

IMPLEMENTATION OF SHARIA COMPLIANCE IN THE HALAL TOURISM INDUSTRY IN INDONESIA (A Study on Sharia Hotels and Beaches)

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Citation Guide:

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SHARIA COMPLIANCE
IN THE HALAL
TOURISM INDUSTRY IN
INDONESIA
(A Study on Sharia Hotels
and Beaches)' [2020] 2 (2)
Prophetic Law Review 5.

Received:

26 January 2020

Accepted:

27 November 2020

Published:

28 December 2020

DOI:

10.20885/PLR.vol12.iss2.art5

Abstract

This is a study on the practices of sharia compliance of halal tourism, especially sharia hotels and beaches in Indonesia. This is an empirical juridical research, using qualitative descriptive analytical techniques. The results of this study indicate several points. First, Sharia compliance in the halal tourism industry is a necessity, because sharia compliance is a unique feature of this industry that distinguishes it from the conventional tourism industry and it will maintain the sustainability of this industry because the interests of Muslim consumers are safeguarded and protected. Second, the halal tourism regulatory framework consists of Law Number 40 of 2007; DSN MUI Fatwa Number: 108 / DSN-MUI / X / 2016 concerning Guidelines for Organizing Tourism Based on Sharia Principles; and Minister of Tourism and Creative Economy Regulation No. 2 of 2014 concerning Sharia Business Hotel Operations. However, these regulations are considered inadequate in regulating halal tourism. Third, optimization of sharia compliance in the halal tourism industry is carried out in three steps: first, strengthening the substance by establishing regulations on halal tourism, second, strengthening the structure, and law enforcement officials, and third strengthening the legal culture through socialization and strengthening people's understanding of the importance of sharia compliance in Halal tourism industry.

Keywords: *Halal industry, halal tourism, sharia compliance.*

A. Introduction

Consuming halal products and utilizing halal services for Muslims is considered as part of religious teaching implementation², so that all supporting facilities for halal

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products and services, including the halal industry have a very important position in the lives of Muslims³.

The halal industry is defined as all forms of business that do not contain and involve things that are prohibited by Islamic law, both in terms of deeds and objects.⁴ In line with this definition, Muhammed stated that the halal industry is to produce goods and services that meet halal requirements.⁵

The definition above highlights that halal industry contains two important concepts, namely Islamic law and halal requirements. The definition of the two terms are correlated one to another, in that something that is done in line with sharia requirement is *halal* or lawful. Thus, any kind of halal industry, both in services and real sectors, must not contain things that are against Islamic law or in other words, it should meet halal requirements. It is for this reason that the words halal and sharia are often used interchangeably depending on the industrial sector and the authorities using them.⁶ Some terms in Indonesia are correlated with halal requirements, such as Islamic banking, sharia insurance, sharia hospitals, sharia tourism, halal restaurants, the halal fashion industry, and others.

In short, the halal industry or sharia industry must comply with the principles of Islamic law or sharia compliance, as in line with the saying of the Quran: “Now, we have set you ‘O Prophet’ on the ‘clear’ Way of faith. So, follow it, and do not follow the desires of those who do not know ‘the truth’.” (45:18). This verse contains arguments about the obligation to comply with sharia, including in terms of industry or business.

Sharia compliance is the alignment of all economic and business activities with sharia provisions⁷. Conversely, if a business activity is contrary to sharia principles, it is called non-sharia compliance. Sharia compliance is a prerequisite for the realization of human welfare, because it contains *maslahah* in sharia.⁸

² Nurul Aini Muhamed and others, ‘Integrating Islamic Financing and Halal Industry: A Survey on Current Practices of the Selected Malaysian Authority Bodies’ (2014) 10 Asian Social Science 120, 124.

³ Idris Oyewale Oyelakin and Asnidar Hanim Yusuf, ‘Prospects of Halal Products in Developing Countries: Comparison between Nigeria and Malaysia’ (2018) 2 International Journal of Business and Society 44, 48.

⁴ Hendri Saparini, Akhmad Akbar Susanto and Mohammad Faisal, *Bisnis Halal: Teori Dan Praktek* (Rajawali Pers 2018) xxii.

⁵ Halal industry is producing goods and services that can fulfill the halal requirements. Muhamed and others, *Op.Cit.*

⁶ *Ibid.*

⁷ Rif’at al-Sayyid Al-Awdli, *Mausu’ah al-Iqtishad al-Islami* (Darusalam 2009) 233.

⁸ Abdul Halim Mahmud Ba’li, *Al-Istismar Wa al-Riqabah al-Syar’iyyah* (Dar al-Wahbah 1991) 201-202/

Sharia compliance for the halal industry is the realization of a comprehensive implementation of Islam in the industry, as every Muslim is ordered to practice his religion in a comprehensive (*kaffah*) manner. If compliance is violated, there will be abuse of sharia, violation of sharia principles by an industry that calls itself the sharia industry.

According to the DSN MUI, the halal industry includes the financial industry, industrial business and sharia economics⁹. Meanwhile, the Ministry of National Development Planning classified the halal industry into the financial industry and the real sector. The halal finance industry is growing faster than other service industries due to a number of factors, namely: the high public demand for a financial system that is free of usury, the presence of relatively complete regulations and the available blueprints from a number of countries which makes it easy to adapt.¹⁰

However, it is disconcerting that the Islamic non-financial services industry is lagging far behind the fast pace of the Islamic financial industry. Among the Islamic non-financial services industry is the sharia tourism industry. Recently, nonetheless, the development of this industry indicates a consistent growth along with the increasing number of Muslim middle class in a number of countries and the technological advancement that provides an easy access to tourist destinations and accommodation through online platforms. Tourism is now no longer a complement but has become a necessity.¹¹ A study conducted by the 2015 Global Travel Intentions Study (GTIS) confirms this fact. Surveys conducted on people aged 18 years and over also indicated that they wanted to travel longer and further afield.¹²

The increasing trend of traveling necessity shared by the Muslim middle class has changed the concept of service in the tourism industry that can answer their needs. Such needs ranges from food, places of worship, travel packages, accommodation, to tourist destinations. Everything must meet the requirements of Muslim tourists or be in accordance with Islamic Sharia.

⁹ Regulation of Indonesian Ulama Council No: Kep.-407/IV/MUI/2016 on Statutes and Bylaws of National Sharia Board-Indonesian Ulama Council.

¹⁰ Deputi Bidang Ekonomi (ed), *Masterplan Ekonomi Syariah Indonesia 2019-2024 Hasil Kajian Analisis Ekonomi Syariah Di Indonesia* (Kementerian Perencanaan Pembangunan Nasional Republik Indonesia 2018) 4.

¹¹ Adinda Pryanka, 'Wisata, Kebutuhan Masyarakat Semua Kelas' *Republika* (24 January 2019) <<https://republika.co.id/berita/ekonomi/korporasi/19/01/24/plt7q3370-wisata-kebutuhan-masyarakat-semua-kelas>> accessed 22 November 2019.

¹² Iwan Kurniawan, 'Berlibur Sudah Menjadi Kebutuhan Primer' *Harian Ekonomi Neraca* (19 September 2015) <<https://www.neraca.co.id/article/58831/berlibur-sudah-menjadi-kebutuhan-primer>> accessed 23 November 2019.

However, it is unfortunate that some products and services produced by the halal tourism industry are not fully in line with Islamic law. According to a report from the Ministry of Tourism and Creative Economy, a number of halal tourist accommodations, restaurants and cafes that provide new halal food and drinks at the self-claim level have not received halal certification by the MUI. The number of restaurants and hotels that guarantee halal food is very limited. Hence, a number of parties suggested that there should be a separation between halal and non-halal food in the hotel kitchen.¹³

Other things of no less important in halal tourist accommodation is the availability of water. Currently, some luxury hotels and shopping centers have adapted western-style toilets. Such toilets, sometimes, only provide toilet paper instead of clean running water. In fact, running water for Muslims is a necessity to wash after defecation.¹⁴

In the practice of halal tourism, there are also a number of violations against sharia compliance. In West Nusa Tenggara, which is known as the world's best halal tourist destination and has been awarded for the development of its halal tourism, we can see some tourists roaming around wearing bikinis at the beaches.¹⁵ Likewise with West Sumatra, the province which is designated as a halal tourist destination has not fully implemented halal tourism, because bikinis and beer can easily be found on a number of beaches in this area.¹⁶

This phenomenon indicates a conflict between value and brand. Halal tourism is a mere brand label to attract consumers and boost foreign exchange or value as well as the application of Islamic teachings in the tourism sector. As a business institution, the tourism industry cannot be separated from its profit seeking basic character, but the basic character of the halal industry that applies these sharia principles must also be maintained.¹⁷ This condition highlights the need for sharia compliance regulations in the sharia tourism industry.

¹³ Deputi Bidang Pengembangan Kebijakan Kepariwisata, 'Laporan Akhir Kajian Pengembangan Wisata Syariah' (Kementerian Pariwisata 2015) 2.

¹⁴ *Ibid.*

¹⁵ Afif Farhan, 'Wisata Halal Di NTB, Tapi Banyak Turis Berbikini?' *Detik Travel* (5 August 2015) <<https://travel.detik.com/travel-news/d-2984271/wisata-halal-di-ntb-tapi-banyak-turis-berbikini>> accessed 23 November 2020.

¹⁶ Ghina Ghaliya Quddus, 'Bir Dan Bikini, Zonasi Pengembangan Pariwisata' *Kontan* (16 October 2017) <<https://nasional.kontan.co.id/news/bir-dan-bikini-zonasi-pengembangan-pariwisata>> accessed 23 November 2019.

¹⁷ Nabyl Eddahar, 'Muslim Friendly Tourism Branding in The Global Market' (Islamic Centre for Development of Trade 2018) 11.

The flourishing development of halal tourism has not been fully supported by the development of Sharia compliance regulations. This is evidenced by the lagging regulations in the tourism sector. This condition results in frequent violations of sharia compliance in the tourism sector. Hotels that claim themselves to be sharia hotels are yet to apply standardized requirements of sharia compliance, because regulations on sharia hotels have even been revoked.¹⁸

Sharia compliance – here in after referred to as SC - has a very important position in the halal tourism industry. Without sharia compliance, the halal tourism industry is no different from the conventional tourism industry, which does not apply the halal concept. Therefore, the massive development of the tourism business that applies the concept of halal must be responded by the presence of regulations that specifically regulate SC. Thus, it is expected that the implementation and supervision of such business as a way to avoid any form of abuse of sharia. The rampant abuse of sharia in the tourism industry is due to the high economic returns in this business. The abuse is done by falsifying the halal certificate of the tourism industry or by having a self-claiming of "halal" product in the industry.¹⁹

Noting the importance of SC in the halal industry, the researcher is interested in taking a closer examination on the implementation of SC in the halal tourism industry and the way to take steps in strengthening SC in the industry.

B. Problems Formulation

Given the abovementioned reasons, research on the sharia compliance of the halal tourism industry is highly relevant to the current problems in the halal tourism business. There are three main questions to answer in this research. First, why is sharia compliance important for the sharia tourism industry in Indonesia? Second, how is sharia compliance in the halal tourism industry regulated in the laws and regulations in Indonesia? Third, what are the steps to strengthen the implementation of sharia compliance in halal tourism?

¹⁸ Regulation of the Minister of Tourism and Creative Economy No. 2 2014 on the Implementation of Sharia Business Hotels is revoked with the Regulation of the Minister of Tourism No. 11 2016. The revocation is due to the reason that it is no longer deemed in accordance with the demands and the development of the tourism at this time.

¹⁹ Ahmad Sahir Jais and Azizan Marzuki, 'Proposing A Muslim-Friendly Hospitality Regulatory Framework Using System Approach', *Muslim Friendly Hospitality practices in Healthcare Tourism* (Ministry of Tourism and Culture Malaysia).

C. Methodology

This is an empirical juridical research using qualitative descriptive analysis techniques with the aim of capturing the overall reality that occurs in the field of halal tourism industry, both the visible and hidden facts. To collect data, the researcher conducted some observation and documentation and reviewed various documents of statutory regulations, ministerial regulations, and MUI fatwas. In addition, the researcher also conducted some interviews with respondents. This research particularly studies the Sharia Hotels and Sharia Beaches as an important player in the sharia tourism industry.

D. Discussions and Results

1. The Development of Halal Tourism in Indonesia

Halal tourism was first introduced by the Organization of the Islamic Conference in 2000 at meetings conducted by the organization.²⁰ The Tourism Law states that tourism is a travel activity carried out by a person or group of people by visiting certain places for recreational purposes, personal development, or learning the uniqueness of a tourist attraction for a temporary period.²¹

Tourism is a travel activity carried out by a person or group of people by visiting certain places for the purpose of recreation, personal development, or learning the uniqueness of the tourist attraction for a temporary period.²²

The concept of halal tourism is represented by various terms, ranging from Halal tourism²³, Islamic Tourism, and Muslim-friendly Tourism (MFT)²⁴, all of which are often used interchangeably, but there is no clear boundaries given for each term.²⁵

Carboni stated that Islamic tourism is a concept of tourism that is in accordance with Islamic teachings, involving Muslims who still want to maintain their religious practices

²⁰ Atang Abd Hakim and others, 'Model of Sharia Compliance on Developing Tourism Industry in Indonesia', *Sharia Compliance Model on Development of Tourism Industry in Indonesia* (Scitepress 2017) 107.

²¹ Law No. 10 of 2009 on Tourism.

²² Fatwa of National Sharia Board-Indonesian Ulama Council No: 108/DSN-MUI/X/2016 on Implementation of Tourism Based on *Sharia* Principles.

²³ Mohamed Battour and Mohd Nazari Ismail, 'Halal Tourism: Concepts, Practises, Challenges and Future' (2016) 19 *Tourism Management Perspectives* 150 -151.

²⁴ Eddahar, *Op.Cit.*, 35.

²⁵ *Ibid.*35; Aan Jaelani, 'Halal Tourism Industry in Indonesia: Potential and Prospects' (2017) 7 *International Review of Maagement and Marketing* <<https://www.econjournals.com/index.php/irmm/article/view/4352/pdf>> accessed 10 November 2019.; Eka Dewi Satriana and Hayuun Durrotul Faridah, 'Halal Tourism: Development, Chance And Challenge' (2018) 1 *Journal of Halal Product and Research* 34-35.

during their tour²⁶. Jafari stated that Islamic tourism is a concept of tourism carried out in accordance with sharia law²⁷. Zamani Farahani and Anderson emphasized that “Islamic tourism is a tourist activity for Muslims from one place to another or to reside outside their place of residence for less than one year for carrying out activities that do not violate Islamic law or halal²⁸.”

Meanwhile, according to Battour, the concept of halal tourism is an object or tourism activity that is allowed (halal) by Islam for Muslims in the tourism industry.²⁹ Meanwhile, OKI defines Muslim friendly tourism as one type of religious tourism that is in accordance with Islamic teachings in ethics, clothing, food and so on³⁰.

The term sharia tourism is more preferably used in Indonesia. The use of this term is as stated in the fatwa of the MUI and the Ministry of Tourism. According to the MUI DSN, sharia tourism is tourism that is in accordance with sharia principles. Similarly, the Ministry of Tourism also uses the same term to refer to tourism that is in accordance with sharia principles.³¹

From these various definitions, it is conclusive that there is no significant difference between the concepts of halal tourism, Islamic tourism, and sharia tourism. This explanation indicates that sharia tourism is tourism services and products that comply with sharia, including hotels, resorts, restaurants and halal trips - whose main customers are Muslims, tourist locations are not only in Muslim countries, and the tourism destination is not limited to religious purposes. Products, services, objects and tourist destinations in Islamic tourism are not different from tourism in general, as long as they do not conflict with sharia provisions. On this basis, there is no significant difference in the use of the term's sharia tourism, halal tourism or Islamic tourism, because the starting point of all these terms is “Islamic law” which is used in the context of tourism services and products.³²

²⁶ Michele Carboni, Carlo Perelli and Giovanni Sistu, ‘Is Islamic Tourism a Viable Option for Tunisian Tourism? Insights from Djerba’ (2014) 11 *Tourism Management Perspectives* 1–9.

²⁷ Jafar Jafari and Noel Scott, ‘Muslim World and Its Tourisms’ (2014) 44 *Annals of Tourism Research* 1–19.

²⁸ Hamira Zamani-Farahani and Joan C Henderson, ‘Islamic Tourism and Managing Tourism Development in Islamic Societies: The Cases of Iran and Saudi Arabia’ (2009) *International Journal of Tourism Research* 79, 80.

²⁹ Battour and Ismail, *Op.Cit* 151.

³⁰ Eddahar, *Op.Cit*. 36.

³¹ The concept of *sharia* in industry was first used in Indonesia in 1992 when an Islamic bank was established. Deputi Bidang Pengembangan Kebijakan Kepariwisata, *Op.Cit*. 12.

³² Hakim and others, *Op.Cit*. 108.

As a country with Muslim majority population, Indonesia has become a supplier of world Muslim tourists and it has developed some globally renown halal tourist destination because of its natural and cultural wealth. This is evidenced by the acquisition of 12 awards out of 16 categories for Indonesia in the 2016 World Halal Tourism Award.³³

2. The Urgency of Sharia Compliance in the Tourism Industry

As an industry based on religious teachings, the halal tourism industry must be managed based on religious teachings, namely al-Qur'an and Sunnah. This is what distinguishes this business from conventional tourism. These differences will affect the aspects of the products and services provided. As a business institution, both the halal tourism industry and the conventional tourism industry cannot escape from pursuing economic gain, but as an industry based on religious teachings, the halal tourism industry does not merely pursue economic benefits but also keeps its products and services from contradicting religious teachings, for example, there is a guarantee for the availability of halal consumption, flexibility in the implementation of worship, protection of honor and genitalia (aurat) and so on. In addition, the relationship between the tourism industry and tourist consumers is different from the conventional tourism industry. For Muslim tourists, the choice of the Islamic tourism industry is based on religious beliefs. With this character, the addition of the word sharia / halal in the tourism industry shows a very close relationship between sharia principles and the business or tourism industry, so it is not wrong to say that one of the substantial aspects that distinguish the sharia tourism industry from the conventional tourism industry is sharia compliance.

On this basis, in the context of halal tourism, all products and all activities must comply with sharia. If that compliance is violated, there will be abuse of sharia, and the violation of sharia principles by an industry that claims itself as the sharia industry. As a result, the claim will only remain as a temporary brand label, which has no significant difference from similar industries that do not label themselves as sharia business. If such condition occurs, the consumers will be the most disadvantaged from this incident.

Law Number 8 of 1999 concerning Consumer Protection (UUPK), article 8 clearly states that business actors are strictly prohibited from producing and/or trading goods

³³ Johannes Randy Prakoso, 'Alhamdulillah, Indonesia Menang 12 Penghargaan World Halal Tourism Awards 2016!' *Detik Travel* (8 December 2016) <<https://travel.detik.com/travel-news/d-3365829/alhamdulillah-indonesia-menang-12-penghargaan-world-halal-tourism-awards-2016>> accessed 12 December 2019.

and/or services that do not meet or do not comply with the standards stipulated in accordance with the provisions of laws and regulations.³⁴

In the context of Muslim consumers, the halalness of a product (goods/services) is a standard that must be met by producers and is something non-negotiable, because it is closely related to the implementation of religious teachings (sharia), which becomes the right for Muslim consumers. Halal tourism is included in such products. Halal standards for a product are indicated by the existence of halal certification, instead of halal self-claims, because it will provide legal certainty and legal protection for consumers.

When it is related to the condition of sharia hotels - as one of the sharia tourism facilities, every hotel that claims itself a sharia hotel must have a halal certificate from the MUI. However, currently, this requirement is not in line with the facts in halal tourism industry. For example, in some major cities like Surabaya and Makassar, some hotels that claim themselves as sharia hotels have not even received a Sharia hotel certificate from the MUI DSN and these hotels are yet to have a Sharia Supervisory Board to oversee the implementation of sharia principles at the hotel.³⁵ This fact is reinforced by Abdul Mujib's research which revealed that sharia that the criteria of sharia compliance in new Islamic hotels are only partially implemented, and such implementation is more apparent in the aspect of *ubudiyah* (religious practices)³⁶. This condition shows that the issue of sharia compliance in the halal tourism industry needs the attention of policy makers, so that Muslim consumers are not disadvantaged by the presence of the halal tourism industry. Apabila dikaitkan dengan kondisi hotel syariah—sebagai salah satu fasilitas pariwisata syariah, setiap hotel yang menyebut dirinya hotel syariah harus memiliki sertifikat halal dari MUI.

To ensure the implementation of sharia compliance in a halal industry we need to have a Sharia Supervisory Board (DPS). Law Number 40 of 2007 concerning Limited Liability Companies, Article 109 states that:

- a. Companies that carry out business activities based on sharia principles are required to have a Board of Commissioners and a Sharia Supervisory Board.

³⁴ Law No. 8 of 2009 on Consumer Protection Article 8.

³⁵ Ubaid Aisyul Hana, 'Konsep Hotel Syariah Dan Implementasinya Di Namira Hotel Surabaya' (Master Thesis, Universitas Islam Negeri Sunan Ampel Surabaya 2018) 4-5; Ismayanti Ismayanti and Muslimin Kara, 'Analisis Pengelolaan Hotel Al-Badar Syariah Di Kota Makassar' (2017) 4 *Laa Maisyir* 35.

³⁶ Abdul Mujib, 'Analisis Terhadap Konsep Syariah Pada Industri Perhotelan Di Indonesia' (2016) 50 *Asy - Syir'ah* 425.

- b. The Sharia Supervisory Board as referred to in paragraph (1) consists of one or more sharia experts who are appointed by the GMS on the recommendation of the Indonesian Ulema Council.
- c. The Sharia Supervisory Board as referred to in paragraph (1) is tasked with providing advice and suggestions to the Board of Directors and supervising the Company's activities to comply with sharia principles.

This law explicitly states that the existence of a Sharia Supervisory Board (DPS) in an industry that runs its business with sharia principles, including the halal tourism industry. Unfortunately, the role of SSB in the Islamic tourism sector has not been explicitly regulated in an independent regulation even though the role of SSB supervision in the halal industry is very vital. SSB has an important role in avoiding the possibility of deviations from sharia compliance. With its supervisory role, SSB can evaluate and detect the extent to which the implementation or application of sharia compliance is well determined and the extent of deviations that occur in evaluating sharia compliance by the halal industry on sharia principles.

3. Halal Tourism Regulatory Framework

The laws and regulations governing halal tourism in Indonesia are stipulated in the following regulations:

Table 1.
Halal Tourism Regulation

No	Type of Regulation	Contents
1	Law Number 40 of 2007 concerning Limited Liability Companies, in particular Article 109.	Companies conducting business based on sharia principles are required to have a sharia supervisory board
2	MUI DSN Fatwa Number: 108 / DSN-MUI / X / 2016 concerning Guidelines for Organizing Tourism Based on Sharia Principles	General requirements; The parties and the contract; Hotel; traveler; tourist destinations; spa, sauna, message; travel agency, tour guide
3	Regulation of the Minister of Tourism and Creative Economy Number 2 of 2014 concerning Implementation of Sharia Hotel Business Hotels	Criteria for Hilal 1 (minimum standard) and Hilal 2 (moderate standard) Hotel
4	Minister of Tourism Regulation No. 11 of 2016 Revocation of Regulation of the Minister of Tourism and Creative Economy Number 2 of 2014 concerning Guidelines for Conducting 'Sharia Hotel Businesses	Revocation of Regulation on Implementation of Sharia Hotel Businesses

Given the above table, the only regulation that covers a broader scope of tourism industry is only stipulated by the MUI Fatwa, which not only includes accommodation and destinations but also covers provisions regarding tourists and tour guides. This fact is in

contrast to the technical regulations for halal tourism as outlined in the ministerial regulation that only regulate the sharia hotel business. Unfortunately, this ministerial regulation was later revoked.

As a comparison, we need to study the provisions of halal tourism in other countries. The followings are the halal tourism standards stipulated in Turkey. The standard covers the following aspects:

- a. Halal Hotels: Some of the main indicators of Islamic hotels include: No alcohols, gambling etc are allowed; only halal food is provided; the availability of Quran is ensured, prayer mats and arrows indicating the direction of Mecca in each room are provided; Beds and toilets are positioned so as not to face Mecca; the availability of prayer book is maintained; The staff's dress code shall be in line with Islamic provisions (covering aurat/body parts to be covered); The funding is obtained through ways in line with Islamic teachings; recreational facilities for men and women are separated.
- b. Halal Transportation: The main indicators for halal transportation include: cleanliness; non-alcoholic drinks; and publications that are coherent with Islam.
- c. Halal Food: Food served in restaurants must be Halal. All animals must be slaughtered according to Islamic principles. No alcoholic beverages are allowed.
- d. Halal Tour Packages: The content of the tour packages must be based on an Islamic theme. The Islamic tour package includes visits to mosques, Islamic monuments and promotions and events during Ramadan.
- e. Halal Finance: Financial resources for hotels, restaurants, travel agencies and airlines must comply with Islamic principles. In general, Islamic finance requires participation in profit and loss sharing among all parties involved in this financial company. Islamic finance also prohibits interest.³⁷

4. Implementation of Sharia Compliance in the Tourism Industry in Indonesia

a. Sharia Compliance at Sharia hotels

Accommodation is an inseparable part of the tourism industry activities. The related accommodation facilities are all forms of services provided in business activities, whether in the form of restaurants, beds, meeting facilities and other facilities.³⁸ Hotels are one of the facilities of a large tourism industry. Their existence is an integral part of the development of the tourism industry.

Syariah Hotel Solo is a four-star hotel that serves as the largest Sharia hotel in Indonesia. The hotel has 378 rooms. Syariah Hotel Solo is the second Syariah hotel, which is still suitable for non-Muslim guests. This hotel provides halal food and

³⁷ Organization of Islamic Cooperation, *International Tourism in D8 Countries: Prospect and Challenge* (The Statistical, Economic And Social Research And Training Centre For Islamic Countries (SESRIC) 2016) 20.

³⁸ Mujib, *Loc.Cit.*

drinks, a prayer room on every floor, and announce the call to prayer for every prayer time³⁹.

Table 2.
Sharia Aspects in Solo Syariah Hotels and their availability

No.	Aspects	Meet the requirements/Not (M/N)
Products		
1	Halal certified Food and Beverage	M
2	Prayer rooms for Muslim (Musala) and a place for washing	M
3	Room Facilities: Directions for Qibla, prayer mat, al-Qur'an, prayer beads, mukena and sarong.	M
4	Bathrooms: The bathrooms provide 2 water faucets, one for the shower and the second one for washing	M
5	Ornaments: Islamic calligraphy/decoration	M
Services		
1	Services: smile, greetings, sharia	M
2	Guest Selection	M
3	TV channel selection	M
Institutional Aspects		
1	Recruitment of employees: The employees are Muslim, physically and mentally healthy, adhere to morals, meet the required skills according to the standard of Sharia hotels, have high integrity, are disciplined, dress neatly and cleanly, are friendly and responsible, and are experts in their fields.	M
2	Employees are required to carry out Islamic law.	M
3	Islamic forum is provided for employees/morning meeting	M
4	Transactions are conducted using Islamic banks	M
5	Social activities covers sacrifice (Qurban), celebrating Ramadan, etc.	M
6	Sharia Supervisory Board	M
7	Zakat on Businesses	M

b. Sharia Compliance on the Syariah Santen Beach, Banyuwangi

Santen Beach initially was a beach that was closed in 2013 by the Banyuwangi Regency Government because this tourist destination was renowned for a prostitution center. It was only at the beginning of 2017 that the Regency Government started to fix this beach by adding various arrangements. Then, on March 2, 2017, this tourist destination was officially declared as a sharia beach. The Banyuwangi Regency Government has determined Santen Island as a sharia tourism destination as a way to

³⁹ Fardil Khalidi, 'Syariah Hotel Solo: Hotel Syariah Terbesar Di Indonesia' *SWA* (17 September 2014) <<https://swa.co.id/swa/trends/marketing/syariah-hotel-solo-hotel-syariah-terbesar-di-indonesia#:~:text=Syariah%20Hotel%20Solo%20adalah%20hotel,syariah%20hotel%20terbesar%20se%20DI%20indonesia.&text=Hotel%20yang%20berdiri%20sejak%20tanggal,Superior%2C%20Deluxe%20dan%20Family%20Suite.>> accessed 11 January 2020.

capture the rapidly growing halal tourism market by changing the negative image of the beach as a center of prostitution⁴⁰.

The concept of halal tourism developed on Santen Island is manifested through the assurance of halal facilities and services as listed in the following table⁴¹:

Table 3.
Sharia Aspects of Santen Beach and its availability

No.	Aspects	Meet the requirements/Not (M/N)
Products		
1	Halal certified Food and Beverage	M
2	Prayer rooms for Muslims (Musala) and places for wash	M
Services		
1	Tour guides dress according to Islamic principles (covering the aurat/parts of the body to be covered)	N
2	Tour guides serve the guests with smiles, greetings, Islamic greetings, and complies with sharia principles	N
3	Avoiding alcohol, gambling, pornography	M
4	Separation between male and female tourists	M
Institutional Aspects		
1	Sharia Supervisory Board	N

Given the table above, it is apparent that Hotel Syariah Solo has applied Islamic principles in the hotel management and tourist destinations. The implementation of sharia compliance in the tourism industry is indicated by the operation of the legal system which consists of elements of legal substance, norms and patterns of behavior (written law and unwritten law), elements of law enforcement (organizational framework and institutional level) and elements of legal culture⁴².

5. Strengthening Sharia Compliance in the Sharia Tourism Industry in Indonesia

To strengthen the sharia compliance of the sharia tourism industry in Indonesia, the researchers used the Friedman legal system approach, which consists of three elements, namely: structure, substance and legal culture.⁴³ The theorist of this system theory stated that the legal structure concerns law enforcement officials. Without credible, competent and independent law enforcement officials, the law will not be upheld. Even a good

⁴⁰ Nawal Ika Susanti, 'Respon Masyarakat Terhadap Pantai Syariah Pulau Santen Di Kelurahan Karangrejo Banyuwangi' (2018) 4 Jurnal Istiqro 24.

⁴¹ Interview with Nur Hamim, 'Head of Tourism Product Division, Culture and Tourism Office of Banyuwangi Regency' (26 July 2019).

⁴² Efran Helmi Juni, *Filsafat Hukum* (Pustaka Setia 2012) 279.

⁴³ Otje Salman and Anthon F Susanto, *Teori Hukum : Mengingat, Mengumpulkan Dan Membuka Kembali* (Refika Aditama 2005) 47.

statutory regulation will never realize justice, if it is not supported by good law enforcement officers.⁴⁴ The legal substance concerns regulations, rules, norms, and real human behavior patterns in the system. Thus, the substance of the law concerns the prevailing laws and regulations, which have binding force and serve as guidelines for law enforcement officials. Meanwhile, the legal culture shall be adopted by the community.⁴⁵ Legal culture is an atmosphere of social thought and social forces that determine how law is used, avoided, or abused. Legal culture is closely related to the legal awareness of the community. In simple terms, the level of community compliance with the law is an indicator of the functioning of the law.⁴⁶

a. Legal substance

The implementation of sharia compliance in the halal tourism industry can be seen from the regulatory aspect. In terms of regulations, the sharia compliance of halal tourism is stipulated in a number of laws and regulations as described in table 1. The table indicates that the only regulation to regulate SC in halal tourism is the MUI Fatwa, because Law 40 of 2007 on Limited Liability Companies only contains the Sharia Supervisory Board which supervises the sharia industry. In addition, Regulation of the Minister of Tourism Number 2 of 2014 concerning Hotel Operation and Hotel Sharia has been revoked. However, MUI fatwas is not classified as statutory regulations because they are not established or stipulated by state institutions or authorized officials through procedures stipulated in statutory regulations as stipulated in Law Number 12 of 2011 concerning the Formation of Laws and Regulations.⁴⁷ Therefore, the MUI fatwa is not a state law that can be imposed on all the people. The MUI fatwa also does not stipulate any sanctions and is not applicable for all citizens. The MUI fatwa only binds and is obeyed by the Muslim community who feel they have are tied to MUI itself. The legality of the MUI fatwa cannot and is unable to force all Muslims. Fatwa will be binding if it has been absorbed in the laws and regulations by government agencies, as in the case of Law no. 21

⁴⁴ Achmad Ali, *Menguak Realitas Hukum: Rampai Kolom & Artikel Pilihan Dalam Bidang Hukum* (Cet 1, Kencana Prenada Media Group 2008) 9.

⁴⁵ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum : Normatif Dan Empiris* (2nd edn, Prenadamedia Group 2018) 231.

⁴⁶ Lawrence M Friedman, *Sistem Hukum : Perspektif Ilmu Sosial* (M Khozim tr, 6th edn, Penerbit Nusa Media 2018) 8.

⁴⁷ Law No. 12 of 2011 on Legislative Drafting Article 1.

of 2008 concerning Islamic Bank⁴⁸. The absence of this halal tourism regulation will complicate SC implementation, let alone control its implementation.

To this day, Indonesia is yet to have a halal tourism standard in the form of positive law, so that the implementation of Law No. 33 of 2014 concerning Halal Product Guarantee also has not accommodated halal services. Article 1 of the JPH Law states: "Products are goods and/or services related to food, beverages, medicines, cosmetics, chemical products, biological products, genetically engineered products, and consumer goods that are used, used or utilized by the community". Services in this article are only about services for the development of physical products or food product chain and so on, not services in the sense of the halal service industry, such as the tourism industry.

In addition, the presence of this law, which mandates halal certification to BPJH adds a long chain of halal certification, while sharia certification for the service industry remains with the MUI DSN. This condition portrays the need for synchronization, because sharia certification requires that the company has a halal assurance system (SJH). For example, a sharia hotel is required to have a halal kitchen, etc⁴⁹.

b. Legal Culture

A legal culture has an important role in law implementation. Without a good legal culture, it is difficult to achieve a good law enforcement. According to Friedman, legal culture is the ideas and expectations of society towards law and legal processes. There are two things that cannot be separated from the legal culture, first, the law according to legal experts, and the second, the law according to society in general. The legal culture gives birth to forces, pressures and demands that support legal institutions, which in turn will encourage the formation of law⁵⁰.

In the context of halal tourism, this industry is known as a newly established industry, even though the community has known and practiced it in another form, religious tourism. Thus, it is necessary to promote this concept on an ongoing basis. Such promotion aims to make people understand about the regulation in this industry so as not to cause resistance. Applying halal tourism is not the same as turning some tourist objects

⁴⁸ Yeni Salma Barlinti, *Kedudukan Fatwa Dewan Syariah Nasional Dalam Sistem Hukum Nasional Di Indonesia* (Cet 1, Badan Litbang dan Diklat, Kementerian Agama RI 2010) 556.

⁴⁹ Interview with A Rofik, 'Head of the Indonesia Ulama Council for Drug and Food Inspection and Supervision East Java, Lecturer of Postgraduate on Islamic State University Walisongo Semarang' (14 December 2019).

⁵⁰ Lawrence M Friedman, *The Republic of Choice: Law, Authority, and Culture* (2. print, Harvard Univ Press 1994) 4.

into halal products. The changing only covers the aspects of service, so that tourists (Muslims) who visit the spot will find it safe and comfortable⁵¹ since they are in line with Islamic law. As a Muslim majority country, Indonesia has the opportunity to develop halal tourism. However, the lack of understanding of halal tourism makes it less developed as compared to neighboring countries, such as Malaysia. To implement halal tourism, our society is lacking of awareness of the importance of Islamic teaching implementation in the field of tourism. This lack of awareness can be seen from the entry of male tourists in special areas for women throughout Lebaran 2017⁵². Thus, it is important to change the legal culture of society towards halal tourism so that people understand that halal tourism has a number of different arrangements that distinguish it from conventional tourism.

c. Legal Structure

The element of law enforcement is the functioning of institutions, law enforcement officials in exercising their authority in law enforcement. In the context of the halal tourism industry, the law enforcement elements are the Sharia Supervisory Board, the National Sharia Council (DSN) MUI, and Institutional Support at the Ministry of Tourism.

The DSN Household Guidelines (article 3 paragraph 8) reconfirm the important role of the DSN, "To make the role of DSN more effective in Islamic financial and business institutions a Sharia Supervisory Board, abbreviated as DPS, is formed as the DSN representative in the relevant Islamic financial and business institutions.⁵³ Thus, DPS is the representative of DSN MUI to guard the fatwas that have been set for the related industry.

Meanwhile, the National Sharia Council (DSN) is an institution that carries out the duties of the MUI in setting fatwas and supervising their implementation in order to foster and develop sharia financial, business and economic businesses in Indonesia⁵⁴. The DSN fatwa is not only a guideline for Islamic banking and Islamic financial institutions, but also other sharia businesses. DSN members consist of scholars, practitioners and experts in

⁵¹ Nashih Nashrullah, 'Wisata Halal Seperti Apa Definisinya? Ini Jawaban MUI' *Republika* (11 October 2019) <<https://www.republika.co.id/berita/dunia-islam/islam-nusantara/19/10/11/pz7x3w320-wisata-halal-seperti-apa-definisinya-ini-jawaban-mui>> accessed 12 January 2020.

⁵² Hafil Ahmad, 'Gara-Gara Ini, Pantai Syariah Banyuwangi Tak Lagi Khusus Perempuan' *Times Indonesia* (3 July 2017) <<https://www.timesindonesia.co.id/read/news/151184/garagara-ini-pantai-syariah-banyuwangi-tak-lagi-khusus-perempuan>> accessed 12 January 2020.

⁵³ Setiawan Budi Utomo, 'Kajian Hukum Atas Keabsahan Produk Perbankan Syari'ah Dikaitkan Dengan Fatwa Dewan Syari'ah Nasional Dalam Tujuan Negara Kesejahteraan' (PhD Thesis, Universitas Padjajaran 2011) 278.

⁵⁴ Regulation of Indonesian Ulama Council *Op. Cit.*

fields related to *muamalah syari'ah* who are appointed and selected by MUI with a term of service equal to the period of service of the central MUI management of 5 (five) years⁵⁵.

The DSN Basic Guidelines (chapter II paragraph 5) state that the Sharia Supervisory Board is a body that exists in sharia financial and business institutions and is tasked with overseeing the implementation of decisions (*fatwas*) of the National Sharia Council. Sharia business includes the tourism industry. In the two tourism industries above, Hotel Syariah Solo has applied a Sharia Supervisory Board, but in practice it has not played much role in providing advice and supervision of aspects of sharia in hotel practice. This happened because the DPS was chosen for its role. Meanwhile, Santen Beach is yet to have a DPS as an organ that oversees the implementation of sharia. On this basis, it is clear that the two tourism industries have not positioned DPS according to its role in guarding the implementation of sharia principles in the practice of the halal tourism industry. Therefore, it is necessary to strengthen the quality and quantity of DPS for the halal tourism industry through education and training programs in collaboration between MUI, universities, and halal tourism industry associations. Thus, in the future, it is expected that there will be DPS that have the qualifications needed by the halal tourism industry.

In addition to the MUI DSN and DPS, to follow up on the development of sharia tourism and the implementation of the MUI DSN fatwas into various Tourism Laws or ministerial regulations, there needs to be institutional support at the Ministry of Tourism, which specifically deals with sharia tourism. Such institutional support will safeguard the development of Islamic tourism, so that policies for developing Islamic tourism will be examined closely by this institution as a way to propose it in ministerial regulations or even proposed it to become laws.

This need is in line with the saying by Ahmad Rofiq:

“To strengthen the sharia aspect of sharia tourism, it is necessary to establish a Sharia Committee at the Ministry of Tourism, because only then can the development of Sharia Tourism and its sharia aspects continue to be studied and get support from the Ministry⁵⁶.

In the line of the above statement, Reyhan argued:

Sharia tourism development efforts carried out by a number of associations, such as Indonesia Hotel and Restaurant Association (IHRA), Association of the Indonesian

⁵⁵ *Ibid* Article 6.

⁵⁶ Interview with Rofik, *Loc. Cit.*

Tours and Travel Agencies (ASITA), and so on will never become a government policy if there is no institution to deal with sharia tourism in the ministry of tourism⁵⁷.

This condition indicates the importance of a special institution that is concerned with Islamic tourism under the Ministry of Tourism. The existence of this institution is expected to fully support the development of sharia tourism at the Ministry of Tourism from in terms of policy and budget.

E. Conclusion

Sharia compliance in the halal tourism industry is a necessity, because sharia compliance is a feature of this industry that distinguishes it from conventional industries. In addition, this distinctive feature will maintain the sustainability of this industry because the interests of Muslim consumers are guarded and protected.

The regulatory framework for halal tourism consists of Law Number 40 of 2007 concerning Limited Liability Companies, in particular Article 109, which regulates the obligation of every industry that carries out its business according to sharia principles to have a Sharia Supervisory Board; MUI DSN Fatwa Number: 108 / DSN-MUI / X / 2016 concerning Guidelines for the Implementation of Tourism Based on Sharia Principles; and Regulation of the Minister of Tourism and Creative Economy Number 2 of 2014 concerning Implementation of Sharia Hotel Business Hotels. However, these regulations are deemed inadequate in regulating halal tourism. On the one hand, Law Number 40 2007 only regulates DPS, while Fatwa DSN MUI is not a state law as in the provisions of Law Number 12 Year 2011 concerning the Formation of Legislative Regulations, so that it cannot be enforced legally. On the other hand, the regulation of the Minister of Tourism and Creative Economy Number 2 of 2014 concerning the Implementation of Sharia Hotel Business Hotels only regulates halal tourist accommodation has been revoked.

Currently, steps to strengthen the sharia compliance of the halal tourism industry are carried out through the Friedmen legal system theory. First, it is conducted by strengthening the legal substance by establishing regulations on halal tourism. Second, it is done by establishing the structure and strengthening law enforcement officers, in this case the Sharia Supervisory Board, through various educational programs and training. In addition, it is also necessary to gain Institutional Support from the Ministry of Tourism by creating institutions that are concerned about policies and budget support in the

⁵⁷ Interview with Muhammad Reyhan Janitra, 'Sharia Quality Control Hotel Grand Dafam Rohan Yogyakarta' (22 January 2020).

development of halal tourism. Third, it is vital to strengthen the legal culture through socialization and by strengthening public understanding of the importance of sharia compliance in the halal tourism industry as a way to raise people awareness about the importance of applying sharia compliance in the halal tourism industry.

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