the main keywords "halal" and "cosmetics" supported by "law" and "regulations" to complete the quest. Collected data were reviewed using content analysis to reduce them to the most relevant data. The reduced relevant data were analyzed to answer the aim of this research. The research found that halal cosmetics certification does not necessarily mean identic with halal food certifications. One of the main issues is alcohol use in cosmetics. Technology plays an essential role in determining the content and alcohol in cosmetics. By issuing the Law on Halal Products Assurance, the Republic of Indonesia shall be ready with the right and accurate technology, especially concerning alcohol use in cosmetics. It also raised the concern that further regulations on halal cosmetics certification shall be issued.

Keywords: Halal Cosmetics, Halal Regulations, Halal Certification, Halal Technology

INTRODUCTION

Indonesia is one of the four countries; with more than 250 million populations with more than 200 million people is Muslim population (Indonesia-Investor <https://www.indonesia-investments.com/culture/religion/islam/item248>.) As for cosmetics demand, Indonesia's National Agency of Drug and Food Control (BPOM RI) mentioned that as of September 2017, there was an increase of 11.57% of registered cosmetic products sold in Indonesia. In 2017, the value of Indonesia's cosmetics industry reached 46.4 trillion IDR. According to the Italian Trade Agency (2018), imported products are still dominant in the Indonesian cosmetics industry. Cosmetics from European countries such as French, Italy, Germany, and the United States mostly dominated the cosmetics import market. The facts showed that demand in the cosmetics market in Indonesia is very still high.

According to a survey, more than half of Indonesian women prefer to use halal cosmetics. (eMAG, 2018). The market share of Wardah, the first halal cosmetic manufacturer in Indonesia, increased to become the second largest after Martha Tilaar in 2015. It was forecasted that Wardah would consistently increase its sales from 20%-50% annually, higher than other manufacturers for the next years. It proved that in Indonesia, as a country with a majority of Muslims, halal cosmetics' needs are increasing.

Besides local needs, Statista (2019) showed that the market value of halal cosmetics worldwide in 2015 has reached approximately \$20,247 million and expected to reach \$54,164 million in 2022. In another report conducted by Market Research Future (2020, <https://www.marketresearchfuture.com/reports/halal-cosmetics-market-6665>), the global compound annual growth rate halal cosmetics market will be 13.40% over the forecast period, which ends in 2023. It was strong evidence that halal cosmetics have been widely recognized and used among

Muslim consumers. All of this shall trigger the increase of halal cosmetics production in Indonesia. Indonesian Ministry of National Development Planning (2019) has issued Indonesia Islamic Economic Masterplan 2019-2024, including a strategic plan for halal cosmetics development.

Given the increasing demand for cosmetics products, 2014, the Republic of Indonesia has issued Law No.33 Year 2014 regarding Halal Products Assurance ("Halal Law"). Although the Halal Law was promulgated in 2014, it only becomes effective upon the issuance of Government Regulation No.31 Year 2019 regarding the Implementation Regulation of Law No.33 Year 2014 regarding Halal Products Assurance ("Halal GR"). On 15 October 2019, the Minister of Religion issued the Minister of Religion Regulation No.26 Year 2019 regarding The Implementation of Halal Products Assurance (MoR Halal Regulation).

This research aims to elaborate and prove that halal certification of cosmetics is unique and, therefore, the technical and regulatory perspective must be considered.

LITERATURE REVIEW

Cosmetics Definition

Federal Food Drugs and Cosmetic Act defines cosmetics as:

(1) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles; except that such term shall not include soap." (FDA, 2004).

In Malaysia, under MS 2200-1 (2008): Islamic Consumer Goods - Part 1: Cosmetic And Personal Care - General Guidelines, "Cosmetic and personal care products are any substance or preparation intended to be placed in contact with various external parts of the human body (epidermis, hair system, nails, lips, and external genital organs) or with teeth and mucous membranes of the oral cavity. The functions of these items are exclusively or mainly to cleaning them, perfuming them, changing their appearance and/or correcting body odours and/or protecting them or keeping them in good condition." Guidelines On The Control Of Cosmetic Products issued by Health Science Authority Singapore (2019) stated that "a 'cosmetic product' is defined as any substance or preparation that is intended to be placed in contact with the various external parts of the human body or with the teeth or the mucous membranes of the oral cavity with a view exclusively or mainly to: cleaning, perfuming, changing appearance, correcting body odours, protecting, keeping in good condition."

Cosmetics shall not claim that it can treat or prevent a disease or otherwise affect the body's structure or function. Any product that can make this claim is a drug and therefore need FDA approval. However, cosmetics need to follow federal labeling requirements. Certain cosmetics (such as shampoos and detergent bubble baths) must also bear specific warnings on their label (Coursehero, 2019).

From the above-given definition, it can be said that cosmetics are different from food that was consumed by a human being that enters into the human body circulation and experienced the process of absorption, distribution, metabolism, and excretion. Cosmetics are something that never enters the human body. Besides, cosmetics are also different from pharmaceutical products that contained active ingredients intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease. Cosmetics are for use in the human body's external parts, including teeth or human body mucous membranes. Cosmetics do not contain any active ingredient that can treat or prevent any disease. Cosmetics can only be used to clean, clean, perfume, change their appearance, correct body odors, and/or protect or keep them in good condition only.

Halal Certification

Hashim & Hashim (2013), quoting Din al-Hafiz (2008), stated that according to Qur'an Surah 5 Al-Maaidah verses 87-88, halal is "a Qur'anic term meaning 'permitted, allowed or lawful.'" In the same verses, the term halal and thoyyib ('good') are also included. Jallad (2008), as quoted by Jalil (2012), stated that linguistically, the word halal is derived from the verb "Halla" which means "to be or become lawful, legal, licit, legitimate, permissible, permitted, allowable, allowed, admissible, un-prohibited, unforbidden." Traditionally the concept of halal was used to the food. The concept is now used for all goods and services, including cosmetics, clothing, pharmaceuticals, financial services, and even tour packages to obtain halal status.

In Article 2 of FAO General Guidelines for Use of the Term Halal, Halal Food means food permitted under the Islamic Law and should fulfill the following conditions (Halal Focus, 2019):

"Does not consist of or contain anything which is considered to be unlawful according to Islamic Law.

Has not been prepared, processed, transported, or stored using any appliance or facility that was not free from anything unlawful according to Islamic Law; and

Has not in the course of preparation, processing, transportation, or storage been in direct contact with any food that fails to satisfy points 1 and 2.

Halal food can be prepared, processed, or stored in different sections or lines within the same premises where non-halal foods are produced, provided that necessary measures are taken to prevent any contact between halal and non-halal foods.

Halal food can be prepared, processed, transported, or stored using facilities which have been previously used for non-halal foods provided that proper cleaning procedures, according to Islamic requirements, have been observed."

The guidelines above was a general concept given for food.

In Malaysia, the Department of Islamic Development Malaysia (JAKIM) is the body that issues halal certificates. JAKIM uses MS 1500: 2004 as the basis for issuing halal certificates for products and services. The definition of halal in Malaysia is regulated in Trade Descriptions (Definition of Halal) Order 2011 and Trade Descriptions (Definition of Halal) (Amendment) Order 2012. However, when it came to cosmetics, Malaysia has its guidance for the process of certification. It is known as MS 2634: 2019 – Halal Cosmetics – General Requirements (1st Revision).

Among several issues that came into attention is applying alcohol in cosmetics (European Union, 2014). The difference in cosmetics' application compared to food and drugs made halal cosmetics shall have different concepts in its validations for certification purposes (Sugibayashi et al., 2019; Pandagel et al., n.d.). There were many debates on the use of alcohol in cosmetics, especially the possibility to enter the skin surface to make it not-halal anymore (Annabi and Ibidapo-Obe, 2017).

METHODOLOGY

This research is normative legal research. This research's data are secondary, data available to the public, including primary legal sources, secondary legal sources, and tertiary legal sources. Primary legal sources are the prevailing laws and legislations. Secondary legal sources consisted of all writings and thought from scholars in books, articles in journals, and other media sources, including unpublished research and papers. Tertiary legal sources shall be legal references found in a dictionary, encyclopedia, and other means.

Data were collected using literature research with "halal" and "cosmetics" as the primary keywords accompanied by "law" and "regulation." The collected data were then screened using content analysis, leaving only the most relevant data that will be used to answer this research's aim. The remaining pertinent data were then analyzed qualitatively by using normative analysis with a descriptive-analytical approach. A normative study was used because this research

aimed to find out the norm of halal cosmetics. A descriptive-analytical process was conducted to explain and prove that different technology must be used to provide halal cosmetics certification.

FINDINGS & DISCUSSIONS

. Regulatory Aspect of Halal Certification in Indonesia

The research found that Indonesia's cosmetics regulations were regulated by the Ministry of Health and Agency of Drug and Food Control (Badan Pengawas Obat dan Makanan), abbreviated as BPOM. Such rules are, among all:

Ministry of Health Regulation No.1175/Menkes/PER/VIII/2010 Year 2010 regarding Cosmetics Production License.

Ministry of Health Regulation No.1176/Menkes/PER/VIII/2010 Year 2010 regarding Cosmetics Notifications.

BPOM Regulation No.25 Year 2019 regarding Guidance for Good Manufacturing Practices for Cosmetics.

BPOM Regulation No.23 Year 2019 regarding Technical Conditions for Cosmetics Ingredients.

BPOM Regulation No.26 Year 2019 regarding Mechanism for Monitoring Cosmetics Side Effects.

BPOM Regulation No.12 Year 2019 regarding Cosmetics Contaminants.

The regulations define cosmetics as:

"ingredient or preparation intended to be used on the outer human body (epidermis, hair, nail, lips and outer genital organ) or teeth and mucous membrane in the mouth specifically to clean, perfume, alter the appearance and or improve body odor or protect or maintain the body in good condition."

From the given definition, it can be concluded that the cosmetics and the use of cosmetics were never intended to penetrate the human body to reach human body tissue and blood circulations. It means that the definition of cosmetics in Indonesia complies with the meaning given in other jurisdictions.

Certification on Halal Products in Indonesia is regulated in Halal Law. Halal Law is implemented by Halal Government Regulation. Following Halal Government Regulation's issuance on 15 October 2019, the Minister of Religion issued the Minister of Religion Regulation No.26 Year 2019 regarding the Implementation of Halal Products Assurance (MoR Halal Regulation). Besides the three regulations, there are:

Compilation of Halal Fatwa from the Indonesian Council of Ulama (Majelis Ulama Indonesia) (MUI, 2010), and General Guidance of Halal Assurance System issued by the Assessment Institute for Foods, Drugs, and Cosmetics of Indonesian Council of Ulama (Lembaga Pengkajian Pangan, Obat-Obatan, dan Kosmetika MUI abbreviated as LPPOM MUI (2008). At least 44 foreign Halal Certification Bodies are listed by LPPOM MUI (LPPOM MUI, n.d.). It showed that there were so many Halal Certification Bodies all over the world. Each body may have its regulations and ways to determine and certify that certain products are halal.

Based on Halal Law, Halal Product is a Product that has been declared halal (lawful) according to Islamic law (Sharia). Halal Product Process, abbreviated as PPH, is a series of activities to ensure the Product's halal-ness, including material procurement, process, storage, package, distribution, and Product presentation. Products themselves are defined as goods and/or services related to food, beverage, drug, cosmetic, chemical Product, biological Product, genetically engineered Product, and consumer goods that are worn, used, or utilized by the public. Halal Product Assurance (JPH) is the legal certainty of a product's halal-ness proven with a Halal Certificate. The same definitions given above can also be found in Halal Government Regulation. Based on the Halal Law and Halal Government Regulation, Halal Certification can only be done by Product Halal Assurance Organizing Body (Badan

Penyelenggara Jaminan Produk Halal abbreviated as BPJPH). As stated by Halal Law, Halal Government Regulation also required that all Products (as defined above) shall be certified halal, except all other products which originate from haram (forbidden) material. Furthermore, there is no specific definition of Halal in the Halal Law and Halal Government Regulation.

As of the date of the implementation of Halal Law in Indonesia, Halal Certification must be made by BPJPH. BPJPH itself is an organization under the Ministry of Religious. BPJPH has been established as part of the Ministry of Religious' organization based on the Regulation of Ministry of Religious No.42 Year 2016 regarding the Work Organization of the Ministry of Religious (MoR42/16). BPJPH can be found in article 815 until article 873, Chapter XIII of MoR42/16. Prof. Ir. Sukoso, MSc., Ph.D. was inaugurated as the Head of BPJPH on 2 August 2017 based on the Decree of President No.94/TPA Year 2017. BPJPH consists of one Secretariat and three centers. Those centers are the Registration and Halal Certification Center, Development and Control of Halal Products Assurance Center, and Cooperation and Halal Standardization Center.

Article 816 MoR42/16 regulates five main functions of BPJPH. They coordinate: the drafting of technical policy, planning, and programming implementation of halal products assurance, to organize the performance of the halal product assurance; the monitoring, evaluating, and reporting the implementation of halal products assurance; supervising the implementation of halal products assurance, and organizing the administration of BPJPH.

Based on Halal Government Regulation, to implement the Halal Products Assurance and certification process, BPJPH shall cooperate and coordinate with related Ministries, Halal Examination Agency (Lembaga Pemeriksa Halal abbreviated as LPH), and MUI. LPH is an agency that will examine the halal-ness of a Product. The cooperation requires that many regulations are expected to be issued by BPJPH and various GOI Ministries to address the implementation of the 2014 Halal Product Assurance Law, including cosmetics and toiletries. Many of the details related to specific products, packaging, labeling, and halal certification requirements are expected to be issued in the form of joint regulations between BPJPH and the relevant Ministry.

Before that, BPJPH shall first formulate and determine the policy of JPH; determine the norms, standards, procedures, and criteria of JPH. After that, BPJPH can issue and revoke the Halal Certificate and Halal Label on Product and perform the Halal Certificate registration on foreign Product. Besides, BPJPH shall also socialize, educate, and publicize Halal Product; conduct accreditation of LPH; Halal certificate Auditor; supervise JPH; develop Halal Auditor, and collaborate with domestic and foreign institutions in organizing JPH.

Some of the requirements mentioned above were further regulated in MoR Halal Regulation. Concerning halal cosmetics, Article 33 paragraph (1) point d, it was stated that halal cosmetics would be implemented starting on 17 October 2021. It means there is still more than one year to go. Article 232 point e. as transitional provision requires that the Assessment Institute for Foods, Drugs, and Cosmetics of Indonesian Council of Ulama (Lembaga Pengkajian Pangan, Obat-Obatan, dan Kosmetika MUI), dan current Halal Examination Agency were legally acknowledged. However, they should adjust following the MoR Halal Regulation at the latest two years after the MoR Halal Regulation promulgation. In addition to the on-line application, Article 233 MoR Halal Regulation expressly stated that the Management information system for halal products assurance called "SIHALAL" must be implemented as the latest two years after publication of the MoR Halal Regulation.

Technology Aspect in the Use of Alcohol in Cosmetics' Halal Certification

Halal certification is a process started from choosing the materials and ingredients, transporting the materials and components, assuring the quality, production processing, using of technology in the manufacturing, warehousing, keeping, packaging, and delivering of halal products, including food, pharmaceutical, and cosmetics (Elasrag, 2016; Halim et al., 2014; Zaidun & Hashim, 2018; Aoun & Tournois, 2015; Hashim et al., 2019). One fundamental

concern that differentiates cosmetics from food and drugs (pharmaceutical products) was the use of alcohol (Mohezar et al., 2016; Sugibayashi et al., 2019), which were prohibited. Meanwhile, in cosmetics, the use of alcohol under certain conditions is still tolerable. Several matters must be considered concerning the use of alcohol in cosmetics preparation. They are:

Ingredients Issues

Although alcohol was not "consumed" in cosmetics, however, as cosmetics used in cosmetics, which are directly attached to human skin, alcohol may be absorbed, evaporated, and inhaled into human blood circulation. The use of the different ingredients will result in different ways on how the alcohol will interact with the skin. Technology may create new elements that may reduce the harm to alcohol use in cosmetics, given the halal-ness.

Storage and Warehousing Issues

The non-use of alcohol in ingredients does not mean that there would be no alcohol. Improper storage and warehousing of specific components, mostly when related to natural products, will cause alcohol production to a certain level that may not be accepted for further production and application for humans. New technology may assist the stability in storage and warehousing.

Production Issues

The use of certain materials and equipment in mixing, heating, and other processes during production may produce alcohol, which may not be accepted in shariah law. It will need careful consideration of manufacturing facilities. Halal certification will need to consider the utilization of manufacturing facilities and technology that may reduce or event negate alcohol production during cosmetics production.

Packaging Issues

Some packaging materials may chemically react with alcohol or other ingredients that will produce in-tolerance alcohol. Besides, the reaction can also cause leaks in the packaging. It will contaminate and react with the end products that can raise the production of alcohol. Therefore, the packaging used to keep cosmetics shall be inert and tight enough to avoid air reaction. Technology may be used to invent inert packaging that will not react with cosmetics products.

Transportation Issues

Issues in transportation are much more the same as storage and warehousing issues. The difference is that storage and warehousing are related to un-moved products, while transport is concerned with moving products. The uneven road may cause shock, changes in temperature and humidity during transportation. Stability and tightness of storage during transportation become essential issues. Technology is expected to overcome the problems.

The above issues showed that specific technology might be required to inspect all aspects before a halal certificate for cosmetics is issued. Such technology must be able to be formulated in regulatory wording.

CONCLUSION & RECOMMENDATIONS

From the above discussion, it can be seen that many implementation regulations are still needed. BPJPH shall issue rules to support its functions. BPJPH shall cooperate and

coordinate with several related and relevant Ministries to issue joint rules for technical issues. BPJPH shall also cooperate with LPH and MUI. Besides, there should be sufficient technology to cope with the halal process requirements formulated in the regulations. A further bilateral agreement, multilateral agreement, or a convention that would harmonize the process of halal cosmetics certifications, regional or internationally, may also be required. This research recommends that BPJPH consider religious aspects of halal cosmetics' certification and regulatory and technical aspects.

ACKNOWLEDGMENTS

Gunawan Widjaja Learning Centre supported this research.

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