

CHAPTER IV

CONCLUSION

A. Conclusion

This research studies the challenges faced by Halal Act on its implementation from the perspective of Islamic law and WTO law. Therefore, the results of this thesis conclude that:

1. Halal Act still needs to be re-examined in the sense of its implementation. There are many derivative supporting regulations which are not yet enacted for example are four (4) Decrees Minister of Religious Affair and Decree of Minister of Finance. Furthermore, there are several potential problematic provisions embedded in Halal Act. Such as mandatory nature, distinction between foreign halal and domestic products, and separation of halal and non-halal processes.
2. The application TBT Agreement of halal measure in Halal Act shows that, this measure falls under the TBT Agreement Article 2.1. However, it is likely that Indonesia will be brought to WTO members due to this potential non-compliance of a measure according to Article 2.1 TBT Agreement.
3. Indonesia could argue regarding the conflicting halal measure and Article 2.1 TBT Agreement using the concept of public moral protection according to Article XX(a) GATT. The sufficient threshold to pass the test of “necessity” and less trade restrictive alternatives can justify the halal measure using public moral protection concept. However, Indonesia is likely to be defenseless when it comes to the non-fulfillment of Halal Act

according to the 'Chapeau' Article XX GATT, which later will end up that Indonesia probably could not justify the Halal Act using public moral exception.

4. Halal Act can be legitimated from the perspective of *maslahah mursalah* and *maslahah al-dauliyyah*. Several problematic provisions according to Islamic perspective stem from the lack of internationally recognized halal process and the difference between halal process varying from countries. The difference also stems from the halal process method according to Islamic jurist (Imam).

B. Limitation & Suggestion

Therefore, in the end of this writing of this thesis, the author proposes several limitations faced as well as several suggestions for the future writings in this topic:

1. The use of *maslahah mursalah* analysis should be carried out carefully in this concept, consider that there are Muslim jurist which does not accept the use of *maslahah mursalah*.
2. In finding the literature regarding Halal Act, to trace back, there are difficulties stemming from the time-gap between the Jurist period to the current days.
3. The scope of application in TBT Agreement can be elaborated further. This thesis does not mention the Article 2.2, 2.4 and 2.5 from TBT Agreement. Further writings could go for further elaboration.
4. This thesis combines two different scope into one. Further writings could spin-off the discussion and go with in-depth analysis.