Update on the Implementing Regulations for Indonesia’s Halal Product Assurance (HPA) Law

Dear Members,

With the statutory implementation deadlines rapidly approaching, the Government of Indonesia is preparing to release a series of regulations to direct the implementation of Law of the Republic of Indonesia Number 33 Year 2014 Halal Product Assurance (HPA) Law. The process, however, has faced numerous challenges and may see further delays or changes. At the same time, the regulations will present new challenges for agriculture, food processing, consumer goods, and pharmaceutical companies. Below is a summary of the current situation, informed by meetings and other advocacy efforts supported by the Council.

According to the Ministry of Religious Affairs (MORA), the law is the culmination of the House of Representative’s (DPR) and the government of Indonesia’s efforts to provide a guarantee of Halal foods for the Muslims of Indonesia. Deliberation took two parliamentary terms from 2004-2009 and 2010-2014 and was enacted on 17 October 2014. Implementing regulations are now under development and the Halal Product Assurance Organizing Agency (BPJPH), the body responsible for halal product assurance, has now been established. MORA has been leading the overall effort.

Updates

On Thursday, August 3, 2017, US-ASEAN Business Council (US-ABC) held a meeting with Prof. Sukoso, the newly appointed Head of BPJPH, during the Council’s 2017 Indonesia Business Mission. The Council then had several follow-up discussions with BPJPH to learn more about their plans. The following points are the key take-aways by subject:

Current Timeline
- As mentioned in the HPA law, the halal certification obligation for products which enter, circulate, or trade in the territory of Indonesia will come into effect five years after the passage of the law, which is October 2019 (article 67) and the type of products which will require halal certification will be regulated in stages. BPJPH conveyed that the stages are as follows:
  - Year 1-3 (October 2019 – 2022): the focus of the mandatory halal certification will be on food and beverage products.
  - Year 1-5 (October 2019 – 2024): in parallel with food and beverages products, there will be a separate process for the mandatory halal certification of drugs, cosmetics, chemical products, biological products, genetically engineered products, and used or worn products. This category covers clothing and accessories, household health supplies, household appliances, food and beverage packaging, stationery and office supplies, and equipment used for Moslems’ worship. The products which will need to be certified under the products used or worn category, are the ones which will touch the skin or other parts of the body, such as the head/ hair, lips, hands, feet for example. The medical devices, such as heart valves, surgical sutures, hearing aids, dentures, etc., which contain the non-halal materials derived from animals, should also undergo the halal product assurance (JPH).

Halal Product Assurance Organizing Agency (BPJPH)
- BPJPH’s vision and mission is to increase consumer awareness of halal products. The agency wants to give consumers a guarantee of whether products are Halal. For products that are 100 percent halal, they will be labelled halal. If they are not halal, then BPJPH will want to make sure that people know it by having non-halal label. It is
impossible to certify all products to be halal so the ones that are clearly non-halal (such as pork) will also be labelled non-halal.

- The BPJPH is now preparing the mechanism for halal certification. The certification initiative should come from the business operators and it was expected that there should be internal Halal Supervisors from the business operators that can provide BPJPH with the documents and information needed. The Halal Auditors of the external body Halal Examination Agencies / Lembaga Pemeriksa Halal (LPHs) will then verify this information. BPJPH will review the documents and information provided by LPHs and will give it to MUI for getting the halal written fatwa (edict). Based on the MUI fatwa, BPJPH will issue the halal certification.
- There are 17 regulations that BPJPH is currently drafting to implement the Halal law in the forms of Government Regulations (PP), Religious Affairs Ministerial Regulations (PMA), and Religious Affairs Ministerial Decrees (KMA). There will be regulations on tariff and registration, on halal certification mechanism, on the halal auditor, etc.
  - There will be KMA on what is called the BPJPH Positive List. The list will consist of non-halal materials which are based on MUI edicts. This list will be strengthened by a PMA.
- There will be socialization of the regulations as the BPJPH thought that it would be very important for the business operators to know the process and mechanism of halal product assurance (JPH).
- Currently, one of the government regulations, the implementing regulation of HPA Law is being reviewed by the Law and Human Rights Ministry. BPJPH expects that all the regulations should be finished by August 2017. They plan to launch them on October 17, 2017. The certification process then will start at BPJPH office and will go on until 2019. The product will get certified halal (mandatory) if it is halal product, or the non-halal certification, translated into non-halal label, if the product is non-halal.
- In addition to issuing and revoking of the halal certificates for both local and foreign products, some other BPJPH’s responsibilities are to provide the accreditation of Halal Examination Agency (LPH), the registration of Halal Auditors (AH), and the cooperation with both local and foreign halal institutions.

Cooperation with other agencies
- BPJPH will work primarily with six ministries: industry, trade, health, agriculture, cooperatives and small and medium enterprises, and foreign affairs. They will also work with BPOM, BSN for standardization, and KAN for accreditation. They will work with other related agencies if it is needed.
  - The Ministry of Industry is to provide guidance, supervision, and regulation for the raw materials, processed materials, added materials, and auxiliary materials.
  - The Ministry of Trade is to supervise the halal products on the market.
- Some forms of cooperation with the Ministry of Health are on the stipulation of the ways of production and distribution of drugs, vaccines, traditional medicine, cosmetics, medical devices, household health supplies, and on the supervision of halal health appliances and household healthcare provision.
  - The Ministry of Health can recommend the revocation of halal certificates and halal label on health equipment and household health supplies.
  - BPOM will supervise and can recommend the revocation on halal labels on the drugs, traditional medicines, cosmetics, health supplement and processed foods.
- the Ministry of Foreign Affairs will facilitate data collection from overseas halal institutions and the cooperation with those agencies.
International Cooperation

- International cooperation can be in the forms of JPH (halal product assurance) development, conformity assessment, or the recognition of halal certificates, which will be further translated into the mutual recognition and mutual acceptance of conformity assessment results.
- International cooperation in the form of mutual recognition of halal certificates will be conducted with the overseas halal institutions that have formally cooperated with BPJPH. The overseas halal bodies with which the BPJPH will cooperate must be formed or must be acknowledged by their governments.
- For imported halal products whose halal certificates have been issued by overseas halal institutions that have collaboration with BPJPH, the business operators importing the products will not need to apply for the products’ halal certification with BPJPH. However, they still need to register these products with BPJPH before distribution in Indonesia. According to the HPA law, failure to register will subject the importer to administrative sanctions including withdrawal of goods from the market (article 48.1.).
- In the transition from Indonesia Ulema Council (MUI) to BPJPH, business will run as usual. BPJPH will acknowledge MUI halal certification until it expires. The halal certification from BPJPH will be for four years, compared to the two-year halal certificates two from MUI.
- There will be MOUs between countries to acknowledge certification. The flow of goods and services will follow that MOU with BPJPH. MUI has MOUs with several overseas halal bodies already, even though they are not full mutual recognition agreements. BPJPH will discuss with MUI so that the process of cooperation will overseas halal bodies will not hamper trade and services in Indonesia.

Halal Examination Agency (LPH):

- Government and Community can establish LPHs.
- The LPH established by the government are the LPH established by the ministries/central government agencies, local governments, state universities, state-owned enterprises (BUMN) or local government-owned enterprises (BUMD) through their relevant working units.
- The LPH established by the community must be submitted by religious institutions of Islamic legal entities that include associations and foundations (yayasan).
- All the LPHs must have accreditation from BPJPH. The process and conditions of the accreditation will be further stipulated in a Ministerial Decree.
- The main function of LPH is to assist BPJPH in the inspection and/or the testing of halal products by its Halal Auditors.

Halal Auditors

- The Halal Auditors are hired by the LPH(s) and they need to be certified as the halal auditor from BPJPH.
- An LPH must have at least three Halal Auditors whose duties are to examine and assess the process of the Halal Product Assurance (JPH).

Halal Product Assurance (JPH)

- HPA law mandates that location, place and equipment/tools for slaughtering, processing, storage, packaging, distribution, sales, and display for Halal products should be separated from the non-halal process.
This provision will ultimately increase the cost of production and the consequences of these separations will be borne by consumers. This means that there is a possibility that halal products will become more expensive and spend more time on the market.

Services covered

- The HPA law stated that halal certified products consist of goods and/or services. BPJPH will limit the services to the business services related to the slaughtering, processing, storage, packaging, distribution, sale, and display of halal products.

Life-saving drugs and vaccines

- In the event of life-threatening situation, drugs, vaccines, and/or other medical devices which are not yet halal may be distributed and traded until a halal option is available.
- BPJPH stated that they do not allow the use of non-halal life-saving drugs and vaccines intentionally. The research for alternative substances should be conducted so that the science can develop. So, even though it is not clear what will happen to the non-halal life-saving drugs and vaccines if the alternative halal drugs and vaccines are available in the markets, it was just implied by the BPJPH that if there is an alternative halal substance or products available in the market, the life-saving non-halal drugs and vaccines needs to be clearly stated as non-halal.
- BPJPH however, when asked, did not indicate that the products withdrawal under this category was an option.

Animal Feeds

- Food products which are not intended for human consumption, such as animal feeds, are not BPJPH's priority. However, it was requested by consumers that this type of products be examined. According to the Head of BPJPH, Prof. Sukoso, research shows that there is a strong link between nutrition needs and genetics. The animals can be classified into three groups: herbivores, carnivores, and omnivores. The phenomenon of the mad cow disease, for example, was because the feed for the cow was added by some materials which are not meant for the herbivores.

Sanctions

- The HPA Law stipulates that companies who fail to keep their products halal after receiving the halal certificates will be sentenced up to 5-years imprisonment or fined up to 2 billion Rupiah. Those involved in the halal product assurance (JPH) who violate the confidentiality of information of the business operators will be sentenced to up to 2-years imprisonment or fined up to 2 billion Rupiah.
- Criminal sanctions are new as previously under the MUI regulation, criminal sanctions were not possible due to the nature of its status of being an Islamic non-profit organization.
- BPJPH informed that business operators who make products that must be halal certified, but are not, and still distribute and trade such products will be imposed with administrative sanctions, such as:
  - Verbal warning
  - Written warning
  - Announcements in the mass media
- It is further informed that that the provisions on sanctions will be further regulated in a Ministerial Regulation

Conclusion
Implementation of the Halal Law regulations in their current form will have several unintended consequences that will create additional costs for consumers, potentially impact public health, reduce efficiency, hamper businesses, even create openings for corruption and unofficial tariff collection. Overall, these challenges will disrupt business operations and reduce the attractiveness of Indonesia as an investment destination. This could also lead to the potential fall in Ease of Doing Business Rank, the improvement of which is an important target for Indonesian policy makers.

At this stage, it is not clear when the Law will be fully implemented, even though BPJPH is planning for all regulations to be launched is by October 2017. There is a judicial review on HPA law that is currently ongoing. The government through the Coordinating Ministry for Economic Affairs (CMEA) is considering issuing an omnibus law/regulation amend several laws/regulations in one go. The Halal Law might be included in this omnibus bill. BPJPH stated that once the Government Regulation to implement HPA Law is approved by the President, the business communities, including the Council, will be invited to the socialization. The Council is also cooperating with other industry associations, including through recent meetings with APINDO members, to exchange information and discuss advocacy efforts.

Review of HPA Law’s Key Provisions

Halal Product Assurance Organizing Agency (BPJPH)

- According to the HPA law, BPJPH is the agency responsible for implementing halal assurance in Indonesia (article 1.6). The BPJPH will take over Indonesia Ulema Council/MUI’s role, which was previously the sole institution for issuing halal certificates. MUI will still have a role in the halal product process (PPH), by issuing the halal fatwa (article 1.10 & article 33.1).
- The structure of BPJPH was already established within the Ministry of Religious Affairs on July 2015 with the Presidential Decree (Perpres) Number 83/ 2015, followed by Religious Affairs Ministerial Decree Number 42/2016 on the BPJPH Organization.
- BPJPH is headed by a Head of Agency, Professor Sukoso, who was sworn in on August 2, 2017 and reports to the Religious Affairs Minister. The structure of BPJPH consists of a Secretariat and three centers: The Halal Registration and Certification Center, the Halal Products Assurance Guidance and Supervision Center, and the Halal Cooperation and Standardization Center.

Products Covered

- HPA law covers a broad range of products. Products referred to in the law are goods and/or services that are related to foods, beverages, drugs, cosmetics, chemical products, biological products, genetically engineered products, as well as consumer goods that are worn or used by the public (article 1.1).
- Obligation of halal certification for products which enter, are circulated, and traded in the territory of Indonesia will come into effect five years from the legislation of the law, which is in October 2019 (article 67). The type of products which will require halal certification will be regulated in stages.

Sanctions

- Administrative and criminal sanction shall be stipulated to enforce the law, with the focus on the business operators which do not maintain product halalness (article 56) or wrongly claimed its product as halal. The law also provides sanctions for the violation of intellectual property rights of the parties not being able to keep the secrecy of formulas in the information submitted during the halal product process.
(article 57), though it is possible that the sanction is not adequate compared to potential business losses.

- Foreign halal products that are imported into Indonesia must comply with provisions regulated in the HPA law (article 47.1) and the product must be registered to BPJPH if it has halal certification with a foreign halal body (but only if that body has the recognition of BPJPH) (article 47.3). If the business operators do not register their imported products accordingly, they will be subjected to administrative sanctions in the form of withdrawal of goods from the circulation (article 48.1). The law does not state clearly the arrangement for the foreign non-halal products / imported non-halal goods. It is only broadly regulated that products that enter, circulate, and trade in the territory of Indonesia must be halal certified (article 4). The Law itself does not set out any sanctions against parties importing, distributing, or selling products that have not secured a halal certificate.

**Key Terms in Halal Regulation**

2. Ministry of Religious Affairs = MORA
3. Halal Product Process = Proses Produk Halal (PPH)
4. Halal Product Assurance = Jaminan Produk Halal (JPH)
5. Halal Product Assurance Organizing Agency = Badan Penyelenggara Jaminan produk Halal (BPJPH)
6. Indonesia Ulema Council = Majelis Ulama Indonesia (MUI)
7. Halal Examination Agency = Lembaga Pemeriksa Halal (LPH)
8. Halal Auditor – Auditor Halal (AH)
9. Halal Supervisor/ Supervisor Halal is the person responsible of Halal Product Process/PPH in the company
10. Government Regulation = Peraturan Pemerintah (PP)
11. Religious Affairs Ministerial Regulation = Peraturan Menteri Agama (PMA)
12. Religious Affairs Ministerial Decree = Keputusan Menteri Agama (KMA)