

## Removal Of Halal Label Due To Indonesia Defeated From Brazil At World Trade Organization

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### ABSTRACT

This research discusses the abolition of the halal label obligation on imported products against the halal certification policy. In the new Minister of Trade Regulation (Permendag), Regulation of the Minister of Trade (Permendag) Number 29 of 2019 concerning Provisions for the Export and Import of Animals and Animal Products, has invalidated Article 16 of the Minister of Trade Number 59 of 2016 which states that imported animal products must be labeled on the packaging. The provisions of the World Trade Organization or WTO have caused the Indonesian government to change new rules, namely by removing the requirement to include the word halal label. The new rule is the Minister of Trade Regulation (Permendag) Number 29 of 2019 concerning Provisions for the Export and Import of Animals and Animal Products. The Ministry of Trade stated that the purpose of the renewal of the rules was as a form of Indonesia's compliance with the WTO because Indonesia lost in the dispute resolution with Brazil in the trade case number DS484. This study discusses how the consequences of the abolition of the halal label have been set forth in the Minister of Trade Regulation (Permendag) Number 29 of 2019 for Indonesia and other countries. The research method uses a normative juridical approach by taking secondary data through library research. Secondary data analyzed and evaluated in the form of primary legal materials, secondary legal materials, and tertiary legal materials. By not continuing to heed the provisions of the WTO, the Indonesian government should pay attention to its people, who are predominantly Muslim, in this case the certainty of halal or not the products consumed.

**Keywords:** Halal Label, WTO, Regulation of the Minister of Trade (Permendag).

### ABSTRAK

Penelitian ini membahas tentang penghapusan kewajiban pencantuman label halal pada produk impor terhadap kebijakan sertifikasi halal. Sesuai dengan peraturan menteri dagang (permendag) yang baru, yaitu Peraturan Menteri Perdagangan (Permendag) Nomor 29 Tahun 2019 tentang Ketentuan Ekspor dan Impor Hewan dan Produk Hewan, yang telah mengugurkan Pasal 16 Permendag Nomor 59 Tahun 2016 yang menyebutkan produk hewan yang diimpor wajib dicantumkan label pada kemasan. Ketentuan Organisasi Perdagangan Dunia atau WTO ini menyebabkan pemerintah Indonesia merubah aturan baru, yaitu dengan menghapus keharusan pencantuman adanya ketentuan label halal. Aturan baru tersebut adalah Peraturan Menteri Perdagangan (Permendag) Nomor 29 Tahun 2019 tentang Ketentuan Ekspor dan Impor Hewan dan Produk Hewan. Kementerian Perdagangan menyatakan, tujuan adanya pembaharuan aturan adalah sebagai wujud ketaatan Indonesia terhadap WTO karena Indonesia kalah dalam penyelesaian sengketa dengan Brasil dalam perkara perdagangan nomor DS484. Penelitian ini membahas bagaimana akibat dari penghapusan label halal yang sudah dituangkan dalam bentuk Peraturan Menteri Perdagangan (Permendag) Nomor 29 Tahun 2019 bagi negara Indonesia dan negara lain. Metode penelitian ini menggunakan pendekatan yuridis normatif dengan mengambil data sekunder melalui studi kepustakaan. Data sekunder yang dianalisis dan dievaluasi berupa bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Dengan tetap mengindahkan ketentuan WTO, seharusnya Pemerintah Indonesia memperhatikan rakyatnya yang mayoritas muslim dan tetap mencantumkan label halal untuk memberi kepastian halal tidaknya produk makanan yang dikonsumsi.

**Kata Kunci :** Label Halal, WTO, Permendag..

## **A. Introduction**

The defeat experienced by Indonesia in various trade issues at the World Trade Organization or WTO caused the Indonesian government to change new regulations, namely by removing the requirement to include the word halal label. The new rule is Regulation of the Minister of Trade (Permendag) Number 29 of 2019 concerning Provisions for the Export and Import of Animals and Animal Products. The Ministry of Trade stated that the purpose of the renewal of the rules was as a form of Indonesia's obedience to the WTO because Indonesia lost the dispute settlement with Brazil in trade case number DS484.

The beginning of the dispute between Indonesia and Brazil was the existence of a protection policy in the poultry sector, this protection resulted in the cessation of imports of chicken meat originating from Brazil, Brazil finally felt disadvantaged by Indonesia because the road to import chicken meat products was closed for seven years starting 2009 until Brazil sued Indonesia in 2014. Indonesia is considered to have violated several rules in the WTO.<sup>1</sup>

The protection policy carried out by Indonesia actually had no intention of limiting trade imports of chicken originating from Brazil, the goal was so that the supply of chicken meat, which at that time was still a lot, was not excessive so that protection was carried out so that the domestic industry did not experience losses because a country had to pay attention to domestic interests. besides foreign interests.

Indonesia's protection policy regulations are considered a violation of quantitative restrictions. Even though the WTO has set several exceptions as justification for applying quantitative restrictions. There are two types of exceptions that are regulated, namely special exceptions to quantitative restrictions contained in Article 11 of the GATT and general exceptions to the obligations mandated by GATT contained in Article 20 of the GATT. These two exclusion articles have one common goal, namely to allow the application of policies or regulations that are actually contrary to the general principles of the WTO in certain circumstances.

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<sup>1</sup> Luh Made Junita Dwi Jayanti dan I Gede Putra Ariana, "Penyelesaian Sengketa Impor Daging Ayam Antara Brasil Dengan Indonesia Melalui Dispute Settlement Body WORD Trade Organization" 06 :04 <https://ojs.unud.ac.id/index.php/Kerthanegara/issue/view/2847> (2018)

This exception explicitly allows WTO member countries to prioritize the values and interests of the people of the countries concerned from trade liberalization, including the principle of non-discrimination and regulations on market access.<sup>2</sup>

From the description of the problem above, the problem can be drawn, namely What are the consequences of removing the halal label which has been set forth in the form of Minister of Trade Regulation (Permendag) Number 29 of 2019 for Indonesia and other countries?

## **B. Research Methods**

The research method in this paper uses a normative approach by researching and analyzing laws and regulations related to halal product guarantees. The normative juridical method takes secondary data through library research. Secondary data analyzed and evaluated are primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include, among others, the 1945 Constitution of the Republic of Indonesia, Law No. 34 of 2014 concerning Guarantees for Halal Products (UU JPH), Regulation of the Minister of Trade (Permendag) Number 29 of 2019 concerning Provisions for the Export and Import of Animals and Animal Products, Law Law No. 8 of 1999 concerning Consumer Protection, Law No. 18 of 2012 concerning Food, Law No. 33 of 2014 namely regarding Halal Registration, Halal Certification, Halal Verification.

Secondary legal material in the form of articles and journals, results of legal research and other research. While the tertiary legal materials used are dictionaries and encyclopedias to help provide additional information from primary legal materials and secondary legal materials related to the implementation of Halal Products and WTO Provisions.

## **C. Finding & Discussion**

### **1. A form of legal protection for Indonesian people, who are mostly Muslim, for food labeled as Halal.**

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<sup>2</sup> Aiz Muhammad Rizky dan Rouli Anita Velentina, Larangan Pembatasan Kuantitatif : “Studi Kasus Indonesia Importation Of Horticultural Products, Animals and Animals Products <http://dx.doi.org/10.21143/jhp.vol51.no2.3055>

The case between Indonesia and Brazil has had an impact on internal policies, namely the government has removed the halal label by issuing a legal basis for Minister of Trade Regulation (Permendag) Number 29 of 2019 concerning Provisions for the Export and Import of Animals and Animal Products. This regulation has invalidated Article 16 of the Minister of Trade Regulation Number 59 of 2016 which states that imported animal products must be labeled on the packaging. One of the labels contains information related to halal.

The existence of this halal label, the Muslim community, especially in Indonesia, can ensure which products are allowed to be consumed, namely products that have and include a halal label on their packaging. It is the Muslim community itself that must be careful in determining whether or not to consume products that are labeled halal or not because it is a right of the Muslim community. The Indonesian government is also required to make active efforts to protect the Muslim community which is the right of Muslim citizens in Indonesia<sup>3</sup>

Broadly speaking, the use of halal labels on products, especially food, aims to distinguish between halal and non-halal products. More specifically, the halal label is the inclusion of halal writing or statements on product packaging to show that the product in question has the status of a halal product. So, to be able to put a halal label on your own packaging, you must first have a halal certificate. The striking difference from labels and halal certificates can be seen from their use. Product owners do not need to include halal certificates on their products as halal statements on their products. Simply by attaching a halal label, the product can already be known whether it is halal or not.<sup>4</sup> Halal products are products that meet halal requirements in accordance with Islamic law.<sup>5</sup>

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<sup>3</sup>Nofa Syam, *Perlindungan Hukum Bagi Konsumen Muslim Dindonesia Terhadap Produk Makanan Berlabel Halal ( Studi Terhadap Peraturan Perundang-Undangan dan Hukum Islam)*, <http://etheses.uin-malang.ac.id/175/10/11220021%20Ringkasan.pdf>

<sup>4</sup><https://ihatec.com/label-halal/>

<sup>5</sup> Burhanuddin, *Pemikiran Hukum Perlindungan Konsumen dan Sertifikat Halal*, Malang: UIN Maliki Press, 2011, hal. 140

The definition of halal comes from the word halal from Arabic which means liberated, released, solved, dissolved and permissible.<sup>6</sup> In the rules of Islamic law, everything that will be consumed must be goods that contain elements of good values that are beneficial for the benefit of the people.<sup>7</sup> Halal is something that is permissible according to Islamic teachings, as contained in the word of Allah QS Al-Maidah: 88: ُ Meaning: "And eat that which is lawful and good from what Allah has provided for you, and fear Allah in whom you believe in His".

Indonesia has a population that is predominantly Muslim, therefore the Indonesian government must pay attention to and protect the rights of its people, in this case especially the Muslim community, namely those related to food and beverage products that are in accordance with the beliefs of the Muslim community, namely halal, because Muslim society has a legal basis in terms of consuming food and drink, namely in the Al-Qur'an, Surat Al Baqoroh verse 172, which means as follows. that: "O you who believe, eat among the good provisions that We give you and give thanks to Allah, if it is really Him you worship".

Based on the consideration of Law no. 33 of 2014 concerning Guarantees for Halal Products point a states that the 1945 Constitution of the Republic of Indonesia mandates the state to guarantee the independence of each resident to embrace their own religion and to worship according to their religion and beliefs; and point b states that in order to ensure that every adherent of a religion can worship and carry out his religious teachings, the state is obliged to provide protection and guarantees regarding the halal products consumed and used by the public; and Law Number 8 of 1999 concerning Consumer Protection stipulates that business actors are prohibited from producing and/or trading goods and/or services that do not comply with the "halal" production provisions stated on the label.

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<sup>6</sup> Abdul Aziz Dahlan, *Ensiklopedia Hukum Islam*, Cet. 1 Jakarta: PT.Ichtiar Baru Van Hoeve, 1997, hal, 505.

<sup>7</sup>Asrina, "Pengaruh Labelisasi Halal Terhadap Keputusan Konsumen dalam Pembelian Produk Kosmetik di Kota Makassar (Studi Kasus pada Giant Supermarket Alauddin)", *Jurnal Iqtisaduna*, Vol. 2, No. 1 . 2016: 5

The halal label on food products is explained in Article 95 of Law No. 18 of 2012 concerning Food. The provisions in this article are a form of protection provided by the government to the Muslim community so that food products with halal labels are maintained. Avoid business actors who commit fraud that can harm the Muslim community.

Halal product guarantees are also regulated in Article 4 of Law Number 33 of 2014 concerning Halal Product Guarantees, which states that: “Products that enter, circulate and trade in the territory of Indonesia must be halal certified. The provisions of this article are a guarantee in halal food products that safety and comfort are maintained for the Muslim community.

A product must be given a label that aims to provide information about the product to be sold. There are several definitions of labels according to experts, including:

1. Kotler, defines a label with a simple appearance or image with packaging which is a single unit.
2. Marinus defines a label as part of a product that functions as information about the product it sells

As quoted in the information from the Halal Product Assurance Agency, that products circulating in Indonesia are guaranteed to be halal, therefore the Halal Product Assurance Organizing Agency has the duty and function to guarantee the halal products circulating and marketed in our homeland, namely Indonesia. The Halal Product Assurance Organizing Body is also supported by the duties and functions as mandated by Law No. 33 of 2014, namely regarding Halal Registration, Halal Certification, Halal Verification, conducting guidance and monitoring of product halalness, Collaboration with all relevant stakeholders, and setting halal standards for a product.<sup>8</sup>

From the discussion that the authors describe, it shows that so far the Indonesian government has actually provided protection to its Muslim

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<sup>8</sup> <http://halal.go.id/profil/pengantar>

population, especially in terms of halal issues in producing food. But why did Indonesia make a new regulation with the issuance of a regulation from the trade ministry which essentially removed the halal label.

The existence of this new regulation shows that the government has set aside Law Number 33 of 2014 concerning Guarantees for Halal Products, which according to the hierarchy of statutory regulations has a higher position than the regulations of the minister of trade. If it turns out that in practice it is the Minister of Trade that is used specifically for transactions, why make a law? The enactment of Law Number 33 of 2014 concerning Guarantees for Halal Products is the step of choice for Indonesia to create comfort and safety for every Muslim consumer in Indonesia.

Regulation of the Minister of Trade (Permendag) Number 29 of 2019 concerning Provisions for the Export and Import of Animals and Animal Products. Which aborted the regulation of the Minister of Trade (Permendag) Number 59 of 2016, in this case it is only natural because both are regulations of the minister of trade, so the new regulations are used.

In Article 12 paragraph (1) of the Minister of Trade Regulation Number 29 of 2019 concerning Provisions for the Export and Import of Animals and Animal Products. Import of Animal Species and Animal Products can only be carried out after obtaining Import Approval from the Minister. In terms of approving animal import activities, in this case the import of chicken meat, are the Regulations of the Minister of Trade Number 29 of 2019 in accordance with Law Number 33 of 2014 concerning Guarantees of Halal Products, specifically Article 4 which states that: "Products that enter, circulate, and trade in the territory of Indonesia must be halal certified".

## **2. Results of Dispute Settlement on the import of chicken meat from Brazil to Indonesia.**

The defeat experienced by Indonesia in various trade issues at the World Trade Organization or WTO caused the Indonesian government to



change new regulations, namely by removing the requirement to include the word halal label. The new rule is Regulation of the Minister of Trade (Permendag) Number 29 of 2019 concerning Provisions for the Export and Import of Animals and Animal Products. The Ministry of Trade stated that the purpose of the renewal of the rules was as a form of Indonesia's obedience to the WTO because Indonesia lost the dispute settlement with Brazil in trade case number DS484.

Settlement of trade disputes through a judicial body is usually only possible when the parties agree. This agreement is contained in a clause in the contract related to the settlement of disputes in the trade contract of the parties. The second possibility is that the parties can submit their dispute to an international court of law. One of the international court bodies that handle trade disputes is for example the WTO (World Trade Organization). However, it should be emphasized that the WTO only handles disputes between WTO member countries. In general, disputes exist because a party (business or country) is harmed because of trade policies of other WTO member countries that harm them.<sup>9</sup>

In this case, it is clear that there is an emphasis on the government Indonesia from the international side by issuing a decision that provided by the Dispute Settlement Body. Especially with the request for changes to the ministerial regulation which made Law no. 33 of 2014 concerning Guarantees for Halal Products is not optimal in its implementation. Especially in international trade activities which should be one thing that is maximized<sup>10</sup>

As the losing party in the chicken import dispute with Brazil, Indonesia has an obligation to make a recommendation from the DS484 panel report. In the case of Brazil and Indonesia, the DSB issued the adoption of the DS484 panel report on November 22, 2017. At the DSB

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<sup>9</sup> Ahmad Farhan Hadad (el.al), Barrier To Entry Dalam Kebijakan Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal Menurut Putusan Dispute Settlement Body Nomor 484 Tentang Kasus Impor Daging Ayam Dan Olahan, <https://journal.uinjkt.ac.id/index.php/jlr/article/download/18204/pdf>

<sup>10</sup> *Ibid*



meeting which was held after the adoption of the panel report in accordance with Article 21.3 of the DSU, Indonesia expressed to the DSB its willingness to implement the recommendations and rulings contained in order to fulfill Indonesia's obligations as a WTO members who comply with the rules.<sup>11</sup>

According to the WTO, the panel explained that there were seven policy steps taken by Indonesia in terms of importing chicken meat, so that the impact would be on stopping Brazilian imports to Indonesia, namely:<sup>12</sup>

1. A general prohibition on the import of chicken meat and chicken products;
2. Prohibition on the import of chicken meat pieces and other prepared or preserved chicken meat;
3. Restrictions on the use of imported products;
4. Indonesia's strict import licensing procedures;
5. Undue delays in connection with approval of sanitation requirements;
6. Restrictions on the transportation of imported products;
7. Discriminatory application of halal labeling requirements.

Of these steps, Indonesia is considered to have discriminated against, but from the seven steps, Brazil could not prove three steps, namely:

1. A general prohibition on the import of chicken meat and chicken products;
2. Restrictions on the transportation of imported products;
3. Discriminatory application of halal labeling requirements.

Furthermore, on February 12 2018 a meeting was held between the Indonesian Minister of Agriculture and the Brazilian Ministry of Agriculture Team to discuss opportunities to increase bilateral relations

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<sup>11</sup> Dokumen Agreement Under Article 21.3 (B) of The DSU WTO No. WT/DS484/16

<sup>12</sup> DSB WTO, Report of The Panel DS:484 Indonesia-Measures Meat Chiken Meat and Chiken Products,[http://www.wto.org/english/tratop\\_e/dispu\\_e/484r\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/484r_e.pdf), h. B-3

between the two countries, especially in the agriculture and livestock sector through the Strategic Partnership framework between Indonesia and Brazil.

The meeting resulted in several agreements, including:<sup>13</sup>

1. The Minister of Agriculture of the Republic of Indonesia approved the entry of Brazilian beef into Indonesia and the Brazilian Ministry of Agriculture team agreed not to import chicken meat and its products into Indonesia after fulfilling the specified technical requirements. This is because Indonesia has over-supply of chicken meat and has even exported to Japan, Timor Leste, Papua New Guinea and is currently exploring exports to other Asian countries and the Middle East;
2. Maintaining good relations between the two countries through cooperation in increasing Animal Husbandry and Health Human Resources (HR).
3. The Brazilian Ministry of Agriculture team will also encourage businesses in Brazil to invest in breeding farms and cattle breeding businesses in Indonesia.

WTO is the only international organization that specifically regulates trade issues between countries. The WTO multilateral trading system is regulated through an agreement which contains the basic rules of international trade as a result of negotiations that have been signed by member countries. The goal of the WTO is to encourage trade flows between countries, by reducing and removing various barriers that can disrupt the smooth trade of goods and services. In addition, the WTO facilitates negotiations by providing a more permanent negotiating forum for its members.<sup>14</sup>

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<sup>13</sup> Ilustrasia Wirafahmi, Proses Penyelesaian Sengketa Impor Ayam Brasil Di Indonesia Melalui WORD Trade Organization (WTO) Tahun 2014–2017, <https://jom.unri.ac.id/index.php/JOMFSIP/article/download/29290/28223>.

<sup>14</sup> Departemen Luar Negeri RI, *Sekilas WTO*, 2009 hal. 1

The Disputes Settlement Body/DSB as an international trade dispute settlement body under the WTO forum bases all mechanisms by referring to the dispute settlement system contained in the Understanding on Rules and Procedures of Disputes Settlement. DSU exists as a dispute resolution system that covers all WTO agreements. With the presence of this system, it confirms that there is no dispute settlement system regulated by each agreement in the WTO. Thus, the existence of the DSU is an agreement on the hopes and determination of member countries to create a dispute resolution system that is better than the previous system. A system that is more effective, provides more legal certainty and guarantees the creation of a free and fair multilateral trading system.<sup>15</sup>

From the results of the explanation above, the settlement of disputes between Brazil and Indonesia which was resolved through the Disputes Settlement Body/DSB as an international trade dispute settlement body, the results were not objective, there was discrimination against Indonesia, Indonesia which was forced to comply with WTO rules which according to him had violated when in fact not violating, namely by changing the regulations that should be the legal protection for its own citizens.

The WTO through the decision of the Disputes Settlement Body/DSB is inconsistent in carrying out the contents of the rules in the WTO which state that there are two kinds of exceptions regulated, namely special exceptions to quantitative restrictions contained in Article 11 of the GATT and general exceptions to obligations mandated by GATT contained in Article 20 GATT. These two exclusion articles have one common goal, namely to allow the application of policies or regulations that are actually contrary to the general principles of the WTO in certain circumstances. This exception explicitly allows WTO member countries to prioritize the values and interests of the people of the countries concerned from trade

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<sup>15</sup> Maslihati Nur Hidayati, *Analisis Tentang Sistem Penyelesaian Sengketa WTO : Suatu Tinjauan Yuridis Formal* <https://ejournal.esaunggul.ac.id/index.php/Lex/article/view/983/911>

liberalization, including the principle of non-discrimination and regulations on market access.

#### **D. Conclusion**

1. With the defeat of the dispute between Indonesia and Brazil, Indonesia could not take a firm stance on the existing rules, and even set aside the legislative hierarchy, which caused the Indonesian people to have no legal certainty. The Government of Indonesia should pay attention to its people, who are predominantly Muslim, in this case the certainty of whether the products consumed are halal or not.
2. In resolving disputes between Indonesia and Brazil, the WTO through the Disputes Settlement Body/DSB must be consistent in implementing the rules, so as not to cause discrimination, Indonesia, in this case, is forced to follow the DSB decision which Brazil cannot actually prove, which forced Indonesia to change ministerial regulation.

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### **Peraturan Perundang-undangan**

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