



Identification and Effectiveness of Halal Tourism Laws in Indonesia

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Abstract. Indonesia has two crucial points in halal tourism: having a variety of attractive halal tourist destinations and a sizeable Muslim community. However, Indonesia still needs to improve compared to other countries. This study aimed to identify and determine the effectiveness of halal tourism regulations for Muslim communities in Indonesia. This research is normative empirical model in nature where several established rules and regulations are critically reviewed. A simple interview also conducted to support the result. This study found that the main umbrella of regulation was Law number 33/2014 on Halal Product Guarantee and Islamic Guidance of DSN-MUI Fatwa 108/DSN-MUI/X/2016 on Tourism Management Based on Islamic Principles. While the latter is not a binding rule, the initial was found to be ineffective although fulfilled the Rule of Law. In addition to that factor, we also found the ineffectiveness of law enforcement, the lacking facilities and inadequate infrastructure and low public awareness on the regulation. This article suggested that Indonesia should enact a more specific law devised for halal tourism to ensure the acceleration of this fast growing industry.

Keywords: Halal Tourism, Fatwa, Regulation, DSN-MUI, Law

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INTRODUCTION

Halal tourism in Indonesia is very potential (Mawardi et al., 2021), because it is supported by several factors other countries do not have. Those factors include huge Muslim population, availability of halal food (Husaini, 2015), certified halal hotels, and the support of high religiosity (Rasyid, 2019). Since its presence, halal tourism has brought in many domestic and foreign tourists. Moreover, Many awards have been received by the halal tourism sector in the world arena. The awards indicate that Indonesian halal tourism can compete worldwide (Hasan & Azlina, 2022).

Based on a report from the Ministry of Tourism and Creative Economy (Kemenparekraf), on the official website of prakarsa.kemenparekraf.go.id, the ranking of Indonesia's tourism competitiveness position, which was previously ranked 70th in 2013, rose to rank 50th in 2015, then ranked 42 in 2017, and ranked 40 in 2019. It is targeted that by 2021 Indonesia will be

ranked 30. However, there has been no recent report on the assessment results until this research. Moreover, this assessment is made by the Travel and Tourism Competitiveness Index organized by the World Economic Forum.

In 2015 foreign tourists visiting for halal tourism reached 2.2 million or 20% of the total foreign tourists visiting Indonesia, as many as 10.41 million. In 2016 foreign tourist visits for halal tourism increased to 2.4 million, about 2% of the total foreign tourist arrivals of 11.52 million. There was an increase again in 2017, 18% of the total foreign tourist visits to Indonesia of 14.4 million, so the number of foreign tourists visiting for halal tourism was 2.7 million. Furthermore, in 2018 foreign tourists visiting for halal tourism 2.8 million foreign tourists from the total foreign tourist visits to Indonesia of 15.8 million people. Meanwhile, from 2018 to 2019, there was an increase of 1.88 percent, reaching 16.11 million visits.

In 2020, Indonesia experienced a Covid-19 pandemic (Muhyidin & Nugroho, 2021). The virus was first detected in March 2020, requiring Indonesia to implement a lockdown policy (Djalante et al., 2020). The Covid-19 pandemic led to the economy's collapse in various sectors, including tourism (Antara & Sumarningsih, 2022). According to National Beureau data (2020), The number of foreign tourist visits to Indonesia in April 2020 has decreased compared to April 2019. The decrease reached 87.44% (Hanggu & Berybe, 2022). So, the cumulative number of visits for January - April 2020 reached only 2.77 million. (Sofyan et al., 2020).

The measurement of the success of the country's tourism sector is not only seen from the rankings assessed by the TTCI organized by the WEF, which the author has conveyed above. There is also Global Muslim Travel Index (GMTI) that includes countries globally belonging to the (OIC) and non-OIC. In 2017, Indonesia was ranked 3rd as a halal tourist destination among OIC countries (Suradin, 2018). TTCI and GMTI carry out many assessment criteria (Lubis et al., 2022). Malaysia remains number one, and Indonesia replaces Turkey. Indonesia itself already has the basic infrastructure for the halal tourism market (Prodjo, 2017).

In 2019, Indonesia made achievements at the international level by achieving a first place as the world's best halal tourism destination, which was announced by *Crescentaring – Mastercard GMTI* (Minardi et al., 2021). After five years of Indonesia's efforts to develop halal tourism, this achievement is the highest. Indonesia is side by side with Malaysia which occupies the second position (Maulani et al., 2021). The third position and the several next

positions was achieved by Turki, Arab Saudi, Uni Emirat Arab, Qatar, Maroko, Bahrain, Oman, dan Brunei Darussalam (Kominfo, 2019).

In 2021, GMTI announced that Indonesia had dropped to rank four as the best halal tourism destination globally (Wulpiah & Rusydiana, 2022). The score received is 73. Malaysia is still in the first position while Turkey is in the second place, Saudi Arabia is the third, and the United Arab Emirates is fifth (Napitupulu et al., 2022). Several factors have caused Indonesia to drop its ranking, including declining facilities and friendly services to Muslim tourists. These services involve airports, restaurants, and hotels. In addition, the decline in the number of tourist visits caused by the Covid-19 pandemic has also been a factor in Indonesia's declining ranking in GMTI 2021 (Widyanti, 2021).

The decline in Muslim-friendly facilities and services in Indonesia is indeed a cause for concern. Indonesia has the largest Muslim population globally but has not provided suitable facilities and services for tourists. This article wants to examine this problem. According to the author, the problem of Muslim-friendly facilities and services has something to do with unclear and adequate halal tourism regulations. Indonesia does not yet have laws and regulations regarding halal tourism. Even though the government has stated that Law Number 33 of 2014 can be used to regulate halal tourism, is this law effective for regulating halal tourism in Indonesia?

The only regulation related to halal tourism is the DSN – MUI Fatwa Number 108/DSN-MUI/X/2016 concerning the Implementation of Tourism Based on Sharia Principles. The DSN MUI fatwa is indeed clear and comprehensive in explaining halal tourism. However, the DSN-MUI fatwa does not have binding legal force because it is not coercive, so it may or may not be followed. Rules like this can still provide loopholes to be broken. The majority of tourism entrepreneurs are more concerned with target visitors than regulations. So, halal tourism requires more positive regulations to be coercive and binding.

The position of the DSN - MUI fatwa in the Indonesian state law system is only as an aspirational law that has morally constructive power for communities that have aspirations to practice it (Zein, 2018). However, the Fatwa cannot be used as a coercive tool for other groups who disagree with the MUI fatwa because it is not included in the positive law (Wajdi, 2021). Fatwas are only religiously binding (Achmad et al., 2022). The position of the Fatwa is only

equivalent to the opinions of legal, language, and religious experts. Only *ulama*, *zu'ama*, and Muslim scholars can judge the content and material (Johar, 2019).

Halal tourism is a unique concept. It cannot be done like tourism in general. The word "halal" attached to "tourism" has a deep and meaningful substance. According to Islamic Law, Muslims believe "Halal" to be something permissible. Seeing the position of the Fatwa, which is not binding, halal tourism requires favourable legal regulations. Meanwhile, the Halal Product Guarantee Act (Jaminan Produk Halal or JPH) is a regulation that generally discusses the halal industry, and there is no article related explicitly to halal tourism.

Research on the legal identification of the DSN MUI Fatwa, which is used as an unwritten legal basis in the implementation of halal tourism in Indonesia, is interesting to study. In addition, the implementation of halal tourism uses written law in the form of Law Number 33 of 2014 concerning Halal Product Guarantee. This study differs from other studies, such as the one conducted by Ramadhani (2021) who focuses on Law 10/2009 on Tourism since the research here focuses more on Law 33/2014 on Halal Product Guarantee and DSN-MUI Fatwa. Therefore, The author feels the need to examine the effectiveness of written law in the form of the JPH Law to determine whether the community has implemented the law on halal tourism. Thus, whether Indonesia needs a new tourism law or keeps the old one can be seen.

LITERATURE REVIEW

In the world, at least five major legal systems live and develop. These legal systems are (Ali, 2013):

1. The Common Law System adopted in England and its former colonies are now, in general, joined in the Commonwealth of Nations,
2. The Civil Law System, which originates from Roman law, which is adopted in Continental Western Europe and brought to colonial or ex-colonial countries by former Western colonial governments,
3. Customary legal systems in Asian and African countries,
4. Islamic legal systems are adopted by Muslims wherever they are, whether in other countries whose population is Muslim in North, East, Central (West Asia) Africa, and Asia, and

5. The Communist/Socialist Legal System was implemented in communist/socialist countries such as the Soviet Union and its former satellites.

The legal system refers to more than just the rules (codes of rules) and regulations (regulations). However, it covers a broad field, including structures, institutions, and processes that contain them, and is related to living law in society and legal culture. According to the flow of sociological jurisprudence, good law must follow the living law in society. Eugen Ehrlich first put forward the term living law as the opposite of state law (law made by the state/jovial law).

In its development, modern countries were born by forming laws (state law). The state law in John Austin's theory is called positive law. Related to this, Hilaire McCoubrey and Nigel D. White stated that the legal positivism school views law from a legal perspective which relates to time and place by setting aside or even eliminating moral and ethical values as criteria for identifying the nature of law.

From sociological and anthropological perspectives, Indonesian society is pluralistic, with various cultures, religions, and customs. Therefore, various laws live in Indonesian society, such as customary and Islamic laws. So before Indonesia's independence, Indonesian people already had the living law. There has been legal pluralism in which every legal community has its law with its style and characteristics.

Dutch colonialism in Indonesia more or less influenced the Indonesian legal system. As we all know, the Netherlands has a civil law tradition. The main characteristic of civil law is the law as the primary source of law. Joseph Dainow stated that the main source of law in civil law is codified legislation. In line with this, Vincy Fon and Francisco Parisi stated that laws are the primary source of law, while court decisions are the second source.

In Indonesia, laws (positive law) are used as the primary source of law. Even the laws and regulations in Indonesia are arranged in stages and levels. Almost all levels of government are given the authority to make laws and regulations. All aspects of state administration and people's behavior escape favorable legal regulations. Because of this, many experts say that Indonesia is like a constitutional state. The need for laws is a logical consequence of the rule of law, where there is a demand to act following the principle of legality. For that, the law is

the answer. However, on the other hand, positive law also has many weaknesses, including unclear, empty, contradictory, incomplete, and other problems.

Under these conditions, the question arises where is the living law located? Indonesia does not adhere to civil law but has its legal system, namely the Pancasila state law. For this reason, besides the law as the primary source of law, Indonesia still recognizes the living law as one of its sources of law. That can be seen in the following provisions: (Hadi, 2017)

1. Article 18B paragraph (2) of the Indonesian Constitution contains recognition of indigenous peoples and their rights. These provisions indirectly acknowledge and respect the existence of the living law in the life of the nation and state. That is marked by the recognition of traditional villages and villages along with their rights originating from the living law of each;
2. Article 5 judicial power obliges a judge to explore the sense of law that grows and develops in society. That means that the judge in deciding cases is not limited to the speaker of the law as in the civil law tradition. Judges are given the freedom to explore the living law to create justice. Even in the event of a legal vacuum, the discovery of law by judges uses existing laws in society;
3. The UUPA stipulates that national land law is based on customary law. The recognition of customary rights marks this;
4. The Marriage Law determines that a marriage is legal if it is carried out following each religion and belief;
5. In inheritance law, legal pluralism is permitted, where there are Islamic, customary, and Western inheritance laws.

In addition to being used in the form of laws governing Muslim society, Islamic law in Indonesia is also available in the form of fatwas issued by the Indonesian Ulema Council. MUI is a religious organization that is independent and aspirational. Fatwa is an explanation of Islamic law that is asked by a mustafti (fatwa requester) (Zakirman, 2016). The fatwa issued by the MUI plays a role in transforming the general meaning of Islamic law into the particular cases it faces (Habibaty, 2017). Meanwhile, specifically for cases related to the economy, MUI has formed an institution called the National Sharia Council (DSN). The function of the DSN

is to issue fatwas on Sharia economics to serve as guidelines for practitioners and regulators (Afrelian & Furqon, 2018).

The MUI fatwa and DSN fatwa cannot be used as a legal basis because they are not a source of positive law in the national legal system and the regulatory system of laws and regulations, as stated in Law Number 12 of 2011 concerning the Formation of Legislation (Hasanah, 2016). Fatwa is a regulation that is not legally binding, but fatwa is still binding for the Muslim community religiously. Thus, because fatwas are not categorized as positive law, they serve as advice from religious scholars or the opinion of religious experts (Suherli et al., 2022).

METHOD

This research is juridical – empirical research, examining the applicable legal provisions and what happens in society (Suharsimi, 2012). The purpose of juridical-normative research is to find out and find the facts and data needed. After the data is collected, the problem can be identified, and problem-solving is carried out (Waluyo, 2002). Through empirical methods, research data is used as material for analysis to answer research problems. Empirical legal research is also technically referred to as socio-legal research or legal study (Waluyo. Bambang, 2002). The law in this study means reality (sien). Empirical or sociological legal research is also known as *a law in action*.

The output in empirical research is a recommendation on whether or not the law's implementation is effective in a broad sense, namely the world of reality (empirical). If effective means no problem, but if it is not practical or not yet effective, or maybe less effective, what is the problem, what factors are causing it, so there needs to be a solution. Factors that cause or influence the effectiveness of the law, in reality, are usually legal behaviour, that is, social behaviour. In this regard, this empirical behaviour becomes the core focus that is concluded in empirical legal research (Qamar et al., 2020).

RESULTS AND DISCUSSION

Identification of Halal Tourism Law

The living Law in Indonesian society consists of Customary Law and Islamic Law. As stated by Soepomo, customary law is *the living law* because it embodies the natural feeling of life of the people. By its nature, customary law continues to grow and develop in society (Sudiyat, 1991). Customary law in society takes various forms, but the most common is unwritten law (*ius nonscriptum*) (Wiranata, 2005).

In the literature research by Van Vollenhoven et al., (2013), it was stated that the indigenous peoples living in Indonesia, for hundreds of years before the arrival of the Dutch, have had and lived in their legal system. The indigenous legal system is known as customary law (Soemadiningrat, 2001). Even according to Soekanto (2001), the process of forming customary law can be seen from a sociological aspect because in principle humans cannot live alone and need other humans since humans are social creatures and have instincts (Firman & Ahmad, 2015). Because human life requires other humans, every human will interact with other humans. From this experience, a value system will be obtained. A value system will be obtained that can be considered a good thing and a bad thing.

This value system will give birth to a mindset/assumption that will lead to a tendency to do or not do. If this attitude tends to act, the behaviour will arise. A collection of repetitive behaviours can be born/abstracted into a norm, a behavioural guide for action. These norms can be divided into personal norms, namely trust and decency and interpersonal norms, namely decency and law (the sanctions are forcing). Indonesia is a country that adheres to the Continental European Legal System or *Civil Law* or *Rechtsstaat* (Hamzani & Irwan, 2020). This system can be seen from history and legal politics, sources of law, and the law enforcement system. However, the formation of laws and regulations that apply in Indonesia is still influenced by the customary law system and the Islamic legal system (Raharjo, 2016).

Islamic Law was only known after the spread of Islam in Indonesia. As for the time of his arrival, historians have no agreement. Some say that Islam came to Indonesia in the 1st century AD or the 7th century AD (Rahman, 2021) while others said it was on the 13th century AD (Karim, 2018). However, after Islam came to Indonesia, Islamic Law was followed and

implemented by the followers of Islam in this archipelago (M. Ali, 2013). After Islam entered Indonesia, many kingdoms turned into Islamic kingdoms / Islamic sultanates. Since then, Islamic Law has been implemented, both normatively - culturally and juridically – formally (Hamzani & Irwan, 2020).

The law that applies in Indonesia contains a transcendental and horizontal dimension (Riyanti, 2021). This means the law may be separate from the first precepts of Pancasila or the Act above it, namely the 1945 Constitution. The relationship influences the values of the style and content of the applicable law in Indonesia (Hamzani & Irwan, 2020).

The first precepts in Pancasila are the philosophy of the Indonesian state. The Muslim community in Indonesia must submit to the values of Belief in the One and Only God and not ignore Islamic law. (Tahmid & Fautanu, 2021). Thus, in a state based on Pancasila law, one of the sources of national Law is Islamic law. Therefore, Islamic Law can apply juridically, regulating human relations with other humans or humans with objects. This section becomes a positive law whose implementation is regulated by the state (Mardani, 2012).

Customary Law and Islamic Law are laws for native Indonesians, and they are equated with the natives. The situation was regulated by the Dutch East Indies government in the past, from 1854 until they left Indonesia in 1942 (M. Ali, 2013). Since it arrived in Indonesia, Islamic Law has been classified as living law. This phenomenon is not due to the religious entity embraced by the Indonesian population. However, in several areas, the application of Islamic Law has become part of the community's traditions (customs) and considered as sacred.

The existence of Customary Law and Islamic Law in Indonesia has given rise to several theories, including the *Receptie in a Complex Theory* introduced by Lodewijk Willem Christian Van Den Berg (1845-1927) (Praja, 2009). According to this theory, the law that applies in Indonesia for native Indonesians is the law of their religion, namely Islamic Law. Then this theory was opposed by Christian Snouck Hurgonje with his *Receptie theory*. The applicable law in Indonesia is not Islamic law, but customary law. Islamic Law only has power if it is accepted as customary law (Ahmad, 2006).

After Indonesia became independent, Pancasila and the 1945 Constitution was established as a source of law. A new theory emerged that rejected the previous Dutch colonial era (Wahid &

Rumaidi, 2001). The theory is the *Receptie Exit Theory* proposed by Hazairin, that *the Receptie Theory* must *exit* from the Indonesian national legal theory because this theory contradicts the Qur'an and the Sunnah of the Prophet SAW (Hazairin, 1974). Then *the Receptie Exit Theory* was developed by Sayuti Thalib with his theory of *Reception a Contrario*, that Islamic Law that applies to the people is their religious law, customary law only applies if it does not conflict with religious law (Thalib, 1985; Fuad, 2005).

Some Islamic law is unwritten, and some are written (Jaenudin, 2017; Musa, 2018). Written Islamic law is called *taqnin*. *Taqnin* is binding, temporary, and has sanctions. In Indonesia, *taqnin* has existed since the founding of the Indonesian nation. *Taqnin* is an idea to include the obligation to implement the Shari'a for adherents of Islam (Jaenudin, 2017). Some of the Islamic law has been accommodated by the birth of various regulations originating from Islamic law, such as laws concerning marriage, zakat, waqf, pilgrimage, sharia banking, sharia securities, and halal product guarantees (Hamzani & Irwan, 2020). As for unwritten Islamic Law, it is Islamic law that is obeyed by Muslims, such as Islamic Law on society that is still contained in the Qur'an, Hadith, and books of fiqh, including in the form of Fatwa DSN-MUI.

Fatwa is the result of the thoughts of scholars to answer contemporary problems that arise at this time, but there are no strict legal provisions either in the Qur'an or in the Hadith. (Ambarwati, 2021). Fatwas are issued by the Indonesian Ulema Council (MUI), an institution established by the government that has the authority to answer and determine the legal status of cases related to Islamic law (Hanif, 2019).

Currently, halal tourism already has a DSN-MUI fatwa (Amiruddin, 2022). This Fatwa considers that the sharia-based tourism sector is growing in Indonesia. The implementation of halal tourism does not yet have a particular legal umbrella, so the DSN - MUI needs to issue a fatwa so that entrepreneurs and consumers of halal tourism can use it. Based on a study of the arguments of the Qur'an, hadith, fiqh rules, and the opinions of scholars, finally, a fatwa on halal tourism was formed under Number 108/DSN-MUI/X/2016 concerning Guidelines for the Implementation of Tourism Based on Sharia Principles.

The Fatwa on the implementation of halal tourism contains general provisions for halal tourism, legal provisions, general principles for implementing halal tourism, the parties' peace, and the contract between the parties. In addition, there are provisions on sharia hotels,

provisions regarding tourists, provisions on tourist destinations, provisions on spas, saunas and massages, provisions on halal travel agencies, and provisions on halal tour guides. This Fatwa closes with an explanation that if there is a dispute between the parties, the settlement is carried out through a dispute resolution institution based on sharia if an agreement is not reached through deliberation.

The Effectiveness of Halal Tourism Law

According to Hans Kelsen, legal effectiveness is related to legal validity. Legal validity means that legal norms must be binding. Communities must obey and apply legal norms in their social life. In comparison, effectiveness is the ability of the organization to carry out its duties and functions. Legal effectiveness means that legal goals or objectives can be achieved as planned (Siregar, 2018). According to Soerjono Soekanto, if someone says that the rule of law succeeds or fails to achieve its goals. It is usually measured whether its influence succeeds in regulating certain attitudes or behaviors so that they are in line with the goals or not (Ahadi, 2022; Djaenab, 2018). Therefore, the operation of the law in society is expected so that the law works according to its function . There are several factors that can affect the law implementation in society which are: 1) Legal Rules; 2) Law Enforcement; 3) Facilities and 4) Public Awareness (Z. Ali, 2009).

1. Legal Rules

The Law must be proven by three things: a) the Rule of Law applies juridically; b) the Rule of Law applies sociologically; and c) the Rule of Law applies philosophically. The rule of law is an instrument for determining whether the law works or not. Because: 1) if the Rule of Law only applies juridically, then there is a possibility that the rule is a dead rule; 2) if it only applies sociologically in the sense of the theory of power, then the rule becomes a coercive rule; 3) if it only applies philosophically, then the rule may be only an aspired law (*ius constituentum*). Based on three aspects mentioned above, the elaboration below analys Indonesian law for halal tourism.

a. Juridical Basis

The juridical basis is the legal provisions that form the basis for making laws and regulations. The juridical basis consists of a formal juridical basis and a material juridical basis. The formal juridical basis is the basis that comes from other laws and regulations that give authority to an institution/agency to make specific legal rules. In contrast, the material juridical basis is the legal basis regulating the problem (object). A juridical basis is essential for regulating a statutory regulation so that there is no legal conflict or legal conflict with the statutory regulations above it. The law must meet the juridical basis to prevent the occurrence of overlapping laws and regulations between similar laws and regulations. In addition, the juridical basis can avoid disharmony and inconsistency between regulation and other related regulations. Disharmony between laws and regulations will reduce the effectiveness of the legislation in question.

The formal juridical basis for establishing halal tourism law in Indonesia is the 1945 Constitution Article 28 J. That article explains that everyone is obliged to respect other human rights so that society, nation, and State can be well organized. Apart from that, the article also explains that everyone must comply with the limitations set by law to guarantee recognition and respect for the rights and freedoms of others in terms of morals, religious values, security, and public order. Article 29 explains that the State of Indonesia is based on Belief in the One and Only God. Thus, the State guarantees the freedom of citizens to embrace and worship according to their religion.

The material foundation for the formation of halal tourism laws in Indonesia is Law Number 33 of 2014 concerning Halal Product Guarantee. The law explains that products that must be halal certified in Indonesia consist of goods and services. The goods in question relate to food, beverages, medicines, cosmetics, biological products, genetic engineering products, and goods used by the public. However, about services, it needs to be clarified what services are meant by the law. Law Number 33 of 2014 does not explicitly regulate halal tourism. The law is a general regulation relating to halal products. The product categories mentioned in this Act also do not mention halal tourism. However, halal food and beverage products are part of the implementation of halal tourism. Therefore, Law Number 33 of 2014 can be used as the juridical basis of the halal tourism law.

b. Philosophical Foundation

The philosophical foundation examines life, culture, religious beliefs, legal philosophy, legal awareness, customs, and nationalism. In law formation, the philosophical basis must be an identity that appears. The former must be aware of the view of the life of the local community, which is reflected in the culture of the community. The philosophical foundation must also be a source of moral and religious beliefs held by the community, legal ideas or philosophy adopted by the community, including the legal awareness of the community, as well as in the context of Republic of Indonesia. The philosophical basis is related to *rechtsidee* (legal ideals) or what they expect in the law, including to ensure justice, order, welfare, *etc.*. Philosophy also means regarding the view of the nature of things. The law is expected to reflect this value system to realize it in people's behaviour. Some values are allowed to live in society, so every statutory regulation must capture them. However, sometimes the value system has been well summarized in philosophical theories and official doctrines (Pancasila).

One Supreme God (Ketuhanan Yang Maha Esa) philosophically shows that all state frameworks must be based on the view that everything in this world follows the highest wisdom of the universe. Indonesian people want to show that no human can stand above other humans through the first principle. All humans are equal (egalitarian). Belief in One Supreme God (Ketuhanan Yang Maha Esa) shows that the Indonesian people believe that there is only one God regardless of religion. Therefore, all existing regulations in Indonesia must be oriented to one God.

In the philosophy of Islamic Law, the principle of monotheism is known, which is part of the principles of Islamic Law (Praja, 1995). The principle of Tawhid is the recognition of Muslims on the Oneness of God. Tawhid has the meaning of impressing, which means impressing God. This principle states that all human beings are under the same rule of Tawhid which is stated in the sentence *La ilaha illa Allah* (There is no God but Allah). This principle is taken from the words of Allah SWT, QS Ali Imran (3): 64. Based on this principle of monotheism, the implementation of Islamic Law is worship in the sense of human enslavement and his submission to God as proof of his gratitude to God.

Based on this principle of monotheism, the Indonesian Muslim community must always present Allah in every aspect of their life. The Muslim community believes that whatever he does in

his daily life is always witnessed by Allah SWT and is included in charity. Therefore, implementing Islamic Law is an act of worship for Muslims. As a consequence of the Muslim faith in Islam, Muslims must carry out orders by Islamic Law, including in carrying out tourism.

Law Number 33 of 2014 was made to regulate products circulating in the Islamic community. These products must be certified halal. This law is the legal ideal of the Indonesian people towards halal products. This law also provides legal justice because the Indonesian Muslim community does not need to hesitate and be afraid that the products in circulation are certified halal. The products in circulation can be classified into halal and non-halal products. Through this regulation, the categorization must be marked with a label. Later, Muslim and non-Muslim communities will know which product categories are purchased, consumed, and used.

Law Number 33 of 2014 does provide legal justice for the Muslim community, but not for tourism managers. Even in the implementation of tourism, halal products will always be part of the tourism component. However, the main components of halal tourism are services and services. In-Law Number 33 of 2014, how halal services must be carried out is not explained. Whereas the Muslim community who manages tourism wants a law that regulates it so that what they do is correct based on the views of Islamic Law and National Law.

c. Sociological Foundation

From a sociological point of view, the law must be accepted voluntarily and happily by the community, meaning that the law can live in society. If the community can accept it well, then the law is considered right and good (Mardjono, 2001). Thus, legal law must also benefit the community because the law is made to benefit the community. Indonesian society (*the living law*) consists of Customary Law and Islamic Law. As stated by Soepomo, customary law is *the living law* because it embodies the natural feeling of life of the people. By its nature, customary law continues to grow and develop into society itself (Sudiyat, 1991).

Legal norms can be implemented by accommodating social practices in society. According to Johnson, the law needs to build a relationship with society. If social law is more robust and advanced than individual law, society can quickly implement the law. (Johnson, 2006). The law must accommodate the aspirations of society towards the law itself. Thus, the purpose of

the law is not only to provide legal certainty or justice but what is more important is that the law can provide benefit/benefit for society (Darmodiharjo & Shidarta, 2006).

The benefit of law teaches that good law is the law that benefits society so that prosperity is created. The author still believes that the benefit of the law is the most crucial goal in law, in addition to justice and legal certainty. Based on the purpose of the law, it means that the law has a specific purpose that is not only oriented to individual humans but also to social life and the state. Thus, based on its purpose and function, the law has a target to be achieved.

Law Number 33 of 2014 has legal benefits for the Muslim community in Indonesia. The benefits provided by the Halal Product Guarantee Act are numerous, especially in terms of halal product certification. This law explains how the process and flow of halal certification on products. Even though this law, institutions are established that will specifically handle the halal certification process for products circulating in Indonesian society. Through this regulation, the government is very serious about halal certification on products so that Muslim communities in Indonesia feel safe and comfortable.

2. Law Enforcer

The effectiveness of the law does not only depend on elements of legal substance alone. However, it is also determined by two other elements of the legal system, namely elements of legal structure and legal culture. Elements of structure include institutions and law enforcement officers. At the same time, elements of legal culture include opinions, habits, ways of thinking and ways of acting, both from law enforcement officers and from citizens (Ali, 2002).

The effectiveness of the law can be known by measuring the extent to which the legal rules are complied with or not complied with. Several factors may affect the effectiveness of law in society, including the implementation of the role, authority, and functions of law enforcement professionally and optimally in carrying out their duties and enforcing regulations. The effectiveness of the law is indeed more specific. Therefore, specific measurements are also needed so that they can be measured (Ali, 2010).

Law enforcement is one component of the legal system proposed by Friedman, namely the *legal structure*. Friedman describes the legal structure as a "driver" that allows the legal system

to work in actual society. Law enforcement officers have a strategic and significant function in enforcing the law. It is reflected in law enforcement officers are one of the most significant elements in law enforcement. Even according to Daniel S. Lev, as quoted by (Soekanto, 2002), what becomes law is the daily practice of legal officials. If legal officials, including judges, prosecutors, advocates, police and government employees in general, change, the law has changed, even though the law is the same as before.

The legal structure is a framework or series of legal systems which survives or give some form and limitation to the whole. In Indonesia, the legal structure includes law enforcement institutions, such as the police, prosecutors and courts (Leatemia, 2019). The legal structure is defined as a framework or framework that gives shape and boundaries to the legal system. The elements of the legal structure are the executive, legislative and judicial bodies. The executive body is composed of the president and his assistants. Legislative institutions are composed of various equipment (leaders, commissions, special committees, *etc*). Meanwhile, the judiciary consists of the composition Supreme Court, the division of general courts, and special courts.

The executive body in the legal structure of halal tourism consists of the President, Vice President, Minister of Tourism, Minister of Education and Culture, Minister of Agrarian and Spatial Planning, and Minister of Religion. While the legislative body consists of the House of Representatives and the judicial body is the Religious Courts, which consists of religious judges, there are also prosecutors, police and advocates. In addition, the legal structure of halal tourism also consists of the Creative Economy Agency, the Tourism and Culture Office of each Province and City, the Indonesian Tourism Industry Association, the Indonesian Ulema Council (MUI), the Halal Product Assurance Agency (BPJPH), the Halal Inspection Agency and the Halal Auditor.

The law gives a mandate to every state institution so that law enforcers can carry out their duties and obligations properly and correctly (Sadjijono, 2007). Law enforcement must be carried out responsibly so people can feel the real impact of implementing a law enforcement system. Thus, peace can be created for the whole community (Arliman, 2015). Therefore, someone who has a specific position is usually called a role *holder*.

The problem of the role is considered necessary because the discussion about law enforcement is more focused on discretion (consideration). Thus, discretion involves making decisions not

strictly bound by law, where personal judgment also plays a role. In law enforcement, discretion is significant because (Soekanto, 2018): a) There are no laws and regulations that are so complete that they can regulate all human behaviour; b) delays in adapting legislation to developments in society, so that it will create uncertainty; c) Lack of costs for implementing legislation as desired by the legislators; and d) There are individual cases that require special handling.

Indonesia, as a developing country, no matter how many laws are regenerated, the authority of the law cannot be guaranteed to be realized if the implementers of the law themselves are still violating the law that should be enforced. Simply put, the law that has authority is the law that is obeyed, not the law that is feared. There is a good correlation between lawmakers and legal targets. Authorizing the law or restoring legal identity is not as easy as turning the palm. A balance of rulers is needed to stand at the middle point between humans who incidentally have emotions and laws that are only written (Aminanto, 2017).

3. Facilities

Another critical factor in ensuring that existing laws are effective or not is the supporting facilities, especially physical facilities. In Indonesia, many regulations have been made but must be supported by adequate facilities. Likewise, halal tourism requires the support of complete and clean facilities. Therefore, before regulations are enacted, it should be ensured that the facilities are adequate. Provision of facilities can refer to whether the facilities already exist, if any, and whether these facilities are suitable for use. If the facility does not yet exist, it must be held first (Ali, 2009).

Many facilities are not adequate in halal tourism. Halal tourism destinations are the same destinations as tourism in general. However, these destinations must be equipped with Muslim-friendly facilities in halal tourism. The place of prayer has the most crucial role. However, not all destinations have places of prayer, incredibly comfortable and clean places. Likewise with toilets and ablution places. Almost all tourist destinations have toilets, but not in ablution places. In addition, the cleanliness and comfort of Muslim-friendly facilities are of the utmost importance.

Often the Muslim community in Indonesia understands the meaning of halal is only related to food. Even though, as Muslims, everything we use and do is lawful. Many components must be met in implementing halal tourism, including sharia hotels, halal restaurants, halal travel, halal tour guides, and halal spas and massages. These components must be certified halal to ensure that the activity is a halal tourism activity.

The top ten halal tourism destinations for the Government of Indonesia are custom and culturally areas, or the majority of their population is Muslim. Meanwhile, Bali, famous for its natural beauty and attracting visitors worldwide, is difficult to become a halal tourist destination because its customary, culture, and the majority of the population of Bali is Hindu. Balinese people are too afraid of the word "halal". If the beauty of Bali's tourist destinations can be added with more Muslim-friendly facilities and services, Indonesian tourism will increase.

Halal tourism is tourism with Muslim-friendly facilities and services. Not specifically for Muslims, but tourism with services that are healthier, cleaner, comfortable, beautiful, and of course halal. Indeed, there needs to be a separation between more Muslim-friendly entertainment, halal food and drink, and halal spa and massage. The most important of all is the cleanliness of the facilities and facilities for worship and tourism. Entertainment, restaurants and spas only need to include or separate what is halal and what is not. Nevertheless, cleanliness is an absolute thing that managers must do because Islam loves cleanliness and is even part of the human faith.

Law Number 33 of 2014 concerning Halal Product Guarantee does not explain how the requirements must be met in organizing halal tourism. What kind of facilities and services is the tour categorized as halal tourism. Therefore, halal tourism requires a law that regulates explicitly halal tourism activities. Based on observations made by researchers on sharia hotels in the Bandung area and tourist destinations in Pangandaran, they agreed that the DSN-MUI Fatwa Number 108/DSN-MUI/X/2016 be transformed into law. In addition, the Halal Tourism Law must later explain that Muslim-friendly facilities and services must meet the criteria for being clean, healthy, comfortable, beautiful, and halal.

4. Legal Awareness of Community

Public awareness of complying with laws and regulations is the most critical factor. Thus, public compliance with the law itself is an indicator of its functioning. The greater social control in the form of custom and religion, the smaller the role of law. For the public to always have legal awareness, there must be efforts made by law enforcers, such as legal counseling, exemplary leaders, and law enforcers, as well as proper institutionalization (Ali, 2009).

The author conducted interviews with several respondents, such as sharia hotel managers in Bandung, managers of tourist destinations in Pangandaran, Halal restaurants in Bogor and Ternate, and several tourists. The result is that the respondents are not even aware of Law Number 33 of 2014 concerning Halal Product Guarantee. Several respondents are more aware of the DSN – MUI Fatwa Number 108/DSN-MUI/X/2016. However, the respondents also do not realize that their tourism has a legal umbrella. Organizing tourism, for example, what the respondents did was to follow the customs that apply in the area compared to following the law.

The DSN – MUI Fatwa position has become even more unclear because the Fatwa is only a legal opinion. Moreover, the content of the Fatwa uses the term sharia tourism, which for them is more frightening. Therefore, the authors agree more on using "halal tourism" than "sharia tourism" because halal tourism will not change the customs and culture of local tourist destinations, only adding more Muslim-friendly facilities and services. Such awareness is not yet known by tour managers, restaurants, travel, guides, even spas and massages.

How will they implement the Act if the halal tourism managers do not know a legal umbrella for halal tourism in Law Number 33 of 2014 on Halal Product Guarantee? The respondents were more aware of the DSN – MUI Fatwa, but the content of the Fatwa and the nature of the Fatwa caused the respondents not to follow the Fatwa rules. Cases like this occur in some regions, but almost all regions will respond differently. Halal tourism is considered religious tourism intended for Muslims only, even though Indonesia has diverse religions.

The thoughts of the people themselves narrow halal tourism. There are no guidelines or regulations that can straighten public awareness of halal tourism laws. Even so, the respondents agreed that the DSN-MUI Fatwa could be transformed into law. It is hoped that the rules for

halal tourism will be more straightforward and more comprehensive. However, there are points in the DSN-MUI Fatwa that need to be changed so that halal tourism is not impressed as Muslim religious tourism. Islamic Law can contribute to national law if the DSN-MUI Fatwa can be transformed into law. In addition, customary law can also be harmonized into the Tourism Law.

Islamic Law and customary Law are two laws that live in Indonesian society. Both are also legal sources of national law. If the Halal Tourism Law can be sourced from Islamic Law and customary Law, the law will be perfect. The community will be more aware of the law. They can apply it in travelling activities, managing tours, managing hotels, managing restaurants, managing travel, and managing spas and massages that are by legal regulations but do not come out of the customs and culture of each blood. Halal tourism will attract not only domestic tourists but also foreign tourists.

CONCLUSION

The legal umbrella used by halal tourism in Indonesia is written law, namely Law Number 33 of 2014 on Halal Product Guarantee, and Islamic guidance of DSN-MUI Fatwa Number 108/DSN-MUI/X/2016 concerning Tourism Management Based on Islamic Principles. However, the legal effectiveness of the two is different. The DSN-MUI Fatwa on the Implementation of Tourism Based on Sharia Principles is not strictly adhered to because it is not a positive regulation. It has no legal force and is not binding. At the same time, the Law Number 33 of 2014 concerning Halal Product Guarantee cannot be proven its effectiveness. According to the Rule of Law, Law Number 33 of 2014 has fulfilled juridical, philosophical, and sociological principles. Law enforcement exists but appears to be ineffective. Facilities and infrastructure are inadequate, and public awareness of these regulations is still lacking. Therefore, Law Number 33 of 2014 is inadequate if used as a legal umbrella for halal tourism. So that the government needs to make a law that explicitly regulates halal tourism, the contents of which can be changed from the DSN-MUI Fatwa Number 108/DSN-MUI/X/2016 concerning Halal Product Guarantee.

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