

HALAL LOGISTICS LEGAL FRAMEWORK: MALAYSIA PERSPECTIVE

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Abstract

Halal logistics is one of the profitable industries in Malaysia with demand from local and international clients. Though there are regulations and standards protecting this industry, the enforcement on these two demands attention and further study as there are still reports of abuse of the Halal logo due to failure to segregation of halal and non-halal products during the logistics chains. Currently, there are very limited literature review on enforcement of halal logistics. Hence, this research seeks to discover the critical factors for effective enforcement of halal logistics in Malaysia. Applying a qualitative method, semi-structured interviews were conducted with stakeholders of the industry. Besides that, references were made to previous publication, case laws and legal documents. The interviews were recorded, transcribed, coded and reconciled. By using Nvivo software (12 Plus), the researcher coded the transcriptions and identify the themes and sub-themes. The findings discovered the following elements as critical within the industry: first the source of laws applicable in halal logistics, the duties and responsibilities of legal agencies and the due process (legal proceedings). This research will focus on the critical elements which are the sources of laws and the due process. The result shows that with regards to the sources of law, all participants agreed criminal laws are applicable in Halal logistics cases. However, only the academician and Halal logistics operator agreed civil laws should be included. Moreover, they also concurred that inclusive application of civils laws should also extend legal exposure to the halal logistics operators in order to manage the activities and avoid mistakes and cross-contamination.

Index Terms-- halal logistics, enforcement, sources of law & civil laws

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INTRODUCTION

Halal logistic is very important scheme within the halal market. It serves to protect the *syariah* principles to avoid mistakes and cross-contamination which result with *syubhah* or doubtful situation. These activities among others includes all the elements of logistics such as transportation, warehousing, packaging, material handling and retailing [1].

In other words, once there is evidence of cross-contamination, the legal consequences of the transaction are compromised, and the goods is now no longer Halal. It changed the legal relationship between the parties due to the breach in the contract. The consequences are loss of profits, payment of damages to aggrieved party and there is also possibility of loss of trust by the consumer towards the Halal branding.

Consequently, Halal logistics integrity comes into the picture. The protection, the monitoring system, the policing of the Halal logistics activities must be seen by the consumer, failing which it will result with loss of confidence and bad faith to the certification [2]. JAKIM as the accreditation body have an inherent interest in protecting its reputation and safeguarding the Halal logo from misuse, abuse and manipulation [3].

It is a critical point that requires urgent attention failing which serious issues on the integrity of JAKIM's halal certification enforcement will occurs and continuing to happen. In order to do so, it is vital to look into the sources of laws available, secondly to look into the legal process and finally the authorities responsible

to carry out the enforcement. This research will focus on the sources of laws and the due process of enforcement.

Hence, this research is very important to the halal logistic industry. It is an opportunity to expand the current legal process on Halal logistics by taking into account other sources of laws available in Malaysia besides the current criminal law under Trade Description Act 2011 and hereinafter known as "TDA 2011".

Furthermore, this is also an opportunity for the research to open new ideas in the future to enhance the scope of legal enforcement on the halal logistics. Hopefully it will lead to a positive enforcement by the local authorities to encourage logistic companies to perform better in their application of the standard despites the fact that it is self-regulatory in nature in order to benefit from this lucrative halal business.

IDENTIFY, RESEARCH AND COLLECT IDEA

The following paragraph discussed on the literature reviews which elaborates on the available Halal schemes offered by JAKIM, a brief on the stakeholders related to the enforcement, the sources of laws in Malaysia, the application of laws in Halal logistics enforcement and the theoretical concept on legal process on Halal logistics.

LITERATURE REVIEW

1. Halal Schemes

Diagram 2.1 below shows the Halal Schemes available in Malaysia.

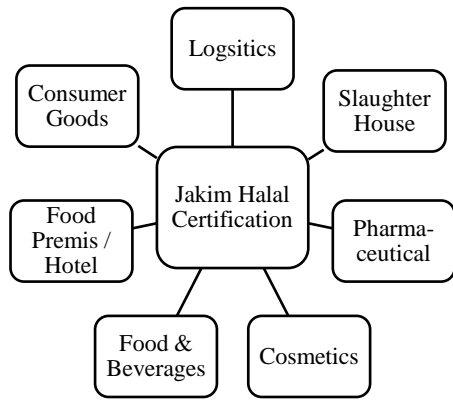


Diagram 2.1. Halal Certification Schemes

The Manual procedure for Halal Certification Malaysia (“MPPHM”) 2014 provides for all these different schemes for Halal certification. One of them is the Halal Logistics certification. The standards guidelines for Halal logistics are:

- a. Halal supply chain management system - Part 1: Transportation (MS2400-1:2019)
- b. Halal supply chain management system - Part 2: Warehousing - General requirements (First revision) (MS2400-2:2019)
- c. Halal supply chain management system - Part 3: Retailing - General requirements (First revision) (MS2400-3:2019)

It is also wise to note that though these guidelines are available, it is prescriptive in nature instead of directive. Hence, it is not legally binding for the certified company to observed so long as they can justify their operation is in adherence to the Halal principles. Hence, at the operation level besides the standard, for Halal logistics operation, there must also established a Halal Control Critical Point to manage issues within time. The compliance of standard however is subject to audit by the accredited agencies which is JAKIM [4].

2. The Stakeholders

The stakeholders in Halal logistics operations are the legal agencies that are JAKIM and religious states bodies. JAKIM as the accredited body has the duty to protect the Halal logistics brand from abuse and misuse [5]. Halal logistics service provider also has the duty and responsibility to adhere to all the applicable standards and regulations. The importance of ensuring protection of Halal logistics operation is the severe magnitude of the breach in the chain of logistics. Finally, the consumer will have to bear the loss of money if there is indeed a breach in the chain of Halal logistics.

3. Sources of Law

Diagram 2.2 shows the branches on sources of law in Malaysia [6].

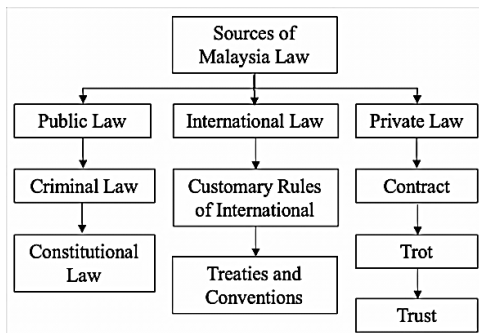


Diagram 2.2. Source of Malaysia Law

Based on the diagram above, in summary there are three branches of laws which are the public, private and international laws. Studies however have shown that in relation to Halal logistics, so far literature has only discussed on application of criminal laws. Such significant point opensan opportunity to expend the scope of laws in order to give better protection to the logistics operation.

The following paragraph explains on some of the applicable criminal laws in Halal logistics operation in Malaysia.

a) Penal Code

It is a codified offence committed by individuals against the states. A crime is a wrong against a state for which punishment is inflicted by the state, with the proceedings being brought by the Public Prosecutor. It has a high burden of proof that is the crime has been committed beyond reasonable doubt and both *actus reus* (a wrongful act) and *mensrea* (a guilty mind) must exist.

Section 365 of the Code basically explained that whoever intended to cause wrongful gain to another, or wrongful loss to another is considered to have committed ‘dishonesty’ or fraud.

In logistics activities, this unlawful act materialized when there is cross-contamination of goods during the logistics chain operation. Once this occurred, the goods supplied can no longer be represented as Halal. Otherwise there is a violation of Section 365.

b) Trade Description Act 2011

Section 2 of the TDA 2011 defined services for Halal as services that related to food or goods including, transport, storage/warehouse, manufacturing of raw material, retailing of those goods.

An example of an offence is in the case law of Wee Mee Industries whereby the court found the defendant to be liable for wrongful description under the Trade Description Act 1972. The unlawful act materialized when the description of Halal stated Halal on the package of instant noodles, but the ingredient actually contained animal fat. In this case, the court held that the description “Edible Vegetable Fats’ is in violation of the Act [7].

c) Consumer Protection Act 1999

This is the saving grace of the protection of Halal rights for the consumer of Halal products. Here it defines goods as for personal consumptions and household usage. Consumer Claims Tribunal will hear all cases and complaints by consumers. It does not specify on Halal per se Section 8 stated that is an offence under the Act for the manufacturer or seller to cause the consumer to be misled by the marking on the goods. It is an offence punishable with a penalty of not more than RM25,000.00 for the first offence and not more than RM500,000.00 for the subsequent offences. The limitation of the Act though as commented in this article [8] was the scope of ‘goods’ defined within the Act. It excludes protection of the process of the production as it only safeguards the consumer from certain ‘products. It does not meet the needs of Halal protection which is to secure the whole chain from point of harvesting to the point of retail.

d) Syariah Criminal Enactment

Article 3 of the Constitution of Malaysia provides for each state to manage their religious activities on their own. For the states without the Head Ruler, they will make proviso for the *Agong* as the Ruler of their states. Therefore, all matters on Halal falls under each state to manage and monitor as it is a religious matter. In matter of Halal, literature discussion has been based on Syariah Criminal Enactment (Federal Territories) 1997 and

Syariah Criminal Enactment (Sabah) 1995.

Under the proviso of Section 42 of Syariah Criminal Enactment (Federal Territories) 1997, it is an offence for anybody to display or describe food products which is not halal and misrepresent it as halal. Imposition of this Act on a natural person bring a penalty of not more than RM5000 or imprisonment of not more than three (3) years or both.

Similarly, under the proviso of Sabah Syariah Criminal Enactment 1995, it is also a criminal offence under section 59 (2) for anybody to provide or distribute any kind of forbidden food or meat which is inconsistent with the Islamic religion to be guilty of an offence under the Act.

In the publication [9] commented that the small punitive penalty imposed RM500.00 under the Syariah Enactment does not act as a deterrent to the defendant and in fact is too small as to compare to the penalty under TDA 2011.

The limitation on Syariah enactment is the following: Firstly, it is only applicable to a natural person therefore, it is not applicable to a corporate entity. Secondly it is only applicable to a natural person who is a Muslim only. Third, it is a criminal offence and not a civil one. Fourth, JAKIM and religious body needs to refer to Syariah Prosecutor for this litigation proceeding, instead of to KPDNHEP (Ministry of Domestic Trade and Consumer Affairs). Nevertheless, it is still another alternative of enforcement as a means to protect the Halal integrity in Malaysia.

The other Acts related to Halal industries are Food Act 1982 and Food Hygiene Regulations 2009, Custom Act 1967 and (Prohibition of Imports) Order 1988. These Acts empowered specific government agencies to enforce the compliance. As compare to the discussed Acts which are specifically within the jurisdiction of KPDNHEP and the Public Prosecutor.

RESEARCH METHODOLOGY

The authors conducted interviews with related participants. Secondary data are from previous published literature, case laws and regulations on Halal. Table 2.1 shows the list of offices participated in the data collection process.

Table 2.1. List of Halal Logistics Stakeholders

No	Stakeholders
1	JAKIM - Malaysian National Islamic Department
2	Selangor State Islamic Department
3	Johor State Islamic Department
4	Melaka State Islamic Department
5	Logistics Service Providers
6	Education Institution

For purpose of achieving the objective of this research, the following participants were selected in the data collection process.

In a qualitative study, the main aim of the research is to get the perspective of the person in charge of the enforcement process. Their experience and feelings while applying the Acts and monitoring the standards represents the view that is needed for this study. As such, the researchers concluded to conduct the collection from Halal certification bodies which offer Halal logistics scheme in the state, a Halal Service Providers and also an Academician.

4. Theoretical Concept on current legal process.

Diagram 2.4 shows the current legal process in Malaysia in relation to Halal cases.

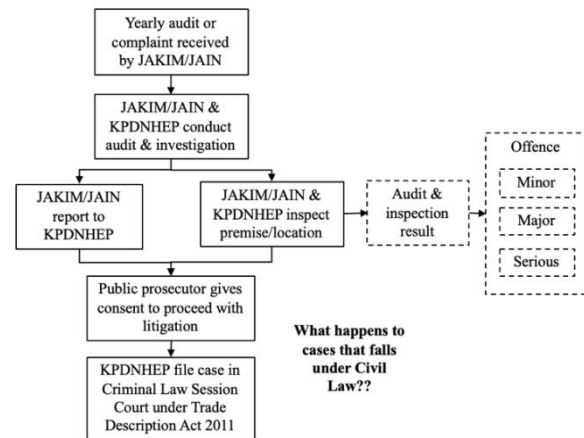


Diagram 2.4. Current Legal Process of Malaysia Halal Related Cases

The current legal enforcement on Halal logistics are as follows beings with the audit or the complaints by the consumer. Once a date is fixed, JAKIM and religious department and sometimes accompanied by KPDNHEP will starts the audit and investigation proceedings at the premises or location. They will refer to the Malaysian Standards and regulations during the process to ensure that all of the compliance is met by the certified logistics companies. Based on the result of the investigation, reports are made and presented to the company.

Based on the interviews, it has been discovered that complaints and audit is the point of investigation on all Halal scheme activities including Halal logistics.

From thereon, the responsible agencies that are JAKIM, JAIN and KPDNHEP among others begin the inspection, investigation and audit process. Next, based on all the evidence obtained, the agencies reported to the Disciplinary Body and the panel decides whether the violation is a minor and only requires a warning, a major which requires a warning and or a suspension or whether it is a serious one which results to a cancellation of the certification.

Concurrently, if the case is found to be in violation of the Trade Descriptions Act 2011 (“Act”) then the matter is hand over to the Public Prosecutor. It is a criminal Act and therefore the prosecutor proceed to file a case into the Criminal Session Court, which is shown in Diagram 2.4 above. The court will next decide on whether there is a prima facie case against the defendant. If the prosecutor succeeds in proving that there is a prima facie case, the court will grant a trial date otherwise the matter is dismissed.

Once fixed for trial, proceeding begin, witness presents their facts and only upon proving beyond reasonable doubt will the court pass a judgement for the prosecutor. Judgement are either a conviction and sentence, a dismissal or acquittal. Legal agencies are called as witnesses and will later make media reports to notify the public of the court’s decision.

Based on the interviews, Syariah law is not applicable in Halal cases as states focus on Trade Description Act 2011 as cases are filed into Session Criminal Court. Therefore, all cases on Halal logistics will also fall under this court. Among the legal agencies, no cases on Halal logistics has been filed into the criminal court as it is relatively new scheme offered by the most states.

On the application of Syariah law, legal agency in Selangor has confirmed its usage in matter of food premises cases. The Selangor legal agency explained the usage of Syariah Criminal Enactment (Wilayah Territories) 1997 is only for this purpose as it is done by the religious department and not the Halal Unit. It can be noted in the grey area of the missing application of civil law within the enforcement on Halal logistics cases.

FINDINGS

The analysis result shows that there all of the participants agrees that criminal laws are the existing source of law which applies to Halal logistics activities. This is consistent with the published journals in [10]. Every participant also has knowledge of the parties responsible to carry out the enforcement on matters of Halal logistics. The legal agencies are JAKIM and states religious bodies who obtained their power via the 'kadkuasa' (authority card) thru the TDA 2011.

Nevertheless, this analysis also prove that the sources of available laws are not fully utilized and therefore there is still room to improve. The academicians and HLSP gave positive feedback on the application of civil law as it means better coverage of regulations on the Halal industry including Halal logistics.

Contrary to that, all religious agencies disagreed and reiterated that for all Halal cases including Halal logistics, legal agencies will only apply TDA 2011 and the other available criminal laws.

Furthermore, based on the analysis, the legal agencies also depend on to other department for purpose of enforcement such as MAQIS (Malaysian Quarantine and Inspection Services) on matters of Halal, when it should be their duty to protect the Halal and *toyibban* aspect of the products within the logistics chain. In the eyes of the consumers, this responsibility should be on JAKIM and states shoulders instead of the other government bodies, as TDA 2011 has empowered them with the said jurisdiction.

Diagram 2.5 is a proposed Conceptual Framework on legal process for Halal Logistics

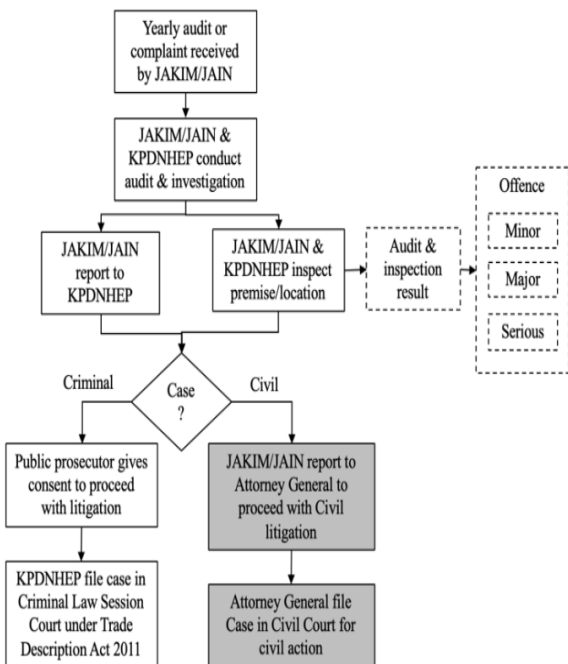


Diagram 2.5. Halal Logistics Legal Framework

Therefore, from the viewpoint of the researchers, the current TDA 2011 sets a high standard of evidence for purpose of litigation. Hence, it will cause delay in court process as matters needs to be proven beyond reasonable doubt. It will also cause dissatisfaction and distrust among the consumers towards Halal branding. Furthermore, according to the currents scattered Acts on Halal have their own limitations.

The proposed application of civil law on the other hand, only requires the evidence to be proven on the balance of probabilities. Therefore, documentations and witnesses' statement are usually sufficient to confirm a judgment in favor of the plaintiff that is JAKIM and state agencies. Diagram 2.5 above is a proposed conceptual framework which takes into consideration of the application of civil laws into place. Another aspect that needs to be critically assessed is the cross of Islamic interpretation of Islamic law within the Trade Descriptions (Definition of Halal) Order 2011 and the scientific evidence that is required under criminal for it to be evidence in court. The report from Chemist department must meet the elements of Islamic law. The report must also prove beyond reasonable doubt that there is evidence of non-Halal matters such as ingredients and the Chemist may be required to be call to the bar as a witness for this purpose. The burden of proof is high and complicated. The litigation demands one to have knowledge in both Syariah law on Islamic law and also criminal laws to try the case in court successfully.

The significance of the proposed conceptual framework in diagram 2.5 is high it is another alternative to the existing framework. Recent publication by [11]and[12], civil laws as part of the sources of law should apply in the Halal industry, therefore inclusion of civil law is vital to protect the interested parties.

The similarity of the elements in TDA 2011 and Sales of Goods Act 1957 hereinafter known as "SOGA" makes it very consistent in the application. Though different from the type of law as one is criminal in nature and the other is in civil, nevertheless the aims of the Act are to prevent false misrepresentation of goods and to prevent unlawful advantage of another. Both Acts protect the consumers from false representation by the manufacturer, seller and parties involved. The only difference is the locus of the parties in the case. In a criminal case, the unlawful act is a violation against the states hence being a criminal action. On the other hand, SOGA is a private law concerning a binding contractual relationship between two or more parties. Nevertheless, the potential usage of SOGA is apparent if the interested party come into the contractual relationship with the manufacturer or seller. A further discussion on this is in a continuing publication as Part B.

It is indeed a very important discovery for the application of civils laws in Halal logistics cases as it will ensure a better protection in term of regulation enforcement. Due to the nature of Halal, it is a voluntary application. It is not mandatory for the halal industry to use Halal logistics service in their day to day operation. As a result, to this, there is a drop in the application of Halal logistics from 2015 until 2019.

Table 2.2. Statistics of Halal Logistics Scheme Application

Year of Application	No of Applicant
2015	28
2016	58
2017	57
2018	58
2019	27
Total	229

Table 2.2 shows the statistics of Halal Logistics Scheme application. This is made in reference to JAKIM's statistics from "StatistikSijilPengesahan Halal Malaysia ("SPHM") berdasarkan Skim Persijilan Halal".

Based on the statistics given by JAKIM, there is a continuous rise in the first few years in the scheme of Halal logistic certification. It reached the peak on 2018 at a number of 59 applications and had a major fall to only 29 applications in 2019. Nevertheless, Halal Industry Development Corp (HDC) has predicted an increase in the demand for Halal export by 50.0 billion ringgits in 2020 [13]. This evidence the statement that indeed, there is a high demand for Halal logistics services in Malaysia. It is also interesting to note that the demand came from the Muslim consumer and also the non-Muslim consumer [14]. The reason being that Halal itself speaks of high quality, good service, food safety and also protection of animal welfare [15]. Consumer now days will go a step further to obtain necessary knowledge to determine the safety, the welfare of the poultry and the manner of logistics before they are willing to pay for the costs of obtaining Halal products [16] and (Kamaruddin et al., 2012)[17].

From the view of Halal logistic service provider, the enforcement support from the legal agencies need improvement. Otherwise the trend of lessening in the certification will continue yearly. In fact, during the interview, participant expressed their view that one reason that, some giant logistics companies are no longer renewing their Halal certification as there is no mandatory need

for such. Lack of enforcement especially during the chain of logistics activity. From their perspective, without Halal certification, the company operation is able to work as usual with less demand from the certification body, less intrusion in term of yearly inspection and audit while at the same time able to service both the Halal manufacturer and also the conventional one. Eventually, they are able to reach the same profit goals. It can be concluded that now is the right time to implement civil laws in the current legal enforcement framework.

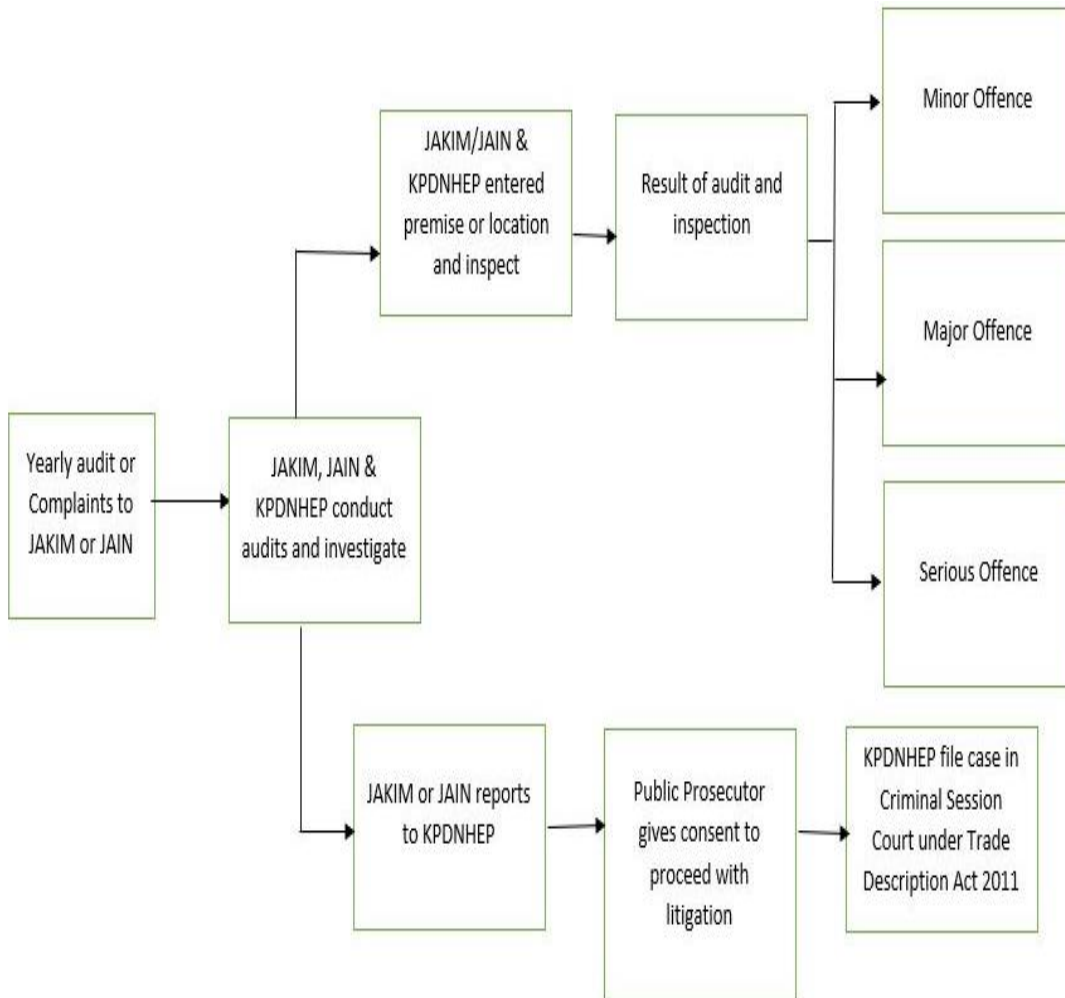
AN IMPROVEMENT AS PER REVIEWER COMMENTS

Clarification on the storyline, duties of the agencies and focus on the first issues on sources of law.

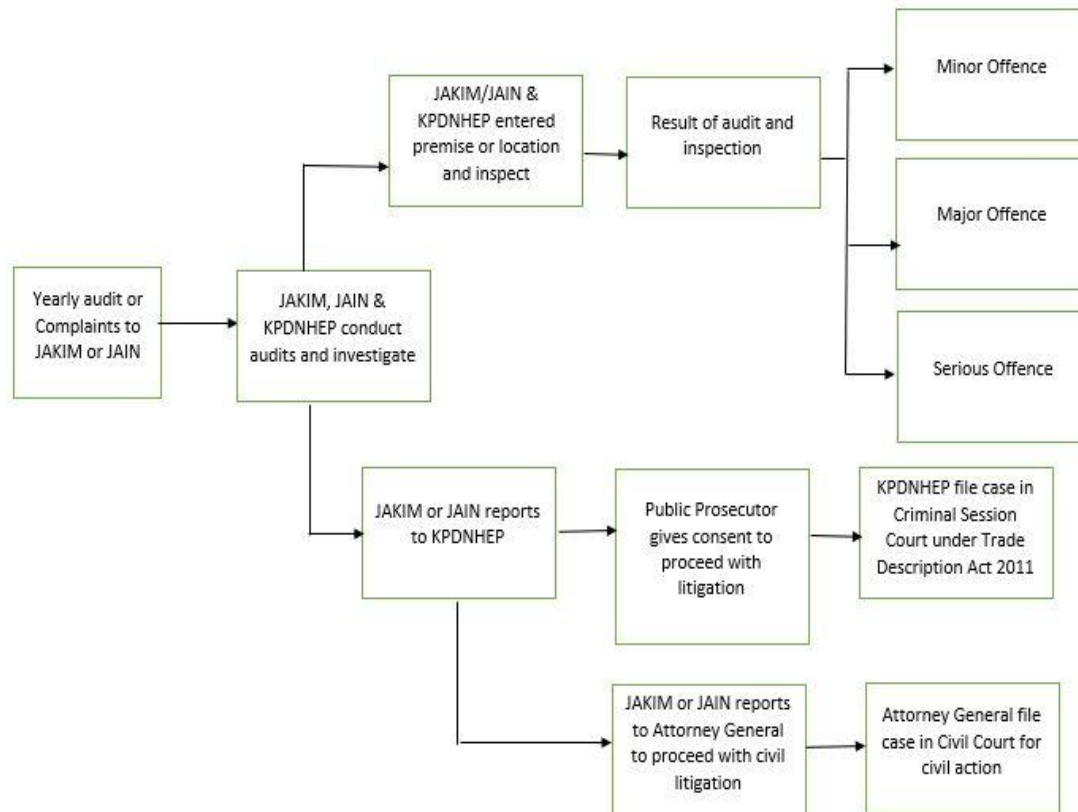
CONCLUSION

Therefore, the researcher agrees with the Halal Logistics Service Providers (HLSP) and academicians that for purpose up upholding the integrity of the industry, it is prudent to apply civil laws as this is another alternative to the existing mode of resolution. By having both civil and criminal regulation to police the activity, the goodwill of JAKIM's halal certification is properly preserved. The operation will follow the standards and avoid probable loss and damages and eventually the ecosystem of Halal logistics will gradually improve to the benefit of not only the consumer of Halal products and services, but all the parties involved.

Current application of Criminal Law in Halal cases



Proposed conceptual legal framework to include civil laws



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