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REGULATING HALAL FOOD CONSUMPTION: MALAYSIAN SCENARIO

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Abstract: Malaysia passed several laws to regulate the halal food industry. Effective implementation of the laws is vital to ensure that halal food producers comply with the obligations under the laws and more importantly to enhance the Muslim consumers' trust in halal food products. The aim of this paper is to examine whether the existing halal laws provide sufficient protection for Muslim consumers. By utilizing a legal research method, this paper analyses the scope and provisions of the relevant laws that govern all matters relating to halal food products. This includes the Trade Description Act 2011, Food Act 1983, Animal Act 1953 (Revised 2006) and Consumer Protection Act 1999. Any shortcomings and gaps in the laws were analyzed in depth. It is submitted that the government has enacted comprehensive laws to regulate the halal food consumption in Malaysia. Indeed, the laws provide sufficient protection to Muslim consumers. However, apart from the unscrupulous business practice, numerous reports on the manipulation of the laws by the food industry clearly show that there are some weaknesses in the implementation and enforcement of Halal laws.

Keywords: Halal, Food Consumption, Consumer Protection, Muslim and Law

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Introduction

The issue of safety and quality of Halal food products has been a major concern for countries all around the world, especially those with a large percentage of Muslim population. In fact, Malaysia is not an exception as the government realizes how important it is for halal certification of products and services to be fully administered for the interests of Muslim consumers and traders. As such, there are various laws regulating halal related matters. The laws adopt the concept of *Halalan Thoyyiban* that requires a very high standard in terms of quality and certification. This paper will examine the relevant Halal laws in Malaysia. This includes Trade Description Act 2011, Food Act 1983, Animal Act 1953 (Revised 2006),

Consumer Protection Act 1999 and other relevant guidelines. Any shortcomings and gaps in the laws will be considered in depth.

An Analysis of Halal Laws in Malaysia

Malaysia passed several laws to regulate Halal food products. This includes the Trade Descriptions Act 1972 (TDA 1972), Animal Act 1953 (revised 2006), Food Act 1983, Food Regulations 1985, Consumer Protection Act 1999 and the Local Government Act 1976. TDA 1972 may be considered as the main legislation to control the Halal food production. The Act allows Minister of Domestic Trade, Cooperatives and Consumerism to enact the Orders relating to Halal food products. However, it is generally accepted that the Orders are not comprehensive and open to be manipulated by the producers and manufacturers of Halal food products. For example, in *PP v Wee Mee Industries Co Sdn. Bhd* [1985] 3 LNS 2, the accused was charged with the offences under TDA 1972 *inter alia* false description of Halal on instant noodles packets produced by his company. However, he was acquitted because the prosecution failed to prove that the expression "Hukum Syarak" in relation to the expression "Halal" under the Trade Descriptions (Use of Expression Halal) Order 1975 applied to the State of Sarawak.

However, the loopholes under the TDA 1972 have been resolved with the enactment of the Trade Descriptions Act 2011 (TDA 2011). The Act was passed in August 2011 and came into force on November 1, 2011. The purpose of TDA 2011 is to reform the trade description law, and more importantly, it replaces the TDA 1972. TDA 2011 aims to promote good trade practices by prohibiting false trade descriptions and false or misleading statements, conducts and practices in relation to the supply of goods and services, thereby protecting the interest of consumers. A key purpose of TDA 2011 is to standardize the issuance of Halal certificates. Effective January 1, 2011, JAKIM and the respective State Islamic Religious Councils (MAIN) are appointed to issue Halal certificates for any food, goods or related services. Other companies previously appointed to issue Halal certificates would no longer be allowed to do so.

By virtue of sections 28 and 29 of TDA 2011, the Minister issued the Trade Descriptions (Definition of Halal) Order 2011 and Trade Descriptions (Certification and Marking of Halal) Order 2011. The laws offer protection to consumers from unethical trade practices relating to Halal products and services.

Trade Descriptions (Definition Of Halal) Order 2011

Article 3 of the Trade Descriptions (Definition of Halal) Order 2011 provides that when food or goods are described as Halal or are described in any other expression to indicate that the food or goods can be consumed or used by a Muslim, such expression means that the food or goods:

- (a) neither is nor consist of or contains any part or matter of an animal that is prohibited by *Hukum Syarak* for a Muslim to consume or that has not been slaughtered in accordance with *Hukum Syarak*;
- (b) does not contain anything which is impure according to *Hukum Syarak*;
- (c) does not intoxicate according to *Hukum Syarak*;
- (d) does not contain any part of a human being or its yield which are not allowed by *Hukum Syarak*;
- (e) is not poisonous or hazardous to health;

- (f) has not been prepared, processed or manufactured using any instrument that is contaminated with impure according to *Hukum Syarak*; and
- (g) has not in the course of preparing, processing or storing been in contact with, mixed, or in close proximity to any food that fails to satisfy paragraph (a) and (b).

From this definition, it is obvious that Halal food covers every aspect of the food production in terms of its cleanliness, free from 'contamination' and healthy food as prescribed by the Islamic law. The Order further defines food as every article manufactured, sold or represented for use as food or drink for human consumption or which enters into or is used in the composition, preparation, preservation, of any food or drink for human consumption and includes confectionery, chewing substances and any ingredient of such food, drink, confectionary or chewing substances.

When compared to the TDA 1972, *Hukum Syarak* is defined more clearly under Article 2 of the Order includes the Islamic laws according to *Mazhab* Syafii, or the Islamic laws in any one of the other *Mazhabs* of Hanafi, Maliki or Hambali which are approved by the Yang di-Pertuan Agong to be in force in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Penang, Malacca, Sabah and Sarawak or the Ruler of any State to be in force in the respective State.

Furthermore, when services in relation to the food or goods including the transporting, storing and processing raw materials, serving and retailing of such food or goods are described as Halal such expression means that the services in relation to the food or goods are carried out in accordance with *Hukum Syarak*.

It must be noted that any person who supplies any food through any representation or act which is likely to mislead or confuse the consumers that the food is Halal or can be consumed by a Muslim commits an offence. The act of representation under Article 4 of the Order includes the usage of the holy verse of Al-Quran or any matter or object in relation to the religion of Islam either in the premises in which such food is sold or in the container in which such food is supplied. Whilst Article 5 stipulates that any person who is guilty of an offence under this Order and upon conviction shall be liable to a fine not exceeding RM 1 million or imprisonment for a term not exceeding 3 years or both. The penalty for a body corporate is a fine not exceeding RM 5 million.

Trade Descriptions (Certification And Marking of Halal) Order 2011

Article 4 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 states that only JAKIM and MAIN in the respective States are appointed as the competent authorities to certify that any food, goods or services in relation to the food or goods is Halal in accordance with the Trade Descriptions (Definition of Halal) Order 2011.

All food, goods or service shall not be described as Halal unless it is:

- (a) certified as Halal by the competent authority (JAKIM/MAIN); and
- (b) marked with the specific logo issued by the competent authority (JAKIM/MAIN).

It should be noted that the certification of Halal also applies to the imported food and goods where they must be certified as Halal by the foreign Halal certification body recognized by JAKIM. The importer or manufacturer of the food and goods which have been certified as

Halal by the foreign Halal certification body recognized by JAKIM must mark on the said food and goods, the name of the said certification body as stated under Article 5 of the Order.

Whilst Article 8 of the Order provides that any person fails to comply with the Order commits an offence and upon conviction, shall be liable to a fine not exceeding RM 100,000.00 or imprisonment for a term not exceeding five years or both. The penalty for a body corporate is a fine not exceeding RM250,000.00.

Clearly, the Orders provide for the standardisation of Halal definition and certification. These provisions are welcome since the existence of several Halal certification bodies and unclear definition of Halal have created confusion among the Muslim consumers. Unfortunately, despite various reports on the misuse of Halal logo and certification, there is no single case against this Order is brought to the court so far. This reflects the inefficiency of JAKIM to execute its power under the law.

Food Act 1983

Food Act 1983 and regulations such as the Food Regulations 1985 and Food Hygiene Regulations 2009 serves as legislation that protects consumers by ensuring that any food supplied cannot contain elements that are harmful to health either in terms of food preparation, sale and consumption (Zulkifli, 2007). This Act empowers the Ministry of Health (MOH) to monitor food labeling, hygiene, and food safety; ensure that food does not contain substances harmful to health and fit for human consumption. (Norazla et al, 2015)

Section 13 (1), for example, a ban on the supply or sale of harmful food. While section 16 prohibits the preparation, packaging, labeling, sale of any food that is wrong, misleading and there are elements of fraud in terms of its character, value, content, quality, safety, authenticity, weight and others. Although Halal is not mentioned explicitly in the Act, the provision also takes into account the aspect of cleanliness, purity, health, and quality of foods that meet Halal as part of the concept *Halalan Thoyyiban*.

Food Regulations 1985

Food Regulations 1985 contain provisions related to sampling procedures, labeling, packaging and so on. Among the areas of concern in Food Regulations, this is a matter relating to food labeling, the language used, the grain labeling, form and manner of labeling, size and color of the letters, marking the date, a statement of the strength of the ingredients, packaging in retail premises and what is prohibited. Although Halal labeling untouched in this regulation but indirectly it also touched on the description of Halal as set out in the Trade Descriptions (Certification and Marking of Halal) 2011.

Food Hygiene Regulations 2009

Food Hygiene Regulations 2009 prescribe matters relating to food hygiene, including food premises used in the preparation, preservation, packaging, storage, shipment, distribution or sale of any food such as factories, restaurants, and food truck. This regulation also includes relabelling, reprocessing or reconditioning of food. It appears that the laws apply the concept of *Halalan Thoyyiban* as prescribed by the Islamic law.

Animals Act 1953 (Revised 2006)

This Act, together with the Abattoirs (Privatization) Act 1993 and its regulations empowers the Ministry of Health (MOH) and the Department of Veterinary Services (DVS) of the

Ministry of Agriculture and Agro-based Industry, *inter alia*, to control the slaughter of animals. The Act does not directly mention the Halal slaughtering method. However, this loopholes have been resolved with the introduction of Halal Protocol for the Halal Meat and Poultry Productions released by JAKIM. The protocol gives clear guidance in the production of halal meat and poultry as well as Halal certificate application process for imported meats. Before all meat imported into Malaysia is recognized as Halal, three officers from Malaysia will visit the slaughterhouse abroad; officials of the DVS will examine the situation of livestock, officials from MOH will examine the safety of animal feed, as well as officials from JAKIM shall ensure that the Halal slaughter procedures have been implemented.

Customs Act 1967

Customs Act 1967 and the Customs (Prohibition of Imports) Order 1988 has empowered the Royal Malaysian Customs on the issue of the importation and the entry of Halal products from overseas. JAKIM has been allowed to make the recognition of foreign Halal certification body to verify the Halal status of sources of raw materials and finished or semi-finished products issued by certain countries for the purpose of importation. Importers or manufacturers of products certified as Halal by overseas Halal certification bodies recognized by JAKIM shall mark the product with the Halal logo or the name of the certification body (Norazla et al, 2015).

Local Government Act 1976

Local Government Act 1976 and the By-Laws of Local authorities such as the Food Premises Regulation and Licensing and Advertising gives jurisdiction to the local authorities in ensuring the cleanliness of food premises. Each trader must ensure that the premises and the food sold are clean. Indirectly, the local authorities can help to promote the virtues of Halal products which should include health aspects (healthy), hygiene and safety (clean & safehygiene), nourishing (nutritious) and quality (Norazla et al, 2015).

Consumer Protection Act 1999

The word Halal indirectly relates to consumerism issues as it involves consumer rights when purchasing of Halal goods or services is made. Consumers in Malaysia are facing many problems in consumerism issues and this includes matters relating to Halal products. The Consumer Protection Act 1999 (CPA) which came into force on November 15th, 1999 provides an additional legal framework to monitor consumer rights on the issue of supply of goods against the suppliers or manufacturers of the concerned goods. It consists of a total of 14 parts containing 150 legal provisions for consumer protection, the setting up of National Consumer Advisory Council and Consumer Claims Tribunal.

Halal products are just like any other products in the context of the sale of goods law. Hence, implied guarantees under the CPA applies to the sale or supply of false Halal products. A contractual term between the supplier and buyer is considered to be breached if the sale of a non-Halal product which was claimed to be Halal either through labeling, representation or by any other means. Thereby, section 34 of the Act states the implied guarantee that the goods supplied to a consumer shall correspond with the description. Halal logo should be considered to be an important aspect of the description of the goods as it generally refers to words which identify the type of goods supplied (Naemah & Norazlina, 2015).

Whilst Section 32 imposes liability on the supplier to supply goods which are acceptable in quality. This refers to goods which are fit for their general purpose, free from minor defects,

acceptable in appearance and finish, safe and durable. This indicates that any label or representation made on the goods should meet with customer expectation. Therefore, false Halal goods are not acceptable in quality as it falls below the expectation of Halal consumers which in effect contradict to the contract of sale (Naemah & Norazlina, 2015).

Malaysian Standard-MS1500:2009

A comprehensive Halal food guideline is known as Malaysian Standard: Halal Food-Production, Preparation, Handling, and Storage was launched in 2004 and revised in 2009. Today, it is known as Malaysian Standard MS 1500:2009. The standard is issued by the Department of Standards Malaysia, the national standards and accreditation body of Malaysia. It provides practical guidance for the food industry on the preparation and handling of Halal food and to serve as a basic requirement for Halal food products and food trade or business in Malaysia. These standards cover both the issue of hygiene, sanitation and food aspects in the food processing and preparation chain. Besides, it also considers the sources of Halal food permissible which include animals, plants, mushrooms, microorganisms, natural minerals, chemicals, and drinks.

In general there are seven basic requirements for the preparation of Halal food based on MS 1500: 2004/2009 as below: a) Sources of Halal food and drinks should be animal and plant-based; b) Slaughtering, for example, Halal and non-Halal animals must never be slaughtered together; c) Product processing, handling, and distribution should comply with Halal regulation; d) Product storage, display and serving for instance equipment, machineries, and other materials used must not be made of non-Halal materials; e) Hygiene, sanitation, and food safety should comply with the concept of *Halalan Thoyyiban*; f) Packaging and labelling must be carefully evaluated by JAKIM; g) Legal requirement which in line with MS 1500:2004 revised 2009.

It is important to note that the standard not only fulfils the Halal requirements under Islamic law but also maintain the standard that meets global benchmarks such as ISO 9000 and Codex Alimentarius and Hazard Analysis Critical Control Point (HACCP). More importantly it reflects that the Malaysian government is committed to formulate a precise and clear guideline for Halal food consumption.

Manual Procedure for Malaysia Halal Certification 2014 (MPMHC)

MPMHC is issued by JAKIM in 2005 and recently revised in 2014. It empowers JAKIM to administer its function as the Halal certification authority. MPMHC contains guidelines for JAKIM and MAIN inspection officers in managing Halal certification. Besides explaining the terms and requirements for Halal certification, MPMHC also contains information relating to application procedures for Halal certification, certification process and fees charges. It is notable that the requirements and conditions for Halal certification has been improved and restructured for easier review and reference by the inspection officers and the industry.

Furthermore, the document also illustrates the audit, monitoring and enforcement procedures. Any breach of the certification requirements enables JAKIM to give warning for the correction action, issue monitoring notice, suspend the Halal certificate and in more serious offence, JAKIM with the advice of Halal Certification Panel may revoke the certification.

In addition, responsibilities of Halal certificate holders are highlighted. In this respect, the holders must abide with the Malaysia Halal Certification Procedures and related laws and understand the current halal issues.

This is evident that the standard and guidelines used by JAKIM to determine Halal food in Malaysia are rigorous and in consistent with the concept of *Halalan Thoyyiban* under the *Shariah* law. Therefore, it helps to restore Muslim consumers' confidence in JAKIM with respect to the implementation of Halal standards and procedures. Halal is a key feature for Muslim to purposely purchase and consume the food products (Nor Anita, et al, 2017). More importantly it will absolutely add value to players in the Halal industry.

Consumer Protection Issues

Despite the enactment of various laws to regulate halal food products, there are still many products do not serve the Muslim halal rulings. In addition, issues of abuse of halal logo and certification remain plentiful (Nor Ardyanti Ahmad et al, 2013). This is due to some weaknesses of legislation regarding halal certification and logo especially when the requirement of the halal certificate is on a voluntary basis (Zalina Zakaria, 2008).

The lack of enforcement in monitoring halal food products triggers consumers to query the validity of products or services claiming to be halal. Furthermore, it caused confusion among Muslim consumers in regard to the issue of halal logo. Reports of fraudulent practices by food operators in mass media and the majority of food premises displaying various type of private halal logo nowadays have confused the consumers and created doubt over Malaysia's Halal logo validity. (Ilyia, *et al*, 2011; Mustafa, 2014). Consequently, it establishes negative perception among consumers on the credibility of the authorities concerned in issuing Halal Certificate for some products. To make matters worse, many of halal allegations were not finalized in court e.g. Cadbury Chocolate case (2014); Starbuck, (2013); KFC slaughter chicken (2010). In fact, until today, no halal violation has been upheld under the Food Act 1983 (Zalina Zakaria, 2008). Most cases were closed after denial was made by the defendant based on out of court settlement.

Apart from the violation of halal logo and certification, there are other issues arising from the manipulation of the existing laws. For example, the violation of the Islamic slaughtering procedures and different methods of slaughtering have affected the public's confidence towards halal meat sold in the Malaysian market (Faizah Md. Yusof, 2006). Besides, fraudulent halal marking and misleading conduct in the supply of halal food products still unresolved. The controversy of Cadbury Milk Chocolate which has been detected to contain pig DNA has undermined the public trust towards the Malaysian Islamic Religious Department (JAKIM) and its halal logo (Harian Metro, 24 May 2014). There are also cases where the manufacturers breach the rules relating to the preparation and storage of halal food. For instance, the raid at Stanson Bakery Sdn Bhd, which produces the High Five bread, revealed that the manufacturer had breached the law. The floor was dirty and some workers were also found working without gloves or aprons, while the factory was badly-lit and poorly-ventilated (The Star, 13 October 2006).

Recently, a video showing unhygienic dish-washing practices at Raj's Banana Leaf Restaurant went viral all over the internet in Malaysia. A shocking fact is that DBKL had earlier awarded the same restaurant an "A" rating. In addition, 12 food premises comprising

several famous *nasi kandar* outlets and restaurants in Penang were closed after they were found to be below the hygiene requirements (The Star Online, 2018). Many unhygienic restaurants were instructed to close but soon resume back to business after settling the penalties. Perhaps, the penalties for those who committed offences relating to safety and hygiene of food products or premises are not sufficient enough to deter such malpractices.

Conclusion

It is clear that Malaysia passed comprehensive laws to regulate Halal food consumption. The laws adopt the concept of *Halalan Thoyyiban* that are very high in terms of quality and certification. More importantly, the laws provide adequate protection to the Muslim consumers.

However, a comprehensive law is futile without effective implementation of the law. Various cases of the manipulation of Halal laws, if left uncheck, would diminish the customer's trust on Halal logo and JAKIM's credibility as the sole authority to administer the Halal certification. In this respect, successful implementation of the laws requires effective coordination among the legal enforcement authorities, industry, and consumers.

The rampant manipulation of Halal laws reflects the weaknesses in the implementation of laws. Indeed, most of the manipulations are caused by unscrupulous business practice. As such, the industry should also comply with high ethical standards to ensure that the foods are *Halalan Thoyyiban*. Ethical standards are vital as they are beyond the statutory obligations to be complied by the industry in preserving the sanctity of Halal.

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