

Enforcement of Consumer Protection Laws on Halal Products: Malaysian Experience

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Received: August 28, 2013 Accepted: September 19, 2013 Online Published: January 27, 2014

doi:10.5539/ass.v10n3p9

URL: <http://dx.doi.org/10.5539/ass.v10n3p9>

This title is a research being conducted by the authors with the use of research funds FRGS (USIM/FRGS-FSU-32-51512) to obtain an information and to develop a model of consumer protection halal products in Malaysia.

Abstract

Halal industry is a market that has not been fully explored and they have a very good potential in the future. This is supported by the larger number of world's Muslim community, estimated at a total of 1.8 billion in 2011, with the current value of the *Halal* market is estimated to reach USD2.3 trillion. However, there are some issues regarding the *Halal* industry both domestic and international, particularly in relation to the abuse of the *Halal* logo and other offenses relating to *Halal* logo. Apart from that, there are also other challenges, particularly in the enforcement of the relevant laws of *Halal* certification. The objective of this article is to look into the consumer protection and enforcement of *Halal* related laws that have been implemented by State Religious Department which are Religious Department of Selangor (JAIS) and Religious Department of Kelantan (JAHEIK). Other objectives of this paper is to improve and enhance the enforcement and monitoring of *Halal* certification for the benefit of consumers and producers and educate them to have a responsibility in producing a *Halal* product.

Keywords: consumer law, *Halal*, *Halal* standards, consumer protection, law enforcement

1. Introduction

The *Halal* industry is growing rapidly not only in Malaysia but throughout the country. The high demand for this industry has led the industry in striving to meet the consumer demands which consist of not only Muslim consumers, but it has started to become the choice of consumers of various places, races and religions. This situation is also led by the increase of Muslims around the world where the number of Muslims are 1.8 billion in 2011 and they are knowledgeable and have a high economic level (Mustafa & Kamilah, 2012) which caused the demand for *Halal* products to surge. Most Muslim countries under the World Islamic Organization has also started producing their own *Halal* standards to ensure that the *Halal* standards in their respective countries are consistent with the Islamic standards (Mustafa & Mahyeddin, 2012).

However, despite the favourable development of the *Halal* industry, the Muslim community in this country is still dealing with the issues of *Halal* certificate forgery, food processing issues that are not in accordance with Islamic law, the issue of uncertain food content and the cleanliness. This should be addressed immediately to avoid doubts about the status of *Halal* products as a new source of global economic growth. Thus, the effectiveness of *Halal* law needs to be improved.

In addition, the *Halal* status of products in the market should not be underestimated by the Muslim users in particular. Before the amendments of the Trade Descriptions Act 2011, there are many cases of fraud *Halal* logo that has been done by the dealer or manufacturer of *Halal* products that claim their products are *Halal*, but in reality it is not (Note 1).

Based on the cases that have been reported, it shows that most of the vendors or manufacturers of the products had been deceptive and made false representations to consumers, especially in the use of *Halal* label. The question to

be raised is whether the rights of consumers being better protected after the amendment of the Trade Descriptions Act 2011 to consumers in *Halal* products? As far as this writing is made, there are no cases of prosecutions brought to court due to abuse of the *Halal* logo. Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) have stated that a total of 29 cases was reported in 2012 and only 1 case was settled with a compound of Ringgit Malaysia 3 thousand while the rest was seized and their goods confiscated which values about fifteen thousand Ringgit Malaysia (Roslan, 2012). This article will study issues related to the enforcement of *Halal* in the Selangor Islamic Religious Department (JAIS) and the Kelantan Islamic Affairs Department (JAHEIK).

2. Enforcement of *Halal* Certification Law in Malaysia

Law and *Halal* guidelines have long been implemented, but there are still many lacuna in terms of the effectiveness of the law and its implementation in Malaysia. This is evident when consumers are confused and sceptical of the *Halal* status of a food or products marketed.

2.1 Before the Amendments of the Trade Descriptions Act 2011 (TDA 2011)

Before the amendments of TDA were made in 2011, the applied laws and acts related to the enforcement of *Halal* were not subject to the jurisdiction of the Malaysia Department of Islamic Development (JAKIM). Their jurisdiction is only on certification process. JAKIM use Malaysian Standards (MS) and the Manual of Malaysian *Halal* Certification Procedure for *Halal* certification (Kamilah & Mustafa 2012).

In addition, the Trade Descriptions (Use of "*Halal*") Order 1975 gives way to individuals or private companies to issue its own certificate and *Halal* logo. This was because, the Order did not mention the names of JAKIM or the State Islamic Religious Department (JAIN) / State Islamic Religious Council (MAIN) exclusively as the competent agencies authorized to issue a *Halal* certificate and logo (Kamilah & Mustafa 2012).

2.2 After the Amendments of the Trade Descriptions Act 2011

Amendments were made to the TDA 2011 that empowered JAKIM to carry out enforcement against traders who abuse the use of the *Halal* logo on their products. It is enshrined in Order 3 of the Trade Descriptions (Certification and Marking of *Halal*) Order 2011. However, the Ministry of Domestic Trade, Co-Operative and Consumerism (MDTCC) still pursuing the enforcement on issues related to *Halal* products during the transition period of TDA 2011 enforcement (Mustafa & Kamilah, 2012).

According to Chief Assistant Director of *Halal* Hub Division JAKIM, Azizan bin Shaari, in the process of strengthening the *Halal* enforcement division in Malaysia, JAKIM is trying to increase the number of competent enforcers to carry out their duties in accordance with the amended Trade Descriptions Act 2011 (Mustafa & Kamilah, 2012).

JAKIM now has the power to prosecute and thereby, JAKIM should have qualified officers to practise in the civil court because the jurisdiction of *Halal* products prosecution, either according to TDA 2011 or other legislation related to *Halal* products, comes under the jurisdiction of the civil court. Meanwhile, the state Chief Prosecutors have the power to prosecute for offences under the State Criminal Offences Enactment (Mustafa & Kamilah 2012).

3. *Halal* Enforcement Case Study in JAIS and JAHEAIK

The lack of a complete law on the issue of *Halal* has made enforcement of existing laws cannot be implemented effectively. This is based on several factors:

3.1 Halal Related Laws

Prior to 2011, the applied law was the Trade Descriptions Act 1972, under the Ministry of Domestic Trade, Cooperatives and Consumerism. When the act was revised, the ministry came to conclusion that the act should be updated, and due to that, the amendments were made to the Trade Descriptions Act 2011. This Act gives power to the minister of the domestic trade, co-operatives and consumerism to appoint a competent authority to deal with *Halal* issues. Therefore, the MDTCC appointed JAKIM, JAIN and MAIN as the competent parties in this context (Roslan, 2012).

Therefore, by-laws have been created to support the Trade Descriptions Act 2011. Among them are the Trade Descriptions (Definition of *Halal*) Order 2011, the Trade Descriptions (Certification and Marking of *Halal*) Order 2011, and the Trade Descriptions (*Halal* Certification and Marking Fees) Order 2011. All of these three by-laws are enforced from the 1st of January 2012 (Roslan, 2012).

Among the reasons for the laws related to *Halal* created under TDA 2011 and the by-laws referred to above is to ensure that there is only one authority responsible for issuing the *Halal* endorsement which is either the JAKIM or

the JAIN/MAIN, giving enforcement powers to only one party which is the MDTCC, and ensure the 'self declaration' of *Halal* is not allowed (Roslan, 2012).

Meanwhile, the Food Act 1983 is the parent to the current food legalities, and under it comes the Food Regulations 1985, the Health Food Regulations 2009 and a number of new regulations that have been gazetted such as the Food Radiation Regulations (Badruzzaman, 2012).

JAKIM recognizes the *Halal* certification implemented by the State Islamic Religious Council (MAIN) / Department of Religious Affairs (JAIN).

In the context of JAIS, Section 38 of the Selangor Syariah Criminal Enactment No. 9 of 1995 states that "any person who exhibits, on any food or drink that is not lawful, any sign which indicates that the food or drink is *Halal*, is guilty of an offence and upon conviction, liable to a fine not exceeding two thousand Ringgit or to imprisonment for a term not exceeding one year or both" (Solihin, 2012).

3.2 Jurisdiction

Two parties recognized by the Malaysian government to issue *Halal* certification in Malaysia are JAIN or MAIN and JAKIM. It is enshrined in Article 74 (2) read together with the Ninth Schedule, State List of the Federal Constitution of Malaysia states that matters pertaining to Islamic law and Muslim individual and family law are under the jurisdiction of the state (Mustafa & Kamilah, 2012). *Halal* is a matter pertaining to Islamic law and is under the jurisdiction of the state. However, the state's jurisdiction is limited only to Muslims.

Due to this circumstances, the enforcement of TDA 2011 is to ensure that the action can be taken by JAIN, MAIN and JAKIM towards non-Muslim who abuse *Halal* label.

3.3 Staff Constraints

In the context of JAIS, only fifteen staffs were assigned to the *Halal* Management Section, Division of Research and Development of JAIS which is headed by an Assistant Director of the Section (Solihin, 2013). Of the fifteen assigned, seven staffs are assigned under the Consultation and Accreditation Unit; four staffs working under the Supervision and Audit Unit, three given the responsibility under the *Halal* Development Unit whilst the last one staff is the administrative assistant (Solihin, 2013).

Meanwhile, there are only ten people who work under the Assistant Director (*Halal* Management) JAHEAIK (Zawawi, 2013). Of the ten assigned, two are working under the Faith and Syariah Unit, four working under the *Halal* Management Unit, and four working under the Administrative Unit (Zawawi, 2013).

Based on the number of staffs involved, JAIS and JAHEAIK find it quite difficult to carry out the enforcement of *Halal* certification abuse because they have to deal with the application of *Halal* certification, *Halal* audit and provide education to the community.

3.4 Enforcement Training and Preparation

JAKIM and MAIN need to provide courses and training in relation to the investigation and prosecution. To facilitate enforcement, the MDTCC has appointed JAKIM officers and state Islamic officers as enforcement officers are called as assistant trade description controllers under the Trade Descriptions Act 2011. So far, the ministry has appointed a total of 240 people from JAKIM, JAIN and MAIN. Courses relevant to the investigation and prosecution should be held and should be further enhanced as to create dedicated law enforcement officers, the relevant knowledge should be deepened as exposure on how to make raids, prosecutions, inspections and knowledge of acts such as the Evidence Act, the Criminal Procedure Code and others (Roslan, 2012).

However, the constraints arise in the context of training the JAIS and JAHEAIK officers. Since there are no strict selection sessions to elect JAIS and JAHEAIK officers, there are officers who do not give their full commitment to the assigned task (Ahmad Solihin, 2013). There are some officers who are not willing to face the challenges of enforcement duties (Zawawi, 2013). Apart from the issues of affordability, efficiency and competency of the officers, JAIS and JAHEAIK also had to deal with the transfer of staffs or officers in the department due to promotions or normal exchange (Zawawi, 2013) Because of this, many officers are not capable of acquiring the required level of skills (Zawawi, 2013).

3.5 Other Enforcement Challenges Faced by the JAIS and JAHEAIK

Other challenges faced in enforcement are:

1) The use of *Halal* logo voluntarily

All these while, the consumers assume that the use of *Halal* logo is compulsory but actually the use *Halal* logo is not compulsory for traders. When the use of *Halal* logo was voluntary, these traders used the *Halal* logo as they

wished. The actions of these traders have caused some confusion among consumers in terms of the *Halal* status of those products and premises (Zawawi, 2013).

2) *Halal* logo as an attraction to Muslim consumers and users in general

Halal logo is used indiscriminately by traders and manufacturers. They assume that if there is no sign of *Halal*, then the consumers will not buy the products or enter their premises. Some of them also felt *Halal* sign is very hard to be obtained to run their business. Therefore, they use the *Halal* mark without applying for it with the related authority (Roslan, 2012).

3) *Halal* debate and expression of the perceptions of Muslims

Public's perceptions about the products made by Muslims are *Halal*. *Halal* is not just to comply with Islamic law but it also covers aspects of food safety and hygiene of food premises (Roslan, 2012).

4) Solving cases take a long time

Settling a case is taking so long. This is because, in order to produce a good case, the investigating officers had to refer to various parties. In terms of certification, the MDTCC had to refer to the JAIS and JAHEIK to verify the authenticity of the *Halal* certificate. In terms of verification of a product, whether it's pork or not, it is slaughtered or not, the MDTCC refers to a third party, such as the Department of Chemistry, Ministry of Health, or the Department of Veterinary Services to see whether the contents of the items are as described. Therefore, the expected settlement of cases cannot be achieved (Roslan, 2012).

4. Findings and Conclusions

In achieving the aim of making Malaysia as the world's *Halal* hub, various issues and challenges arose in relation to the enforcement of *Halal* certification in Malaysia. Therefore, the government and the authorities should immediately take steps to address these issues because it has major implications on the Muslim community in particular. There are several proposed improvements to address these issues and challenges as follows:

1) JAKIM and MAIN need to provide courses and training in relation to the investigation and prosecution. To facilitate enforcement, the MDTCC has appointed JAKIM officers and state Islamic officers as enforcement officers are called as assistant trade description controllers under the Trade Descriptions Act 2011. So far, the ministry has appointed a total of 240 people from JAKIM, JAIN and MAIN. Courses relevant to the investigation and prosecution should be held and should be further enhanced as to create dedicated law enforcement officers, the relevant knowledge should be deepened as exposure on how to make raids, prosecutions, inspections and knowledge of acts such as the Evidence Act, the Criminal Procedure Code and others.

2) Expand public awareness campaigns in order for the public to file a complaint related to *Halal* abuse to the authorities.

3) Set up a special commission to govern *Halal* matters in Malaysia.

4) Create specific *Halal* law to govern *Halal* legislations. Without effective laws, various problems will arise that may thwart government's efforts to lift the *Halal* industry as a new source of world economic development.

5) Ongoing effort to bring awareness to consumers about the importance of choosing foods on display.

In compliance with the amendments to the Trade Descriptions Act 2011, where this act has named JAKIM or JAIN/MAIN as a competent authority, the authority in issuing the *Halal* certificate. This means that, based on the TDA 2011, any individual or private company cannot simply issue the *Halal* expression or logo unless issued by JAKIM or JAIN only. Prior to this amendment, the authority permits any individual or private companies to issue its own certificate and *Halal* logo. Thus, TDA 2011 gave a great impact and effect in terms of *Halal* law enforcement in Malaysia.

JAIM, JAIS and JAHEIK are examples of institutions that governs the *Halal* matters in the country, but they face many constraints in the management of *Halal* that needs to be realized by the government and at the same time need to be improved, particularly in terms of staffs so that the *Halal* industry can be protected from any fraud.

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Note

Note 1. Example of cases reported by the press as the dealer has acquired a *Halal* logo but then misused the logo, *Halal* certification has expired or the company never obtained a *Halal* certificate but used a fake certificate. There are cases also reported by the mainstream media where there is a business that uses *Halal* logo for their products, but the results of the investigation showed that the products contained alcohol or deoxyribonucleic acid (DNA) of pork which is forbidden in Islam. Among the cases reported by the Department of Islamic Development Malaysia (JAKIM) are the results of the analysis conducted by the Chemistry Department of Malaysia in samples of HP Sauce and Tabasco Pepper Sauce which confirmed the presence of pork's deoxyribonucleic acid (DNA) in their products (Revoke Sale of Products found with pig DNA. The Star. 17th June; Sijil *Halal* Kerajaan Perlu Tegas. Utusan Malaysia. June 17). Meanwhile, Utusan Malaysia reported that Muslims are reminded not to use Golden Churn Pure Creamery Butter after Jakim confirmed that their products were not *Halal* (Golden Churn Pure Creamery Butter tidak *Halal*. Utusan Malaysia. 7th April). Utusan Malaysia reported on the three directors of Rail Passion Sdn. Limited. (Rail Passion) was charged in the Magistrate's Court on two charges of selling coffee containing the pork deoxyribonucleic acid (DNA) in their shop, Kluang Rail Coffee without putting its existence statement on the label of the coffee packaging (Three Directors, Manufacturers of pork DNA Coffee charged. Utusan Malaysia. 20th May). Meanwhile, Muslim consumers are advised to carefully select bread, pastries and cakes based food in the market after JAKIM cancelled the *Halal* certification application of a supplier company located in Europe which supplies non-*Halal* ingredients to several well-known supermarkets and restaurants in the country (DNA Babi: JAKIM Batal Sijil *Halal* Syarikat Bekal Ramuan Roti. Utusan Malaysia. 18th May).

Appendix

Statutes

Abattoirs (Privatization) Act 1993

Animals Act 1953 (Revised 2006)

Animal Rules 1962

Animal (Importation) Order 1962

Customs Act 1967

Customs (Prohibited Imports) Regulations 1998

Federal Constitution

Food Act 1983

Food Regulations 1985

Local Government Act 1976

Syariah Criminal Offences (Federal Territories) Act 1997

Syariah Criminal Enactment (Selangor) 1995

Trade Descriptions Act (TDA) 2011

Trade Marks Act 1976

Trade Descriptions (Definition of *Halal*) Order 2011

Trade Descriptions (Certification and Marking of *Halal*) Order 2011

Trade Descriptions (Certification and Marking of *Halal* Fees) Order 2011

Trade Marks Regulations 1997

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