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The Intersection of the Progressive Law Theory and the Self-Declaration Concept of MSEs Halal Certification

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ABSTRACT

The self-declaration by Small Micro Enterprises (MSEs) for obtaining a halal logo has both advantages and disadvantages. Proponents argue that self-declaration makes it easier for MSEs to acquire a halal certificate, reduces the submission period, and streamlines the certification process. However, opponents argue that self-declaration violates certain laws, such as the UUJPH and the Consumer Protection Act. The Omnibus Law (UUCK) conceptually includes halal in the licensing cluster to facilitate business, but the Constitutional Court has deemed UUCK formally flawed and conditionally unconstitutional. Self-declaration simplifies the



licensing process for obtaining a halal certificate specifically for SMEs. It waives certification fees, reduces processing time, and simplifies aspects of business licensing. MSEs can obtain a free certificate through self-declaration if their products meet certain conditions, including not being at risk, being made from natural ingredients, being halal, having a simple production process, having assistance with Halal Production Process (PPH), and being supported by an MUI fatwa. Progressive law recognizes that the law is not absolute or final, but an evolving process aimed at achieving justice and improving human lives. This article explores the intersection between self-declaration and Satjipto Raharjo's progressive legal theory. It highlights the shared objectives of realizing justice, assisting MSEs in obtaining halal certification, humanizing the law, facilitating licenses for MSEs, and adapting regulations to societal changes. The approach encourages breaking and making rules to create progressive laws and involves business actors and companions in the halal certification process, making the law responsive and participatory.

Keywords: Progressive Law, Halal Certification, Self Declaration

INTRODUCTION

Professor Satjipto Rahardjo, one of Indonesian legal scholars, introduced the concept of "*progressive law*" as a response to concerns about the functioning of the legal system. He expressed apprehension that if the law fails to bring happiness to the people, those responsible for its enforcement should feel a sense of unease. This anxiety stemmed from observing the prevailing approach to law in Indonesia,

where rationality is often prioritized above justice in its application and implementation.¹

The development of progressive law was a direct reaction to the dominance of a modern legal paradigm that emphasized rationality as the primary guiding principle. According to Satjipto Rahardjo, this approach neglected the broader pursuit of justice and the overall well-being of individuals within society. He argued that the law should not merely be an instrument of rationality, but rather a means to achieve justice and promote the happiness and welfare of people. By advocating for progressive law, Satjipto Rahardjo aimed to highlight the limitations of a purely rational legal framework and promote a more holistic understanding of law's purpose and impact. He encouraged legal practitioners and scholars to critically assess the existing legal system and strive for legal principles and practices that prioritize justice and human well-being over mere technical rationality²

The theory of progressive law emphasizes the never-ending process of searching for the truth and strengthening the law for humans.³ The logical consequence is that implementing the law must benefit humans. Law enforcers must place and provide justice for humans.⁴ Law is a process that continuously seeks a way to realize

¹ Satjipto Rahardjo. *Membedah Hukum Progresif*. (Jakarta: Penerbit Buku Kompas, 2006). See also Winda Indri Astuti, "The Progressive Mind on Corruption Eradication In Indonesia, A Book Review 'Pemberantasan Tindak Pidana Korupsi Perspektif Hukum Progresif', Yudi Kristiana, 2016," *Journal of Indonesian Legal Studies* 6, No. 1 (2021): 221–28, <https://doi.org/https://doi.org/10.15294/jils.v6i1.34794>; Satjipto Rahardjo, "Hukum Progresif: Hukum yang Membebaskan." *Jurnal Hukum Progresif* 1, No. 1 (2005): 1-24.

² Satjipto Rahardjo, *Membedah Hukum Progresif*, ed. I Gede A B Wiranata, Joni Amirzon, and Firman Muntago, 3rd ed. (Jakarta: PT Kompas Media Nusantara, 2008).pp. 10-12.

³ David Tan and Lu Sudirman, "Concept to Increase Voluntary Tax Compliance among Legal Professions in Indonesia," *JILS (Journal of Indonesian Legal Studies) Volume* 5, No. 1 (2020), <https://doi.org/https://doi.org/10.15294/jils.v5i1.37308>.

⁴ Dian Latifiani et al., "Reconstruction Of E-Court Legal Culture In Civil Law Enforcement," *Journal of Indonesian Legal Studies* 8, No. 2 (2022): 409–48, <https://doi.org/https://doi.org/10.15294/jils.v7i2.59993>.

justice for humans. In theory and practice, the implementation of the law must be able to realize justice for humans.

The concept of progressive law, which emphasizes the never-ending process of searching for the truth, is an opportunity to strengthen the human factor in law.⁵ But a different meaning is conveyed by Erlyn Indarty regarding progressive law. Erlyn stated that Progressive law requires the state to abandon its restricted function and embrace a boundless one to allow people to get hold of their desired affluence. It rests on the presupposition that the state can tell its citizens what they must—and must not—do. Progressive law may have the potential to manufacture a system of laws that excessively empowers the state so that liberty is crushed and the light of a free society is replaced with the darkness of tyranny.⁶

In this article, the progressive law theory refers to Satjipto⁷, which said that progressive law begins with the basic assumption that law is an institution that aims to deliver humans to a just, prosperous, and human happiness life. It directs the ability of the law to serve humans. The primary legal capability in progressive law is to carry out rule-breaking or rule-breaking through existing laws if the law faces extraordinary conditions.

As stated by Suteki, there are 2 (two) basic assumptions in the progressive legal movement. First, the law for humans. The presence of law is not for itself but for something broader and more significant. If a legal problem exists, the law must be reviewed and corrected, not forced to include humans in the legal sub-theme. Second, the law is not an absolute and final institution because the law is always in a

⁵ Tan and Sudirman, "Concept to Increase Voluntary Tax Compliance among Legal Professions in Indonesia."

⁶ Erlyn Indarti. "Progressive Law Revealed: a Legal Philosophical Overview." *Diponegoro Law Review* 3, No. 1 (2018): 28-42.

⁷ Satjipto Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*. (Yogyakarta: Genta Publishing, 2009). p.1.

process that is continuously becoming (*law as a process, law in the making*).⁸

Conceptually, self-declaration has become a keyword in fulfilling halal certification obligations since the enactment of Law No. 11 of 2020 Concerning Job Creation/Undang-Undang Cipta Kerja (hereinafter as UUCK). One of the significant changes in the application of halal product guarantees is the existence of Article 4A concerning self-declaration. Article 4A UUCK states the obligation to have a halal certificate for Micro and Small business actors based on Micro Small Enterprises (MSEs) own statements.⁹

Article 4 of Law No: 33 of 2014 concerning Halal Food Assurance (UUJPH)¹⁰ states that products that enter, circulate, and trade in Indonesian territory must be halal certified. However, with the issuance of the UUCK, in particular, Article 48 UUCK, halal certification for MSEs has changed with the self-declaration concept.

Article 48 UUCK states that between Article 4 and Article 5 Law No. 33 of 2014 concerning the Law on Halal Food Assurance (UUJPH), inserted article 4A as follows:

- (1) For Micro and Small Business Actors, the obligation to obtain halal certificates, as referred to in Article 4, is based on the unilateral statements of Micro and Small Business actors.
- (2) Statements of Micro and Small Business Actors, as referred to in paragraph (1), are carried out based on halal standards set by BPJPH (Halal Product Assurance Implementing Agency).¹¹

⁸ Suteki, *Rekam Jejak Pemikiran Hukum Progresif Satjipto Rahardjo*, ed. Myrna A Safitri, Awaludin Marwan, and Yance Arizona, 1st ed. (Jakarta: Epistema Institut, 2011). p. 34.

⁹ "Undang-Undang Republik Indonesia No. 11 Tahun 2020 Tentang Cipta Kerja" (2020).

¹⁰ "Undang-Undang Republik Indonesia No. 33 Tahun 2014 Tentang Jaminan Produk Halal" (2014).

¹¹ Undang-undang Republik Indonesia No. 11 Tahun 2020 Tentang Cipta Kerja.

Conceptually, UUCK, as the Omnibus Law, includes halal in the licensing cluster and ease of business.¹² The omnibus law simplifies and combines various types of permits for business activities into one kind of business permit by rearranging the licensing process into one electronic licensing system. UUCK uses the Risk Base Approach (RBA) in granting business licenses and implementing supervision based on the risk level of a business and activity.¹³

According to Julia Black, Risk-based frameworks can become very complex as the number of risks they focus on increases. The risk-based frameworks in use vary considerably in their degree of complexity.¹⁴ The RBA determines the level of risk and the type of permits required. RBA consists of low-risk levels in the form of legality, medium-low-risk levels, medium-high-risk levels, and high-risk levels.¹⁵ In the RBA concept, sectoral regulatory agencies apply RBA specifically, have great discretion, and determine risks. Sectoral regulatory bodies are the parties that understand the most about inherent and managerial risks in each sector.¹⁶

It is not surprising that the existence of a self-declaration concept is controversial. One party appreciates, but the other party depreciates (denounces). Parties who contra and depreciate self-declaration mention the following reasons:

¹² "Questioning the Self-Declaration of Halal Products in the Ciptaker Law," accessed May 5, 2022, <https://nasional.sindonews.com/read/189162/18/menoal-self-declare-product-halal-di-uu-ciptaker-1602076239>.

¹³ Aryo Hanggono, "Risk-Based Business Licensing Implementation of the Risk Based Approach-RBA Cluster: Simplification of Business Licensing for the Job Creation Bill," 2020.

¹⁴ Julia Black, *OECD Reviews of Regulatory Reform: Risk and Regulatory Policy* (OECD, 2010), p.196.

¹⁵ Hanggono, "Perizinan Berusaha Berbasis Risiko Penerapan Risk Based Approach-RBA Klaster: Penyederhaan Perizinan Berusaha RUU Cipta Kerja."

¹⁶ Mohamad Mova Al'afghani and Bisariyadi, "Konsep Regulasi Berbasis Risiko: Telaah Kritis Dalam Penerapannya Pada Undang-Undang Cipta Kerja," *Jurnal Konstitusi* 18, No. 1 (2021): 066, <https://doi.org/10.31078/jk1814>.

First, the existence of a self-declaration concept conflict with Law Number 33 of 2014 concerning Guaranteed Halal Products. Something prohibited by Law Number 33 of 2014 concerning Guarantees for Halal Products to become Halal after the provisions of the Omnibus Law. The use of self-declaration for MSMEs will doubt the halalness of MSME products.¹⁷

Second, horizontally, self-declaration raises juridical problems with Law Number 8 of 1999 concerning consumer protection and Law Number 18 of 2012 concerning Food. According to the Daily Chairperson of the Indonesian Consumers Foundation (YLKI), Tulus Abadi, *self-declaration* is risky for violating consumer rights. Halal statements based on self-declarations will lead to violations of consumer rights.¹⁸

Third, the Constitutional Court (MK), in its decision No 91/PUU-XVIII/2020, stated that UUCK is formally flawed and conditionally declared unconstitutional.¹⁹ The Constitutional Court noted that the formation of the UUCK had not met the requirements regarding procedures for forming laws. Particularly not meeting the principle of openness, including maximum and more meaningful community participation, as a constitutional order in Article 22A of the 1945 Constitution.

Even though a Constitutional Court decision stated that UUCK was formally flawed and conditionally unconstitutional,²⁰ cluster on

¹⁷ Istianah Istianah and Gemala Dewi, "Analisis Masalah Pada Konsep Halal Self-Declare Sebelum Dan Pasca Enactment Undang-Undang Cipta Kerja," *Al-Adl : Jurnal Hukum* 14, No. 1 (2022): 85, <https://doi.org/10.31602/al-adl.v14i1.5870>.

¹⁸ Fitri Novia Heriani, "Perlunya Keberpihakan Pada Konsumen Produk Halal Di Aturan Turunan UU Cipta Kerja," accessed May 4, 2022, <https://www.hukumonline.com/berita/a/perlunya-keberpihakan-pada-konsumen-produk-halal-di-aturan-turunan-uu-cipta-kerja-lt5f90df658af0c>.

¹⁹ Mahkamah Konstitusi, "Putusan Nomor 91/PUU-XVIII/2020," 2021, https://www.mkri.id/public/content/persidangan/putusan/putusan_mkri_8240_1637826598.pdf. P.412

²⁰ Mahkamah Konstitusi, "Putusan Nomor 91/PUU-XVIII/2020", p. 412.

halal certification and self-declaration continues, and executing regulations remain in place. Assistance training for Halal Product Process (PPH) continues. The continuation of the self-declaration cluster was seen as a breakthrough because It helps MSEs get free halal certification and targets 10 million MSEs by 2022.²¹ BPJPH has prepared 100,000 PPH assistants from various elements from State/Private Universities, Islamic Organizations or Islamic Institutions, and Non-PNS Islamic Religious Extensionists.²²

As for the party that appreciates self-declaration states: *First*, Self-declaration will make it easy for MSEs to get a halal logo, trim the filing period, and process for halal certification. It improves halal product guarantee services and measurability for business actors, especially in managing halal certificates through regulatory flexibility.²³

Second, self-declaration has implications for faster halal certification services for MSEs. It encourages the development of the halal ecosystem in Indonesia. It is free of charge for MSEs through various financing facilities. ²⁴ *Third*, self-declaration aligns with Syariah's objectives to achieve benefit and eliminate harm. ²⁵

Fourth, self-declaration uses strict standards and requirements based on Halal Product Assurance Organizing Agency (BPJPH)

²¹ "Halal Certification for SMEs in the Free 'Self-Declare' Category, These are the Requirements," accessed May 14, 2022, <https://nasional.kompas.com/read/2022/03/18/18595151/certification-halal-for-ukm-category-self-declares-free-this-conditions>.

²² "BPJPH-UNP Discusses Preparation of PPH Assistance and Halal Examination Agency," accessed May 25, 2022, <https://kemenag.go.id/read/bpjph-unp-bahas-pendamping-pendamping-an-pph-dan-institution-pemeriksa-halal-lmn0k>.

²³ Farid Wajdi, "The Implications of Application of Law Number 11 of 2020 Concerning Creation of Work on the Implementation of Halal Product Assurance," *Indonesian Journal of Education, Social Sciences and Research (IJESSR)* 3, No. 2 (2021): 56–70.

²⁴ Wajdi, 2021.

²⁵ Istianah and Dewi, "Analisis Masalah Pada Konsep Halal Self-Declare Sebelum dan Pasca Enactment Undang-Undang Cipta Kerja."

provisions. BPJPH is at the forefront of implementing halal certification and self-declaration. This self-declaration can only be carried out with strict supervision from BPJPH so that the essence of the halal certification rules is maintained.

The concept of self-declaration in fulfilling the obligation of halal certification has both advantages and disadvantages. To understand how the theory of progressive law views the idea of self-declaration for MSEs, the authors compare and analyze the self-declaration concept in MSEs with Satjipto Rahardjo's progressive legal theory. Progressive law, as developed by Satjipto Rahardjo, focuses on justice and the well-being of individuals. The theory questions the traditional emphasis on strict rationality in the application of the law and encourages a more holistic approach that considers the needs and happiness of people.

In the context of self-declaration for MSEs, the authors examine how it aligns with the principles of progressive law. They analyze whether self-declaration contributes to justice, helps MSEs obtain halal certification, and humanizes the legal process. They explore whether self-declaration facilitates licensing and certification processes, breaks and makes rules, and adapts to societal changes. By comparing the concept of self-declaration for MSEs with Satjipto Rahardjo's progressive legal theory, the authors aim to identify intersections and similarities. They assess how self-declaration can promote justice, assist MSEs in obtaining halal certification, and reflect the progressive nature of the law.

Through this analysis, the authors provide insights into the compatibility of self-declaration for MSEs with the principles of progressive law, shedding light on the potential benefits and implications of adopting such an approach in the context of halal certification for MSEs.

THE HISTORY AND SPIRIT OF PROGRESSIVE LAW: CAPTURING SATJIPTO RAHARDJO'S VIEW

Satjipto Rahardjo (February 15, 1930-January 9, 2010) was a distinguished figure in the field of law, renowned as a professor emeritus, lecturer, writer, and advocate for law enforcement in Indonesia. During the 1970s and 1980s, he served as the Dean of the Law Faculty at Universitas Diponegoro, Semarang. Recognizing his contributions, he was also granted honorary membership in the Indonesian Academy of Sciences (AIPI). Satjipto Rahardjo earned his undergraduate degree from the Faculty of Law at the University of Indonesia, graduating in 1960. He demonstrated his commitment to legal education by chairing the Law Doctoral Program at Diponegoro University from 1996 to 2000. Throughout his career, Satjipto Rahardjo actively engaged with legal scholarship and advocated for a progressive approach to law. He emphasized the importance of justice and the well-being of individuals, challenging the prevailing emphasis on strict rationality in legal matters. His work contributed to the development of legal theory and influenced legal practitioners and scholars in Indonesia. Satjipto Rahardjo passed away on January 9, 2010, leaving behind a significant legacy in the field of law and a lasting impact on legal thinking in Indonesia. His dedication to legal education and his progressive legal theories continue to inspire generations of legal professionals in the country.²⁶

²⁶ Satjipto Rahardjo, *Penegakan Hukum Progresif*. (Jakarta: PT Kompas Media Nusantara, 2010). See, Satjipto Rahardjo. *Hukum Progresif Sebuah Sintesa Hukum Indonesia*. (Yogyakarta: Genta Publishing, 2009); Satjipto Rahardjo, *Membedah Hukum Progresif*. (Jakarta: PT Kompas Media Nusantara, 2008).

Progressive Law wants to keep up with the times, respond to a rapidly changing society with all the basics, and serve the community by relying on the morality aspect of law enforcement.²⁷ Satjipto stated that law is a progressive institution that never stops stagnant but continues to grow, change and develop. Without change, society will leave the law. Changes occur in the legal system and regulations.²⁸ Progressive law and progressive legal science are flowing ideas. The law continuously overturns, replaces, and liberates stagnant laws. The law rests on rules and behavior, but progressive law places more factors of behavior above rules.²⁹

Kristiana³⁰ identifies progressive law's assumptions, goals, spirit, and character as stated in figure 1. According to Kristiana, progressive law assumes that law is for humans and is not a final institution. Progressive legal goals for human welfare and happiness. The spirit of progressive law is liberation from the principles, theories, and ways of thinking that dominate today. Progressive law rejects the status quo and is sensitive to changes in society.

²⁷ Emy Hajar Abra and Rofi Wahanisa, "The Constitutional Court Ultra Petita as a Protection Form of Economic Rights in Pancasila Justice," *Journal of Indonesian Legal Studies* 5, No. 1 (2020), <https://doi.org/https://doi.org/10.15294/jils.v5i1.35965>.

²⁸ Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*. p. 59 and 61.

²⁹ Rahardjo., p.39.

³⁰ Yudi Kristiana, "Rekonstruksi Birokrasi Kejaksaan Dengan Pendekatan Hukum Progresif," *Hukum Progresif* 3, no. 1 (2007): 1–13.

Identification	Progressive Law
Assumption	<ol style="list-style-type: none"> 1. Law For humans; 2. Law is not the final institution.
Destination	Prosperity and happiness, man
spirits	<ol style="list-style-type: none"> 1. Liberation to principles, theories, and methods think the moment this dominate ; 2. Liberation enforcement culture _ law (<i>administration of Justice</i>) that lasts this power and inhibition law complete problem.
Progressivity	<ol style="list-style-type: none"> 1. aim for well-being and happiness ; 2. Sensitive to changes that occur in society ; 3. Reject the status quo.
Character	<ol style="list-style-type: none"> 1. Point-heavy study laws on conduct ; 2. Responsive; closer to humans and society ; 3. Share understanding with <i>legal realism</i>; see the law from social goals and consequences _ from its works law ; 4. Have proximity with <i>Sociological Jurisprudence</i> Roscoe Pound, view law from the effect it works law ; 5. Have proximity with law naturally because of characteristic "<i>meta juridical</i>"; 6. Proximity with <i>Critical Legal Studies</i> with more coverage _ broad.

FIGURE 1. Progressive Law Identification

Source: Yudi Kristiana, 2007.³¹

The spirit of progressive law is the *spirit* of liberation. The meaning of "*liberation*," according to Satjipto Rahardjo:³²

- 1) Freedom from the types, ways of thinking, principles, and theories;
- 2) Liberation of law enforcement facilitates legal efforts to resolve problems.

Liberation in progressive law means liberation in thinking and acting in law. The liberation that allows the law to flow to serve humans and humanity, from rule-making and rule-breaking. Breakthrough does not mean blindly breaking into legal norms.

³¹ Yudi Kristiana, "Rekonstruksi Birokrasi Kejaksaan dalam Pendekatan Hukum Progresif", *Jurnal Hukum Progresif* 3, No. 1 (2007). <https://doi.org/10.14710/hp.3.1.21>

³² Suteki, *Rekam Jejak Pemikiran Hukum Progresif Satjipto Rahardjo*. p. 35

Liberation in progressive law must not violate the substance of the law.³³

Yusriyadi,³⁴ quoting Satjipto, said that rule-breaking is looking for a new path in the following way:

- 1) Using spiritual intelligence to wake up from legal adversity, the courage to seek new ways;
- 2) The search for deeper meaning is a new criterion in implementing the law and being the rule of law. Each party involved in the law enforcement process is always encouraged to ask conscience about the deeper meaning of the law;
- 3) The implementation of the law is not only according to logic alone but with feelings, concern, and involvement for vulnerable groups. Progressive law always sees law as a comprehensive institution in law enforcement.

In his book Satjipto Rahardjo³⁵ recorded 5 (five) progressive legal ideas. *First*, the basic assumption of progressive law is that law is an institution that aims to deliver humans to a just, prosperous life and makes people happy. Law is not an absolute and final idea. Progressive law is a correction to the weaknesses of the modern legal system, which is rigid and bureaucratic.

Second, the idea is that humans are good. The law is not a king but a tool to give the world and humans grace. There are 3 (three) cores of progressivism: law exists for humans and not for itself, the law is always in the status of "*law in the making*," not final, and law is a morally human institution. Progressive legal criteria have goals for

³³ Muhamad Rakhmat, "Refleksi Terhadap Teori Hukum Satjipto Rahardjo, Mochtar Kusumaatmaja Dan Romli Atmasasmita," *Al-Akhar* 5, No. 2 (2013): 36–61. P. 53.

³⁴ Yusriyadi, "Paradigma Sosiologis dan Implikasinya Terhadap Pembangunan Hukum dan Penegakan Hukum di Indonesia (Pidato Pengukuhan Peresmian Penerimaan Jabatan Guru Besar dalam Bidang Sosiologi Hukum Pada Fakultas Hukum Universitas Diponegoro)" (Semarang: Badan Penerbit Universitas Diponegoro Semarang, 2006), <http://eprints.undip.ac.id/337/>. P 33.

³⁵ Rahardjo, *Progressive Law A Synthesis of Indonesian Law* . pp v-ix.

human welfare and solid moral content. It liberates theory and practice and is critical and functional.

Third, morally progressive law encourages law to provide better services to the nation. *Fourth*, elaborating progressive legal capabilities to improve the quality of legal products. Such as pushing for the method of law to be a combination of various elements; the combination of various theories, commitment, dare, and determination. *Fifth*, it is necessary to read legal texts that open up interpretation. Interpretation of regulatory texts is the heart of the law.

The law is not for itself and is not final. Even in a rule-of-law state, not all issues have to be with and through law. Progressive law sees law, not as a final product. Law is always in the process of continuing to be, constantly waking up and transforming itself to a higher level of perfection.³⁶

Public participation support law enforcement. Public participation is vital because the law has limited ability. To believe that the law can do everything is unrealistic and a wrong attitude.³⁷ Law is not only a matter of law but also behavior. There must be an approach from the other side of the law; political, social, economic, and cultural society.³⁸

Progressive Law wants to consciously place its presence in a close relationship with humans and society.³⁹ So, every doctrine must be open to review and rethinking its use. Law is for a man, not man for the law. Law is always in the process of building.⁴⁰ Executing the law is not the same as applying the letters, but seeking and finding the true meaning of a rule. Progressive law is not stopping to accept

³⁶ Rahardjo. p.21.

³⁷ Rahardjo, *Membedah Hukum Progresif*., pp 75-81.

³⁸ Rahardjo, *Penegakan Hukum Progresif*. p. 257.

³⁹ Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*. pp. 6-7.

⁴⁰ Rahardjo. pp. 18, 39, 143.

the situation and being frozen but creative. Progressive law liberates spiritual creativity by breaking the existing benchmark rule-breaking and forming new rule-making.⁴¹

Concerning laws in Indonesia that have not provided Justice to society, progressive laws suggest using a dual paradigm; the regulatory and moral paradigms. The moral paradigm; is honesty, self-control, maintaining human dignity and shame, reducing self-esteem, and paying more attention to others. In comparison, the regulatory paradigm can refer to Lon L Fuller's opinion.

According to Fuller, the law must follow the Morality of Law provisions to realize Justice and make regulations. Regulation to be accepted as a legal system must base on 8 (eight) "principles of legality"⁴² The rules must be (1) sufficiently general, (2) publicly promulgated, (3) prospective (i.e., applicable only to future behavior, not past), (4) at least minimally clear and intelligible, (5) free of contradictions, (6) relatively constant so that they do not continuously change from day to day, (7) possible to obey, and (8) administered in a way that does not wildly diverge from their obvious or apparent meaning.⁴³

Fuller states, "A total failure in any of these eight directions does not simply result in a flawed law system. It results in the law not being a legal system at all. However, at some point, obedience becomes futile."⁴⁴ If a system of social control does not fulfill each condition to some extent, then it is not a legal system. A complete

⁴¹ Rahardjo, *Membedah Hukum Progresif*. pp. 20-21.

⁴² Lon L Fuller, *The Morality of Law*, Revised Ed (New Haven and London: Yale University Press, 1963). pp. 46-91.

⁴³ András Sajó and Renáta Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism*, *The Constitution of Freedom: An Introduction to Legal Constitutionalism*, 1st ed. (Clarendon: Oxford University Press, 2017). p. 305.

⁴⁴ Fuller, *The Morality of Law*. p. 39.

failure regarding any of the eight precepts will entail the non-existence of law within the society marked by the failure.⁴⁵

Based on Fuller's opinion above, there is a possibility that the obligation of halal certification for MSMEs will cause problems without a legal system. These problems include:

- 1) The obligation of halal certification will be an obligation that exceeds the capabilities of MSE Business Actors in terms of financing and procedures.
- 2) There may be a mismatch between their halal certification obligations and daily practices. The low number of those who carry out halal certification indicated this mismatch.

The progressive law theory drives law as an institution that aims to deliver humans to a just, prosperous, and happy life. The presence of law is not for itself but for something broader and more significant. If a legal problem exists, the law must be reviewed and corrected, not forced to include humans in the legal sub-theme. The law is not an absolute and final institution because the law is always in a continuously becoming process.

SELF-DECLARATION CONCEPT

Etymologically, self-declaration, according to The American Heritage Dictionary of The English Language⁴⁶ and The Merriam-Webster Dictionary,⁴⁷ comes from the word "declare", which means "to make

⁴⁵ Matthew Kramer, "Scrupulousness Without Scruples: A Critique of Lon Fuller and His Defenders," *Oxford Journal of Legal Studies* 18, No. 2 (1998): 235–64, <https://doi.org/10.1093/ojls/18.2.235>. p. 237

⁴⁶ Anne H Soukhanov, David A Jost, and Kaethe Ellis, *The American Heritage Dictionary of The English Language*, ed. Joseph P. Pickett, David R. Pritchard, and David M. Weeks, 3rd ed. (Boston: Houghton Mifflin Harcourt, 2000), <https://iopscience.iop.org/article/10.1088/1751-8113/44/8/085201>. page 1982)

⁴⁷ John M Morse, *The Merriam Webster Dictionary*, ed. Frederich C Mish, 11th ed. (Springfield Massachusetts, 2004). p.185.

known formally or officially. With the addition of the word self, etymologically, self-declaration means an official announcement by oneself. In terms of self-declaration, according to article 1, paragraph (11) of the Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2021 concerning Halal Certification for Micro and Small Business Actors, is a statement issued by Micro and Small Business Actors regarding the halalness of a product.⁴⁸ Therefore, by self-declaration, business actors officially declare the halalness of a product.

Self-declaration is a regulation that applies a risk-based regulatory approach. MSEs can get a free certificate with a self-declaration concept. Self-declaration requires products that are not at risk. Products made from natural ingredients are halal, have a simple production process, assist with Halal Production Process (PPH), and there is an MUI fatwa, as emphasized on Figure 2. Regulation of the Minister of Religion of the Republic of Indonesia (PMA RI) Number 20 of 2021 concerning Halal Certification for Micro and Small Business Actors Article 2 paragraphs (7) and (8)⁴⁹ state, "*Business Actor Statements are submitted to BPJPH to be forwarded to MUI.*" Then the MUI held a halal fatwa session to determine the halalness of the product. If it passes, BPJPH issues a Halal Certificate based on the MUI's written halal fatwa.

Based on PP No. 39 of 2021 concerning the Implementation of the Halal Product Assurance, Article 79 paragraph (1) states:⁵⁰ "the halal certification obligation for micro and small business actors based of the declaration of micro and small business actors, who have net

⁴⁸ "Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2021 concerning Halal Certification for Micro and Small Business Actors" (2021).

⁴⁹ Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2021 concerning Halal Certification for Micro and Small Business Actors.

⁵⁰ "Government Regulation Number 39 of 2021 Regarding Implementation of the Halal Product Guarantee Field" (2021).

worth or have annual sales proceeds under the provisions of laws and regulations." Regulation of the Minister of Religion of Indonesia No 20 of 2021, Article 4, paragraphs (1)⁵¹ states that the product is not at risk or uses materials and conforming halal status. With the criteria: halal certified or included in the positive list, does not use hazardous materials, and has been verified as halal by PPH assistants (Halal Process Companion). The criteria for the requirements for statements by MSEs actors: The product is not at risk or uses materials and conforming halal status. The production process is guaranteed to be halal and straightforward. MSEs statement is on halal standards set by BPJPH. Business actor's statement in the form of a pledge containing: the *halalness* of the products and materials used and the existence of PPH assistance.⁵²

Thus the essential criteria in a self-declaration are: the product is not at risk, guaranteed to be halal, and the production process is halal and simple.⁵³ As for the production criteria that are guaranteed to be halal and simple: using production equipment with simple technology or done manually or semi-automatically, the production process does not experience irradiation, genetic engineering, ozonation, and the use of hurdle technology, or the location, place, and PPH equipment are under the JPH system.

For the cost of halal certification, Article 44 paragraph (1) UUJPH states that micro, small, and medium enterprises applying for a halal certificate pay a Halal certification fee. With Law No. 11 of 2020

⁵¹ Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2021 concerning Halal Certification for Micro and Small Business Actors.

⁵² Amrullah Kamsari, "Mechanism for Submission of Halal Certification and Halal Facilitation for MSEs," 2020, 28, http://halal.go.id/cms/assets/files/Materi_Pak_Amru_compressed.pdf.

⁵³ Khotibul Umam, "Self Declare Halal Certification With PPH Assistance Pattern," Halal Auditor Development Coordinator and Business Actors, 2021.

concerning Job Creation (UUCK), with a self-declaration concept, the cost of halal certification for MSE Business Actors is free.⁵⁴

The Regulation of the Minister of Finance No. 57 /PMK.05/2021, Concerning Service Tariffs for Public Service Agency Halal Product Assurance Organizing Bodies at the Ministry of Religion Article 5 states: (1) Tariffs for halal self-declaration services for micro and small business actors that meet the criteria for halal declaration, so service rates renewal of halal certificates and service rates for adding variants or types of products are subject to a service rate of IDR 0.00 (zero rupiahs). With the existence of the UUCK, the halal certification procedure applies to the exemption of halal certification fees for micro and small business actors (MSES), relatively shorter processing time efficiency, simplification aspects related to business licensing and its supervision, as well as the integration of various permits into the business licensing. From the concept of Risk Based Regulation (RBR).⁵⁵

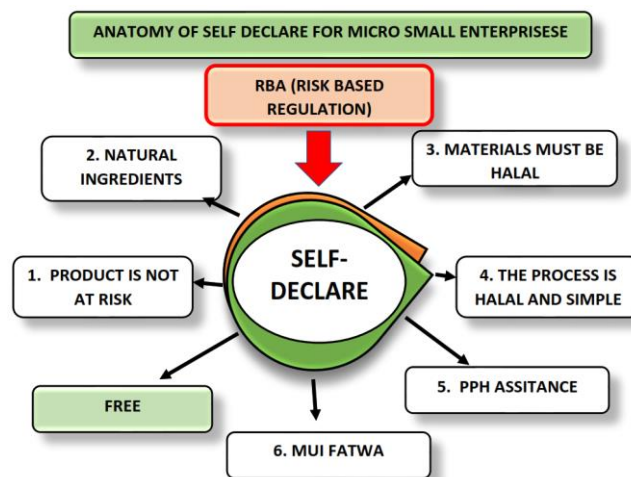


FIGURE 2. Self-Declaration Concept

Source: UUCK, *PP No.39/ 2021 Tentang Penyelenggaraan Bidang Jaminan Produk Halal dan PMA No 20 Tahun 2021 Tentang Sertifikasi Halal Bagi Pelaku Usaha Mikro Dan Kecil*

⁵⁴ "Law of the Republic of Indonesia No. 11 of 2020 Concerning Job Creation" (2020).

⁵⁵ Istianah and Dewi, "Maşlahah Analysis on the Halal Self-Declare Concept Before and After the Enachment of the Job Creation Law." p.98.

Therefore, self-declaration made the halal certification procedure apply to exempting halal certification fees for MSES, relatively shorter processing time efficiency, and simplifying aspects related to business licensing. MSEs get a free certificate with a self-declaration concept with the condition: the product is not at risk, is made from natural ingredients, is halal, has a simple production process, has assistance with Halal Production Process (PPH), and there is an MUI fatwa.

AN INTERSECTION OF PROGRESSIVE LAW THOUGHT & SELF-DECLARATION CONCEPT

In November 2018, the director of LPPOM MUI, Lukmanul Hakim, stated that only 1% of Indonesia's 4 million MSMEs had received halal certification from MUI.⁵⁶ Adhi Lukman, the head of the Food and Beverage Entrepreneurs Association (GAPMMI), said in June 2019 that only 10% of MSMEs currently have halal certificates. About 160 thousand of the 1.6 million MSME actors now have a new halal product guarantee certification.⁵⁷ However, many MSEs cannot fulfill their halal certification obligations due to a lack of access to information, education about the importance of halal certification, and cost considerations.⁵⁸

⁵⁶ "MUI: Baru 1 Persen UMKM Yang Sudah Tersertifikasi Halal," Berita tanggal 1 November 2018, accessed April 15, 2020, <https://kumparan.com/kumparanbisnis/mui-baru-1-persen-umkm-yang-sudah-tersertifikasi-halal-1541051378902499264>.

⁵⁷ "Baru 10 Persen UMKM Yang Kantungi Sertifikat Halal," Berita Tanggal 29 Juni 2019, 2020, <https://bisnis.tempo.co/read/1219420/baru-10-persen-umkm-yang-kantungi-sertifikat-halal/full&view=ok>.

⁵⁸ Istianah and Dewi, "Analisis Masalah Pada Konsep Halal Self-Declare Sebelum Dan Pasca Enactment Undang-Undang Cipta Kerja."

Extra costs and time consumption constrain MSEs with little sales turnover and small capital to access halal certification. They think obtaining a halal certificate is expensive, complicated, and takes a long time. They have not considered halal certification, considering the business turnover is still tiny and unstable. They are waiting for free facilities and assistance from other parties.

I. SELF-DECLARATION & JUSTICE

Progressive law is pro-justice and pro-people.⁵⁹ From a regulatory standpoint, Progressive law means that the law exists for humans, not humans for law. Humans are the central point of law. Suppose laws and regulations do not accommodate the interests of the community means application ignores the rights and obligations of the community. As a sociological reflection of society, the law can seek and find its way.⁶⁰

Donald J Black said⁶¹ that social life has several variable aspects, including stratification. Stratification is the vertical aspect of social life or the unequal distribution of conditions of existence, such as food, access to land or water, and money. Black⁶² also said that higher-income people are more likely to see a lawyer. Wealthier people remain more aware of the law. Wealthy people are more likely to file lawsuits against each other for everything.

Gallanter divides groups related to contact and use of law in their daily life into 2: The Havesnot, who only occasionally ask for assistance from the court, and The Haves regarding power, wealth,

⁵⁹ Rakhmat, "Refleksi Terhadap Teori Hukum Satjipto Rahardjo, Mochtar Kusumaatmaja Dan Romli Atmasasmita."

⁶⁰ Rakhmat. P. 46

⁶¹ Donald J Black, *The Behaviour Of Law*, 1st ed. (London: Academic Press, Inc, 1976). P. 1.

⁶² Black.p. 16.

and status, who always contacts law in their daily life.⁶³ The haves have been involved in many similar litigations over time.⁶⁴

There are 4 (four) elements to the advantage of the rich getting legal services:⁶⁵ *First*, as a party to a lawsuit, they can write contracts, have access to specialist lawyers, enjoy economies of scale, and have the ability to negotiate. *Second*, they have lower initial costs than their abilities in the legal service element. *Third*, elements of institutional facilities can maintain relations with court institutions. *Fourth*, they can play the rules in the field of rules. They can expend resources in influencing rule-making.

In "The Theory of Justice," John Rawls states the need to regulate social and economic inequality to benefit disadvantaged groups the most. Rawls stated, "Social and economic inequalities must be arranged: (a) towards the greatest expected benefit of the socially disadvantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity."⁶⁶ The socio-economic difference is the difference in a person's prospects for obtaining welfare, income, and authority. In the medium term, the most disadvantaged refers to those with the slightest opportunity to achieve prospects for prosperity, income, and authority.⁶⁷

Samekto, quoting Roscoe Pound, views the duty of law as a tool to carry out social engineering for shared prosperity. The task of law is to harmonize the interests of the individual and society toward

⁶³ Marc Galanter, "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review* 9, No. 1 (2014): 95–160.

⁶⁴ Galanter.p.97.

⁶⁵ Galanter.p.125.

⁶⁶ John Rawls, *A Theory Of Justice*, Revised Ed (Cambridge, Massachusetts: Harvard University Press, 1999).p. 53

⁶⁷ Ikhsan Abdullah. "Tanggung Jawab Negara Terhadap Kewajiban Sertifikasi Halal dalam Sistem Hukum Indonesia." *Thesis*. (Jember: Universitas Jember, 2018)

achieving the desired justice together.⁶⁸ Justice is the goal of legal systems. It is inaccurate to refer to justice as either an "individual virtue" or "the ideal connection among men." Justice can be summed up as "such adjustment of relations and ordering of activity as will make the goods of life go-round as far as feasible with the least friction and waste."⁶⁹

Conversely, People's contact with the law varies and depends on social status. Poor people tend not to do anything with the law. Poor people tend to be unwilling and unable to comply with legal obligations. People with higher incomes are more likely to use the law. The unequal wealth distribution differences affect the tendency to use the law.⁷⁰ MSEs are a group of people who tend to have less contact with the law. With their wealth level, they tend not to follow and obey the law.

Moreover, the obligation of halal certification will cost MSEs and take up their time. Initially, UUJPH required halal certification for all business actors, regardless of each business actor's capital and annual sales. However, UUCK waives the cost of halal certificates for MSEs with small capital and turnover. So, the existence of self-declaration can create justice and balance for MSMEs.

The expected balance point is the hope that all economic groups can carry out the halal certification process by eliminating the difficulties of the minor business sector, MSEs. Self-declaration achieved a balance if it targeted the benefit of all stakeholders, including customers and consumers, MSMEs, and large businesses.⁷¹

⁶⁸ Adji Samekto, *Law in the Trajectory of History*, 1st ed. (Bandar Lampung: Indept Publishing, 2013). p. 71.

⁶⁹ James A Gardner, "The Sociological Jurisprudence of Roscoe Pound (Part I)," *Villanova Law Review* 7, no. 1 (1961). p.12.

⁷⁰ Black, *The Behaviour of Law*. p.16.

⁷¹ Istianah and Dewi, "Analisis Masalahah Pada Konsep Halal Self-Declare Sebelum Dan Pasca Enactment Undang-Undang Cipta Kerja."

Progressive law is pro-justice, and pro-people, from the perspective of MSEs, can mean the ease of obtaining a free and halal certificate. Self-declaration can only be carried out with strict supervision from BPJPH so that the essence of the halal certification rules is maintained.

Self-declaration seeks to regulate the implementation of halal certification to realize the basic structure of Social Justice. The halal certification obligation has been torn apart by social stratification based on differences in wealth. Until only middle-class business actors can access the halal logo, MSE's self-declaration concept can overcome gaps in the implementation of halal certification. There is an easy concept, free mechanism, and assistance. Thus, MSE's business actors can feel prosperity and happiness because self-declaration is oriented towards the goodness of business actors who benefit the least.

Fairness in obtaining a halal logo for MSEs is an adjustment of relations and behavior regulation that will make MSEs get the correct halal logo. The acquisition is under the rules and standards set by BPJPH. UUCK mandate, which BPJPH is now implementing, will regulate the implementation of self-declaration in such a way that it continues to give justice to MSEs. The regulation does not compromise halal principles and standards like the ordinary halal procedure.

II. SELF-DECLARATION FROM RULE-BREAKING TO RULE-MAKING

MSMEs are the essential pillar in the Indonesian economy, amounting to 64.13 million or around 99.92% of Micro and Small Enterprises. The COVID-19 pandemic has harmed MSMEs; most MSMEs (82.9%) have

felt the negative impact of the pandemic.⁷² MSEs, the backbone of the nation's economy, have been badly affected by Covid19. Many of the businesses went bankrupt and disbanded.

The existence of mandatory regulations for halal certification is quite burdensome for them. Costs, time, and complicated procedures constrain them. So MSMEs need legal breakthrough regulations that can provide flexibility or a way out for MSEs to survive in a difficult situation. The legal breakthrough (rule-breaking) lies in the emergence of regulations that previously required all business actors to carry out halal certification with certain costs and procedures. Then came a regulation that waived obligations for business actors from weak MSE groups. A self-declaration concept emerged that made it easier for MSEs to obtain halal certification.

From the theory of progressive law, self-declaration is a form of rule-breaking to rule-making. Self-declaration is a legal breakthrough when the law deals with extraordinary conditions. Self-declaration is a search for a new path (rule-breaking). Rule-breaking, in the concept of progressive law, uses spiritual intelligence to make legal rules. Courage to seek new roads (rule-breaking) and create rules that create balance and Justice for MSEs. Self-declaration is an effort to find deeper meaning in carrying out the law, especially in the halal certification program.

From the perspective of the spirit of progressive law, self-declaration is an attempt at liberation. Progressive law liberates ways of thinking and theories used so far. Liberation of the culture of administration of Justice has been hampering MSEs from carrying out halal certification. Self-declaration can mean liberation in thinking and acting according to the law. The liberation that allows the law to

⁷² "Government Support for MSMEs to Recover During a Pandemic," 2021, <https://www.ekon.go.id/publikasi/detail/2939/support-government-bagi-umkm-agar-pulih-di-masa-pandemi>.

flow to serve humans and humanity, especially the vulnerable groups of MSEs.

From a regulatory standpoint, from a progressive legal theory, self-declaration is law-making for humans. It is not the other way around; the community of MSME actors seeks law. Self-declaration makes human MSME actors the central point of law. Naturally, suppose laws and regulations do not accommodate the interests of society. In that case, their application follows the reality of society. The law, as a sociological reflection of society, will seek breakthroughs.

To realize and ensure the realization of *self-* declared in UUCK, the Government and BPJPH have issued various implementing regulations, namely:⁷³

- 1) Government Regulation No: 39 of 2021 concerning the Implementation of the Field of Halal Product Guarantee (Ps. 79);
- 2) PMA No: 20 of 2021 concerning Halal Certification for Micro and Small Business Actors;
- 3) PMA No: 57 of 2021 concerning Criteria for the Halal Product Guarantee System;
- 4) KMA No. 748 of 2021 concerning Types of Products that Must Be Halal Certified;
- 5) KMA No: 1360 of 2021 concerning Materials that are exempt from the obligation to be Halal Certified;
- 6) Agency No: 1 of 2021 concerning Procedures for Payment of Public Service Agency Tariffs;
- 7) Kepkaban No: 141 of 2021 concerning Stipulation of Service Fees for Public Service Agencies;
- 8) Kepkaban No. 33 of 2022 concerning Technical Guidance for Companion of Halal Product Process in Determining Halal

⁷³ Lady Yulia, "Training Material of Trainer Companion for the Halal Process of IAIN Syekh Nurjati Cirebon, 19-21 April 2022." (Jakarta, 2022).

Certified Obligations for Micro and Small Business Actors based on Statements of Business Actors;

- 9) Kepkaban No. 57 of 2022 concerning the Manual for the Halal Product Assurance System for Halal certification with statements of micro and small businesses (self-declaration);
- 10) Kepkaban No. 58 of 2022 concerning the Establishment of Verification and Validation Instruments by Halal Product Process Facilitators;
- 11) Kepkaban No. 40 of 2022 concerning the Determination of Halal Labels.

Those rules show the seriousness of BPJPH in realizing the self-declaration program. Seriousness in the form of rule-breaking and legal breakthroughs to help MSEs obtain halal certificates. Self-declaration is rule-breaking as well as rule-making by preparing and implementing rules. Those rules realize the idea of self-declaration for MSEs.

III. SELF-DECLARATION AS A RESPONSIVE & PARTICIPATORY LAW

The existence of laws and regulations in a rule-of-law state aims to improve people's welfare. Welfare is very important because laws and regulations are a means to create legal order in society. Laws create a conducive atmosphere for public welfare by creating responsive, participatory, and populist laws.⁷⁴

Responsive legal vision guides values such as equality, freedom, and efficiency to become valid for life. To whom should these values

⁷⁴ Bayu Dwi Anggono, "The Politics of Law on The Formation of Responsive, Participative, and Populist Legislation," *International Journal of Business, Economics and Law* 9, No. 4 (2016): 4–9, p.8

be prioritized? Officials must understand which law should be prioritized.⁷⁵ The critical stages of responsive law are in the implementation and acquisition of legitimacy; it must be able to translate the general objectives of law into specific objectives.⁷⁶

One of the characteristics of responsive, participatory, and populist legislation is seeing the legal need mainly from the public to form legislation.⁷⁷ Anggono,⁷⁸ quoting Seidman and Seidman, defines participation as "the parties affected by regulations must have the widest opportunity to provide feedback, criticism. They must be involved in the decision-making process."

According to Shidarta, 2 (two) logics must always be followed in reading legal rules, namely the logic of social reasonableness and justice.⁷⁹ Social appropriateness is individual behavior in response based on the habits prevailing in society.⁸⁰ If Satjipto Rahardjo agrees that progressive law adheres to a responsive type of law, he tends to view justice as substantive justice.⁸¹

Substantive justice is based on public morality, human values and can provide satisfaction and happiness for society. Justice is not merely a juridical issue but also a social problem. The character of substantive justice rests on the 'response' of society, which relies on law based on the people's hearts. There are at least 4 (four)

⁷⁵ Philippe Nonet and Philip Selznick, *Toward Responsive Law (Law & Society in Transition)* (Routledge: Taylor & Francis Group, 2017).p. xiii.

⁷⁶ Nonet and Selznick. p.112.

⁷⁷ Anggono, "The Politics of Law on The Formation of Responsive, Participative, and Populist Legislation."p.8

⁷⁸ Anggono.p.8

⁷⁹ Shidarta, *Posisi Pemikiran Hukum Progresif dalam Konfigurasi Aliran-Aliran Filsafat Hukum: Sebuah Diagnosis Awal*, ed. Myrna A Safitri, *Satjipto Rahardjo Dan Hukum Progresif: Urgensi dan Kritik* (Jakarta: Epistema, 2011). p. 60.

⁸⁰ Wahyu Widhiarso, "Orientasi Keputusan Sosial Dan Respons Tipuan Pada Alat Ukur Dalam Konteks Seleksi Kerja," *BENEFIT Jurnal Manajemen dan Bisnis* 15, No. 2 (2011): 79–90.

⁸¹ Shidarta, *Posisi Pemikiran Hukum Progresif Dalam Konfigurasi Aliran-Aliran Filsafat Hukum: Sebuah Diagnosis Awal*. p. 60.

characteristics of substantive justice content, namely objectivity, honesty, impartiality, and rationality.⁸²

Progressive law is a responsive legal type, such as resistance.⁸³ Responsive, progressive law relies on the doctrine that law must be functional, pragmatic, purposeful, and rational.⁸⁴ The essence of responsive, progressive law is to make the law more responsive to reality. So, progressive law also prioritizes substantive Justice and the integration of legal and political aspirations.⁸⁵ Responding to reality means placing law as a means of responding to social provisions and public aspirations, following the progressive nature of law, which is open and accommodates social changes.⁸⁶

Progressive laws encourage public participation. Public participation is vital because; the law has limited power. Entrusting everything to the power of law is an unrealistic and wrong attitude. On the other hand, society has autonomous power to protect and organize itself. This power temporarily sank under the domination of modern law, namely state law.⁸⁷

According to Anggono,⁸⁸ participatory law means that the idea of forming laws and regulations does not always come from state authorities but can come from society. The drafting and discussion process involves the public giving their opinion directly or indirectly.

⁸² M Syamsudin, "Keadilan Prosedural Dan Substantif Dalam Putusan Sengketa Tanah Magersari (Kajian Putusan Nomor 74/PDT.G/2009/PN.YK)," *Jurnal Yudisial* 7, no. 1 (2014): 18–33.

⁸³ Atmadja and Budiarta, *Legal Theories* . pp. 117-118.

⁸⁴ Atmadja and Budiarta. pp. 117-118.

⁸⁵ Rhiti, "Philosophical Foundation of Progressive Law." glm 39-40

⁸⁶ I Dewa Gede Atmadja and I Nyoman Putu Budiarta, *Legal Theories* , *Setara Press* , 1st ed. (Malang: Setara Institute, 2018). pp. 117-118.

⁸⁷ Shidarta, *Posisi Pemikiran Hukum Progresif Dalam Konfigurasi Aliran-Aliran Filsafat Hukum: Sebuah Diagnosis Awal*.p. 57.

⁸⁸ Anggono, "The Politics of Law on The Formation of Responsive, Participative, and Populist Legislation."p.8

They must be allowed to give their opinion on any provisions that will govern and bind them.

The function of public participation is, first, to foster democratic politics and fight the tendency towards *top-down control*. Second, it provides legitimacy for certain decisions and public institutions, increasing the relevance and validity of decision-making. Third, focus on the community's ability to contribute to specific policy decisions.⁸⁹

Warlan,⁹⁰ quoting Lothar Gundling, stated several benefits of community participation in law-making. They are providing information to the government about regulations needed by the community, increasing people's willingness to accept decisions, assisting legal protection, and democratizing decision-making.

Responsive legal theory has the character of democratic law. The law is for humans. Therefore, the law must serve humans. So the legal character is open to participation.⁹¹ The scope of public participation consists of public involvement in access to information, consultation, and dispute resolution. Public participation can increase substantive regulatory output and improve the quality of decisions through input from a broader range of participants (experts and non-experts), including access to Justice.⁹²

The nature of community participation coexists with easy access for the community to justice. So justice is based on a contextual conception of law. Contextual Justice means "justice by finding ways

⁸⁹ William J Kinsela, *Public Expertise: A Foundation for Citizen Participation in Energy and Environmental Decisions In Communication and Public Participation in Environmental Decision Making*, ed. Stephen P. Depoe, John W. Delicath, and Marie-France Aepli Elsenbeer, 1st ed. (Albany, New York: State University of New York, 2004).p.88.

⁹⁰ Asep Warlan Yusuf, "Partisipasi Masyarakat Dalam Pembangunan Kota Yang Berkelanjutan Dan Berkeadilan," *Administrasi Publik* 11, No. 2 (2014): 53–68.

⁹¹ Atmadja and Budiarta, *Teori-Teori Hukum*.p.123

⁹² Jane Donoghue, "The Rise of Digital Justice: Courtroom Technology, Public Participation and Access to Justice," *Modern Law Review* 80, No. 6 (2017): 995–1025, <https://doi.org/10.1111/1468-2230.12300>.Pg 1002.

to overcome difficulties or obstacles that make legal rights inaccessible to many individuals, weak communities such as MSES." Due to social, cultural, and economic barriers, they cannot fulfill them. So that Justice does not only include the availability of legal aid but the opportunity to participate.

Substantive Justice is based on public morality and human values and can provide society satisfaction and happiness. Justice is not merely a juridical issue but also a social problem. The character of substantive justice rests on the 'response' of society, which relies on law based on the people's hearts. There are at least 4 (four) characteristics of substantive justice content: objectivity, honesty, impartiality, and rationality.⁹³

By using a responsive, progressive legal theory, self-declaration is a form of regulation to realize substantive Justice and integrate the legal and political aspirations of the small community represented by MSES. This program responds to the reality of the people who have difficulties fulfilling the obligation of halal certification. The self-declaration concept places law as a means of responding to social desires and public aspirations and, under the responsive and open nature of progressive law, tries to accommodate the wishes and legal aspirations of the community.

Progressive law shows that self-declaration attempts to prove that self-declaration is sensitive and responsive to the reality in MSEs. Sensitive to the difficulties experienced by MSEs. Responsive in looking for solutions to overcome problems. The problem is the difficulty in fulfilling the obligation to carry out halal certification for MSMEs.

⁹³ M Syamsudin, "Procedural and Substantive Justice in the Magersari Land Dispute Decision (Study of Decision Number 74/PDT.G/2009/PN.YK)," *Judicial Journal* 7, No. 1 (2014): 18–33.

Self-declaration shows a legal form that is functional, pragmatic, purposeful, and rational. Functional means that the law functions to realize substantive justice as the basis for legal legitimacy. Pragmatic means useful or functional law is the truth.⁹⁴ So, it is necessary to be creative in using discretion in making legal decisions while remaining oriented towards goals and substantive Justice. It aims at the principles of fundamental morality in carrying out the law. Rational in legal considerations.

Self-declaration balanced procedural Justice with substantive Justice oriented to the benefit of society. It returns legal thinking to its basic philosophy: law for humans, MSES. Humans become the determinant and legal orientation point. Self-declaration shows that the law is in charge of serving humans, especially MSEs. Self-declaration shows that law is not an institution free from human interests. So the philosophy of the progressive legal paradigm is the law for humans. The quality of law upholds integrity in serving human welfare –the embodiment of progressive pro-justice and pro-people law. The people's interests are the orientation point and the ultimate goal of law enforcement.

For this reason, the stakeholder's self-declaration: BPJPH and business actors must prioritize honesty and sincerity in implementing self-declaration. Holders of legal power have empathy and concern for the people's suffering. Business actors burdened with the obligation to carry out halal certification must be honest, sincere, and eager to fulfill their obligations.

Self-declaration requires products made from natural ingredients, micro or small turnover, and assistance in the Halal Product Process (PPH). The PPH Facilitator ensures that the product is not at risk with the following halal criteria: halal certified or

⁹⁴ Wasitohadi, "Pragmatisme, Humanisme Dan Implikasinya," *Satya Widya* 28, no. 2 (2012): 175–90. p.177.

included in the positive list, does not use hazardous materials, and has been verified as halal by the PPH Facilitator.⁹⁵

The Head of BPJPH stated that BPJPH had carried out the PPH Facilitator Training. BPJPH has prepared 100,000 PPH assistants from various elements from State/Private Universities, Islamic Organizations or Islamic Institutions, and Non-PNS Islamic Religious Extensionists, with a target to help MSEs get halal certification for free, with a target of 10 million in 2022.⁹⁶

Thus self-declaration has encouraged public participation with PPH assistance. Self-declaration involves public participation consisting of Islamic community organizations, Islamic religious institutions with legal entities, and public and private universities to assist in the Halal Product Process. Self-declaration has participatory rules.

CONCLUSION

This study examined the impact of self-declaration on Micro and Small Enterprises (MSMEs) in obtaining halal certification. The study concluded and highlighted that self-declaration significantly reduces regulatory burdens for MSMEs by providing them with a free halal label. It streamlines the certification process, leading to shorter filing periods and improved service quality in ensuring halal product standards. This regulatory flexibility fosters justice and balance among MSMEs, aligning with the goals of progressive law to promote justice, welfare, and happiness. By adopting a self-declaration

⁹⁵ Peraturan Menteri Agama Republik Indonesia Nomor 20 Tahun 2021 Tentang Sertifikasi Halal Bagi Pelaku Usaha Mikro dan Kecil.

⁹⁶ "Sertifikasi Halal Untuk UKM Kategori 'Self-Declare' Gratis, Ini Syaratnya."

approach, the regulatory framework demonstrates responsiveness to the evolving needs, desires, and changes within society. It offers MSMEs an opportunity to obtain halal certificates even with limited financial resources and sales capacity, thereby achieving a fair balance between MSMEs and larger companies. Furthermore, the study identifies key intersections between progressive law and the objectives of self-declaration. These intersections include: *first*, realizing justice by assisting MSMEs in obtaining halal certification, prioritizing the human aspect of the law and facilitating the licensing process for MSEs, *second*, embodying the concept of rule-breaking to rule-making, which entails creating new regulations to promote progressive laws. This perspective acknowledges that the law is not static but can adapt to societal changes, and *third*, encouraging a responsive and participatory legal system that involves business actors and companions in the halal certification process. Overall, this study confirmed that the implementation of self-declaration in halal certification aligns with the principles of progressive law, fostering justice, balance, and inclusivity for MSMEs in their pursuit of halal compliance.

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