

Harmonization of Halal Drug Guarantee Provisions from the Perspective of Law No. 17 of 2023 on Health and the Principles of Maqāsid Al-Sharī‘Ah in Efforts to Protect the Health of the Muslim Community

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Abstract

The transformation of health regulations in Indonesia through the enactment of Law Number 17 of 2023 concerning Health has significant implications for pharmaceutical governance, including aspects of halal product assurance. This paper discusses the integration of halal certification requirements for pharmaceutical preparations regulated under the new legal framework and how effectively it harmonizes with the principles of Maqashid Syari'ah. Through normative legal research methods, this study found that Health Law No. 17 of 2023 seeks to synchronize medical safety standards with consumers' religious beliefs. However, technical challenges in substituting non-halal drug ingredients require adaptive fiqh discourse, particularly in the context of hifdz al-nafs (protection of life) and hifdz al-din (protection of religion).

Keywords: Harmonization, Halal Medicine Guarantee, Health Law

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Introduction

Halal Product Guarantee (JPH) in Indonesia is a constitutional and religious mandate that is specifically regulated through Law Number 33 of 2014. With the enactment of Law Number 17 of 2023 concerning Health (Health Law 2023), which also regulates the availability and supervision of medicines, as an omnibus law, this law repeals dozens of old regulations in order to simplify bureaucracy and strengthen the national health system.

One crucial aspect that remains a focus of public and legal discourse is the guarantee of the availability and safety of pharmaceutical products, including medicines, which must be in line with the beliefs of the majority of Indonesia's population. The guarantee of halal products is not merely an administrative or economic issue, but a manifestation of the protection of human rights in practicing one's religion according to one's beliefs. In the medical context, drugs play a vital role in human survival, so certainty regarding their halal status is a fundamental requirement that demands harmonization between secular positive law and Islamic law, which is based on the values of the philosophical framework of Islamic law, namely the *Maqāsid al-Sharī'ah* principle. In order to realize comprehensive health protection for the Muslim community, the enactment of Law Number 17 of 2023 concerning Health (hereinafter referred to as the 2023 Health Law) is a step taken by the Indonesian government to codify and simplify various health regulations that were previously scattered in different places. In the national pharmaceutical industry landscape, the issue of drug halalness is not merely an administrative matter, but touches on the essence of protecting Muslim consumers, who constitute the majority of Indonesia's population. Ensuring halal products in the context of medicines is more complex than in the case of food products, given the domestic pharmaceutical industry's dependence on imported raw materials that often come from sources whose halalness has not been verified in accordance with Islamic law. Therefore, the enactment of the 2023 Health Law should be seen as an effort to strengthen a health ecosystem that is inclusive of religious values. Philosophically, the state has a constitutional obligation to protect citizens in practicing their religious beliefs, including in the aspect of medicine consumption. On the other hand, the state is also obliged to guarantee the right to health as part of fundamental human rights. Urgent medical needs and the availability of halal medicines often place patients and medical personnel in difficult positions.

Literature Review

The Normative and Philosophical Foundations of Halal Drug Assurance

The 2023 Health Law strengthens the role of the state in ensuring the availability and safety of medicines. Although this law focuses on the health system in general, the issue of halal medicines remains relevant because it operates as a *lex specialis* that regulates the health sector and must be in line with the JPH Law. The 2023 Health Law should be interpreted as a strengthening of the state's commitment to safe and high-quality health products, which implicitly includes aspects of halal, given the large Muslim population. This regulation serves as a positive legal basis that covers the national pharmaceutical system, including the monitoring mechanism for raw materials and finished products that must comply with halal standards if intended for Muslims. After the enactment of the 2023 Health Law, regulations regarding pharmaceutical preparations underwent quite fundamental structural changes. Although this law is omnibus in nature, the provisions regarding halal product guarantees still refer to the principles laid down in Law Number 33 of 2014 concerning Halal Product Guarantees (JPH Law), which was later reinforced through the Job Creation Law.

The 2023 Health Law, in its articles on the safety of pharmaceutical preparations, emphasizes that medicines in circulation must meet safety, efficacy, and quality standards, without neglecting the aspect of halal certification where required. This legal synchronization is important to avoid dual standards between the health authority (BPOM) and the halal certification authority (BPJPH). The 2023 Health Law mandates that all pharmaceutical products manufactured and distributed in Indonesia must take into account the interests of the

wider community, including the availability of medicines that are in accordance with religious beliefs (Nurhayati, Jurnal Hukum Farmasi, 2024, p. 45). The implementation of halal certification requirements for medicines is being carried out gradually, given the difficulty in finding substitutes for medicinal components derived from non-halal animals such as pigs. Through the 2023 Health Law, the state provides space for pharmaceutical technology innovation based on natural or herbal ingredients that are easier to verify as halal as a long-term strategy for national medicine independence. However, legal challenges arise when there are essential pharmaceutical preparations that do not yet have halal certification. The Health Law of 2023 does not necessarily prohibit the use of these drugs in medical emergencies. This shows harmony with the general legal principle that safety of life is the top priority. Explanations in derivative regulations are expected to provide clarity regarding the threshold between halal obligations and medical necessity. Juridically, the 2023 Health Law serves as a legal umbrella that integrates product safety from a scientific perspective with legal certainty from a religious perspective.

Regulatory Framework for Halal Medicine Guarantees in Health Law No. 17 of 2023

The Indonesian government, through Law No. 17 of 2023, stipulates that pharmaceutical preparations must meet standards of quality, safety, and efficacy. Although detailed regulations regarding halal certification are specifically governed by Law No. 33 of 2014 concerning Halal Product Guarantee (JPH Law) and its amendments in the Job Creation Law, this new Health Law provides an operational basis for the integration of halal standards in the pharmaceutical supply chain. The articles in the Health Law emphasize the importance of product information transparency for consumers. This integration means that every drug circulating in Indonesia must undergo a process of identifying raw materials, production processes, and distribution that meet the criteria of not containing prohibited elements. The biggest challenge in this implementation is the dependence on imported raw materials for medicines (BBO), which still reaches over ninety percent, many of which are sourced from enzymes or animal derivatives that may not have halal certification from their country of origin. Therefore, the Health Law encourages the independence of the domestic pharmaceutical industry as a strategic step to facilitate quality control and the halal status of products.

Maqashid Syari'ah as a Philosophical Framework for Analysis

In Islamic law, the main purpose of establishing laws is to realize human welfare, which is summarized in five main pillars: protection of religion (hifdz al-din), protection of life (hifdz al-nafs), protection of reason (hifdz al-aql), protection of offspring (hifdz al-nasl), and protection of property (hifdz al-mal). In the context of halal medicine guarantees, the pillars of hifdz al-din and hifdz al-nafs are central to the discourse. Protection of religion mandates that every Muslim must avoid things that are prohibited by sharia, including consuming medicines that contain pork or other impure substances. Uncertainty about the halal status of a medicine can cause inner turmoil that hinders peace of mind in worship. On the other hand, hifdz al-nafs or protection of life requires medical treatment to cure illness. If the only available medicine is non-halal and the patient's life is at risk, then the fiqh rule of al-dharuru tubihu al-mahdhurat (emergency situations permit prohibited things) applies. Maqashid Syari'ah views that religion exists to make life easier for humans, not to make it difficult. Therefore, the integration of halal product guarantees in the 2023 Health Law is actually a manifestation of the state's efforts to implement these two pillars in a balanced manner. The halal provisions in the law are not intended to restrict access to health care, but to provide dignified choices for patients. The harmonization between positive law and Maqashid Syari'ah is reflected in the flexibility of health regulations. Islam recognizes the concepts of istihalah (change in the form of a substance) and istihlak (mixing substances in such small quantities that their original properties are lost), which can open the door to the use of complex chemicals in pharmaceuticals that were originally considered dubious. The 2023 Health Law, which encourages domestic

pharmaceutical research and development, is in line with the spirit of Maqashid Syari'ah to create independence and minimize dependence on products that are questionable in terms of sharia.

Research Methodology

The research methodology is Normative Legal Research (Yuridis Normatif). By synchronizing positive law (Health Law) and sharia principles (Maqāshid al-Sharī'ah). Through a literature study, which is research focused on examining the rules or norms in positive law and Islamic legal principles, through a Statute Approach and examining Law No. 17 of 2023 concerning Health and regulations related to Halal Product Guarantee (JPH) and taking a Conceptual Approach (Conceptual Approach): Referring to the principles of Maqāshid al-Sharī'ah (especially hifz al-nafs and hifz al-din) as a tool for analysis. Using a comparative or harmonization approach between state regulations and Islamic law, utilizing secondary data sources classified as follows:

Classification	Sources of Legal Materials
Primary Legal Materials	Law No. 17 of 2023 concerning Health, Law No. 33 of 2014 concerning Halal Product Guarantee (along with its amendments in the Job Creation Law), and the Qur'an and Hadith.
Secondary Legal Materials	Legal textbooks, scientific journals, previous research results, and opinions of scholars/intellectuals regarding halal certification for medicines.
Tertiary Legal Materials	Legal dictionary, Indonesian Dictionary (KBBI), and encyclopedia.

Results

Analysis of Maqashid Syari'ah on Halal Medicine Guarantees

Maqashid syari'ah, or the objectives of Islamic law, provide a strong evaluative framework for viewing the urgency of halal medicine guarantees. Fundamentally, there are five key elements in maqashid syari'ah, namely protection of religion (hifz ad-din), life (hifz an-nafs), intellect (hifz al-'aql), lineage (hifz an-nasl), and property (hifz al-mal). The guarantee of halal medicine directly intersects with hifz ad-din and hifz an-nafs. Protection of religion is realized when the state facilitates Muslims to avoid consuming haram substances that can interfere with the sanctity of worship. On the other hand, protection of life is realized through the certainty that the medicine consumed is not only halal theologically, but also thayyib (good and safe) medically. From an Islamic legal perspective, consuming haram medicine under normal circumstances is prohibited, but Islam provides leeway through the principle of necessity (adh-dharurat tubih al-mahzhurat). However, the existence of Law No. 17 of 2023 aims to minimize this “emergency” space by providing halal medicine substitutes through research and biotechnology innovation that is in accordance with sharia law.

The Dynamics and Problems of Implementing Halal Guarantees in the Pharmaceutical Sector.

Although theoretically the 2023 Health Law and Maqashid Syari'ah are harmonious, in practice there are still various obstacles. One crucial issue is the dependence on gelatin, enzymes, and catalysts derived from animals. Most of these additives are still imported from non-Muslim countries. The halal certification requirement, which is reaffirmed in the spirit of the 2023 Health Law, requires the pharmaceutical industry to conduct in-depth audits of their

supply chains. This has an impact on increased production costs, which in turn can affect people's purchasing power for essential medicines. In addition, there is ambiguity in determining the criteria for "emergency". The 2023 Health Law gives medical personnel the authority to provide the best treatment for patients, but without clear guidelines on when a non-halal drug truly has no halal alternative, legal uncertainty continues to haunt practitioners. From an Islamic legal perspective, the determination of emergency must be based on credible medical expert testimony. Therefore, synergy between scholars (MUI) and pharmacologists is needed to compile a list of drugs that currently fall into the category of dharurah or hajiyyat (urgent secondary needs) so that there is no conflict between religious compliance and patient safety. The government, through the 2023 Health Law, also pays attention to the development of natural medicine (phytopharmaceuticals). From the perspective of Maqashid Syari'ah, optimizing Indonesia's natural resources for medicine is a concrete step in protecting the nation's lives and wealth. The use of plant-based ingredients minimizes the risks associated with animal-based ingredients. By strengthening the halal pharmaceutical ecosystem, Indonesia is not only fulfilling its constitutional mandate, but also positioning itself as a leader in the global halal market. This harmonization shows that Indonesian health law has transformed towards a more sociological-religious direction.

The Challenge of Harmonizing Law and Industrial Reality

The process of harmonizing the Health Law and halal principles often encounters technical obstacles in laboratories. Many essential medicines, such as vaccines or insulin, have historically been developed using growth media or enzymes derived from pigs. Health Law No. 17 of 2023 mandates the strengthening of research and development in the health sector. Harmonization occurs when medical research is directed towards finding alternative non-animal or halal-slaughtered animal raw materials. The provisions regarding the obligation of halal certification for medicines as stipulated in the derivative regulations of the JPH Law must be viewed as a complement to the patient safety standards regulated in the Health Law. This synchronization ensures that patients not only receive physical healing, but also inner peace. If there is a discrepancy, for example, if a much-needed medicine does not yet have a halal label, then health regulations must ensure that honest information is provided so that medical personnel can give adequate explanations to patients, in line with the principle of the right to information in health law.

The Position of Fatwas and the Role of Institutions

Within Indonesia's legal structure, the role of the Indonesian Ulema Council (MUI) through the issuance of fatwas on product halal certification remains a key pillar adopted in the state administration system through the Halal Product Guarantee Agency (BPJPH). Health Law No. 17 of 2023 strengthens cross-sectoral coordination. The effectiveness of halal drug assurance depends heavily on the extent to which the Halal Inspection Agency (LPH) can synergize with the Food and Drug Supervisory Agency (BPOM) as the drug safety supervisory authority. This synergy reflects the concept of mashlahah ammah (public interest), whereby the state is present to eliminate doubts (syubhat) among the public. Without strong harmonization, there will be dual standards that will complicate matters for pharmaceutical businesses and harm consumers. Therefore, data integration between the national health information system mandated by the Health Law and the halal information system is an absolute requirement for the successful implementation of halal product assurance in the digital era.

Conclusion

Law Number 17 of 2023 concerning Health has successfully integrated the values of halal product assurance as an integral part of pharmaceutical preparation quality standards in Indonesia. This regulation reflects a strong harmonization with the principles of Maqashid Syari'ah, particularly in balancing religious protection (hifdz al-din) and life protection (hifdz

al-nafs). Despite technical challenges in implementing halal certification in the complex pharmaceutical industry, this policy encourages innovation towards national drug independence based on natural ingredients that are more in line with sharia principles. Sustained synergy between regulators, industry, and religious authorities is key to ensuring that halal drug guarantees do not become a barrier to health access, but rather a new standard of excellence in the national health system.

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