



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER
58/PUU-XXI/2023**

Concerning

**Legal Action Against Non-Issuance of Halal Certificate
by Komite Fatwa Produk Halal (Halal Product Fatwa Committee)**

- Petitioner** : Rega Felix
- Type of Case** : Judicial Review of Law Number 33 of 2014 concerning Halal Product Guarantee (Law 33/2014) and Law Number 6 of 2023 concerning Determination of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law (Law 6/2023) against the 1945 Constitution of the Republic of Indonesia (of 1945 Constitution)
- Subject Matter** : Judicial Review of Law 33/2014 and Law 6/2023 against Article 28 paragraph (1), Article 28D paragraph (1), Article 28E paragraph (2), Article 29 paragraph (1) and paragraph (2) of 1945 Constitution
- Verdict** : To dismiss the Petitioner's petition in its entirety
- Date of Decision** : Thursday, 29 August 2024
- Overview of Decision** :

The Petitioner is an Indonesian citizen who has a culinary business under the trademark "Felix Burger" and his business products are burgers and hotdogs.

Whereas regarding the authority of the Constitutional Court (the Court), since what is being petitioned for review is the constitutional review of law *in casu* Law 33/2014 and Law 6/2023 against the of 1945 Constitution, the Court has the authority to hear the *a quo* petition.

Whereas regarding the legal standing, the Petitioner who has a business in the culinary sector selling a popular "western" food product, the Petitioner has been questioned about the halal status of the products he sells. The Petitioner wishes to register his business product to obtain a halal certificate, but because the name of his product refers to something that is forbidden or infidel or false, he has not yet passed the halal certification and he feels that his constitutional rights have been violated because there is no legal remedy that can be taken against the fatwa court decision when it has stated that a product is non halal.

Pursuant to the Petitioner's description of his legal standing, the Court is of the opinion that the Petitioner has been able to describe or explain his alleged constitutional loss which according to the Petitioner, specifically, his constitutional rights have the potential to be violated by the enactment of Article 48 number 19 of the Attachment to Law 6/2023 which contains the amendments to the norms of Article 33 paragraph (5) of Law 33/2014, Article 48 number 20 of the Attachment to Law 6/2023 which contains additions to the norms of Article 33A paragraph (1) of Law 33/2014, and Article 34 paragraph (2) of Law 33/2014 because it does not provide a guarantee of legal certainty to resolve the issue of halal product guarantees in religious courts. In addition, the Petitioner has been able to describe the causal relationship (*causal verband*) between the alleged loss and the enactment the norm of the Article for which the judicial review is being petitioned. Therefore, if the petition is granted, the alleged constitutional loss of the Petitioner will not occur. Therefore, regardless of whether the unconstitutionality of the norms being petitioned for review by the Petitioner is proven or not, the Court is of the opinion that the Petitioner has the legal standing to act as Petitioner in the *a quo* petition.

Whereas regarding the reasons for the petition, according to the Petitioner, Law 33/2014 provides a legal obligation for business actors to obtain halal certificates (mandatory), there should also be a mechanism and process that allows for obtaining such certificates through all possible legal means. Therefore, the state is obliged to fulfil these constitutional rights by providing fair institutions and processes for the community through religious courts. The provisions of Article 48 number 19 of the Attachment to Law 6/2023, which contains amendments to the norms of Article 33 paragraph (5) of Law 33/2014 and Article 48 number 20 of the Attachment to Law 6/2023, which contains additions to the norms of Article 33A paragraph (1) of Law 33/2014, regulate the authority of Komite Fatwa Produk Halal (Halal Product Fatwa Committee) to determine the halal status of a product, thus making the fatwa decisions naturally the same as those of the State Administrative Decisions (*Keputusan Tata Usaha Negara* or KTUN). Therefore, to provide certainty, the religious courts need to be given the authority to enforce the issue of halal products in accordance with the religious law.

Whereas regarding the reasons for the petition, the Court has carefully read the Petitioner's petition along with the evidence submitted by the Petitioner and the Petitioner's conclusion, the President's statement, the expert statement submitted by the President, and the President's conclusion, the constitutionality issue that must be answered by the Court is whether Article 48 number 19 of the Attachment to Law 6/2023 which contains amendments to the norm of Article 33 paragraph (5) of Law 33/2014, Article 48 number 20 of the Attachment to Law 6/2023 which contains additions to the norm of Article 33A paragraph (1) of Law 33/2014, and Article 34 paragraph (2) of Law 33/2014 are contrary to the 1945 Constitution of the Republic of Indonesia because no legal action may be taken against the religious court's determination of the halal status of a product.

Whereas regarding the constitutionality issue of the norm of Article 48 number 19 of Attachment to Law 6/2023 which contains amendments to the norm of Article 33 paragraph (5) of Law 33/2014. In principle, the norm in Article 33 paragraph (5) which is being petitioned for review is not independent because it is an inseparable part of the norm above it which regulates the "Determination of the Halal Status of a Product". The norm stipulates that MUI (Majelis Ulama Indonesia or Indonesian Ulema Council), *in casu* the provincial MUI, district/municipal MUI, or Majelis Permusyawaratan Ulama Aceh (MPU Aceh or Aceh Ulema Consultative Assembly) are given the authority to determine the halal status of a product through a predetermined process. With the enactment of Law 6/2023, the existence of the Halal Product Fatwa Committee which is questioned by the Petitioner also involves various institutions to determine the halal status of a product. The mechanism for determining the halal status of a product as regulated in Law 6/2023 is oriented towards regulating the acceleration and efficiency of the process of determining the halal status of a product. However, the process of submitting an application for a halal product, starting from the

inspection and/or examination of the halal status of the said product by Lembaga Pemeriksa Halal (LPH or Halal Inspection Institution) to the determination by the MUI, is still carried out in accordance with the principles of accuracy and transparency pursuant to the Islamic law, and there is a handling mechanism if the deadline for determining the halal status of such product is not met. Therefore, the Petitioner's argument requesting the addition of a legal remedy mechanism to the religious court against the decision of the Halal Product Fatwa Committee is not in line with the established legal principles and framework. Because the authority of the Halal Product Fatwa Committee to determine the halal status of a product is based on the results of the inspection and/or examination. In this regard, the existence of the said Committee is only to accelerate the determination of the halal status of a product that cannot be immediately carried out by the MUI, provincial MUI, district/municipal MUI, or Aceh MPU upon receiving the results of the inspection and/or examination of products by the LPH. Moreover, if the Petitioner's *petitum* is granted, by giving the authority to the religious court to determine the halal status of a product, in fact it is not in accordance with the absolute competence of the religious court to assess or examine the halal fatwa of a product. If a product is decided in a halal fatwa hearing to be non-halal, Badan Penyelenggara Jaminan Produk Halal (BPJPH or the Halal Product Assurance Organizing Body) will return the halal certificate application to the business actor accompanied by the reasons, so that the business actor is aware of the non-halal nature and is able to correct it. This means that the non-halal status of a product that has been determined in a halal fatwa hearing cannot be reviewed by a religious court, let alone be decided to be a halal product. Therefore, there is no constitutionality issue regarding the norm of Article 48 number 19 of Attachment to Law 6/2023 which contains amendments to the norm of Article 33 paragraph (5) of Law 33/2014 as argued by the Petitioner, thus the Petitioner's argument is legally unjustifiable.

Whereas regarding the constitutionality issue of the norm of Article 48 number 20 of the Attachment to Law 6/2023 which contains additions to the norm of Article 33A paragraph (1) of Law 33/2014, which states, "In the event that an application for halal certification is made by a micro and small business actor through a halal statement, the determination of the halal status of the said Product is carried out by the Halal Product Fatwa Committee in accordance with the provisions of the Halal Fatwa". According to the Petitioner, the *a quo* norm is unconstitutional if it is not interpreted as "against the Decision of the Halal Product Fatwa Committee, legal action may be taken through the Religious Court". The Court is of the opinion that the addition of the norm of Article 33A paragraph (1) to Law 6/2023 is intended to make it easier for the micro and small business actors to obtain halal certificates requested by the micro and small business actors. This is in line with the provisions that require every product to have a halal certificate for any products entering, circulating, or being traded in Indonesia, including products from the micro and small business actors. Therefore, to fulfil these obligations, especially for the micro and small businesses which are one of the foundation of the Indonesian economy, an easier access is given to apply for halal certification of their products based on the halal statements of the micro and small business actors in accordance with the halal standards set by BPJPH. The existence of this access does not mean that any deviations may be made in the process of issuing halal certificates because the Halal Product Fatwa Committee which is authorized to issue halal certificates for the micro and small businesses must decide it in accordance with the provisions of the halal fatwa to guarantee the halal status of a product which include the provision of materials, processing, storage, packaging, distribution, sales, and presentation of products. The Petitioner's *petitum* requesting that the decision to determine the halal status of a product by the Halal Product Fatwa Committee be submitted for legal action to the religious court is a *petitum* that cannot possibly be granted by the Court because this is not within the absolute competence of the religious court. Therefore, the Petitioner's argument questioning the constitutionality of the norm of Article 48 number 20 of the Attachment to Law 6/2023 which contains additions to the norm of Article 33A paragraph (1) of Law 33/2014 is legally unjustifiable.

Whereas the Petitioner also questions the constitutionality of the norm of Article 34 paragraph (2) of Law 33/2014 concerning the return of halal certification application from BPJPH to business actors under the reasoning that if the product is determined to be non halal by the Halal Fatwa Hearing, according to the Petitioner, the halal certification application should not be returned to the business actors, instead a legal action should be able to be taken through the religious court so as not to conflict with Islamic law, the right to develop oneself, and fair legal certainty as guaranteed by the 1945 Constitution of the Republic of Indonesia. The Court is of the opinion that if the Halal Fatwa Hearing states that a product is a non-halal product, then BPJPH will return the halal certificate application to the business actors accompanied by clear reasons regarding the non-halal nature of the product. Before the Court considers further the constitutionality of the *a quo* norm which is being questioned by the Petitioner, it is necessary to understand that the norm for which a review is being petitioned is the provisions governing the "Issuance of Halal Certificates". With regard to the said halal certificate, it is a requirement to include a halal label on a product that meets the halal requirements according to the Islamic law, while the halal label on a product is intended to assure consumers, especially Muslims, that the product is processed, produced, or stored using methods or materials that are in accordance with the Islamic law. In this regard, Article 48 number 1 of Attachment to Law 6/2023 which contains amendments to the norm of Article 1 of Law 33/2014 provides a definition of a halal certificate, namely the recognition of the halal status of a product issued by BPJPH in accordance with a written halal fatwa or determination of the halal status of a product by the MUI, provincial MUI, district/municipal MUI, MPU Aceh, or the Halal Product Fatwa Committee. Pursuant to the above definition, it can be understood that the halal certification issued by BPJPH is a declarative decision. Meanwhile, the determination of the halal status of a product, whether by the MUI or the Halal Product Fatwa Committee, is a constitutive decision that is not included, or it is excluded from the State Administrative Decision. Therefore, neither halal certificates nor determination of the halal status of a product may be submitted as an object of State Administrative disputes. The halal certification application mechanism in Indonesia has undergone significant developments along with the existence of the Halal Product Fatwa Committee and changes in the role of BPJPH. Moreover, the decision of the Halal Product Fatwa Committee has been based on the results of strict inspection and/or examination in accordance with the Islamic law. Therefore, the Petitioner's argument regarding the constitutionality of the norm of Article 34 paragraph (2) of Law 33/2014, which according to the Petitioner should be interpreted that an application for halal certification which is declared non halal should not be returned to the business actor but instead a legal action may be taken through the religious court, it is evident that this is not the absolute competence of the religious court. The religious court cannot assess whether a product that has been declared non-halal through a Halal Fatwa Hearing may change its status to halal or vice versa. Because, for every product that has been declared non halal, it must be returned to the business actor to be adjusted in accordance with the reasons why such product is determined to be non halal as has been submitted to the business actor in order to realize the purpose of establishing the halal product guarantee law, namely to provide comfort, security, safety, and certainty of the availability of halal products for the public in consuming and using the products. Normatively, the competence of a court can only be determined by law. Therefore, the Petitioner's argument questioning the constitutionality of the norms of Article 34 paragraph (2) of the 33/ 2014 Court Law is legally unjustifiable.

Pursuant to the considerations above, the Court then passed down a decision in which verdict states to dismiss the Petitioner's petition in its entirety.