

**INDONESIA'S HALAL CERTIFICATION AS A MARKET  
ACCESS BARRIER: WTO TRADE LAW PERSPECTIVE**

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**Abstrak**

Sertifikasi halal di Indonesia telah menjadi sorotan dalam diskusi perdagangan internasional karena berpotensi menjadi hambatan akses pasar bagi produk impor. Kewajiban untuk memiliki sertifikasi halal bagi hampir semua produk yang beredar di Indonesia diberlakukan melalui Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal. Meskipun bertujuan untuk melindungi konsumen Muslim sebagai bagian dari moralitas publik, implementasi kebijakan ini telah menimbulkan kekhawatiran di antara negara-negara mitra dagang terkait dengan pengakuan terbatas terhadap lembaga sertifikasi asing dan kemungkinan penerapan yang diskriminatif. Dalam kerangka hukum WTO, khususnya TBT Agreement, sertifikasi halal Indonesia perlu dievaluasi kesesuaiannya dengan prinsip-prinsip transparansi, non-diskriminasi, dan pembatasan yang tidak lebih dari yang diperlukan. Dengan pendekatan yuridis normatif dan studi kasus, tulisan ini menganalisis peluang pembenaran kebijakan tersebut berdasarkan pengecualian moralitas publik dalam Pasal XX GATT dan potensi konsekuensi hukumnya dalam konteks perselisihan perdagangan internasional.

**Kata Kunci:** Sertifikasi Halal, Akses Pasar, TBT Agreement, dan Perdagangan Internasional.

## INTRODUCTION

The enactment of Law Number 33 of 2014 concerning Halal Product Assurance (Indonesia Halal Act 33/2014) necessitates that all products entering, circulating, and being traded in Indonesia must possess halal certification.<sup>1</sup> This stipulation applies to domestically produced and imported goods, making halal certification a critical prerequisite for market entry.<sup>2</sup> This legislation protects Muslim consumers by ensuring that products comply with Islamic dietary laws and regulations.<sup>3</sup> This requirement happens because the majority of Indonesian people are Muslim. According to the Global Muslim Population report published by Times of Prayer, the Muslim population in Indonesia reached 244,918,929 people, making it the country with the largest Muslim population in the world.<sup>4</sup>

In general terms, "halal" is an Arabic word meaning "permissible" or "lawful" under Islamic law, known as Sharia.<sup>5</sup> It broadly refers to actions, foods, beverages, and practices that are permitted for Muslims, as opposed to "haram," which denotes prohibited matters. In Islamic teachings, particularly as outlined in the Quran and Hadith, halal encompasses food, finance, pharmaceuticals, cosmetics, and lifestyle choices, ensuring that all aspects of a Muslim's life conform to divine guidance.<sup>6</sup> For Muslims, compliance with halal standards is both a religious obligation and an expression of personal piety and societal identity. The Indonesian legal framework defines halal more specifically under the Halal Act No. 33/2014, which states that a halal product has been declared halal by Islamic law.<sup>7</sup> Under Indonesian regulation, halal certification extends beyond food to include goods, services, and business activities related to the public's consumption or use of such products. Thus, Indonesia integrates both the theological definition and administrative procedures into its formal legal system.

Halal certification is a consumer protection mechanism and a regulatory requirement for products entering the domestic market in Indonesia. Halal Act 33/2014 applies to all imported, distributed, and traded products within Indonesian territory.<sup>8</sup> This provision applies uniformly to domestically produced and foreign goods, making halal certification a practical prerequisite for market entry. The implementation is carried out by the Halal Product Assurance Organising Agency (BPJPH), which oversees the certification process and determines the recognition of foreign halal bodies.<sup>9</sup> In practice, imported products are subject to the exact halal certification requirements as local products, but often face additional procedural burdens due to the limited recognition of foreign certifying authorities.<sup>10</sup> Consequently, halal certification functions as a non-tariff measure that influences market access by requiring compliance with domestic conformity procedures, regardless of whether a product has been certified halal under equivalent standards abroad.

While halal certification intends to protect consumers,<sup>11</sup> it may inadvertently be a technical trade barrier. Regulations that create trade barriers do not align with the World

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<sup>1</sup> Indonesia Halal Act 33/2014, Article 1(5)

<sup>2</sup> Ibid, Article 4

<sup>3</sup> Ibid, Article 3(a)

<sup>4</sup> Times Prayer, "Global Muslim population," [timesprayer.com](https://timesprayer.com/en/muslim-population/), 11 April 2025, available on <https://timesprayer.com/en/muslim-population/>, accessed on 12 April 2025.

<sup>5</sup> Codex Alimentarius Commission, *Guidelines for the Use of the Term "Halal"* (CAC/GL 24-1997), p. 2.

<sup>6</sup> Mian N. Riaz and Muhammad M. Chaudry, *Handbook of Halal Food Production*, ed.1 (Boca Raton: CRC Press, 2018), p. 5–6.

<sup>7</sup> Indonesia Halal Act 33/2014, Article 1(2).

<sup>8</sup> Indonesia Halal Act 33/2014, Article 4

<sup>9</sup> Halal Product Assurance Organizing Agency, *Guidelines for Foreign Halal Certification Body Cooperation* (Jakarta: Ministry of Religious Affairs, 2023), p. 4.

<sup>10</sup> Michelle Engel Limenta, Bayan M. Edis, and Oscar Fernando, *Disabling Labelling in Indonesia: Invoking WTO Laws in the Wake of Halal Policy Objectives*, *World Trade Review*, 17(3), 2018, p. 457.

Trade Organisation (WTO)'s purpose and objectives as an international trade organisation. The WTO Agreement on Technical Barriers to Trade (TBT Agreement) aims to prevent unnecessary international commerce requirements from technical regulations.<sup>11</sup> Mandatory halal certification could be considered an impediment, mainly when the certification process entails additional costs or intricacies for foreign producers.<sup>12</sup> The Preamble of the TBT Agreement states that technical regulations and standards should not create unnecessary obstacles to international trade.<sup>13</sup> Moreover, no country should be prevented from taking measures necessary to ensure the quality of its exports.<sup>14</sup> However, no country should be prevented from taking measures required to protect its essential security interests.<sup>15</sup> From the preamble, we should examine whether halal certification is considered a security interest for Indonesia or if it simply acts as a trade barrier.

Indonesia's halal certification requirement reflects a broader tension between exercising regulatory autonomy and the country's international trade commitments.<sup>16</sup> On the one hand, the mandatory halal certification policy serves a legitimate domestic objective: protecting Muslim consumers in accordance with their religious principles.<sup>17</sup> On the other hand, as a Member of the WTO, Indonesia is bound by disciplines under agreements such as the General Agreement on Tariffs and Trade (GATT) and the Agreement on Technical Barriers to Trade (TBT), which aim to reduce unnecessary obstacles to trade.<sup>18</sup> The challenge lies in ensuring that domestic measures do not result in trade restrictions that are arbitrary, discriminatory, or more trade-restrictive than necessary. In this context, halal certification may operate as a non-tariff barrier if implemented without sufficient regard for transparency, necessity, or equivalence of foreign standards.<sup>19</sup> Thus, a critical balance must be maintained between protecting public morals and upholding Indonesia's commitments to facilitate trade.

Indonesia's halal certification policy has increasingly been viewed as a potential barrier to market access for foreign exporters. As the country with the world's largest Muslim population, estimated at over 231 million, Indonesia has a strong domestic obligation to ensure that products circulating in its territory conform to Islamic law.<sup>20</sup> To fulfil this responsibility, the government introduced the Halal Act 33/2014, which mandates that a wide range of goods, including food, beverages, cosmetics, and even chemicals, must

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<sup>11</sup> WTO, "Technical barrier to trade," wto.com, available on

[https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm), accessed on 20<sup>th</sup> April 2025.

<sup>12</sup> ABNR, "New Halal Law Makes Halal Certification Mandatory," abnrlaw.com, 28<sup>th</sup> August 2025, available on <https://www.abnrlaw.com/news/new-halal-law-makes-halal-certification-mandatory>, accessed on 20<sup>th</sup> April 2025.

<sup>13</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Preamble, para 5.

<sup>14</sup> Ibid, para 6.

<sup>15</sup> Ibid, para 7.

<sup>16</sup> Michelle Engel Limenta, Bayan M. Edis, and Oscar Fernando, "Disabling Labelling in Indonesia: Invoking WTO Laws in the Wake of Halal Policy Objectives", *World Trade Review*, Vol. 17, No. 3 (2018), p. 451.

<sup>17</sup> Rachmania Nurul Fitri Amijaya et al., "Risk Assessment of Trade Barriers: The Implications of Indonesia's Halal Certification Law on International Commerce," *International Journal of Islamic Economics*, Vol. 6, No. 2 (2024), p. 140.

<sup>18</sup> Neni Ruhaeni, Eka An Aqimuddin, and Hadian Afriyadi, "Moralitas Publik Sebagai Dasar Pembenaar Terhadap Kewajiban Sertifikasi Halal Produk Makanan di Indonesia Berdasarkan GATT-WTO 1994," *Jurnal Hukum & Pembangunan*, Vol. 52, No. 1 (2022), p. 115.

<sup>19</sup> Neni Ruhaeni and Eka An Aqimuddin, "Halal Food Certification as an Exception Clause Under the Rule of the WTO-GATT: An Indonesian Experience," *Cogent Social Sciences*, Vol. 9, No. 2 (2023), p. 6.

<sup>20</sup> Pew Research Center, *The Future of the Global Muslim Population: Projections for 2010–2030*, January 2011, p. 21.

be halal-certified before being distributed in the domestic market.<sup>21</sup> While the regulation aims to protect Muslim consumers, many WTO Members have raised concerns at the WTO Committee on Technical Barriers to Trade (TBT). In multiple TBT Committee meetings, countries such as the European Union, the United States, Australia, and Canada questioned the scope, implementation, and transparency of Indonesia's halal certification regime, arguing that it may create unnecessary obstacles to international trade.<sup>22</sup> These concerns underscore the growing tension between legitimate domestic regulation and compliance with global trade rules within the WTO framework.

## **RESEARCH METHODS**

This research employs a normative juridical method, focusing on the examination of legal norms, principles, and frameworks related to Indonesia's halal certification requirements within the context of international trade law. The study relies on a combination of a conceptual approach and a statutory (legislative) approach. The conceptual approach is used to understand the theoretical foundation behind state regulatory autonomy, public morals as a legal justification under WTO law, and how these concepts intersect with global trade liberalisation commitments. This includes evaluating the legitimacy and limits of using religious-based domestic regulation in the context of obligations under the General Agreement on Tariffs and Trade (GATT) and the Agreement on Technical Barriers to Trade (TBT Agreement).

Meanwhile, the statutory approach is used to examine the relevant legal instruments, including Indonesia's Law No. 33 of 2014 concerning Halal Product Assurance (Indonesia Halal Act 33/2014), its implementing regulations, and the provisions of WTO agreements to which Indonesia is a party. Key legal texts analysed include GATT 1994 Articles I, III, XI, and XX, as well as TBT Agreement Articles 2.1 to 2.9, particularly those concerning non-discrimination, necessity, international standards, and transparency. These provisions are analysed to determine whether Indonesia's halal policy aligns with its international trade obligations or constitutes an unjustifiable trade barrier.

The research also integrates case study analysis, particularly examining the WTO Dispute Settlement Body's findings in the DS484 case (Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products), which involved similar issues regarding halal certification and market access. WTO official documents, including panel reports, TBT Committee meeting minutes, and member state submissions, are examined to provide institutional and legal context. The research uses secondary data sourced from academic journals, WTO legal texts, government publications, and credible international reports. All data is analysed qualitatively using legal interpretation techniques to assess regulatory compliance, identify areas of tension, and propose recommendations for improving alignment between Indonesia's domestic halal certification regime and its obligations under international trade law.

## **RESULTS AND DISCUSSION**

### **Indonesia Halal Certification Requirement as Market Access Barrier**

Indonesia's mandatory halal certification regime, established under Halal Act 33/2014, requires that all products entering, circulating, and being traded within Indonesia obtain halal certification.<sup>23</sup> This obligation applies equally to domestic and imported goods, making halal certification a uniform condition for market access. Certification must be carried out through

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<sup>21</sup> Indonesia Halal Act 33/2014, Article 4(2).

<sup>22</sup> WTO, Committee on Technical Barriers to Trade, Minutes of the Meeting of 22–23 June 2022, G/TBT/M/88, para. 3.49–3.54.

<sup>23</sup> Indonesia Halal Act 33/2014, Article 4.

domestic halal institutions approved by the BPJPH or, in the case of imports, by foreign halal bodies formally recognised by BPJPH.<sup>24</sup> While the regulatory objective is to protect Muslim consumers by ensuring compliance with religious dietary requirements, the limited recognition of foreign halal certification bodies has raised concerns about the consistency and accessibility of the process. Foreign producers are often subjected to additional procedural layers, including repetitive conformity assessments, even where certification has already been obtained from internationally credible institutions.

These procedural complexities contribute to increased compliance costs and legal uncertainty, particularly for small and medium-sized enterprises (SMES) whose ability to export may be disproportionately affected. The requirement to follow Indonesia-specific conformity mechanisms, without reciprocal recognition or equivalence measures, can operate as a non-tariff measure (NTM) that limits trade.<sup>25</sup> This regulatory approach creates a de facto barrier to market entry, particularly when foreign producers must bear the costs and time associated with redundant certification. Within the framework of the TBT Agreement, such practices may raise legal concerns under provisions that prohibit unnecessary obstacles to trade and require that technical regulations not be more trade-restrictive than necessary to fulfil legitimate policy objectives. Where procedural burdens are applied without adequate justification, particularly in the absence of international harmonisation or mutual recognition, Indonesia's halal regime risks being viewed as inconsistent with its international trade obligations. The implications of such regulatory inconsistencies are significant, not only for exporters but also for Indonesia's compliance with WTO disciplines. Although no dispute has directly challenged Indonesia's halal certification under the TBT Agreement, jurisprudence from past WTO cases involving Indonesia offers relevant context. The halal certification regulation under Halal Act 33/2014 could be vulnerable to future challenges, this time under the TBT Agreement, if it is seen as a disguised restriction on international trade.<sup>26</sup>

#### **TBT Agreement Provisions on Market Access**

While rooted in legitimate public interest, Indonesia's halal certification requirement engages several provisions under the TBT Agreement that aim to prevent discriminatory and trade-restrictive regulations. Article 2.1 of the TBT Agreement prohibits WTO Members from treating imported products less favourably than domestic or third-country products.<sup>27</sup> Indonesia's limited recognition of foreign halal certification bodies has raised concerns under this provision. Domestic producers can access BPJPH-approved halal services with greater ease and certainty, while foreign exporters often face more burdensome and uncertain pathways, potentially amounting to de facto discrimination.<sup>28</sup> While local producers can access nationally accredited halal certifiers relatively easily, foreign producers must undergo BPJPH's recognition process, which may lack transparency and

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<sup>24</sup> Halal Product Assurance Organizing Agency, *Guidelines for Foreign Halal Certification Body Cooperation* (Jakarta: Ministry of Religious Affairs, 2023), p. 4.

<sup>25</sup> Michelle Engel Limenta, Bayan M. Edis, and Oscar Fernando, "Disabling Labelling in Indonesia: Invoking WTO Laws in the Wake of Halal Policy Objectives", *World Trade Review*, Vol. 17, No. 3 (2018), p. 457.

<sup>26</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.2 and 2.5; see also Appellate Body Report, *US – COOL* (DS384/386), adopted 23 July 2012, and Panel Report, *EC – Sardines* (DS231), adopted 23 October 2002.

<sup>27</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.1

<sup>28</sup> Michelle Engel Limenta, Bayan M. Edis, and Oscar Fernando, "Disabling Labelling in Indonesia: Invoking WTO Laws in the Wake of Halal Policy Objectives", *World Trade Review*, Vol. 17, No. 3 (2018), p. 457.

predictability.<sup>29</sup> This disparity in treatment warrants scrutiny under the principle of non-discrimination, particularly when no clear justification is provided for excluding foreign halal certifiers. If the differential treatment results in a disadvantage for foreign producers without objective justification, it may be inconsistent with the principle of national treatment under Article 2.1 of the Agreement.

Article 2.2 permits Members to adopt technical regulations in pursuit of legitimate objectives, such as protecting public morals, health, or safety.<sup>30</sup> However, these measures must not be more trade-restrictive than necessary to achieve the stated aim. Indonesia may justify its halal certification regime under the protection of public morals as an objective recognised in WTO jurisprudence.<sup>31</sup> However, to comply with Article 2.2, Indonesia must also demonstrate that the measure is proportionate and that no reasonably available, less trade-restrictive alternative exists. The lack of recognition for equivalent foreign certifications and the absence of mutual recognition arrangements suggest that less restrictive options have not been fully explored, potentially undermining the legitimacy of the regime under this provision.

Articles 2.4 and 2.5 encourage WTO Members to base their technical regulations on relevant international standards where they exist.<sup>32</sup> When Members adopt such standards, their regulations are presumed not to create unnecessary obstacles to trade. One widely accepted reference point in halal certification is the Codex Guidelines for the Use of the Term “Halal” (CAC/GL 24-1997), which outlines minimum requirements consistent with Islamic principles and trade facilitation.<sup>33</sup> This deviation weakens the presumption of compliance with the TBT Agreement. Furthermore, the absence of justification for divergence from recognised standards raises the question of whether Indonesia’s approach imposes higher-than-necessary obligations on foreign exporters, thereby increasing the likelihood that its regulation will be viewed as a barrier to trade.

Under Article 2.5, if a regulation is not based on international standards, the presumption of compliance with the TBT Agreement is lost.<sup>34</sup> This suggests that Indonesia must demonstrate that its halal requirements do not create unnecessary trade barriers. Since halal food certification aligns with various international guidelines, Indonesia's selective or lack of alignment with these guidelines weakens this presumption. Consequently, Indonesia may be required to offer a comprehensive justification for why its national halal system imposes additional requirements beyond what is recognised internationally. Failing to provide such justification could make the measure vulnerable to challenge under the WTO's dispute settlement mechanism.

Article 2.8 of the TBT Agreement requires Members to avoid unnecessarily duplicative conformity assessment procedures.<sup>35</sup> Indonesia's halal certification system requires that all products be certified through BPJPH or its designated national bodies, even

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<sup>29</sup> Halal Product Assurance Organizing Agency, *Guidelines for Foreign Halal Certification Body Cooperation* (Jakarta: Ministry of Religious Affairs, 2023), p. 4.

<sup>30</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.2.

<sup>31</sup> See Appellate Body Report, *US – Gambling* (DS285), adopted 20 April 2005, para. 296 (public morals as a legitimate objective).

<sup>32</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.4 and 2.5.

<sup>33</sup> Codex Alimentarius Commission, *Guidelines for the Use of the Term “Halal”* (CAC/GL 24-1997); see also WTO, Committee on TBT, G/TBT/N/IDN/140, Notification of Halal Product Assurance Law by Indonesia (22 November 2019).

<sup>34</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.5.

<sup>35</sup> *Ibid*, Article 2.8.

if they have already received certification from reputable foreign halal agencies. This exclusive reliance on national certification leads to regulatory duplication, increased costs, and potential delays. If the country of origin adheres to standards equivalent to those of Indonesia, this requirement may be considered unnecessarily burdensome. Unless Indonesia can demonstrate that this duplication is essential for ensuring public morals or safety, such measures could be inconsistent with Article 2.8.

### **Ensured Indonesia Halal Certification Compliance with TBT Agreement on Market Access**

To comply with the TBT Agreement, Indonesia must ensure that its halal certification regime is transparent, non-discriminatory, and no more trade-restrictive than necessary. This includes recognising foreign halal certifications that meet equivalent standards and providing clear procedures to facilitate compliance by foreign producers. Article 2.9 of the TBT Agreement is pivotal for maintaining transparency and fostering effective communication among WTO Members regarding any proposed technical regulations that can potentially influence international trade dynamics.<sup>36</sup> This provision explicitly requires Members to notify their counterparts of proposed rules, creating an opportunity for affected parties to assess the potential impacts on their economic interests and engage meaningfully in the regulatory process by submitting comments and feedback within a reasonable timeframe.

In light of Indonesia's halal certification system, established through its domestic legal framework, critical questions arise about the extent to which Indonesia has fulfilled its obligations under Article 2.9. If evidence suggests that Indonesia did not adequately notify or consult its trading partners during the development stages of this certification system, such a lack of transparency could violate international trade norms and seriously undermine the perceived credibility and legal defensibility of the halal certification framework. The implications of such deficiencies are far-reaching, potentially eroding trust among trading nations and complicating Indonesia's standing in international trade discussions, particularly in sectors sensitive to food safety and product quality standards.

Transparency lies at the heart of the TBT Agreement's regulatory expectations. Under Article 2.9, WTO Members are required to notify other Members of any proposed technical regulations that may significantly affect trade, allowing sufficient time for comments and engagement.<sup>37</sup> In Indonesia's halal certification, it is crucial to assess whether the government fulfilled these notification duties before enacting Law No. 33 of 2014. Although Indonesia did submit a notification to the WTO in 2019 (G/TBT/N/IDN/140), questions remain regarding whether this occurred at a meaningful stage in the legislative process and whether stakeholders had a genuine opportunity to comment.<sup>38</sup> If the regulatory framework was introduced or amended without adequate transparency and consultation, Indonesia may not comply with Article 2.9. Such shortcomings affect procedural legality, reduce regulatory predictability, hinder trust in Indonesia's domestic system, and impact exporters' ability to comply promptly and cost-effectively.

Article 2.1 of the TBT Agreement requires WTO Members to treat imported products no less favourably than domestic or third-country products.<sup>39</sup> While the formal requirements apply equally to all products in Indonesia's halal requirement, the implementation reveals significant disparities. Domestic producers benefit from the immediate accessibility of BPJPH-accredited certifiers and direct oversight. In contrast, foreign producers must either

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<sup>36</sup> Ibid, Article 2.9.

<sup>37</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.9.

<sup>38</sup> WTO, Committee on TBT, Notification G/TBT/N/IDN/140 (22 November 2019).

<sup>39</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.1

obtain recognition for their certifying bodies or rely on a limited list of BPJPH-recognised foreign institutions.<sup>40</sup> This process is lengthy and burdensome and may also be inconsistently applied. Such structural barriers create de facto discrimination against imported products. They could be deemed inconsistent with Article 2.1 if Indonesia cannot demonstrate that the differential treatment is based on objective, non-trade-related grounds. Ensuring equal access to certification pathways for foreign producers is thus essential to complying with the national treatment obligation.

Under Article 2.2, Members may adopt technical regulations for legitimate objectives, such as protecting public morals, including religious dietary laws, provided that such measures are not more trade-restrictive than necessary.<sup>41</sup> The halal certification requirement may be justified under this exception. However, the regulation must pass the necessity and proportionality test by demonstrating that no reasonably available alternative exists to achieve the same policy objective with less trade restrictiveness. In this context, Indonesia's failure to pursue broader mutual recognition agreements (MRAS) or to accept certifications from reputable foreign bodies that follow equivalent halal standards weakens the justification for its approach.<sup>42</sup> The necessity test must also assess whether the regulation's scope is overly broad, encompassing product categories or certification levels that exceed what is necessary for consumer protection. Without such proportionality, halal law risks being found incompatible with the TBT Agreement's discipline on regulatory overreach.

Articles 2.4 and 2.5 of the TBT Agreement encourage Members to base their technical regulations on relevant international standards where they exist.<sup>43</sup> This helps facilitate regulatory harmonisation and reduce unnecessary trade obstacles. One such standard is the Codex Alimentarius guideline on "halal" (CAC/GL 24-1997), which establishes minimum requirements aligned with religious principles while facilitating trade.<sup>44</sup> Indonesia's halal requirement does not refer to these international standards, nor explain why it departs from them. When a WTO member deviates from such standards without adequate justification, it loses the presumption under Article 2.5 that its measure does not create an unnecessary barrier to trade. In this case, Indonesia must provide a reasoned explanation for the divergence, such as demonstrating that Codex standards are insufficient to protect public morals. If it fails, the halal regulation could be found in breach of Articles 2.4 and 2.5.

Finally, Article 2.8 calls upon Members to ensure that technical regulations do not require unnecessarily burdensome conformity assessment procedures. Indonesia currently requires imported halal products to be certified either directly through BPJPH or through a foreign body recognised explicitly by BPJPH.<sup>45</sup> However, the recognition process is complex, and the list of approved foreign certifiers is limited. When foreign products are already certified halal by reputable organisations that follow equivalent standards, requiring additional domestic certification introduces redundant costs and delays. If these duplications cannot be justified as necessary to achieve the policy aim (such as public morals), they may be considered unnecessary barriers under Article 2.8. Indonesia could reduce trade restrictiveness by broadening recognition of foreign certification bodies or establishing a

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<sup>40</sup> Halal Product Assurance Organizing Agency, *Guidelines for Foreign Halal Certification Body Cooperation* (Jakarta: Ministry of Religious Affairs, 2023), p. 4.

<sup>41</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.2, see also Appellate Body Report, *US – Gambling* (DS285), para. 296.

<sup>42</sup> Dwi Astuti Adisti, "Implikasi Penerapan Sertifikasi Halal Wajib terhadap Akses Pasar Produk Impor di Indonesia," *Jurnal Hukum Kenotariatan*, Vol. 6, No. 2 (2021), p. 233–234.

<sup>43</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.4 and 2.5.

<sup>44</sup> Codex Alimentarius Commission, *Guidelines for the Use of the Term "Halal"* (CAC/GL 24-1997).

<sup>45</sup> Agreement on Technical Barrier to Trade (adopted on 2 November 1994, enforced on 1 January 1995), Article 2.8.

Mutual Recognition Agreement (MRA) with key trading partners.

### **Indonesia-US Chicken leg**

Indonesia is one of the largest consumers of chicken meat in Southeast Asia, with poultry being a significant source of animal protein for its population. As of 2022, annual chicken meat consumption in Indonesia reached approximately 12.9 kilograms per capita, reflecting steady growth from previous years.<sup>46</sup> A growing middle class, urbanisation, and increased demand for affordable and convenient protein sources primarily drive this trend. Chicken is considered relatively more affordable and accessible compared to beef or fish, making it a staple protein in both urban and rural diets.<sup>47</sup> The Indonesian government also promotes poultry production through national food security programs to support domestic consumption and reduce reliance on imported animal protein.<sup>48</sup>

Indonesia's domestic chicken market is heavily segmented based on the type and value of chicken parts. Whole chickens, particularly ayam kampung (free-range chickens), are traditionally preferred in wet markets and rural areas for ceremonial and household consumption.<sup>49</sup> In contrast, processed chicken parts such as wings, thighs, and breasts are increasingly popular in urban supermarkets and quick-service restaurants. Consumers in urban areas are showing a growing preference for convenience, cleanliness, and portioned cuts, particularly among the middle class.<sup>50</sup> This shift in demand influences how domestic poultry producers package and distribute their products across traditional and modern retail channels.

In the context of imported chicken, demand is mainly concentrated on specific parts such as chicken leg quarters, drumsticks, and mechanically deboned meat.<sup>51</sup> These products are often more affordable than local equivalents and are targeted at food processing industries, fast food chains, and institutional buyers. However, the importation of certain chicken parts is politically sensitive and has faced regulatory restrictions, particularly from major exporters such as the US.<sup>52</sup> The segmentation between domestic and imported chicken also reflects religious and regulatory standards, including the requirement for halal certification for all imported meat.<sup>53</sup> Consequently, the chicken import market in Indonesia remains relatively limited and heavily regulated despite growing consumer demand for low-cost poultry products.<sup>54</sup>

Indonesia's halal certification requirement has also been practically tested in the case of imported chicken leg quarters from the US. Based on a study, Indonesia applied a halal certification standard that barred US chicken leg quarters from entering the Indonesian market. Although USA chicken leg quarters were cheaper, their entry was restricted because they failed to meet Indonesia's halal standards, particularly concerning slaughtering

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<sup>46</sup> USDA Foreign Agricultural Service, Indonesia Poultry and Products Annual Report 2023, GAIN Report ID2023-003, p. 4.

<sup>47</sup> Ibid, p. 5.

<sup>48</sup> Direktorat Jenderal Peternakan dan Kesehatan Hewan (Ditjen PKH), Laporan Kinerja Tahun 2024, *Strategi Percepatan Sewasembada Susu dan Daging Nasional*, Directorate General of Livestock and Animal Health, Ministry of Agriculture of Indonesia, p. 8.

<sup>49</sup> Wahyuni, Siti. "Consumer Preferences of Chicken Meat in Indonesia," *Jurnal Agribisnis Indonesia*, Vol. 8, No. 2 (2020), p. 110–111.

<sup>50</sup> Ibid, p. 112–113.

<sup>51</sup> USDA FAS, Indonesia Poultry and Products Annual Report 2023, p. 6–7.

<sup>52</sup> WTO Panel Report, Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products, WT/DS484/R, para. 7.105.

<sup>53</sup> Indonesia Halal Act 33/2014, Article 4(2).

<sup>54</sup> Akim, Arfin Sudirman & Pratama, Januar Aditya, Indonesia–US Trade Barrier: A Study on the Halal Certification of Imported Chicken Leg Quarters, *Jurnal Hubungan Internasional*, Vol. 12, No. 1 (2023), p. 56.

practices.<sup>55</sup> Even when Indonesia recognised certain US halal certification bodies, not all production processes from US exporters aligned with Indonesia's stricter interpretations of halal requirements. As a result, halal certification became a de facto non-tariff barrier, impacting trade flows from the US to Indonesia for nearly two decades.

This case highlights two strategic considerations behind Indonesia's mandatory halal certification: a society-centred approach to protect the religious values of its Muslim-majority population and a state-centred approach to safeguard domestic poultry producers while preserving economic stability during the post-1997 financial crisis.<sup>56</sup> Although Indonesia justified its policy based on the protection of public morals under WTO law, the lack of proportionality and failure to demonstrate necessity eventually led to Indonesia's defeat at the WTO dispute settlement in 2017.<sup>57</sup> This outcome illustrates the risks Indonesia faces if halal certification measures are perceived as disguised barriers rather than legitimate moral protections under GATT Article XX(a) and the TBT Agreement.

## CONCLUSION

Indonesia's mandatory halal certification requirement, as established under Halal Act 33/2014, represents a legitimate expression of regulatory sovereignty aimed at protecting public morals, particularly the religious values of its Muslim-majority population. This objective is well recognised under international trade law, especially in the context of GATT Article XX(a), which permits Members to adopt measures necessary to protect public morals. However, despite the legitimacy of its aims, how Indonesia implements this regulation raises concerns regarding its consistency with the legal obligations contained in the WTO framework, particularly under the Agreement on Technical Barriers to Trade (TBT Agreement).

The requirement that all goods distributed in Indonesia be certified as halal, regardless of whether they are domestically produced or imported, may create significant obstacles for foreign exporters. These concerns primarily arise from the procedural complexity, limited transparency, and the lack of automatic recognition of foreign halal certification bodies. As the regulation mandates certification only from bodies recognised by the Halal Product Assurance Organising Body (BPJPH), many credible foreign certifiers face administrative barriers that may result in redundant assessments, increased compliance costs, and trade delays. In practice, this transforms halal certification from a consumer protection tool into a de facto non-tariff measure that impacts market access, particularly in the case of processed food, cosmetics, and pharmaceutical products.

From the perspective of WTO law, this raises potential incompatibility with several provisions of the TBT Agreement, including the obligations of non-discrimination (Article 2.1), necessity and legitimate objectives (Article 2.2), the use of international standards (Article 2.4), and the avoidance of unnecessarily burdensome conformity assessment procedures (Article 2.8). Indonesia must also comply with transparency obligations under Article 2.9 by notifying new technical regulations to WTO Members and providing an opportunity for comment. While Indonesia has made such notifications, concerns remain regarding the adequacy and inclusiveness of consultations with affected trading partners.

Suppose the policy were to be challenged through the WTO Dispute Settlement Body, as in the DS484 case brought by the United States concerning the importation of chicken products. In this scenario, Indonesia would need to justify the measure under GATT Article XX. In such a case, it would be required to demonstrate not only that the measure serves a

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<sup>55</sup> Ibid, p. 50-55.

<sup>56</sup> Ibid, p. 56-58.

<sup>57</sup> Ibid, p. 59-61.

legitimate public moral purpose, but also that it is necessary to achieve that objective and that no less trade-restrictive alternative exists. Furthermore, the application of the measure must satisfy the chapeau of Article XX, which prohibits arbitrary or unjustifiable discrimination or disguised restrictions on international trade. Failure to meet these criteria could result in a WTO ruling against the measure, which may have broader implications for Indonesia's trade relations and regulatory credibility.

To reconcile its domestic policy objectives with international trade commitments, Indonesia should consider implementing several regulatory reforms. These include expanding the scope of recognised foreign halal certifiers, referencing relevant international standards such as the Codex Alimentarius where appropriate, and engaging in bilateral or regional mutual recognition arrangements. Such efforts would reduce unnecessary trade barriers while maintaining the integrity of Indonesia's halal assurance system. Ultimately, by improving regulatory coherence and procedural transparency, Indonesia can ensure that its halal certification regime functions not as a barrier to trade but as a fair and legitimate instrument of consumer protection that complies with both domestic religious expectations and international legal norms.

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