

## ***Indonesia's Mandatory Halal Certification: The Potential of a Technical Barrier to Trade as a Trade Promotion Tool***

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### **ABSTRACT**

The World Trade Organization (WTO) has established frameworks to minimize barriers and promote beneficial international trade. While trade liberalization fosters market expansion and economic growth, it also intensifies competition. In response to reduced traditional trade restrictions under GATT, countries have increasingly adopted Technical Barriers to Trade (TBTs), sparking debate over their restrictive versus beneficial impacts. Indonesia's Halal Act (Law No. 33/2014) introduces a TBT through mandatory halal certification for products in its market. This study examines (i) the classification of Indonesia's halal certification as a TBT under GATT and the TBTA and (ii) its potential impact on Indonesia's international trade. The findings suggest that while halal certification functions as a TBT, it can also serve as a trade-promoting mechanism, reinforcing Indonesia's position in the global market.

**Keywords: Technical Barriers to Trade, Indonesian Halal Act, World Trade Organization, Indonesia**

### **INTRODUCTION**

The interplay between the international trade regime and domestic regulations on social, environmental, and health issues remains a subject of extensive debate in both academic and diplomatic spheres (Bjola & Kornprobst, 2018). This ongoing discourse highlights the complexities and tensions in balancing trade liberalization with national regulatory autonomy. The World Trade Organization (WTO) Appellate Body plays a crucial role in addressing these challenges, particularly through the General Agreement on Tariffs and Trade (GATT), by providing a framework for reconciling international trade commitments with domestic regulatory measures. However, the extent to which this mechanism effectively accommodates the regulatory interests of individual states, including Indonesia, requires further examination. However, this issue remains a subject of ongoing debate, particularly regarding the impact of domestic regulations on international trade. Trebilcock argued that domestic laws and regulations often undermine the intended benefits of trade policies, necessitating WTO intervention beyond border measures (Trebilcock & Trachtman, 2020). Similarly, Kang and Ramizo highlighted that excessive regulatory restrictions can hinder trade flows and, if driven by vested domestic

interests or nationalistic motives, may further harm global trade dynamics and economic welfare, particularly in trade relations with non-Muslim countries.

Multilateral negotiations facilitated by the WTO have successfully established the liberalization of international trade, especially through the widespread adoption of tariff reduction to promote international trade (Flentø & Ponte, 2017). For example, the Tokyo Round has birthed nine agreements in regard to international trade, including measures on subsidies, countervailing, anti-dumping, et cetera. Such negotiations include the WTO Agreement on Safeguarding, which prohibits members of the WTO from participating in restrictive practices or adopting similar restrictive measures. Even so, though it is the purported function of international trade to expand a country's market and support the country's economic growth significantly, the development of international trade could also potentially create a much more competitive environment in its domestic market. As a result, in an effort to safeguard their domestic markets, countries have increasingly adopted more subtle trade restrictions, such as non-tariff measures (NTMs). These NTMs, which can impede foreign trade, are classified as non-tariff barriers to trade (NTBs). Among the various forms of NTBs, technical barriers to trade (TBTs) have gained prominence, particularly domestic technical standards and regulations that are framed as measures to ensure product quality and safety (Chakraborty & Dey, 2024). Given this trend, the Halal Act emerges as a potential TBT, influencing trade dynamics while also serving as a trade promotion tool, particularly within the Indonesian context.

Indonesia, in order to cater to its over-eighty-percent Muslim citizens' needs, has enacted mandatory Halal certification through Law No. 33 the year 2014 (Halal Act), which requires all products circulating in Indonesia to obtain the Halal certification from its Halal Product Assurance Organising Body (BPJPH) and Indonesian Ulema Council (MUI). In Indonesia, issues related to the Halal nature of exported products tend to cause an outburst of backlash from the public, with some facing a massive public boycott, such as the Halal issue of an instant noodle brand from South Korea called Samyang in 2017, and some turned into a dispute, such as the Halal issue of Brazilian chicken in Indonesia. In this article, Halal certification in Indonesia as a supposedly TBT, alongside its issues and disputes arising from its enforcement, will be further discussed to determine whether it imposes a destructive effect on international trade or rather a positive one.

## **RESEARCH METHODS**

This study employs a qualitative research approach with a descriptive-exploratory design to examine the impact of Indonesia's mandatory halal certification policy on international trade promotion. The research is conducted within Indonesia's jurisdiction, considering that the policy's primary implementation occurs in the country with the world's largest Muslim population. To enhance transparency, further elaboration on data collection methods and analysis techniques is necessary.

This research was conducted over six months, from January to June 2025. This timeframe was chosen to enable adequate and in-depth data collection regarding the implementation of halal certification policies at the national level and their implications globally. The population of this study includes, Business actors in the food, beverage and cosmetics sectors who are affected by halal certification obligations (Al-shami & Abdullah, 2023). Halal certification institutions, such as BPJPH and MUI. Muslim consumers in Indonesia who are the main target of this policy implementation. The research sample was purposively selected to ensure a balanced representation of the various relevant groups. The total sample consists of 50 interviewees, including 20 local and international businesses, 10 representatives of halal certification bodies, and 20 Muslim consumers.

## **RESULTS AND DISCUSSION**

### **Indonesia's Mandatory Halal Certification as TBT**

By their enforcement subjects, NTMs are divided into three categories; first, those imposed on import such as import prohibitions, quotas, import licensing, customs procedures, and even administration fees; second, those enforced on export, such as export taxes, export quotas, subsidies, export prohibitions to voluntary export restraints; third, NTMS imposed on the domestic economy such as behind-the-border measures including domestic legislation covering technical, health, product, labor, and environmental standards, domestic subsidies, to internal taxes or charges. In a sense, NTMs pose the same domestic market-protectionism nature as those that fall under tariff measures. Tariffs bring revenues for governments, while NTMs, which are non-monetary barriers, protect domestic industries from foreign competition under the regime of international trade (Mustafa et al., 2020).

TBT consists of domestic technical standardizations and regulations, which are proclaimed by the countries as an effort to ensure environmental protection, safety measures, and national security, and even as a means to provide consumers with necessary information (Romanchyshyna, 2023). Aside from the trade restrictions' negotiations contained in GATT, a particular agreement regarding TBTs is also facilitated under the umbrella of WTO, known as the Agreement on Technical Barriers to Trade (TBTA). The TBTA is created to ensure that technical regulations and standards, and procedures for assessment of conformity with them do not create unnecessary obstacles to international trade. The main objectives of TBTA are to promote transparency by eliminating a country's ability to choose rules that have a greater protective effect and to facilitate trade expansion and promotion. As the application of TBTs varies from country to country in terms of their magnitude and product coverage, TBTA was created to ensure countries do not impose TBT in restrictive manners (Ng & Su, 2024).

In Annex 1 of TBTA, technical regulation is defined as documents that lay down production and process methods and characteristics, which include administrative provisions of a product, with which compliance is mandatory (Musto & Papastavridis, 2021). Such regulation may also include or deal exclusively with symbols, packaging, terminology, marking, and

labeling requirements for such product or its production or process method. Although allowed, in cases where technical regulation is required, countries shall ensure that suppliers of like products originating from other countries are not discriminated against. In this context, applying countries shall make sure that foreign suppliers are under conditions no less favorable than those of national origin or originating in any other country.

The implementation of the Halal Act may be imposed as a TBT, as foreign suppliers, especially those originating from non-Muslim majority countries, may face much more challenges to comply than the domestic suppliers or those originating from Muslim-majority countries. Numerous provisions in the JPH law require burdensome labeling and certification processes and have the potential to cause consistency issues with the TBT Agreement. Given that halal certification plays a fairly important role in global trade, in the future, the JPH Law is feared to have the potential to limit trade and paralyze Indonesia's trade relations with other WTO trading partners. During its implementation process, the Halal Act may cause discrimination against foreign firms, which may be restrictive (Amijaya et al., 2024).

Although both trade remedies and TBTs are legitimate trade protection measures, there is a particular difference between them. While the purpose of trade remedies is to restore a level playing field after considering the impact of trade on an economy (ex-post), TBTs are implemented to ensure the quality and standard of imported goods before they are consumed (ex-ante). If TBTs are established properly, they can act as a trade promotion, however, their nature is not so simple as they can also be used as an excuse for protectionism for countries' domestic markets when set at a relatively high level, and if driven by the vested interests of domestic businesses or imposed to suit the self-interest of the imposing country. The legal characteristic of TBTs distinguishes them from non-regulatory barriers. The latter are voluntary, not legally binding and arise from the self-interest of only producers and/or consumers involved, such as the need to improve the information in commercial transactions and ensure compatibility between products. On the other hand, the former mainly relates to either technical specifications or testing, and certification requirements such as a conformity assessment (Emerson & Kofner, 2018). Technical barriers, therefore, strike at the heart of business operations, affecting business pre-production, production, sales, and marketing policies. The need to adapt product design, re-organize production systems, and multiple testing and certification costs can entail a high cost (or technical trade barrier) for suppliers of exported goods to a particular country, the magnitude of which differs across products.

### **Overview of Halal Issues in Indonesia**

The word halal (حلال) comes originally from the Arabic language, which possess the meaning of: acceptable, allowable, permitted, and/or permissible. Though most people will expect or think that the concept of halal is only related to food and/or food products, its scope actually goes beyond food to cover every aspect of the life of a person who adheres to Islam (Muslim). Within this regard, the concept of halal is formed around the need for every Muslim to have access to products that are permitted, permissible, allowable, and acceptable from an

Islamic point of view (Neio Demirci et al., 2016). For this, the concept of halal revolves around the compliance of a product to Islamic Shariah, which includes food and beverages, banking, finance, tourism, cosmetics, pharmaceuticals, jobs, etc. For a product to be deemed Halal, it requires full compliance with the requirements set out in Islamic Shariah as found in its sources, which include two of its most important sources: the Holy Qur'an and the Sunnah.

Based on the verses in the Holy Qur'an and Sunnah, the foods that are not halal (haram) for human consumption are those containing corpses or animals slaughtered not according to the Shariah; domesticated donkey, mules, elephants; swine or pork and its by-products; alcohol and intoxicating substances; poisonous plants; carnivorous animals; birds of prey; snakes; pests; insects; blood and blood by-products; any other food contaminated with the previously-mentioned products. A common misconception about halal products is that as long as the product does not contain and/ or be contaminated with any ingredients deemed as haram, it is safe to be classified as halal (Ahmad et al., 2018). However, the Halal concept also requires the product to remain Halal until it reaches the end point of consumption, meaning that any packaging that comes into contact with the product should also be Halal. In terms of human consumption, the extension of the halal concept is also broadened to cosmetics and pharmaceutical products, which, in essence, are those products that must not have any ingredients deemed haram, processed according to Shariah law, and stored in such a way that they do not come in contact with haram items.

The concept of halal in the global industry has been growing significantly. Studies have found that the global halal market is predicted to have the potential to reach USD 3.1 trillion per year. Specifically in Indonesia, the potential market is at USD 10 billion. The Muslim population in Indonesia, which makes up over eighty percent of Indonesia's population, provides a dominating market segment in Indonesia's market. Indonesia, through the Halal Act, requires all products circulating in Indonesia to obtain halal certification from BPJPH and MUI. The Halal Act has established standardization of what amounts to halal and non-halal. The non-halal products listed in the Act include corpses, pig/hog's blood, and/or animals slaughtered not according to the sharia are; drinking and/or those impose harmful effects on health plants byproducts; microbe byproducts exposed and/or contaminated by haram ingredients; chemically, biologically, or genetically altered ingredients, products exposed and/or exposed to haram ingredients.

In Indonesia, issues related to the Halal nature of exported products tend to cause an outburst of backlash from the public; some were facing a massive public boycott, such as the Halal issue of an instant noodle brand from South Korea called Samyang. The backlash started in 2017 when the brand's products, which originated from South Korea (a majority country), were suspected to contain lard. Due to the decrease in sales from the backlash, the brand then quickly adjusted their products to meet the needs of its Muslim consumers in Indonesia by creating Samyang Green, its halal alternative, which already obtained a halal certification from LPPOM MUI. Some halal issues even turned into disputes, such as the Halal issue of Brazilian

chicken in Indonesia, which is a measure concerning the importation of chicken meat and chicken products in the WTO Panel (Suryawan et al., 2022).

### **Indonesia — Chicken (Brazil v. Indonesia)**

Indonesia – Measures concerning the importation of chicken meat and chicken products (Indonesia - Chicken) is a dispute about imports of chicken from Brazil, which has de facto been banned from the Indonesian market. At face value, Indonesia - Chicken deals with plain import restrictions that were not “in conformity” with WTO law. Accordingly, the Panel established to solve the dispute found most of the measures challenged by the complainant, Brazil, to be WTO-inconsistent. At the more fundamental level, the dispute touches upon the broader question of the relationship between WTO law and domestic food policy preferences, in particular, policies that pursue food self-sufficiency (Margulis, 2017). Even though the potential conflict between these aspects was only superficially touched upon in the Panel report, it appears to be the actual cause of the dispute (and other WTO disputes related to Indonesia’s food policies).

Indonesia is the world’s fourth most populous nation, with a population of 283 million and a GDP per capita of USD 4,919.7 in 2023, which makes it a highly attractive market. The Indonesian poultry market is dominated by a few large firms, some of them with foreign parent companies. Indonesian consumers prefer to buy in wet markets, and the Indonesian demand for poultry meat is expected to continue rising because of the growing purchasing power of the country’s expanding middle class. Moreover, per capita poultry meat consumption is below the world average and also below those of neighboring countries such as Thailand and Malaysia (Yitayih et al., 2021). Due to a largely Muslim population, most Indonesians are required to eat halal chicken.

Indonesia had established an intricate import licensing regime that required pre-importation approval of both the country of origin as well as the individual business unit where the product was supposed to be processed (Rigod & Tovar, 2019). Such approvals required the consecutive consent of two different authorities: first, the Ministry of Agriculture, which needed to issue a recommendation, and then the Ministry of Trade, which, based on the recommendation, needed to grant approval. In addition, Indonesian law provided for a plethora of other limitations on the importation and sale of chicken, such as: a “positive list requirement” according to which only products explicitly listed in the relevant laws could obtain an import license; an “intended use requirement” according to which imported chicken could only be sold at certain venues, such as hotels and restaurants, but not at the traditional markets; a “cold storage” requirement that prescribed that imported frozen chicken may only be sold if a cold storage facility was in place; temporal “application windows” during which import approval applications needed to be made and which worked in tandem with limited validity periods of import recommendations; a requirement to obtain veterinary certificates; a halal-certification and surveillance scheme and a halal labeling requirement; allegedly requiring direct transportation from the country of origin to the entry points in Indonesia.

Brazil made claims against these individual measures. In Brazil’s view, the Indonesian

regulations effectively banned the importation of or discriminated against imports of chicken from Brazil. All chicken meat sold in Indonesia, irrespective of its origin, must be “halal”, i.e., be slaughtered in accordance with certain religious standards. To ensure halalness, Indonesian law provides for a certification and labeling scheme. Before the Panel, Brazil did not contest the legality of the halal requirement as such but only its enforcement. While imported chicken must be labeled halal, fresh chicken sold in traditional markets in small quantities was not. The Panel, however, rejected Brazil’s argument that the labeling requirement discriminated against imported products. In its view, less favorable treatment of Brazilian producers, if any, did not result from the exemption for chicken sold at traditional markets. In other words, the source for the unfavourable treatment of imports was a different one than the one suggested by Brazil. According to the Panel, there was no genuine relationship between the contested exemption and the alleged detrimental impact and, thus, no violation of Article III GATT.

The Panel in its decision included several key points; first, the Panel decided that Indonesia's import restrictions on chicken products violated several provisions of the GATT, particularly Article XI, which prohibits quantitative restrictions on imports; second, the Panel concluded that Indonesia's measures were inconsistent with its commitments under the Agreement on Agriculture, specifically regarding market access for agricultural products; third, the Panel concluded that Indonesia was unable to justify its import restrictions as necessary for the protection of human, animal, or plant life or health, which is a requirement under GATT Article XX; lastly, The Panel recommended that Indonesia bring its measures into compliance with its WTO obligations, allowing for the resumption of trade in Brazilian chicken products.

The decision by the Panel reflected the failure to recognize economic rationality in this case. For instance, Sutrisno contested that there exists a misleading economic legal analysis which led to an oversimplification. According to Sutrisno further states that this oversimplification cannot be separated from the overgeneralization assumption that ignores the particularity in this case, which made the Halal Act nothing more than Indonesia’s “protectionist impulse.” However, one should look deeper into such particulars, which reveals a more profound logic of explanation of Indonesia’s rather stubborn decision to defend the Halal Act. According to Sutrisno claimed that the institutionalization of the Halal Act is a legitimate measure that a WTO member can adopt.

## **Protecting Public Morals as Trade Promotion**

### **1) Halal Act as a ‘means to protect’ Public Morals**

The equilibrium between the liberalization of trade and the sovereignty of the state to regulate public morality has long been a controversial discussion due to its delicate nature. Article XX(a) of GATT and its equivalent contained in Article XIV(a) of the General Agreement on Trade in Services (GATS) give permission for Member States to justify what normally is considered trade restrictions on the grounds that such restrictions are necessary to protect the “public morals”. A particular question arises regarding this issue: How can states have the sovereignty to regulate matters of moral protection while ensuring that they do not impose

protectionist measures disguised as public morals? Questions on this matter continue to spark controversy as to what exactly amounts to public morals. What does it mean to protect them? Whose morals are at stake? And are they concerned with the qualities of persons, actions, or certain communities?

Howse, Langille, and Sykes deny that Panels or the Appellate Body should examine the authenticity of said public morals, whether it be in terms of public support, legislative history, or connection to the particular interest of a certain group of people: they rather suggest inquiries only to whether the contended concerns are ones that could fall under the issue of morality at all. Wu, however, suggests that public morals should be limited to issues anticipated by the original drafters of the exception, to those that fall under the *jus cogens* norms or widely recognized as being moral issues, that only measures passed through standard legislative procedures be eligible. The lasting debate between minimalists and maximalists thus divided the debate into three subordinate: about whether invoking public morals requires evidence of genuine moral beliefs in the said state or to be validated through a particular body or representative; about whether the relevant morals are exclusive to those of the regulating state, or are required to also be recognized by other states; and about whether the moral issue should only be limited to activities within the territory of the regulating state, or can extend to other states.

Essentially, Article XX contained ten individual paragraphs referring to particular issues or concerns in the trade liberalization effort; XX(a), in particular, allowed exceptions on the grounds of public morals. Rather than focusing on the issue of necessity and arbitrariness, the nature of public policy and what it means to protect them are the questions that the Appellate Body seems reluctant to address. The history of public moral exceptions in trade law goes back over 60 years. However, it is only in the case of *China-Audiovisual* (Audiovisual) and *US-Gambling* (Gambling) that the WTO has been required to give an interpretation of the exception and its application. Nevertheless, these cases left uncertainties; for example, how can we evaluate the legitimacy of a country's claim that the regulation is imposed to protect public morality? Who is responsible for regulating the substance and boundaries of public morality? Or does a norm have to be accepted universally as a moral issue to not be considered restrictive? There is limited legislative history on the issue, and its interpretation was non-existent until 2005 in US gambling. The following paragraphs will discuss this issue further.

First discussion is how to define and identify public morals. In the cases of *Gambling*, *Audiovisual*, and *Seals*— which consider the interpretation of public morals, have adopted the same formulation: public morals are standards of right and wrong conduct maintained by or on behalf of a community or nation. The Panel in *Gambling* in their reasoning, which was adopted by the Appellate Body in *Seals*, reviewed that ‘content of public morals for Members can vary in time and space, depending upon a range of factors, including prevailing social, cultural, ethical and religious values’, and thus accordingly members should be given ‘some scope to define and apply for themselves the concepts of “public morals” ... in their respective territories, according to their own systems and scales of values’. The most obvious understanding of these statements



is that public morals are truths of culture or sociology, traits of specific groups or societies.

It should be emphasized that public morals in WTO discourse are not about the sincerity of fundamental moral claims. In the context of WTO discourse, as stipulated in the previous paragraph, members are given the freedom to define what things are considered public morals according to their own system and values and to apply said public morals (Du, 2016). When discussing public morality, we argue about the claims of particular communities to choose or to establish certain standards rather than to prove the validity of those claims in any meaningful philosophy or ideology sense. Consequently, when a society invokes public morals, the claim is not whether that particular conduct is immoral objectively but that it is immoral by the standards applied in that society. The claim is thus about which standards should apply in a situation where standards vary between the members involved. Hence, the sincerity of the public claims made by a country should not be the main argument but rather its existence and applicability in the society within that country.

The second discussion would be to define what ‘means to protect’ public morals is. Suttle claims that there are a number of ways for us to understand this. First, we must understand public morals as the moral qualities of individual members of the public. Through this conclusion, public morals would be protected by protecting the public from what the public deems as immoral behaviours. The second interpretation views public morals as qualities of a certain community. As called by the Appellate Body, public morals are the standards of right and wrong conduct sustained by that community (Bozeman et al., 2018). In essence, public morals are social conventions, part of the sustained public culture of a particular community, and protecting them means protecting their status as such and the community’s bond to them. The third interpretation pairs protecting public morals with protecting the principles of interests that those standards are strongly associated with. Suttle states that this interprets ‘protecting’ as ‘enforcing,’ or perhaps ‘vindicating,’ heavily implying that measures are taken to enforce compliance with a moral standard, or preventing moral harm, equate to protecting public morals.

In the case of Indonesia, an Indonesia eminent constitutional expert once said that Indonesia’s 1945 Constitution is a ‘very Godly constitution.’ The saying is derived from the fact that the idea of religion in Indonesia is a big deal, as it is one of the main fundamentals of the country, as opposed to Western legal traditions, where it is essential to accept that there is a fine line between legal and non-legal matters. This fundamental idea has legitimized a further conflation of legal and extralegal reasoning, which gives a green line to introducing laws that explicitly regulate citizens’ private lives, including religious affairs (Mańko, 2025). Halal Act has a policy objective to assure and protect Muslims to practice their belief, particularly in consuming halal food, hence the change of halal certification requirement from voluntary to mandatory. Some argue that the measure contradicts Article III:4 GATT 1994, which forbids States to apply National Treatment. In that case, the WTO member states, particularly Indonesia, can justify their halal food certification policy by arguing based on a valid exception stipulated in Article XX (a) of the GATT 1944 on public morality, although WTO jurisprudences do not give

a linear decision. It is important to note that the nature of jurisprudential politics in Indonesia influenced the enactment of the Halal Act. What constitutes this is, in essence, a combination of a host of religio-cultural factors that distinguish Indonesia's sociological profile. Indonesia has preserved its lasting tradition of keeping the sacred and profane as one, not separated. This orientation is what caused Indonesia's Halal Act to be sustained.

Indonesia's promulgation of the Halal Act, in essence, mandated that every product circulating in Indonesia have a certification that indicates the halalness of the product, from its resourcing and production to its distribution. Now, to discuss the characteristics of the Halal Act as a means to protect public morals, we may use the steps provided by Suttle above. First, to understand whether the "morals" protected in the Halal Act amounts to a public moral, to understand whether it amounts to a "morality of the individual members of the public" or "standards of right and wrong conduct sustained by that community". Indonesia, with over 240 million Muslim population, contributes 12.27% percent of the total global Muslim population, making it the country with the most Muslims worldwide. In the case of Indonesia, it is worth noting that the country has its own logical operation of its legal reasoning, which differentiates it from the ones normally found in the Western legal system. One of the most notable distinctions is the blurred line between law and morality, one that Jimly Asshidique claims over Indonesia's 1945 Constitution as "a very Godly constitution." This resulted in Indonesia having its own notion of religious freedom, which protects the sanctity of orthodox religious ideas, while not essentially protecting the individual idea of religiousness normally found in liberal (Western) legal systems.

Second, as previously discussed, protecting public morals means protecting their status as the sustained public culture in a community and the community's bond to them. The Halal Act, regardless of its sincerity and political nature, was enacted based on sociological factors to protect the freedom of its citizens to exercise their rights to religious ideas. Indonesia's Constitutional Court further added a reasoning for the enactment of Halal Act, which translates to as "the state's constitutional obligation to ensure the exercise of the right of society to have healthy life and the individual right to live their life according to their beliefs as it protected in the 1945 Constitution". Lastly, the obligations set out in Halal Act were measures taken to "enforce compliance of a moral standard, or preventing a moral harm" which equate protecting public morals. The idea of halal in the legal frameworks of Indonesia has been manifested since 1967 through the Animal Health Act in 1967, which continued to be manifested in the Health Act in 1992, the Food Act in 1996 and 2012, and the Consumer Protection Act in 1999. Though strange as it is for Indonesia to take almost five decades to finally create specific legislation regarding the issues of halal, through the enactment of Halal Act, Indonesia has moved forward to bring halal, a public morality of the majority of its population, into its constitutional level.

## **2) Halal products and its sanitary assurance**

When it comes to halal, especially in food and beverage products, sanitary plays a key role. For a food and beverages product to be deemed halal, the product must not be made of, or

contain, contaminated by, or come into contact with haram substances and substances deemed as filth according to Islamic law. Filth is things which are considered as impure and dirty and should not be used as foods, drinks, or clothes. Filth according to Islamic law are; urine; fecal matter; madzi (liquid coming out of reproduction organs); dog; pig and its by-products; pus (liquid coming out of abscess); liquid coming out of wound or gash; blood; bile; intoxicating substances; substances coming out of stomach such as vomit; breast milk of haram animals; corpse and carcasses of living organisms including mutilated body parts of living organisms, except those of grasshopper, or aquatic species; liquid coming out of animals; and steam or smoke emitting off of combustion or incineration of filth substances.

Irrespective of this, through Government Regulations No. 42 of 2024, Indonesia has enacted standardization to ensure a product of its Halalness. The standardization includes strict requirements for the location, place, and tools used during the Halal products' processing process (HPP). Article 6 of the Government Regulations laid out that: location, place, and tools for the HPP should be separated from the location, place, and tools used in the processing of non-halal products; the aforementioned location, place, and tools should also be free of filth and non-halal substances; and the cleanliness and hygiene of the location, place, and tools should also be ensured and maintained.

The sanitary assurance of Halal products has caused the preference of it to experience rapid growth, including in non-Muslim majority countries, which created a separate market. Studies have found that the global halal market is predicted to have a potential of reaching USD 3.1 trillion per year, and USD 10 billion in Indonesia specifically. The Muslim population in Indonesia, which makes up over eighty percent of Indonesia's population, provides a dominating market segment in Indonesia's market. Though not all countries which Indonesia has a trade relationship with are Muslim-majority countries, the rapid growth of halal lifestyle trends worldwide may increase the popularity of the halal products in the global market.

### **3) Halal Act as Trade Promotion Tools**

The question arises on whether Halal Act imposes a negative effect on international trade promotion, or rather submerging positive ones. Ramli contested that law and regulation for a halal product is crucial to impose a moral obligation to producers, for consumer protection, and to gain a competitive advantage in both local and global markets. However, in the case of TBT, unlike other traditional trade barriers, TBT may have both trade restriction and trade promotion effects. On one hand, by complying with the importing country's standards, increased variable costs may be incurred every time an export to the TBT-imposing country's market happens (for example, if it requires advanced technology to ensure higher quality). On the other hand, by adopting rather strict technical standards imposed by the importing country, production upgrades by firms serve as a quality confirmation, thus increasing demand for the products.

Though an exact study has not yet been conducted to properly examine the effect of halal certification to the wellbeing of trade, similar ones have been conducted. Wood et al. concluded in the South Korean market, by catering to the public needs, for example, by associating the

product with how the majority of the people in the country prefer their products, the positive effects of TBT can outweigh the negative ones. Irrespective of this theory, research has been conducted by Permata and Kaban which tested the effect of halal labeling on the purchase decision of a noodle brand in Indonesia, which had a controversy of its halal nature back in 2017, Samyang Buldak Chicken noodle. The research concluded that halal labels influence consumers' purchasing decisions for imported instant noodles in Indonesia. The result of this research is also aligned with the research conducted by Muhammad, Purnamasari, Habibah, and Fadlullah et al., which also conclude that halal labels have a positive effect on the purchasing decisions of consumers in the Indonesian market.

Bao and Qiu, however, claim that the outcome of TBT heavily depends on the type of the country, the type of industry, and time periods. In China's market, the impact of TBT on agricultural and manufacturing goods imports is different. Trade-promoting effects are found in manufacturing goods, while agricultural goods are reduced. This varying result may be based on the country's demand. In this instance, China is a country whose economy is centered around manufacturing, meaning that imposing a TBT to ensure higher quality manufacturing goods could potentially increase the demand for the products, thus acting as a promotion tool. Meanwhile, the same cannot be said for agriculture since the need for high-quality agricultural goods is not as high as the need for manufacturing goods; thus, imposing a TBT might restrict its sales rather than promote it.

Bao and Chen used three aspects to undertake a complete analysis of the effects of TBT. The first is to focus on the relation between TBT and market entry by using a dataset covering manufacturing industries from all TBT notifying countries, which facilitates the comparison between developing and developed countries, as they differ in their roles as the makers or the takers of the standards. Bao and Qiu found that when comparing the TBT effect on market entry of different exporters, the negative impacts are generally stronger in developing countries than in developed countries. While the effects of TBT may differ between importers, the negative impacts of TBT from developed countries are more severe than those imposed by developing countries.

Second is to decompose bilateral trade flows into the number of goods traded (extensive margins) and the trade value of each good (intensive margin). Bao and Qiu found that extensive margin accounts for a greater effect than the intensive margin in most cases. TBT increases trade volumes by expanding the range of goods traded, not by increasing the value of those goods that are already being traded. Although it was found that TBT decreases the probability of trade participation, the estimated result in the research shows that TBT increases the volume of trade, once the exporters decide to enter the market (positive trade flows).

Third, the connection between the duration of the trade relationship between the maker and the taker and the TBT itself. For countries that have not yet established a trade relationship, TBT acts as a barrier and therefore reduces the probability of trade occurrence, however for country pairs with established trade relationships, TBT can improve trade performance, through several

ways such as providing information to firms or by discouraging potential competitors from entering the markets. Bao and Chen stated that the impacts of TBT on trade differ by level of development of the importers and exporters. For the probability of trade, the negative effect is stronger if TBT is imposed by developed countries than by developing countries. For the volume of trade (including the extensive and intensive margins), the trade promotion effect is more effective when TBTs are imposed by developing countries than by developed countries.

Irrespective of this, first, Indonesia's largest manufacturing segment by GDP contribution is food products and beverages, with total revenue of the market expected to show an annual growth rate of 8,47%, resulting in a projected market volume of USD 17.16 million by 2029. Moreover, Indonesia's halal market is predicted to reach USD 10 billion. The characteristic of the TBT in regards of halal products imposed by Indonesia as a developing country is then expected to produce a promotion effect to the country's international trade market regime as it caters to the religious ideas and needs for halal food product and beverages of its Muslim population, which makes up over 80% of Indonesia's total population. Second, enacting the Halal Act could potentially increase trade volumes by expanding the range of goods traded or through extensive margins rather than increasing the value of already traded goods or intensive margins. This works in the sense that enabling the Halal Act will not increase the value of already traded halal goods, as it has always been around, but it will increase the range of halal certified goods. This possibility is also in accordance with the second parameter used by Bao and Chen. As of the third parameter, the trade promotion effect in regards to this halal certification TBT heavily depends on the relationship of Indonesia and each exporting country. In essence, the last aspect that influences the outcome of the Halal Act is the already formed trade relationship rather than the Halal Act itself. Aside from the points above, the strict requirements of halal certification can also result in better quality.

One of Indonesia's objectives is to become the forefront of the halal industry in the world, capitalizing on its significant Muslim population and cultural heritage. Aside from its nature as a "means to protect public morals", the Halal Act will impose a trade promotion effect, despite its "protectionism" nature, as claimed by some. The implementation of the Halal Act has already begun to yield positive effects, enhancing the credibility and standardization of halal products within the country. By providing a clear framework for halal certification, the Act not only fosters consumer confidence in Halal products but also has the potential to positively influence Indonesia's international trade regime. As Indonesian products gain recognition for their adherence to halal standards, the country may attract increased foreign investment and expand its export markets, thereby strengthening its position in the global economy.

## CONCLUSION

Despite global efforts to eliminate trade restrictions, countries have increasingly adopted more subtle measures, such as non-tariff measures (NTMs), including technical barriers to trade (TBTs), to protect their domestic markets and firms from intensifying global competition. In

response to these dynamics, Indonesia enacted the Halal Act in 2014, requiring all products circulating in the country to obtain halal certification, ensuring compliance with Islamic dietary laws. While some critics argue that the Act constitutes a TBT in violation of Article III of GATT 1994, its primary objective is to safeguard the religious sanctity of Indonesia's Muslim majority by ensuring access to halal products—an objective that aligns with the public morals exception under Article XX(a) of GATT 1994. To enhance policy effectiveness, further research is needed to assess the Act's long-term impact on trade and propose regulatory adjustments that balance religious considerations with Indonesia's international trade commitments. While a claim regarding the trade restricting nature of the Halal Act is arguably valid in the sense that it may hinder the export of products from non-Muslim majority countries, we argue that the Halal Act embraces a rather positive effect on trade. First, the characteristic of the Halal Act is that it is a means to protect public morals and acts as an accommodation for the Muslim population of Indonesia, which makes up 87% of the country's total population. Second, halal certification provides additional information that influences the purchasing decisions of Indonesia's majority of the population. Fourth, the food and beverages manufacturing sector, including its market, is the largest in Indonesia, with the potential of halal market reaching the value of USD 10 billion, making assurance and accommodation of preferred quality of food and beverages products (in this case halal certified ones) a rather promoting tool for trade. Lastly, the enactment of the Halal Act will increase the range of halal-certified products rather than increasing the value of already existing products, which is proven to impose a positive effect on trade rather than hindering its continuity.

However, we recommend that Indonesia's government provide more definitive regulations concerning the halal requirement set out in the Halal Act to utilize its function as a trade promotion tool. For example, we find some vague and broad provisions such as: first, the Act covers a wide range of products and services, creating uncertainty about which 'products' are subject to halal certification and which are not; second, inconsistency in procedures and timelines during certification process may lead to delays; lastly, the involvement of multiple regulatory bodies may create varying interpretations of the law, which can lead to difficulty in compliance, especially for foreign firms to enter Indonesia's market. Nevertheless, we find that Halal Act potentially imposes a positive effect on trade if utilized.

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