

***MASHLAHAH* ANALYSIS ON DAMAGING HORTICULTURAL
PRODUCT IMPORT ON RULE OF THE TRADE MINISTER ARTICLE
30 NUMBER 16/M-DAG/2013 CONCERNING PROVISIONS OF
HORTICULTURAL PRODUCT IMPORT**

THESIS

Submitted to the Syari'ah Faculty in Partial
Of the Requirement for the Degree of Bachelor of Art in
Department of *Muamalah*



Written By:

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**SYARI'AH FACULTY
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SEMARANG 2015**

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PRODUCT IMPORT ON RULE OF THE TRADE MINISTER ARTICLE
30 NUMBER 16/M-DAG/2013 CONCERNING PROVISIONS OF
HORTICULTURAL PRODUCT IMPORT**

Is definitely my work. I am completely responsible for the content of this thesis.
Other writer's opinion or finding included in the thesis are quoted or cited in
accordance with ethical standards.

Semarang, June 11, 2015

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ADVISORS APPROVAL

Dear Sir,

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Assalamu'alaikum Wr. Wb.

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Import On Rule Of The Trade Minister Article 30
Number 16/M-Dag/2013 Concerning Provisions Of
Horticultural Product Import

It is ready to be submitted in joining the last examination.

Wassalamu'alaikum Wr. Wb.


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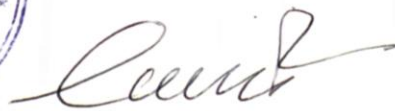
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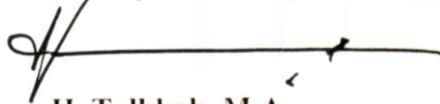


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Motto

*O Allah enrich me with science, wisdom, and wealth to be “your hand” to help
and share with the others.*

TRANSLITERATION

Vowel Letters

Ā	a long spelling
Ī	i long spelling
Ū	u long spelling

Arabic Letter	Written	Spelling
ا	A	Alif
ب	B	Bā'
ت	T	Tā'
ث	Ts	Tsā'
ج	J	Jīm
ح	<u>H</u>	<u>Hā'</u>
خ	Kh	Khā'
د	D	Dāl
ذ	Dz	Dzāl
ر	R	Rā'
ز	Z	Zal
س	S	Sīn
ش	Sy	Syīn
ص	Sh	Shād
ض	Dh	Dhād
ط	Th	Thā'
ظ	Zh	Zhā'
ع	'A	'ain
غ	Gh	Ghain
ف	F	Fā'
ق	Q	Qāf
ك	K	Kāf

ل	L	Lâm
م	M	Mîm
ن	N	Nûn
و	W	Waw
ه	H	Hâ'
ي	Y	Yâ'

a. Long vocal (*mâd*)

نا = nâ

b. Double Letter (*Syiddah*)

رَبِّ = Rabbu

c. The Use of Article

السِّيفَاءُ = Al-Syifâ'

الْقَلَمُ = Al-Qalamu

DEDICATION

I dedicate my thesis to:

My lovely mother and father. The first ones on earth who give me timeless love.

My grand mother and father who say ,“ *I want to come to your graduation ceremony*”. Even their age and health are their challenges to come to Semarang from Karawang. I do see your love.

My strong grand mother. I see the beauty of storm with you.

My inspiring teacher, DR KH Fadlolan Musyaffa, Lc, M.A, Your spirit burns my zeal.

My lovely sisters who always hold my hand, Rina, Soh, Teteh, and Ade.

My little brother, Sakti Sirullahi Siqti. *Hâfizhu al- Qur'an* of mine, I am proud of you.

My family, in my home village and Ma'had al-Jami'ah Walisongo.

And For every love, smile, and zeal we share, we are always 'are'.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

All praises is due to Allah *al-rahmân al-rahîm*, the all-knowing.

Peace and sallutation always be with my prophet, Muhammad SAW. The last prophet who gets Muslims to be international student, go where science goes!

The biggest obstacle in finishing my thesis is my self. Fortunately, Allah gives me easiness through His servants. Therefore, I would like to express my gratitude for their hospitality, generosity, and kindness.

1. Prof. Dr. H. Muhibbin, M. Ag., the rector of Walisongo Islamic State University who gives his best effort for this university.
2. DR. H. Akhmad Arif Junaedi, M.Ag, the dean of Syari'ah Faculty and my advisor. Your trust on me grows my self confidence.
3. H. Talkhah, M. A,s my adviser and inspiring teacher.
4. DR. KH Fadlolan Musyaffa, Lc, M.A, the great teacher who gives many opportunities to his poor student.
5. H. Muhyiddin, M.Ag, the great teacher who makes me realize I have great potency.
6. All of my teachers and staffs of Syari'ah Faculty.
7. My parents, family, and friends.

I ask to Allah to give you reward and easiness more than you give to me.

Semarang, June 11, 2015

Sonia So'imatus Sa'adah
112311010

CONTENTS

COVER.....	i
THESIS PROJECT STATEMENT.....	ii
ADVISOR APPROVAL.....	iii
RATIFICATION.....	iv
MOTTO.....	v
TRANSLITERATION.....	vi
DEDICATION.....	viii
ACKNOWLEDGMENT.....	ix
CONTENTS.....	x
ABSTRACT.....	xii

CHAPTER I INTRODUCTION

1.1 Background	1
1.2 Research Question.....	5
1.3 Purpose of Research.....	5
1.4 Significant of Research.....	6
1.5 Literature Review.....	6
1.6 Research Methodology.....	9
1.7 System of Writing.....	10

CHAPTER II *MASHLAHAH*

2.1 <i>Mashlahah</i> Definition.....	11
2.2 The Kinds of <i>Mashlahah</i>	14
2.2.1 <i>Mashlahah</i> existence.....	14
2.2.2 The Priority of <i>Mashlahah</i>	17
2.2.3 The Coverage of <i>Mashlahah</i>	18
2.2.4 The Time of <i>Mashlahah</i>	19

CHAPTER III IMPORT DETERMINATION ON REGULATION OF THE MINISTRY OF TRADE OF REPUBLIC OF

INDONESIA NUMBER 16/M-DAG/PER/4/2013

3.1 Import Requirement.....	20
3.1.1 Recognized Importer.....	21
3.2 Horticultural Product Import Recommendation (HPIR).....	24
3.3 Packaging and Label.....	32
3.3.1 Packaging.....	32
3.3.2 Label.....	33
3.4 Damaging Horticultural Product.....	35

**CHAPTER IV MASLAHAH ANALYSIS ON DAMAGING
HORTICULTURAL PRODUCT IMPORT ON RULE
OF THE TRADE MINISTER ARTICLE 30 NUMBER
16/M-DAG/2013 CONCERNING PROVISIONS OF
HORTICULTURAL PRODUCT IMPORT**

4.1 General Opinion on Damaging Horticultural Product.....	37
4.2 The Author's Opinion.....	39
4.2.1 The Tight Rule of Import.....	39
4.2.2 Consumer Protection.....	40
4.2.3 Local Plant Natural Resources Protection.....	42
4.2.4 Local Farmer Protection.....	43
4.3 The Author's Answer.....	43
4.3.1 Unqualified product is a bad product.....	43
4.3.2 Choosing the lower risk.....	46
4.3.3 Choosing Public Benefit.....	47
4.3.4 Choosing Eternal Benefit.....	47

CHAPTER V CLOSING

5.1 Conclusion.....	48
5.2 Suggestion.....	49

BIBLIOGHRAPY

Abstract

Seeing the phenomena of damaging horticulture product import, the people question the government's rule. Is it useless deem? Or is it in line with benefit?

The reason of those phenomena is the Rule of the Trade Minister Article 30 Number 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import. The fresh product will be damaged if it againts the condition of label and package, and import approval. Meanwhile proccessed product will be re-exported if it againts the same rule.

Therefore the author is encouraged to analiyse this rule—damaging horticulture product import—by the 'soul' of Islamic law, mashlahah. For that reason, the purpose of this research is to know import conditions based on Rule of the Trade Minister Number 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import and deem this rule by mashlahah analysis. The type of this research is qualitative and its method of collecting the data is library research.

The writer concludes that this rule is in line with mashlahah. because horticulture is classified as regulated import product which harms and threats safety, healthy, plant natural resources, and moral (Keamanan, Kesehatan, Keselamatan, Lingkungan hidup dan moral bangsa/K3L). Therefore the products which contravense this rule is unqualified product. Based on the theory of saddu al-dzari'ah and chosing the paramount benefit (mashlahah), public benefit (mashlahah 'ammah) and long term benefit (mashlahah muabbadah).

Key word: *mashlahah, horticulture, rule, label, package, and import approval.*

Abstrak

Melihat penomena penghancuran produk hortikultura impor, masyarakat bertanya-tanya mengenai aturan pemerintah tersebut. Apakah ini tindakan yang sia-sia? Atau apakah hal ini membawa manfaat?

Alasan penghancuran tersebut adalah Aturan Kementerian Perdagangan Pasal 30 No. 16/M-Dag/2013 mengenai Ketentuan Impor Produk Hortikultura. Produk hortikultura segar akan dihancurkan jika melanggar ketentuan label, kemasan, dan izin impor. Sementara produk olahan akan diekspor kembali.

*Karena itu penulis terdorong untuk menganalisa aturan ini—penghancuran produk hortikultura impor—dengan berlandaskan ‘jiwa’ dari Hukum Islam, yakni mashlahah. Oleh sebab itu, tujuan dari penelitian ini adalah untuk mengetahui ketentuan impor yang diatur dalam Peraturan Kementerian Perdagangan No. 16/M-Dag/2013 dan menilai kemanfaatan aturan ini dengan analisa mashlahah. Jenis dari penelitian ini adalah kualitatif dengan *library research* sebagai metode pengumpulan datanya.*

*Hasil dari penelitian ini adalah aturan ini sejalan dengan mashlahah karena hortikultura termasuk produk yang impornya diatur. Dikarenakan produk ini mengancam K3L (Keamanan, Kesehatan, Keselamatan, Lingkungan hidup dan moral bangsa). Karena itu produk yang melanggar aturan ini adalah produk yang tidak baik. Hal ini berdasarkan teori *saddu al-dzarî’ah* dan memilih mashlahah yang lebih utama, yakni kebaikan umat (mashlahah ‘*âmmah*) dan maslahat jangka panjang (mashlahah *muabbadah*).*

Kata Kunci: *hortikultura, aturan, label, kemasan, dan persetujuan impor.*

CHAPTER I

INTRODUCTION

1.1 Background

Human is *homo social*. It means he needs the other in every aspect of his life. And trade is his way to fulfill his need, through buying and selling goods or service. In this step, his aim is to appease his need. Therefore, the grand theory of trade is barter.¹

As time goes by, human realizes that he can get more than he need by trade. In this case, he becomes *homo economicus* and trade alters to be more advanced, and international trade is one of its proves. International trade is a trade that its doers are the people having different nationality. Therefore international trade is very complicated².

There are so many theories on international trade such as absolute advantage invented by Adam Smith. Adam says that two countries get benefit from absolute advantage that they nature gives. Because it can minimize the production cost. The other theory is comparative advantage of David Ricardo. David states that a country should specialize itself on the most efficient product production. In a word the author can say, “focus on your talent and you will maximize your achievement”.

The countries interact and cooperate by trade, whether goods—export and import, or asset—investment. Export is the activity of selling the goods in another country, while import is its opposite, buying another country’s product. For example, when Indonesia sells *peuyum*³ to Australia, it is a kind of export, but when Indonesian buy soybean from AS to make *tempe*, it is a kind of import

¹ Herman Budi Sasono, *Manajemen Pelabuhan dan Realisasi Ekspor dan Impor*, (Yogyakarta: ANDI, 2012), page 91.

² Badan Pengkajian dan Pengembangan Kebijakan Perdagangan Pusat Kebijakan Perdagangan Luar Negeri, *Kajian Kebijakan Penentuan Pelabuhan Tertentu Sebagai Pintu Masuk Impor Produk Tertentu*, page 8.

³ *Peuyeum* is a traditional food of sundaniss people in Indonesia.

which the author focuses on. And then, over investment, either direct investment such as the author builds Sundanis Restaurant in Australia or indirect investment through buying share and bound in another country.⁴

Absolutely, the rule to hold mutualism relation among the countries is needed, but the people are wondered of government rule to damage illegal horticulture import product⁵.

Horticulture is a part of crop agriculture that also includes agronomy and forestry. The difference, it deals with garden crops such as fruit, culinary herbs, and spices. Agronomy is involved with grain, fiber crops, and industrial crops. While the objects of forestry are trees grown for timber⁶.

And according to Dinas Tanaman Pangan and Hortikultura, horticulture is derived from latin language, *hortus* (garden) and *colere* (to cultivate). Literally, horticulture is an effort to cultivate vegetables, fruits, and ornamental plants. State Policy Guidelines (*Garis-Garis Besar Haluan Negara/ GBHN*) in 1993-1998 classified herbs as one of horticulture.

The characters of horticulture are:

- a. It can not be stored for a long time.
- b. It needs loose place (*voluminous*).
- c. It is perishable
- d. It is uneven to be gotten.
- e. It has sharp- price fluctuation.⁷

⁴ N. Gregory Mankiw, *Pengantar Ekonomi Makro*, translated by Chriswan Sungkono from "Principles of Economics", (Jakarta: Salemba Empat, 2006), page 257.

⁵<http://m.108csr.com/default/news/2013/07/02/43316/Bea-Cukai-Musnahkan-Produk-Hortikultura-Impor-Ilegal-304-Kontainer-> accessed 17/01/15, 10.36 pm.

⁶ Horticulture, *Encyclopedia of Food and Culture*, 2003, Accessed 28/10/ 2014 from *Encyclopedia.com*.

⁷ Accessed 28/05/2014 from <http://distan.riau.go.id/index.php/bidang/hortikultura>

By both of definitions, the author can take a conclusion that there are a lot of kinds of horticulture which is needed by human. Unfortunately, it has sensitive character, so assertive and quick rule are needed.

As known, import and export are the main activities of trade. In this globalization era, Indonesia is not only forced in participating free trade, but also import is the problem solving when Indonesia can not cater whole its people needs—especially for developing country—So, in this issue import is emergence policy. Besides, damaging the product is useless deem.

But, there are a lot of phenomena of damaging horticultural product. For example, 183 Ton of horticultural import products are damaged by Quarantine Department of Tanjung Priok because of two reasons, imported through Tanjung Priok Harbour and manipulated import document⁸. This illegal products consist of 117,2 ton of grape, 38,155 ton of pear and 27,14 ton of carrot⁹. Customs of Tanjung Perak also does the same thing, it damages 304 container of horticultural products since they do not complete import conditions¹⁰. Either, 304 container of horticultural products at 30 Billion Rupiahs damaged by Tanjung Perak Customs because they did not obtain permit from the Ministry of Agriculture and the Ministry of Industry¹¹.

The reason of those eradication is Rule Of The Trade Minister Article 30 Number 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import.

- (1) *Company the perform Horticultural Product import not in accordance with the labeling and packaging provisions in this Ministerial Regulation will be sanctioned in accordance to the regulatory legislation.*
- (2) *If the imported fresh Horticultural Product:*

⁸ In the document, they sates that they import only carrot, but the other products are found.

⁹ Accessed 06/05/2015 from <http://pemilu.tempo.co/read/news/2013/03/01/090464562/183-Ton-Produk-Hortikultura-Ilegal-Dimusnahkan>

¹⁰ Accessed in 06/05/2015 from <http://bcperak.net/berita/pemusnahan-produk-hortikultura-impor>

¹¹ Accessed 07/05/2015 from <http://daerah.sindonews.com/read/756426/23/304-kontainer-produk-hortikultura-impor-dimusnahkan-1372745525>

- a. *Is not in accordance with the Horticultural Product as intended in recognition as Producer Importer of HP and/or Import Approval; and/or*
- b. *is not in accordance with the packaging provisions as intended in Article 18 and/or labeling provisions as intended in Article 19, Shall be destroyed according to the regulatory legislation.*
- (3) *If the imported processed Horticultural Product:*
- a. *is not in accordance with the Horticultural Product as intended in recognition as Producer Importer of HP and/or Import Approval; and/or*
- b. *is not in accordance to the packaging provisions as intended in Article 18 dan the labeling provisions as intended in Article 19; will be re-exported according to the regulatory legislation.*
- (3) *Cost for implementing the destruction and the re-exportation as intended in paragraph (2) and paragraph (3) is the responsibility of the importer.*

Based on those explanations, the author tries to answer the question and worry of the people who think that the government ignores their need of horticulture product, particularly when rareness comes, as if the government does not care their welfare. Whereas, The people welfare should be the mind aim of every government's policy as mentioned in *qaidah fihiyyah*:

تصرف الإمام على الرعية منوطاً بالمصلحة

"The People's welfare should be the aim of government's policy."

That principle above is one messages of QS al-Nisa:6¹²:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ وَكَفَىٰ بِاللَّهِ حَسِيبًا (6)

And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And

¹²Syaikh Abu Bakar Al Ahdali Al Yamani, *Faraidhu Bahiyyah*, translated by M. AdibBisri, (Kudus:Menara Kudus)

*whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant.*¹³

From the verse above, that trustee may not misuse his orphan's wealth, neither does the government. The citizen is a trust for government, so their welfare should be their purpose of policy.

*The second, Islam protects treasure (hifzh al maal) for human welfare, that is the reason (in Islamic Economics) of the government right to seize the land which is ignored by his owner, either why ishraf and tabdzir are unmoral deed. Therefore, Chapra says "Islam provides an economic system that makes it absolutely imperative to use God-given resources for fulfilling the essential needs of all human beings and providing them with decent living conditions."*¹⁴

Those are the reasons of the importance to ensure this rule through *maslahah* of Islamic law, because people's welfare are the main object of Syara' and government rule.

1.2 Research Question

- a. How does Rule of The Trade Minister Number 16/M-Dag/2013 Concerning Provisions of Horticultural Product Import regulate Horticultural Product Import?
- b. Is Rule of the Trade Minister Article 30 Number 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import in line with *maslahah*?

1.3 Purpose of Research

The purposes of this research are:

¹³ Accessed 20/06/2014 at 4 pm from <http://quran.com/4>

¹⁴ Muhammad Umer Chapra, *Towards A Just Monetary System*, (London: The Islamic Foundation, 1986), page 26. Accessed 03/03/2014 from ierc.sbu.ac.ir/File/Book/Towards A Just Monetary System_47581.pdf

- a. To know import conditions based on Rule of the Trade Minister Number 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import.
- b. To deem Rule of the Trade Minister Article 30 Number 16/M-Dag/2013 Concerning Provisions of Horticultural Product Import by *mashlahah* analysis.

1.4 Significant of Research

Some of helpfulness of this research are:

- a. To answer Muslim question on damaging horticultural product import from islamic-law perspective.
- b. To enrich our knowlage in islamic law.

1.5 Literature Review

Through literature review, the author knows the previous researches on agriculture. Its purpose is not only to inform which research should she read to get complete fathom about it, but also to avoid plagiarism. There are a lot of reasearches on horticulture, some of them are:

Prima Medista Ginting from USU (Universitas Sumatra Utara) with his thesis *Analisa Pengembangang Komoditas Unggulan Hortikultura di Kabupaten Karo (Tinjauan Keteknikan Pertanian)*. The result of this research is karo used only conventional method in agriculture, otherwise Karo had comparative advantage as the central place of agriculture.¹⁵

Dewi Kristiawan, the student of Universitas Kristen Satya Wacana, with her thesis *Respon Petani Terhadap Risiko Dan Peluang Dalam Usaha Tani Hortikultura Organik Di Desa Batur, Kecamatan Getasan, Kabupaten Semarang*.

¹⁵ Prima Medista Ginting, *Analisa Pengembangang Komoditas Unggulan Hortikultura di Kabupaten Karo (Tinjauan Keteknikan Pertanian)*, (Thesis: Universitas Sumatra Utara, 2010)

As we know the people prepare organic crops to chemical synthesis, so by this thesis, she wants to know the farmer deem to take this chance and challenge.¹⁶

I Made Antara from Udayana University, by the tittle *Sistem Pengembangan Agribisnis Hortikultura Berkelanjutan dan Berdaya Saing Tinggi di Kawasan Timur Indonesia*, Made takes Thailand as a good example to make better agriculture of Indonesia.¹⁷

Khoerul Amri from UNNES, 2013 with his thesis *Analisis Efisiensi Penggunaan Faktor-faktor Produksi Kebun Benih Padi pada Balai Benih Tanaman Pangan dan Hortikultura Wilayah Semarang*.¹⁸ Khoerul's research explained the factors that can support high harvest result, such as fertilizer and workers.¹⁹

I Made Supartha Utama from Udayana University, with his thesis *Pentingnya Rantai Pendingin dan Teknologi Praktis Pasca Panen Bagi Pengembangan Hortikultura di Indonesia*. The purpose of this research is to solve the distribution problem in Indonesia, which has large area but Indonesia has no good transportation yet.²⁰

Iis Murtiana, 2011 UIN Sunan Kalijaga, with her thesis *Identifikasi Parasitoid Lalat Buah (Diptera:Tephritidae) Pada Berbagai Tanaman Holtikultura Di Kabupaten Sleman, Daerah Istimewa Yogyakarta*. The purpose of

¹⁶ Dewi Kristiawan, *Respon Petani Terhadap Risiko Dan Peluang Dalam Usaha Tani Hortikultura Organik Di Desa Batur, Kecamatan Getasan, Kabupaten Semarang*, (Thesis: Universitas Kristen Satya Wacana, 2012)

¹⁷ Made Antara, *Sistem Pengembangan Agribisnis Hortikultura Berkelanjutan dan Berdaya Saing Tinggi di Kawasan Timur Indonesia*, (Thesis: Udayana University, 2010)

¹⁸ Khoerul Amri, *Analisis Efisiensi Penggunaan Faktor-faktor Produksi Kebun Benih Padi pada Balai Benih Tanaman Pangan dan Hortikultura Wilayah Semarang*, (Thesis: Universitas Negeri Semarang, 2014) .

¹⁹ Accessed 02/06/2014 from <http://lib.unnes.ac.id/18032/1/7450408064.pdf>.

²⁰ I Made Supartha Utama, *Pentingnya Rantai Pendingin dan Teknologi Praktis Pasca Panen Bagi Pengembangan Hortikultura di Indonesia*, (Thesis: Udayana University, 2010)

this research is to know the kinds of *parasitoid* which is dangerous for fruit flies (*Diptera:Tephritidae*).²¹

Mawardi, ITB, with his thesis *Pengaruh Perendaman Buah dalam Larutan CaCl₂ terhadap Kualitas Tomat (*lycopersicon esculentum*)*. The goal of this thesis is to know the influence of soaking Tomato with CaCl₂.²²

Khairunnisa Kudadiri with her thesis on the effect of China horticulture product to Indonesia horticulture sector, *Dampak Impor Hortikultura Cina Terhadap Sektor Hortikultura Indonesia*. She states that China's product influences economy and politic sector.²³

Bagus Irawan Cahyono with his dissertation on import prohibition of horticulture product, *Memahami Kebijakan Larangan Impor Hortikultura Indonesia tahun 2013 dalam Kerangka Safeguard Measure WTO*. He says, "There are three main things that must be met in line with safeguards that is increases in imports, the existence of serious injury or threat of serious injury and there is a causal link between the import surge with a serious injury occurring". He states that this policy againsts the condition of safeguard measure²⁴.

Wisnu Winardi in his research *Dampak Pembatasan Impor Hortikultura Terhadap Aktivitas Perekonomian, Tingkat harga dan Kesejahteraan*. He concludes that the restriction of horticulture import is pro equality and not pro growth²⁵.

²¹ Iis Murtiana, *Identifikasi Parasitoid Lalat Buah (Diptera:Tephritidae) Pada Berbagai Tanaman Holtikultura Di Kabupaten Sleman, Daerah Istimewa Yogyakarta*, (Thesis: UIN Sunan Kalijaga, 2011)

²² Mawardi, *Pengaruh Perendaman Buah dalam Larutan CaCl₂ terhadap Kualitas Tomat (*lycopersicon esculentum*)*, (Thesis: ITB)

²³ Khairunnisa Kudadiri, on the effect of China horticulture product to Indonesia horticulture sector, *Dampak Impor Hortikultura Cina Terhadap Sektor Hortikultura Indonesia*, (Tesis: UIN Syarif Hidayatullah, 2014)

²⁴ Bagus Irawan Cahyono, *Memahami Kebijakan Larangan Impor Hortikultura Indonesia tahun 2013 dalam Kerangka Safeguard Measure WTO*, (Dissertation: UGM, 2015)

²⁵ Wisnu Winardi in his research *Dampak Pembatasan Impor Hortikultura Terhadap Aktivitas Perekonomian, Tingkat Harga dan Kesejahteraan*, Buletin Ekonomi Moneter dan Perbankan Juli 2013, page 22-39.

From literature review that the author has mentioned, it can be concluded the researcher has different object of research. The author focuses to analyze *mashlahah* on the Rule of Trade Minister Article 30 Number 16/M-Dag/2013 On Damaging Import-Agriculture Product from the view of Islamic law.

1.6 Research Methodology

Cambridge dictionary defines methodology as “*a system of ways of doing, teaching or studying something*”. In a word, methodology is the researcher guidance to discover the purpose of this research.

a. The type of the research

The type of the research is qualitative. Qualitative is a kind of research which examines the object in its natural setting because it focuses on process and quality of something²⁶. Through qualitative, the author will deem whether benefit or disadvantage given by Rule of Trade Minister Article 30 Number 16/M-Dag/2013.

b. Method of Data Collecting

The method of data collecting in this research is library research. Because the author will look for the data from document and any other reference to find appropriate explanation to understand the Rule of Trade Minister Number 16/M-Dag/2013 Concerning Provisions of Horticultural Product Import.

c. Resource

1. Primary Resource

The main resources of this research are Rule Of The Trade Minister Article 30 Number 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import and Regulation of Agriculture

²⁶ Aman, *Metodelogi Penelitian Kualitatif*, accessed in 15/06/2014 from <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAA&url=http%3A%2F%2Fstaff.uny.ac.id%2Fsystem%2Ffiles%2Fpengabdian%2Fdr-aman-mpd%2Fc>

Minister Number 86/Permentan/OT.140/8/2013 Concerning Import Recommendation of Horticulture Product.

2. Secondary Resource

Indonesia Food and Agricultural Import Regulations and Standards – Certification 2014, Manajemen Perdagangan Impor²⁷, Kajian Kebijakan Pengendalian Impor Hortikultura 2014²⁸, and Manajemen Pelabuhan dan Realisasi Ekspor dan Impor²⁹.

1.7 System of Writing

To achieve the purpose of this research, the author organizes this thesis by the systematic writing below:

The first chapter is introduction by describing the background, the research question, purpose of the research, significant of the research, literature review and research methodology.

The second chapter is the definition of *mashlahah* and the kinds of it.

The third chapter is describing the object of this research. Its contents are: import requirement, HPIR (Horticultural Product Import Recommendation), lable and package.

The fourth chapter is analiyses, by knowing import determination based on the Rule of Trade Minister Number 16/M-Dag/2013 the author will assess its *masalah*.

The fifth chapter is closing. In this chapter, the author will present final result from the explanations of the previous chapters which have been elaborated in the research, and conclude *mashlahah* acheavement of this rule.

²⁷ Muchjidin, *Kajian Kebijakan Pengendalian Impor Hortikultura 2014*,

²⁸ Hamdani and Pebriana Arimbhi, *Manajemen Perdagangan Impor*, (Bogor: in Media, 2014)

²⁹ Herman Budi Sasono, *Manajemen Pelabuhan dan Realisasi Ekspor dan Impor*,(Yogyakarta: ANDI, 2012)

CHAPTER II

MASHLAHAH

2.1 *Mashlahah* Definition

Islam is religion of humanity. It admits and guarantes the primary need of human by *maqâshidu al-syar'i*. According to al-Syâtibî the determination of Syara' globally (*jumlatan*) and specifically (*tafshilan*) based on human wealfare¹.

The synonym of *mashlahah* is benefaction (*al-khair*), utility (*al-naf'u*), and godness (*al-hasanah*). *Mashlahah* is the antonym of *mafsadah* which means evil and harmful. Etimologically it has various definitions as Abd.Rahman Dahlan re-explained in his book—Ushul Fiqh—some of them are:

كون الشيء على هيئة كاملة بحسب ما يراد ذلك الشيء

“The perfect condition of something, based on its function and using.”

For example, the function of book is for reading in order to get science or information, not for seating or wrapping our food. The other definition:

السبب المؤدّ الى مقصود الشارع عبادة أوعادة

“The cause of reaching syara' purpose both of worship and tradition.”

By this definition, the author concludes that Syara' gurantees the right of worship and the right of human in his social life, and *mashlahah* is the reason of keeping both of them.

According to Al-Ghazali *mashlahah* itself is:

¹ Yubsir, *Maqâshid al-Syari'ah sebagai Metode Interpretasi Teks hukum: Telaah Filsafat Hukum Islam Maqâshid al-Syari'ah sebagai Metode Interpretasi Teks Hukum Islam*, (Journal of al-'Adalah, Vo 11 No 2, July 2013), page 41-63.

جلب منفعة او دفع مضرة.²

Taking the benefit or refusing the damage.

Mashlahah prospers human life both of in the world and hereafter. Because of keeping the Syara' aim is to guarantee *al-dharûriyyât- al khams* as the author will explain³. Meanwhile Al-Ghazali classifies everything which keeps the benefit as *mashlahah* and something threatens it as *mafsadah* or *madharah*⁴.

Understanding *mashlahah* is very important because it is “the soul” of Islamic law. Ghofar Shidiq explains in his journal⁵ the importance of *mashlahah* for most of scholars. Abdul Wahib Khallaf says that *mashdar al-hukmi*—al-Qur'an and Hadits—will not be understood if the legal specialist (*mujtahid*) does not understand *mashlahah*. Wahbah Zuhaili also says that to recognized *mashlahah* is very urgent issue in giving legal opinion and knowing the law secret.

Allah characterizes Himself as *al-rahîm*, and His mercy is given for everything. Therefore He will not get His servants to do something except for their benefit. He also names Himself by *al-Hakîm* and therefore He will legislate rule with His wisdom⁶. The purpose of dispatching Prophet Muhammad SAW is in line with His characters, He says:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ (107)

² Imam al-Ghazali, *al-Mustasfâ min 'ilmi al-Ushul*, (e-book, Vol 2), page 481.

³ Abd. Rahman Dahlan, *Ushul Fiqh*, (Jakarta: Amzah, 2011), page 304-306.

⁴ Imam al-Ghazali, *al-Mustasfâ*..., page 482.

⁵ Ghofar Shidiq, *Teori Maqashid Al-Syari'ah Dalam Hukum Islam*, (The journal of Sultan Agung University, Vol. XLIV No. 118, June- August 2009), page120.

⁶ Yusuf al-Shubily, *Maqâshudu al-Tasyri'i al-Islâmi*, accessed 20/04/2015 from <http://www.shubily.com/books/mqased.pdf>

“And We have not sent you, [O Muhammad], except as a mercy to the worlds⁷.” QS. al-Anbiyâ:107

Rasulullah will not be mercy for the world, if he does not care its *mashlahah*.⁸ And one of the reasons of Rasulullah success is described by a Hadits narrated by Abu Hurairah, when Rasulullah wants to dispatch Mu’ad and Abu Musa to Yaman. He says:

يَسِّرًا وَلَا تُعَسِّرًا، وَبَشِيرًا وَلَا تُنْفِرًا، وَتَطَوَّعًا وَلَا تَخْتِلَفًا⁹

Please ease and do not complicate, cheer up and do not disaffect, unite and do not divorce.

Rasulullah himself shows this principle in his life, he always chooses the easiest thing in doing something as long it does not contradict the law¹⁰, as informed by ‘Aisyah,

أَنَّهَا قَالَتْ مَا حُيِّرَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- بَيْنَ أَمْرَيْنِ إِلَّا أَحَدَهُمَا أَيْسَرُهُمَا مَا لَمْ يَكُنْ إِثْمًا فَإِنْ كَانَ إِثْمًا كَانَ أَبْعَدَ النَّاسِ مِنْهُ¹¹.

“Indeed ‘Aisyah said: Whenever the prophet had a choice between two alternatives, he would always choose the easier of the two as long as it did not amount to a sin”.

Narrated by Abu Umamah, Rasulullah also says:

...بُعِثْتُ بِالْحَنِيفِيَّةِ السَّمْحَةِ...

⁷ Departemen Agama RI, *Al-Qur'an dan Terjemahan*, (Bandung: al-Mizan Publishing House, 2013), page 332

⁸ Bazro Jamhar, *Konsep Maslahat dan Aplikasinya dalam Penetapan Hukum Islam Studi Pemikiran M. Sa'id Ramdhan al-Bûthi*, (Semarang: Program Pasca Sarjana IAIN Walisongo, 2012), page 41

⁹ HR. Bukhari Vol 4.

¹⁰ Muhammad Akram Laldin, *Understanding the Concept of Mashlahah and Its Parameters When Used in Financial Transaction*, (Journal of Islamic Business and Management, Vol.3 No.2, 2013), page 155.

¹¹ HR Bukhari.

“...I am heralded for the true and tolerance religion..¹²”

The verse and Hadits above reveal that Syari’ah is mercy for all creatures, including human kind. Its rules bring benefit and prosperity, either prevent them from hardship.

Mashlahah is the vision of *syara’* (*maqâshidu al-syar’i*), and the main issue of it is ‘illah and *hikmah*. Imam al-Baydhowi—as cited by Achmad Musyahid Idrus—says that ‘illah is the reason of the law. Meanwhile Abu al-Aynayn states that ‘illah is obvious and measurable (*mundhabith*) character of the law reason¹³. Therefore, ‘illah can be found scientifically.

In another hand, *hikmah* is the aim of law legitimation. Although it is not as easy as finding ‘illah, but its goal is based on human need.

Although it does not always appear, we are given the way to find it because *mashlahah* is created for our need. Generally, there are two ways to reach it:

- a. To realize human happiness and goodness (*Jalbu al-manfa’ati*).
- b. To lose and avoid badness and unbenefit (*Dar u’ al-mafâsid*).¹⁴

2.2 The Kinds of *Mashlahah*

There are so many kinds of *mashlahah*, but in this *kutaibah* the author will only mention some of it, based on its position before Syara’ (*mashlahah* existence), interest and time.

2.2.1 *Mashlahah* existence

Imam al-Ghazali in *al-mushtasfâ min ‘ilmi al-Ushûl* classifies *mashlahah* based on its existence according to Syara. Those are:

2.2.1.1 Accredited *Mashlahah* (*mu’tabar*)

¹² HR. Ahmad Mukhraj Vol 36.

¹³ Achmad Musyahid Idrus, *Tradisi Penalaran Filosofis Dalam Hukum Islam*, (Journal of al-Daulah, Vol. No. 1, June 2014), page 50-51.

¹⁴ Ghofar Shidiq, *Teori Maqashid...*, page 121.

Accredited *mashlahah* is *qiyas* which is admitted and supported by *nash* (al-Qur'an and Hadits) and *ijma'* (scholars' consensus). Therefore, it is recognized as *hujjah*.

Qiyas defined as:

تسوية فرع بأصل في حكم لعلّة جامعة بينهما

*Equalizing the law of new case (far'i) to the original case (ashl) because they have the same 'illah*¹⁵.

There are four components of *qiyas*¹⁶:

- a. *Al-Ashlu*, a case which mentioned in al-Qur'an or Hadits. For example, Allah's commandment on *khamer*.
- b. *Al-Far'u*, new case which needs to be determined for its law.
- c. *Hukmu al-Ashl*, the law of the previous case.
- d. *Al-'illah*, the law reason of the previous case.

For example, the analogy of every intoxicated beverage and food with *khomer*. Allah says in QS al-Maidah: 90.

إِنَّمَا يُرِيدُ الشَّيْطَانُ أَنْ يُوقِعَ بَيْنَكُمُ الْعَدَاوَةَ وَالْبَغْضَاءَ فِي الْخُمْرِ وَالْمَيْسِرِ وَيَصُدَّكُمْ عَنْ ذِكْرِ اللَّهِ وَعَنِ الصَّلَاةِ فَهَلْ أَنْتُمْ مُنْتَهُونَ (91)

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful.

The verse reveals the origin case (*al-ashlu*), *khamer*, and its law is haram (*hukmu al-ashl*). The scholars analogize the law of every intoxicated beverage and food with *khomer* because they have the same *'illah*, intoxicant which damage human's brain.

¹⁵ Muhammad bin Shalih al-Utsaimin, *Prinsip Ilmu Ushul Fiqh*, translated by Abu Shilah and Ummu Shilah from "al-Ushul min 'ilmi al-Ushul", (e-book), page 105.

¹⁶ Abdul Wahhab Khallaf, *Ilmu Ushul Fiqh*, translated by Moh. Zuhri and Ahmad Qarib from " 'ilmi Ushul Fiqh", (Semarang: Thoha Putra Group, 1994), page 80.

2.2.1.2 Nullified *Mashlahah* (*ghairu mu'tabar*)

Mashlahah ghairu mu'tabar is *mashlahah* which is unaccepted or refused by Syara'. Imam al-Ghazali epitomizes this *mashlahah* through a fatwa given by some scholars to some of the kings that do sexual intercourse in the day of Ramadhan. They state that the kings should fast two months perpetually. Because liberating a slave is very easy for the kings and therefore to make them repent, fasting is the effective one.

Al-Ghazali says that this legal opinion against Syara' because it can change all of the rule of Syara'¹⁷.

2.2.1.3 *Mashlahah Mulghâh*

Mashlahah mulghâh is “a greyish” *mashlahah* because Syara' does not admit neither refuse it. This *Mashlahah* is called *mashlahah mursalah* or *istishlahah*¹⁸. Al-Ghazali defines it as:

ما لم يشهد له من الشرع بالبطلان ولا بالإعتبار¹⁹

Dalil of law which is not witnessed by Syara' wheather refuses or recognizes it.

According to Imam al-Ghazali as re-explained by Abd. Rahman Dahlan, there are three criteria in using it²⁰:

- a. *Mulâ'imah* or in accordance with Syara'.
- b. The case is in the level of *dharûri* or *hâjâh*.
- c. Relating to life, it should be *dharûriyyah* (primary), *kulliyah* (universal) and *qot'iyah* (certain)²¹.

¹⁷Imam al-Ghazali, *al-Mustasfâ*...,Juz 2, page 479-480.

¹⁸ Abdul Hannan, *Mashlahah Mursalah (Public Interest)*, t.th, accesed 20/04/2015 from <https://thequranblog.files.wordpress.com/2008/04/maslahah.pdf>

¹⁹ Imam al-Ghazali, *al-Mustashfâ*...,Juz 2, page 481.

²⁰ Abd. Rahman Dahlan, *Ushul Fiqh*..., page 317.

The example of the last condition is given by Imam al-Ghazali as re-explained by Zaki. If one of Muslims is kidnapped by heathens in their fort to be their shield from Muslims' lunge, Muslims may not sacrifice his brother and attack them because it is not *dharûriyyah*. Besides, Muslims can not ensure that by attacking heathens' fort they can win the battle (*laisa qath'i*)²².

2.2.2 The Priority of *Mashlahah*

Not only economics which categorizes the priority of need, which need that should be on the top. Either in *mashlahah*, according to al-Ghazali, there are three kinds of *mashlahah* grounded by their necessity.

The first *mashlahah al-dharûriyâh* means the primary need which must be reached for human prosperous in this world and hereafter, because without it human's life will be suffer. The part of this *mashlahah* are: religion protection (*hifzh al-din*), life protection (*hifzh al-nafs*), mind protection (*hifzh al-'aql*), descendant protection (*hifzh al-nasl*), and wealth protection (*hifzh al-mâl*).

While Shihab al-Din al-Qarafi classified self-esteem (*hifzh al-'irdh*) as *mashlahah al-dharuriyah* based on Allah's commandment in QS al-Nur: 4.

وَالَّذِينَ يَزْمُونَ الْمُحْصَنَاتِ ثُمَّ لَمْ يَأْتُوا بِأَرْبَعَةِ شُهَدَاءَ فَاجْلِدُوهُمْ ثَمَانِينَ جَلْدَةً وَلَا تَقْبَلُوا لَهُمْ شَهَادَةً أَبَدًا وَأُولَئِكَ هُمُ الْقَاسِيُونَ (4)

And those who accuse chaste women and then do not produce four witnesses - lash them with eighty lashes and do not accept from them testimony ever after. And those are the defiantly disobedient.

²¹M. Zaki, *Formulasi Standar Masalahat Dalam Hukum Islam: Studi Atas Pemikiran Al-Ghazali Dalam Kitab Al-Mustashfa*, (Al-Risalah Journal, Vol.13 No. 1), page111.

²² *Ibid.*

Al-Qur'an tells explicitly the punishment of *al-qadzif* (adultery slander). It reveals that self-esteem is the primary need of human that may not be attacked.²³

Mashlahah al-dharûriyâh is the most important *mashlahah* that should be reached. Because those parts of *mashlahah* keep the existence of human, without them human will not be the best creature. For example, without *hifzh al-mâl* human's life will be like jungle where the people grab and rob each another. Either without *hifzh al-nafs* human and animal are alike. Therefore, *mashlahah al-dharûriyâh* is the primary need of human.

The second is *mashlahah tahsiniyah* which eases the human's life, without it humans will face difficulty (*masyaqqah*) in their live. Therefore, when a Muslm faces difficulty, Syar' gives him easiness (*taisir*).

المشقة تجلب التيسر

“Difficulty causes easiness.”

The third *mashlahah hajiyyah* to beautify humans' live based on tradition in their society. Al-Syâtibî says that by reaching this *mashlahah* human will reach *makârim al- akhlâq* (ethic) . He says that this *mashlahah* completes both of *mashlahah adh-dharuuriyah* and *mashlahah tahsiniyah*.²⁴

2.2.3 The Coverage of *Mashlahah*

There are two kinds of *mashlahah* based on its coverage, public and privat *mashlahah*. public interest (*mashlahah 'âmmah*) is universal *mashlahah* which its benefit and goodness is for all people such as jihad

²³ Asmawi, *Memahami Konsep Mashlahah sebagai Inti Maqashid al-Syari'ah*, accessed 30/11/14 from <http://www.imz.or.id/new/uploads/2012/08/Maqashid-al-Syariah-Zakat.pdf>

²⁴ *Ibid.*

and teaching. While *mashlahah khâshshah* is everything which benefits individual life such as pray and fasting²⁵.

2.2.4 The Time of *Mashlahah*

Based on its time, there are two kinds of *Mashlahah*, namely short and long term *mashlahah*. Long term *mashlahah* (*mashlahah mu'abbadah*) is eternal *mashlahah* or it has long benefit. While short term *mashlahah* (*mashlahah mu'aqqatah*) is *mashlahah* which has finite time.²⁶

One of its example is Hudaibiyah Agreement, one of its point is if Madinah people come to Makkah, they can not come back to their country. In contrast, if Makkah people come to Madinah, Rasulullah and his companions should let them go. This point is criticized by companions, but Rasulullah does not change his decision. In fact, Makkah people go to Madinah because they want to convert their religion. In contrast, no one of Madinah resident goes to Makkah. Through this agreement Rasulullah and companions are able to go to pilgrimage.

Although in short time this agreement is like unjust agreement, but in long time its benefit is greater and more important. Therefore, *mashlahah mu'abbadah* should be taken.

²⁵ Yusuf al-Shubily, *Maqâshudu...*, page 8.

²⁶ Ridzwan Ahmad, *Metode Pentarjihan Mashlahah dan Mafsadah dalam Hukum Islam Semasa*, (Sharia Journal, Vol. 16 No. 1, 2008), page 110-111.

CHAPTER III

IMPORT DETERMINATION ON REGULATION OF THE MINISTRY OF TRADE OF REPUBLIC OF INDONESIA NUMBER 16/M- DAG/PER/4/2013

3.1 Import Requirement and Its Purpose

There are so many definitions of state. What is state? Bewa Raga Wino explains the definition of state from some scholars¹. Hugo de Groot states that state is the association of independent people in order to get law protection. The definition given by R. Joko Sutono is closely resemble with Hugos'. Joko defines state as the people's organization under the same government. Both of them emphasize the people will to rally. But why they want to unite?

This question can be answered by the theory of the emerging of state. The first theory is the fact theory. According to this theory, a state is created by three factors; authority, people, and government. Another theory is conquest theory, a state is the conquerors's means to maintain their authority². The author thinks that this theory is not suitable for civilized people. The other theory is social contract of Thomas Hobbes. He states that the people agree to "create" a country in order to protect their need and interest because human has evil potency (*homo homini lupus*)³.

From Hobbes' theory, the author concludes that one of the government's obligation is to guarantee its people right and need. And Regulation Of The Ministry Of Trade Of Republic Of Indonesia Number 16/M-Dag/Per/4/2013 is one of the government's way to realise its obligation.

¹ Bewa Raga Wino, *Hukum Tata Negara*, page 10 from http://pustaka.unpad.ac.id/wp-content/uploads/2009/05/hukum_tata_negara.pdf

² *Ibid*, page 9

³ *Ibid*

Every horticultural product which is against Regulation of Trade Minister RI Number 16/M-Dag/Per/4/2013 will be punished. It is mentioned in 30 Article:

- 1) *Company the perform Horticultural Product import not in accordance with the labeling and packaging provisions in this Ministerial Regulation will be sanctioned in accordance to the regulatory legislation.*
- 2) *If the imported fresh Horticultural Product:*
 - a. *is not in accordance with the Horticultural Product as intended in recognition as Producer Importer of HP and/or Import Approval; and/or*
 - b. *is not in accordance with the packaging provisions as intended in Article 18 and/or labeling provisions as intended in Article 19.*
Shall be destroyed according to the regulatory legislation.
- 3) *If the imported processed Horticultural Product:*
 - a. *is not in accordance with the Horticultural Product as intended in recognition as Producer Importer of HP and/or Import Approval; and/or*
 - b. *is not in accordance to the packaging provisions as intended in Article 18 dan the labeling provisions as intended in Article 19;*
Will be re-exported according to the regulatory legislation.

Based on the article above, there are some points that the author will highlight. Those are recognized importer, import approval, label, and package.

3.1.1 Recognized Importer

There are two kinds of importer, Producer Importer of Horticultural Products (hereinafter referred to IP-HP) and Registered Importer of Horticultural Products (hereinafter referred to IT-PH). Their difference is on their purpose of importing. Rule of the Trade Minister 16/M-Dag/2013 Number 6th defines IP-HP as:

Producer Importer of Horticultural Products, hereinafter referred to as Producer Importer of HP/ IP-Produk Hortikultura is an industrial company which uses Horticultural Products as raw materials or supporting materials in the production process itself and not trading or transferring to other parties.

Meanwhile IT-PH is defined as:

Registered Importer of Horticultural Products, hereinafter referred to as Registered Importer of HP/ IT-Produk Hortikultura is a company which import Horticultural Products for the purpose of business activity by trading or transferring to other parties.

The author concludes that IP-HP imports horticulture because of his/her own need, to produce or to create his/her own product. While IT-PH imports to re-sell horticulture product to the retailer or company that needs import product but does not import by itself (indenter).

They should enrol electronically to the Trade Service Unit (UUP/ *Unit Pelayanan Perdagangan*) for being recognized importers and fulfil the requirements. Article 5 mentions the requirements to be recognized as IP-HP:

- a. *Photocopy of Industrial Business License or other similar business license which make use of raw materials from Horticultural Products, issued by authorized agency or technical offices.*
- b. *Photocopy of Company Registration Card ;*
- c. *Photocopy of Tax Identification*
- d. *Photocopy of Producer Importer Identification*
- e. *Proof of storage area control in accordance with product characteristics;*
- f. *Proof of means of transport in accordance with product characteristics;*
- g. *Horticultural Product Import Recommendation (HPIR) from the Minister of Agriculture.*

Meanwhile the requirements to be recognized as IT-PH is mentioned in Article 8:

- a. *Photocopy of Trading License/ Surat Izin Usaha Perdagangan (SIUP) whose scope of business includes horticulture or other similar business license published by authorized agency or technical office;*
- b. *Photocopy of Company Registration Card / Tanda Daftar Perusahaan (TDP);*
- c. *Photocopy of Tax Identification Number / Nomor Pokok Wajib Pajak (NPWP);*
- d. *Photocopy of General Importer Identification Number / Angka Pengenal Importir Umum (API-U);*
- e. *Proof of storage area control in accordance with product characteristics;*
- f. *Proof of means of transport in accordance with product characteristics; and*
- g. *Proof of Horticultural Product sales collaboration contract at least with 3 (three) distributors for at least 1 (one) year;*
- h. *Proof of experience as Horticultural Product distributor for 1 (one) year; and*

- i. Stamped letter of statement stating that it will not sell Horticultural Product directly to consumers or retailers or appointed official.*

Those requirements will be examined by Coordinator and Implementer of UPP in order to ensure the completeness of documents. Even Coordinator and Implementer also inspects their validity directly to the field. And they will be recognized as lawful importer if they passed these steps successfully. They have different period of recognition, IP-HP period is in accordance with HPIR period⁴. Meanwhile IT-PH period is two year.

Based on their requirements the author concludes that some of them is related with the attendance of company as public instrument and its purpose of import. While the other requirements' function—storage area and means of transport—are to ensure the quality of horticultural product.

To keep the product well—the author mentions horticultural character in first chapter—storage plays important role. Importer can not avoid decreasing quality of the product, but at least she/he can minimize it by good storage. Storage is the activity of putting and keeping horticultural product before it is processed and transferred. Some conditions that should be considered are:

- a. Product quality.
- b. Temperature of storage.
- c. Pre-cooling the product before it is being put in storage place.
- d. Compatibility of the products if they have different characters⁵.

Transport also determines the quality of the product and therefore it should be fast and reliable to send this perishable product to another place. There are also some conditions should be considered by importer in

⁴Regulation of Agriculture Minister Number 86 Article 13 86/Permentan/OT.140/8/2013 Concerning Import Recommendation of Horticulture Product.

⁵ Muntazir, *Pemasaran Produk Hortikultura*, accessed 23/04/15 from <http://atadro.files.wordpress.com/2011/12/makalah-pasca-panen.pdf>

choosing means of transport, whether by plane, ship or train, some of them are:

- a. Product character.
- b. Product volume.
- c. Transit time.
- d. Destination.⁶

3.2 Horticultural Product Import Recommendation (HPIR)

Horticultural Product Import Recommendation (HPIR) is the main prerequisite to get import approval as mentioned in the rule of Agriculture Minister Article 4 Number 86/Permentan/OT.140/8/2013 Concerning Import Recommendation of Horticulture Products.

- 1) *Import of Horticulture Product can be conducted by importer after obtaining import approval by the Minister of Trade or appointed official.*
- 2) *Import approval as intended in paragraph (1) is issued after obtaining RIPH from the Minister of Agriculture.*

HPIR not only needed by IP-HP, but also IT-PH. It means, without HPIR IT-PH can not import and only recognized as lawful importer. As mentioned in Article 12 Regulation of the Minister of Trade Republic of Indonesia Number 16/M-Dag/Per/4/2013 Concerning Provisions Of Horticultural Product Import:

- 1) *Registered Importer of HP can only perform import activity after obtaining the Import Approval.*
- 2) *The Import Approval as intended in paragraph (1) is issued after the Registered Importer of HP obtained the RIPH.*

HPIR is defined as, “...a written statement given by the Minister of Agriculture or official appointed by the Minister to company that will import horticultural products into the territory of the Republic of Indonesia⁷.”

In this case, there are two kinds of horticultural product, fresh and processed. The first Article of 16/M-DAG/PER/4/2013 defines fresh product as,

⁶*Ibid.*

⁷Article 1 86/Permentan/OT.140/8/2013 Concerning Import Recommendation of Horticulture Products.

“Fresh Horticultural Products are plant based foods which are the resulting product of post-harvest processing for consumption or industrial raw materials, and/or products which has gone through minimal processing”. While processed product is defined as, *“Processed Horticultural Products are foods or drinks which are processed in certain ways or methods with or without additives”*. Both of the products have different requirements in getting HPIR as mentioned in Article 8 the rule of Agriculture Minister Article 8 Number 86/Permentan/OT.140/8/2013:

- 1) *RIPH is issued with the following administrative requirements:*
 - a. *Fresh horticulture products for consumption shall include:*
 - *Photo copy of RI-Horticulture Product from the Ministry of Trade;*
 - *Photo copy of General Importer Identification Number (API-U);*
and
 - *Statement of not importing horticulture products which exceed 6 (six) months after the harvest period.*
 - b. *Fresh and processed horticulture products for industrial raw materials shall include:*
 - *Technical letter of consideration, industry location, and industrial capacity from the Minister of Industry;*
 - *Photo copy of Importer Producer Identification Number (API-P).*
 - c. *Processed horticulture product for consumption shall include:*
 - *Photo copy of RI-Horticulture Product from the Ministry of Trade;*
 - *Importation approval letter from the Agency of Drug and Food Control; and*
 - *Photo copy of General Importer Identification Number (API-U).*

The requirements above show that the Minister of Trade cooperates with the other ministers in giving import approval based on their kind and aim of import. Knowing what the requirements are help the author understands the importance of them.

Technical Consideration of the Ministry of Industry is defined as, *“...an explanation of the Tariff Heading/HS, goods description, type and number of horticultural products as raw/auxiliary materials of industries that are imported, and destination port, as a requirement to obtain RIPH”*⁸.

⁸ Regulation of the Minister of Industry Article 1 Number 01/M-IND/PER/1/2013 Concerning Granting of Technical Consideration Certificate on the Import of Horticulture Products.

In order to create good competition and ensure that documentative requirement are completed, the government regulates the entry port of import. Because the increasing of import product not only threatens local product, but also threatens Indonesia's local plant. Based on the Rule of Agriculture Minister Number 15/M-Tan/2012 Technical Requirements Plant Quarantine Action For Importing Fruits And/Or Fresh Vegetable Fruits Into Indonesian Territory, the entry points of horticultural import are:

- a. Belawan Harbour, Medan.
- b. Tanjung Perak Harbour, Surabaya.
- c. Soekarno-Hatta Harbour, Makasar.
- d. Soekarno Hatta Airport, Jakarta.

The Head Of Drug And Food Supervisory Agency (*Badan Pengawas Obat dan Makanan/ BPOM*) as an institution obligated to supervise drug and food in order to ensure that consumer gets qualified product⁹. Based on Peraturan Kepala BPOMRI (the Rule of the Cheafe of BPOMRI) Article 4 No.HK 00.05.23.1455 every processed product will be entered to Indonesia should get entry permit (*Surat Keterangan Impor/SKI*) by fulfilling the requirements below:

- a. *It has been tested and or inspected and passed in terms of safety, quality and or nutrition by the competent agency in the country of origin;*
- b. *Testing or inspection as intended in paragraph a must be proved by certificate of analysis from an accredited laboratory;*
- c. *On the processed food as intended in paragraph a, can be tested and checked again in Indonesia or in terms of safety, quality and or nutrition before distributed.*

In addition, the products in retail package must have an imported food number (*Makanan Luar/ ML*)¹⁰. Besides those requirements, there are additional

⁹ Accessed 07/04/2015 from <http://www.pom.go.id/new/index.php/home/en,>

¹⁰ Food and Agricultural Import Regulations and Standards – Narrative FAIRS Country Report 2013.

conditions should be fulfilled for importing fresh horticultural product as mentioned in second point of the rule of Agriculture Minister Article 8 Number 86/Permentan/OT.140/8/2013:

- 2) *Issuance of RIPH for consumable fresh produce, in addition to meeting the administration requirements as intended in paragraph (1) item a, must be completed with the following technical requirements:*
 - a) *Land/plantation registration information or GAP certificate;*
 - b) *Packing house registration which is issued by authorized agency from the country of origin;*
 - c) *Have storage and distribution facilities for horticulture products which is in accordance with the product type and character.*
- 3) *Technical requirements as intended in paragraph (2) item a and b are translated into Bahasa Indonesia.*

The effect of different kind of the products is the different of administrative document, Technical consideration letter from the Ministry of Industry for industrial need whether fresh or processed horticulture, and copy of import permission from the Agency of Drug and Food Control for processed horticultural product with consuming purpose. And for fresh horticultural product the importer should fulfill technical requirements, both of GAP (Good Agriculture Practices) and PH (Packing House).

Agriculture experts from University of Kentucky define GAP as, “*production and farm level approaches to ensure the safety of fresh produce for human consumption*”. GAP was created to response the number of disease caused by contaminated fresh product. Therefore, GAP is the efforts to prevent the potential contamination on the farm.¹¹ The principle of GAP’s orientation is low external input for sustainable agriculture (LEISA), thereby it keeps the environment by minimizing the using of fertilizer, land degradation and conservating water sources¹².

¹¹ Accessed 17/03/2015 from <http://www.uky.edu/Ag/CCD/introsheets/gap.pdf>,

¹² Sudiarto, *Praktik Pertanian yang Baik Untuk Partisipasi Pasar Global*, from <http://www.litbang.pertanian.go.id/artikel/one/78/pdf/Praktik%20pertanian%20yang%20baik%20untuk%20antisipasi%20pasar%20global.pdf>

Meanwhile, PH is preparing place before the produce is distributed. The activity in this house is cleaning, sorting, trimming, grading and packaging¹³.

From both of definitions, the author can conclude that GAP is the guideline of farming. Meanwhile Packing house is the place of preparing product to be distributed. Both of them are to ensure that the products are qualified from the first process (farming) to the end (distributing).

If importer has fulfilled those requirements, Trade Service Unit will give him import licence. But, getting import licence is not the end of import procedure. Before import products are carried in their port, the surveyor will verify the qualification of the products¹⁴. Regulation of the Minister of Trade R.I. Article 1 Number 16/M-DAG/PER/4/2013 defines Surveyor as, “*a survey company which is authorized to carry out imported product verification or technical inspection activity*”.

The data that will be checked are mentioned at article 22:

- 1) *Verification as intended in Article 21 paragraph (1) is conducted on Horticultural Products impor, which include data and information regarding:*
 - a. *Loading port and country of origin;*
 - b. *Tariff Post or HS number and product description;*
 - c. *Type and volume;*
 - d. *Date of shipping;*
 - e. *Port of destination;*
 - f. *Inclusion of Food Grade Logoo and Recycling Code on packaging;*
 - g. *Health Certificate;*
 - h. *Phytosanitary Certificate for fresh horticultural products;*
 - i. *Certificate of Origin;*
 - j. *Food grade packaging test result certification or letter of statement from importer stating that packaging used is in accordance with the regulating legislation for fresh horticultural products;*
 - k. *Inclusion of Food Grade Logo and Recycling Code, or letter of statement stating that packaging used is in accordance with the regulating legislation for fresh horticultural products; and*

¹³ Fika Harini Sinaga, Yusak Maryunianta, and Hasman Hasyim, *Analisa Kelayakan Packing House*. From <http://download.portalgaruda.org/article.php?article=184461&val=4143&title=ANALISIS%20KE%20LAYAKAN%20PACKING%20HOUSE>

¹⁴ As mentioned in article 12 in this rule.

1. *Compliance in labeling as intended in Article 19, except for Ornamental Plant Products and Horticultural Products used as industrial raw materials.*
- 2) *Verification result as intended in paragraph (1) is outlined in the form of Surveyor Report to be used as a complementary document for Customs office in completing customs on import.*
- 3) *The Surveyor collect fees from Registered Importer of HP or Producer Importer of HP for implementing verification or technical inquiry as intended in paragraph (1), in which the amount is determined by observing the principles of benefit.*

Importer also needs permission of the Ministry of Transportation Republic of Indonesia which will be given if surveyor states that he has fulfilled all requirements¹⁵.

If the products have arrived in Indonesia, they can not be distributed directly, but they will face to institutions, namely Customs and Quarantine Departement.

Law of the Republic of Indonesia No. 17/2006 Concerning Amendment of Customs Laws No. 10/1995 defines Customs as: “*Customs means all activities pertaining to the supervision of incoming and outgoing traffic of goods into or from the Customs territory and also the collection of import and export duties.*” Meanwhile Cambridge dictionari defines it as, “*the place at a port, airport or border where travellers' bags are looked at to find out if any goods are being carried illegally*”. From both of defitions, Customs has two main functions, particularry as government’s income collector and examiner import requirements.

The second one is Quarantine Departement which will examine horticultural fresh product and animal. The purposes of quarantine are mentioned by Indonesia Agricultural Quarantine Agency (IAQA):

- a. *Prevent the entry of quarantine diseases of animals and/or quarantine pests of plants from abroad into the Territory of the Republic of Indonesia;*

¹⁵Kebijakan-kebijakan dalam bidang Pertanian: Pemantauan dan Evaluasi 2013 Negara-negara OECD dan Negara-negara Berkembang Indonesia.

- b. Prevent the further spread of quarantine diseases of animals and/or quarantine pests of plants from area to another within the Territory of the Republic of Indonesia;*
- c. Prevent the exit of quarantine diseases of animals from the Territory of the Republic of Indonesia.¹⁶*

To be quarantined there are three conditions that must be fulfilled:

- a. Accompanied by a health certificate or phytosanitary certificate*
- b. Through the designated place of entry and place of exit;*
- c. Notified and presented to the quarantine officer at the places of entry and exit for quarantine actions.¹⁷*

Health certificate or phytosanitary certificate is a certificate given by authoritative departemen of exporter's home country. By this certificate, the authoritative departement ensures and guarantee that the product is qualified to be consumed.¹⁸

Even the product has phytosanitary certificate, it can not be distributed to retailer or indentor directly, but it shoul be quarantined. Their steps and deem on the product are:

- a. Inspection;

There are two kinds of inspection as mentioned in Article 8 of the Government Regulation of the Republic of Indonesia Concerning Plant Quarantine. They are:

- 1. Administrative inspection to know the completeness, the accuracy and legality of the required documents; and*
- 2. Health inspection to detect the possibility of the existence of the Plant Destruction Organisms and/or the Quarantined Plant Destruction Organisms.*

¹⁶ Law of The Republic of Indonesia Article 3 Number 16 1992 Concerning Animal, Fish, and Plant Quarantine.

¹⁷ *Ibid*, Article 5.

¹⁸ Accessed in 24/4/2015 from http://lms.aau.ac.id/library/ebook/1121.%20MANAJEMEN%20PELABUHAN%20&%20REALI%20SASI%20EKSPOR%20IMPOR/files/res/downloads/download_0082.pdf

b. Isolation ;

The inspection needs a long time , special facilities, and condition. Therefore the product should be isolated.

c. Observation ;

Observation is the activity a long isolation time.

d. Treatment;

The purpose of giving treatment is to free the product from any pests. There are two reason for giving tratmen. They are mentioned in the second point of Article 13 of Law of the Republic of Indonesia Number 16 of 1992 Concerning Animal, Fish, and Plant Quarantine:

The treatment referred to in Section (1) shall be performed if after inspection or isolation for observation it becomes evident that the carrier:

- a. Is infested/infected or suspected of being infested/infected by quarantine pests and diseases of animals, fish, and plants, or*
- b. Is not free or suspected of being not free from quarantine pests and diseases of animals, fish, and plants.*

e. Detention;

The reasons for giving detention are : It may be caused by the product which has high potency of carrying pests and the prodeuct's document is not complete¹⁹.

f. Refusal;

According to Article 15 of Law of the Republic of Indonesia Number 16 of 1992 Concerning Animal, Fish, and Plant Quarantine. They are:

1. The product infected by certain quarantine pests. Or the product is damaged.
2. The product is not accompanied by quarantine condition.

¹⁹ Accesed 01/06/15 from
[http://www.skpsamarinda.org/index.php?option=com_content&view=article&id=39:tindakan-karantina-8p,](http://www.skpsamarinda.org/index.php?option=com_content&view=article&id=39:tindakan-karantina-8p)

g. Destruction;

Article 16 of Law of the Republic of Indonesia Number 16 of 1992 Concerning Animal, Fish, and Plant Quarantine mentions the reason of destruction.

- a. *after discharge from the means of conveyance and subsequent inspection, the carrier is infected by certain quarantine pests and diseases of animals, fish, and plants designated by the Government, or is in a decaying condition or damage, or belongs to those species the introduction of which is prohibited, or*
- b. *after refusal of entry as mentioned in Article 15, the carrier is not moved out of the territory of the Republic of Indonesia or area of destination by its owner within the stipulated period, or*
- c. *after observation in isolation, the carrier is not free from infestation of infection by certain quarantine pests and diseases of animals, fish, and plants designated by the Government, or*
- d. *after discharge from the means of conveyance and subsequent treatment, the carrier cannot be freed from infestation or infection by quarantine pests and diseases of animals, fish, and plants.*

h. Release

Only qualified product which is released. The product is accompanied by the conditions and not infected by any pest of plant.

3.3 Packaging and Label

3.3.1 Packaging

The rule of the Trade Minister Number 16/M-Dag/2013 Article 1 defines package as, “*Packaging is the material used to contain and/or encase Horticultural.*” Meanwhile Fahri Maulana, Indah Yuliasih and Sugiarto define it as wrapper to protect horticultural product having list, label and any means of communication, promotion benefiting both of consumer and producer²⁰. Package has a lot of function, as explained by them. It has 6 main function:

- a. To keep the product cleanness.
- b. To keep the product physical.

²⁰ Fahri Maulana, Indah Yuliasih and Sugiarto, *Estimating the Shelf Life of Salak Chips*, accessed 28/03/15 from <http://repository.ipb.ac.id/bitstream/handle/123456789/53632/Abstract.pdf?sequence=1>

- c. To economize the procecess of placing
- d. To ease the process of opening, closing, transferring and distributing.
- e. To ease the consumer.
- f. To give information and promote the product²¹.

Article 18 regulates packaging requirements:

- 1) *Imported Horticultural Products must meet the packaging requirements:*
 - a. *Packaging which directly contact the food must use materials that are allowed for food according to the regulatory legislation;*
 - b. *Packaging which uses plastic is required to include Food Grade Logo and Recycling Code according to the regulatory legislation; or*
 - c. *Packaging which uses wood must be dried, and given marking according to the regulatory legislation.*

To ensure our government's purpose is reached—to protect consumer, importer has to prove that he has completed them. It is mantioned in the second point of this article:

- 2) *Compliance with the packaging requirements as intended in paragraph (1) must be proven with:*
 - a. *certified test results issued by competent testing laboratory and recognized by local government; or*
 - b. *statement letter from the importer which state that the packaging used is in accordance with the regulatory legislation by including Recycling Code and Food Grade Logo on the packaging.*

3.3.2 Label

The first article of Trade Minister's Regulation Number 16/M-Dag/2013 defines label as:

“Label is every information regarding Horticultural Products in the form of picture, writing, a combination of both or other forms which contain information about the product and the business as wll as other

²¹ *Ibid*

information in accordance with the regulatory legislation, is included on the product, incorporated into, attached to, or part of the packaging.”

Based on the definition above, the author concludes that label has urgent role for consumer. Some of its functions are:

- a. To inform the content of the product without opening its package.
- b. As a means of communication both of producer and consumer.
- c. To guide consumer so he/she can maximize the product's benefit.
- d. As a means of advertising for consumer.
- e. To protect consumer²².

The government also gives regulation of how the label given. Article 19 mentions:

- 1) *Horticultural Products imported by the Registered Importer of HP is required to include label in Bahasa Indonesia on every product and/or packaging.*
- 2) *Horticultural Products as intended in paragraph (1), upon entry into the territory of the Republic of Indonesia is already labeled in Bahasa Indonesia and must at least include:*
 - a. *Product name and/or brand;*
 - b. *Net weight or amount of product;*
 - c. *Name and address of producer and/or exporter; and*
 - d. *Name and address of importer.*
- 3) *Labeling as intended in paragraph (2), must at least use Bahasa Indonesia that is clear and easy to understand.*
- 4) *The use of other language other than Bahasa Indonesia, arabic numbers, latin letters is allowed if there is no equivalent.*

The next article also emphasizes the importance of clear information in label:

- 1) *Labeling as intended in Article 19 is done in such a way, so that it does not easily come off from the product or packaging, fade or damaged, as well as easy to see and read.*

²² Accessed in 10/04/2015 from <https://www.google.com/search?q=fungsi+label+makanan&ie=utf-8&oe=utf-8>,

2) *Labeling as intended in paragraph (1) that is not possible for small-sized products, must be affixed on the packaging or attached on the product.*

3.4 Damaging Horticultural Product

The main points of the rule of Ministry of Trade 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import are:

- a. Only recognized importer whether Producer Importer (*IP/Importir Produksen*) or Registered Importer who can import (*IT/Importir Terdaftar*).
- b. Both of them should get import approval from Trade Minister.
- c. They use their import product for their own purpose.
- d. The product should fulfil the package and label condition .
- e. Label should use *Bahasa Indonesia*.
- f. Every import implementation should be verified by surveyor.
- g. Through determined entry place Importer should report the implementation of Horticultural import through <http://intrade.kemendag.go.id>.

And To give clear understanding of the reason of damaging horticulture product, let's see the 30 Article again.

- 1) *Company the perform Horticultural Product import not in accordance with the labeling and packaging provisions in this Ministerial Regulation will be sanctioned in accordance to the regulatory legislation.*
- 2) *If the imported fresh Horticultural Product:*
 - a. *Is not in accordance with the Horticultural Product as intended in recognition as Producer Importer of HP and/or Import Approval; and/or*
 - b. *is not in accordance with the packaging provisions as intended in Article 18 and/or labeling provisions as intended in Article 19*
Shall be destroyed according to the regulatory legislation.
- 3) *If the imported processed Horticultural Product:*
 - a. *is not in accordance with the Horticultural Product as intended in recognition as Producer Importer of HP and/or Import Approval; and/or*
 - b. *is not in accordance to the packaging provisions as intended in Article 18 dan the labeling provisions as intended in Article 19;*
Will be re-exported according to the regulatory legislation.

Knowing the steps of getting import approval, the author thinks that the product which againts the the Rule of Trade Minister 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import is unqualified product. And seeing the news of damaging horticulture phenomena, the author concludes two reasons of damaging horticulture import product.

- a. Smuggled product, the product which is imported secretly and illegally.
- b. Manipulation of the data, the real conditions of the product is in accordance with the document. For example, he states as apple importer, but the other product is also found.
- c. Againts the lable and package regulation.

The author thinks that import permit (*Surat Persetujuan Import/SPI*) is the guarantee of qualified product. Because getting import permit means the product is accompanied by all of the provisions wheather from BPOM/Ministry of Agriculture and Ministry of Industry. As informed by USDA Foreign Agriculture Service:

“The RIPH and SPI requirements remain, as well as all the packaging and labeling provisions, and pre-shipment inspection requirements. Extensive documentation requirements still remain in place. Exporters cannot ship without RIPH and SPI”²³.

While Re-export in this case is transferring unqualified product to its origin country. Its owner will be given 60 days to accomplish re-exporting process²⁴. But if the product is ignored by the owner, it will be non-controlled goods (*Barang Tidak Dimiliki/BTD*). Afterwords it will be destroyed because horticultura belongs to regulated import product^{25 26}. It means the processed product which is damaged is ignored product.

²³ Global Agriculture Information Network, Revised Regulation on the Importation of Horticulture Products 2013.

²⁴ <http://www.bcsotta.net/v2/page/ketentuan-btd-bdn-dan-bmn>, accessed in 25/04/15.

²⁵Hamdani and Pebriana Arimbhi, *Manajemen ...*, page 87.

²⁶. There are three kinds of import product based on their regulation. Those are:

-
- a. Inhibited product. Inhibited product is a product which harms safety, healthy, environment and moral or K3LM (*Keamanan, Kesehatan, Keselamatan, Lingkungan hidup dan moral bangsa*).
 - b. Regulated product. If a product threatens K3LM, but it is needed by the people whether for consuming or producing.
 - c. Free product.
 - d.

CHAPTER IV

MASLAHAH ANALYSIS ON DAMAGING HORTICULTURAL PRODUCT IMPORT ON RULE OF THE TRADE MINISTER ARTICLE 30 NUMBER 16/M-DAG/2013 CONCERNING PROVISIONS OF HORTICULTURAL PRODUCT IMPORT

4.1 General Opinion on Damaging Horticultural Product

There are two main reasons of people seeing government's policy, damaging illegal product. The first one, the thought that for developing country import is exhorced policy, Indonesia is not only being forced by globalization era and trade, but also—the main reason—it can not fulfill whole its people need of horticultural product, moreover 40% of Indonesia people are poor¹. Therefore, seeing both of re-exporting and damaging horticultural product, some people think that the government's policy does not side with the people's need. And from the side of religion, this policy is *tabzir*.

These opinions are not taken only by lay people, but also some scholars such as Islamic scientists of Aceh through Fatwa of MPUA (Majelis Permusyawaratan Ulama Aceh)² and Andika Thriel Putra in his thesis which on *mashlahah* analysis of damaging onion import, *Analisis Masalah Terhadap Pemusnahan Barang Ilegal (Studi Kasus Pemusnahan Bawang Ilegal)*.³

¹ The percentage of income of the people of Indonesia: high income 20%, low 40% and middle income 40%, accessed 29/03/15 from <http://www.republika.co.id/berita/nasional/umum/14/12/23/nh191e-penduduk-miskin-di-2015-diprediksi-3025-juta-jiwa>,

² Accessed 29/03/2015 from <http://mpu.acehprov.go.id/uploads/Fatwa%20MPU%20Aceh%20No.%201%20Tahun%202014%20tentang%20Pemusnahan%20barang%20ilegal%20menurut%20tinjauan%20islam.pdf>

³Andika Thriel Putra, *Analisis Masalah Terhadap Pemusnahan Barang Ilegal (Studi Kasus Pemusnahan Bawang Ilegal)*, (UIN Sunan Ampel, 2014).

Andika states that damaging horticultural product has more negative impact than positive impact⁴, based on *qoidah fihiyyah*, لا ضرر ولا ضرار . This policy causes horticultural rareness and increasing price of the product, meanwhile the victim of this policy will be the poor⁵.

Aceh Ulema Council (*Majlis Permusyawaratan Ulama Aceh/MPU*) has the same reason as Andhika's. Safifudin, the chief of Secretariat of MPUA, says, *"Apabila barang itu dapat dimanfaatkan tetapi tetap dimusnahkan maka akan mubazir. Sebab, masih ada orang-orang yang membutuhkan namun tidak mampu membelinya"*⁶. In a word, damaging is useless deem while poor people's need is ignored. Therefore MPU states that:

- a. The government is rightful to seize illegal product and possess it, if its owner does not complete its requirements.
- b. Damaging useful product which can be used is prohibited (*harâm*).
- c. Damaging illegal product which can not be utilized is obligated (*wâjib*).
- d. The government should take quick policy to avoid the product's damage.
- e. The government should utilize useful product for people's need⁷.

⁴*Ibid*, Page 53.

⁵*Ibid*, Page 5.

⁶accessed 29/03/15 from <http://aceh.tribunnews.com/2014/02/01/dari-mubazir-terbitlah-fatwa>

⁷ Its real statements are:

- a. Pemerintah berhak menyita barang ilegal dan dijadikan sebagai barang keajaannegara apabila pemiliknya tidak mengurus segala persyaratan yang dibutuhkan.
- b. Pemusnahan barang ilegal yang masih dapat dimanfaatkan menurut Syariat Islam hukumnya haram
- c. Pemusnahan barang ilegal yang tidak dapat dimanfaatkan hukumnya wajib.
- d. Pemerintah wajib memelihara dan melakukan tindakan segera untuk mengantisipasi kerusakan barang ilegal yang masih dapat dimanfaatkan.
- e. Pemerintah wajib memelihara dan memanfaatkan barang ilegal yang masih dapat dimanfaatkan dalam Islam untuk kemaslahatan ummat

Even we have different focus, but those are general reasons of the people seeing the government's policy, damaging illegal product. Therefore, the author begins her analysis from this general thought, so the readers can get comprehensive understanding.

4.2 The Author's Opinion

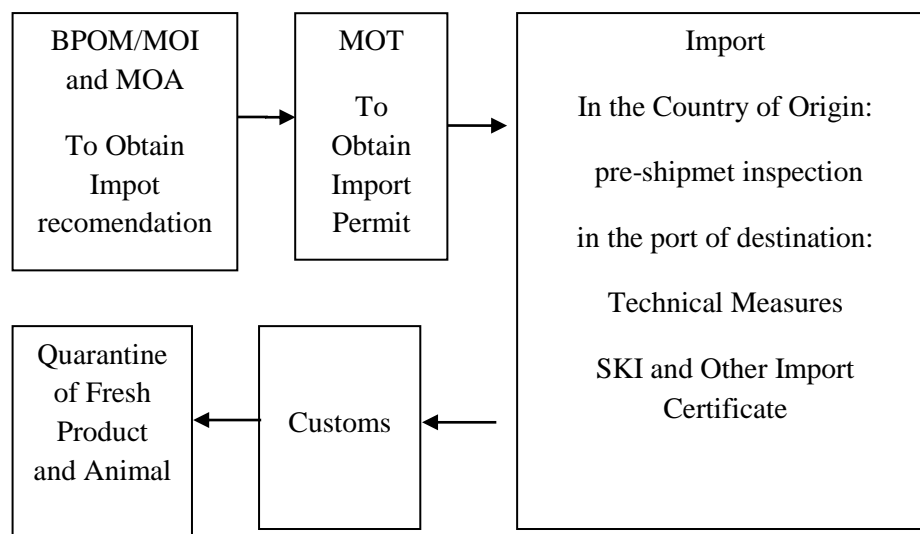
Knowing the Rule of Trade Minister Number 16/M-Dag/2013, for some reasons, the author has different opinion on it.

4.2.1 The Tight Rule of Import

There are three kinds of conditions should be fulfilled to import based on the Rule of Trade Minister Number 16/M-Dag/2013, namely:

- a. Import permit (Surat Persetujuan Impor/SPI).
- b. Recognized importer
- c. Package.
- d. Label.

An Import Permit (SPI) is the most important because getting SPI means all of conditions are fulfilled. It will be issued by the Ministry of Trade (MOT) after getting the Import Recommendation (RIPH) from the Director General of Processing and Marketing of Agricultural Products (P2HP) of the Minister of Agriculture (MOA). Meanwhile, the different kind of the products, fresh or processed, and their purpose of importing render different conditions to get RIPH. There is no additional prerequisite for fresh product, from the other ministry, but processed product needs import approval from BPOM and food processors and manufacturers technical recommendation from the Ministry of Industry (MOI). Here is the step:



Passing those steps the product should be accompanied by certificate from authoritative institution which states that the product is qualified to be consumed. It means, the product was examined in its origin country. To ensure the product is good product, it will be examined again whether by BPOM, to get entry permit and ML number for processed product, or by Quarantine Department.

For this reason, the author thinks that horticultural product which is imported illegally or its determination is withstood—Rule of Trade Minister Number 16/M-Dag/2013—is a bad and unqualified product .

4.2.2 Consumer Protection

Based on this rule, the author can conclude that the government tries to protect consumers. Cambridge dictionary defines consumer as, “*a person who buys goods or services for their own use*”. This simple definition is suitable with Law of the Republic of Indonesia Number 8 Year 1999 Concerning consumer protection , “*Consumer is each individual user goods and/or services available in society, for the benefit of them-selves, family members, other people, and other living creatures and which are not for trading*”. By both of definitions, it can be concluded that consumer is

the last user of a product or service. The Rule of Trade Minister Number 16/M-Dag/2013 protects consumers through two determination, qualified food and information.

These are the requirements to ensure and keep the product's quality:

- a. Proof of storage area control in accordance with product characteristics;
- b. Proof of means of transport in accordance with product characteristics;
- c. Horticultural Product Import Recommendation (HPIR)/ *Rekomendasi Impor Produk Hortikultura (RIPH)*.

As mentioned, horticulture is perishable product. It can be contaminated by any of a number of microbes (bacteria, viruses, parasites, or fungi) at any step of production, processing, packaging, or marketing. Meanwhile import is transferring it to another country. Therefore it is regulated from cultivating (GAP) to distributing (PH).

While processed product will get entry permit after it was examined by BPOM. While, product in retail package should get ML number. Both of them are *pre-market* controls of BPOM in ensuring qualified product.

There are two kinds of BPOM supervision, pre-market and post-market. Pre-market supervision is product evaluation—from its quality, safety and benefit—when it is registered. Meanwhile post-market supervision is examining the product when it was distributed, through sampling and market inspection⁸. Both of them are important, but as wise people say, “to prevent is better than to cure”.

⁸Arie Ivander Solag, Fendy Setyawan and Nuzulia Kumala Sari, *Kajian Yuridis Perlindungan Konsumen Terhadap Produk Makanan Dan Minuman Dalam Kemasan Yang Belum Memenuhi Standar Nasional Indonesia*, page 4. Accessed 11/05/2015 from <http://repository.unej.ac.id/bitstream/handle/123456789/58829/Arie%20Ivander%20Solag.pdf?sequence=1>,

As mentioned that horticulture is classified as regulated import product because it threatens K3LM. Therefore the product which its import conditions are not completed is unqualified product. Because one of the purposes of these requirements is to ensure that consumer gets fit product to be consumed.

Either package and label. Package keeps the quality of the product and label gives consumer clear information about the product. Even label warns consumer the effect of the product for any sick and disease.

The objectives of the regulation, development and supervision of food are mentioned in Act of the Republic of Indonesia Number 7 Of 1996 on food.

1. The availability of food, fulfill the requirements on safety, quality and nutrition for the interest of human health.
2. The creation of an honest and responsible food trade; and
3. The realization of a food sufficiency level in accordance with the need of the community.

4.2.3 Local Plant Natural Resources Protection

There are hundreds of disease that may be carried by import product. They harm Indonesia origin horticulture. Therefore, the more Indonesia imports, the more it risks itself because import product may carry its own disease which never be founded in Indonesia.

In fact, there are some “import disease” such as *cassavamealybug from Africa, this pest threatened food availability, in its home country, it caused crop failure over 82% in 1980. Unfortunately in 2010 it was founded in Bogor*⁹. *Either maiz is contracted by Stewart disease. This deasea found in US hundreds of years ago, and became the worst one. Than it spreads to*

⁹accessed 31/03/2015 from <http://tanamanpangan.pertanian.go.id/ditlintp/berita-160-kutu-putih-phenacoccus-manihoti-hama-%E2%80%9Cimpor%E2%80%9D-baru-pada-tanaman-ubi-kayu.html>,

whole the world, Bolivia, Brazil, Canada, Costa Rica, Guyana, Mexico, Peru, Puerto Rica, and so on. In Indonesia, it was found in West Sumatra¹⁰.

For this reason, basically entering horticulture product whether fresh or processed should fulfill two conditions:

1. Administrative requirement, phytosanitary certificate.
2. The product is stated as qualified product after it was examined.

Phytosanitary certificate is issued by Quarantine Department in the product's origin country. Having phytosanitary certificate means the product has been quarantened and stated as good product. But, to prevent this danger risk, it should be quarantened again in Indonesia.

4.2.4 Local Farmer Protection

As mentioned, horticultural product may bring pests of plants (*Organisme Pengganggu Tumbuhan Karantina/OPTK*). This issue threatens both of plant natural resources and farmer.

This new and strange pest will add farmer's burden. It will take cost of farm, whereas in this globalization era, farmer faces international trade competition. It means, giving "easiness" to unqualified product only adds the farmer's burden.

4.3 The Author's Answer

Based on all of the explanation, the author thinks that this policy is inline with Islamic *mashlahah* for two reasons.

4.3.1 Unqualified product is a bad product

The rule and step of import are tight enough. Therefore, the author think that the product which contravene this rule—The Rule Of The Trade

¹⁰Accessed 31/03/2015 from

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0CEYQFjAF&url=http%3A%2F%2Frepository.unand.ac.id%2F4112%2F1%2FARTIKEL_Haliatur.doc&ei=NIIZVbDnI86OuATp94GIag&usg=AFQjCNF_aKcpRO11FK0FuxD_rh1r8xDCYQ&sig2=NC8QR68GVOIUdvbQcvR2Hg&bvm=bv.89381419,d.c2E

Minister Number 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import –is unqualified or a bad product. Let’s take a lesson from a Hadits from al-Nawwâs bin Sam’ân:

البرّحسَن الخلق والإثم ماحاك في النفس وكرهت ان يطلع عليه الناس¹¹.

The goodness is the moral. And the malefaction is something which burdens the heart, and you dislike to show it to the others.

Those who against any rule will not show their deed to the other. In this case, illegal product may be caused by manipulation of documents or being smuggled. Both of their importers and exporter hide their mistake. Therefore, According to the Hadits above, the author thinks that the product which is imported illegally is a bad product.

Damaging horticulture product is also based on *dalîlu al-hukmi, saddu al-dzarî’ah*. Etymologically, the meaning of *saddu* and *dzarî’ah* is to close and the way. *saddu al-dzarî’ah* is to prevent any action or deem in order to avoid unbenefit (*mafsadah*)¹². There are two ways in using *saddu al-dzarî’ah*:

1. The doer’s motivation (*al-bâ ‘its*)
2. The effect

The doer’s motivation can be difficult to be found. For example, the prohibition of marriage for a man who has a bad intention such us to hurt his wife. No one knows his bad motive of marriage except God right? As He says:

وَأَسْرُوا قَوْلَكُمْ أَوِ اجْهَرُوا بِهِ إِنَّهُ عَلِيمٌ بِذَاتِ الصُّدُورِ¹³.

And conceal your speech or publicize it; indeed, He is Knowing of that within the breasts. (QS al-Mulk:13)

¹¹ HR Muslim.

¹² Abd. Rahman Dahlan, *Ushul Fiqh...*, page 236.

¹³ Departemen Agama RI, *Al-Qur’an...*, page 564

The law is given by the second way, the effect. Because of the risk of any action can be deemed. The prohibition of insulting the God of another religion is one of its example. Based on Allah's commandment:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَقُولُوا رَاعِنَا وَقُولُوا انظُرْنَا وَاسْمَعُوا وَلِلْكَافِرِينَ عَذَابٌ أَلِيمٌ¹⁴.

O you who have believed, say not [to Allah 's Messenger], "Râ'inâ" but say, "Unzhurnâ" and listen. And for the disbelievers is a painful punishment. (QS al-Baqarah:104)

The verse tells explicitly the effect of affronting the other God. In this case, the effect of “legalizing” unqualified product is very obvious. It harms consumer, plant, and farmer as mentioned. Therefore, damaging unqualified product is a prevention policy to avoid the worse effect.

Definitely, the importance of consuming qualified food is not only realized by the government, but asked by Syara'. Because food is primary need of life, bad food threatens both of human life (*hifzhu al-nafs*) and mental (*hifzhu al-'aql*). Therefore, Muslim is asked to eat good food as mentioned:

يَا أَيُّهَا النَّاسُ كُلُوا مِمَّا فِي الْأَرْضِ حَلَالًا طَيِّبًا وَلَا تَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ إِنَّهُ لَكُمْ عَدُوٌّ مُبِينٌ¹⁵.

O ye people! Eat of what is on earth, lawful and good. And do not follow the footsteps of the Evil one, for he is to you an avowed enemy. QS al-Baqarah:168

Regarding to food, there are two things that should Muslims obey from the verse above, lawful (حَلَالًا) and good (طَيِّبًا). The first is halal, halal is allowed by *syara'*, it is the opposite of haram. Halal literally means “loose”, to get halal food we should avoid haram wheather *harâm lidzâtihi* or *harâm lighairihi*¹⁶. *Harâm lidzâtihi* is haram because the material itself

¹⁴ *Ibid*, page 17

¹⁵ *Ibid*, page 26

¹⁶ Abd. Rahman Dahlan, *Ushul Fiqh...*, page 61-62.

is prohibited such as pig and dog. In contrast, *ḥarām lighairihi* is prohibited by the other factors, like stealing duren, the way of getting duren makes duren (*ḥalâl lidzâtihi*) becomes *ḥarām lighairihi*—by stealing.

Horticultural product is *ḥalâl lidzâtihi* such as apple, orange and jam. But the product which contavenes one of the stipulations that regulated in the Rule of Trade Minister Number 16/M-Dag/2013 is not *thayyib* product, even it harms human's health. Therefore, the author thinks that damaging unqualified product is not *tabdzir*. Even it is in line with *maqâshidu al-syari'*, to keep human's life.

4.3.2 Choosing the lower risk.

The need of horticulture product can not be denied. But seeing its big potency to danger consumer, natural-plant resources, and farmer, the author thinks that the government should take this policy—damaging unqualified horticulture. Based on *qoidah fiqhiyyah*:

إذا جمع الضرران فعليكم بأخفهما

If there are two harms, you should take the smallest one.

As mentioned before, the product should be accompanied by certificate and it will be re-examined again in its destination country, Indonesia. The products are not accompanied by certificate and contravene this rule—The Rule Of The Trade Minister Number 16/M-Dag/2013 Concerning Provisions Of Horticultural Product Import—should be damaged.

Even if the horticultural product is really needed in Indonesia, and as the theory of economics says that the price of product depends on its demand, “high demand is high price”. This rule is still in line with *Syara'*, based on *qoidah fiqhiyyah*:

الضرر لا يزال باضرار

Harm is not vanished by harm

The need of horticultural product should be appeased because it can harm the people. But the government may not solve this problem by giving more problem or harm.

4.3.3 Choosing Public Benefit

There are many parties that will get unbenefit from illegal product. They are consumer, local plant natural resources, and farmer. It means giving “easiness” to unqualified product only benefits exporter and importer. And in Islamic law, public benefit should be the aim of every government policy, including import regulation.

4.3.4 Choosing Eternal Benefit

One of horticulture characters is it has sharp price fluctuation. Some people focus on this character and therefore they crisisize the rule of damaging horticulture import product. Because the product can neutralize the market.

The author thinks that the people should focus on eternal benefit. In short term the author can not deny that the unqualified product helps the people’s need of horticulture. But in long term, its unbenefit is more than its benefit. Because as mentioned the unqualified product threats consumer, local plant natural resources, and farmer.

CHAPTER V

CLOSING

5.1 Conclusion

Based on the explanations, the author will conclude some points:

- a. Horticulture is regulated import product because it threatens safety, healthy, plant natural resources, and moral (*Keamanan, Kesehatan, Keselamatan, Lingkungan hidup dan moral bangsa/K3L*).
- b. The main conditions of import Based on the Rule of Trade Minister Number 16/M-Dag/2013 are: recognized importer, label and package. To get import approval from Ministry of Trade, importer should obtain permit from BPOM/ Ministry of Industry and Ministry of Agriculture.
- c. The product is examined twice, in its origin country, proved by certificate, and its destination country. And both of examinations should be faced by the product.
- d. The product against the Rule of Trade Minister Number 16/M-Dag/2013 is unqualified product which endangers K3L.
- e. Damaging unqualified horticultural product is a preventive policy because the effect or harm of legalizing unqualified product is very obvious. It threatens the consumer, local plant natural resources, and farmer.
- f. The benefits which are gotten from damaging unqualified product are public benefit (*mashlahah 'âmmah*) and long term benefit (*mashlahah muabbadah*).
- g. Knowing the reason of damaging horticulture product, the author concludes that this rule is in line with *mashâlih*. Therefore, the principle of governance as mentioned in *qaidah fihiyyah*:

تصرف الإمام على الرعية منوطاً بالمصلحة

"People's welfare should be the aim of the government policy."

The government achieves this purpose by damaging unqualified product.

5.2 Suggestion

- a. The people should know the reason of government's policy that they will not blame it without good reason.
- b. The government and people should focus on long term and public benefit.

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