

**THE UNIVERSITY OF HULL**

**CONSUMER PROTECTION REGARDING HALAL FOOD IN MALAYSIAN  
AND ENGLISH LAW**

**being a Thesis submitted for the Degree of**

**Doctor of Philosophy in Law**

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**by**

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## **ABSTRACT**

The thesis will explore consumer protection in respect of the abuse of halal food law in Malaysia. It will argue that the protection of halal food consumers is not sufficient to protect consumers in Malaysia. It will identify potential halal food-law infringements in the areas of certifications, false labelling, adulteration of halal food, improper slaughtering practices, questionable hygiene, and misrepresentation of halal.

This thesis will investigate the current legal framework of halal food by identifying the potential violation of law, and consequently, will explore possible remedies and legal protection in cases where there is halal food abuse in Malaysia. This thesis will also consider the issue of private remedies for consumers who suffer as a result of food abuses and will explore compensation as a remedy for the nuisance caused. In addition, it will explore the adequacy of administrative measures to address halal food issues in Malaysia and identify whether these measures are capable of preventing legal abuses and holding traders to account. The competent authorities who enforce halal standards face problems and difficulties in providing a sufficient level of policing. This thesis will explore the criminal remedies provided by Malaysian law to deal with halal food abuse.

While the problems in Malaysia and the United Kingdom may be similar, there are differences in how both countries deal with halal food issues. This thesis seeks to identify practices and solutions provided by English law which may be implemented in Malaysia to offer increased or more effective protection and to prevent halal food infringement.

This thesis will suggest that the law in Malaysia requires modification in order to improve consumer protection. It will indicate a need for effective implementation of legal and enforcement measures in Malaysia. Any consequences of the lack of resources will also be identified.

The thesis will conclude by providing recommendations on the implementation of a set of rules and compliance measures that will effectively contribute towards improving consumer protection vis-à-vis halal food in Malaysia.

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AER	All England Report
BRIMAS	Borneo Research Institute of Malaysia
CLY	Current Law Year Book
CA 1950	Contract Act 1950
CAP	Consumer Association Pulau Pinang
CEN	Comité Européen de Normalisation (European Committee for Standardization)
CLJ	Current Law Journal
COMCEC	Committee for Economic and Commercial Cooperation of the Organization of Islamic Cooperation
Cr App R	Criminal Appeal Reports
CRA 2015	Consumer Rights Act 2015
DNA	Deoxyribonucleic acid
DVS	Department of Veterinary Services
EA 2002	Enterprise Act 2002
EC	European Community
ECMs	Enhanced Consumer Measures
EU	European Union
EWHC	England & Wales High Court
FSA 1990	Food Safety Act 1990
FSA	Food Standard Authority

GMO	Genetically Modified Organism
HDC	Halal Industry Development Corporation
JAIN	State Islamic Religious Department
JAKIM	Department of Islamic Development of Malaysia
MAIN	State Islamic Religious Council
MARDI	Malaysian Agricultural Research and Development Institute
MDTCC	Ministry of Domestic Trade, Co-operatives and Consumerism
MITI	Ministry of Trade and Industry
MLJ	Malayan Law Journal
MOH	Ministry of Health
OIC	Organization of Islamic Cooperation
QB	Queen's Bench (Law Reports)
QBD	Queen's Bench Division
SAM	Friends of the Earth, Malaysia (Sahabat Alam Malaysia)
SMIIC	Standards and Metrology Institute for Islamic Countries
SoGA 1957	Sale of Goods Act 1957
SWT	Subhanahu Wa Taala (Glory to him, the exalted)
TC	Technical Committee
TDA 2011	Trade Description Act 2011
UK	United Kingdom
VO	Veterinary Officer

## TABLE OF LEGISLATION

### Malaysian law

Consumer Protection Act 1999 (Act 599)

Contracts Act 1950 (Act 136)

Federal Constitution 1957

Food Act 1983 (Act 281)

General Guidelines for Use of the Term 'Halal' 1997 (CAC/GL 24-1997)

Penal Code (Act 574)

Rules of Court 2012 (P.U.(A) 205/2012)

Specific Relief Act 1950 (Act 137)

Syariah Criminal Offences (Federal Territories) Act 1997 (Act 559)

Trade Description Act 2011 (Act 730)

Trade Descriptions (Certification and Marking of Halal Fees) Regulations 2011 (P.U. (A) 432)

Trade Descriptions (Certification and Marking of Halal) Order 2011 (P.U. (A) 431)

Trade Descriptions (Definition of Halal) Order 2011 (P.U. (A) 430)

### English law

Consumer Rights Act 2015 c. 15

Enterprise Act 2002 c. 40

Food Labelling Regulations 1996, SI 1996/1499

Food Law Code of Practice 2015

Food Safety Act 1990 c. 16

Food Safety and Hygiene (England) Regulations 2013, SI 2013/2996

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The General Food Regulations 2004, SI 2004/3279

The Welfare of Animals at the Time of Killing (England) Regulations 2015, SI 2015/1782

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Council Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs [2004] OJ L 139/1

Council Regulation (EC) No 853/2004 of the European Parliament and the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin [2004] OJ L 139/55

Council Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption [2004] OJ L 139/206

Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing [2009] OJ L 276/33

Council Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers [2011] OJ L 304/18

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*Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193

*Matang Plastik & Metal Work Industries Sdn Bhd & Ors v Daimler Chrysler Malaysia Sdn Bhd & Ors* [2014] 8 CLJ 998 (Court of Appeal)

*Mokhtar Hj Jamaludin v Pustaka Sistem Pelajaran* [1985] CLJ (Rep) 595 (High Court)

*Nam Leong Department Store (Miri) Sdn Bhd v PP* 2013 1 CLJ 583

*Public Prosecutor v Lip Lock Yuen Co* [2000] 1 LNS 200 (High Court)

*Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd* [2011] 9 CLJ 833

*Televisyen Broadcast and Others v Seremban Video Centre Sdn Bhd* [1985] 1 MLJ 171

*William Jacks & Co Sdn Bhd v Chemquip (M) Sdn Bhd* [1994] 3 MLJ 40

*Zainuddin bin Puteh v Yap Chee Seng* [1978] 1 MLJ 42

### English law cases

*Amira G Foods Ltd v Rs Foods Ltd* [2016] QB EWHC 76

*Anglo-Cyprian Trade Agencies Ltd v Paphos Wine Industries Ltd* [1951] 1 All ER 873

*Anns v Merton London Borough Council* [1978] AC 728

*Archer v Brown* [1985] QB 401

*Ashington Piggerie Ltd v Christopher Hill Ltd* [1972] AC 441

*Bhamra v Dubb* [2010] EWCA Civ 13

*Caparo Industries plc v Dickman and others* [1990] 2 AC 605

*Derry v Peek* (1889) 14 App Cas 337, 54 JP 148, 58 LJ Ch 864, 1 Meg 292, 38 WR 33,  
[1886-90] All ER Rep 1, 61 LT 265, 5 TLR 625

*Donoghue v Stevenson* [1932] AC 562; 1932 SC (HL) 31; 1932 SLT 317; [1932] WN 139 (House of Lords)

*Edgington v Fitzmaurice* (1885) 29 Ch D 459, 50 JP 52

*Langridge v Levy* (1837) 150 ER 863

*Liverpool City Council v Irwin and another* [1977] AC 239

*Malins v Cole & Attard* [1986] CLY 89 (Crown Court (Knightsbridge))

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*R v Yusuf (Yakub Moosa)* (2011) 1 Cr. App. R. (S.) 47

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*Wellesley Partners LLP v Withers LLP* [2015] EWCA Civ 1146 (CA)

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*Manoussakis and others v Greece* [1996] European Court of Human Rights Application no. 18748/91

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## CHAPTER 1: INTRODUCTION

This thesis explores consumer protection with regard to the abuse of halal food law in Malaysia. It identifies potential halal food law infringements, investigates the current legal framework of halal and explore possible remedies and legal protection in cases where there is halal food abuse in Malaysia. The protection of consumers regarding halal food is not effectively sufficient to protect consumers in Malaysia.

Therefore, to find solutions, this thesis explores how English law deals with similar problems. While the problems in Malaysia and the United Kingdom may be similar, there are differences in the method of dealing with halal food issues. This thesis identifies practices and solutions provided by English law which may be implemented in Malaysia to offer increased or more effective protection and preventing halal food abuse. The opening section will begin with the background of this research.

### 1.1 Background

Malaysia is known as one of the halal<sup>1</sup> players in the world and seeks to position itself as a halal world hub. The number of current Malaysian food industries<sup>2</sup> is increasing<sup>3</sup>, and the halal food market is growing fast<sup>4</sup>. There are many exhibitions, forums, and conferences which educate people and disseminate information on halal products, such as the World Food Market and the International Halal Showcase.<sup>5</sup>

The *Encyclopedia Britannica Almanac 2003* as adopted by Riaz and Chaudry<sup>6</sup> discusses halal activity in various countries where it is globally accepted and indicates that

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<sup>1</sup> The word 'halal' is commonly used to refer to something that is considered permissible and lawful by the Islamic religion. See Chapter 2.2 for a detailed discussion on the definition of halal.

<sup>2</sup> The Malaysian food industry consists of 5,565 food manufacturers and 172,252 food services entities.

<sup>3</sup> Hayati@Habibah Abdul Talib, Khairul Anuar Mohd Ali and Khairur Rijal Jamaludin, 'Quality Assurance in Halal Food Manufacturing in Malaysia: A Preliminary Study' [2008] Proceedings of International Conference on Mechanical & Manufacturing Engineering 1.

<sup>4</sup> Mohamed H Marei, 'A Rising Star? Halal Consumer Protection Laws' (2001) <<http://dash.harvard.edu/handle/1/8846786>> accessed 28 October 2013; Johan Fischer, 'Feeding Secularism: Consuming Halal among the Malays in London' (2005) 14 *Diaspora: A Journal of Transnational Studies* 275.

<sup>5</sup> 'MIHAS' <<http://www.mih.com.my>> accessed 7 March 2017.

<sup>6</sup> Mian N Riaz and Muhammad M Chaudry, *Halal Food Production* (CRC Press 2004).

Malaysia, which is a member of the Organization of Islamic Cooperation (OIC), is one of the countries that: (i) has strong halal activity both in food processing and export/import trading, which is evidenced by the halal certification within the country; (ii) requires halal certificates for importing into the country not only meat products but also processed meat, food, and other similar products; and (iii) has an organized halal certification either supported by the community or by its respective government<sup>7</sup>.

Legal provisions governing halal food production are found in various Acts, regulations, and standards. Laws and regulations concerning halal are important for the protection of consumers – for example, to ensure that halal food manufacturers and traders fulfil their moral and legal obligations towards consumers. The laws, regulations, and standards stand together as a guideline for all Muslim and non-Muslim food manufacturers<sup>8</sup>.

In the presentation of the Malaysian Government financial budget 2010, it was announced that the Malaysian Halal Act would be drafted to address issues concerning halal so as to strengthen the provisions of the law, the control of halal processes, halal procedures, and halal certification<sup>9</sup>. However, the Malaysian Halal Act has not been tabled in Parliament. In 2011, the Trade Description Act 1972 was repealed and replaced by the Trade Description Act 2011. There are amendments to legal provisions concerning halal in the Trade Description Act 2011<sup>10</sup>. The Trade Description (Certification and Marking of Halal) Order 2011 also contains provisions on the safeguarding of halal certification.

However, the halal food industry in Malaysia is complex. Even though halal food in Malaysia is regulated by the Malaysian Government, there is no uniform law or regulation on halal food<sup>11</sup>. The Trade Description Act 2011 is the main legislation governing halal

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<sup>7</sup> Hayati@Habibah Abdul Talib and Khairul Anuar Mohd Ali, 'An Overview of Malaysian Food Industry: The Opportunity and Quality Aspects' (2009) 8 *Pakistan Journal of Nutrition* 507, 509.

<sup>8</sup> Mustafa Afifi Ab Halim and Kamilah Wati Mohd, 'Keberkesanan Penguatkuasaan Undang-Undang Berkaitan Produk Halal Bagi Perlindungan Pengguna' in UKM Faculty of Islamic Studies (ed), *Proceedings of Seminar Persidangan Fiqh Muamalah dan Isu-isu Fiqh Semasa 2012* (2012) 8 <[http://www.ukm.my/jsyariah/index.php?option=com\\_content&view=article&id=11&Itemid=11](http://www.ukm.my/jsyariah/index.php?option=com_content&view=article&id=11&Itemid=11)> accessed 22 October 2013.

<sup>9</sup> Ahmad Hidayat Buang and Zulzaidi Mahmud, 'Isu dan Cabaran Badan Pensijilan Halal di Malaysia (The Issues and Challenges of Halal Certification Bodies in Malaysia)' (2012) 3 *Jurnal Syariah* 271, 279.

<sup>10</sup> s 28 and 29 give power to the Ministry to regulate Orders concerning halal food.

<sup>11</sup> Noriah Ramli, 'Legal and Administrative Regulations in Halal Production' in *The Modern Compendium of Halal Volume 1: The Essence of Halal* (Halal Industry Development Corporation 2011) 94.

food in Malaysia with the assistance of other related legislation. There are various agencies (as discussed in Chapter 3) that are able to address consumer protection issues and the efficiency of the halal legal framework if the agencies are collaborating effectively.

This thesis will examine how halal food manufacturers play their parts in controlling food before the labelling stage. Some manufacturers fail to display the sources of ingredients if they contain gelatine or emulsifier; the source may derive from a prohibited animal or non-halal ingredient, but the food label may nevertheless be labelled as halal.<sup>12</sup> This is why it is important to conduct this research in order to identify how far the manufacturers ensure the food processing comply with the halal requirements.

This thesis also seeks to explore the halal certification legal framework from a consumer protection standpoint by looking whether current law is sufficient to ensure the halalness of the food product. If it is not adequate, this thesis offers suggestion for improvement and this will contribute to the enhancement of halal food legal framework.

Malaysia has regulated its halal certification, but there still exists a great deal abuse in the implementation of halal certification. Halal certification regulation is different from other food regulations because it is not only covering the general food law requirement, but also the religious requirement as provided in Chapter 2 of this thesis. Due to this, there will be limited lessons from other areas. Cases of halal fraud have been reported but how far the laws protect consumers in this respect is still in question<sup>13</sup>. While legislation is in force, enforcement is lacking and ineffective. Thus, it is important to analyse the current halal legal framework and examine how the law protects consumers in halal food abuses in Malaysia.

A qualitative research approach will be adopted using doctrinal analysis and comparative jurisdiction approaches. Moreover, this research will provide recommendations to enhance the effectiveness of the legal infrastructures for halal food industries in order to enable the word 'halal' to become a marketing tool in winning the hearts of consumers as

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<sup>12</sup> Mustafa Afifi Ab Halim and Mohd Mahyeddin Mohd Salleh, 'The Possibility of Uniformity on Halal Standards in Organization of Islamic Countries (OIC) Country' (2012) 17 World Applied Science Journal 6.

<sup>13</sup> *ibid* 6, 7.

a symbol of health, quality, cleanliness, and safe products in accordance with Sharia<sup>14</sup> requirements.

After discussing the background of this research, the next sections will examine the problem statement, the objectives, and the research questions. It will also discuss the significance of the research, the scope, the methodology, the aim of this research, and chapter arrangement of this thesis.

## 1.2 Problem Statements

At present, the market for halal food is expanding significantly,<sup>15</sup> estimated to be USD 168 billion (GBP 120 billion) per annum<sup>16</sup> (See Section 4.1 for detail exploration on halal market). However, some halal food manufacturers have not complied with the regulations set by the authorities despite having halal certification. The issue has been controversial, with Muslim consumers beginning to question the status of halal food. For example, the issue concerning halal certification in Malaysia<sup>17</sup>, problem in observing halal food process in packaging<sup>18</sup> and problem of traceability and certification in halal supply chain.<sup>19</sup> There will be detail exploration of halal food abuse in Chapter 4 of this thesis. This thesis categorizing the halal food abuse as discussed in Section 4.3.2 that later help to analyse and identify the appropriate protection and remedy for consumer in halal food abuse in Malaysian law (Chapter 5) and English law (Chapter 6). Thus, it is important to examine how the law deal with halal food abuse and provides protection and remedies to consumer.

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<sup>14</sup> Sharia is 'a system of laws, rather than a codification of laws, based on the Quran and other Islamic sources' as per *Black's Law Dictionary* (BA Garner, *Black's Law Dictionary* (10th edn, 2014) 1586.

<sup>15</sup> Zunirah Talib, Suhaiza Zailani and Yusserie Zainuddin, 'Conceptualizations on the Dimensions for Halal Orientation for Food Manufacturers: A Study in the Context of Malaysia' (2010) 7 *Medwell Journal* 56.

<sup>16</sup> Sharifah Zannierah Syed Marzuki, 'Understanding Restaurant Managers' Expectations of Halal Certification in Malaysia' (University of Canterbury 2012) 17 <<http://ir.canterbury.ac.nz/handle/10092/6867>> accessed 31 October 2013.

<sup>17</sup> Buang and Mahmod (n 9) 271.

<sup>18</sup> Mohamed Syazwan Ab Talib and Mohd Remie Mohd Johan, 'Issues in Halal Packaging: A Conceptual Paper' (2012) 5 *International Business and Management* 94, 94.

<sup>19</sup> MP. Meuwissen and others, 'Traceability and Certification in Meat Supply Chain' 21 *Journal of Agribusiness* 167, 167.

The main question is whether the current legal infrastructures (particularly in Malaysia) are effective in supporting the halal industry. Whether consumers' rights are fully protected under halal-related legislations, and what are the remedies and protection provided by law if the traders or manufacturers are not complying with the regulations.

To date, there has been little discussion on consumer protection and remedies in halal food law. For example, Abu Bakar et. al presented their research on civil liabilities for false halal logo under Consumer Protection Act 1999 at Malaysia International Halal Research & Education.<sup>20</sup> The focus of their research is to identify how Consumer Protection Act 1999 provides protection for false halal logo. The research looks at civil remedy but not covering various issues and problems concerning halal food abuse in term of administration and criminal sanction. Halal food itself is complex and it is not able to find the best outcome if the only reference is due to Consumer Protection Act 1999. Amin and Abdul Aziz in their article, 'the liability of the producers of false halal products under product liability law' focus only on the product liability and private remedy. They examines whether non-halal products can be considered as 'defective' and what kind of injury can be recovered by the victims.<sup>21</sup> The findings of this study provide insights to producers and suppliers on the civil liability for supplying supposedly halal products and recognition of consumer right of redress for injury caused by non-halal products,<sup>22</sup> but how and what is the forum for consumer to make claim has not been explored since nature of halal food is not same with other goods. In other article, Ab Halim and others discussed the general protection provided by law in relation to halal products in Malaysia.<sup>23</sup> However, it does not explore in depth what are the problems and possible violation of law involved.

From a regulatory perspective, no major study has explored the fundamental issues pertaining to the enforcement of halal food law in Malaysia. There is literature on enforcement of consumer protection laws on halal products, but the focus of this literature

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<sup>20</sup> Elistina Abu Bakar, Sa'odah Ahmad and Rojanah Kahar, 'Civil Liabilities for False Halal Logo under the Consumer Protection Act 1999', *Malaysia International Halal Research & Education* (Halal Product Research Institute 2014) <<http://www.slideshare.net/HadiAkbar1/mihrec-2014-conference-proceeding>>.

<sup>21</sup> Naemah Amin and Norazlina Abdul Aziz, 'The Liability of the Producer of False Halal Products under Product Liability Law' (2015) 11 *Asian Social Science* 295, 298.

<sup>22</sup> *ibid* 300.

<sup>23</sup> Mustafa Afifi Ab Halim and others, 'Consumer Protection of Halal Products in Malaysia' (2013) 13 *World Applied Science Journal* 22.

is limited to the obstacles and issues in enforcing halal food law in three states of Malaysia which are Federal territory, Selangor and Kelantan.<sup>24</sup> It does not explore the types of administrative remedy that impose in the case of halal food abuse. In the event of halal food abuse, consumers should be compensated, the traders should be punished, and the relevant authority should take necessary measures to ensure that such abuse is not repeated. However, this is not being done in Malaysia. Currently, it is difficult to prosecute cases relating to halal due to the lack of enforcement<sup>25</sup>. If a law is enacted but such law cannot protect consumers, there will be no purpose in having such law<sup>26</sup>. There is no detail discussion on how the law responses to the misuse of halal in Malaysia from private, administrative and criminal sanction. This is a stronger case about what new finding the thesis is adding, to explore appropriate protection and remedy for consumer as discussed in Chapter 5 of this thesis.

In order to analyse the application of the current Malaysian law relating to halal foods, it is important to consider whether the requirements are clearly set out; whether there are any incentives for compliance; and whether there are appropriate sanctions for non-compliance because these factors may determine the effectiveness of regulation.<sup>27</sup>

In terms of the halal certification process, there is a question whether the origins of ingredients of halal foods or products comply with Sharia requirements as outline in Chapter 2. If they do not, how is it best to remedy this issue in order to protect consumers? How can consumers seek redress if food products are non-halal but nevertheless are labelled as halal? Consumers may have difficulty obtaining redress unless there is a proven defect<sup>28</sup>.

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<sup>24</sup> Mustafa Afifi Ab Halim and others, 'Enforcement of Consumer Protection Laws on Halal Products In Malaysia: A Case Study in the State Religious Departments' (2013); Mustafa Afifi Ab Halim and Azlin Alisa Ahmad, 'Enforcement of Consumer Protection Laws on Halal Products: Malaysian Experience' (2014) 10 Asian Social Science 9.

<sup>25</sup> Ab Halim and Mohd (n 8).

<sup>26</sup> Mustafa Afifi Ab Halim and others, 'Enforcement of Consumer Protection Laws on Halal Products In Malaysia: A Case Study in the State Religious Departments' (The Asian Conference on Social Sciences, Kyoto, Japan, June 2013) 1, 4.

<sup>27</sup> Christopher Hood, Henry Rothstein and Robert Baldwin, *The Government of Risk: Understanding Risk Regulation Regimes* (OUP 2001) 37.

<sup>28</sup> Christian Twigg-Flesner, *Consumer Product Guarantees* (Ashgate Publishing Limited 2003) 20.

This thesis will also analyse the requirements of halal food law, how effectively the law responds to infringements, and how such law and infringements are monitored by the relevant regulatory bodies. It will also examine the effectiveness of Department of Islamic Development of Malaysia (JAKIM) as a government agency entrusted to lead and deal with the issue of halal certification and the role of relevant regulatory bodies dealing with halal food abuse and the appropriate measures that should be applied to reduce future abuses and infringements. This is important to gain confidence and trust from the consumer since halal in Malaysia is regulated by the government. Failure of the government agency entrusted with halal to deal with halal abuse effectively will give impact on consumer confidence.

This thesis will identify problems in the current halal-food official controls, which render them unable to deliver effective halal food control. Thus, this thesis will seek to address the consumer issues arising from the practical aspects of halal food law, by studying and analysing the existing law and the halal framework in Malaysia by making comparisons with other jurisdictions. In addition, this thesis will seek to highlight the importance of enhancing the effectiveness of the current halal-food legal framework to achieve such effectiveness.

### **1.3 Objectives**

Halal is essential for Muslim consumers<sup>29</sup>. Allah SWT<sup>30</sup> made it compulsory for Muslims to consume halal food.<sup>31</sup> It is vital that consumer protection law is sufficiently practical to ensure that the rights of consumers are being protected.

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<sup>29</sup> Halal food is related to the religion as Allah said in Al-Qur'an 23:51: 'Eat of the good things, and do right. Lo! I am aware of what you do.' In another verse 2:172 Allah said, 'O ye who believe! Eat of the good things that We have provided for you, and be grateful to God, if it is Him ye worship.'

<sup>30</sup> Muslims God is Allah and when writing the name of Allah, it is often followed with the abbreviation 'SWT'. It is an Arabic word 'Subhanahu Wa Taala,' which means 'Glory to Him, the Exalted'. See Huda, 'Islamic Abbreviation: SWT' (*ThoughtCo*) <<https://www.thoughtco.com/islamic-abbreviation-swt-2004291>> accessed 9 March 2017.

<sup>31</sup> AM Yunus, WMY Wan Chik and M Mohamad, 'The Concept of Halalan Tayyiba and Its Application in Products Marketing: A Case Study at Sabasun HyperRuncit Kuala Terengganu, Malaysia' (2010) 1 *International Journal of Business and Social Science* 239.

Thus, this thesis will examine problems relating to halal food and analyse the different bases of liability which offer different protections to consumers under both Malaysian and English law.

This thesis will have the following objectives:

1. To identify current practices in the halal certification framework under Malaysian and English law.
2. To investigate the protection provided by the law relating to the abuse of halal products.
3. To identify the appropriateness of implementing any relevant regulations in Malaysia with preference to the existing rule under the English law which is related to the protection of consumers applicable to halal food abuse.

### **1.3.1 Research Questions**

The standards and procedure for the halal certification process differ from one country to another. Having different standards for halal may give an opportunity to some traders to benefit from the situation by abusing the halal label.<sup>32</sup> Even though some countries have their own halal certification, there is a lack of legal enforcement and this is discussed in Chapter 4 (on the halal market and the abuse of the halal label) and also in Chapter 3 (on halal certification and food certification). For the purpose of achieving the objectives of this thesis, it is important that the research questions are formulated correctly.

The main question is, how can consumers be protected from halal food abuse, and does the existing law provide the appropriate protection and remedies for consumers of halal food?

Based on the main question above, there arise the following research questions:

1. What are the developments and the current practice of the halal certification framework under Malaysian and English law?
  - (a) Is the current practice of halal certification adequate to enable consumers to obtain genuine halal food?

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<sup>32</sup> Amin and Abdul Aziz (n 21) 295.



2. What are the protection and remedies provided by the law relating to the abuse of halal products?
  - (a) Why is there halal food abuse, even though the law has been implemented?
  - (b) What are the remedies provided by Malaysian law and English law for halal food abuse?
  - (c) How effective does halal regulation work for halal consumers in protecting consumers from halal food abuse?
  
3. What are the recommendations to protect consumers in relation to halal food?
  - (a) What are the appropriate legal tools to protect consumers of halal food?

#### **1.4 Significance of the Research**

This thesis is important as the halal industry is a growing industry estimated to be USD 168 billion (GBP 120 billion) per annum.<sup>33</sup> The industry is not limited to the Muslim community; non-Muslims buy halal products too (See Section 4.1 of this thesis for the discussion on halal market). Hence, the effectiveness of the legal framework and the application of halal laws are very important to ensure that the consumers are fully protected and that there is no abuse of halal products. Research is also significant and objective study is merited because most of the literature either criticizing or supporting the halal statutes lacks detail and objectivity.

This thesis will have impact and significance for both Muslim consumers in Malaysia and non-Muslims living in Malaysia. Since Malaysia is one of the leading countries in promoting halal certification and standards, it can be viewed as a benchmark for global halal standards and certification<sup>34</sup>. This thesis will also provide recommendations for the improvement of the halal legal framework in Malaysia for better protection of consumers of halal food.

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<sup>33</sup> Syed Marzuki (n 16) 17.

<sup>34</sup> H Mohd Yusoff, 'Halal Certification Scheme' (2004) 11 Standard & Quality News 4.

## 1.5 Research Methodology

The emphasis of this thesis is on qualitative methodology and will apply doctrinal and comparative approaches.

Doctrinal analysis is deployed to examine the content of the legal provisions and to analyse it appropriately<sup>35</sup>. In this thesis, the method was conducted to establish the conformance and permissibility of the operational aspect of halal with Sharia.

Relevant halal regulations and statutes will be scrutinized in terms of the holistic nature of the focus of the issues – halal and consumer protection. For the purpose of justifying the acceptable values in operating a Sharia base of halal, the Sharia values are defined in Chapter 2 as information which is relevant to halal food business and dealings. The doctrines which are the subject of the thesis are primarily the consumer law and the consumer protection law relating to halal food. This thesis will include textual studies based on the literature and academic texts relevant to halal and consumer protection law. Such literature comprises published journals, periodicals, books, theses, the Halal Certification Guideline, unpublished articles, and Internet resources. The statutes pertaining to halal will also be analysed, including: Food Act 1983 (Act 281) of Malaysia; Food Regulations 1985 of Malaysia; Local Government Act 1976 (Act 171); Trade Descriptions Act 2011 (Act 87); Trade Descriptions (Certification and Marking of Halal) Order 2011; Trade Descriptions (Definition of Halal) Order 2011; and Consumer Protection Act 1999 (Act 599). Secondary data will include government publications, websites, company records, journal articles, and seminar write-ups.

This thesis will use the comparative approach, which a common method used in legal studies. The legal comparative analysis is the ‘principle of functionality’ which allows jurisprudences to benefit from each other in terms of tools, interpretation, and research<sup>36</sup>. The comparative method is useful to find the best solution. If a problem arises in another system or jurisdiction, it cannot be rejected simply because it is foreign and *ipso facto*

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<sup>35</sup> Emerson H Tiller and Frank B Cross, ‘What Is Legal Doctrine’ [2006] Northwestern University Law Review 2.

<sup>36</sup> Ralf Michaels, ‘The Functional Method of Comparative Law’ in Mathias Reimann and Reinhard Zimmermann (eds), *The Oxford Handbook of Comparative Law* (OUP Oxford 2008) 343.

unacceptable<sup>37</sup>. Before adopting a foreign solution, there are several grounds to consider – whether it was a success in its country of origin and whether it could work in the country proposed<sup>38</sup>. Halal regulation and certification differs from one country to another and the foreign legal provisions must be analysed to see if they would be a good fit for consumer protection in halal law.

Two different jurisdictions were selected for the purpose of comparative study specifically relating to the protection of consumers of halal food: Malaysian law (in Malaysia) and English law (in the UK).

Malaysia was chosen because it is promoting halal food and seeks to become the halal hub of the world<sup>39</sup>. Further, Malaysia has its own halal certification for food which is issued by Government<sup>40</sup> and has reputation locally and internationally<sup>41</sup>.

The UK was chosen as it has a good reputation for protecting consumers and has implemented specific statutes for consumer protection such as, most recently, the Consumer Rights Act 2015.

It is also important for this thesis to examine the related institutions that deal with halal issues under English law, and to compare this function with that of institutions under Malaysia law. Michaels points out: ‘Institutions, both legal and non-legal, even doctrinally different ones are comparable if they are functionally equivalent, if they fulfil similar functions in different legal systems’.<sup>42</sup> For example, there are various agencies dealing with halal issues in Malaysia such as Islamic Development Department of Malaysia (JAKIM), Ministry of Health (MOH), and Ministry of Domestic Trade,

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<sup>37</sup> K Zweigert and H Kötz, *An Introduction to Comparative Law* (Tony Weir tr, 3rd edn, Clarendon Press 1998) 17.

<sup>38</sup> *ibid.*

<sup>39</sup> Nik Maheran Nik Muhammad, Filzah Md Isa and Bidin Chee Kifli, ‘Positioning Malaysia as Halal-Hub: Integration Role of Supply Chain Strategy and Halal Assurance System’ (2009) 5 *Asian Social Science* 44, 45; Abdul Talib and Mohd Ali (n 7) 508.

<sup>40</sup> Halal certification for food in Malaysia is performed by the Islamic Development Department of Malaysia (JAKIM) or State Islamic Religious Council (JAIN), whereas in most other countries in the world the Halal certification is certified by religious associations or religious leaders (see Chapter 3.3 on Halal certification in the world).

<sup>41</sup> Nik Muhammad, Md Isa and Chee Kifli (n 39) 45.

<sup>42</sup> Michaels (n 27) 342; Ralf Michaels, ‘The Functional Method of Comparative Law’ in *Duke Law School Faculty Scholarship Series* (2005) 4 <[http://Isr.nellco.org/duke\\_fs/26](http://Isr.nellco.org/duke_fs/26)> accessed 13 February 2016.

Cooperative and Consumerism (MDTCC), and the comparison can demonstrate how institutions under English law such as the Food Standard Authority (FSA) perform their role and functions in relation to halal food issues.

This thesis will examine problems concerning halal food that have occurred in the UK and how English law has dealt with such problems. It is also important to examine how English law in the UK affords protection to consumers from halal food abuse and whether it functions efficiently because ‘the basic methodological principle of all comparative law is that of *functionality*’.<sup>43</sup>

The approach to compare with English law was chosen so as to evaluate the effectiveness of the law and to determine whether it is appropriate to deal with halal food problems. It then may help find a better solution for Malaysian law. As Zweigert and Kötz point out: ‘Comparative law is an ‘*école de vérité*’ ... [and] offers the scholar of critical capacity the opportunity of finding the “better solution” for his time and place’.<sup>44</sup>

The main purpose of this thesis is to identify potential solutions to problems concerning halal food abuse in Malaysia and to analyse different bases of liability which offer different protections to consumers. In addition, it will seek to investigate the appropriateness of implementing any relevant rule in Malaysia with reference to the existing rule under English law related to halal food.

## **1.6 Scope of the Thesis**

The scope of this thesis will be current practices in the halal legal framework as governed in Malaysia, and one other jurisdiction will be selected for the purpose of comparison. The jurisdiction chosen for this thesis are Malaysian law and English law. This thesis will analyse the existing law and the certification and regulation related to halal food in the area of consumer protection law.

## **1.7 Selected Jurisdiction and Rationale**

Most countries have their own regulations, laws, procedures, and statutes and the food industries within those countries must comply with them. Different countries will use

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<sup>43</sup> Zweigert and Kötz (n 37) 34.

<sup>44</sup> *ibid* 15.

different Acts, regulations, and guidelines, but it is still necessary for them to follow and be consistent with international practices (even with some modifications to suit local circumstances) to ensure that they can market their product globally<sup>45</sup>.

In order to discuss the issues of regulation related to halal food and consumer protection, this thesis will divide the discussion into two different jurisdictions: The Malaysian law and the English law.

Malaysia has its own halal certification for food which is issued by the Government<sup>46</sup> and has a reputation both locally and internationally<sup>47</sup>. Even though Malaysia has not created a specific halal statute, the provisions concerning halal are embedded in other legislations. Malaysia is actively hosting a forum and debate on halal products and services<sup>48</sup>. The global halal market has huge potential<sup>49</sup> and accordingly the Malaysian Government has introduced the Third Industrial Master Plan (IMP3) 2006-2020, pursuant to which it seeks to become a global halal hub for the production and trade in halal goods and services<sup>50</sup>.

The other jurisdiction to be studied in the current halal legal framework is English law in the UK. This is because Malaysia sharing the same legal family with UK, which is common law system. Malaysia also make many references to English law as provided in the Civil Law Act 1956, incorporated principles of English common law as at 1957<sup>51</sup>. As a result, common law doctrines have been adopted into Malaysian jurisprudence and applied by Malaysian courts but are limited to Section 3 of the Civil Law Act 1956<sup>52</sup>.

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<sup>45</sup> Abdul Talib and Mohd Ali (n 7).

<sup>46</sup> Halal certification for food in Malaysia is certified by the JAKIM/JAIN/MAIN while most of the countries in the world, their Halal certification is certified by Religious Association or religious leader (See Halal certification in the world in Chapter 3).

<sup>47</sup> Nik Muhammad, Md Isa and Chee Kifli (n 39) 45.

<sup>48</sup> *ibid*.

<sup>49</sup> See Chapter 4.1.

<sup>50</sup> MITI (Ministry of International Trade and Industry), 'Third Industrial Master Plan (IMP3)' <[http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section\\_8ab58e8f-7f000010-72f772f7-dbf00272](http://www.miti.gov.my/cms/content.jsp?id=com.tms.cms.section.Section_8ab58e8f-7f000010-72f772f7-dbf00272)> accessed 3 March 2014.

<sup>51</sup> Malaysia's year of independence

<sup>52</sup> This section provides for cut-off dates for the application of English law to specific parts of Malaysia. In Peninsular Malaysia, the courts must apply the common law of England and the rules of equity as administered in England on the 7<sup>th</sup> day of April 1956. In Sabah and Sarawak, the courts must apply the common law of England and the rules of equity as administered or in force in England on the 1<sup>st</sup> day of December 1951 and the 12<sup>th</sup> Day of December 1949 respectively.

However, if there is a conflict of law between English law and written law in Malaysia, Malaysian written law prevails<sup>53</sup>. English cases after 1957 together with decisions of courts of other Commonwealth countries continue to have persuasive authority and are considered by Malaysian courts in arriving at their judgments<sup>54</sup>.

Unwritten law consists of Malaysian case law, customary law<sup>55</sup>, English Common Law and others Commonwealth jurisdiction. Michael F. Rutter opined that the applicable law in Malaysia is an assortment of differences, borrowed law, continuing traditions and locally produce jurisprudence<sup>56</sup>.

Most importantly, The UK is renowned for its consumer protection laws and has enacted specific consumer protection legislation such as the recent Consumer Rights Act 2015. There are some of the key areas where research question drives this thesis, for example on private law. There has been very recent modernization, clarification, updating and re-thinking, for example Consumer Rights Act 2015. This area of law tries to think about modern rule, condition and circumstances, for example in the definition of satisfactory quality, fit for purpose and match the description which is also applicable to halal food.

Chapter 6 of this thesis (the current halal legal framework and responses to the misuse of halal in the United Kingdom from English law perspective) will explore this in greater detail.

## **1.8 Thesis Structure**

This thesis consists of seven chapters and is arranged so as to present the reader with a background of the subject and then to answer the research questions.

Chapter 2 identifies the philosophy and concept of halal food. This chapter seeks to provide an understanding of halal food and summarizes the requirements for halal food

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<sup>53</sup> Ahmad Ibrahim and Joned Ahilemah, *The Malaysian Legal System* (Dewan Bahasa dan Pustaka 1995) 81–91.

<sup>54</sup> *ibid* 116–141; MF Rutter, ‘The Applicable Law in Singapore and Malaysia’ [1989] *Malayan Law Journal* 413, 413–548.

<sup>55</sup> Customary law can further be sub-divided into Malay customary law, Chinese customary law, Hindu customary law and native customary law. See M.F.Rutter ‘The Applicable Law in Singapore and Malaysia’ (1989) *Malayan Law Journal* 413.

<sup>56</sup> Rutter (n 54) 551.

as per Sharia. In addition, it discusses the *tayyib* concept, which is one of the most important criteria for halal food. This chapter assists in identifying the meaning of halal not only in a literal sense but also in relation to the Sharia requirements for halal food.

Chapter 3 examines the halal certification process in Malaysia and the UK. The chapter begins by discussing the halal labelling process and then presents the wider overview of halal certification throughout the world before examining the halal certification in Malaysia and the UK. The chapter reviews the introduction of halal certification in Malaysia and identifies the agencies involved in halal food. It also addresses the foreign halal logo that is applicable in Malaysia and the issues associated with it. It then reviews halal certification in the UK and the effort to introduce a European Standard on halal food.

Chapter 4 explores the halal market and consumer perception of the halal label. It then proceeds to examine the nature of halal food abuse and the potential breaches of Malaysian law. In order to discuss the potential breaches of law, the halal legal requirements and the relevant Malaysian laws are explored. There are in total six potential legal infringements of halal food related to the various laws identified in this chapter.

Chapter 5 investigates the current state of consumer protection in Malaysia by examining the legal responses to halal food abuses in Malaysia. It is divided into two parts: Part 1 examines the available remedies for consumers in terms of private remedies, administrative remedies, and criminal remedies, while Part 2 discusses the mechanism to deal with halal food abuse and the implementation of the mechanism. This chapter provides an overview of the administrative enforcement action to deal with halal food abuse in Malaysia. It also evaluates the effectiveness of administrative sanctions in Malaysia that exist to protect consumers from halal food abuse. Finally, the chapter explores the problems pertaining to prosecution of offenders in halal food abuse, including evidential problems in halal food abuse cases.

Chapter 6 studies the halal legal framework and the responses to the halal food abuses by English law. It begins with an examination of the halal food legal framework to establish the requirement of halal from a legal perspective, the religious requirement and the general food requirement. In contrast, under English law, there is only the general food requirement. Thus, it is important to examine whether the general food requirement, as it exists in English laws, is compatible with the halal food requirement. The chapter also

investigates the legal remedies provided by English law to protect consumers from halal food abuse and the way in which English law achieves compliance in food-related issues, as these can also be applied to halal food. It is noteworthy that Enhanced Consumer Measures (ECMs) under Part 8 of the Enterprise Act 2002 (as introduced by the Consumer Rights Act 2015) make it possible to tackle some of the difficulties presented in the Malaysian model.

Chapter 7 discusses the findings and sets out the potential solutions and recommendations for halal food-law infringements. Such findings reflect the need to restructure the current law in Malaysia in order to deal with halal food abuse and to provide consumers with greater protection and increased avenues for redress.



## CHAPTER 2: PHILOSOPHY AND CONCEPT OF HALAL AND *TAYYIB* FOOD

### 2.1 Introduction

The previous chapter discussed the background of this research. It is important to identify and gain an understanding on the meaning of halal and to achieve that purpose, this chapter will examine the philosophy and concept of halal and *tayyib*. *Tayyib* is one of the concepts relating to halal and will be discussed in this chapter. There is a misconception that halal food is only free from pork. However, as well as being ‘pork-free’ many processes are involved to fulfil the criteria set by Sharia which will be discussed in detail in this chapter.

This chapter will begin with the section on the definition of halal food in order to identify what is deemed as halal in Islam. It is followed by halal slaughtering section, which discusses the requirements to be fulfilled for animal slaughtering. This chapter also consists of section concerning halal food processing and halal packaging.

### 2.2 Definition of Halal Food

This section will discuss the definition of halal food from religious and legal perspective. It will also discuss the requirements of halal food concerning the prohibited and permitted animal, prohibition of the meat of dead animals or carrion, prohibition of flowing blood, prohibition of pork and prohibition of intoxicants.

#### 2.2.1 Definition of Halal from Religious Perspective

Halal is an Arabic word, having its origin from the verb ‘*halla*’, which means lawful or permitted<sup>57</sup>. Its antonym is *haram*, which means forbidden. Food plays a vital role for human beings. It is important for Muslims to seek and find halal food, because Muslims have their own food restrictions<sup>58</sup>. Halal food is a food which fulfils the Sharia

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<sup>57</sup> John Pointing and Yunes Teinaz, ‘Halal Meat and Food Crime in the UK’ (2004). Ab Halim and Mohd Salleh (n 12); Frans Van Waarden and Robin Van Dalen, ‘Hallmarking Halal’ (2010) <<http://regulation.upf.edu/dublin-10-papers/5F3.pdf>> accessed 1 November 2013.

<sup>58</sup> Syed Marzuki (n 16).

requirement and is not contaminated with *haram* (prohibited) ingredients, exploitation of labour or environment, and not harmful or intended for harmful use<sup>59</sup>.

Halal rules are set out in the Holy book of Muslims, which is Al-Qur'an.<sup>60</sup> The chapters of the Qur'an that are relevant to halal are *Surah Al-Baqara* (The Cow), *Al-Maidah* (The Table Spread), and *Al-An'am* (Cattle). The three *Surahs* describe food as a sign from God for which believers owe gratitude<sup>61</sup>. Foods that are perpetually mentioned in the Quran include honey, dates, milk, semolina, and wine<sup>62</sup>.

Allah states in *Surah Al-Baqarah*, verses 172-173:

172. O ye who believe! eat of the good things that we have provided for you, and be grateful to Allah, if it is Him ye worship.

173. He hath only forbidden you dead meat, and blood, and the flesh of swine, and that on which any other name hath been invoked besides that of Allah, but if one is forced by necessity, without wilful disobedience, nor transgressing due limits, then is He guiltless. For Allah is Oft-forgiving Most Merciful<sup>63</sup>.

Allah states in *Surah Al-Maidah*, verse 6 and 87:

6. This day all things good and pure have been made lawful to you.

87. O ye who believe! Forbid not the good things that Allah has made halal for you.

Based on the above Surah, halal does not only constitute a good food but should not consist of dead mead, blood, flesh of swine and any permitted animal slaughter not in the name of Allah. Halal can also be defined as conduct or personal action where the individual has freedom to choose and its

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<sup>59</sup> Kambiz Heidarzadeh Hanzaee and Mohammad Reza Ramezani, 'Intention to Halal Products In The World Markets' (2011) 1 Interdisciplinary Journal of Research in Business 1.

<sup>60</sup> Al-Qur'an is a sacred book for Muslim and become the most important guidance for Muslim in their daily life. Quranic chapters are called *surah* and verses are called *ayah*. It contains 114 *surah* and 6256 *ayat*. See Al-Islam.org, *Physical Aspects of the Noble Qur'an* <<http://www.al-islami.org/introduction-glorious-quran-bahram-samii/physical-aspects-noble-quran>> accessed 27 January 2014.

<sup>61</sup> Syed Marzuki (n 16) 14.

<sup>62</sup> Syed Marzuki (n 16).

<sup>63</sup> All Quranic translation in this writing are based on Tafsir Ibn Kathir (Plug in Al Quran for Ms Word) except stated otherwise.

implementation does not give reward or punishment to the individual.<sup>64</sup> Halal is identified based on the evidence in the Sharia as and Muslim jurists formulated guidelines for its application in slaughter procedure and dietary ingredients.<sup>65</sup>

### 2.2.2 Definition of Halal from Malaysian Law

The definition of halal food is also embedded in Malaysian law. The definition of food is stated in Section 3 of the Food Act 1983 that 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 and includes confectionery, chewing substances and any ingredient of such food, drink, confectionery or chewing substances.

In section 3 of Trade Description (Definition of Halal) Order 2011, halal is defined as follows:

When food or a good or service in relation to the food or goods used in the course of trade or business is described as 'Halal' or by any other expression indicating that Muslims are permitted to consume or use such food or goods or service, it means the food or good or service in relation to the food or goods:

- (a) neither is nor consists of or contains any part or matter of an animal that a Muslim is prohibited by *Hukum Syarak*<sup>66</sup> to consume or that has not been slaughtered in accordance with *Hukum Syarak* and *fatwa*<sup>67</sup>;
- (b) does not contain anything impure according to *Hukum Syarak* and *fatwa*;
- (c) does not intoxicate according to *Hukum Syarak* and *fatwa*;
- (d) does not contain any parts of a human being or its yield which are not allowed by *Hukum Syarak* and *fatwa*;
- (e) is safe to be used or consumed, not poisonous or hazardous to the health;
- (f) has not been prepared, processed or manufactured using any instrument that was not free from anything impure according to *Hukum Syarak*;
- (g) has not in the course of preparation, processing or storage been in contact with, mixed, or in close proximity to any food that fails to satisfy paragraph (a) and (b).

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<sup>64</sup> Mohammad Hashim Kamali, *The Parameters of Halal and Haram in Shari'ah and the Halal Industry* (IIIT 2013) 2.

<sup>65</sup> *ibid.*

<sup>66</sup> *Hukum syarak* refer to Sharia.

<sup>67</sup> *Fatwa* refer to ruling made by Islamic Scholar.

Hence, halal consists of anything that is free from any component that Muslims are prohibited from consuming. Muslims are permitted to consume food which does not contain any animal or part of an animal that is forbidden by Sharia. In other words, the food must not contain any part of an animal that is forbidden by Islam – for example, pork.

Malaysian Halal Standard MS1500:2009 defines halal as the things or actions permitted by Sharia without punishment imposed on the doer<sup>68</sup>. Further, these Guidelines give the meaning of halal food as follows<sup>69</sup>:

to mean food fit for human consumption and permitted by Sharia Law and fulfils the following conditions:

- a) do not contain any parts or products of animals that are non-Halal by Sharia law or any parts or products of animals which are not slaughtered according to Sharia Law;
- b) does not *najs*<sup>70</sup> according to Sharia Law;
- c) is safe for consumption, non-poisonous, non-intoxicating or non-hazardous to health;
- d) is not prepared, processed or manufactured using equipment contaminated with *najs* according to Sharia Law;
- e) does not contain any human parts or their derivatives that are not permitted by Sharia Law;
- f) during its preparation, processing, packaging, storage or distribution, the food is physically separated from any other food that does not meet the requirements stated in items (a), (b), (c), (d) or (e) or any other things that have been decreed as *najs* by Sharia law.

The definition in these Guidelines is not different from the definition given by the Trade Description (Definition of Halal) Order 2011, the term is different, but it has the same meaning.

It is to be noted that both the Trade Descriptions (Definition of Halal) Order 2011 and Malaysian Halal Standard MS1500:2009 are in line with the international guidelines for halal provided by Codex Alimentarius Commission<sup>71</sup>, known as Codex General

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<sup>68</sup> Department of Standards Malaysia, *MS 1500:2009 Halal Food - Production, Preparing, Handling and Storage - General Guidelines (Second Revision)* (2009).

<sup>69</sup> *ibid.*

<sup>70</sup> *Najs* mean unclean or dirty. It is a term used to refer things that are not permissible and Muslim should avoid any foods containing *najs*.

<sup>71</sup> The Codex Alimentarius Commission is an international standard setting body for food safety jointly administered by two United Nations agencies which are The Food Agriculture Organisation (FAO) And the World Health Organisation (WHO) in 1963. Their role is to develop and harmonised international food

Guidelines for Use of the Term ‘Halal’ which is a supplement to the Codex General Guidelines on Claims. This Guidelines provide basic and general information on how food may be produced and claimed as halal as follows:

When a claim is made that a food is Halal, the word Halal or equivalent terms should appear on the label<sup>72</sup>. In accordance with “Codex General Guidelines on Claims”, claims on Halal should not be used in ways which could give rise to doubt about the safety of similar food or claims that Halal foods are nutritionally superior to, or healthier than, other foods.<sup>73</sup>

In contrast, haram is the opposite of halal and it means that which the Law-Giver has absolutely prohibited; anyone who commits it is liable to incur the punishment of Allah in the Hereafter as well as a legal punishment in the world<sup>74</sup>.

### **2.3 Religious Requirements for Halal Food**

General Quranic guidance dictates that all foods are halal except for those that are specifically mentioned as haram in the Quran or in an authentic Hadith. Allah SWT says:

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.<sup>75</sup>

From this verse, it can be understood that Islam sets out two requirements for food consumption: halal (permissible by Sharia) and *tayyib* (of good quality). A particular food type may not be of good quality but may nevertheless be halal. Therefore, one is expected,

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standards, guidelines and codes of practice to protect the health of the consumers and ensure fair practices in the food trade. The application of Codex standards is voluntary to its member but in many cases, it serves as a basis for national legislation.

<sup>72</sup> General Guidelines for Use of the Term ‘Halal’ 1997, para 4.1.

<sup>73</sup> *ibid* 4.2.

<sup>74</sup> Yusuf Al-Qardhawi, *The Lawful and the Prohibited in Islam* (Al-Falah Foundation for Translation 2001) xxv.

<sup>75</sup> Translation of Al-Qur’an, *Al-Baqarah*, 2:168.

when choosing food, to give priority to food of good quality, both in terms of decency or health, and lawfulness in terms of religious requirements.<sup>76</sup>

In this era of technology, food technology has become more complex. The concept of halal can no longer be restricted to simply meaning food that has prohibited elements in its physical existence, as it covers a multitude of forms such as emulsifiers and other food substances such as gelatine, enzymes, lecithin, and glycerine as well as additives such as stabilizers, flavouring, colouring, and breadcrumbs<sup>77</sup>. Halal consumers need to be cautious because food may contain prohibited elements which are not physically apparent because the original elements are not there physically but can only be identified in the laboratory.

The halal dietary laws deal with the issues set out in 2.3.1–2.3.7 below.

### **2.3.1 Prohibited and Permitted Animals**

The meat of pigs, boars, and swine is strictly prohibited, as is the meat of carnivores such as lions, tigers, cheetahs, dogs, and cats, and birds of prey such as eagles, falcons, osprey, kites, and vultures<sup>78</sup>.

The meat of domesticated animals such as ruminants with split hooves (cattle, sheep, goats, lamb) is permitted, as is meat from camels and buffaloes<sup>79</sup>. Also permitted is meat from birds that do not use their claws to hold down food, such as chickens, turkeys, ducks, geese, pigeons, doves, partridges, quails, sparrows, emus, and ostriches. The meat of some animals and birds is permitted only in special circumstances or subject to certain conditions<sup>80</sup>.

Food from the sea, namely fish and seafood, is the most controversial among various denominations of Muslims<sup>81</sup>. Certain groups accept only fish with scales as halal, while

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<sup>76</sup> Yunus, Chik and Mohamad, 'The Concept of Halalan Tayyiba and Its Application in Products Marketing: A Case Study at Sabasun HyperRuncit Kuala Terengganu, Malaysia' (n 22) 242.

<sup>77</sup> Zalina Zakaria, 'Tapping into the World Halal Market: Some Discussions on Malaysian Laws and Standards' (2008) 16 *Shari'ah Journal* 603, 604.

<sup>78</sup> Owens Casey M., *Poultry Meat Processing* (Boca Raton: CRC Press 2001) 284.

<sup>79</sup> Casey M. (n 78).

<sup>80</sup> *ibid.*

<sup>81</sup> *ibid.*

others consider everything that lives in water all the time or some of the time as halal<sup>82</sup>. Consequently, prawns, lobsters, crabs, and clams are halal but may be detested (*makruh*) by some and hence not consumed<sup>83</sup>.

There is no clear status on insects in Islam except that the locust is specifically mentioned as halal. Among the products from insects, the use of honey was very highly recommended by Prophet Muhammad.<sup>84</sup> Other products such as royal jelly, wax, shellac, and carmine are acceptable to be used without restriction by most Muslims; however, some may consider shellac and carmine *makruh* or offensive<sup>85</sup>. Eggs and milk from permitted animals are also permitted for consumption by Muslims. Milk from cows, goats, sheep, and buffaloes is halal.<sup>86</sup>

### **2.3.2 Prohibition of the Meat of Dead Animals or Carrion**

Carrion is the carcass of a dead animal that turns into food for other hunting animals<sup>87</sup>. The prohibition of the meat of dead animals is established according to the following Quranic verse: ‘He has forbidden you dead meat ...’<sup>88</sup>

An animal which has been slaughtered is permitted to be consumed by Muslims. Carrion or dead animals that are killed by strangulation, by a blow, by a fall, by being gored, or that are partly eaten by wild animals are forbidden, as eating the flesh of a ‘dead animal’ is regarded as contrary to human dignity and is unhealthy because the decaying process leads to the formation of chemicals which are harmful to humans<sup>89</sup>.

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<sup>82</sup> *ibid.*

<sup>83</sup> *ibid.*

<sup>84</sup> Riaz and Chaudry (n 6) 153.

<sup>85</sup> Casey M. (n 78).

<sup>86</sup> *ibid.*

<sup>87</sup> Islambase Publications Team, *The Issue of Halal Meat* (1st edn, Islambase Publications 2005) <[www.islambase.tk](http://www.islambase.tk)> accessed 14 November 2013.

<sup>88</sup> Translation of Al-Quran, Al-Maidah 5: 3.

<sup>89</sup> Mian N Riaz and Muhammad M Chaudry, *Halal Food Production* (Boca Raton: CRC Press 2004) 24.

Animals that have died by themselves are forbidden because they may die due to a long-suffered disease or a disease that exists suddenly or from eating poisonous plants<sup>90</sup> which may cause harm to humans. Animals that have died because of being strangled, being hit violently or falling from a high place, goring by a horn by another animal, and partly eaten by a wild animal are also forbidden, unless they had an opportunity to be slaughtered.<sup>91</sup> The wisdom of the prohibition is to honour human and to avoid them from consuming animal carcasses<sup>92</sup>. This is also to educate humans to show sympathy to animals and not to beat them to death before they are consumed<sup>93</sup>.

Animals have to be respected and honoured both before and after their death. Islam shows the best way to kill an animal, that is, by slaughtering in accordance with Sharia to ensure that the animal does not suffer before its death. A sharp knife can end the animal's life in the fastest way and release it from suffering<sup>94</sup>. Islam does not permit slaughter by teeth or bones because it can cause suffering to the animal. There is one Hadith of Prophet Muhammad SAW narrated by Shaddad bin Aws *radialluhanhu* (r.a):<sup>95</sup>

Verily, Allah has obligated you to be good to all creatures. In killing, kill properly. In a narration by a non-Muslim it is said: Make proper your killing and when slaughtering, slaughter properly. The knife must be sharp and the animal must be put to rest.<sup>96</sup>

In addition to honouring animals, slaughtering animals and not consuming carrion also serve to protect the dignity of human beings and to ensure their safety and good health. Animals that have died without being slaughtered may have died from poison or disease. Thus, this prohibition protects humans from poison or disease from the carrion's unknown death.

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<sup>90</sup> Ibrahim Al-Hasani Al-Azhari Basri and Mohd Yusuf Wan Chik, 'Maqasid Syar'iyah According to Al-Qaradawi in the Book Al-Halal Wa Al-Haram Fi Al-Islam' (2011) 2 International Journal of Business and Social Science 238.

<sup>91</sup> *ibid* 238.

<sup>92</sup> Al-Hasani Al-Azhari Basri and Wan Chik (n 90).

<sup>93</sup> *ibid*.

<sup>94</sup> *ibid* 246.

<sup>95</sup> Radialluhanhu is an Arabic word that means, may Allah pleased with him and mentioned whenever say the name of prophet companion. See 'Dictionary | Islamic Ink' <<https://islamicink.wordpress.com/basic-islamic-phrases-terms/>> accessed 16 February 2017.

<sup>96</sup> Al- Tirmizi, Kitab Ma Ja'a Fi al-Diyah Kam Hiya Mina al-Ibili, hadith no: 1329.



### 2.3.3 Prohibition of Flowing Blood

Allah states in the Quran: ‘Say: I find nothing in what has been revealed to me that forbids any one to eat of any food except the dead, running blood ...’<sup>97</sup>.

The consumption of flowing blood is prohibited (as opposed to blood which remains in the flesh of the slaughtered animals after one has done one’s best to remove it)<sup>98</sup>. The drinking of blood is repugnant to human decency and it may be injurious to human health because blood is a good culture medium for micro-organisms, viruses, and carriers of disease<sup>99</sup>.

### 2.3.4 Prohibition of Pork

Pork is prohibited as it serves as a vector for pathogenic worms to enter the human body.<sup>100</sup> In the Quran, it is mentioned that Allah prohibits eating the flesh of swine, because it is a sin and an impiety (*rijs*). Allah says: ‘He has forbidden you dead meat, and blood and the flesh of swine’<sup>101</sup>.

There are a large number of germs, parasites, and bacteria that infest swine and live in its flesh, such as tapeworms, round worms, hook worms, *faciolopsis buski*, *paragonimus*, *clonorchis senesis*, and *erysipelothrix rhnsiphathiae*. When swine is eaten, diseases are transmitted to humans<sup>102</sup>.

There is a wisdom behind the prohibition of pork – to protect human health and to ensure that humans consume good-quality food.

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<sup>97</sup> Translation of Al-Quran, Al- An’am 6:145.

<sup>98</sup> Ahmad H Sakr, *Dietry Prohibition* (2009) <<http://www.iuhk.org>> accessed 1 November 2013.

<sup>99</sup> *ibid.*

<sup>100</sup> Riaz and Chaudry (n 6) 24; Wan Melissa Wan-hassan and Khairil Wahidin Awang, ‘Halal Food in New Zealand Restaurants: An Exploratory Study’ (2009) 3 385, 390; JM Regenstein, MM Chaudry and CE Regenstein, ‘The Kosher and Halal Food Laws’ (2003) 2 *Comprehensive Reviews In Food Science And Food Safety* 111, 120.

<sup>101</sup> Translation of Al-Quran. An-Nahl 16:115.

<sup>102</sup> Ahmad H Sakr, *Pork Possible Reasons for Its Prohibition* (The Foundation for Islamic Knowledge 1991).

### 2.3.5 Prohibition of Intoxicants

Allah states in the Quran: ‘O you who believe! Intoxicants and gambling (dedication of) stones, and (divination by) arrows, are an abomination, of Satan’s handwork’<sup>103</sup>.

Alcoholic beverages and intoxicating drugs are a source of disgrace and immorality; indulging in intoxicants prevents people from remembering Allah. It also generates enmity and hatred among people<sup>104</sup>.

From a scientific perspective, alcoholic beverages and intoxicating drugs do present danger to human life.<sup>105</sup> The reason why Islam prohibits it, is to protect the human mind and body.

### 2.3.6 Halal Slaughtering

Section 2.3.2 of this thesis discussed the prohibition of the meat of dead animals or carrion. The animal should be slaughtered according to the Sharia to make it lawful and permissible or otherwise it will be considered as carrion. This section examines the requirements of slaughtering according to Sharia.

It should be noted that the Islamic method of slaughter is the least painful method as compared to other methods if the correct measures are undertaken<sup>106</sup>. These measures are for the benefit of both animals and consumers<sup>107</sup>. The meat of animals slaughtered according to the prescribed conditions is called *zabiha* or *dhabiha* meat, meaning purified or rendered good or wholesome<sup>108</sup>. There are requirements that must be complied with for halal slaughtering. The slaughter of animals must be performed by a Muslim of sound mind and maturity, who fully understands the fundamentals and conditions related to this

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<sup>103</sup> Translation of Al-Quran, Al-Maidah 5:90.

<sup>104</sup> Mohammad Mazhar Hussaini, *Islamic Dietary Concepts & Practices* (Jafar Mohi-el-din Qadri and others eds, First Edit, The Islamic Food & Nutrition Council of America 1993).

<sup>105</sup> Ahmad Sahir Jais, ‘Halal Practices in Foodservice Operation’ 175.

<sup>106</sup> Team (n 87) 7.

<sup>107</sup> C Michael Hall and Stefan Gossling, *Sustainable Culinary Systems: Local Foods, Innovation, Tourism and Hospitality* (First Edition, Group, Taylor & Francis 2013).

<sup>108</sup> Karijn Bonne and Wim Verbeke, ‘Religious Values Informing Halal Meat Production and the Control and Delivery of Halal Credence Quality’ (2007) 25 *Journal of Agriculture and Human Values* 35, 38.

activity<sup>109</sup>. In addition, the slaughterman/woman must hold a certificate for halal slaughtering issued by a competent authority<sup>110</sup>. The act of slaughter must be done with *niyyah* (intention) and the slaughterer must be well aware of his/her action<sup>111</sup>. The animal to be slaughtered must be an animal that is halal<sup>112</sup>. The animal to be slaughtered must be alive or deemed to be alive (*hayat al-mustaqirrah*) at the time of slaughter<sup>113</sup>. In addition, the animal to be slaughtered must be healthy and have been approved by the competent authority<sup>114</sup>.

The phrase '*Bismillahir Rahmanir Rahim*' which means 'In the name of Allah, Most Gracious, Most Merciful' must be invoked immediately before the slaughtering of every animal<sup>115</sup>. There are two main reasons for saying this blessing during slaughter. First, it reminds the slaughterer of his/her responsibility in observing the prescribed requirements to remove any doubt as to whom the animals are dedicated. Second, it reinforces the notion that the animal is being slaughtered in the name of Allah for food and not for recreational purposes<sup>116</sup>. The slaughtering is recommended to be performed while facing the *qiblah* (the direction of the Kaaba where Muslim turn at prayer)<sup>117</sup>.

In terms of slaughtering lines, tools and utensils shall be dedicated for halal slaughter only<sup>118</sup>. For the sake of animal welfare, the knife used for slaughter must be so sharp that the animal does not feel pain when cut, especially when no stunning is used<sup>119</sup>. The size of the knife should be proportionate to the size of the neck<sup>120</sup>. The cuttingshall be done only once. A 'sawing action' is permitted as long as the slaughtering knife or blade is not lifted off the animal during the slaughtering<sup>121</sup>.

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<sup>109</sup> Syed Marzuki (n 16) 17.

<sup>110</sup> Department of Standards Malaysia (n 68) 6.

<sup>111</sup> *ibid.*

<sup>112</sup> *ibid* 5.

<sup>113</sup> *ibid* 6.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

<sup>116</sup> Bonne and Verbeke (n 108) 42.

<sup>117</sup> Bonne and Verbeke (n 108).

<sup>118</sup> *ibid.*

<sup>119</sup> *Ibid* 41.

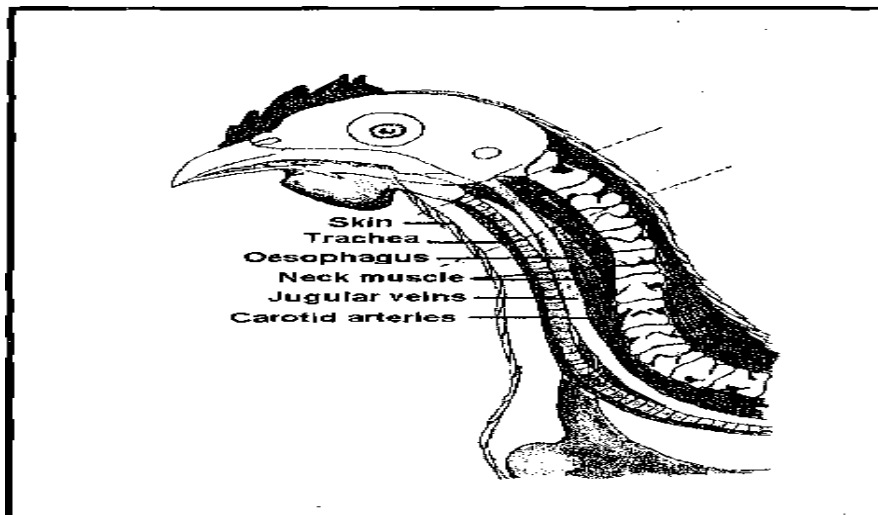
<sup>120</sup> Department of Standards Malaysia (n 53) 6-7.

<sup>121</sup> *Ibid.*

It should be borne in mind that bones, nails, and teeth shall not be used as slaughtering tools<sup>122</sup>. The act of halal slaughter must begin with an incision on the neck at some point just below the glottis (Adam's apple), and after the glottis for long-necked animals<sup>123</sup>. The slaughter act must sever the trachea (*halqum*), oesophagus (*mari'*), and both the carotid arteries and jugular veins (*wadajain*) in order to hasten the bleeding and death of the animal. The bleeding must be spontaneous and complete<sup>124</sup>.

In addition, no part of the body should be cut and no attempt to skin it should be made until the animal is dead<sup>125</sup>.

**FIGURE 1:** Slaughtering Parts for Chickens



(Source: Department of Standards Malaysia 2009)<sup>126</sup>

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<sup>122</sup> *ibid.*

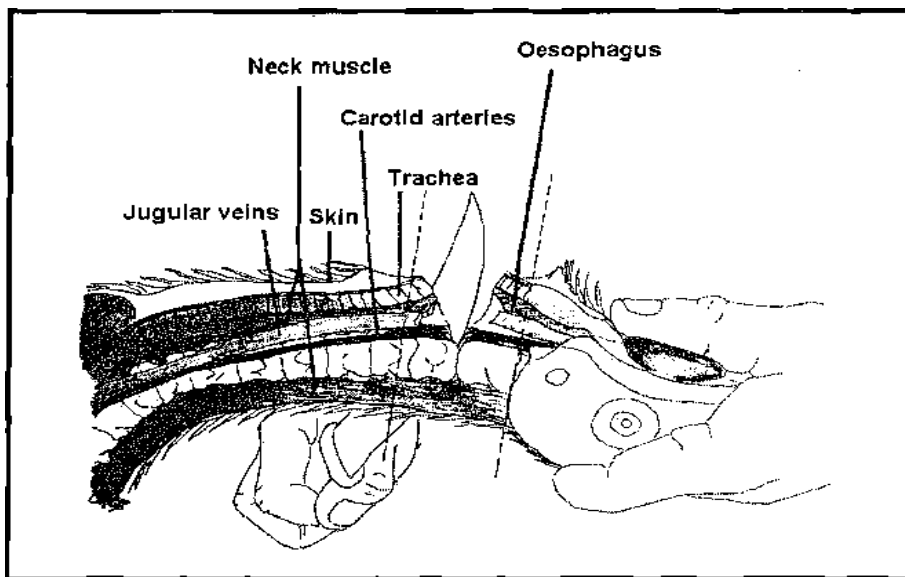
<sup>123</sup> *ibid.*

<sup>124</sup> *ibid.*

<sup>125</sup> D Nurdeng, 'Review Article Lawful and Unlawful Foods in Islamic Law Focus on Islamic Medical and Ethical Aspects' (2009) 16 *International Food Research Journal* 469, 471.

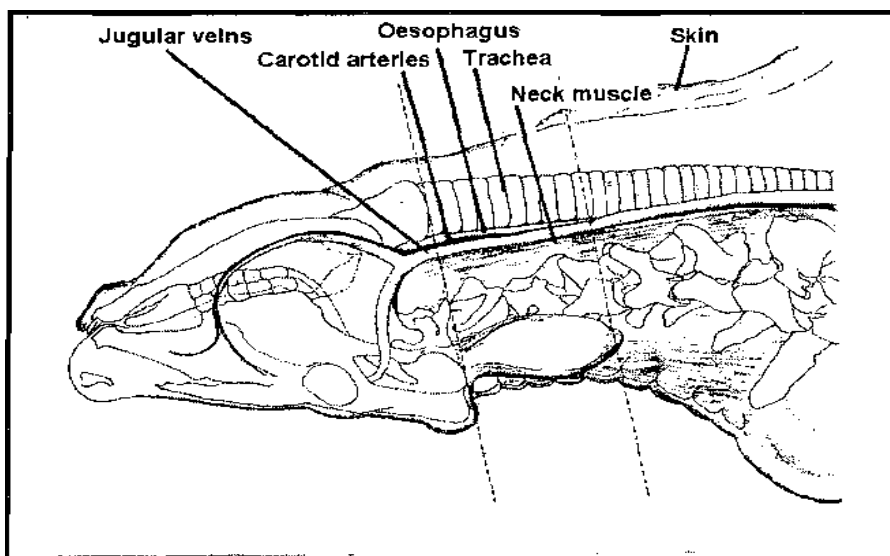
<sup>126</sup> Department of Standards Malaysia (n 68) 8.

**FIGURE 2: Method of Slaughtering Chicken**



(Source: Department of Standards Malaysia 2009)<sup>127</sup>

**FIGURE 3: Slaughtering Parts for Cattle**

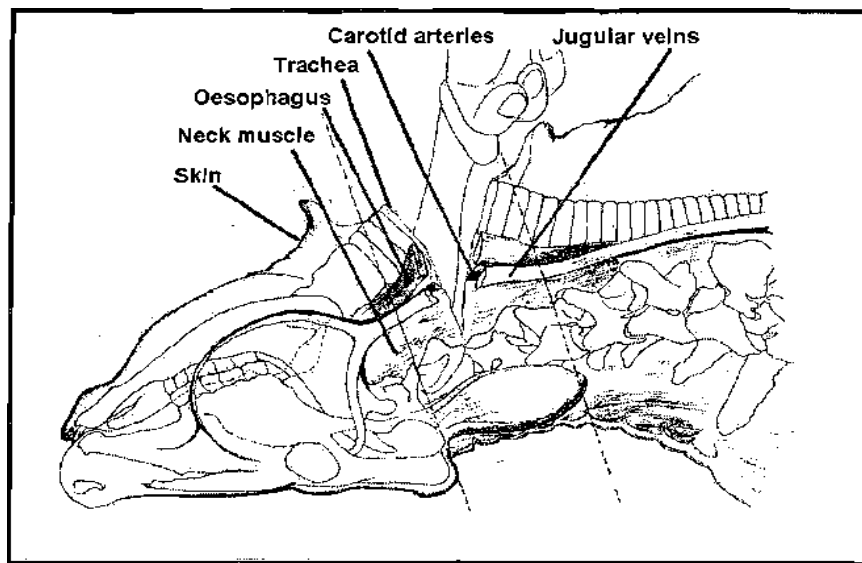


(Source: Department of Standards Malaysia 2009)<sup>128</sup>

<sup>127</sup> *ibid.*

<sup>128</sup> *ibid* 9.

**FIGURE 4:** Method of Slaughtering Cattle



(Source: Department of Standards Malaysia 2009)<sup>129</sup>

There are several issues to consider with halal slaughtering<sup>130</sup>. One of the debated issues is animal stunning especially in non-Muslim countries. Animal rights organizations criticize halal slaughtering methods on the basis that it is inhumane due to a non-stunning practice<sup>131</sup>. Political organizations are also objecting to the growth of Islam in their country and veterinarian organizations in some countries encourage the use of obligatory stunning<sup>132</sup>. This will be examined further in Chapter 6.3.1.3 dealing with contemporary issues of religious slaughter.

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<sup>129</sup> *ibid.*

<sup>130</sup> Dutch law implicitly assumes that religious slaughter equals to slaughter without stunning.

<sup>131</sup> This argument can be rebutted because there is a study that halal slaughtering is more humane (the study of Professor Wilhelm-Schulze and his colleagues found that Islamic slaughtering is the most humane method of slaughtering compared to westerner practice. See W. Schulze, H. Schultze-Petzold, A.S. Hazem, and R. Gross, 'Experiments for the objectification of pain and consciousness during conventional (captive bolt stunning) and religiously mandated (ritual cutting) slaughter procedures for sheep and calves.' [http://www.halalfocus.com/artman2/uploads/1/Hanover\\_report\\_1978.pdf](http://www.halalfocus.com/artman2/uploads/1/Hanover_report_1978.pdf) accessed 20 January 2018).

<sup>132</sup> Tetty Havinga, 'Regulating Halal and Kosher Foods: Different Arrangements between State, Industry and Religious Actors' (2010) 3 *Erasmus Law Review* 241, 247.

### 2.3.7 Halal Food Processing

All processed foods are halal if the ingredients used are halal. In terms of the processing, this must be clean<sup>133</sup> and halal meat:

- (i) Must not be made of, or containing any parts or products from animals, which are forbidden by Islamic laws to be consumed by Muslims or not slaughtered according to Islamic laws;
- (ii) Must not contain any products which are considered as filth according to Islamic laws whether in little or large quantities such as pig oils, fats, lards from carcass, types of alcohol, and other items;
- (iii) Must be prepared, processed, or manufactured using equipment which is free from filth in accordance with Islamic laws, such as cutting devices, premises, containers, and other related equipment;
- (iv) Must not, during preparation, processing, and storage, come into contact or close proximity with any food which does not meet the requirements in paragraph i, ii, or iii or any product that is considered as filth according to Islamic laws;
- (iv) Must be placed in different containers to non-halal meat and should not be cooked in the same container. If cooking halal and non-halal meat in an oven, the halal meat should be on the upper shelf, with the non-halal on the lower shelf, to avoid contamination.<sup>134</sup>

#### 2.3.7.1 Halal Packaging

Packaging is one of the crucial elements that ensure the integrity of halal status for food. There can be a potential halal issue if the halal status of packaging materials is questionable. For example, even though a plastic microwavable container of frozen food may appear acceptable, the source of some of the ingredients used to make it may be unknown.<sup>135</sup>

In many cases, stearates are used, which originate from animals<sup>136</sup>. Another issue concerns metal; in many cases the formation and cutting of cans require the use of oils

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<sup>133</sup> Ahmad Robin Wahab, *Guidelines for the Preparation of Halal Food and Goods for the Muslim Consumers* (Amalmerge (M) Sdn Bhd 2004).

<sup>134</sup> Toni Thatcher, 'What Does Halal Mean?' (Halal Research Council) <[http://www.Halalrc.org/images/Research Material/Literature/What does Halal mean.pdf](http://www.Halalrc.org/images/Research%20Material/Literature/What%20does%20Halal%20mean.pdf)> accessed 1 November 2013.

<sup>135</sup> Riaz and Chaudry (n 6) 188.

<sup>136</sup> Riaz and Chaudry (n 6).

which can be animal-derived and therefore the halal status may be questionable because it will not be known whether the animal was slaughtered according to Sharia<sup>137</sup>.

To avoid cross-contamination, it is important to ensure that the tools used to handle halal food are made from the halal substances. Even during the packaging of foods into plastics or containers, workers will use disposable gloves to ensure good hygiene. However, the gloves' source of origin be uncertain in terms of halal status if they are made from animal substances not permitted by Sharia. Even though tools are not an ingredient in food, they will nevertheless affect the halal status of the food product according to Sharia.

In addition, tracking and tracing halal packaging in the supply chain is also important to identify the halalness of the food product. Traceability in terms of packaging can be defined as the ability to trace and track packaging flow in both fresh production and industrial distribution<sup>138</sup>. Traceability means that the packaging is uniquely identified at critical points in the production and distribution process<sup>139</sup>. The information of product flow is then systematically collected, processed, and stored<sup>140</sup>.

There are several issues associated with halal traceability and tracking in the context of halal packaging. Firstly, there is no real-time halal tracking. A limited number of countries provide web-based halal information services that largely concentrate on the list of companies and food products that have valid halal certification. However, this list does not include information or lists relating to the source of packaging.<sup>141</sup> Secondly, the use of the halal certification logo on food packaging is often violated because there are numerous reports of fraud and misuse of the halal logo certification provided by a non-certified halal certification authority or may even be bought.<sup>142</sup> Thirdly, there is no method to determine whether the packaging has come from the country of origin or otherwise, as only the origin of the content of the product is stated.<sup>143</sup> This will put halal

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<sup>137</sup> Talib, Zailani and Zainuddin (n 15) 60; Riaz and Chaudry (n 6).

<sup>138</sup> Meuwissen and others (n 19).

<sup>139</sup> Ab Talib and Mohd Johan (n 18) 96.

<sup>140</sup> Ab Talib and Mohd Johan (n 18).

<sup>141</sup> N. Anir, MN. Hairul Nizam and A Masliyana, 'RFID Tag for Halal Food Tracking in Malaysia: User Perception and Opportunities' Proceedings of the 7th WSEAS International Conference on Telecommunication and Informatics (TELE-INFO 08) 843.

<sup>142</sup> *ibid.*

<sup>143</sup> *ibid.*



food into jeopardy if the source of packaging is unknown. If the sources of packaging are from non-halal elements, it will give impact on the halal status of the food because halal and non-halal cannot mix together.

This thesis explores whether specific measures could be put into place to ensure that halal food processing satisfies halal food requirements and enhances protection for consumers

## **2.4 Definition of *Tayyib***

The previous section discussed halal requirements set by Sharia. *Tayyib* requirements also must prevail to ensure the food is halal and this section will discuss the importance of *tayyib* in halal food.

*Tayyib* is a quality standard for goods or products<sup>144</sup>. According to Kamali, *Tayyib* literally means pure or clean.<sup>145</sup> In addition to being halal, food must be of the best quality. Allah stated in the Al-Qur'an: 'O ye people! Eat what is on earth, lawful (Halal) and good (*tayyib*)...'<sup>146</sup>

From this verse, there are two criteria set by Islam for food consumption which are halal and *tayyib*.

In the same surah but a different verse, Allah SWT said:

O you who believe! Eat of the good things that we have provided to you, and be grateful to God, if it is He ye worship. He hath only forbidden you dead meat, and blood, and the flesh of swine and that on which any other name hath been invoked besides that of God.<sup>147</sup>

The above verse states that eating food that is halal and the avoidance of what has already been forbidden, haram, is an obligation placed upon every Muslim. Moreover, what the human consumes will be absorbed and metabolized in their body, brain, and heart.<sup>148</sup>

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<sup>144</sup> Yunus, Chik and Mohamad, 'The Concept of Halalan Tayyiba and Its Application in Products Marketing: A Case Study at Sabasun HyperRuncit Kuala Terengganu, Malaysia' (n 22) 242.

<sup>145</sup> Kamali (n 64) 6.

<sup>146</sup> Translation of Al-Quran, Al-Baqarah, 2:168.

<sup>147</sup> Translation of Al-Quran, Al-Baqarah, 2:172-173.

<sup>148</sup> Golnaz Rezai, 'Consumers' Confidence in Halal Labeled Manufactured Food in Malaysia' (thesis, Universiti Putra Malaysia 2008) 2.15.

Allah further states in Al-Qur'an: 'O ye people eat of what is on earth, lawful and good'<sup>149</sup>. In other *surah*, Allah states: 'So eat of the sustenance which God has provided for you, lawful and good.'<sup>150</sup>

In the Quran, when the word 'lawful' (halal) is mentioned in the context of food, the word 'good' (*tayyib*) will follow.

Therefore, before Muslims can decide which foods are fit for their consumption, they must not only consider whether the food is halal or haram<sup>151</sup> but also whether it is *tayyib*. The word '*tayyib*' means 'good', and this means that the quality must correspond with halal such as having a good taste and smell, being fresh, beneficial, natural, clean and pure, and the food preparation and how the food is served being hygienic<sup>152</sup>.

It is extremely important for the food or product supplier to ensure that their halal food also fulfils the requirement of *tayyib*. However, this can be very difficult unless there is in place a good procedural and monitoring process.

## 2.5 Conclusion

Halal has its own philosophy and concept. This chapter studied the philosophy and concepts of halal food, including the requirements that must be fulfilled before the food can be classified as halal. Among such requirements are that the food must be derived from permitted sources, and it must not contain dead animal parts, blood, pork, or intoxicants. If meat, the animal must be meat permitted by Sharia and slaughtered in accordance with Sharia. Failure to fulfil any of these requirements will render the food non-halal.

The primary sources of halal food requirements are derived from Quran and Hadith. Manual procedures, guidelines, and standards for halal are taken from the halal concept and philosophy. Even though the guidelines and laws of halal are available, halal abuse nevertheless exists, and this will be examined in Chapter 4 (Halal Markets, Halal Abuse, Halal Legal Requirements, and Potential Breaches). Halal requirements are applied in

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<sup>149</sup> Translation of Al-Quran, Al-Baqarah 2: 168.

<sup>150</sup> Translation of Al-Quran, Al-Nahl 16: 114.

<sup>151</sup> Rezai (n 148).

<sup>152</sup> Yunus, Chik and Mohamad (n 22) 242, 243.

halal food standards and are implemented by way of certification as discussed in Chapter 3 (Halal food certification). This is fundamental requirement of halal food that specifically shape the later chapter.

Halal has wider significance, fundamental religious practise, wide spread and there are differences within school of thought. This is some consideration influence later chapter specifically under discussion on the challenges of halal certification in English law due to the reason, it is not controlled by the government (See Section 3.3.2). This further stress the importance of observing halal food process for consumers' protection.

In summary, this chapter examines the criteria of halal and the next chapter will be about how consumer can identify what food is halal by exploring halal certification and the fulfilment of halal requirements in food certification and labelling.

## CHAPTER 3: HALAL FOOD CERTIFICATION

### 3.1 Introduction

The previous chapter identified halal food requirements, and it is now important to discuss halal certification to identify whether the certification process is compliant with halal requirements. Halal certification is a long process because it involves a large number of procedures<sup>153</sup>. An example is where poultry must be slaughtered in accordance with Sharia<sup>154</sup>. After slaughter, it must be transported according to Sharia and must not be mixed with non-halal meat<sup>155</sup>. Halal food-processing requirements must be observed from beginning to end to ensure that there is no contamination with non-halal ingredients during the process.<sup>156</sup> This section will identify the certification of halal in Malaysia and Western countries including the UK, the process and issues involved. In addition, it will address the following research question: What are the developments and the current practice of the halal certification framework under Malaysian and English law?

### 3.2 Food Certification

Aside from halal food, there are other recognized certifications such as Genetic Modified Organism (GMO), Kosher, vegan, and others. These certifications exist due to the global trend to have quality food processing or certification marks because of the demands made by consumers.

Studies by Fisher, Waarden and Dalen, Rezai, Laric and Sarel found that consumers were educated<sup>157</sup> and more ethical<sup>158</sup> than in previous times and observed an increase in

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<sup>153</sup> Slaughtering process, transportation, storage and preparation of food must be done accordingly. See Chapter 2.3.7.

<sup>154</sup> See Chapter 2.3.6.

<sup>155</sup> See Chapter 2.3.1 and 2.3.4.

<sup>156</sup> See Chapter 2.3.7.

<sup>157</sup> Johan Fischer, 'Feeding Secularism: Consuming Halal among the Malays in London' (2005) 14 *Diaspora: A Journal of Transnational Studies* 275, 276; Waarden and Dalen (n 42) 14; Rezai (n 133) 4.51; MV Laric and D Sarel, 'Consumer (Mis) Perceptions and Usage of Third Party Certification Marks, 1972 and 1980: Did Public Policy Have an Impact?' (1981) 45 *The Journal of Marketing* 135, 5–8.

<sup>158</sup> Mohammad Hashim Kamali, 'Tourism and the Halal Industry: A Global Shariah Perspective' (2012) 3 *Islam and Civilisational Renewal (ICR)* 454, 457.

consumers' concern for safe food. This can be achieved by looking at the food labelling. Golnaz's study<sup>159</sup> on the sample of the demography data for consumers in Malaysia found that 75.5% of respondents were educated at tertiary level. More educated the consumer the more they will be concerned about the food label. This is because they can get information from the label, which will help them to make better choice.

Certifications and quality labels are marks used in connection with the products and services of one or more persons to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics.<sup>160</sup>

Such marks can be classified into three major categories: evaluation certification, warranty certification, and factual certification.<sup>161</sup> Evaluation certification is when the certifier presents evaluative opinions by a multi-point rating scheme<sup>162</sup>. For example, hotel services in Malaysia rated and certified by Malaysian Association of Hotel is said to have evaluation certification. Warranty certification is when the certifier indicates some responsibility relative to the purchase of a given product and most of certifying sources usually provide a limited warranty, promising a replacement or refund for the defective product<sup>163</sup>. For example, Malaysian Association of Hotel promise a refund if the hotel that are rated and certified by them does not poses quality as per their certification. Factual certification is when the certifier provides factual assurance as to the quality of the product to their customer<sup>164</sup>. The halal certification itself is an example for factual certification and assurance that the food poses halal quality.

The certification is therefore important because it has its own value and interpretation for consumers.

When the manufacturer or trader obtains halal certification, it needs to be labelled properly on the product. There is another important issue concerning voluntary and mandatory labelling in halal food. Most countries make halal labelling voluntary and it is

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<sup>159</sup> R Golnaz and others, 'Non-Muslims ' Awareness of Halal Principles and Related Food Products in Malaysia' (2010) 674 *Agribusiness* 667, 671.

<sup>160</sup> DM Phelps, 'Certification Marks under the Lanham Act' (1949) 13 *Journal of Marketing* 498, 500.

<sup>161</sup> MV Laric and D Sarel, 'Consumer (mis) Perceptions and Usage of Third Party Certification Marks, 1972 and 1980: Did Public Policy Have an Impact?' (1981) 45 *The Journal of Marketing* 135, 136.

<sup>162</sup> *ibid.*

<sup>163</sup> *ibid.*

<sup>164</sup> *ibid.*

not well regulated by the government, thereby creating an avenue for the abuse of halal labelling. Since this section will only focus on halal certification issue, the issue concerning labelling will be discussed further in Chapter 4.4.2 of this thesis.

### **3.3 Certification of Halal Worldwide<sup>165</sup>**

This section will discuss the certification of halal in the world to understand how halal certification work since there are various certifiers. Then, this section will analyse the certification of halal in Malaysia and the UK.

There are currently more than 100 active halal-certifying bodies around the world consisting of government agencies, local mosques, and Islamic societies<sup>166</sup>. As the demand grows for halal products and the industry itself heads quickly towards maturity, there is an urgent need for a common direction or set of guidelines to ensure that all certifying bodies adopt proper guidelines in their certification process. The huge numbers of halal-certifying bodies have now resulted in different usage of the halal logo and standard<sup>167</sup> used by halal-certifying bodies in the world.

At the International Halal Market Conference 2009, there was a conference presentation titled 'Standards Development and the Implications for industry',<sup>168</sup> which stated that the differences in standards occurred because there are a large number of factors and elements

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<sup>165</sup> Due to the limitation of words and thesis restriction in term of time and resources, this section will discuss on Halal certification in some countries and standardization of certification by Organisation of Islamic Cooperation (OIC) (Formerly known as Organisation of Islamic Conference).

<sup>166</sup> DD Hashim and IHIA CEO, 'The Quest for a Global Halal Standard' (Available at [http://Executive Review 2007. In World Halal Forum \(p. 30\). www.ihialliance.org/hiab.php](http://ExecutiveReview2007.InWorldHalalForum(p.30).www.ihialliance.org/hiab.php), 2010) <[http://www.mia.co.nz/docs/mia\\_conference/2010/Presentations/100920 Darhim Hashim.pdf](http://www.mia.co.nz/docs/mia_conference/2010/Presentations/100920_Darhim_Hashim.pdf)> accessed 29 October 2013.

<sup>167</sup> Examples of Halal standards in national level are MS1500:2009, Halal Food-Production, preparation, handling and storage – General guidelines (Malaysia); ONR 142000:2009, Halal Food – Requirement for the food chain (Austria); BAS 1049:2010, Halal foods-Requirements and measures (Bosnia and Herzegovina); HRN BAS 1049:2010, Halal foods-Requirement and measures (croatia); RAL-RG 160:2009, Halal für Lebensmittein – Begriffsbestimmungen (Germany).

<sup>168</sup> Ab Halim and Mohd Salleh (n 12).

according to the Syaria which must be considered<sup>169</sup> and that there are also complications in meeting the standards in the industry<sup>170</sup>.

Furthermore, according to findings by Darhim Hashim, the Chief Executive Officer of International Halal Integrity Alliance found that, out of 57 OIC member countries, less than five have halal certification bodies, less than half have halal import regulations, and none has domestic halal legislation<sup>171</sup>. However, it may be surprising to note that halal-related organizations exist in non-OIC countries such as the UK. To regulate the uniform standard, there are five factors that need to be considered in the development of the Global Halal Standard, which are the differences of interpretation of halal among Muslim scholars, science, industry, consumers, and Sharia<sup>172</sup>.

To be certified, the suppliers have to choose the organization that meets the needs of the market to which they intend to supply their products, and some of the countries like Malaysia, Singapore, Indonesia, and Brunei have their own governments approve halal programmes for halal certification<sup>173</sup>. When targeting a specific country, it is best to get halal certification through an organization that is approved, recognized, and deemed acceptable by that country<sup>174</sup>.

There are various standards or guidelines set by organizations around the world pertaining to halal food standards. For example, halal food standard ICRIC-MHS-0110 is applicable to 57 Muslim countries in the Organization of Islamic Cooperation (OIC) member countries, halal food Standard THS24000:2552 is applicable in Thailand, the Guidelines of Halal Assurance System are applicable in Indonesia, and Halal standards ONR14200:2009 in Austria<sup>175</sup>.

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<sup>169</sup> See Chapter 2.3 of this thesis on the religious requirements for halal food.

<sup>170</sup> Ab Halim and Mohd Salleh (n 12). 6, 7.

<sup>171</sup> Farah Ahmadnawi, 'OIC Nations Should Have Common Halal Certifying Body' (Halal *Focus*, 2009) <<http://Halalfocus.net/oic-nations-should-have-common-Halal-certifying-body/>> accessed 2 February 2014.

<sup>172</sup> *ibid.*

<sup>173</sup> Hanzae and Ramezani (n 59) 4–5.

<sup>174</sup> *ibid.* 5.

<sup>175</sup> M Van Der Spiegel and others, 'Halal Assurance in Food Supply Chains: Verification of Halal Certificates Using Audits and Laboratory Analysis' (2012) 27 *Trends in Food Science & Technology* 109, 112.

The halal certification process is important in order to verify that the ingredients used in a product are halal-certified and to ensure that the premises are free from haram or non-halal food. It also reduces consumer deception in terms of the preparation, distribution, and sale of halal products.

Consumers who seek halal food will rely on the halal logo or label. Consumers trust its source, and this has resulted in a growing number of halal-labelled or certified products in Western European supermarkets<sup>176</sup>.

The regulatory framework of halal is different between countries, as presented by Darhim Hashim. For example, some countries have legislation and official standards concerning halal, such as Malaysia, Brunei, New Zealand, and Singapore.<sup>177</sup> In terms of halal certification, Brunei, Malaysia, and Singapore have halal certification certified by a government agency.<sup>178</sup> In Austria, Canada, Philippines, and the United Kingdom, halal certification is certified by private agencies.<sup>179</sup> In Australia, both types of halal certification (government and private certifier) exist.<sup>180</sup> Next section will focus on halal certification in Malaysia, the UK, and the European Union, and on efforts by the Organization of Islamic Cooperation (OIC) to develop uniform halal standards.

### **3.3.1 Halal Certification in Malaysia**

This section examines the development and chronology of halal certification in Malaysia. This is important to understand Malaysian history on halal certification and how the government play their role and control halal in Malaysia.

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<sup>176</sup> Havinga (n 132) 243.

<sup>177</sup> Darhim D Hashim, 'The Quest for a Global Halal Standard' (2010) <[http://www.mia.co.nz/docs/mia\\_conference/2010/Presentations/100920 Darhim Hashim.pdf](http://www.mia.co.nz/docs/mia_conference/2010/Presentations/100920%20Darhim%20Hashim.pdf)> accessed 3 July 2014.

<sup>178</sup> *ibid.*

<sup>179</sup> *ibid.*

<sup>180</sup> *ibid.*



Malaysia is known by other countries as a modern Islamic country in this decade<sup>181</sup>. At present, Malaysia is focusing on agriculture as one of its economic growth areas and is looking to take a prime role as a food-producing and trading nation in this region and also to play an active role in the halal food hub among Muslim countries<sup>182</sup>.

In the 1980s, the term 'halal' started to be used to indicate food products that are permissible according to Sharia, and the Islamic Affairs Division in the Prime Minister's Department formed the 'Halal and Haram Committee'.<sup>183</sup>

In 1974, a government agency called the Islamic Affairs Division of the Prime Minister Department had issued the first use official halal certificate and label<sup>184</sup>. However, a serious step was taken in 1982 when members from among professionals with different expertise and skills were appointed to a 'Halal Committee' to determine the halal and haram status of products. The Committee members were selected from various disciplines: Islamic lawyers, food scientists, and government officials. The Committee continues to represent all levels of Malaysian Government agencies ranging from the Ministry of Health, the Ministry of Domestic and Consumer Affairs, and the Department of Veterinary Services as well as scientists from local universities<sup>185</sup>.

As from 1994, halal confirmation was granted in the form of a certificate with a halal logo, and as from 30 September 1998, halal inspections were carried out by Ilham Daya, a company appointed by the Malaysian Government. On 1 September 2002, the Government decided that all halal certification activities would be conducted by JAKIM's Food and Islamic Consumer Products Division which comprised only 28 positions<sup>186</sup>.

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<sup>181</sup> Institute of Marketing Malaysia, 'Halal Market-Branding Malaysia as Global Halal Hub : Call to Action' [2011] *Marketeer* <<http://imm.or.my/wp-content/uploads/2011/02/M1-20066cstory.pdf>> accessed 9 July 2014.

<sup>182</sup> Habibah Abdul Talib and Khairul Anuar Mohd Ali, 'An Overview of Malaysian Food Industry: The Opportunity and Quality Aspects' (2009) 8 *Pakistan Journal of Nutrition* 507, 508.

<sup>183</sup> Ahmad Hidayat Buang and Zalina Zakaria, 'Halal Food Industries in Malaysia: Some Assessment on the Adequacy of Regulatory and Supervisory Framework', *International Seminar on Halal Food Products* (2004).

<sup>184</sup> JAKIM, 'Halal History' <<http://www.Halal.gov.my/v3/index.php/en/corporate/Halal-history>> accessed 22 March 2014.

<sup>185</sup> Mohd Fazli Mat Akar, 'Halal Label: The Role of JAKIM towards Enhancing Public's Trust' (Universiti Sains Islam Malaysia 2006) 10.

<sup>186</sup> JAKIM, 'Halal History' (n 184).

Due to the rapid development of the food industry in Malaysia and in order to meet the needs of the Muslim population, on 17 November 2005, the Public Service Department of Malaysia approved a total of 165 positions from different schemes, grades, and designations to create the newly named Halal Hub Division.<sup>187</sup> Several years later on 2 April 2008, the Halal Industry Development Corporation (HDC) took over the management of all halal certification activities<sup>188</sup>. In 2011, the Trade Descriptions Act 2011 through the Trade Descriptions (Certification and Marking of Halal) Order 2011 gave authority to the Department of Islamic Development Malaysia (JAKIM)/State Islamic Religious Department (JAIN)/State Islamic Religious Council (MAIN) to become the sole authority in halal certification in Malaysia<sup>189</sup>.

Halal food certification in Malaysia is governed by the current Malaysian Standard MS 1500:2009 Halal Food – Production, Preparation, Handling and Storage – General Guidelines (Second Revision). It provides the practical guidelines in preparing and handling halal food.

Before the revision, halal certification was governed by MS 1500:2004 Production, Preparation, Handling and Storage – General Guidelines (First Revision). This standard is implemented together with food safety<sup>190</sup> and food hygiene<sup>191</sup> standards to guarantee the halalness and the safety of the food<sup>192</sup>.

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<sup>187</sup> *ibid.*

<sup>188</sup> *ibid.*

<sup>189</sup> Trade Descriptions (Certification and Marking of Halal) Order 2011 Order 3. This order stated The Department of Islamic Development Malaysia (JAKIM) and the Islamic Religious Council in the respective States shall be 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.

<sup>190</sup> MS 1480: 2007 (First Revision) is a Malaysia food safety standard describes the requirements for food safety according to HACCP system to ensure the safety of foodstuffs during preparation, processing, manufacturing, packaging, storage, transportation, distribution, handling or offering for sale or supply in any sector of the food chain.

<sup>191</sup> MS1514: 2009 – Malaysian Standard on Good Manufacturing Practices (GMP).

<sup>192</sup> Zakaria (n 77) 613.



### 3.3.1.1 Muslim population in Malaysia

Malaysia is a multiracial country with a population that currently stands at 31,967,295, of which approximately 18,972,327 or 61.3% percent are Muslims.<sup>193</sup> Islam is constitutionally the country's official religion, with the freedom to practise other religions.<sup>194</sup> For Muslims, halal food is essential to them. The above data indicate that Muslim is a majority group in Malaysia and the implication will give effect towards the development of the legal position of halal food in Malaysia, which will be discussed further in Chapter 5.

### 3.3.1.2 Halal Agencies





To further discuss halal in Malaysia, it is important to identify the agencies involved in halal matters. The Malaysian Government has control over halal food through a multi-agency approach led by JAKIM. The agencies involved in halal are set out in the Table below:






**TABLE 1:** Halal Agencies in Malaysia

Agency	Functions	Acts
 Department of Islamic Development Malaysia (JAKIM)	Provides <i>fatwa</i> and deals with Sharia matters.  Monitors and issues halal certificate for Federal Territories.	None introduced.
 Ministry of Agriculture and Agro-	Responsible for animal health and abattoirs.	Animal Rules 1962.

<sup>193</sup> 'Population of Malaysia' (*live population*) <<https://www.livepopulation.com/country/malaysia.html>> accessed 17 October 2018.

<sup>194</sup> Federal Constitution 1957 Article 3.

Based Industry (MOA)	Monitors halal certificates.	
 <p>Ministry of Health (MOH)</p>	Responsible for food safety.	Food Act 1983 and Food Regulations 1985.
 <p>Ministry of Domestic Trade, Cooperative and Consumerism (MDTCC)</p>	Provides an enforcement and monitoring programme.	Trade Descriptions (Certification and Marking of Halal) Order 2011 and Trade Descriptions (Definition of Halal) Order 2011.
 <p>Chemistry Department</p>	Responsible for food analysis.	Food Act 1983 and Food Regulations 1985.
 <p>State Islamic Religious Department (JAIN)/ State Islamic Religious Council (MAIN)</p>	Monitors and issues halal certificates for state markets.	Each state has provisions on offences related to halal abuse. Enactment is via the Sharia Criminal Offences state enactment. (For example, for Selangor: section 38 of the Sharia Criminal Offences

		(Selangor) Enactment 1995 sets out the punishment for those abusing the halal label).
	Local Universities and Research Institutes	Provide R&D and courses in halal matters.
 (DVS)	Department of Veterinary Services	Provides consultancy and advisory services on halal livestock, monitoring and enforcement, issues on exports, permits and veterinary health certificates.
	Ministry of Trade and Industry (MITI)	Formulates strategies and provides incentives to encourage trade and investment in halal products and services.
 Malaysia (SIRIM)	Standards and Industrial Research Institute of	Provides R&D for halal in areas of advance material and manufacturing.
	Malaysian Agricultural Research and	Provides R&D for halal in halal food-processing

Development (MARDI)	Institute	technology and technological development.	
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(Source: Halal Industry Development Corporation website)<sup>195</sup>

Table 1 shows that Malaysia has many agencies dealing with halal matters which are fully monitored by Government agencies. However, the halal abuse exposed by the mass media<sup>196</sup> evidences that either the governing law is not effective, or the agencies are not working effectively.

Based on the above discussion, even though halal in Malaysia has been regulated by several statutes and agencies and is based on the Trade Descriptions Act 2011 with the power of certification being given fully to JAKIM and JAIN, there remains doubt as to the enforcement power and reliability of JAKIM to control halal abuse in Malaysia. This will be examined further in Chapter 5.

### 3.3.1.3 The Halal Logo in Malaysia

This section will identify the requirements for Malaysian halal logo. Failure to use the right halal label is constituted as an abuse. Halal logo is governed by Trade Description (Certification and Marking of Halal) Order 2011. Before looking at the provision on halal logo, this section will discuss the provision concerning label provided by the Food Act 1983.

The manufacturer or trader who obtains halal certification can use the halal logo/label on their product. Section 2 of the Food Act 1983 defines a label as ‘including any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, painted, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food’<sup>197</sup>. The halal logo is a mark accompanying food. Any halal logo attached to food either from JAKIM or other certifiers is considered a label under section 2 of the

<sup>195</sup> Halal Industry Development Corporation, ‘Halal Industry Development Corporation - Halal Agencies in Malaysia’ <[http://www.hdcglobal.com/publisher/gw\\_Halal\\_agencies](http://www.hdcglobal.com/publisher/gw_Halal_agencies)> accessed 22 March 2014.

<sup>196</sup> Ab Halim and others (n 23) 23.

<sup>197</sup> Food Act 1983 s 2.

Food Act 1983. This is a general provision on food labelling but is also applicable to the halal logo.

Order 4(1) of the Trade Descriptions (Certification and Marking of Halal) Order 2011 provides two conditions to be satisfied before foods and goods can be described as halal. First, they must be certified by the competent authority<sup>198</sup> and then marked with the logo,<sup>199</sup> as stated in the first schedule of the Order. The word ‘and’ in the Order shows that it must be read conjunctively – certified and then marked with the halal logo. Food producers must be certified before they are entitled to use the halal logo in their product. If a food producer uses the legitimate halal logo correctly, there are no legal problems to resolve. However, if they use it falsely, the Malaysian Government can prosecute them for falsely using the halal logo under law currently in force. How the law deals with misuse of the halal logo will be explored in Chapter 5.

In addition, the Food Act 1983 provides a general definition on labelling which can also apply to the halal logo, while the Trade Descriptions (Certification and Marking of Halal) Order 2011 sets out specific features of the halal logo that must be adhered to in marking halal food products.

The First Schedule of the Trade Descriptions (Certification and Marking of Halal) Order 2011 describes the Malaysian halal logo as follows<sup>200</sup>:

- (a) Star with eight edges in the middle of the circle.
- (b) Arabic word – Halal in the middle of the star.
- (c) Followed by the word Halal in alphabet.
- (d) Circle with the word ‘Malaysia’ in Arabic and alphabet.
- (e) Small star to distinguish between Arabic and alphabet.

The Malaysian halal logo has been used since November 2003 for the purpose of coordination among the 14 states in Malaysia. Any foods and goods that obtain halal certification from JAKIM/JAIN/MAIN must use the Malaysian halal logo. It should be printed clearly on all manufactured products and labelled on all packaging. In the case of food premises, the halal logo must be displayed at the premises, in the halal kitchen, or at the particular halal section of the restaurant.

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<sup>198</sup> Trade Description (Certification and Marking of Halal) Order 2011, Order 4(1)(a).

<sup>199</sup> Ibid, Order 4(1)(b).

<sup>200</sup> JAKIM, ‘Circular Halal Malaysia Certification No 1/2011’ 8.

One of the problems concerning halal in Malaysia before the amendment of the Trade Description Act 2011 was the self-declaration of halal where producers could declare their product as halal and in the event of a dispute, the onus was on the prosecution to prove that the product was non-halal. Consequently, some producers took advantage of the situation and produced products with a false halal logo. It was difficult for consumers to identify whether the food was genuine halal or not, since there were so many halal abuse cases during that time<sup>201</sup>.

As a result, the Trade Descriptions Act 2011 and the Trade Description (Definition of Halal) Order 2011 were amended. In addition, the Trade Description (Certification and Marking of Halal) Order 2011 was passed with the aim of protecting halal consumers from fraudulent halal food.

To tackle this issue, the Malaysian Government, through Order 4 of the Trade Description (Certification and Marking of Halal) Order 2011, controls the halal logo by only recognizing one halal logo (as set out above), thereby making it easier for consumers to verify the label with JAKIM if there is any ambiguity concerning food products. This is good for consumers and avoids confusion since there is only one recognized Malaysian halal logo. There are still occasions where business owners use the false halal logo on their products or in their premises or use an expired halal logo.

All food specified in the Schedule hereto which is halal according to the Trade Description (Certification and marking of Halal) Order 2011 shall not be supplied unless it is marked by a halal logo indicating that such food is halal. The halal logo can only be marked on each product upon approval of the competent authority in Malaysia which is JAKIM/JAIN/MAIN<sup>202</sup>.

To summarize, Malaysia has provided a clear provision on the marking of the halal logo where the food is claimed to be halal, and thus the halal label should accompany the food.

By contrast, if food producers or manufacturers do not use the halal logo on their products, it is not considered a violation of these laws, since application for the halal logo is voluntary in Malaysia. Due to the current regulation, some Muslim consumers prefer to purchase the food from Muslim sellers in the hope that the food is halal even though the

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<sup>201</sup> Refer to halal abuse as discussed in Chapter 4.3.

<sup>202</sup> Paragraph 6 of the MS1500:2009.



halal logo is not displayed<sup>203</sup>. This might involve an issue on the definition of halal as provided in the Trade Description (Definition of Halal) Order 2011 which will be discussed later in Chapter 4.4.6 of this thesis.

One of the problems concerning the Malaysian halal logo is its security; it has no special security features, meaning that any person can copy it. The only way to know whether the logo is genuine or not is by getting verification from the authority (JAKIM/JAIN/MAIN). Currently, the genuine halal logo can be checked online at the JAKIM website or through a mobile application known as an app called 'myJAKIM',<sup>204</sup>. This app can help consumers establish whether a food supplier has a valid halal certificate and to identify the expiration date of such certificate. This is one of JAKIM's efforts to protect consumers.

#### 3.3.1.4 Foreign Halal Logos

In addition to the Malaysian halal logo, there are foreign halal logos recognized by JAKIM/JAIN/JAIM in Malaysia<sup>205</sup>. This section will identify the foreign halal logo applicable in Malaysia. Order 5(1)(2) of the Trade Description (Certification and Marking of Halal) Order 2011 states that food and goods shall be marked with the name of the certification body. It is not necessary to mark such food and goods with the logo since some of the foreign halal certifiers do not have a halal logo. Schedule 2 of the Trade Description (Certification and Marking of Halal) Order 2011 provides the list of foreign halal certification bodies recognized by JAKIM. Currently, there are 67 foreign halal certifications recognized by JAKIM and they carry different halal logos.<sup>206</sup> This number is not static; it changes as bodies are listed or delisted. As of July 2014, the number of

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<sup>203</sup> Zakaria (n 77) 611.

<sup>204</sup> This is the official app from Department of Islamic Development Malaysia (JAKIM). myJakim is one of many apps offered under the project of myGov Mobile. This project is an initiative by MAMPU (Malaysian Administrative Modernisation & Management Planning Unit) to access government services through mobile platforms for quick and easy access in real time, from anywhere. myJakim provides an information as this app is authenticated and owned by Department of Islamic Development Malaysia (JAKIM). This app features a large amount of information and provides a halal directory which covers a list and location details of halal products and premises in Malaysia. In addition, this app is helpful as JAKIM publishes all international halal logos that are recognized and certified by the agency.

<sup>205</sup> *Trade Descriptions (Certification and Marking of Halal) Order 2011*, Order 5.

<sup>206</sup> JAKIM, 'The Recognised Foreign Halal Certification Bodies and Authorities as at 15 September 2017' (15 September 2017) <<http://www.halal.gov.my/ckfinder/userfiles/files/cb/CB%20List%20LATEST%20.pdf>> accessed 19 October 2017.

foreign halal certification bodies was 73 and 2 were deleted from the previous list<sup>207</sup>. A company will be delisted if the requirement<sup>208</sup> set by JAKIM is not satisfied<sup>209</sup>. There is an example of the delisting of Australian and New Zealand halal meat producers by JAKIM<sup>210</sup>. However, for the last three years, the list has been decreasing.

In 2014, out of 73 foreign halal certifiers, only 60 have their own halal logo, with the remaining having no logo<sup>211</sup>. Currently as at 15 September 2017, there are 67 foreign halal certifiers, and all have their own halal logo.<sup>212</sup> The way of marking is different from the Malaysian halal logo where the marking of halal is using the name of the certifier as stated in order 5(2) of the Trade Description (Certification and Marking of Halal) Order 2011. With the numbers of different halal logos in the market, again it is difficult for consumers to identify the originality of the logo or the name of the certifier, and the same problem may occur as with the Malaysian halal logo before the amendment of the Trade Descriptions Act 2011<sup>213</sup>. Before the amendment of this Act there were many logos and some were not certified by the authority. Nowadays, certification is by the authority, but the number of logos is still huge. Consumers do find it confusing and the various types of foreign halal logos are open to abuse. In Malaysia, Muslims consume food, drink, and manufactured products by looking at the halal logo that is authorized by the Government

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<sup>207</sup> JAKIM, 'The Recognised Foreign Halal Certification Bodies & Authorities' <<http://www.Halal.gov.my/v3/index.php/ms/senarai-badan-islam-yang-diiktiraf>> accessed 19 November 2014.

<sup>208</sup> Among the requirement sets are the company loses its legal status by law; failure in monitoring the halal status of the abattoirs and processing plants; and failure to fulfil Malaysia's requirement on halal certification including failure to submit the six-month report of monitoring and audit activities of the plant in every six months

<sup>209</sup> JAKIM, 'International Islamic Bodies' (*Halal Malaysia*, 11 February 2015) <<http://www.Halal.gov.my/v3/index.php/en/guidelines/international-islamic-bodies>> accessed 11 February 2015.

<sup>210</sup> They are delisted because applying 'thoracic sticking'. Thoracic sticking is severing major blood vessels emerging from the heart by inserting a knife in front of the brisket or sternum (double cut: first the skin, then the vessels).

<sup>211</sup> See appendix for the list of the recognised foreign Halal certification bodies & authorities as at July 24th, 2014

<sup>212</sup> JAKIM, 'The Recognised Foreign Halal Certification Bodies and Authorities as at 15 September 2017' (n 206).

<sup>213</sup> Some irresponsible producers or manufacturer may take advantage of the different foreign halal logo in the market because it is quite difficult for the consumer to identify whether the label is genuine or not.

agency. Therefore, the halal logo by which Muslims purchase their daily food is well trusted.

To overcome this issue, it is suggested that the Malaysian halal logo is attached to the foreign halal logo or foreign halal certification name, on the food or goods, to help consumers with identification. The advantage of this would be to make it convenient for consumers. However, there are two disadvantages. First, it may increase the production costs of packaging. Second, if the halal foreign certifier is delisted, there will be a problem<sup>214</sup> with the existing production since the Malaysian halal logo would be attached to the food and goods and the certifier would be prohibited from using that logo.

Next section will look at the halal certification in the United Kingdom.

### **3.3.2 Halal Certification in the United Kingdom**

It is important to understand the halal certification in the United Kingdom because this thesis focuses on the issue concerning halal food abuse applicable in Malaysian and English law. This section will begin with a brief description of the Muslim population in the UK, to identify the need for halal food. Then, it follows with a discussion of the halal certification in the English law. The legal position and requirements of halal food in the English law will be discussed in Chapter 6.

#### **3.3.2.1 Muslim Population in the UK**

In January 2015, the Muslim Council of Britain published a report on the Muslim population in the UK, based on 2011 survey, led by Sundas Ali to study on demographic, Socio-economic and health profile of Muslims in Britain. It was reported that the number of Muslims in England and Wales had increased by 42.8% in 2011 compared to the population in 2001, with a growth in number from 1.55 million to 2.71 million.<sup>215</sup> Out of the total population in England and Wales, Muslims form 4.8%.<sup>216</sup> Meanwhile in

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<sup>214</sup> The problem here is they cannot use the Malaysia halal logo and it will increase repackaging costs. If they keep using the logo after being delisted, they will be liable for misuse of the halal logo.

<sup>215</sup> Muslim Council of Britain, 'British Muslims in Numbers' (Muslim Council of Britain 2015) 16 <[http://www.mcb.org.uk/wp-content/uploads/2015/02/MCBCensusReport\\_2015.pdf](http://www.mcb.org.uk/wp-content/uploads/2015/02/MCBCensusReport_2015.pdf)> accessed 5 December 2015.

<sup>216</sup> *ibid.*

Scotland, there are 77,000 Muslims and the number in Northern Ireland is 3,800.<sup>217</sup> For Muslims, halal food is necessary since they cannot consume non-halal food. The above data indicate that Muslim is a large minority group in the UK which by implication will give effect towards the development of the legal position of halal food in the UK, which will be discussed further in Chapter 6. It is important to identify the halal certification in the UK, which is to be discussed below.

### **3.3.2.2 Halal Certification in the UK**

There are many halal food certification bodies in the UK.<sup>218</sup> In order to get into the halal markets, manufacturers must have their products certified by qualified halal certification agencies and many of them have different approaches to certification.<sup>219</sup> Moreover local imams, respected Muslim clerics, the Muslim Council of Britain and the Council of Mosques are also bodies or individuals entrusted to provide halal certification.<sup>220</sup>

The certification is only an accreditation scheme for halal food criteria and it does not carry any legal status.<sup>221</sup> Thus, any individual or organization can certify halal and provide halal label. The problem of having many halal certifiers is that the approach used differs from one certifier to another and no consensus on definition of halal.<sup>222</sup> Mike Law identifies three different approaches used in the certification process by various certifiers, which are<sup>223</sup>; first, comprehensive written standards that cover food hygiene, safety issues

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<sup>217</sup> *ibid.*

<sup>218</sup> For examples, there are: The Halal Food Authority (HFA), The Halal Monitoring Committee (HMC), the European Association of Halal Certifiers (AHC-EUROPE), The Department of Halal Certification Ireland (DHCI), The Universal Halal Agency (UHA), The Halal Food Council of Europe (HFCE), the Halal International Authority (HIA), The Halal Authority Board (HAB), The European Halal Development Agency (EHDA) and The Muslim Food Board.

<sup>219</sup> Saim Kayadibi, 'A Way Forward to European Standard on Halal Food' (2014) 3 *Journal Asian Dev. Stud.* 105, 111.

<sup>220</sup> Agriculture & Horticulture Development Board (AHDB), 'The Halal Meat Market: Specialist Supply Chain Structures and Consumer Purchase and Consumption Profiles in England' (EBLEX 2010) 18.

<sup>221</sup> Emma Downing, 'Religious Slaughter of Animal' 22 <<http://researchbriefings.files.parliament.uk/documents/SN07108/SN07108.pdf>> accessed 9 June 2016.

<sup>222</sup> *ibid.*

<sup>223</sup> Mike Law, 'Understanding Halal' 6 <<http://www.sofht.co.uk/members/hifs/understanding-Halal/Understanding-Halal.pdf>> accessed 2 January 2016.

and religious aspects<sup>224</sup>, second, certify on the basis of judging what they see against their own beliefs, and, third, a combination of consultancy with certification that does not differentiate between these two processes, which normally involves small organizations. He also suggests that it may create some problems in terms of acceptability towards customers, even though the certifiers claim that the key issue is to ensure that certification awarded by a specific body will meet consumers' needs.<sup>225</sup> Islamic organizations in Britain also claim authority and compete over halal certification to extend the market of Muslim consumers.<sup>226</sup>

However, according to Dr Mustafa Farouq, these differences are a minor issue as they concern the variations in performing some practices in the way preferred by them, but not the fundamental practices as provided in the Quran and Hadith as previously discussed in Chapter 2.<sup>227</sup> Having many certifiers impliedly shows that there is a demand for halal food and the industry is growing. Even though it may seem a minor issue for some Muslim scholars, in reality it divides Muslims, and brings difficulty and confusion to business operators with different standards and criteria for halal food but at the same time need to fulfil religious, non-religious and market requirement.<sup>228</sup>

However, too many certifiers and different standards might also lead to abuse if it is not regulated and controlled. In the United Kingdom as a whole, the Muslim community is a minority, so certification and monitoring of halal food is not a government priority. There is no specific government agency entrusted by the government to deal with halal food certification as practice in Malaysia and no specific law or legal requirement governing

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<sup>224</sup> This approach is similar with the certification approach by JAKIM/JAIN/MAIN in Malaysia.

<sup>225</sup> Law (n 223).

<sup>226</sup> Fischer (n 4) 289.

<sup>227</sup> Mustafa M Farouk, 'New Zealand Meat Industry Must Optimise Halal Market Opportunities' (*New Zealand Food Technology News*) <<http://www.foodtechnology.co.nz/content/new-zealand-meat-industry-must-optimise-halal-market-opportunities/>> accessed 6 June 2016.

<sup>228</sup> Mustafa M Farouk, 'Advances in the Industrial Production of Halal and Kosher Red Meat' (2013) 95 *Meat Science* 805, 814–815.

halal certification.<sup>229</sup> Pointing et al. describe this as a ‘regulatory problem’.<sup>230</sup> Thus, this will be an opportunity for traders to take advantage of this situation by misusing the halal label<sup>231</sup> due to the lack of control and monitoring from the government.<sup>232</sup> This is consistent with Fisher’s claim in his empirical research that found many halal products in the UK are not properly certified.<sup>233</sup>

There are many examples of halal food incidents which are reported by the media, such as pork DNA found in halal food<sup>234</sup> and non-Muslims served halal food without their knowledge or consent.<sup>235</sup> In addition to the above, recent research has also identified issues concerning the legitimacy of halal food that might be contaminated with non-halal elements during the preparation process.<sup>236</sup>

The situation is worsened because fraud and corruption exist within the halal trade as well as the local certifying bodies.<sup>237</sup> There were also incidents where certifiers, for example,

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<sup>229</sup> John Pointing, Yunes Teinaz and Shafi Shuja, ‘Illegal Labelling and Sales of Halal Meat and Food Products’ [2008] *Journal of Criminal Law* 206, 212; Food Standards Agency, ‘Guidance Note on Halal Food Issues’ 3 <<https://www.food.gov.uk/sites/default/files/multimedia/pdfs/enforcement/enfe10038.pdf>> accessed 23 November 2015; Gareth RT White and Anthony Samuel, ‘Fairtrade and Halal Food Certification and Labeling Commercial Lessons and Religious Limitations’ [2015] *Journal of Macromarketing* 0276146715620236, 3; John Pointing, ‘Strict Liability Food Law and Halal Slaughter | Westlaw UK’ (2014) 78 *Journal of Criminal Law* 387, 389.

<sup>230</sup> Pointing, Teinaz and Shuja (n 229) 206.

<sup>231</sup> *ibid* 3; Fischer (n 157) 276.

<sup>232</sup> Pointing, Teinaz and Shuja (n 229).

<sup>233</sup> Fischer (n 4) 289.

<sup>234</sup> ‘Halal Meat in Birmingham Found to Contain Pork - BBC News’ <<http://www.bbc.co.uk/news/uk-england-birmingham-21956961>> accessed 2 June 2015; ‘“Traces of Pork DNA” Found in Halal Prison Meat - BBC News’ <<http://www.bbc.co.uk/news/uk-21302925>> accessed 8 January 2016.

<sup>235</sup> Simon Mcgee and Martin Delgado, ‘Britain Goes Halal ... but No-One Tells the Public : How Famous Institutions Serve Ritually Slaughtered Meat with No Warning’ (2010); ‘Halal Meat Served in Schools, Hospitals and Pubs: Vets Say Islamic Slaughter Is Cruel | Daily Mail Online’ <<http://www.dailymail.co.uk/news/article-1328616/Halal-meat-served-schools-hospitals-pubs-Vets-say-Islamic-slaughter-cruel.html>> accessed 8 January 2016; ‘Waitrose Forced to Ditch Halal Lamb from Prince of Wales’ Duchy Range | Daily Mail Online’ <<http://www.dailymail.co.uk/news/article-1317312/Waitrose-forced-ditch-halal-lamb-Prince-Wales-Duchy-range.html>> accessed 15 November 2015.

<sup>236</sup> Angerlique M.Thomas and others, ‘Challenges and Practices in Halal Meat Preparation: A Case Study Investigation of a UK Slaughterhouse’ [2015] *Total Quality Management & Business Excellence* 1, 2–5; White and Samuel (n 229) 1.

<sup>237</sup> Fischer (n 4) 286.

imams or religious leaders, without any real knowledge of halal, issue halal certificates in as much as they receive money.<sup>238</sup> This claim is supported by Teinaz,<sup>239</sup> who stated that certification can be bought if someone pays for it, due to the lack of control and regulation<sup>240</sup>. The effectiveness of the audit also can be questioned because it depends on the ‘self-responsibility of the auditor’.<sup>241</sup> Powell contended that the auditing is helpful in theory but practically, there is ‘disconnect between what auditors provide and what buyers believe they are doing’.<sup>242</sup>

Since consumers identify halal food through its halal certification label,<sup>243</sup> this might undermine consumer trust in halal. It is difficult for the consumer to identify the authenticity of halal food, since there is no public body that can be relied on to monitor on the certification of halal food as Pointing mentioned: ‘Consumers have little to go on regarding halal authentication beyond trusting the producers - the chain of persons involved in placing food on the market - and the unaccountable certifiers.’<sup>244</sup>

However, it is also reasonable to assume that if the issue of halal food involves a spiritual understanding, outside the brief of the written local authority guidelines, then is important for communities to assist and co-operate with local authorities in the awareness required to identify and inform on this subject. At an open board meeting of the Food Standards Agency (FSA) on the 4<sup>th</sup> June 2013, Rod Ainsworth (Legal Director ) reported that the dispute among the Muslim community concerning the standard of halal cannot be resolved unless there is consensus on one halal standard, The Food Standards Agency recognizes, along with other parts of Government, that the certification of halal product is a matter for the certifying organizations within the Muslim community and not something that is covered by specific regulations. Given this factor, the FSA ‘would not

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<sup>238</sup> *ibid.*

<sup>239</sup> He was a Chartered Environmental Health Practitioner, London Central Mosque Trust and the Islamic Cultural Centre.

<sup>240</sup> Pointing, Teinaz and Shuja (n 229) 4.

<sup>241</sup> Friederike Albersmeier and others, ‘The Reliability of Third-Party Certification in the Food Chain: From Checklists to Risk-Oriented Auditing’ (2009) 20 *Food Control* 927, 930.

<sup>242</sup> DA Powell and others, ‘Audits and Inspections Are Never Enough: A Critique to Enhance Food Safety’ (2013) 30 *Food Control* 686, 689.

<sup>243</sup> However, there are also instances where the label is fraudulently used by the food manufacturer or seller. See the discussion in Chapter 4.3 (halal food abuse).

<sup>244</sup> Pointing, ‘Strict Liability Food Law and Halal Slaughter | Westlaw UK’ (n 229) 391; John Pointing, ‘Consensus Matters’ (2014) 164 *New Law Journal* 6, 6.

advise on minimum standards for halal-certifying organizations; define what halal should mean in any respect; or participate in the debate on what is an acceptable level of DNA contamination for the community.’<sup>245</sup>

It is clear that the Food Standards Agency and other government departments do not accept any responsibility over halal food certification, unless there is an issue related to other general food issues within their jurisdiction. The FSA Guidelines on halal that do exist were prepared with the advice of relevant Muslim organizations<sup>246</sup>. So, even though the Food Standard Agency is reluctant to have responsibility for halal certification<sup>247</sup>, they still have duty under the law to protect consumer interest in relation to the food<sup>248</sup>. This will be discussed in Chapter 6.

Consequently, and returning to the issue of whether government or government agencies can look to the cooperation of the Muslim community in the question of halal food certification in either an advisory or statutory role, it seems unlikely at the present time, and this is obviously to the detriment of halal consumers.

Fisher claims that the current legal status of halal in the UK is similar to the Malaysian situation in the early 1980s, he says,

Interestingly, the current situation in Britain is somewhat similar to that in Malaysia before state recognition and regulation of ‘national’ Halal began in the early 1980s. What some Muslim groups call for is such a national standard for Halal, one that would mark a kind of British Muslim unity and identity. The central difference, Malays Consuming Halal in London of course, is that the secular state in Britain is reluctant to extend recognition of a relatively fragmented Halal market beyond already existing regulation on food in general.<sup>249</sup>

Thus, the single halal standard might be proposed to reduce halal food abuse and gain consumer trust in purchasing halal food as currently practised in Malaysia. Due to this

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<sup>245</sup> Rod Ainsworth, ‘FSA Role in Relation to Contamination of Halal Food’ (2013) para 1.4 <<http://www.food.gov.uk/sites/default/files/multimedia/pdfs/board/board-papers-2013/fsa-130606.pdf>> accessed 12 February 2015. Emphasis added.

<sup>246</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229) 2687.

<sup>247</sup> FSA Rejects Responsibility for Halal Certification - MeatInfo’ <[http://www.meatinfo.co.uk/news/archivestory.php/aid/15709/FSA\\_rejects\\_responsibility\\_for\\_halal\\_certification.html](http://www.meatinfo.co.uk/news/archivestory.php/aid/15709/FSA_rejects_responsibility_for_halal_certification.html)> accessed 9 February 2016.

<sup>248</sup> Food Standards Act 1999 s 1.

<sup>249</sup> Fischer (n 4) 286–287.



single standard, Malaysia becomes a leader in the halal food benchmarking and also listed as a top ten in halal food industry in the World Competitiveness Scoreboard.<sup>250</sup>

It is worth noting at this stage that there is an initiative to develop the common standard for halal food for the European Union by the Comité Européen de Normalisation (CEN) or European Committee for Standardization.<sup>251</sup> With the current EU developments in progress, there is no effect for the UK if the European halal standard come into existence because this standard is voluntary, and UK might decide whether to apply it or not. There will be advantages of using single standard compared to various halal standards, especially in gaining consumer trust. This is an opportune moment to review some developments which have taken place in the EU.

### **3.3.3 Comité Européen de Normalisation - European Committee for Standardization - CEN/TC 425: Project Committee – Halal Food - to Prepare a European Standard on Halal Food**

It is appropriate to look at the broader picture of halal issues in Europe, and in particular to explore the development and challenges involved in efforts to establish a single halal food standard for the European Union (EU).

Standardization is a specific process in developing and implementing certain specification known as a standard with the involvement of various interest groups, and they come with the mutual agreement to implement that standard in order to promote safety, compatibility, or quality.<sup>252</sup>

A committee known as CEN/TC 425 ‘Project Committee – Halal Food’ (European Halal Standard Project) has been established in order to create a common standard for the European Union. The purpose of this EU committee is to introduce a single standard for

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<sup>250</sup> Kayadibi (n 219) 108.

<sup>251</sup> *ibid* 109.

<sup>252</sup> Zongjie Xie and others, ‘Standardization Efforts: The Relationship between Knowledge Dimensions, Search Processes and Innovation Outcomes’ (2016) 48–49 *Technovation* 69, 69; Jörg Gröndahl, ‘The Economics of Standards: Theory, Evidence, Policy—a Review Article’ (2005) 22 *Homo Oeconomicus* 93, 93.

halal food, and, interestingly, the British Standards Institute is one of the bodies involved in realizing this initiative.<sup>253</sup>

CEN is based in Brussels, founded in 1961 as non-profit organization and consist of national members that working together for the development of various standard in Europe with an objective to build European internal market and to put Europe in a good position as one of the global economy player.<sup>254</sup> CEN national members consist of 28 European Union Countries, the Former Yugoslav Republic of Macedonia, Serbia, Turkey, Iceland, Norway and Switzerland.<sup>255</sup> They also affiliates with 17 National Standards bodies from Eastern Europe, the Balkans, Northern Africa and the Middle East and has more than 50 000 technical experts from various background that involved in their networks.<sup>256</sup>

The key questions are whether a single halal standard will be accepted by all certifiers, and how it will be implemented and controlled, since there is no halal food regulator in the European Union, or in the United Kingdom.<sup>257</sup> However, the initiative has not been able to move forward, and the future is uncertain, largely because issues were raised by the committee of the European Halal Standard Project that prevent the development of this standard. It seems useful to briefly look at some of these issues in order to understand how halal certification is seen by the committee of the European Halal Standard Project.

### **3.3.3.1 Receptiveness of the Implementation and Professional Operation of Halal Certification.**

Countries involved in the development of international standards often convene a national committee to ‘mirror’ the structure of the international committee, or, as in this case, the European Union committee. In this case the Austrian mirror committee urges that the implementation and operation of halal certification should not be monopolised

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<sup>253</sup> Pointing, ‘Strict Liability Food Law and Halal Slaughter | Westlaw UK’ (n 229) 391.

<sup>254</sup> Kayadibi (n 219) 112.

<sup>255</sup> European Committee for Standardization, ‘CEN - CEN Community - Members - List of Members’ <<https://standards.cen.eu/dyn/www/f?p=CENWEB:5>> accessed 9 February 2017.

<sup>256</sup> Kayadibi (n 219) 112.

<sup>257</sup> Unlike Malaysia, Halal is regulated by the government. Single Halal Malaysia is introduced by statute with the implementation of Trade Description (Certification and Marking of Halal) Order 2011.

by the Muslim community, but agrees that Muslim community should identify the framework for halal food production in order to ensure the requirements are fulfilled.<sup>258</sup>

The Austrian committee argues that halal certification constitutes a business, thus, it is subject to existing regulation and also activity with a trading licence.<sup>259</sup> If it is fully monopolised by the Muslim community, they claim that it will compete with other existing qualified consultants.<sup>260</sup> However, in the current practice, halal certification is always being certified by Muslim organizations and there is no issue concerning this matter. From a consumer point of view, it will be difficult for Muslim consumers to accept a halal food certificate issued by non-Muslim organization. It is because the certifier must understand the concept and requirements of halal and the basis come from Quran and Hadith. It is important to ensure that the halal requirements are followed by the company and the audit for halal certification is properly done. They also need to take responsibility if there is any issue concerning the product certified by them.

### **3.3.3.2 Primacy of the European Legal System and National Law Before Religious Precepts**

Gebhard Fidler, President of Society for the Advancement of Global Understanding Organization in consultative status with the Economic and Social Council (ECOSOC) of United Nations claimed that the European Halal Standard Project violates the EU legal principle on separation of state and religion.<sup>261</sup> He argued that the wording of the standard makes reference to the ‘Quran’, ‘Sunnah’, ‘fatwa’ and ‘Sharia’ and are therefore derived from Sharia, and Sharia is prohibited in Europe.<sup>262</sup> His argument makes reference to the case of *Refah Partisi (The Welfare Party) and Others vs Turkey*<sup>263</sup> where the European Court of Human Rights, sitting as a Grand Chamber held that ‘Sharia is incompatible with the fundamental principles of democracy, which are enshrined in European Convention

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<sup>258</sup> Karl Grün, ‘Strategic Items Requested to Be Discussed at the 4th Plenary Meeting of CEN/TC 425 Austrian Mirror Committee’ (13 April 2015).

<sup>259</sup> Gebhard Fidler, ‘Request - the EU Law in the European Halal Standard CEN/TC 425’ (30 March 2014).

<sup>260</sup> Grün (n 258).

<sup>261</sup> Fidler (n 259).

<sup>262</sup> *ibid.*

<sup>263</sup> Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98.

on Human Right (ECHR)<sup>264</sup>. However, this case was about the dissolution of a political party by the Turkish Constitutional Court and the suspension of certain political rights of the other applicants, and not about the different issues of halal standards in Europe.

Of course, context is all important, and in *Refah's case*<sup>265</sup> the Court made clear that

Freedom of religion is in the first place a matter of individual conscience, it also implies freedom to manifest one's religion alone and in private or in community with others, in public and within the circle of those whose faith one shares.<sup>266</sup>

Arguably, inherent in the rights of freedom of religion as provided by Article 9 of the ECHR and Article 10 of the Charter of Fundamental Rights of the European Union<sup>267</sup>, eating halal food is one of the religious practice for Muslim. Perhaps this can be illustrated in *Manoussakis and others v Greece*<sup>268</sup>, where it was held that the right to freedom of religion excludes any discretion of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate. It is a theme repeated by Amir Sakić, a representative on the European Committee for Standardization, who explained that the freedom of religion is not only restricted to right to pray, but it covers various activity of Muslim life including eating halal food.<sup>269</sup>

By way of analogy, it is noteworthy that article 2(g) of Council Regulation (EC) No 1099/2009 understands the religious requirements in the question of slaughtering animals by religious rite.<sup>270</sup> Religious rite is defined as 'a series of acts related to the slaughter of animals and prescribed by a religion'.<sup>271</sup> It is argued that religious requirement in slaughtering process are recognized by the European Union and it is one of many requirements of halal food, but, why should the effort to establish halal standard in EU been stop. Thus, it is submitted that, if there is total prohibition based

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<sup>264</sup> *Refah Partisi (The Welfare Party) and Others vs Turkey* [2003] European Court of Human Rights Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98 [123].

<sup>265</sup> Applications nos. 41340/98, 41342/98, 41343/98 and 41344/98.

<sup>266</sup> *Refah Partisi (The Welfare Party) and Others vs Turkey* (n 264) [92].

<sup>267</sup> (2000/C 364/01).

<sup>268</sup> Application no. 18748/91

<sup>269</sup> Amir Sakić, 'Statement on Proposal CEN/TC 425 N 46' (20 April 2015).

<sup>270</sup> See Article 2(g) Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing 2009.

<sup>271</sup> Article 2(g) *ibid*.

on religion, Article 9 of the ECHR and Article 10 of the Charter of Fundamental Rights of the European Union will not exist. In addition to that, derogation for religious slaughter also should be prohibited due to separation of religion and state, but it is allowed.

Therefore, it is submitted that there must be clear distinction of the committee between developing the standard and introducing new legal system such as Sharia in the European Union.

In addition to the above, there is also issue emerged from disagreements as to the principles of which school of thought (*madhhab*) should be used for this standard<sup>272</sup>.

According to Saim Kayadibi, the Chairman of the European Halal Standard Project, the project had to stop because some of the members of the European Union did not recognize the Quran and Hadith as a basis and sources for the EU halal standards.<sup>273</sup>

Next section will explore the effort done by Organization of Islamic Cooperation (OIC) to establish a single halal certification.

### **3.3.4 Efforts by the Organization of Islamic Cooperation (OIC) for a Single Halal Certification**

As discussed earlier in Section 3.3, not all Islamic countries have their own halal standard and certification. In contrast, some of the countries having their own halal certification and standard but the requirement to be fulfilled are different between one and another. Due to this issue, OIC makes an effort to come with one standard to be implemented in national regulation on halal food for OIC member states.

To resolve the issue of uniform halal standard to be used among OIC countries, OIC Standardization Expert Group is established under the committee for Economic and Commercial Cooperation of the Organization of Islamic Cooperation (COMCEC)<sup>274</sup>.

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<sup>272</sup> Grün (n 258).

<sup>273</sup> E-mail from Associate Professor Dr Saim Kayadibi dated 23<sup>rd</sup> June 2016 informing the current status of the European Halal Standard Project.

<sup>274</sup> Ab Halim and Mohd Salleh (n 12) 6, 9.

Later, Standards and Metrology Institute for Islamic Countries (SMIIC)<sup>275</sup> was established which is an associated body of the OIC. It aims<sup>276</sup> to have united standardization for halal and harmonization will be done by OIC countries in their national standards to demolish the barriers and to make trade easier among them<sup>277</sup>.

The Board of SMIIC then establishes a Technical Committee with the participation of SMIIC members and non-members to undertake any further tasks regarding halal food standards<sup>278</sup>.

With the involvement of 33 representatives from various OIC member states, the Technical Committee organized a meeting which was held in Yaoundé, Republic of Cameroon on 16–17 May 2011<sup>279</sup>. The Technical Committee Meeting considered and adopted the three documents as OIC/SMIIC Standards<sup>280</sup>, which are ‘OIC/SMIIC 1:2011, General Guidelines on Halal Food’, ‘OIC/SMIIC 2:2011, Guidelines for Bodies Providing Halal Certification’ and ‘OIC/SMIIC 3:2011, Guidelines for the Halal Accreditation Body Accrediting Halal Certification Bodies’<sup>281</sup>.

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<sup>275</sup> SMIIC officially established after the inaugural First General Assembly Meeting held in Ankara, Republic of Turkey on 02-03 August 2010. The First Board of Directors Meeting of SMIIC was held in Istanbul, Republic of Turkey on 08 January 2011. The Meeting was attended by the Member States having membership in the SMIIC Board of Directors.

<sup>276</sup> The Board endorsed that SMIIC is the ideal platform for undertaking the mandate of Halal food standards and procedures, and decided to consider the three draft standards (prepared by Standardization Expert Group, before the establishment of SMIIC, mandated by COMCEC) as SMIIC standards.

<sup>277</sup> SMIIC, ‘Report for 28th Meeting of Follow-up Committee of COMCEC’ (2012).

<sup>278</sup> *ibid.*

<sup>279</sup> *ibid.*

<sup>280</sup> The standards entered into force on 17 May 2011 and were adopted in English language. The standards have been translated in the official languages of the OIC which are Arabic and French. The adoption of the first three SMIIC standards were communicated to the National Standards Bodies of all OIC countries as well as the General Secretariat of the OIC.

<sup>281</sup> SMIIC (n 277).

SMIIC General Secretariat anticipates all SMIIC members will harmonize SMIIC Standards as their national standards. As at 25 October 2011, there are only ten (10) OIC Member States<sup>282</sup> signed SMIIC Statute<sup>283</sup>.

Even though the standardization of standards has been made by OIC, there are issues involved. Whether the standardization standard will be honoured by the member states? What is the best mechanism to ensure that there will be no more abuse especially in Muslim countries after the standard being implemented by the member states? How far are the member states willing to adopt the OIC standard? All these questions are raised because the standardization might help to reduce the abuse but the enforcement of law itself is very important to ensure that the rights and protection of consumer for halal food are fully protected. The good standards will not guarantee that there will be no abuse unless the law is strict and is implemented appropriately.

### **3.5 Conclusion**

To ensure compliance, both food law and religious requirements must be fulfilled and properly observed. To summarize, halal certification is established all over the world, but abuses still occur. Even though the uniformity of halal standards is important, the enhancement of the law is more important to ensure that the rights and interests of consumers of halal food are fully protected. Although studies and literature for the halal legal framework are limited, this thesis will identify the existing gap, find the solution(s), and enrich the literature and knowledge with regard to the halal legal framework and consumer protection. The next chapter will discuss the halal market and identify the halal abuses and potential violations of law that have taken place in the halal food market.

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<sup>282</sup> Republic of Azerbaijan; Burkina Faso; Republic of The Gambia; Republic of Guinea-Bissau; Federal Republic of Nigeria; State of Palestine; Republic of Senegal; Republic of Sierra Leone; Syrian Arab Republic; Republic of Yemen.

<sup>283</sup> SMIIC (n 277).

## CHAPTER 4: HALAL MARKETS, HALAL ABUSE, HALAL LEGAL REQUIREMENTS AND POTENTIAL BREACHES

### 4.1 Halal Market

The previous chapter discussed the development of halal certification and then examined halal certification in Malaysia and the UK specifically. Many countries around the world are seeking to adopt halal standards because of the huge demand for halal food. However, if the halal food market is not properly controlled and regulated, infringements will occur. This section will study the demand for halal food and the nature of halal food abuses. It will also examine the legal requirements of, and the violations involved in halal food infringement in Malaysia.

There is increasing demand<sup>284</sup> for halal food even though halal food is more expensive due to the process involved, and this has led to dishonest prices and misuses of the halal label<sup>285</sup>. There are many reasons for abuse and these will be explored in this chapter.

The food industry, like any other industry, responds to the needs and desires of the consumers. The number of food industries is growing rapidly both locally<sup>286</sup> and internationally<sup>287</sup>. With Islam being the world's fastest-growing religion<sup>288</sup>, the halal market is equally expected to grow. The world's Muslim population in 2017 is 2.18 billion<sup>289</sup> and this number is predicted to increase to 30% of the whole world population by 2025<sup>290</sup>. The increase in Muslim population is occurring in both Muslim and non-

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<sup>284</sup> Syed Marzuki (n 16) 21; Ab Halim and Mohd Salleh (n 12) 7; Abdul Talib and Mohd Ali (n 7) 516; Wahab (n 133) 10.

<sup>285</sup> Rain Levy Minns, 'Note: Food Fights: Redefining the Current Boundaries of the Government's Positive Obligation to Provide Halal' (2013) 17 J.L. & Pol. 714.

<sup>286</sup> Abdul Talib, Mohd Ali and Jamaludin (n 3) 2.

<sup>287</sup> Zakaria (n 77) 604.

<sup>288</sup> Bonne and Verbeke (n 108) 35.

<sup>289</sup> 'Muslim Population Worldwide Data' <<http://www.muslimpopulation.com/World/>> accessed 11 December 2017.

<sup>290</sup> Zulkifli Hasan *Undang-Undang Produk Halal Di Malaysia: Isu Penguatkuasaan Dan Pendakwaan* (n 5)1, 3.



Muslim countries<sup>291</sup>. Approximately, 11 million Muslims live in North America, 12–13 million in West Europe, and 400,000 in Belgium<sup>292</sup>. One in four consumers worldwide buy halal products<sup>293</sup>. In the Netherlands, the Muslim population is estimated to be 1/16th of the total population, amounting to 940,000 and representing 1% of the total Muslim population in Europe<sup>294</sup>.

These facts show that the halal market is very significant and will continue to grow. Thus, specific guidelines, regulations and laws are required to ensure that halal products are genuine and comply with Sharia<sup>295</sup>.

Business opportunities relating to halal food are currently exploding worldwide.<sup>296</sup> There is a growing global market for halal food, estimated to be USD 168 billion (GBP 120 billion) per annum<sup>297</sup>. EBLEX<sup>298</sup> Chairman, John Cross, stated that the halal meat market is a ‘very important sector’ in the UK and worth around £2.6 billion a year.<sup>299</sup> Based on this fact, Muslims are demanding halal food products and will avoid foods which are not halal<sup>300</sup>.

## 4.2 Consumer Perception of the Halal Logo

In Malaysia, where Muslims make up of 60.4 percent of the population, there is the concern about the ‘halalness’ of food, because generally the halal logo increases public

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<sup>291</sup> Elijah L Milne, ‘Protecting Islam’s Garden from the Wilderness: Halal Fraud Statutes and the First Amendment’ (2006) 2 *Journal of Food Law and Policy* 62.; Karijn Bonne and others, ‘Determinants of Halal Meat Consumption in France’ (2007) 109 *British Food Journal* 367, 370.

<sup>292</sup> Bonne and Verbeke (n 108) 35.

<sup>293</sup> Bonne and Verbeke (n 108).

<sup>294</sup> Waarden and Dalen (n 57).

<sup>295</sup> Abdul Talib, Mohd Ali and Jamaludin (n 3) 6.

<sup>296</sup> Marei (n 4). See also Fischer, ‘Feeding Secularism : Consuming Halal among the Malays in London’ (n 4) 275, 276.

<sup>297</sup> Syed Marzuki (n 16) 17.

<sup>298</sup> ‘AHDB Beef & Lamb | Meat Trade UK | Beef and Lamb Trade Marketing’ <<http://www.qsmbeefandlamb.co.uk/>> accessed 6 March 2017.

<sup>299</sup> Adam Withnall, ‘Halal Meat: What Is It and Why Is It so Controversial’ (*The Independent*, 7 May 2014) <<http://www.independent.co.uk/life-style/food-and-drink/what-is-halal-meat-the-big-questions-about-religious-slaughter-answered-9331519.html>> accessed 6 March 2017.

<sup>300</sup> Zakaria (n 77).

trust and confidence in brands and products<sup>301</sup>. According to Ballin, accurate<sup>302</sup> labelling is important to inform consumer choice<sup>303</sup>. Muslim consumers have less time to check or obtain the necessary information on products to satisfy their conscience that they can rely on the determination of the halal status of a product<sup>304</sup>.

In his study, Rezai found that displaying the JAKIM halal logo on food products is an important determinant for consumer confidence, and the effect is positive<sup>305</sup>. This indicates an increasing likelihood of consumers trusting manufactured food products with the JAKIM halal logo in preference to others. According to the results of the study, the level of confidence in the JAKIM halal logo is 3.321 times greater than other halal logos in Malaysian food markets<sup>306</sup>. Conversely, simply reading or looking at the list of ingredients would be less likely to impress consumers<sup>307</sup>. It can be concluded that consumers rely on the JAKIM halal label more than the list of ingredients. However, the halal logo and the labelling are both important and are necessary to ensure that consumers get what they really want. Currently, other than the Malaysian halal logo, there are 73 foreign logos recognized in Malaysia by JAKIM/JAIN and MAIN<sup>308</sup>, as discussed previously in Chapter 3.3.1.3 (Foreign Halal Logos).

Despite consumers having a higher level of confidence in the halal logo, there are many incidents reported by the press involving the abuses of halal food which will be discussed below.

### **4.3 Halal Food Abuses**

Increasing numbers of Muslim consumers sourcing halal food, and halal food business opportunities are not only limited to Muslim countries<sup>309</sup> but are also expanding to non-

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<sup>301</sup> Rezai (n 148) 1.33.

<sup>302</sup> Authenticity problem may occur in terms of origin, substitution, processing treatment and addition ingredients.

<sup>303</sup> NZ Ballin, 'Authentication of Meat and Meat Products' (2010) 86 *Meat Science* 577, 578.

<sup>304</sup> Zakaria (n 77) 610.

<sup>305</sup> Rezai (n 148) 4.49.

<sup>306</sup> Rezai (n 148).

<sup>307</sup> *ibid.*

<sup>308</sup> As at 24 July 2014.

<sup>309</sup> Nik Muhammad, Md Isa and Chee Kifli (n 39).

Muslim countries<sup>310</sup> and becoming sources of revenue.<sup>311</sup> Consequently, any food which is not halal or which is not labelled as halal will be avoided by the Muslim consumers<sup>312</sup>. Some traders and food suppliers are therefore taking advantage by abusing the halal logo for the marketing of their products<sup>313</sup>.

Halal can be certified by any of more than 100 halal certification agencies worldwide and each of them has its own halal standards and guidelines<sup>314</sup>. However, due to the lack of regulation and no recognition between the countries when it across national boundaries, there is possibility that halal logo can be abused<sup>315</sup>. For example, the requirement of the halal standard in Malaysia is not similar to the halal standard in Indonesia and Brunei. The trader who wishes to market their halal product in Malaysia must make sure that they comply with the halal standard set up in Malaysia. If they wish to market their product in both Brunei or Indonesia, they must make sure they comply with the halal standard and requirement of both these countries. It can be concluded that there is no uniform halal standard yet<sup>316</sup> all over the Muslim countries and that the trader must decide where to market their product and follow the standard requirement which has been set up in that particular country.

Thus, it is very important to ensure that any product with the halal label is really halal. With the development of food technology, it is difficult to trace the source of various ingredients, as the consumer can only rely on the ingredients stated on the external packaging of the product,<sup>317</sup> as discussed earlier in Chapter 3.

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<sup>310</sup> Marei (n 4). See also Fischer, 'Feeding Secularism : Consuming Halal among the Malays in London' (n 4) 275, 276.

<sup>311</sup> Syed Marzuki (n 16) 17.

<sup>312</sup> Zakaria (n 77) 603.

<sup>313</sup> Havinga (n 132) 251; Waarden and Dalen (n 57) 5.

<sup>314</sup> Hanzaee and Ramezani, 'Intention to Halal Products In THE World Markets' (n 44) 1, 3.

<sup>315</sup> *ibid.*

<sup>316</sup> Bonne and others (n 291) 369.

<sup>317</sup> Zakaria (n 77) 606.

This discussion on halal food abuses will focus on abuses taking place in selected Western countries<sup>318</sup> and Malaysia<sup>319</sup>.

#### 4.3.1 The Nature of Halal Abuse in Western Countries

Halal food abuse does not only occur in Muslim countries; it occurs in non-Muslim countries such as the UK and the Netherlands. For example, the media reported pork DNA being found in halal food, thereby rendering it haram (not permissible)<sup>320</sup>, and there have been occasions when non-Muslims have been provided with halal food without their knowledge or consent.<sup>321</sup> Recent research has also identified operational deficiencies in preparing halal food that undermines the authenticity of halal food.<sup>322</sup>

In the UK there have been many incidents involving food adulteration. A famous incident occurred in 2013, when pork DNA was found in halal pasties supplied to UK prisons.<sup>323</sup> There are many ways in which contamination can occur when handling halal food.<sup>324</sup> In the UK, while there is a certification, there is a problem of illegal labelling of halal food<sup>325</sup>, as discussed earlier in Chapter 3.3.2.

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<sup>318</sup> United Kingdom and Netherland are selected because they have reputation for protecting consumers but halal abuse still occurs in these countries. This thesis will also examine whether adequate legal protection also apply to Halal food consumer in western countries. However, this thesis will not identify the details on consumer protection to all countries due to the words restriction of this thesis and language issue since some of countries having materials in their own language. Apart from that, the most important point in this section is to establish the problem statement that the abuse of Halal is happen not only in Malaysia, but it also happens in other countries.

<sup>319</sup> Malaysia is one of the Halal importer and hub in the world and one of the purposes of this study is to enhance the effectiveness of current legal infrastructure of Halal foods in Malaysia.

<sup>320</sup> 'Halal Meat in Birmingham Found to Contain Pork - BBC News' (n 234); "'Traces of Pork DNA' Found in Halal Prison Meat - BBC News' (n 234).

<sup>321</sup> Mcgee and Delgado (n 235); 'Halal Meat Served in Schools, Hospitals and Pubs: Vets Say Islamic Slaughter Is Cruel | Daily Mail Online' (n 235); 'Waitrose Forced to Ditch Halal Lamb from Prince of Wales' Duchy Range | Daily Mail Online' (n 235).

<sup>322</sup> M.Thomas and others (n 236) 2–5; White and Samuel (n 229) 1.

<sup>323</sup> Susan Ghaiwal, 'Horsemeat Adulteration in Burgers' (2013) 15 *Food Safety Newsletter* 1, 1.

<sup>324</sup> *ibid* 2.

<sup>325</sup> John Pointing, Yunes Teinaz and Shafi Shuja, 'Illegal Labelling and Sales of Halal Meat and Food Products' (2008) *Journal of Criminal Law* 1.

In the Netherlands, 10 random samples of Turkish sandwiches sold as 100% lamb were taken from different shops and analysed in the laboratory. The results found that only one sandwich was 100% lamb, 8 sandwiches were lamb mixed with other meat, and one sandwich was 100% pork<sup>326</sup>. This was an infringement of halal food by mixing it with non-halal ingredients. Although lamb is halal, if it is contaminated with non-halal food, its halalness becomes questionable.

In November 2009, the inspection was made by Algemene Inspectiedient AID from the Dutch Ministry of Agriculture of Fasen Meat Trading, a meat wholesaler from Breda which used forged documents to fraudulently sell thousands meat as halal to Muslims in France<sup>327</sup>.

The Belgian Halal Federation in 2009 claimed that 60 percent of all halal products in that country were not halal<sup>328</sup>. The Dutch Agriculture Minister admitted in a letter to the Dutch Parliament that the Dutch chicken products which had been sold as halal or kosher meat possibly contained beef or pork proteins<sup>329</sup>.

De Volkskrant newspaper reported that many salted Thai or Brazilian chicken fillets which were imported by Dutch poultry processors had been washed with pork or beef proteins and that this information had not appeared on the product labels<sup>330</sup>.

In 1978, Egypt dumped eight containers of meat from Dutch meat producer Zwanenberg into the Red Sea because it contained a mixture of beef fat and powdered pig bones and this fraud was only been detected after they sold the product to Saudi Arabia and Saudi Arabia analysed the ingredients<sup>331</sup>.

In halal food, there can be difficulty in tracing the food-chain process and this leaves a question mark over possible contamination in the process. Also, not many consumers are aware of the E-numbers that contain prohibited ingredients<sup>332</sup>. E-numbers are the code

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<sup>326</sup> Waarden and Dalen (n 57) 5.

<sup>327</sup> *ibid* 6.

<sup>328</sup> *ibid*.

<sup>329</sup> *ibid*.

<sup>330</sup> *ibid*.

<sup>331</sup> *ibid*.

<sup>332</sup> *ibid* 5.

numbers used to categorize food additives<sup>333</sup> and are approved for used in the EU<sup>334</sup>. Some of the additives are mixed with animal gelatine and for Muslims to be permitted to consume them, the animal must fall within the category of non-prohibited animal and be slaughtered according to Sharia, as discussed in Chapter 2. It is difficult for consumers to identify the halalness of E-numbers unless they are derived from natural sources or plants. However, consumers can refer to halal E-number listings provided by Muslim organizations to check whether the E-number stated in the food ingredients is halal.<sup>335</sup>

Based on the examples of halal abuses that occur as discussed above, it is very difficult for consumers to check thoroughly the process and food ingredients unless there is a credible halal certifier. Abuse of the halal logo or label will decrease the trust and confidence of consumers in the halal label and halal certifiers. The next section will identify the nature of halal abuses in Malaysia and then categorize them accordingly in order to identify whether such abuses violate Malaysian law.

#### **4.3.2 the Nature of Halal Abuse in Malaysia**

The focus of this section is to identify the nature of halal abuse in Malaysia since one of the objectives of this thesis is to look for the best solution to halal food abuse. In Malaysia, many cases of misuse of the halal logo have been committed by manufacturers or traders of halal products whereby the products are claimed to be halal, but in reality, they are not<sup>336</sup>. Muslims, as the largest population in Malaysia, have an advantage in getting halal food easily.

It is important to understand the nature of halal abuse since it is very difficult for an individual consumer to identify whether the food is genuinely halal or not. The easiest way for a consumer to obtain halal food is by relying on the halal label stated on the product.

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<sup>333</sup> Some additives have long chemical names and E-number is a system of to identify the additive in the specific number.

<sup>334</sup> 'Food Standards Agency - Additives or E Numbers' <[http://www.food.gov.uk/policy-advice/additivesbranch/#.Uu94X\\_ldUp](http://www.food.gov.uk/policy-advice/additivesbranch/#.Uu94X_ldUp)> accessed 3 February 2014.

<sup>335</sup> See 'E-Numbers Listing Halal or Haram Ingredients' <<http://www.alahazrat.net/islam/e-numbers-listing-Halal-o-haram-ingredients.php>> accessed 3 February 2014.

<sup>336</sup> Examples of halal food infringement will be discussed in detail in this chapter.

Halal certification in Malaysia is voluntary in nature, and it is governed by the Ministry of Consumer, Domestic Trade and Co-Operation under the Trade Description Act 2011 (TDA 2011), Trade Description (Definition of Halal) Order 2011, Trade Description (Certification and Marking of Halal) Act 2011, and Trade Description (Certification and Marking of Halal fees) Regulations 2011 (these are discussed in detail in Chapter 4.4 when dealing with general requirements under Malaysian law and potential breaches).

If the manufacturer decides to market their product as halal, it is mandatory for them to apply for halal certification for the products before entering the domestic market and selling their products. The Malaysian halal logo is recognized both domestically and internationally.

There are various incidents where halal abuse has occurred in relation to the halal logo or label. Such abuse may occur in many ways because halal food preparation involves many processes. It may happen during the beginning of the halal food process itself, such as in slaughtering the animal, which may not adhere to the Sharia. It may also happen at the very end of the process, for example, during the transporting of the food to the retailer and there may be contamination with non-halal elements during the process.

For food premises like stalls and restaurants, there is a tendency to add alcohol when the chef cooks the meal, even if the premises have obtained the halal logo and the halal label is stated in the premises' menu<sup>337</sup>. The Consumer Association of Pulau Pinang (CAP) have reported an incident pertaining to food to which alcohol had been added, which was served to the Muslims without informing them<sup>338</sup>. In this case, the food producer should label the food as containing alcohol, as stated in regulation 11(1)(d) of the Food Regulations 1985. These are also examples of misuse of the halal logo even though the law on the use of the halal logo is clearly set out in the legislation.

There have also been incidents reported by consumer association groups such as CAP concerning misuse of the halal logo. Up to December 2012, JAKIM carried out 740

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<sup>337</sup> JAKIM, 'Juadah berbuka campur wain' (*Portal Rasmi Halal Malaysia*) <<http://www.Halal.gov.my/v4/index.php/my/arkib-berita/93-juadah-berbuka-campur-wain>> accessed 29 January 2015; 'Chef Muslim Mesti Dalami Hukum Halal, Haram' <<http://halaqah.net/v10/index.php?PHPSESSID=ju769qbiklvn1h8kpb21b875i3&topic=9551.0>> accessed 29 January 2015.

<sup>338</sup> Persatuan Pengguna Pulau Pinang, *Panduan Halal Haram* (Persatuan Pengguna Pulau Pinang 2006) 41.

inspections of the Malaysian halal logo on restaurant premises. Only 308 of the premises complied with the usage of the halal logo, while the remaining of 432 premises were given a warning for the offence of not complying with the conditions of the halal logo. Eight cases were investigated under the Trade Descriptions Act 2011<sup>339</sup>. JAKIM inspected the company because it carries the Malaysian halal logo and 58.37% fail to comply with the criteria set by JAKIM. In addition, there are also cases of misuse of the halal logo where companies never applied to use the halal logo. They are simply using false halal logos or another company's halal certification<sup>340</sup>. The greatest danger faced by consumers looking for halal food is in the consumption of false halal food. It is important for consumers to identify the genuine halal logo which is attached to foods or goods. They can check with JAKIM whether the product obtain halal certification or vice versa.

Halal food abuse can generally be divided into three categories. First is where there are subsequent misuses of the halal logo after the business has acquired the logo. In this scenario, the company successfully obtains the halal label from the Department of Islamic Development Malaysia (JAKIM) or State Religious Council (MAIN)/State Islamic Religious Affairs Department (JAIN)<sup>341</sup>, but they misuse the halal logo by selling non-halal products and claiming them to be halal. They may also mix non-halal items into the product.

Second is the use of an overdue or expired halal compliance certificate<sup>342</sup>. In this situation, the product might be halal in terms of its content, but it is not valid according to the law.

Third is where the company never obtained the halal certificate but used forged certificates<sup>343</sup>. It has been reported that false halal logos, resembling JAKIM's halal logo, are in the market. Some of these include *Kopitiam* restaurants in Malaysia. *Kopitiam* restaurants are eating places that attract Muslim consumers because of their modern concept and hygiene, but not all of them obtained the halal certification from JAKIM. The information was disseminated to the public that not all *Kopitiam* restaurants were

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<sup>339</sup>Parliament Malaysia, 'Hansard Parliament 18 December 2012 (Penyata Rasmi Parlimen Dewan Negara)' (Parliament Malaysia 2012) 24 <<http://www.parlimen.gov.my/hansard-dewan-rakyat.html?uweb=dr&>> accessed 16 December 2014.

<sup>340</sup> Ab Halim and Ahmad (n 24) 9.

<sup>341</sup> JAKIM is governed by the Federal government while MAIN and JAIN are under the state jurisdiction.

<sup>342</sup> Abdul Talib, Mohd Ali and Jamaludin (n 3) 4.

<sup>343</sup> Ab Halim and Mohd Salleh (n 12) 6.



halal and that some of the *Kopitiam* restaurant owners had used a false halal logo to deceive Muslim consumers.<sup>344</sup> This logo had been displayed on the door at the payment counter of the premises and most of consumers had not been aware of the halal label deception<sup>345</sup>.

Therefore, there are cases where food producers use a false halal label, or halal logos with expired certificates, or mix non-halal elements into food which is certified halal by the authority<sup>346</sup>. These are all examples of false labelling. Halal abuse may occur intentionally or unintentionally. The example of abuse occurring intentionally is when the food product which is certified halal is contaminated with non-halal elements without the knowledge of the producers. This can happen within the supply chain process. Effective legislation is vital to safeguard the halal process from the beginning until the end.

In addition, there was also an incident reported by the press in Negeri Sembilan, Malaysia. In this case, a restaurant misused the Malaysian halal logo by displaying it in the entrance of their premises. They displayed the halal logo even though the certification had expired, and the renewal had been rejected due to the failure of the company to comply with the halal standard<sup>347</sup>. In another reported incident, a factory abused the halal logo by using another company's halal certification<sup>348</sup>. In both of these examples, there was intention to misuse the halal logo.

There is no way that the consumer can identify the validity of the halal logo used by restaurants unless they can verify it with the authority if there is ambiguity about the logo. The halal logo can increase the demand for a product, and thus some of traders take advantage of this situation by abusing, exploiting, or misusing the halal logo. This is one of the problems faced by consumers: identifying genuine halal food products in the market.

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<sup>344</sup> Mohd Jamilul Anbia Md Denin and Kasdi Ali, 'Perdaya Pelanggan (Cheating the Consumers)' *My Metro* (Malaysia, 2011) <<http://www.hmetro.com.my/articles/Perdayapelanggan/Article>> accessed 10 November 2016.

<sup>345</sup> *ibid.*

<sup>346</sup> Director of JAKIM Halal Hub mentioned to Utusan Malaysia on 2 February 2011 that not all Halal logo in the market are genuine. For fake Halal logo, the jurisdiction is under the MDTCC and not JAKIM.

<sup>347</sup> Nur Sharieza Ismail, 'Papar Logo Halal Palsu' <<http://www.sinarharian.com.my/edisi/melaka-ns/papar-logo-Halal-palsu-1.119950>> accessed 12 February 2015.

<sup>348</sup> *ibid.*

With the amendment of the Trade Description Act (TDA) in 2011, there have been some modifications in the landscape of halal law in Malaysia. Based on orders 4(1)(b), 5(2) and 6 of the Trade Description (Certification and Marking of Halal) Order 2011. It is not an obligation for food producers to mark their food as halal.<sup>349</sup> The Order only specifies that once the food is marked as halal, then the trader or the manufacturer/producer of the food is responsible for ensuring that the food is genuinely halal.

The reported incidents show that most of the vendors or manufacturers of the products had been deceptive and had made false representations to consumers, especially in the use of the halal label. Halal consumers normally refer to the labelling and packaging of the product, without which it is difficult to determine the halal status of the food product<sup>350</sup>. Due to these circumstances, they depend on authorities to ensure the halalness of food products<sup>351</sup>. To date, there have not been prosecutions for the abuse of halal certification or halal label. The data provided by JAKIM and parliament hansard as discussed earlier does not categorised the abuse, it just reported as halal food abuse. However, based on the literature and reported incidents of halal food abuse, there are six common misuses of halal food by manufacturers, producers, or traders. This categorization of abuse is helpful in identifying possible protection and remedy for consumer and may help to underpinning good regulation. These can be categorized as follows:

- (i) the misuse of halal certifications;
- (ii) false labelling;
- (iii) the adulteration of halal food;
- (iv) improper slaughtering practices;
- (v) questionable hygiene; and

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<sup>349</sup> Trade Descriptions (Certification and Marking of Halal) Order 2011 (n 189) o 4.

<sup>350</sup> Zakaria (n 77).

<sup>351</sup> *ibid.*

(vi) misrepresentation of halal as stated in the Trade Descriptions (Definition of Halal) Order 2011<sup>352</sup>.

The following sections will identify and examine how the law in Malaysia is being applied to the types of violations or abuses that are commonly committed by manufacturers and traders in relation to halal food abuse.

#### **4.4 General Requirements Under Malaysia Law and Potential Breaches of Law**

In this part, the general requirements of halal under the law and the potential breaches of law are identified. Each section below discusses an individual issue – for instance, the potential misuse of halal food – parallel to the issue pertaining to the nature and the abuse of halal food, as previously discussed above.

##### **4.4.1 Halal Misuse 1: Misuse of Halal Certification**

This section examines, in particular, how the law has responded to the problem pertaining to the misuse of halal certifications. It was seen earlier<sup>353</sup> that such misuse occurs when companies selling non-halal products as halal, either mix non-halal ingredients into the food, use an overdue or expired halal certificate, never obtain a halal certificate, or used a forged certificate.<sup>354</sup>

This section addresses the question of why such problem occurs and how the law responds to the problem. It also asks what the requirements are for halal certification in terms of the law, the consequences of the misuse of the halal certification, and the consequences of using non-approved or invalid certification.

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<sup>352</sup> Any person who supplies or offers to supply any food through any representation or act which is likely to mislead or confuse any person that the food is Halal or can be consumed by a Muslim commits an offence. Representation or conduct 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.

<sup>353</sup> See Chapter 4.3.

<sup>354</sup> Mustafa Afifi Ab Halim and Mohd Mahyeddin Mohd Salleh, 'The Possibility of Uniformity on Halal Standards in Organization of Islamic Countries (OIC)' (2012) 17 World Applied Science Journal 6, 6.

#### 4.4.1.1 What Are the Legal Requirements of Halal Certification?

There are two general legal requirements to be fulfilled under the specific laws on halal. First, there must be compliance with the definition of halal, as stated in Order 3 of the Trade Descriptions (Definition of Halal) Order 2011.

Second, the certification must be awarded by religious authorities such as Jabatan Kemajuan Islam Malaysia (JAKIM), Jabatan Agama Islam Negeri (JAIN) or Majlis Agama Islam Negeri (MAIN)<sup>355</sup> or foreign halal certification bodies that are recognized by JAKIM<sup>356</sup> and comply with the Malaysian Standard MS1500:2009 ('Standard MS1500:2009'), the Malaysian Halal Certification Manual Procedure (versions 2011 and 2014) ('the manual' when referring to both or 'the 2011 Manual' for version 2011 and 'the 2014 Manual' for version 2014) and Malaysian Halal Certification Circular (versions 2011 and 2012) ('the Circular' when referring to both or 'the 2011 Circular' for version 2011 and 'the 2012 Circular' for version 2012) of religious bodies such as JAKIM/JAIN/MAIN as stated in Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011.

Furthermore, Order 3(1) of the Trade Descriptions (Definition of Halal) Order 2011 provides that a food product or material can be stated as halal if:

it does not contain any part or matter of an animal that is prohibited by Hukum Syarak (Sharia Law) for a Muslim to consume and the animal should be slaughtered in accordance with to Hukum Syarak, does not contain anything which is impure according to Hukum Syarak, does not intoxicate according to Hukum Syarak, does not contain any part of a human being or its by products, which are not allowed by Hukum Syarak, is not poisonous or hazardous to health, has not been prepared, processed or manufactured using any instrument that is contaminated with impure materials according to Hukum Syarak and has not, in the course of preparing, processing or storage has been in contact with, mixed, or in being close proximity to any food that is against Hukum Syarak.

Order 4 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 provides two elements to be satisfied for food products to be defined as halal. The first element is when the food is described as halal by labelling it with the halal label after the food product is certified as halal by the competent authority after the producers have paid

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<sup>355</sup> Trade Descriptions (Certification and Marking of Halal) Order 2011 (n 189).

<sup>356</sup> *ibid* O 5.

the fee as provided in Order 2 of the Trade Descriptions (Certification and Marking of Halal Fees) Regulations 2011. According to Riaz and Chaudry, as long as the food product meets all the established and agreed-upon production and marketing requirements between the company and the halal-certifying organization, the product remains halal-certified<sup>357</sup>. Most of the food manufacturers and traders in Malaysia see halal certification as a business opportunity and, according to Wilson, Liu<sup>358</sup> and Rezai,<sup>359</sup> any brand marked 'halal' will have credibility among consumers.

The second element is when the food is described in a way that indicates that the food can be consumed by a Muslim. For example, the usage of the holy verse of Al-Quran in the premises in which such the food is sold or in the food container.<sup>360</sup> This issue will be discussed in depth in Chapter 4.4.6 on halal misuse and representation of halal by expression.

In order to obtain halal certification, Order 7.1 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 states that the applicant should make an application for halal certification from the religious authorities competent to award certification (JAKIM/JAIN/MAIN). This is because only JAKIM/JAIN/MAIN are named as authorities competent to certify halal in Malaysia.<sup>361</sup> Furthermore, Order 7.2 states that an application for halal certification shall comply with the Standard, procedures and the Circular enforced by the Director General of JAKIM.

Based on the above, it can be concluded that the specific law on halal simply states the general requirement for the food to be certified as halal. The applicant need to make an application to a competent authority (JAKIM/JAIN/MAIN), and should comply with the Standard MS1500:2009, the Manual, and the Circular enforced by JAKIM/JAIN/MAIN. These documents lay down the details required for halal certification as well as the certification fees that need to be paid.

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<sup>357</sup> Riaz and Chaudry (n 6) 188–189; Hanzae and Ramezani (n 44) 4.

<sup>358</sup> Jonathan A.J. Wilson and Jonathan Liu, 'Shaping the Halal into a Brand' (2010) 1 *Journal of Islamic Marketing* 107, 111.

<sup>359</sup> Rezai (n 148) 1.33.

<sup>360</sup> Trade Descriptions (Definition of Halal) Order 2011 Order 4(2).

<sup>361</sup> Trade Descriptions (Certification and Marking of Halal) Order 2011 (n 4) O 3.

The Trade Descriptions (Certification and Marking of Halal) Order 2011 does not contain detailed guidance because the detail is provided by the Standard and the Malaysia Halal Certification Manual. According to Pointing, Teinaz and Shafi, most of the food legislation sets down in the form of specific regulations may be supported by guidance and codes of practice that address particular aspects of food production, labelling and sales in detail.<sup>362</sup>

The detailed requirements for halal certifications, which are provided by the Standard MS1500:2009 and the Manual have been discussed earlier in Chapter 3.3.1. Among the requirements that need to be fulfilled as prescribed by the Manual is the need to register the business with the Companies Commission of Malaysia (CCM), and to obtain a valid licence to operate a business from a local government or government agency<sup>363</sup>. The applicants must ensure that they are registered with the CCM and have the valid licence before making an application. In addition, they must prove that they only produce and deal with halal products and comply with the stated standard, and ensure that the ingredients used in the food are halal. There are service fees charged based on the type of premises and industry.<sup>364</sup> According to JAKIM,<sup>365</sup> once the company has obtained a halal certificate from JAKIM/JAIN/MAIN, they can use the halal label on their product and premises, as stated under Order 4 of the Trade Descriptions (Certification and Marking of Halal) Order 2011.

Spiegel and others indicate that even though the fee to obtain halal certification is not expensive, compliance with the certification requirement is costly.<sup>366</sup> This was proven by Siew Fun in his research on Nestlé, Ayamas and Silver Bird being some of the companies in Malaysia able to meet halal criteria set by JAKIM.<sup>367</sup> Nestlé spends RM 500,000 (GBP

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<sup>362</sup> John Pointing, Yunes Teinaz and Shuja Shafi, 'Illegal Labelling and Sales of Halal Meat and Food Products' [2008] *Journal of Criminal Law* 1, 2.

<sup>363</sup> JAKIM, 'Malaysian Halal Certification Manual 2011 (Second Revision)' para 4.1-4.7.

<sup>364</sup> Trade Descriptions (Certification and Marking of Halal Fees) Regulations 2011.

<sup>365</sup> JAKIM, 'Frequently Asked Questions About Malaysian Halal Certification' (*JAKIM*, 2010) 17 <[www.jakim.gov.my](http://www.jakim.gov.my)> accessed 10 March 2014.

<sup>366</sup> Van Der Spiegel and others (n 175) 110.

<sup>367</sup> Siew Fun Vivienne Soong, 'Managing Halal Quality in Food Service Industry' (University of Nevada, Las Vegas 2007) 23 <<http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1702&context=thesisdissertations>> accessed 11 December 2014.

90,912) a year on facilitating the implementation of halal procedures within the organization by adopting a controlled purchasing system to ensure that raw materials are procured from genuine halal suppliers, that hygiene practices are implemented inside and outside the processing plant, that equipment used is free from najis, and on developing a halal committee to ensure that halal standards are met.<sup>368</sup> This is because halal certification is not a certification per se, but it is to ensure that the processing of the food from the very beginning to the end complies with halal requirements.<sup>369</sup> This indirectly has a cost impact on small businesses in meeting the halal standards.

However, the Manual only deals with the certification procedure conducted by JAKIM/JAIN/MAIN. Order 5(1) states that imported food and goods marketed in Malaysia can also be certified as halal by the foreign halal certification bodies that are recognized by JAKIM.

Moreover, the supplier, seller and food manufacturer must also be aware of the legal requirement set out in the Order, the Circular, the Manual and standards MS1500:2009. According to Talib and Ali, the process of obtaining halal certification is not a simple task; rather, it is a complex process requiring certainty and creditability in all aspects, from the initial input stage through to the final customer stage.<sup>370</sup>

Accordingly, the certification requirements for halal food appear complicated because the food producers must comply with legislation related to halal and at the same time ensure they satisfy the requirements provided by the Standard MS1500:2009, the Manual and the Circular.

A further discussion and analysis of the offences relating to halal certification and how the law<sup>371</sup> deals with this issue and whether the law is addressing the issues involved in halal certification will be conducted in the proceeding sections. In addition, such

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<sup>368</sup> *ibid.*

<sup>369</sup> Buang and Mahmud (n 9) 277; Nik Muhammad, Md Isa and Chee Kifli (n 39) 45.

<sup>370</sup> Abdul Talib and Mohd Ali (n 7) 514.

<sup>371</sup> In dealing with this issue, the specific law concerning Halal such as Trade Description (Certification and marking of Halal) Order 2011, Trade Description (Definition of Halal) Order 2011 and the general law which are applicable to the issue such as Food Act 1983, Food Regulation 1985, Consumer Protection Act 1999 and others will be examined.

discussions also provide an opportunity to discuss the authorities competent to award halal certifications in Malaysia, from a legal standpoint.

#### **4.4.1.2 Authorities Competent to Award Halal Certification**

The development of the halal legal framework in Malaysia after the amendment of the Trade Descriptions Act 2011 has encountered another challenge with the introduction of exclusivity of halal certification in Malaysia whereby only JAKIM/JAIN/MAIN are competent to certify halal. This monopoly has attracted criticism from Kee Sin, National Deputy President of SMI Association of Malaysia by expressing his concern that JAKIM might not be able to handle the certification alone since it has already faced problems regarding the application and renewal of halal certification when there are more than seven certifiers in Malaysia before the amendment of the Trade Descriptions Act 2011.<sup>372</sup> However, Liow opposed this criticism and indicated that this move would enhance Malaysia's international reputation since halal matters would be properly controlled and regulated.<sup>373</sup> This argument is explored further in Chapter 5.2.2.

In this section, the term 'competent authority' in the Trade Descriptions (Certification and Marking of Halal) Order 2011 and the Standard MS1500:2009 are examined since the term is similar but has a different definition and might cause confusion to consumer and trader.

As noted in Chapter 3.3.1, there are various agencies involved in the halal certification legal framework. These agencies include; the religious bodies of JAKIM/JAIN/MAIN; the Ministry of Health (MOH); the Ministry of Domestic Trade, Cooperative and Consumerism (MDTCC); the Department of Chemistry Malaysia; the Department of Veterinary Services (DVS); and the Standards and Industrial Research Institute of Malaysia (SIRIM).

Since 2011, pursuant to Order 3 of the Trade Descriptions (Certification and Marking of Halal) Order 2011, JAKIM/JAIN/MAIN are now the only credible and competent organizations to award halal certification in accordance with the definition of halal as

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<sup>372</sup> Halal Research Council, 'Halal News: Allow More Bodies to Undertake Halal Certification, Says SMI Association' <<http://halalrc.blogspot.co.uk/2011/11/allow-more-bodies-to-undertake-halal.html>> accessed 13 October 2015.

<sup>373</sup> Joseph Chiyong Liow, *Piety and Politics* (Oxford University Press 2009) 52.



provided in the Trade Descriptions (Definition of Halal) Order 2011.<sup>374</sup> Further, Order 4.1 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 provides that halal certifications must be awarded only by a competent authority.<sup>375</sup> While other agencies like the MDTCC, the MOH, the DVS, the Department of Chemistry Malaysia, the Malaysian Royal Customs and the SIRIM can assist JAKIM in certain issues concerning halal certifications.

On the other hand, the Standard MS1500:2009<sup>376</sup> provides a wider definition of the competent authorities as being those ‘who are authorised by the government to carry out specific work according to the prescribed requirements such as Islamic affairs, halal certification, animal health, public health, food safety and others’.<sup>377</sup> The note under paragraph 1 of the Standard MS1500:2009 states: ‘This standard does not contain all requirements which may be required for certification. Halal certification may be sought by arrangement with the competent authority in Malaysia.’

Hence, based on paragraph 1 of the Standard MS1500:2009, it can be understood that the competent authority cannot be limited to religious authorities like JAKIM/JAIN/MAIN, as these bodies do not deal with animal health, public health, food safety and other health and safety-related issues. However, even though other government agencies such as the DVS, MOH and the Department of Chemistry Malaysia are among the agencies that can be involved in the certification process, they are not stated under the law as competent authorities to certify halal.<sup>378</sup> This might cause confusion for the food producers and consumers since the Trade Descriptions (Certification and Marking of Halal) Order 2011 only names religious authorities JAKIM/JAIN/MAIN as competent authority. This has a negative effect since the scope of the Standard is to provide a practical guide for the preparation and handling of halal food.

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<sup>374</sup> Faridah Jalil and Nurhafilah Musa, ‘Halal Products – Malaysian Constitution Perspective’, *INHAC 2012* (UPM 2012) 697.

<sup>375</sup> Syed Marzuki (n 16) 160.

<sup>376</sup> Trade Description (Certification and Marking of Halal) Order 2011, O 7 - requires the applicant for Halal certification to comply with the standards MS1500:2009, the Manual and the Circulars enforced by the Director General of JAKIM or JAIN/MAIN. In the Malaysian Halal Certification Manual Procedure, it stated under para 8.1 that the Malaysian Standard MS1500:2009 is referred for Halal certification procedure.

<sup>377</sup> Department of Standards Malaysia (n 68) paragraph 2.6.

<sup>378</sup> Trade Description (Certification and Marking of Halal) Order 2011, O 3.

Based on the Trade Descriptions (Certification and Marking) Order 2011, only the religious authorities JAKIM/JAIN/MAIN can award halal certification, which seems to contradict with the Trade Descriptions (Certification and Marking) Order 2011 and this may lead other agencies to think that they also have power concerning halal certification, which had happened before in the Cadbury incident<sup>379</sup>. Perhaps the best way to overcome this issue is to amend the Standard MS1500:2009, since this was introduced in 2009 (before the Trade Descriptions (Certification and Marking of Halal) Order 2011)). The best option would be to add other paragraph to acknowledge JAKIM/JAIN/MAIN as a competent authority in halal certification since the definition of competent authority provided under paragraph 2.6 of the Standard MS1500:2009 is general and covers not only religious authorities but also other government agencies which, by law, are not able to certify halal pursuant to Order 3 of the Trade Descriptions (Certification and Marking of Halal) Order 2011.

Since the Standard and the Malaysian Halal Certification Manual Procedure are the documents that provide detailed criteria for halal certification, it is important to examine their legality.

#### **4.4.1.3 Whether Standard MS1500:2009 and the Manual Have Any Legal Effect?**

The next step in this process is to identify whether the Standard MS1500:2009 and the Manual from JAKIM/JAIN/MAIN have any legal effect on the implementation of halal Regulations. If enforceable, they apply to manufacturers, food producers or traders in the event of any violation of the Standard MS1500:2009 and the Manual. Gray stated that agencies' internal procedural manuals are of unsettled legal status.<sup>380</sup>

Even though the Standard and the Manual may have originally been voluntary in nature,<sup>381</sup> there may be made mandatory by the regulatory authorities through regulations, by-laws or other similar ways.<sup>382</sup> This occurred in 2011 when Order 7(2) of the Trade

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<sup>379</sup> This issue will be further discussed later in Chapter 5.3.3.1.2.1.

<sup>380</sup> Timothy H Gray, 'Manual Override? Accardi, Skidmore, and the Legal Effect of the Social Security Administration's HALLEX Manual' (2014) 114 Columbia Law Review 949, 951.

<sup>381</sup> Abdul Talib and Mohd Ali (n 7) 511; Noriah Ramli, 'Laws and Regulations on Halal Production' (2010) <[http://irep.iium.edu.my/16117/1/HALAL\\_LEGAL\\_CONTROL-USIM-HDC\\_HEP\\_1\\_2010-2.pdf](http://irep.iium.edu.my/16117/1/HALAL_LEGAL_CONTROL-USIM-HDC_HEP_1_2010-2.pdf)> accessed 10 March 2014; Zakaria (n 77) 604.

<sup>382</sup> See Department of Standards Malaysia (n 68).

Descriptions (Certification and Marking of Halal) Order 2011 made Standard MS1500:2009 and the Manual mandatory, stating: ‘Any application for the Halal certification shall comply with the standards, procedures and the Circular enforced by the Director General of JAKIM or the Islamic Religious Council in the respective States.’<sup>383</sup>

Therefore, the law has stated that an application for halal certification must comply with the standards, which are stated in Standard MS1500:2009 and in the procedures outlined in the Manual and in the Circular by JAKIM/JAIN/MAIN.

The Trade Descriptions (Certification and marking of Halal) Order 2011<sup>384</sup> provides the general requirements on the certification and the procedure of halal and the details are provided by the Manual and Standard MS1500:2009. Based on Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 above, the applicant must comply with its provision because the detail on the certification process is provided by the Standard and the Manual. Here, it can be concluded that the status of Standard MS1500:2009 and the Manual are voluntary in nature, but they are mandatory for the application of halal certification.<sup>385</sup>

The following section looks at violations of law where there are various regulatory bodies involved, and it examines the effectiveness of the law. The legal remedies available and the implementation of the law on the misuse of halal will further discuss in Chapter 5.

#### **4.4.1.4 Potential Violations**

After identifying the legal requirement, this section investigates the reasons behind the issues concerning halal certification, and determines whether the law is ambiguous or vague, or whether food producers are breaching a clearly stated law. The assumption might be that the law is clear, but in reality, either the food producers find it difficult to follow the law or competent authorities find it difficult to enforce and this has allowed the food producers to take advantage of the situation.

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<sup>383</sup> Trade Descriptions (Certification and Marking of Halal) Order 2011 (n 189) O 7(2).

<sup>384</sup> See Order 7.

<sup>385</sup> Trade Description (Certificatiion and Marking of Halal) Order 2011, O 8 - failure to comply with any Order (in this case is to comply with Order 7) can be convicted to fine and imprisonment.

This subsection identifies the offences related to halal certification and how the law responds to the problem, as discussed generally earlier in Chapter 4.3.1.

Currently, there is no evidence of reported legal cases concerning the misuse of halal certification in Malaysia; however, there have been many incidents of abuse reported by the competent authorities, media outlets and consumer associations (as discussed earlier in Chapter 4.3.2).

#### 4.4.1.4.1 Violation of the Trade Descriptions (Certification and Marking of Halal) Order 2011

This section examines whether there will be a violation of the Trade Descriptions (Certification and Marking of Halal) Order 2011 if a company uses halal certification without authority or without obtaining certification from the competent authority or misuses the appropriate certificates.

##### 4.4.1.4.1.1 Violation of Order 4 of the Trade Descriptions (Certification and Marking of Halal) Order 2011

It is a violation of Order 4 if the producer, manufacturer or producer uses halal certification that is not certified by the competent authority as stated under Order 4 of the Trade Descriptions (Certification and Marking of Halal) Order 2011. For an example, a trader displays the halal certification in his premises, which are not certified by a competent authority (JAKIM/JAIN/MAIN). One of the criteria as laid down in Order 4 is that, for food to be described as halal, it must be certified by the competent authority.

##### 4.4.1.4.1.2 Violation of Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011

In order to obtain the halal certification, the manufacturer, producer or trader must comply with the Halal Standards MS1500:2009, the Manual and the Circular as discussed in Chapter 5.1.1.3. Failure to comply constitutes a violation of Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011. For instance, it is

necessary that the food is prepared by Muslim workers,<sup>386</sup> and failure to fulfil this requirement means that the requirement of halal under the Manual is not satisfied.

There are many examples of violation of Order 7 for non-compliance with the certification procedures. They include: the failure to produce documents on audit,<sup>387</sup> changing to suppliers who do not have halal certification,<sup>388</sup> moving premises,<sup>389</sup> changing the company's name or management without informing the competent authority;<sup>390</sup> using a certification beyond its limitation;<sup>391</sup> and using expired certificates.<sup>392</sup>

#### 4.4.1.4.2 Violation of Order 3 of the Trade Descriptions (Definition of Halal) Order 2011

The misuse of halal certification is also a violation of Order 3 of the Trade Descriptions (Definition of Halal) Order 2011 if the food products or materials are wrongly described as halal or are described in any other expression to indicate that the food products or materials can be consumed or used by a Muslim when they cannot, otherwise there is no violation.<sup>393</sup> One example is where the manufacturer, producer or trader uses halal certification for their food products, but the food contains animal that is prohibited by the Sharia for Muslims to consume or has not been slaughtered in accordance with Sharia. Another example is where the food is claimed to be halal-certified but is poisonous or hazardous to health, which is in contradiction with the definition of halal provided under Order 3 of the Trade Descriptions (Certification and Marking of Halal) Order 2011.

Based on the discussion in this section, it can be concluded that the misuse of halal certification can occur if the legal requirements are not fulfilled. This includes the

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<sup>386</sup> See para 6.1.2.1(3) and 6.1.2.2(3) of Malaysian Halal Certification Manual - requirement for multinational company and small medium industry to have at least 2 Muslim workers, 6.1.2.3(2) and 6.1.2.4(1) of Malaysian Halal Certification Manual - requirement for small and micro company to have at least 1 Muslim worker.

<sup>387</sup> *ibid* 10.4.1(i)(h).

<sup>388</sup> *ibid* 10.4.2(i)(a).

<sup>389</sup> *ibid* 10.4.3(ii)(a).

<sup>390</sup> *ibid* 10.4.3(ii)(b).

<sup>391</sup> For example, using certification for product not listed in the halal certification.

<sup>392</sup> Malaysian Halal Certification Manual, para 10.4.3(ii)(b)

<sup>393</sup> See requirement for definition of halal as stated in Chapter 5.1.1.4.

violation to Order 4 and 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 and Order 3 of the Trade Descriptions (Definition of Halal) Order 2011.

#### **4.4.2 Halal Misuse 2: Labelling of Halal Using False Halal Certification or Label**

This section looks at the application of the law concerning halal labelling and the legislation on labelling. Pointing, Teinaz and Shafi stated that consumer protection and food safety measures could be used to prevent false halal labelling.<sup>394</sup> Food labelling has been incorporated in many statutes – for example, the Food Act 1983, the Trade Descriptions Act 2011, and the Consumer Protection Act 1999. The following sections identify the current legal requirements for labelling of halal food products in Malaysia and analyse the potential breaches of the law through false labelling in halal food.

##### **4.4.2.1 Does the Halal Label or Certification Mark on a Product Constitute ‘Label’ Under the Food Act 1983?**

This subsection identifies whether the use of the halal label or certification on food products constitute ‘label’ under the Food Act 1983. If halal marking is considered as a label under the Food Act, then any false halal labelling will violate that Act. Section 2 of the Food Act 1983 defines a label as ‘any tags, brands, marks, pictorials or other descriptive matters that are either written, printed, stencilled, marked, painted, embossed or impressed on, or attached to or included in, belonging to, or accompanying any food’<sup>395</sup>

Meanwhile, Order 4(1) of the Trade Descriptions (Certification and Marking of Halal) Order 2011 provides two requirements to be fulfilled before a food product can be labelled as halal. First, it must be certified by the competent authority<sup>396</sup> and then marked with the halal label,<sup>397</sup> as stated in the first schedule of the Order. The word ‘and’ in the Order shows that the two requirements must be read conjunctively; hence the food product must be certified and then marked with the halal label. Therefore, the food product must be certified before the halal label can be used on the product. In addition to

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<sup>394</sup> Pointing, Teinaz and Shafi (n 212) 1.

<sup>395</sup> Food Act 1983, s 2.

<sup>396</sup> Trade Description (Certification and Marking of Halal) O 2011 and O 4(1)(a).

<sup>397</sup> *ibid*, Order 4(1)(b).

the above, the halal label is defined as a label registered under the Trade Mark Act 1976 by the competent authority.<sup>398</sup>

Based on the above, the halal label or certification mark fulfils the definition of label (as defined in section 2 of the Food Act 1983) under the category of ‘mark accompanying any food’. Therefore, the use of halal label or certification mark as a label under the Food Act 1983 is also applicable to the halal label or halal certification.

#### **4.4.2.2 What Are the Labelling Requirements for Halal Food?**

The labelling of halal food in Malaysia is governed by various law and regulations. For instance, Order 6 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 states that the food and goods intended to be labelled as halal must be affixed with the standard halal label, as stated in the First Schedule of this Order. In addition, the food must also fulfil the requirements in Orders 4 and 5 as discussed earlier in Chapter 4.4.1.1.

While the Standard MS1500:2009 (developed by SIRIM) and the Manual (developed by JAKIM) are also used to provide specific requirements for halal labelling, there are no detailed provisions on halal labelling. Thus, the Food Regulations 1985 (which is a subsidiary legislation of the Food Act 1983) which provides details on general food labelling is also applicable to halal labelling.

##### **4.4.2.2.1 General Food Labelling by the Food Regulations 1985 (Governed by the MOH)**

This section examines whether the labelling provisions that are currently in force under the Food Regulations 1985 are sufficient to cover halal food labelling. The Food Regulations 1985 make it compulsory for food containing beef, pork or its derivatives, or lard to be clearly labelled of such ingredients and marked: ‘CONTAINS (state whether beef or pork, or its derivatives, or lard, as the case may be)’.<sup>399</sup>

Hence, food products containing pork, its derivatives and lard are considered as non-halal. This also applies to beef, its derivatives and lard that are considered as also non-halal if the animal is not slaughtered or prepared in accordance with Sharia law. This includes

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<sup>398</sup> See Para 8.2.1 of Malaysian Halal Certification Manual.

<sup>399</sup> Food Regulations 1985, R 11 (1) (c).

the use of clones or genetically modified organisms (GMO) that obscures the differences between plants and animals and that can be potentially confusing, especially to Muslims. This is because such products could have been mixed with non-halal-derived genes – for example, certain soybeans spliced with genes from pigs to create a resilient and bountiful harvest.<sup>400</sup> Based on the above provision, plants which contain genes from pigs can be considered as pork derivatives. This also applies to alcohol. If the food contains alcohol, there must be an indication of the presence of alcohol in the food,<sup>401</sup> as halal food should not contain pork, alcohol or any intoxicating elements.

#### 4.4.2.2.1.1 Is the Food Standard for Labelling Under the Food Regulations 1985 Applicable to Halal Food?

Food labelling must comply with the prescribed food standard. Section 15 of the Food Act 1983 states:

Where a standard has been prescribed for any food, any person who prepares, packages, labels or advertises any food which does not comply with that standard, in such a manner that it is likely to be mistaken for food of the prescribed standard, commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to fine or to both.

The relevant standard for halal food in Malaysia has been set by the Standard MS 1500:2009 and the Manual.<sup>402</sup>

Even though there are specific standards concerning halal in Malaysia, do they constitute part of the food standards under the Food Regulation 1985? To answer this question, the Food Regulations 1985 must be examined. There are ten parts (Parts I–X) to the Food Regulations 1985. Part VIII covers the standards and particular labelling requirements. In turn this Part VIII covers 31 items, including food cereal, cereal products, milk and milk products, meat and meat products, fish and fish products, and others. However, there are no halal standards or particular labelling requirements for halal food in the list. This presents a lacuna since there is a standard and labelling requirement for halal but it is not

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<sup>400</sup> Abdul Raufu Ambali and Ahmad Naqiyuddin Bakar, 'People's Awareness on Halal Foods and Products: Potential Issues for Policy-Makers' (2014) 121 *Procedia - Social and Behavioral Sciences* 3, 20.

<sup>401</sup> Food Regulations 1985, R 11 (1)(d).

<sup>402</sup> This standard has been discussed in Chapter 3.3.3 – halal certification in Malaysia.



incorporated in the Food Regulations 1985. Consequently, this creates confusion for food producers and may explain the continued misuse of halal.

Pursuant to the Food Act 1983 and the Food Regulations 1985, the law is stringent in terms of labelling of food packaging, unless there is a contamination after the labelling process<sup>403</sup> or the food producer has an intention to deceive consumers. However, there is a lacuna on halal food, in particularly the labelling that can be improved to provide better protection for halal food consumers. This is supported by Ramli, a trainer for the halal Industry Development Corporation (HDC) who stated that although the Food Regulations 1985 require the presence of non-halal substances to be declared on the label, the provision is insufficient to govern all matters related to halal food production.<sup>404</sup> In order to rectify this gap, it is suggested that the labelling requirements in Standard MS1500:2009 are incorporated into the Food Regulations 1985. This would help to promote halal standard in the Food Regulations and at the same time strengthen the protection of halal food for consumers. In the event of misuse, action could be taken against food producers or manufacturers pursuant to section 15 of the Food Act 1983. There are a few examples of cases where the action was taken against sellers for food that did not fulfil the requirement set by Part VI of the Food Regulations 1985 on the standards and particular labelling requirements for foods. In *Public Prosecutor v Lip Lock Yuen Co*,<sup>405</sup> the respondent was charged with the sale of two packets of preserved fruit which were found to contain a sweetening substance (cyclamate) prohibited by Regulation 133(2) of the Food Regulations 1985. Thus, the halal standard should be incorporated as a standard in the Food Regulations 1985. Then, there will be stronger grounds for food enforcement officers to initiate action in the event of misuse of halal labelling.

#### 4.4.2.2.1.2 Standard MS1500:2009

The Malaysian Halal Standard MS1500:2009, paragraph 3.7 specifies the requirements for halal labelling under the heading 'Packaging, labelling and advertising'. It provides

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<sup>403</sup> There are few cases where the contamination occurs after the labelling process – for example, in the Cadbury case in May 2014.

<sup>404</sup> Ramli (n 381) 14.

<sup>405</sup> *Public Prosecutor v Lip Lock Yuen Co* [2000] 1 LNS 200 (Hight Court).

details on how to pack, label and advertise halal food. In terms of the labelling guidelines, paragraph 3.7 of the Standard MS1500:2009 states:

Halal food shall be suitably packed. Packaging materials shall be Halal in nature and shall be made from any raw materials that are decreed as non-najs by Shariah law; it is not prepared, processed or manufactured using equipment that is contaminated with things that are najs as decreed by Shariah law; during its preparation, processing, storage or transportation, it shall be physically separated from any other food that does not meet the above requirements stated in the above items or any other things that have been decreed as najs by Shariah law; the packaging material does not have any toxic effect on the Halal food; packaging design, sign, symbol, logo, name and picture shall not be misleading and/or contravening the principles of Shariah law<sup>406</sup>. Labelling material used in direct contact with the product shall be non-hazardous and Halal.<sup>407</sup>

From this paragraph it can be seen that the principle of halal that is applied does not differ greatly from the labelling requirements in Regulation 11 of the Food Regulations 1985.<sup>408</sup> However, Standard MS1500:2009 makes specific provision on the requirement of Sharia – such as materials being non-najs and the design, sign, symbol, logo and name of the picture not contravening the principles of Sharia law – which are absent in the Food Regulations 1985. This disparity could be resolved by incorporating this provision into Part VII of the Food Regulations 1985, as suggested above.

Why is the inclusion of this provision in the Food Regulations 1985 important? It can be argued that it is difficult to ensure that the labelling material is halal and does not have direct or indirect contact with any non-halal elements. Riaz and Chaudry stated that packaging and labelling materials can be questionable in their halal status. While the use of a plastic microwavable container of frozen food may appear acceptable, the source of

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<sup>406</sup>Department of Standards Malaysia (n 68) s 3.7.1.

<sup>407</sup>ibid 3.7.3.

<sup>408</sup> Paragraph 3.7.5 provided that each container shall be marked legibly and indelibly or a label shall be attached to the container, with name of the product; net content expressed in metric system (SI units); name and address of the manufacturer, importer and/or distributor and trademark; list of ingredients; code number identifying date and/or batch number of manufacture and expiry date; and country of origin. Paragraph 3.7.6 further stated that, for primary meat products, the label or mark shall also include the date of slaughter; and date of processing.

some of the ingredients used to create it may be ambiguous.<sup>409</sup> In many cases, stearate might be used and be animal-derived.<sup>410</sup>

Furthermore, issues concerning metals are also relevant. In many cases, the moulding and cutting of cans require the use of oils that can be animal-derived and have questionable halal status as there is no scientific way to know whether the animal has been slaughtered according to Sharia law.<sup>411</sup> Hence, it is difficult to check this without conducting laboratory testing and this may increase production costs. This is a loophole that needs to be looked at; otherwise, it can create abuse of halal food status. By including detailed provisions on halal labelling, procedures for preparing and labelling halal food products can be strengthened. At the same time, producers, manufacturers and traders can ensure that the provisions will be followed so as to avoid problems for their businesses.

Another issue concerning false labelling is that the Manual (governed by JAKIM/JAIN/MAIN) only applies to abuse conducted within the jurisdiction of JAKIM/JAIN/MAIN, and this is discussed below.

#### 4.4.2.2.1.3 The Manual

The Manual prescribes the guidelines for inspection officers and manufacturers of halal food and consumer goods in Malaysia, with the aim of clarifying the requirements to be complied with in order to obtain the Malaysian halal certification. For the purpose of this discussion, this section will focus on the paragraph 6.1 of the Manual concerning halal labelling:

All packaging should be marked in a way it is easy to read, with durable labelling, and including the name and/or product brand (should be the same in the Halal Certificate); minimum content in metric measurement; name and address of manufacturer and/or distributor and chop/trade mark; list of ingredients; code numbers showing the date and/or batch number/expiry date; and Malaysia Halal logo.<sup>412</sup>

Hence, JAKIM can only impose this Manual on and have jurisdiction over the manufacturer or trader who obtain the halal certification from JAKIM. Thus, if a matter

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<sup>409</sup> Riaz and Chaudry (n 6) 188.

<sup>410</sup> Riaz and Chaudry (n 6).

<sup>411</sup> Talib, Zailani and Zainuddin (n 15) 60; Riaz and Chaudry (n 6).

<sup>412</sup> JAKIM, 'Malaysian Halal Certification Manual 2011 (Second Revision)' (n 363) para 6.1 (vi).

involves a fraudulent label or the use of the halal label by organizations not recognized by JAKIM, it will not fall within JAKIM's jurisdiction, but under the power of the MDTCC. This is one of the obstacles faced by JAKIM which will be discussed further in Chapter 5.

#### 4.4.2.2.1.4 Potential Violations

This section identifies the potential breaches of laws involving false labelling of halal food. As mentioned above, there are examples of false labelling cases where food producers used fake halal label, expired halal certificates or included non-halal elements into halal-certified food.<sup>413</sup> While the labelling may represent that the food is halal, in reality it may not be halal due to the failure to satisfy the requirements for halal food.

There are reported incidents where food producers have used false halal certification or used the halal label for products that are not listed in the halal certification, as discussed earlier in Chapter 4.3.1.1. If the food producer has falsely used the halal label in their product without any valid halal certification, they can be convicted of trying to mislead the consumer into believing that the product is halal. The next section explores the potential violations concerning halal false labelling under the laws currently in force in Malaysia.

#### **4.4.2.2.2 Violation of the Food Act 1983**

The Food Act 1983 aims to protect the public against health hazards and fraud in the preparation, sale and use of food products, and also for matters that are incidental or connected to food products including halal food.<sup>414</sup> In this subsection, the discussion focuses on potential violation of the Food Act 1983 by false halal labelling.

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<sup>413</sup> Director of JAKIM Halal Hub mentioned to Utusan Malaysia on 2 February 2011 that not all halal logo in the market are genuine. For fake halal logo, the jurisdiction is under the MDTCC and not JAKIM.

<sup>414</sup>Food Act (n 197).

#### 4.4.2.2.1 Whether the False Labelling of Halal Food Violates Section 14 of the Food Act 1983?

Section 14(1) of the Food Act 1983 contains a prohibition against the sale of food that is not of the required nature, substance or quality.

Halal food has its own requirements on nature, substance and quality that need to be fulfilled before it can be certified as halal. This provision further identifies the parameters for the nature, substance and quality which are specified under this Act or any regulation made under this Act:

Any person who sells any food which is not of the nature, or is not of the substance, or is not of the quality (as specified under this Act and any regulation made thereunder) of the food demanded by the purchaser, commits an offence and is liable on conviction to imprisonment for a term not exceeding five years or to fine or to both.

Surprisingly, there is no specific provision on labelling halal food in the Food Act 1983 in order to specify its own nature, substance or quality. Even though section 14(2) of the Food Act 1983 states that if there is a regulation made under this Act to prescribe any food in term of its composition, substance, nature and quality, a consumer of this food can demand that the food is compliant with the provisions of that regulation. However, this Act cannot be applied to halal food because it is not specified under the Food Act 1983 and any regulation made thereunder.

This is frustrating since halal food has its own nature, substance and quality. Thus, any false labelling of halal food will not violate section 14 of the Food Act 1983 unless an amendment is made to insert the provision on the nature, substance and quality of halal food.

#### 4.4.2.2.2 Whether the False Labelling of Halal Food Violates Section 15 of the Food Act 1983 for not Complying with the Requirement Set by Part VI of the Food Regulations 1985 on the Standards and Particular Labelling Requirements for Foods?

This issue has been discussed in Chapter 4.4.2.2.1.1 where the answer has been proven to be that there is no violation. This is because the particular labelling of halal food is not incorporated under Part VIII of the Food Regulations 1985. Thus, there is no violation of section 15 of the Food Act 1983 unless the Regulations are amended as suggested earlier.

Pursuant to section 34 of the Food Act 1983, the MOH has the power to amend the 1985 Regulations in favour of the purpose and provisions of 1983 Act – for example, to protect halal food consumers. Based on this, section 34(a) can be applied ‘to prescribe the standard, composition, strength, potency, purity, quality, weight, quantity, shelf life or other property of any food or any ingredient or component’.

Since the standard particularly on labelling of halal food has already been developed by SIRIM as stated in the paragraph 3.7 of the Standard MS1500:2009, the Minister could incorporate this into Part VIII of the Food Regulations 1985. However, currently, any false labelling is not a violation to section 15 of the Food Act 1983 since the halal standard is not included in Part VIII of the Food Regulations 1985 unless the law is amended as suggested above.

#### 4.4.2.2.3 Whether the False Labelling of Halal Food Is a Violation of Section 16 of the Food Act 1983?

Section 16 of the Food Act 1983 stipulates that it is an offence for any person to prepare, pack, label or sell any food products in any false, misleading or deceptive manner regarding its character, nature, value, substance, quality, composition, merit or safety strength, purity, weight, age, origin, and proportion.<sup>415</sup> However, the Act does not specifically mention any abuse or illegal use of the halal label; therefore, this provision must be examined to see whether false halal labelling is a violation thereof and to identify the requirements that are set in its provisions.

There are two limbs to section 16. First, there must be false, misleading or deceptive labels or packaging. Second, the fraud must relate to either the character, nature, value, substance, quality, composition, merit or safety strength, purity, weight, age, origin, and proportion. In relation to false or misleading labels and packages concerning the nature, substance and quality of the food products, one must cross-reference to sections 14 and 15 of the Food Act 1983 since section 14 makes it clear that the parameters for the nature, substance and quality has to be provided by the Food Act 1983 or Food Regulations 1985 as discussed earlier in paragraph 4.4.2.2.1.1 Thus, it can be argued that halal food

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<sup>415</sup> Food Act 1983, s 16.

labelling is not subject to the provisions of sections 14 and 15 of the Food Act 1983 because the nature, substance and the quality is not provided for by the Act.

On the other hand, there are other requirements that might apply to halal food in order to protect consumers based on the false labelling provisions in the Food Act 1983. For example, in terms of the requirements concerning the composition and purity of halal food products, there is no detailed provision in the Food Act 1983 to explain these criteria, and such criteria can be generalized so they can also be applied to false labelling of halal food. Halal food should not consist of non-halal materials, but if the manufacturers or food producers label the food falsely, it can affect the purity of halal food. Thus, section 16 of the Food Act 1983 can also be applied to misleading or deceptive acts in which a product is marked as halal when it is not. Therefore, false labelling of halal food is a violation of section 16 of the Food Act 1983. However, until today, no halal violation has been upheld under this provision.

#### 4.4.2.2.4 Violation of the Trade Descriptions (Certification and Marking of Halal) Order 2011?

This section examines the potential violation of the Trade Descriptions (Certification and Marking of Halal) Order 2011.

#### 4.4.2.2.5 Whether False Labelling of Halal Food Violates Order 6 of the Trade Descriptions (Certification and Marking of Halal) Order 2011?

Order 6 is a straightforward provision which states that any food and goods which are intended to be labelled as halal must fulfil the halal requirements as set out in Order 4 of the Trade Descriptions (Certification and Marking of Halal) 2011 Order, which requires the food to be certified as halal by the competent authority and marked with the halal label. Any false labelling will be a violation of Order 6 and subject to penalty pursuant to Order 8 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 (discussed later in Part 2).

#### **4.4.2.2.3 Violation of the Trade Descriptions Act 2011 (TDA 2011)**

The next section examines the potential violation of the Trade Descriptions Act 2011.

#### 4.4.2.2.3.1 Whether False Labelling of Halal Food Violates Section 6(1) of the TDA 2011?

The Trade Descriptions Act 2011 is a general Act governing any trade description in Malaysia. Section 6(1) of the TDA 2011 defines what trade description is. It mentions 14 elements of a trade description, including, but not limited to: the method of manufacturing, production, processing or reconditioning;<sup>416</sup> quality otherwise than as specified in the preceding paragraphs;<sup>417</sup> and approval by any person or conformity with a type approved by any person.<sup>418</sup> If this provision is applied to the halal label, it will fall under the definition of 'trade description' as defined in section 6(1)(c). This is because, to obtain halal certification, the producer has to fulfil specific methods of production and this is parallel to section 6(1)(j), where the halal itself can represent a quality and to ensure the quality is maintained, it must fulfil the specific standard (i.e. Standard MS1500:2009) and section 6(1)(k) and it must be approved by religious bodies such as JAKIM/JAIN/MAIN. Thus, false labelling can constitute violation of section 6(1) of the TDA 2011.

#### 4.4.2.2.3.2 Whether False Labelling of Halal Food Violates Section 7 of the TDA 2011?

Section 7(4) of the TDA 2011 relates to false trade description, and includes:

false indication or anything that is likely to be taken as an indication of something that are false, any goods that comply to a standard specified that are deemed to be false, implying to have approval from any person which has false descriptions, and if there is no such person or no standard that are specified, recognized or implied.

As discussed in Chapter 4, not all halal labelling in the market is genuine.<sup>419</sup> Section 7(4) can be applied to false halal labelling because halal itself carries a specific definition<sup>420</sup> and method of certification<sup>421</sup> and it needs specific provisions to govern its status. This is

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<sup>416</sup> Trade Description Act 2011, S 6(1)(c).

<sup>417</sup> *ibid* s 6(1)(j).

<sup>418</sup> *ibid* s 6(1)(k).

<sup>419</sup> Director of JAKIM Halal Hub mentioned to Utusan Malaysia on 2 February 2011 that not all halal logo in the market are genuine. For fake halal logo, the jurisdiction is under the MDTCC and not JAKIM.

<sup>420</sup> See Section 2 on the philosophy and concept of halal.

<sup>421</sup> See Section 3.3.1 on halal certification in Malaysia.



proven by sections 28<sup>422</sup> and 29<sup>423</sup> where the MDTCC used its power under these sections to regulate Orders concerning the definition of halal, certification and marking of halal. Therefore, any false labelling may constitute a violation of section 7(4) of the TDA 2011.

#### **4.4.2.3.4 Violation of the Consumer Protection Act 1999 (CPA)**

The CPA 1999 which is governed by the Ministry of Domestic Trade, Co-operative and Consumerism (MDTCC)<sup>424</sup> is applicable to all goods and services provides to consumer<sup>425</sup> and contains provisions concerning false labelling. It has 14 parts involving 150 legal provisions with the aim to provide protection for consumers, including setting up the National Consumer Advisory Council and the Consumer Claims Tribunal. It also has power to order compliance for consumer law infringement (this will be discussed in Chapter 5.2.2.6). The CPA covers consumers on all types of goods, types of services, trade practices, unfair contract terms, product safety, liability, and consumer redress. This section will examine the potential breach of the law on false halal labelling in the CPA.

##### **4.4.2.3.4.1 Whether False Halal Labelling Constitutes False Labelling Under the CPA?**

The section looks at the meaning of ‘false’ in the CPA and the application of the CPA in regulating and enforcing false halal labelling.

The term ‘false’ can be interpreted as ‘misleading or deceptive, and can include the conducts, representations or practices which are capable of leading a consumer into error’.<sup>426</sup> It has been further specified that any act that is capable of leading consumers into error, such as using false, misleading or deceptive information in relation to a product, presentation or practice, is prohibited.<sup>427</sup> For instance, the use of false statements that can make consumers believe that the goods are of a particular kind, standard, quality,

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<sup>422</sup> The law give power to the Minister to define term.

<sup>423</sup> Minister has a power to regulate an order for informative marking and certifications.

<sup>424</sup> The government is conscientious in constructing for a new formulation to upgrade efforts on the protection of consumer rights. This is reflected through the establishment of CPA 1999 which provides for additional legal frameworks to monitor consumer rights on the issue of supply of goods against the suppliers or manufacturers of the goods concerned.

<sup>425</sup> Consumer Protection Act 1999, s 1(2)(1).

<sup>426</sup> Consumer Protection Act 1999, S 8 (a).

<sup>427</sup> *ibid* Section 9 (a).

or that the goods have any endorsement approval is dealt with under section 10(1)(a) of the CPA. This provision also addresses the definition of ‘false’ concerning halal products. For example, if the producer sells food with the halal label but it is not in fact halal or does not fulfil the requirements for halal certification, there will be a breach of sections 8(a) and 9(a) of the CPA. There are three criteria to identify ‘false’ under section 9(a): false, misleading and deceptive.

On the other hand, if the food producer uses the halal label which is not in a particular standard or quality of halal, without any halal certification that is approved by the religious bodies such as JAKIM/JAIN/MAIN, will it fall within the definition of false in section 10(1)(h) of the CPA?

Section 10(1)(h) is very general and only mentions endorsement or approval. This creates the question whether halal certification can be considered as endorsement or approval by a competent authority. Since there is no clear provision, it will fall to the court to interpret, and probably this provision – section 10(1)(h) can also be applied towards false halal certification and labelling because the traders deceive consumers into thinking that the product has fulfilled the halal criteria as prescribed by JAKIM/JAIN/MAIN, but in fact it has not. Thus, false halal labelling can constitute false labelling under the provision of sections 8(a), 9(a), 10(1)(a) and 10(1)(h) of the CPA.

#### 4.4.2.3.4.2 Whether False Labelling Amounts to Breach of Implied Guarantee Under Sections 32 and 34 of the CPA (Part V)?

The use of false halal labelling indicates that the food products can be categorized as non-halal food. Therefore, the implied guarantees under Part V of the CPA are applicable to the sale or supply of false halal products.<sup>428</sup> Under Part V of the CPA, the use of guarantee<sup>429</sup> was included to highlight the guarantee in default to supply and manufacture goods to consumers. It provides the level of guarantee default as a minor default that

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<sup>428</sup> Consumer Protection Act 1999, S 32 and S34.

<sup>429</sup> There are seven implied guarantees on goods and services supplied by the supplier of the ownership of goods, of acceptable quality, fitness articles, descriptions, samples, prices and repairs and spare parts as in section 31 to section 37 of Act 599. While the manufacturer liability detailed in section 50 (a) to (d), among others, in relation to a breach of the implied guarantee compliance with acceptable quality, description of goods, repairs and spare parts and breach of manufacturer clear guarantees (refer to section 38 of Act 599).

could be rectified or involving a substantial default. Out of seven implied guarantees stated in the CPA, only two are related to the issue of halal: the implied guarantee of acceptable quality<sup>430</sup> and the implied guarantee that goods comply with their description.<sup>431</sup>

In *Matang Plastik & Metal Work Industries Sdn Bhd & Ors v Daimler Chrysler Malaysia Sdn Bhd & Ors*,<sup>432</sup> the appellant purchased a Mercedes-Benz car and used it for 9 months before it suffered engine failure.<sup>433</sup> The judge decided that the respondents were in breach of the implied guarantee as provided in section 32 of the CPA, in particular the guarantee as to acceptable quality of the car. There was a defect and the car was at all material times unsafe, not of acceptable quality and not roadworthy. The judge also referred to *Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd*,<sup>434</sup> where the implied guarantee was breached due to the fact that the car was unable to start six times only ten months after purchase and it spent 128 days in the garage for repairs.<sup>435</sup> In these two cases, the product failed to fulfil the implied guarantee of acceptable quality.

Eventhough the above cases are about physical function defects, the issue discussed are concerning implied guarantee of acceptable quality that can also apply to false halal labelling. Applying this principle, it is well known that halal labelling is associated with the assurance of quality, since it needs to fulfil the specific requirements and must be endorsed by the competent authority before the halal label can be used. In section 32(1) of the CPA 1999, there are five criteria to be fulfilled for goods to become of acceptable quality: '(i) fit for general use, (ii) free from minor defects, (iii) acceptable in appearance, (iv) safe, and (iv) durable'. These are not fulfilled by false halal labelling. As discussed earlier in section 4.2 concerning consumer perception of halal, the halal consumer is similar to any other consumer, in that they will consider the nature of the food, price, statement or representation on the packaging or label about the halal food before purchasing it.<sup>436</sup> Hence, a false halal label and certification arguably does not conform

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<sup>430</sup>Consumer Protection Act 1999, S 32.

<sup>431</sup>ibid 34.

<sup>432</sup> *Matang Plastik & Metal Work Industries Sdn Bhd & Ors V Daimler Chrysler Malaysia Sdn Bhd & Ors* [2014] 8 CLJ 998 (Court of Appeal).

<sup>433</sup> ibid 1004.

<sup>434</sup> *Puncak Niaga (M) Sdn Bhd v NZ Wheels Sdn Bhd* [2011] 9 CLJ 833 858.

<sup>435</sup> ibid 833.

<sup>436</sup> ibid 32(2)(b)

with the quality since it does not fit any five of the criteria for the acceptable quality of halal food. Currently, there are no court cases relating to misuse of halal and section 32(1), and this issue will be examined further in Chapter 5, Parts 1 and 2 when discussing remedies and the legal implementation and mechanism to prevent halal food abuse.

#### 4.4.2.3.4.3 Whether False Labelling Amounts to Defective Product Liability Under Part X of the CPA 1999?

In order for liability to attach to the manufacturer, the product must be proved to be defective. The general consumer expectation test should be applied as it is the test that need to be proved as stated in section 67(1) of the CPA: Subject to subsections (2) and (3), there is a defect in a product for the purposes of this Part if the safety of the product is not such as a person is generally entitled to expect.

The consumer expectation test is subjective. How should this expectation be measured since every person is different? Amin stated that there will be scope for debate over questions of fact, degree and standard in deciding whether or not a particular product was unsafe and therefore defective.<sup>437</sup> She further argued that it is even more problematic when safety is to be judged according to what a person is generally entitled to expect. Thus, the individual consumer's personal knowledge, experience or lack thereof, and sensitivity ought to be factors.<sup>438</sup> However, according to Clark, it is the general expectation that will be taken into account and not the actual expectation.<sup>439</sup> For example, can a car be considered defective if a warning buzzer, which is supposed to indicate that seat belts are unfastened, fails to operate and results in serious injury? The ordinary consumer ought to be aware of the danger of not wearing a seat belt. Arguably a person is generally entitled to expect that the product has been designed and manufactured as safely as possible and he should be properly warned of any possible danger.<sup>440</sup> Therefore, ascertaining what a person is generally entitled to expect may prove to be a vague test. The CPA clearly adopts the consumer expectation test in determining defectiveness.<sup>441</sup>

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<sup>437</sup> Naemah Amin, 'Product Liability Under the Consumer Protection Act 1999' [1999] IIUM Law Journal 175, 183.

<sup>438</sup> *ibid* 184.

<sup>439</sup> Alistair Clark, *Product Liability* (Sweet&Maxwell 1989) 34.

<sup>440</sup> *ibid* 35.

<sup>441</sup> Amin (n 437) 184.

The consumer expectation test has also been criticized for its failure to protect the consumer adequately in the case of obvious danger.<sup>442</sup> Many products by their nature are dangerous – for instance, knives and dynamite. Applying the consumer expectation test to such a case is likely to exempt its producer from liability. Such products cannot be defective since the consumer could not have expected them to be safe. The test also means that proper warnings will often be sufficient to exempt producers from liability.<sup>443</sup> Nonetheless, for the purpose of determining what ‘a person is generally entitled to expect’, section 67(2) lays down guidelines and states:

all relevant circumstances shall be taken into account, including:

- (a) the manner in which, and the purposes for which, the product has been marketed;
- (b) the get-up of the product;
- (c) the use of any mark in relation to the product;
- (d) instructions for or warnings with respect to doing or refraining from doing anything with or in relation to the product;
- (e) what may reasonably be expected to be done with, or in relation to, the product; and
- (f) the time when the product was supplied by its producer to another person.

The above provision provides the guideline for safety and must be assessed according to the criteria and individual merits. In deciding what a person is generally entitled to expect, the court must have regard to the circumstances in which the product is marketed. Undoubtedly, the manner in which the product is marketed has an immediate impact on the public’s expectation. These include advertising, packaging and labelling. The reference to ‘the use of any mark’ would obviously include such things as the use of the halal label.

How can the principle of strict product liability which is provided in Part X of the CPA be applied to false halal labelling? A food producer is defined by section 66(1) of the CPA as a person who is involved in the manufacturing process, pre-manufacturing activity and the processing of a natural product. Hence, the producer of component parts and raw materials can be sued separately or jointly with the producers of the final product based on the definition of product as stated in section 66(1) of CPA. By applying the strict liability rule, the food producer is responsible not only for the production but also the

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<sup>442</sup> *ibid* 185.

<sup>443</sup> *ibid*.

labelling and promotion of the sales due to consumer demands and expectations.<sup>444</sup> The main purpose of this strict liability rule is to overcome the problem that is inherent in the contractual and negligence remedies.<sup>445</sup> Hence, if there is a defect in the product, liability can be imposed by reason of the defect alone. When this is applied to the false halal labelling scenario, if a consumer buys food which is labelled with a false halal certification or label and causes injury, the consumer may rely upon the strict liability under Part X of the CPA based on the general consumer expectation test discussed above.

How can one identify whether the false halal label and certification has caused a product defect and whether the consumer of false halal food suffers injury and is entitled to damages? By applying section 67(2) of the CPA (discussed earlier in relation to false halal labelling), a consumer is generally entitled to expect the food to be halal based on the displayed halal certification or label.<sup>446</sup> If it is not halal, does this constitute a product defect? Product defect can generally be divided into three categories: design defect, manufacturing defect, and marketing defect.<sup>447</sup> First, a particular product may have weaknesses in its design and may fail to perform as intended due to this defect.<sup>448</sup> Second, the manufacturing defect may occur during the process of production and due to some abnormality in the process (for example, an inclusion of unintended ingredients during the production stage and affecting a specific batch.<sup>449</sup> Third, a marketing defect may occur by reason of improper labelling, insufficient instructions or inadequate safety warning on the product.<sup>450</sup>

Thus, it can be claimed that false halal label and halal certification technically can fall under the category of a manufacturing and marketing defect. The example of false halal label under the category of manufacturing defect, where there is inclusion of non-halal ingredients during the production stage. The example for marketing defect is when the food is label as halal but it does not fulfil halal requirements.

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<sup>444</sup>Amin and Abdul Aziz (n 21) 298.

<sup>445</sup>*ibid.*

<sup>446</sup> CPA 1999, S 67(2)(c) of the CPA

<sup>447</sup>Amin and Abdul Aziz (n 21) 299.

<sup>448</sup>Twigg-Flesner (n 28) 5.

<sup>449</sup>Amin and Abdul Aziz (n 21) 299; Twigg-Flesner (n 28) 5.

<sup>450</sup>Amin and Abdul Aziz (n 21) 299.

The product must be proved to be defective before liability can be imposed on the producer, as discussed earlier. Section 67(1) of the CPA states that ‘there is a defect in a product for the purposes of this Part if the safety of the product is not such as a person is generally entitled to expect’. Here, the definition of ‘defect’ is based on the concept of safety<sup>451</sup> due to the indication of safety stated in section 67(4) in relation to a product which shall include any of the following: safety with respect to products comprised therein, safety in the context of risk of damage to property, and safety in the context of risk of death or personal injury. In applying this provision, the product can only be considered to be defective if it is unsafe in the sense that it causes physical injury to consumers or property damage. This is difficult to prove in the case of false halal labelling.<sup>452</sup> Based on the above, false halal labelling will not make the product defective as it causes no physical harm, and the application of strict liability rule to the food producer of false halal certification or label products is not applicable unless a wider interpretation is given to the meaning of safety.

Safety can be judged according to what ‘a person is generally entitled to expect’.<sup>453</sup> The consumer general expectation test has been discussed above. In the context of false halal certification or label, it may be contended that Muslims at large are entitled to expect that the products supplied to them are halal as claimed by the producer. Clearly, products which are promoted to Muslim consumers with the halal label are very relevant factors in deciding their entitlement to expectation. This, however, does not answer the question whether Muslim consumers are entitled to expect that the product will be safe to consume in the sense that it carries no risk of causing not only physical damage but also spiritual and emotional injury.<sup>454</sup> Thus, there remains a grey area for further debate and discussion and at the same time there is room for court discretion.

#### **4.4.2.3.5 Violation of the Sale of Goods Act 1957 (SoGA).**

This section examines whether false halal labelling violates any provision under the Sale of Goods Act 1957 (SoGA). This is because halal food is similar to other products in the context of sale of goods law. Section 15 of the SoGA provides that where the goods are

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<sup>451</sup>Naemah Amin, *Product Liability in Malaysia* (Sweet & Maxwell Kuala Lumpur 2007) 299.

<sup>452</sup>*ibid.*

<sup>453</sup> Consumer Protection Act 1999, S. 67(2)

<sup>454</sup>Amin and Abdul Aziz (n 21) 299.

being sold by their description, there is an implied condition that they must correspond with the description. Applying this provision to the food which is labelled halal, there is an implied condition that the food is halal, and if it is falsely labelled, it will be a violation of section 15 of the SoGA because it does not correspond with the description.

#### **4.4.2.3.6 Violation of the Contract Act 1950**

This section identifies whether false halal labelling violates any provision of the Contract Act 1950.

##### **4.4.2.3.6.1 Whether False Labelling Constitutes Fraud Under Section 17 of the Contract Act 1950?**

Fraud is an act committed by a person or his agent with the intent to induce another party to enter into the contract<sup>455</sup>. Based on the definition of fraud in section 17 of the Contract Act 1950, there are two requirements to be fulfilled for fraud to have taken place: the intention to deceive and the inducement of another party to enter into a contract. Hence, the representation made must be a fact, as stated in section 17(a) of the Act. For example, if a manufacturer or producer produces non-halal food but then labels it as halal to induce Muslim consumers to buy the product, they can be charged with committing a fraud because the intention of the manufacturer or producer is to make people believe that the product is halal but in fact it is not. Thus, false halal labelling by manufacturers and producers can constitute fraud under section 17 of the Contract Act 1950.

#### **4.4.2.3.7 Violation of the Penal Code**

Section 415(b) of the Penal Code makes it an offence to intentionally induces a person to do or omit to do anything which he would not do if he were not deceived if this act or omission may cause damage or harm to that person's body, mind, reputation and property. Hence, false halal labelling may induce a Muslim consumer to believe that the product is halal, but in fact it is not. By consuming the non-halal food, it can cause harm to the body and mind of a Muslim consumer. This is parallel to illustration (b) in section 415 of the Penal Code, which gives the scenario where:

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<sup>455</sup>Contracts Act 1950, S 17.



‘A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article, A cheats.’<sup>456</sup>

Applying this illustration to the scenario of false halal labelling, it can be claimed that Muslim consumers will believe in the halal label on the food since there are stringent procedures before the halal label can be used on the food and it is controlled by a competent authority. Thus, using false halal labelling can be considered as cheating within the definition of section 415(b) of the Penal Code.

#### **4.4.2.3.8 Violation of Trade Marks Act 1976 (TMA1976)**

An infringement of halal logo will occur if a product or food premises not certified as halal by the competent authority<sup>457</sup>, but the owner uses the halal logo without authorization. Another situation is when the food producer obtains halal certification but apply the logo to the product which is not listed in the *halal* certification. This is because the law states in section 38 (1) of TMA1976 that, if a person who is not the registered owner of the trade mark or the permitted user of a trade mark, uses a mark which is identical with it or so nearly resembling it is as likely to deceive or cause confusion in the course of trade in relation to goods or services in respect of which the trade mark is registered in such a manner, an infringement will arise.

In the case of halal logo abuse, an infringement action can be based on a registered mark. It is possible to sue for trademark infringement and passing off<sup>458</sup>. In the case of unregistered marks, the sole redress for the proprietors is to sue for passing off. Section 38 (1) of the Trademarks Act gives an indication of the infringements to the Act which include the unauthorised use of an identical or confusingly or resembling similar mark in respect of goods or services within the scope of the registration; and the unauthorised use of an identical or confusingly similar mark which imports a reference to the registered proprietor or its goods. JAKIM can take civil and criminal action to the offender and this will be discussed in Chapter 5 on legal responses to the misuse of halal in Malaysia.

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<sup>456</sup> Penal Code ss 415, Illustration (b).

<sup>457</sup> JAKIM/JAIN/MAIN named as a competent authority to certify *halal* based on Order 3 Trade Description Order (Certification and Marking of *Halal*) Order 2011.

<sup>458</sup> Passing off is a tort which can be used to enforce unregistered trademark rights. It is to prevent a trader from misrepresentation of goods and services of another, and/or holding a goods or services as having some association or connection with another when this is not true.

Based on the discussion and analysis concerning labelling of halal using false halal certification or label, there are many law dealing with this issue as discussed above. In summary, those who commit false halal labelling will violate Food Act 1983, TDA 2011, CPA1999, SoGA1957, Contract Act 1950, Penal Code and TMA1976. The next section will analyse the potential violation concerning adulteration of halal food.

#### **4.4.3 Halal Misuse 3: Adulteration of Halal Food (Mixing Halal Food With Non-Halal Food/Ingredients)**

##### **4.4.3.1 What Is Adulteration of Food?**

The adulteration of halal food is the mix or contaminate of halal food with non-halal ingredients as provided by section 13B of the Food Act 1983.<sup>459</sup> This is also against the religious requirements of halal food as discussed in Chapter 2 earlier. Adulteration is violation of food law and religious requirements.

As discussed earlier in Section 2.3, halal food cannot be mixed with non-halal ingredients. Pointing, Teinaz and Shafi indicate that the food which is contaminated by the addition of animal proteins would cause anxiety and distress not only for Muslims, but also non-Muslims.<sup>460</sup> To reinforce the requirements of halal food for the purpose of this discussion, Order 3(1) of the Trade Descriptions (Definition of Halal) Order 2011 (examined earlier in Chapter 4.4.1.1) is applicable. There will be potential breaches of this Order if halal food is mixed or contaminated with non-halal food or ingredients, as discussed in the proceeding section.

##### **4.4.3.2 Potential Violations**

One of the misuses committed by food producers or manufacturers of halal food is to mix it with non-halal food or ingredients. This could occur if a food producer obtained halal certification but later used non-halal food/ingredients not certified as halal. In such circumstances there would be a violation of several legislations currently in force in Malaysia.

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<sup>459</sup> See Chapter 4.4.3.2.2.1 which define adulteration of food under Section 13B of the Food Act 1983.

<sup>460</sup> Pointing, Teinaz and Shafi (n 212) 3.

#### **4.4.3.2.1 Violation of the Trade Descriptions (Definition of Halal) Order 2011**

The requirements for halal food have been identified in section 5.1.1.1 and there are many requirements which have been set down in Order 3 of the Trade Descriptions (Definition of Halal) Order 2011, including not to mix halal food with non-halal food or ingredients. Thus, any food which is claimed to be halal but is mixed with non-halal food or ingredients will breach Order 3 of the Trade Descriptions (Definition of Halal) 2011.

#### **4.4.3.2.2 Violation of the Food Act 1983**

This section investigates whether the adulteration of halal food violates the provisions under the Food Act 1983.

##### **4.4.3.2.2.1 Whether the Mixture of Non-Halal Food or Ingredients in Halal Food Constitutes Adulteration of Food Under Section 13B of the Food Act 1983?**

It is against the law to prepare or sell any adulterated food.<sup>461</sup> Section 13B(2)(a) states:

... any food shall be deemed to be adulterated if-(a) it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure, normal or specified state and in undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer.

Section 13B(2) provides eight circumstances where food shall be deemed as adulterated, including: mixing or diluting halal food with any substances which can diminish its nutrition or other benefits (as compared to in its pure form);<sup>462</sup> extracting ingredients which make the food less than it should be;<sup>463</sup> mixing with substances of lower commercial value;<sup>464</sup> containing substances which are not permitted by the Act;<sup>465</sup> not complying with the standard or specification prescribed by any regulations made under the Food Act 1983;<sup>466</sup> and, finally, containing a greater proportion of any substance than

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<sup>461</sup> Food Act 1983 (281) s 13B(1).

<sup>462</sup> *ibid* 13B(2)(a).

<sup>463</sup> *ibid* 13B(2)(b).

<sup>464</sup> *ibid* 13B(2)(c).

<sup>465</sup> *ibid* 13B(2)(d).

<sup>466</sup> *ibid* 13B(2)(e).

is permitted by the Act or other legislation.<sup>467</sup> Therefore, halal food which has been adulterated with non-halal ingredients can be said to contain or be mixed with a substance that can diminish its beneficial properties as compared with pure halal food and might bring prejudice or disadvantage to the consumer. Hence, the adulteration of halal food might violate section 13B(2)(a) of the Food Act 1983.

According to section 13B(2)(a), any halal food which has been diluted or mixed with non-halal ingredients can constitute adulteration of food. For example, this will occur when chicken is being secretly pumped up with a water and chemical mix containing pork or beef, or when beef and pork protein is injected into chicken.<sup>468</sup>

#### 4.4.3.2.2.2 Whether the Adulteration of Halal Food Violates Section 14 of the Food Act 1983?

Section 14(1) of the Food Act 1983 prohibits any person from selling food which is not of the nature, substance or quality (as specified under the Food Act 1983) demanded by the purchaser. The sale of such food can be considered as an offence liable to conviction and imprisonment and payment of fines. With regard to halal food, as discussed earlier in Chapter 4.4.2.2.2, the nature, substance and quality of halal food are not specified in the Food Act 1983. However, section 14(1) of the Food Act provides a requirement 'of the food demanded by the purchaser'. This can be used to convict those who sell food which does not fulfil the halal food requirements as requested by the consumer. Thus, adulteration of food might fall within section 14(1) of the Food Act 1983 since it does not fulfil the nature, substance and quality of halal food as demanded by the consumer.

Based on the discussion and analysis concerning adulteration of halal food, those who commit this offence will violate Order 3 of the Trade Description (Definition of Halal) Order 2011, Section 13(B) and 14 of the Food Act 1983. The next section will analyse the potential violation concerning slaughtering of halal food.

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<sup>467</sup>ibid 13B(2)(f).

<sup>468</sup> 'Ayam Kampung Organik: Ayam Diberi Enzim Babi: Mudah Busuk' <<http://ayamkampungorganik.blogspot.co.uk/2007/11/ayam-diberi-enzim-babi-mudah-busuk.html>> accessed 2 October 2015; 'Ayam BABI!! ~ Usahawan Tani Kelantan' <<http://usahawantani-kelantan.blogspot.co.uk/2007/09/ayam-babi.html>> accessed 2 October 2015; Anonymous, 'SJ-10-0062 : ayam diberi makanan yg ada enzim babi' (*al-ahkam.net* 1434, 24 September 2007) <<http://www.al-ahkam.net/home/content/sj-10-0062-ayam-diberi-makanan-yg-ada-enzim-babi>> accessed 2 October 2015.

#### **4.4.4 Halal Misuse 4: Slaughtering**

##### **4.4.4.1 Halal Slaughtering Requirement**

This section discusses the misuse of halal concerning slaughtering. The general requirement for slaughtering has been discussed in Chapter 2.2.6. This section provides a brief recap of the slaughtering rules according to Sharia law, which are needed to comply with the standards of halal slaughtering. The detailed procedure for slaughtering can be obtained from Standard MS1500:2009. The legal effect of Standard MS1500:2009 has also been discussed earlier in Chapter 4.4.1.3. On one hand, this Standard does not have any legal effect if it stands by itself; however, Order 7(2) of the Trade Descriptions (Certification and Marking of Halal Order) 2011 can give legal effect to Standard MS1500:2009 since the procedures of the Standard need to be complied with when applying for the halal certificate as discussed earlier in section 4.4.1.1.

Furthermore, Order 8 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 also provides that it will be an offence for those who contravene any provision of this Order, including Order 7 – for instance, the need to comply with the Standard MS1500:2009 and the Manual to obtain the halal certificate. Halal slaughtering requirements are, *inter alia*:<sup>469</sup> the slaughter of animals must be performed by a Muslim of sound mind and maturity, who has a certificate for halal slaughtering issued by a competent authority, done with intention, and the animal must be alive. In addition, the tools and utensils used shall be dedicated only for halal slaughter, and the knife used for slaughter must be sharp and the size of the knife should be proportionate to the size of the neck of the animals. The failure to fulfil any of these requirements might violate the Trade Descriptions (Certification and Marking of Halal) Order 2011, as discussed below.

##### **4.4.4.2 Potential Violations**

The Trade Descriptions (Certification and Marking of Halal) Order 2011 does not provide any detailed offences concerning halal slaughtering; however, the potential violations are

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<sup>469</sup> See Chapter 2.2.6 for the detail requirement for halal slaughtering.

provided by the 2014 Manual, and this Manual must be read together with Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011.

#### **4.4.4.2.1 Violation of the Trade Descriptions (Certification and Marking of Halal) Order 2011**

The reference for any potential violation concerning halal food can be made to the Manual and this includes halal slaughtering. The Manual provides three potential violations concerning halal slaughtering: the use of unauthorized butchers; the use of stun guns which are not in accordance with Standard MS1500:2009; and when the stunner is controlled by a non-Muslim.<sup>470</sup> As discussed earlier, Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 provides a general provision that the applicant for halal certification shall follow the Standard MS1500:2009 and the Manual. Meanwhile, Order 8 provides that it is an offence to breach any of the provisions under this Order. Thus, to make it enforceable, the Standard MS1500:2009 and the Manual must be read together with Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011, and any potential breach might violate Order 7 of the Trade Descriptions Act 2011.

#### **4.4.5 Halal Misuse 5: Hygiene and Sanitation**

##### **4.4.5.1 General Hygiene Requirement**

Hygiene is one of the concepts that need to be fulfilled in halal food<sup>471</sup> preparation. The Muslim consumer does not always make food-related decisions that are safe and hygienic, when other factors such as tradition, habit, pleasure or financial constraints may become features of decision making.<sup>472</sup> Exploratory research shows that although some consumers do not have a solid confidence in their butcher in terms of hygiene and safety, they feel that they have no viable alternative as long as the meat is halal.<sup>473</sup>

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<sup>470</sup>JAKIM, 'Malaysia Halal Certification Manual 2014' para 10.4.

<sup>471</sup> See *Tayyib* concept in Chapter 2.4.

<sup>472</sup> Karijn Bonne and Wim Verbeke, 'Muslim Consumer Trust in Halal Meat Status and Control in Belgium' (2008) 79 Meat Science 113, 121.

<sup>473</sup> Bonne and Verbeke (n 472); Bonne and Verbeke (n 108).

According to the Food Act 1983:

all food premises or appliances must be put in a hygienic and sanitary condition and inspection can be made to any food premises, or any appliances used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food, to ensure the compliance.<sup>474</sup>

If the premises are in a condition that fails to comply with the sanitary and hygienic requirements and is likely to be hazardous to health, the proprietor, owner or occupier of the premises who fails to comply with the order is committing an offence.<sup>475</sup>

Under this statutory provision, there is no detailed provision on halal food hygiene and sanitation; however, reference can be made to the Food Act 1983 and the Food Hygiene Regulations 2009. Section 10 of the Food Act 1983 provides that the director may order food premises or the appliances to be put into hygienic and sanitary condition where food premises used for preparation, preservation, packaging, storage, conveyance, distribution or sale of food are in a condition that fails to comply with any hygiene and sanitary requirements specified in regulations made under the Food Act 1983. The detailed requirement is found in Part III (Conduct and Maintenance of the Food Premises) and Part IV (Food Handler and Protection of Food) of the Food Hygiene Regulations 2009. Part III of these Regulations is divided into three chapters. Chapter 1 deals with the duty of the proprietor, owner or occupier of the food premises. Chapter 2 deals with general requirements for food premises. Chapter 3 provides the specific requirements for food premises. Part IV of these Regulations contains two chapters. Chapter 1 deals with training, health conditions and personal hygiene of the food producer. Chapter 2 is concerned with on handling and protection of food.<sup>476</sup>

Hygiene is a general requirement for the preparation of any food and it is also applicable to the preparation of halal food. Even though the source of food is halal, there have been cases where preparation has not been hygienic and has prevented the owner from obtaining the halal certificate. This issue has also been discussed in Parliament where it

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<sup>474</sup> Food Act (n 197).

<sup>475</sup> *ibid* 11.

<sup>476</sup> See Food Hygiene Regulations 2009 for the details.

is claimed that many small businesses do not care about good practices (*Tayyiban*).<sup>477</sup> This section identifies potential breaches of the legislation in Malaysia concerning hygiene.

#### **4.4.5.2 Potential Violations**

In order to identify potential breaches concerning hygiene in halal food preparation, two statutory instruments are relevant: The Trade Descriptions (Certification and Marking of Halal) Order 2011 and the Food Act 1983.

##### **4.4.5.2.1 Violation of the Trade Descriptions (Certification and Marking of Halal) Order 2011**

Again, for the purpose of this discussion, it is important to note that the application of the 2014 Manual and the Trade Descriptions (Certification and Marking of Halal) Order 2011 (discussed earlier in section 4.4.4.2.1) are similar. As with the issue on slaughtering, the Manual provides possible potential violations concerning hygiene of premises, equipment, staff and the environment and also sanitation.<sup>478</sup>

Similarly, Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 provides a general provision where applicants for halal certification must follow the Standard MS1500:2009 and the Manual, while Order 8 provides that it is an offence to violate any of the provisions under the 2011 Order. Thus, this Manual must be read together with Order 7 of the Trade Descriptions (Certification and Marking of Halal) Order 2011, and any potential breach might violate Order 7.

##### **4.4.5.2.2 Violation of the Food Act 1983 and the Food Hygiene Regulations 2009**

Section 10 of the Food Act 1983 provides that food premises or appliances must comply with any hygiene and sanitary requirements provided by this provision, and this includes halal food. This is because halal food is also subject to the Food Act in terms of hygiene

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<sup>477</sup> Parliament Malaysia, 'Hansard Parliament 27 March 2014 (Penyata Rasmi Parlimen Dewan Negara)' (Parliament Malaysia 2014) 114 <<http://www.parlimen.gov.my/hansard-dewan-rakyat.html?uweb=dr&>> accessed 8 January 2015.

<sup>478</sup> JAKIM, 'Malaysia Halal Certification Manual 2014' (n 470) para 10.4.



and sanitation. Therefore, any halal food premises that fail to fulfil the hygiene and sanitary condition requirements might violate section 10 of the Food Act 1983. The details on the premises and appliances which must be put into hygienic and sanitary condition are provided in the Food Hygiene Regulations 2009. Furthermore, halal food needs to fulfil requirements specified in the Food Act 1983 and the Food Hygiene Regulations 2009. Any breach will constitute a violation of the Food Act 1983 and the Food Hygiene Regulations 2009.

Based on the discussion and analysis concerning hygiene requirement for halal food, those who commit false halal labelling will violate Order 7 of the Trade Description (Certification and marking of halal) Order 2011, Section 10 of the Food Act 1983 and Food Hygiene Regulations 2009. The next section will analyse the potential violation concerning representation of halal by expression.

#### **4.4.6 Halal Misuse 6: Representation of Halal by Expression**

##### **4.4.6.1 General Requirement**

The representation of halal by expression means that the food is represented as halal not by labelling it with the halal label but by using other expressions that might lead the consumers to believe that the food or product is halal. The definition of halal by expression is provided by Order 3 of the Trade Descriptions (Definition of Halal) Order 2011.

The Trade Descriptions (Definition of Halal) Order 2011 defines halal in a broad context rather than the limitations given by the Trade Descriptions (Use of expression “Halal”) Order 1975, which only contains three provisions to express the definition of halal and it only gives the definition of halal<sup>479</sup> without mentioning any action that may lead to the mislabelling of halal. Before 2011, anyone could declare their products as halal; this is no longer possible following the amendments to the Trade Descriptions Act 2011.<sup>480</sup> Following this amendment, the producer, manufacturer or the food premises must ensure that they have obtained a halal certificate before using the label and should avoid any

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<sup>479</sup> Trade Descriptions (Use of Expression “Halal”) Order 1975, S 3.

<sup>480</sup> Trade Description (Certification and Marking of Halal) Order 2011, O 4 only recognizes the Malaysian halal logo as illustrated in Schedule 1 of the Order.

action that may mislead the public into believing that their foods or goods are halal, even if they do not display any halal labels or signage.

Furthermore, Order 4(1) of the Trade Descriptions (Definition of Halal) Order 2011 provides that it is an offence to supply or offer to supply any food through a representation or conduct that may mislead or confuse any person into thinking that the food is halal. This representation or conduct includes the use of the verses of Quran or any matter or objects that are in relation to Islam, either in the premises in which such food is sold or in the container in which such food is supplied.<sup>481</sup>

Moreover, Order 4 seems to broaden the context of labelling of halal and implies that not only are the actual halal labels important, but the public cannot be led to believe that the food is halal if the premises do not sell halal food. However, the word ‘any food’ in Order 4 is ambiguous. Does it include halal food which is not certified halal by the competent authority or does it only refer to non-halal food? Senator Datuk Dr Mashitah Ibrahim, Deputy Minister in the Prime Ministers’ Office, stated that the awareness of halal certification among Muslim traders is still low as some of them have still not applied for halal certification for their foods and products in the mistaken belief that it is not necessary for them to obtain halal certification because they are Muslim and are dealing with Muslim consumers.<sup>482</sup> This is supported by Bonne and Verbeke’s findings that individuals who are raised within a particular religious tradition will place more trust in others raised within the same religious tradition.<sup>483</sup> Hence, buying food from a Muslim eventhought the label halal is not obtained, is an example of where the product’s authenticity and trust are mediated through personal interactions, and social networks become very important within certain cultural settings.<sup>484</sup> Currently, 70% of Malaysia’s halal certificate holders are non-Muslim traders.<sup>485</sup>

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<sup>481</sup> Trade Description (Definition of Halal) Order 2011, Order 4(1)(2).

<sup>482</sup> Parliament Malaysia (n 339) 24–25.

<sup>483</sup> Bonne and Verbeke (n 472) 121.

<sup>484</sup> Bonne and Verbeke (n 455).

<sup>485</sup> ‘Sijil Halal: Kesedaran Peniaga Islam Masih Rendah’ <<http://www.sinarharian.com.my/sijil-halal-kesedaran-peniaga-islam-masih-rendah-1.111416>> accessed 20 November 2014.

Order 4 is elaborated further in the Paragraph 21 of the 2011 Circular from JAKIM, which provides the example of the representation or the conduct which are deemed to be misleading or deceiving.

For the premises sell non-halal food, they cannot allow their employees to wear 'songkok'<sup>486</sup> (for men) or a hair scarf (for women) as frequently worn by Muslims, because this would deceive the public that halal food is offered, other example is using or manipulating the verses of the Quran.<sup>487</sup> Therefore, providers of non-halal products cannot use any sign or conduct that could mislead or confuse the public, such as displaying pictures of mosques on their packaging or using Muslim names for their product.

In addition, the phrase 'a representation or act that may mislead or confuse any person that the food is Halal' as provided by Order 4(1) of the Trade Descriptions (Definition of Halal) Order 2011 is difficult to interpret. This creates an argument over the requirements that need to be fulfilled to prove that the representation may mislead a person to believe that the food is halal. Furthermore, even though Order 4(2) of the Trade Descriptions (Definition of Halal) Order 2014 states that it applies to the use of the verse of Quran or any matter or objects that are in relation to Islam either in the premises or in the container in which the food is supplied, it seems that the interpretation can be wide and vague. For example, if the owner uses the word 'alcohol-free' or 'pork-free', this may not mean that the food served or sold in the premises is halal. However, this provision is able to protect consumers from the misrepresentation of halal.

#### **4.4.6.2 Potential Violations**

This section looks at the potential violation of the law when misrepresentation of halal food is identified.

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<sup>486</sup> *Songkok* is a traditional prayer hat for Muslim in Malaysia, Indonesia and some of the South East Asia Countries.

<sup>487</sup> JAKIM, 'Pekeliling Pensijilan Halal Malaysia Bil. 1/2011' 7.

#### **4.4.6.2.1 Violation of Section 4 of the Trade Descriptions (Definition of Halal) Order 2011.**

Any trader or seller who is selling non-halal food and is trying to mislead or deceive the halal status of food by actions such as allowing their employees to cover their heads/hair, as frequently worn by the Muslims, with the intention to deceive the public into believing that halal food is offered by using Islamic representation, by manipulating the verses from the Quran, or using any signs that could mislead or confuse the public (such as displaying pictures of mosques in their packaging or using Muslim names in their products) will violate section 4 of the Trade Descriptions (Definition of Halal) Order 2011.

#### **4.5 Conclusion**

In relation to the food law, Pointing, Teinaz and Shafi stated that the food regulations often appear to be detailed, to the extent of being complex, even to lawyers.<sup>488</sup> In fact, it is not only Malaysia that has detailed regulations on food; English law has Regulation 5 of the Food Labelling (Amendment) (England) (No 2) Regulations 2004 (amending Regulation 13(5) of the Food Labelling Regulations 1996).<sup>489</sup> However, if the legislation is overly complex or confusing, it can lead to less protection for consumers because confusing regulation is difficult to enforce and many small businesses will struggle to comply with the law and so ignore it.<sup>490</sup>

Based on the discussion in section 4.4, are the halal regulations in Malaysia clear, and do they address all the problems concerning halal? Is the current halal law in Malaysia able to protect the interests of consumers of halal food?

It appears that some issues are covered by law and some are not. While halal is governed by various legislation and various agencies, given the incidents reported in the news and

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<sup>488</sup> Pointing, Teinaz and Shafi (n 212) 2.

<sup>489</sup> Where a food consists of, or contains, mixed fruit, vegetables or mushrooms which are used in proportions that are likely to vary and no particular fruit, vegetable or mushroom predominates significantly by weight, those ingredients may be grouped together in the list of ingredients under the designation 'fruit', 'vegetables' or 'mushrooms' followed by the phrase 'in varying proportions', followed by a list of the fruit, vegetables or mushrooms present; in such a case the total weight of the fruit, vegetables or mushrooms shall determine the order in which this entry appears in the list of ingredients.

<sup>490</sup> Pointing, Teinaz and Shafi (n 212) 5.

the data provided in Parliament Hansard<sup>491</sup> and the statistics on misuse received from the JAKIM and MDTCC, there is evidence that there are shortcomings in the law.

Based on the current legislation, the law does not cover all the issues concerning halal. The issues raised in this chapter can be summarized as follows:

Firstly, some provisions under the Food Act 1983 does not apply to halal food. The first example is section 14 of the Food Act 1983 (prohibition against the sale of food that is not of the nature, substance or quality demanded). The second example is section 15 of the Food Act 1983 (not complying with the standard of food). The Food Act 1983 is the main food legislation in Malaysia and is governed by the MOH. The absence of halal standards in the Food Regulations 1985 will decrease consumer protection and allow food producers to commit halal food abuses since they are aware of the lack of legal consequences of committing these types of abuse.

Secondly, there are issues concerning competent authorities. There are many agencies involved in halal food, but only JAKIM/JAIN/MAIN are recognized as competent authorities to certify halal food in Malaysia. Thus, the definition of ‘competent authority’ in Standard MS1500:2009 should be revisited and some modification should be made to the role of competent authority in halal to avoid confusion.

Thirdly, the authority for halal is JAKIM/JAIN/MAIN, as evident from Order 3 of the Trade Descriptions (Certification and Marking of Halal) Order 2011. JAKIM only possesses administrative power and not enforcement powers, and this might explain the lack of halal misuse case law even though there are many reported halal misuse incidents. This is discussed further in Part 1 of Chapter 5.

Fourthly, despite regulation by the Malaysian government, the current halal food industry is not giving sufficient protection to consumers. One way to deal with this is to examine and compare how other countries deal with the halal food industry and their control on food labelling and enforcement procedures, and this will be explored in Chapter 6.

To conclude, this Chapter begins with the study regarding halal food market to show the demand available for halal food. It then highlighted the nature of halal food abuse, and it

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<sup>491</sup> Parliament Malaysia, ‘Hansard Parliament 18 December 2012 (Penyata Rasmi Parlimen Dewan Negara)’ (Parliament Malaysia 2012) 24 <<http://www.parlimen.gov.my/hansard-dewan-rakyat.html?uweb=dr&>> accessed 16 December 2014.

comes with the long list of incidents, and the types of abuse sometimes overlap with each other. It then categorized halal food abuse into 6 types of infringement as provided in Chapter 4.4 and explored possible violation of law involving halal food abuse. Finally, it summarizes the aspect that are not covered by Malaysian law and looking for the appropriate suggestion. The right mechanism needs to be identified to ensure that the consumers of halal food are protected and provided with suitable remedy.

Chapter 5 will identify the available remedies as provided by Malaysian law for the violation of breach in halal food.

## **CHAPTER 5: LEGAL RESPONSES TO THE MISUSE OF HALAL IN MALAYSIA**

### **5.1 Introduction**

The previous chapter examines halal market and the nature of halal food abuse. It also examines the general requirements under the law concerning halal and potential breaches.

After the general requirements of halal food and potential breaches have been identified, this chapter examines the legal response and the available remedies as provided by Malaysian law for the violation of breach in halal food in terms of civil, criminal and administrative perspectives. It also examines the relevant legislation in place when consumers' rights concerning halal products are violated. The law will be examined in order to identify whether it provides sufficient protection to consumers of halal food. Legal implementation and mechanism will be analysed to identify any loop holes involving consumer in halal food abuse. Despite the existence of legal protection, halal food abuses still persist, as discussed earlier in Chapter 4.3.

Thus, in order to thoroughly examine the law, this section is divided into two parts. Part 1 identifies the available remedies that are provided by Malaysian law; and Part 2 looks at the enforcement and the mechanism of the law concerning the misuse of halal food in Malaysia.

### **PART 1**

#### **5.2 Available Remedies**

This section will examine the remedies provided by Malaysian law in the event of any violation of halal food law. Part 1 identifies the legislations applicable to the misuse of halal in Malaysia, including the Consumer Protection Act 1999 (CPA), the Sale of Goods Act 1957 (SoGA) and the Contract Act 1950.

This section identifies the remedies provided by the Malaysian law, and divides the discussion into three subsections: private remedies, administrative remedies and criminal remedies.

## **5.2.1 Private Remedies**

The first section discusses the private remedies likely to be applicable to most halal misuse issues and then examines the private remedies for the misuse of halal as provided by the Consumer Protection Act 1999 (CPA), the Sale of Good Act 1957 (SoGA) and Contract Act 1950.

### **5.2.1.1 Consumer Redress Under the CPA**

Most studies on abuse of halal food have focused on the effectiveness of enforcement agencies in punishing the offender.<sup>492</sup> Naemah indicated that only a few studies were conducted on compensation made by the wrongdoer to the victim of halal food abuse.<sup>493</sup>

If there is any violation concerning halal food, consumers may make a claim under several provisions of the CPA. As discussed earlier in Chapter 4.4, the misuse of halal (such as the use of false halal certification, the use of false halal labelling, the adulteration of halal food, unhygienic premises, and the misrepresentation of halal which does not fulfil the description of halal food) can violate the implied guarantee as per section 34 of the CPA, and the consumer may seek redress under section 50. If the consumer has been able to identify the false halal status of the food, they may seek redress against the food producer under section 50(a) of the CPA:

This Part gives a consumer a right of redress against a manufacturer of goods where-

(a) the goods fail to comply with the implied guarantee as to acceptable quality under section 32.

Further references can be made to section 32(1), which states that there shall be an implied guarantee that the goods are of acceptable quality when supplied to consumers. In addition, section 32(2) states the criteria to constitute acceptable quality, which is reasonable consumers are fully acquainted with the state and condition of the acceptable

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<sup>492</sup> Ab Halim and Ahmad (n 24) 10.

<sup>493</sup> Amin (n 437) 295.



goods based on any statement made about the goods.<sup>494</sup> Thus, the quality criteria provided by section 32(2) should fit the halal food in term of quality.

By applying section 32(2) to the misuse of halal status, consumers may seek redress against producers, as the failure to fulfil the halal criteria that has been set by the Standard MS1500:2009 and the Manual will render the food non-halal and any attempt to sell it as halal can constitute a misuse.

Section 41 of the CPA further provides that the remedies are restricted to the repair, replacement and reduction in the value of the goods. This, arguably, is not so significant in the case of false halal status,<sup>495</sup> even though other kinds of losses or injuries may be claimed as a consequential loss if proven to be the result of the product's failure.<sup>496</sup> Whether a consumer can claim for mental distress or other emotional injuries as a result of consuming non-halal goods under this provision is highly debatable because the CPA is silent on this issue.

Even though there have been many incidents relating to the use of false halal food, not many consumers have sought legal redress. There might be reasons for this – for example, difficulty for the consumer to prove that the injury/damage is a direct consequence of the misuse, or that their rights have been violated. If the amount of money involved in the dispute is too small, it is not worth litigating and the complaint is deemed ineffective or worthless.<sup>497</sup> This issue will be discussed in Chapter 5.3.1.1.1. Meanwhile, in order to make any claim, the consumer must prove that they had suffered injury before they can claim damages, and this is discussed below.

#### **5.2.1.1.1 Is a Consumer Who Has Consumed False Halal Food and Suffers Injury Entitled to Claim for Damages?**

First and foremost, there should be concrete evidence of an injury before the consumer can claim damages. Furthermore, the injury must be wholly or partially caused by the

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<sup>494</sup> Consumer Protection Act 1999, S 32 (2) (b) (iii).

<sup>495</sup> *ibid* S 41 and 42.

<sup>496</sup> Consumer Protection Act (n 425).

<sup>497</sup> Geraint Howells and Stephen Weatherill, *Consumer Protection Law* (Second Edition, Ashgate Publishing Limited 2005) 604.

producers, suppliers or retailer and not the consumer.<sup>498</sup> Section 66(1) of the CPA defines damage as ‘death or personal injury, or any loss of or damage to any property including land’. Thus, it is debatable whether any distress/other emotions suffered by the consumer are included since ‘personal injury’ is not well defined within the CPA.

A Muslim consumer who has suffered some form of bodily harm or sickness (for example, headache, allergic reactions or vomiting) immediately after consuming food with false halal certification will be eligible to make a claim under the CPA if they can prove a causation. However, it is very uncommon for a consumer to suffer any physical injury after consuming non-halal products; rather, they would feel victimized and complain that they are experiencing some sort of emotional injury.<sup>499</sup> This is because Muslims believe that halal food will not only ‘feed’ them physically, but spiritually as well. Hence, consuming non-halal food may be harmful for their soul,<sup>500</sup> and have a negative impact on their spiritual and physical well-being. Consequently, this would likely cause distress and psychological damage after realizing that the food consumed had no halal guarantee. It can be argued that considering the fact that halal is vital in a Muslim’s life and is part of a Muslim’s faith, the misuse of halal food can cause extreme emotional distress to them. Thus, such a claim ought to be allowed by the court even in the absence of any detectable manifestation of physical injury.

However, Amin indicated another difficulty in bringing a successful claim in regard to false halal status: –the requirement to show a causation link between the defect(s) in the food (false/ambiguous halal status) and its adverse effect on the emotional or psychological well-being of the consumer.<sup>501</sup> This is because it may take some time before the consumers become aware of the true halal status of the product, especially if through official announcements from authorities or in the media or news publications<sup>502</sup>. Thus, it might nevertheless be argued that the requirements in proving the causation link may be satisfied if the customer can prove that he suffered the injury just after realizing the true halal status of the product. However, the causation issue might be complicated

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<sup>498</sup> Consumer Protection Act (n 425).

<sup>499</sup> Amin and Abdul Aziz (n 21) 300.

<sup>500</sup> SS Qureshi and others, ‘A Review of Halal Food with Special Reference to Meat and Its Trade Potential’ 22 (2 Suppl.) *The Journal of Animal and Plant Sciences* 79, 79.

<sup>501</sup> Amin and Abdul Aziz (n 21) 177.

<sup>502</sup> JAKIM, ‘Malaysia Halal Certification Manual 2014’ (n 470) para 10.9(ii).

by other factors, such as intervening health factors. Thus, the law in Malaysia is not providing a remedy for non-physical injury in halal food abuse.

It is timely to consider an amendment of the CPA by adding a definition of personal injury and widening cover to include not just physical injury but also non-physical injuries such as emotional or psychological injury. This issue will be explored later when examining how other jurisdictions treat emotional/psychological injury in Chapter 6.5.

### **5.2.1.2 Consumer Redress Under the SoGA**

As discussed earlier in Part 1, halal abuse can violate section 16 of the SoGA (breach of warranty) and consumers can seek redress under section 59 of the SoGA. This provision not only allows consumers to reject the goods, but he may sue the seller for breach of warranty in the form of diminution or extinction of the price or sue the seller for damages based on breach of warranty.<sup>503</sup>

However, the subject matter and the amount of money involved may not justify the consumer bringing an action under the SoGA. In most incidents, the subject matter is the food that has already been consumed by the consumer and the value of the food is too small to be worth litigating.

While it may not be worth bringing a claim for monetary loss under the SoGA, section 59(2) provides that the consumer can also sue for the breach of warranty if he has suffered further damage. However, the term ‘further damage’ is not explained in this provision. It might involve, for example, the loss of expenses if the food’s false halal status has caused further monetary loss to the consumer.

### **5.2.1.3 Consumer Redress Under the Contract Act 1950**

Consumers can also claim pursuant to section 74 of the Contract Act 1950, which provides compensation for loss or damage caused by breach of contract. As discussed earlier in Part 1, a manufacturer or purchaser who sells food with false halal status with the intention to deceive the consumer is said to commit fraud under section 17 of the Contract Act 1950.

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<sup>503</sup> SoGA 1957, S 59(1)(a) and (b).

Section 74(1) provides that when a contract has been breached, the suffering party is entitled to receive compensation, from the breaching party, for any loss or damage arising naturally from the breach. Once again, as discussed in the remedy provided by the SoGA earlier, the same issue arises as to the subject matter and the value of money involved and difficult for the consumer when considering a claim. Section 74(1) also provides that the consumer cannot claim compensation for any remote and indirect loss or damage sustained caused by the breach.<sup>504</sup>

Since there is no direct case law related to halal food, this thesis will refer to case law on the recovery of non-pecuniary loss in non-halal food matters and will then apply it to the halal issue. In the case of *Mokhtar v Pustaka Sistem Pelajaran*,<sup>505</sup> the plaintiff applied for a declaration that he was the sole author and owner of the copyright in his two literary works and an injunction to restrain the defendants from selling copies of the said literary works until they amend, at their own expense all available copies of the said literary works. The infringement was proved and damages fell to be considered. The plaintiff claimed that he had suffered wounded feelings. The court had to decide whether he could claim damages for mental distress under section 74.<sup>506</sup> Judge Gun Chitt Tuan J agreed with Counsel for the plaintiff's argument that:

... compensation cannot be given for any remote and indirect loss or damage sustained by reason of the breach of the agreement where he pointed out that the feelings of the plaintiff had been hurt although there was no direct financial damage. When wounded feeling was involved, the principle of *restitutio in integrum* no longer applied and contended that the plaintiff was entitled to exemplary damages after referring to the following paragraph at p. 223 in Vol. 11 of Halsbury's Laws of England (3rd. Edn.)

Where the wounded feeling and injured pride of a plaintiff, or the misconduct of a defendant may be taken into consideration, the principle of *restitutio in integrum* no longer applies. Damages are then awarded not merely to recompense the plaintiff for the loss he has sustained by reason of the defendant's wrongful act, but to punish the defendant in an exemplary manner, and vindicate the distinction between a wilful and an innocent wrongdoer.<sup>507</sup>

The judge held:

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<sup>504</sup> See Section 74(2) of the Contract Act 1950.

<sup>505</sup> *Mokhtar Hj Jamaludin v Pustaka Sistem Pelajaran* [1985]CLJ(Rep) 595 (High Court).

<sup>506</sup> *ibid* 595 para c.

<sup>507</sup> *ibid* 597 para d-e.

... the plaintiff was also entitled to damages for infringement of his copyright in the said literary works, and in an action for infringement of copyright the damages have been said to be at large, i.e. not limited to the pecuniary loss that can be specifically proved.<sup>508</sup>

In this case, the court held that damages for mental distress can be recovered in contract, just as damages for shock can be recovered in tort, and the plaintiff was awarded RM 2,500 (GBP459.73).<sup>509</sup> However, this is a common-law remedy where the plaintiff was awarded with exemplary damages.

Based on the above decision, it recognizes non-pecuniary loss suffered by a plaintiff and the damages awarded are not only to compensate the plaintiff for the defendant's wrongful act, but also to punish the defendant.

This principle should also apply to halal food misuse where the food producer sells non-halal food as halal. Thus, a consumer who has consumed halal food will suffer loss in terms of the cost of the food (likely to be too small to justify legal action) and may also suffer non-physical injury upon discovering that the food consumed is non-halal. This might affect their soul and physical well-being, which is non-pecuniary loss, and where the onus is on the consumer to prove such non-physical injury.

#### **5.2.1.4 Consumer Redress Under Trade Marks Act 1976 (TMA1976) and Specific Relief Act 1950 (SRA1950)**

Applying section 38 (1) of TMA1976 into third category of halal abuse in Malaysia, which is the use of false halal labels without obtaining a halal certificate<sup>510</sup>, JAKIM can apply for injunction order as one of the action to stop the infringement<sup>511</sup> and the application for injunction is governed by Order 29 Rules of Courts 2012. Injunction is an order by court to prohibit parties from breach their undertaking or to stop them not to do something.<sup>512</sup>

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<sup>508</sup> *ibid* 598 para f.

<sup>509</sup> *ibid* 599 para b.

<sup>510</sup> See Chapter 3.3.1.

<sup>511</sup> Specific Relief Act 1950 Section 52, Illustration (t).

<sup>512</sup> Stephen Graw, *An Introduction to the Law of Contract* (Thomson Reuters 2012) 547 <<http://eprints.jcu.edu.au/25769/>> accessed 7 March 2017.

Injunction is also known as ‘preventive relief’ as stated in Part III of SRA1950. SRA1950 provides two types of injunction which are temporary and perpetual injunction.<sup>513</sup> Temporary injunction can be granted for specific time or until getting further instruction from the court.<sup>514</sup> A perpetual injunction can only be obtained upon order made on the hearing and subject to the merit of the application.<sup>515</sup>

In order to obtain injunction order for halal label infringement, JAKIM must establish 3 things; there is a serious question to be tried<sup>516</sup>, remedy is not adequate damages to injury suffered<sup>517</sup> and the balance of convenience.<sup>518</sup>

First, the court has discretionary power to grant an injunction and the court need to satisfy that there is a serious question to be tried which constitute a basis whether the injunction should be granted on the balance of convenience.<sup>519</sup>

Second, in order to apply for injunction order, JAKIM must proof that there is no adequate remedy for the damages suffered. In the case of halal food label infringement, it may be submitted that the damage is irreparable for the JAKIM and injunction should be granted. As the authority and single certifier of halal in Malaysia JAKIM, their reputation will be affected, and consumer will suffer for the infringement of halal label. This is irreparable damage.

In the case of *Televisyen Broadcast and Others v Seremban Video Centre Sdn Bhd*<sup>520</sup> that involved various acts of infringing the copyright in respect of cinematograph films of the plaintiff company. Peh Swee J held that the nature of infringement which was infringement of copyright is irreparable and claim of damages is not an adequate remedy.<sup>521</sup> Thus, this is applicable to halal abuse cases.

Third, on the balance of convenience requirement, if the court is satisfied that there is a

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<sup>513</sup> Specific Relief Act 1950 (n 511).

<sup>514</sup> *ibid* 51(1).

<sup>515</sup> *ibid* 51(2).

<sup>516</sup> *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193.

<sup>517</sup> *Televisyen Broadcast and Others v Seremban Video Centre Sdn Bhd* [1985] 1 MLJ 171.

<sup>518</sup> *Associated Tractors Sdn Bhd v Chan Boon Heng and Another* [1990] 2 MLJ 408.

<sup>519</sup> *ibid* 409.

<sup>520</sup> [1985] 1 MLJ 171.

<sup>521</sup> *Televisyen Broadcast and Others v Seremban Video Centre Sdn Bhd* (n 517).

serious question to be tried, and the remedy is not adequate for the damage caused, it will consider whether the injunction on the balance of convenience should be granted, taking into account the various matters that require consideration by the court.<sup>522</sup> In the case of *Mohamed Zainuddin bin Puteh v Yap Chee Seng*<sup>523</sup> Hashim Yeop A Sani J stated on the balance of convenience:

Firstly to discover whether the plaintiff's case is frivolous or vexatious. If it is not, then to decide in whose favour the balance of convenience lies. If these factors are evenly balanced it may not be improper for the court to take into account any tipping in the balance as revealed by affidavits.

If the court finds that there is a balance of convenience for both parties that 'would maintain the status quo', court will allow the injunction.<sup>524</sup> Failure to comply with the injunction order will be contempt of court and is punishable with imprisonment and fine.<sup>525</sup>

In the case of halal label infringement, the court should grant the injunction application because there is a serious question to be considered since the halal label involves JAKIM's reputation as the Malaysian halal certifier, and also affects the status of halal food itself, and thus, remedy is not an adequate for damages and there is balance of convenience.

Thus, injunction order is one of the available remedies can be obtained by JAKIM for halal food infringement. However, there is no injunction action initiated by JAKIM because they prefer to deal with administrative remedies that will be examined in the next section (Chapter 5.2.2).

To summarize, it can be argued that the private remedy rights granted to the consumer are not effective because the amount of money involved is often too small to be worth litigating and the consumer must prove that they have suffered injury before they can claim damages, which is very difficult to prove.

A consumer who has consumed food with false halal status can be said to suffer distress or other unnecessary feeling and they must prove the link of causation with the effect of

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<sup>522</sup> *Associated Tractors Sdn Bhd v Chan Boon Heng and Another* (n 518).

<sup>523</sup> *Zainuddin bin Puteh v Yap Chee Seng* [1978] 1 MLJ 42 42.

<sup>524</sup> *ibid.*

<sup>525</sup> *William Jacks & Co Sdn Bhd v Chemquip (M) Sdn Bhd* [1994] 3 MLJ 40.

consuming the non-halal food. The consumer may not become aware of the real halal status of the product until sometime later, usually through announcement by an authority in the media or through a news publication<sup>526</sup>. In addition, the causation issues can be complicated by other elements such as intervening health factors, which might negatively impact the consumer's prospects of success.

A representative action might serve to protect an individual consumer in the event of misuse of halal status, and this is discussed in Chapter 5.3.2.

### **5.2.2 Administrative Remedies**

In this section, the administrative remedies provided in the case of misuse of halal are identified, described and discussed.

In Malaysia, there are various agencies that deal with the issue of halal. For the certification procedure, the religious bodies JAKIM/JAIN/MAIN have been named as authorities competent to certify halal certification under Order 3 of the Trade Descriptions (Certification and Marking of Halal) Order 2011. However, other agencies still can play their role if the misuse has occurred within their jurisdiction. For example, in issues concerning food health and safety, it is under the MOH jurisdiction. MDTCC may also issue compounds if it involves any violations under the Trade Descriptions Act 2011. This section identifies the administrative remedies concerning misuse of halal and, for the purpose of this discussion, references are made to the Manual and other relevant legislation such as the Food Act 1983 and the Trade Descriptions Act 2011.

The religious bodies JAKIM/JAIN/MAIN are given the authority to issue the certification of the halal status, based on the Order 3 of the Trade Description (Certification and Marking of Halal) Order 2011. These bodies are responsible for deciding how to best respond to the offences and make decisions based on the authority delegated to them under the terms of the legislation to deal with halal issues. Therefore, if JAKIM/JAIN/MAIN decide that a company is not in compliance with the rules, they can take action to refuse, suspend or withdraw the halal certification given to the company. However, until now, there has been no prosecution concerning the misuse of halal

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<sup>526</sup> 2014 Manual, Para 10.6 (iii).



certification. This is because of the administrative action taken by the competent authorities.

JAKIM/JAIN/MAIN have full power over the audit process and certification as competent authorities. There is criticism that this monopoly potentially causes corruption because it is not monitored by a higher institution/agency.<sup>527</sup>

As at December 2012, JAKIM had carried out 740 inspections concerning the use of the Malaysian halal label in restaurant premises. Out of 740 companies inspected, 58.37% failed to comply with the criteria set by JAKIM. It was reported that only 308 of the premises have complied with halal standards and laws, and a total of 432 premises were given a warning for the offence of not complying with the conditions of Malaysia's halal certification. Out of these cases, only eight incidents had been investigated under the Trade Descriptions Act 2011.<sup>528</sup>

This scenario creates a very disappointing illustration of the authority's approach to the offences. The following section explores how the authority approached offences related to the misuse of halal.

Paragraph 10.4 of the 2014 Manual (also known as Manual Pensijilan Halal Malaysia 2014) and paragraph 7.4.6 of the 2011 Manual (Malaysian Halal Certification Manual 2011 (Second Revision)) are the subject of this discussion. Different forms of the misuse of the halal food can be identified based on the manual. It has been prepared by the halal committee which consists of representatives from religious bodies such as JAKIM/JAIN/MAIN<sup>529</sup> who have the authority in halal certification in Malaysia. Hence it is compulsory for applicants to comply with the Manual to ensure a successful application for halal certification.<sup>530</sup>

However, the classification of the offences in the Manual is only for administrative and auditing purposes. Therefore, its use here is only intended to act as a guide to identify the types of offences and administrative actions concerning halal certification. This guideline on the types of offences forms the basis for actions that should be taken by the authority

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<sup>527</sup> 'Opinion: The Problem with Halal Certification' <<http://halalfocus.net/the-problem-with-halal-certification/>> accessed 13 October 2015.

<sup>528</sup> Parliament Malaysia (n 339) 24.

<sup>529</sup> Attachment 6 of the Malaysian Halal Certification Manual 2011 (Second Revision)

<sup>530</sup> Trade Descriptions (Certification and Marking of Halal) Order 2011 (n 189).

to either issue notices and warnings, deliver suspension notices, withdraw the halal certification, issue compounds or close the premises.

### **5.2.2.1 Notices and Warnings**

In terms of the issuance of notices and warnings, reference is made to the 2014 Manual. Notices and warnings are normally given as responses to small offences. Here, small offences include technical offences which will not affect the halal status of the food or the product<sup>531</sup> as they do not involve any Sharia-related offence. Those who commit this type of offence ended up with just a warning and the producer needs to rectify the mistakes. Examples of such offences include those related to hygiene and sanitation, the failure to ensure food operators have the typhoid vaccine, and failure to produce documents requested during the auditing procedure.<sup>532</sup> Normally, these types of incidents can be resolved if the producer complies with the requirements of the notice. If the producer still fails to rectify the issue, then the offences accumulate and can become a more serious offence which has different consequences<sup>533</sup>. The notice is issued to the producer and the warning is given immediately.<sup>534</sup>

Once the notice is issued, the producer must comply with the requirement set by the authority within 14 days or any time period specified by the notice.<sup>535</sup> At the end of this period, the authority will perform an inspection to ensure that the producer has complied with the notice. If the producer fails to comply within the given period, its halal label will be suspended, and a final decision will be made by the JAKIM Halal Committee on the halal status of the company.<sup>536</sup>

Current data reported that there were 448 warnings issued in 2012, 43 issued in 2013, and 110 in 2014.<sup>537</sup> This figure shows that there is a decrease of warning issued in 2013 but this number has increased in 2014. Even though there is increment in 2014 but the number

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<sup>531</sup> JAKIM, 'Malaysia Halal Certification Manual 2014' (n 470) para 10.4.1(i).

<sup>532</sup> *ibid* 10.4.1(i)(a)-(h).

<sup>533</sup> *ibid* 10.4.2(i)(n)

<sup>534</sup> JAKIM, 'Malaysia Halal Certification Manual 2014' (n 470) para 10.4.1(ii)(a).

<sup>535</sup> *ibid* 10.4.1(ii)(b).

<sup>536</sup> Malaysian Halal Certification Manual 2014, para 10.4.1.

<sup>537</sup> Statistics by JAKIM Halal monitoring and Enforcement Division. Received by e-mail on 15<sup>th</sup> May 2015.

is lower compared to warnings issued in 2012. Notices and warnings are helpful to reduce the small offence in dealing with halal food.

In addition to the 2014 Manual, section 10 of the Food Act 1983 has provisions concerning food hygiene and sanitation. This provision for general food hygiene can also include halal food.

Section 10(1) provides:

if any food premises, or any appliances used for or in connection with the preparation, preservation, packaging, storage, conveyance, distribution or sale of food, is in a condition that fails to comply with any hygiene and sanitary requirements specified in regulations made under the Food Act 1983, a notice may be served on the proprietor, owner or occupier of such premises, ordering that the premises or appliance be put into a hygienic and sanitary condition to the satisfaction of an authorized officer within a period specified in the instrument.

Based on this provision, a notice can be issued by the MOH to any halal food premises that do not fulfil the Food Hygiene Regulations 2009.

#### **5.2.2.2 Suspension Notices**

Under the 2014 Manual, a suspension notice can be issued if the notice and warning have been ignored or there is a misuse involving a serious offence. Serious offences usually involve technical offences that are serious when compared to small offences. The impact of the offences under this category is the suspension of the halal certification, followed by the decision to either withdraw or continue the company's halal certification, which will depend on the findings made by the JAKIM Halal Committee.<sup>538</sup>

Examples of this type of serious offence include: the use of the halal label for a product that is not stated as halal in the Malaysian halal certificate; the use of a fake halal label; the use of an overdue or expired halal certificate; changing or adding suppliers who do not have halal certification from JAKIM/JAIN/MAIN; doctoring the information in the halal certificate; changing or adding ingredients without informing (JAKIM/JAIN/MAIN); using non-Muslim workers in the processing area/kitchen; having other religions' worship paraphernalia in the processing area/kitchen; the breach of any of the halal requirement; and the failure to rectify and comply with the correctional order

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<sup>538</sup> JAKIM, 'Frequently Asked Questions About Malaysian Halal Certification' (n 365).

in relation to a minor offence.<sup>539</sup> There are many real-life examples companies committing an offence under this category.

In such cases, the suspension notices are issued, and the report is submitted to the JAKIM Halal Committee. The JAKIM Halal Committee will decide whether the company needs a revisit, or whether to issue a re-authorization of the use of the halal certification, or whether to withdraw the halal certification. If the panel decide to make a revisit, the company must comply with the requirements; failure to do so will prevent them from using the halal label.<sup>540</sup>

### **5.2.2.3 Withdrawal of Halal Certification**

Previous section discussed the suspension notices and one of the implications for the company withdrawal of the halal certificate. The withdrawal of the halal certificate may happen if the misuse of halal involved a serious offence as provided by the 2014 Manual (Third Revision). Serious offences are offences involving the Sharia and technical offences. An example of serious offences under the Sharia category include the use of ‘haram’ (non-halal) ingredients after the authorization to use the halal label has been issued; storing both halal and haram ingredients or products in the same place; keeping the equipment used for halal and haram food preparation in the same place; and using meat from animals which are not properly slaughtered according to the Sharia law or animals that have been stunned (which may cause the death of the animal).<sup>541</sup>

Example of serious offences under the technical category include: moving to other premises without informing the religious authorities (JAKIM/JAIN/MAIN); the change of the company’s management or company’s name without informing religious authorities (JAKIM/JAIN/MAIN); using an unauthorized butcher, checker or those with expired certification; the use of stunning that is not in accordance with the Malaysian standard, such as the stunner being controlled by a non-Muslim; the presence of non-halal ingredients in the premises; and the use of prohibited ingredients as specified in the Food Act and related law.<sup>542</sup>

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<sup>539</sup> JAKIM, ‘Malaysia Halal Certification Manual 2014’ (n 470) para 10.4.2.

<sup>540</sup> *ibid* 10.4.2(iii).

<sup>541</sup> *ibid* 10.4.2(i).

<sup>542</sup> *ibid* 10.4.3(ii).

Based on the Sharia law, the impact of halal is on the status of the food itself, where it can become haram or prohibited food. However, technically, the halal food may be considered as non-halal if the food preparation is not compliant with the Standard MS1500:2009, even if there are no ‘non-halal’ ingredients in the food. Furthermore, it will become a Sharia offence if the non-halal ingredients are mixed with the food after the company has received authorization to use the halal label (for example, putting alcohol into the food product). The Muslim consumer might not be aware that some products contain alcohol, except when it is properly labelled.<sup>543</sup> However, there are incidences where a food premises, like a stall or a restaurant, which has obtained the halal certification based on its stated menu, has added alcohol into the food.<sup>544</sup> As an example, the Consumer Association of Pulau Pinang (CAP) reported an incident pertaining to alcohol added to the food served to Muslims during the fasting month, without informing the consumers.<sup>545</sup> Alcohol is prohibited for Muslims and it will harm them spiritually.

For food producers that are involved in this category of offences, their certificate will be withdrawn, and they must stop using the halal label immediately.<sup>546</sup> Furthermore, Trade Descriptions (Certification and Marking of Halal) Order 2011 does not specifically mention the provision concerning the classification of halal, the guideline for serious offences in the 2014 Manual can be executed as long as it fits the criteria set by the statute.

#### **5.2.2.4 Power to Compound / Fine**

Previous section discussed on the withdrawal of halal certification and this section will analyse the administrative remedy by compound or fine. Section 63(1) of the Trade Descriptions Act 2011 provides that any offence committed by any person under this Act can be compounded, whereby a sum of money not exceeding the maximum fine for that offence should be paid within the time specified in the offer of compound with the consent in writing from the Public Prosecutor. Section 63(2) further provides that ‘the offer to

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<sup>543</sup> Food Regulations 1985, R 11 (1) (c).

<sup>544</sup>JAKIM, ‘Juadah berbuka campur wain’ (*Portal Rasmi Halal Malaysia*) <<http://www.Halal.gov.my/v4/index.php/my/arkib-berita/93-juadah-berbuka-campur-wain>> accessed 29 January 2015; ‘Chef Muslim Mesti Dalami Hukum Halal, Haram’ <<http://halaqah.net/v10/index.php?PHPSESSID=ju769qbiklvn1h8kpb21b875i3&topic=9551.0>> accessed 29 January 2015.

<sup>545</sup> Persatuan Pengguna Pulau Pinang (n 338) 41.

<sup>546</sup> JAKIM, ‘Malaysia Halal Certification Manual 2014’ (n 470) para 10.4.3(iii).

compound may be made at any time after the offence has been committed but before any prosecution for it has been instituted.’ This section further states that ‘when the amount specified in the offer is not paid within the time specified in the offer, prosecution for the offence may be instituted at the expiry of the time stipulated in the offer against the person to whom the offer was made.’<sup>547</sup>

For example, if a producer fails to obtain the religious authorities’ (JAKIM/JAIN/MAIN) certification standard, or never applies for it, but uses the halal label on its product, it will violate the provisions of the TDA. Hence, it can be prosecuted or given an offer for compound. The MDTCC has stated that a total of 99 compounds were issued concerning the misuse of the halal status from 2005 to 2010, and 13 compounds were issued from 2011 to 2014.<sup>548</sup> Even though there is a decrease in the number of compounds issued, this might be due to the transition period given by the Trade Descriptions Act 2011 and the introduction of the Trade Descriptions (Certification and Marking of Halal) Order 2011 which names religious authorities like JAKIM/JAIN/MAIN as competent authorities. This also suggests that even though religious authorities like JAKIM/JAIN/MAIN are the authorities in halal matters, the power to issue compounds still belongs to the MDTCC pursuant to section 63 of the Trade Descriptions Act 2011.

In addition, the MOH also has the power to issue compounds under section 33 of the Food Safety Act 1983. As discussed earlier in section 5.2.2.1, the MOH also has the power to issue notices and warnings concerning any breach of the Food Act 1983 and the Food Regulations 1985. However, the MOH covers food safety in general and most of the incidents involved in halal status are handed to the religious authorities (JAKIM/JAIN/MAIN).<sup>549</sup>

MDTCC has a power to take legal action for trade mark infringement including the infringement of Malaysian halal logo which is own by JAKIM. However, there is no legal

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<sup>547</sup> Trade Description Act 2011, s 63(2).

<sup>548</sup> Statistics provided by the MDTCC officer on the compounds issue on the misuse of the halal from 2005 to 2014. Received by email on 20 May 2015.

<sup>549</sup> Explanation by Ministry of Health officer received by e-mail on 1<sup>st</sup> July 2015. JAKIM/JAIN/MAIN will only deal with the halal certification issue such as to suspend or withdraw the certification if it commits any offence as stated in the Manual, but the Ministry of Health can take other action such as to close the premise – for example, if the premises do not fulfil the hygiene requirement under the Act and Regulations. Received by email on 1 July 2015.

action taken for trade mark infringement of halal logo. This is based on the statistical data provided by MDTCC that there are 195 reported incidents concerning infringement of the halal logo trademark under section 3 of the TDA 1972 from 2005 to 2011 and 33 reported incidents from 2011-2014 under section 8 of the TDA 2011<sup>550</sup>. MDTCC offer fine to the offender by virtue of section 63 of TDA2011 which stated:

The Controller may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act by accepting from the person committing such offence, a sum of money not exceeding the maximum fine for that offence within such time as may be specified in the offer to compound.

Thus, this is one of the reason why there is no prosecution with regard to the infringement of the trade mark. This practice can be criticized since it does not help to decrease the offence. MDTCC should start prosecuting offenders as a good sign and warning to other potential offenders since the current practice cannot curb this offence. In addition to that, the halal logo can gain public trust and show their integrity to control the infringement of the halal logo.

Based on the above, MDTCC may consider initiating an infringement of trade mark proceeding for those who are using an illegal halal logo without obtaining a halal certificate based on section 8 of the TDA 2011.

#### **5.2.2.5 Closure of Insanitary Premises**

Section 11 of the Food Act 1983 provides that the authority may, in writing, order the closure of any food preparation or food retail premises for a period not exceeding fourteen days if it fails to comply with the sanitary and hygiene requirements. This power is granted to the MOH in the case of food premises in general but is also applicable to halal food premises.

Religious authorities such as JAKIM/JAIN/MAIN (as the competent authorities) are not able to order the closure of unsanitary premises because they only have administrative power to issue notices and warnings that can affect the halal certification in determining

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<sup>550</sup> Data provided by Othman Nawang, Enforcement Officer of the MDTCC by e-mail on 20<sup>th</sup> May 2015.

either to suspend or withdraw the halal certification based on the offences involved. This is why it is important for agencies that also have jurisdiction over halal matters to assist JAKIM/JAIN/MAIN to enforce administration action, in this case the MOH.

#### **5.2.2.6 Power to Order Compliance**

Section 141 of Consumer Protection Act 1999 (CPA1999) provides controller<sup>551</sup> with the power to order compliance if there is any contravention to the CPA 1999. As provided in section 7 of the CPA 1999, Controller is the public officer who control of consumer affairs and appointed by the Minister of the Ministry of Domestic Trade, Co-operation and Consumerism (MDTCC)<sup>552</sup>. If there is violation to the consumer legislation, controller can make an order to stop the violation, contemplated the violation or refrain from further violation.<sup>553</sup> As discussed in Chapter 4.4.2.3.4, Abuse of halal food is within the jurisdiction of CPA 1999, thus, the controller can make an enforcement order to stop and prevent the infringement. The copy of the compliance order must be served on the person named in it and the reason for it must be stated in the order.<sup>554</sup> The compliance order can be served through the following means; A.R. registered post, telegram, facsimile transmission or any other electronic transmission directed to the person in the compliance order.<sup>555</sup> Failure to comply with the compliance order is an offence under section 142 of the Act and can be convicted for the following: (1) For individual, fine not exceeding RM50 000 or imprisonment not exceeding 3 years or both, and RM100 000 fine or imprisonment up to 5 years or both for subsequent offence,<sup>556</sup> (2) for body corporate, fine not exceeding RM100 000 and RM200 000 for the subsequent offence,<sup>557</sup> and (3) if the offence continues after conviction, individual or body corporate will be liable to a fine not exceeding RM1 000 for each day or part of.<sup>558</sup>

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<sup>551</sup> as provided by Section 7 of the CPA 1999.

<sup>552</sup> Consumer Protection Act (n 425) s 7.

<sup>553</sup> *ibid* 141(1).

<sup>554</sup> *ibid* 141(2).

<sup>555</sup> *ibid* 141(3).

<sup>556</sup> *ibid* 145(1).

<sup>557</sup> *ibid* 145(2).

<sup>558</sup> *ibid* 145(3).



### 5.2.2.7 Critical Point for Administrative Remedies

These various precautionary measures, including fines, have given JAKIM a degree of latitude to determine which measures can be used against offenders.<sup>559</sup> However, JAKIM only has power to issue notices and warnings, and suspend or withdraw the certification; it does not have power to compound or make closures order. Compound offers, or closures order must come from the MDTCC or MOH<sup>560</sup>. Thus, proper coordination is important to ensure that the appropriate action is taken against the offender.

Various administrative agencies are involved in the enforcement of halal in Malaysia.<sup>561</sup> It has been noted that some administrative bodies have discretion to determine whether to pursue administration remedies or not.<sup>562</sup> Administrative remedies vary from one agency to another, and remedies depend on the opinion of individuals in the department where action may be taken, including offering a compound, notice of rectification or closure of premises. Here, JAKIM leads the multi-agency structure of the halal development system, but it does not have enforcement power. In less serious cases, JAKIM offers compounds, and in serious cases, halal certificates can be suspended or withdrawn. But how effective is this administrative remedy in preventing halal food abuse? It can be speculated that a company which has been served with a suspension or withdrawal notice of halal certification might apply for new certification using a new company. There is no harm to the trader, but the consumer will suffer most in this situation because non-halal food which is claimed as halal will still be in the market.

If a consumer has been seriously injured by non-halal food which was claimed to be halal, there should be more consideration as to criminal remedies to tackle this issue.<sup>563</sup> This is discussed in the next section.

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<sup>559</sup> Buang and Mahmod (n 9) 274.

<sup>560</sup> See Paragraph 10.6 Malaysia Halal Certification Manual 2014.

<sup>561</sup> Hadijah Iberahim, Rohana Kamaruddin and Alwi Shabudin, 'Halal Development System :The Institutional Framework, Issues and Challenges for Halal Logistics', *2012 IEEE Symposium on Business, Engineering and Industrial Applications Halal* (2012) 760.

<sup>562</sup> *ibid.*

<sup>563</sup> Pointing, Teinaz and Shafi (n 212) 1.

### 5.2.3 Criminal Remedies

The previous section discussed the private and administrative remedies. Other than these two remedies, there may be a legal remedy by way of criminal sanctions. This branch of law is used as a means of deterring producers from engaging in the trade violations related to the misuse of the halal status. This section examines the criminal remedies provided under the Trade Descriptions (Certification and Marking of Halal) Order 2011, the Trade Descriptions (Definition of Halal) Order 2011, the Consumer Protection Act 2011, and the Food Act 1983.

#### 5.2.3.1 False Halal Certification

The Trade Descriptions (Certification and Marking of Halal) Order 2011 provides severe penalties for those who violate the regulations on the halal certification of any food, goods or service. However, section 6 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 does not make any specific offences concerning the misuse of halal status.

On the other hand, any offence involving the non-compliance of the halal certification will be treated as a breach. This is based on the general provision provided by Order 8 of the Trade Descriptions (Certification and Marking of Halal) Order 2011, whereby a person commits an offence if they contravene any of the Halal Certification Orders. This means that if a person does not certify the halal product through the competent authorities (JAKIM/JAIN/MAIN)<sup>564</sup> or other credible, foreign certification bodies,<sup>565</sup> they commit an offence under section 8 of the Trade Descriptions (Certification and Marking of Halal) Order 2011. A corporation can be fined up to RM 200,000 for the first offence and RM 500,000 for subsequent offences. If it involves a person, that person can be liable to a fine up to RM 100,000 or imprisonment of not exceeding three years or both, and a fine of up to RM 200,000 or imprisonment for five years or both for each subsequent offence.<sup>566</sup>

This Act provides a criminal sanction for those who misuse the halal certification and halal marking. Even though this provision can be criticized since it does not specifically

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<sup>564</sup> Trade Descriptions (Certification and Marking of Halal), O 3 (n 4).

<sup>565</sup> *ibid* O 5.

<sup>566</sup> *ibid* O 8 (B).

categorize the offence or the misuse of halal, it does give a wider interpretation and may cover the whole spectrum of misuse concerning certification and marking of halal products and services. However, if criminal sanction is applicable, whether any of non-compliance should be treated as the same? Ashworth's approach to identify sufficient to criminalise conduct is not to include minor wrongs and the wrong must be serious enough to be condemned and sanctioned by the criminal law<sup>567</sup>. How the court may decide whether the offence involve in halal abuse is small or serious offence? Looking back at the discussion in administrative remedy in Chapter 5.2.2, JAKIM has provide a guideline on what can be constitute as a small, big or serious offence and this may become a guideline for the court to identify the seriousness of the offence committed by the offender in halal misuse.

In addition, the law has also distinguished between corporations and individuals. For a corporate body, the company can be liable to a fine not exceeding RM 200,000, and for the second or subsequent offences, to a fine not exceeding RM 500,000.<sup>568</sup> If it involves a person, he can be liable to a fine not exceeding RM 100,000 or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding RM 250,000 or to imprisonment for a term not exceeding five years or to both.<sup>569</sup> Normally, those who commit the offence will often be given the opportunity to simply pay the fine.

There is, however, an issue concerning imprisonment; imprisonment is only applicable for a person and not for a corporation. Since the entity needs to be registered, only business people operating under a sole proprietorship or partnership can be held liable for imprisonment.<sup>570</sup> This shows that there is a gap in the law since there may be many misuses of the halal status committed by companies.<sup>571</sup> Therefore, it is timely to also subject the management of the corporation to imprisonment if the company is held liable for misuse of the halal status. This practice is not new in Malaysia; for example, section

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<sup>567</sup> Andrew Ashworth, 'Is the Criminal Law a Lost Cause' (2000) 116 Law Quarterly Review 225, 241–242.

<sup>568</sup> Trade Descriptions (Certification and Marking of Halal) Order 2011, ord 8 (A).

<sup>569</sup> *ibid* ord 8(B).

<sup>570</sup> The sole proprietorship is not a legal entity. It simply refers to a person who owns the business and is personally responsible for any legal issue arising from the business. In partnership, partner will share the liability depend on the partnership agreement.

<sup>571</sup> See example of halal abuse in Chapter 4.2.

130(1)(b) of the Companies Act provides that any person convicted within or outside Malaysia of any offence involving fraud or dishonesty which is punishable on conviction with imprisonment for three months or more is prohibited from taking part in the management of a corporation in Malaysia for a period of five years.

Low Hop Bing J in the case of *Golden Vale Golf Range & Country Club Sdn Bhd v Hong Huat Enterprise Sdn Bhd* stated that it is appropriate to refer to some fundamental principles in the lifting of the corporate veil:<sup>572</sup>

In *Aspatra*, one Lorrain exercised effective control of the appellant companies and one of the questions before the Supreme Court was whether Zakaria Yatim J (later FCJ) was correct in lifting the corporate veil so that Lorrain was the alter ego and the assets of the companies were held or deemed to be the assets of Lorrain. The majority judgment of the Supreme Court delivered by Mohamed Azmi SCJ (as he then was) held that the learned first instance judge was correct in lifting the corporate veil, as the court would generally do so in order to do justice particularly when an element of fraud was involved.

... because a company has a legal personality and a separate legal entity of its own distinct from its members or directors, there have been and will be instances where its members or controllers hide behind its corporate entity or are otherwise hidden from the view or shielded by what has come to be described as its corporate veil to manipulate it fraudulently for unjust personal gains, and that in such an exceptional case, the court, in order to do justice, will not hesitate to lift the corporate veil by cutting across the legal boundary of corporate structure in order to see the faces and discover the true identities of these members or controllers who use the company as an extension of themselves and make them personally liable or responsible for the debts and liabilities of the company where the evidence justifies such a remedy.

The concept of lifting the corporate veil should be exercised towards the management of company involved in the misuse of halal. If action is taken against the management of the company over halal misuse, it will send a clear message to directors and officers of companies in Malaysia to the effect that they have to strictly observe the requirement of halal before using the halal label.

In addition to the above sanction, this category of misuse can also make a company officer liable for misleading and deceptive labelling of the halal label under section 16 of the Food Act 1983 and section 10 of the CPA 1999. If they are found liable, they can be sentenced to imprisonment for a term not exceeding three years, or to a fine, or to both

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<sup>572</sup> *Golden Vale Golf Range & Country Club Sdn Bhd v Hong Huat Enterprise Sdn Bhd* [2005] 5 CLJ 289 (High Court) 300.

under section 16 of the Food Act 1983, while under section 25 of the CPA 1999 there can be fines for the corporation or fines or imprisonment if it involves a person.<sup>573</sup>

For such cases, the provisions in sections 10 and 25 of the CPA 1999 and sections 15 and 16 of the Food Act 1983 are applicable since these types of offences are also involved in the misuse of halal.

### **5.2.3.2 False Halal Labelling**

False, misleading or deceptive labelling is an offence under section 16 of the Food Act 1983. Hence, those who falsely use the halal label or certification are liable under this provision. Criminal liability attaches to the food producer who commits the offence of halal false labelling under Part IV of the CPA<sup>574</sup> and section 16 of the Food Act 1983<sup>575</sup>.

Thus, even though this is a general provision on false labelling, it is clear that this provision can also be applied to the abuse of halal status. When there is an overlap between these provisions, the scopes of these statutes are different. The scope of the Trade Descriptions Act 2011 is to promote good trade practices by prohibiting false trade descriptions and the use of false or misleading statements, conduct and practices in relation to the supply of goods and services. The CPA aims to provide for the protection of consumers. And the Food Act 1983 is to protect the public against health hazards and fraud in the preparation, sale and use of food. When it comes to the misuse of the halal label, all these provisions are applicable. This indirectly safeguards the halal label against

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<sup>573</sup> Section 25 of the Consumer Protection Act 1999: (1) Any person who contravenes any of the provisions of Parts II and III commits an offence and shall on conviction be liable— (a) if such person is a body corporate, to a fine not exceeding two hundred and fifty thousand ringgit, and for a second or subsequent offence, to a fine not exceeding five hundred thousand ringgit; (b) if such person is not a body corporate, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding six years or to both.

<sup>574</sup> See Section 25 CPA 1999 which provides fine up to RM250,000 for the first offence and RM500,000 for the subsequent offence if involve the company and fine up to RM100,000 and/or imprisonment up to 3 years for the individual and the subsequent offence will be fine up to RM250,000 and imprisonment up to 6 years.

<sup>575</sup> Those who commits an offence and is liable under this provision can be convicted to imprisonment for a term not exceeding three years or to fine or to both.

any misuse if the law is properly applied and the agencies involved put halal matters as their agency priority.

In addition to the provisions stated above, false halal labelling can also come under the category of cheating. Cheating is defined in section 415(b) of the Penal Code as when someone deceives another person with the intention to induce the person to do or omit to do anything which the other person would not do or omit to do if he/she was not being deceived and the act is likely to cause damage or harm to any person's body, mind, reputation or property.

This can be applied to false halal labelling. An illustration in section 415(b) states:

... if A put a counterfeit mark on an article to intentionally deceive Z into believing that this article was made by a certain manufacturer and thus dishonestly induced Z to buy and pay for the article. A can be convicted of cheating.

Another example is when the manufacturer puts a false halal label on the food to entice Muslim consumers to buy the food because the consumers believe that it is halal. This can constitute cheating under section 415(b) of the Penal Code and is punishable with imprisonment up to five years or with a fine or both, as provided by section 417 of the Penal Code.

In the case of false halal labelling, the proprietor of a trademark which is JAKIM can resort to some criminal sanctions to curb counterfeiting activities involving trademarked goods. The principal legislation that provides for such criminal penalties is the Trade Descriptions Act 2011. This can be seen in the provisions provided in Part II of the TDA2011. Section 5 of the Act creates three distinct offences in connection with goods which include the offence of applying a false trade description to any goods; the offence of supplying or offering to supply any goods to which a false trade description is applied; and the offence of exposing for supply or having in possession, custody or control for supply any goods to which a false trade description is applied. A trade description, in relation to a product, is an indication of its nature, quantity, method of manufacture, composition, strength or performance<sup>576</sup>. This definition is wide enough to encompass trademarks affixed to goods.

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<sup>576</sup> Trade Description Act (n 547).

The Controller of trade descriptions, his Deputy and Assistant have the power to enter premises (but not premises used as dwellings) to ascertain whether any offence under the Act has been committed. They also have the power to arrest, investigate, prosecute and compound any offence under TDA 2011.

Malaysia has a unique remedy created by statute, called a trade description order, which is an order of the High Court made under section 9 of the Trade Descriptions Act declaring that a specified infringing trademark or get-up is a false trade description for the purpose of the Act. A trade description order is conclusive proof in proceedings under the Trade Descriptions Act that the infringing trademark or get-up specified therein is a false trade description when applied to the goods denoted in the order. Section 8 of the TDA 2011 contains the prohibition of false trade description in relation to trademark<sup>577</sup>. The conviction for corporation is a fine not exceeding fifteen thousand ringgit and subsequent offence, to a fine not exceeding thirty thousand ringgit for each goods bearing the false trade description<sup>578</sup>. If it involves a person, a fine is not exceeding ten thousand ringgit for each goods bearing the false trade description or to imprisonment for a term not exceeding three years or to both, and for a second or subsequent offence, a fine not exceeding twenty thousand ringgit for each goods bearing the false trade description, or to imprisonment for a term not exceeding five years or to both<sup>579</sup>.

In addition to civil court, there is Sharia Court in Malaysia which deals with Muslim personal law and both have jurisdiction towards abuse of halal label.<sup>580</sup> Section 42 of Syariah Criminal Offences (Federal Territories) Act 1997 provides fine not exceeding five thousand Malaysian ringgit (GBP 922.86)<sup>581</sup> or imprisonment not exceeding three

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<sup>577</sup> This includes any person who—

- (a) applies a false trade description to any goods as if the goods were subject to any rights relating to registered trade mark;
- (b) supplies or offers to supply any goods to which a false trade description is applied as if the goods were subject to any rights relating to registered trade mark; or
- (c) exposes for supply or has in his possession, custody or control for supply any goods to which a false trade description is applied.

<sup>578</sup> Trade Description Act (n 547).

<sup>579</sup> *ibid* Section 8(2)(B).

<sup>580</sup> Federal Constitution (n 194) List II, Schedule 9; Syariah Criminal Offences (Federal Territories) Act 1997 s 42.

<sup>581</sup> 'Population of Malaysia' (n 193).

years or both for those who abuse halal label.<sup>582</sup> The interesting point is Sharia Court is only applicable to Muslim and the case cannot be brought before the court if the party involved is a non-Muslim, company or corporation. This is stated in List II, schedule 9 of the Federal Constitution of Malaysia<sup>583</sup>.

However, none of these provisions have been used to prosecute a halal misuse offender.

### 5.2.3.2 Adulteration of Halal Food

As discussed earlier in section 5.1.3, the adulteration of food is also a halal food misuse. Section 13 (B)(4) of the Food Act 1983 provides that a fine not exceeding RM 20,000 (GBP 3,691.45) or imprisonment of a term not exceeding five years or both are applicable for those liable for food adulteration. This general provision on food adulteration can also be applied to incidents involving the adulteration of halal food.

Section 272 of the Penal Code also provides criminal liability for those who have adulterated food or drink materials which are intended for sale, and is punishable with imprisonment for a term not exceeding six months or a fine not exceeding RM 2,000 (GBP 82.87) or both.

The penalty provided by section 13(B)(4) of the Food Act 1983 is more severe than that provided by section 272 of the Penal Code, but neither provision has ever been tested in

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<sup>582</sup> Syariah Criminal Offences (Federal Territories) Act (n 580).

<sup>583</sup> List II, Schedule 9 of Federal Constitution (n 194).

‘Except with respect to the Federal territories of Kuala Lumpur, Labuan and putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and baitulmal or similar Islamic religious revenue; mosques or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the constitution, organization and procedure of Syariah courts, **which shall have jurisdiction only over persons professing the religion of Islam** and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay custom’.



court with regard to the adulteration of halal food. However, there is one case concerning adulteration of non-halal food: *Nam Leong Department Store (Miri) Sdn Bhd v PP*.<sup>584</sup> In this case, the appellant was charged and convicted under section 13(B)(1) of the Food Act 1983 read together with section 13B(2)(e) of the same Act and Regulation 285(3) of the Food Regulations 1985 and was sentenced under section 13(4) of the Food Act 1983 for selling adulterated food, which was salt containing only 13.7mg/kg of iodine (less than the required amount fixed by law). Applying this case to the scenario of halal food adulteration, action can be taken against the food producer if the criteria provided by section 13(B)(2) of the Food Act 1983 are satisfied, such as the food contains or is diluted with any substance which diminishes in any manner its nutritive or other beneficial properties or contains or is mixed or diluted with any substance of lower commercial value than such food in a pure, normal or specified state and in an undeteriorated and sound condition.

#### **5.2.3.4 Hygiene and Sanitation**

Even though this offence is related to the halal status, the authorized agency that has the power to prosecute and take action concerning hygiene and sanitation of food in Malaysia is the MOH. Competent authorities named in the Order 3 Trade Descriptions (Certification and Marking of Halal) Order 2011 (which are the religious authorities JAKIM/JAIN/MAIN) can only take administrative action such as to suspend or withdraw the halal certification. This can be seen in the recent incident reported on 5 May 2015 where JAKIM had withdrawn the halal certification of Secret Recipe Sdn Bhd due to the company's failure to comply with the hygiene requirements and Good Manufacturing Procedure (GMP).<sup>585</sup> JAKIM had been evaluating the company's halal certificate application after it had conducted checks based on the Standard MS1500:2009 and the 2014 Manual.<sup>586</sup> JAKIM's media statement shows that JAKIM had withdrawn the halal

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<sup>584</sup> *Nam Leong Department Store (Miri) Sdn Bhd v PP* 2013 1 CLJ 583.

<sup>585</sup> 'Secret Recipe Halal Certificate Revoked' <<http://english.astroawani.com/malaysia-news/secret-recipe-halal-certificate-revoked-60809>> accessed 26 May 2015; 'Secret Recipe Halal Certification Revoked in Malaysia' (*Channel NewsAsia*) <<http://www.channelnewsasia.com/news/asiapacific/secret-recipe-halal/1872586.html>> accessed 26 May 2015.

<sup>586</sup> 'Secret Recipe Loses Jakim Halal Cert over Cleanliness - The Malaysian Insider' (26 2015) <<http://www.themalaysianinsider.com/malaysia/article/secret-recipe-loses-jakim-halal-cert-over-cleanliness>> accessed 26 May 2015.

certification of the company and the company had to re-apply for the certificate after fulfilling the requirements set by JAKIM.<sup>587</sup> However, there was no further prosecution action taken against the company for the misuse of its halal certificate. This creates the possibility that the misuse can reoccur since the action taken by JAKIM was not severe.

However, there is a criminal sanction provided by section 11 of the Food Act 1983 involving offences on hygiene and sanitation. This section provides that the authority may order the closure of the premises if they are of the opinion that such premises are in a condition that fails to comply with the sanitary and hygiene requirements and the proprietor or the occupier of the food premises fails to comply with the hygiene and sanitation Order, whereby he commits an offence and is liable to conviction of imprisonment of not exceeding five years or to pay a fine or both.<sup>588</sup> Unfortunately, this provision has not been used to prosecute for any unhygienic premises involving halal food.

#### **5.2.3.5 Misrepresentation of Halal**

Order 5 of the Trade Descriptions (Definition of Halal) Order 2011 provides a criminal sanction for those who misrepresent the halal status. Order 5 of the Trade Descriptions (Definition of Halal) Order 2011 provides that a person will commit an offence if they contravene any of the Halal Certification Orders. This means that if a person does not apply for halal certification through JAKIM/JAIN/MAIN<sup>589</sup> or any credible, foreign certification body,<sup>590</sup> they are committing an offence under section 8 of the Trade Descriptions (Certification and Marking of Halal) Order 2011. A corporation can be fined up to RM 5,000,000 for the first offence and RM 10,000,000 for each subsequent offence. If it involves a person, that person can be liable to a fine up to RM 1,000,000 or imprisonment of a term not exceeding three years or both, and a fine of up to RM 5,000,000, or face imprisonment for five years or both for subsequent offences. This sanction is the most severe punishment compared to other provisions.

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<sup>587</sup> *ibid.*

<sup>588</sup> Food Act 1983, S 11.

<sup>589</sup> Trade Descriptions (Certification and Marking of Halal), O 3 (n 4).

<sup>590</sup> *ibid* O 5.

In addition, this category of misuse can also make a food producer liable for misleading and deception labelling of the halal label under section 10 of the Consumer Protection Act 1999 for false and misleading representation. If liable, they can be convicted of imprisonment for a term not exceeding three years or to pay a fine or both, under section 16 of the Food Act 1983, while under section 25 of the Consumer Protection Act 1999 there may be fines for corporations and fine or imprisonment if it involves a person.<sup>591</sup> Neither provision under the Trade Descriptions (Certification and Marking of Halal) Order 2011 or the Food Act 1983 have been tested yet in court, even though there are reported incidences concerning misrepresentation on the definition of halal.

### **5.2.3.6 Critical Point for Criminal Remedies**

Practically, the criminal sanction is never tested yet in halal food misuse in Malaysia since the competent authority which are JAKIM/JAIN/MAIN may adopt compliance strategy as discussed in administrative remedy<sup>592</sup> in preference to formal prosecution. Although discretion is exercised at most levels of law enforcement, it is clear that regulatory agencies prefer to use warnings far more frequently and prosecute far less<sup>593</sup>.

Criminal liabilities and sanctions of consumer protection regulation infringements have raised debate.<sup>594</sup> The criminal procedure and remedies are totally different from the private remedies because the law is more stringent due to the level of burden of proof which is higher compared to private remedies. This might reduce the chance of success for criminal actions. Also, the consumer receives no monetary benefit from criminal prosecution because all fine proceeds go to the government.<sup>595</sup>

In spite of these disadvantages, there are numerous motives why numerous consumers may favour criminal remedies and liabilities over private remedies. First, it is argued that sanctions serve to strengthen civil deterrence. Civil remedies alone have proved to be

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<sup>591</sup> Consumer Protection Act 1999, S 25.

<sup>592</sup> See Chapter 5.2.2.

<sup>593</sup> Ashworth (n 567) 247.

<sup>594</sup> Peter Cartwright, *Consumer Protection and the Criminal Law* (Cambridge University Press 2001).

<sup>595</sup> Iain Ramsay, *Consumer Law and Policy* (2nd edn, Hart Publishing 2007) 360–361.

insufficient to deter potential violators, particularly those acting for the purpose of private financial gain and commercial advantage.<sup>596</sup>

It is also argued that the imprisonment of consumer protection law infringers may well guarantee that they are no longer ‘industry participators’.<sup>597</sup> Civil remedies cannot prevent the infringer from re-entering the industry, even if the judge decides to possess the infringing goods and also orders the manufacturing equipment to be destroyed or seized. By contrast, if criminal sanctions are imposed against the infringer by way of imprisonment, then the infringer is physically removed from the markets, and hence no longer represents a threat. Thus, criminal sanctions could be one of the most successful methods of restricting unfair commercial acts and protecting consumer rights.<sup>598</sup>

According to Bardach and Kagan, civil damages would be an additional cost of doing business from manufacturer or trader perspective, as an example, if there is civil claim, the offender will pay the damages claim while at the same time continuing their business to earn more profit<sup>599</sup>. Section 8 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 carries severe punishment and will be a more effective deterrent than a civil remedy because it provides for high levels of compensation and long imprisonment. But this might not work for offenders who have limited funds. As stated by Shavell, it is impossible to deter a person with no assets by the threat of monetary sanctions<sup>600</sup>.

It is also argued that the imprisonment of halal food abuse offender will help to remove them from the industry. Civil remedies are not able to stop offenders from re-entering the industry, even if the judge decides to possess the goods and also destroy or seize the equipment<sup>601</sup>. By contrast, if criminal sanctions are imposed against the offender by make them liable for imprisonment, then the violator is physically removed from the markets,

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<sup>596</sup> Gordon J Borrie, *The Development of Consumer Law and Policy: Bold Spirits and Timorous Souls* (Stevens & Son Ltd 1984) 46.

<sup>597</sup> *ibid.*

<sup>598</sup> *ibid.* 53.

<sup>599</sup> Eugene Bardach and Robert A. Kagan, *Going by the Book: The Problem of Regulatory Unreasonableness* (Temple University Press 1982) 44.

<sup>600</sup> Steven Shavell, ‘Criminal Law and the Optimal Use of Nonmonetary Sanctions as a Deterrent’ (1985) 85 *Columbia Law Review* 1232, 1237.

<sup>601</sup> Borrie (n 596) 53.

and hence no longer represents a threat. Thus, criminal sanctions could be one of the most successful indication of restricting unfair commercial acts and protecting customer rights<sup>602</sup>.

Even though there will be no pecuniary gain, society may benefit from criminal sanctions against infringers in terms of health and safety, and the reduction of halal food misuse.<sup>603</sup> This is because imprisonment might restrain repeat offenders and may be the appropriate deterrent for offenders who would commit further halal food abuse.

#### **5.2.4 Conclusion**

This section was divided into three subsections; private remedies, administrative remedies, and criminal remedies. The remedies which are actively in place are administrative remedies. However, the administrative remedies do not impact greatly on halal misuse based on the statistical data of halal misuse incidents provided by Parliament, the JAKIM and the MDTCC.

Private remedies appear to be the best option for individuals to claim damages, but the issue concerning evidence in non-physical injury and non-pecuniary loss must be resolved (as discussed earlier in Chapter 5.2.1). With regard to ‘non-physical injuries’, other jurisdictions will be studied in this thesis to fill the gap in the current Malaysian law since this term is not clearly defined under the CPA 1999. This will be further explored in this thesis, to see whether psychological injury suffered by consumer in halal food abuse can be remedied in English law.

There is a gap in the administrative action capable of being taken by the competent authorities (JAKIM/JAIN/MAIN) and this needs to be rectified. This thesis uses the comparative approach and will examine other jurisdictions’ practices, specifically the English law, in order to deal with the lacuna in the administrative actions currently being enforced in Malaysia.

This thesis examines the law on the basis of the interests that it aims to protect – the consumer. The objective of legislation related to halal is to provide consumers with halal food and protect them from misuse. Yet in real life, it seems that the consumer is being

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<sup>602</sup> *ibid.*

<sup>603</sup> Ramsay (n 595) 357.

less considered. Either the law is not explicit or the action taken by government to handle the misuse of halal is less obvious. The government should take a holistic approach to this issue and not only rely on administrative action. If administrative action works, there will be no issue. However, misuse continues to occur and is in fact increasing. Perhaps it is time to consider the application of criminal law to halal misuse offenders. Cartwright gives the example of quality regulation which has generally been viewed as the domain of the law of contract, but the criminal law may also have a role to play here, to ensure consumers receive food of acceptable quality.<sup>604</sup> There is an argument that criminal law is the last resort to resolve issues concerning consumers. Consumer protection law will only achieve its objectives if it is enforced effectively by the enforcement agencies. The enforcement authorities such as JAKIM favour compliance, but they need deterrence strategies. This might be one of the alternative approaches that can be taken by JAKIM/JAIN/MAIN. However, in order to apply criminal law, JAKIM/JAIN/MAIN should liaise closely with other enforcement agencies because they are not able to prosecute halal abuse offenders but can only assist with the enforcement.

After examining the requirements of the law and the potential breaches concerning the misuse of halal in Chapter 4.4, and the remedies provided by law in Part 1 of Chapter 5, the next part (Part 2) explores the implementation and mechanism of the law in dealing with the misuse of the halal status.

## **PART 2**

### **5.3 Implementation and Mechanism**

This part seeks to identify how the law is being put into practice and the mechanism of the law in dealing with the misuse of the halal status. Part 2 is divided into four subsections: private action by an individual, representative action, administrative action, and prosecution.

#### **5.3.1 Private Action by an Individual**

Access to justice is a system where a person may claim their rights or settle the dispute using a specific medium. Two criteria must be fulfilled: (1) it must be capable of being

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<sup>604</sup> Cartwright (n 594) x.

accessed by everyone; and (2) the settlement must be fair to the individual and community.<sup>605</sup>

The Malaysia Government has established a mechanism for consumers to seek justice where they may take action by way of court proceedings or alternative dispute resolution.<sup>606</sup> The JAKIM and MDTCC data concerning abuse of halal food shows that there has been an increase in the halal food abuse incidents,<sup>607</sup> but the number of cases brought to court by consumers is very low.

There are many laws in Malaysia that have been introduced to protect the consumer in terms of abuse of halal status.<sup>608</sup> Therefore, consumers should know the law and the remedies available to them to take action if their consumer rights have been abused and as discussed previously in Part 1.<sup>609</sup> There are forums that can be utilized by consumers to protect their rights and claim compensation in halal food abuse cases.

### **5.3.1.1 Access to Justice**

#### **5.3.1.1.1 Court claim**

A court claim is one of the mechanisms to access justice. In Malaysia, a civil action may be initiated in the Magistrates' Court, the Sessions Court or the High Court, and civil proceedings in Malaysia are governed by the Rules of Courts 2012<sup>610</sup>. In order to initiate legal proceedings in court, consumers must identify the court according to its jurisdiction. The consumer must also particularize the damages they seek from the court.

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<sup>605</sup> Azimon Abdul Aziz and others, 'Permasalahan Dalam Mekanisme Penyelesaian Pertikaian Pengguna: Impak Ke Atas Pengguna Dalam Mendapatkan Keadilan', *Prosiding PERKEM VI (UKM)* 229–230 <<http://www.ukm.my/fep/perkem/pdf/perkemVI/PERKEM2011-1-2B2.pdf>> accessed 10 October 2015.

<sup>606</sup> *ibid* 230.

<sup>607</sup> E-mail from JAKIM dated 15<sup>th</sup> May 2015 and E-mail from KPDNKK dated 20<sup>th</sup> May 2015.

<sup>608</sup> See discussion in Chapter 4.4 concerning general legal requirement of halal food and potential violation of law.

<sup>609</sup> See discussion in Chapter 5.2 concerning the available remedies in halal food abuse.

<sup>610</sup> Rules of Court 2012, O 1 R 2.

The consumer will need to consider whether the claim is worth litigating because the cost of litigation in court is expensive<sup>611</sup> and time-consuming.<sup>612</sup> The court process may also involve postponement of the case for various reasons, one of which (and as stated by former Chief Justice of Malaya, Haidar Mohamed Noor) is the limited number of judges.<sup>613</sup> This will have some impact on cases involving halal food because it may be difficult to gather evidence and trace witnesses or witnesses may not remember material facts of the case.<sup>614</sup>

To initiate a legal proceeding in court is costly. The consumer needs to retain a lawyer and the retainer fees are expensive.<sup>615</sup> Moreover, there are also fees that need to be paid to the court during the litigation process.<sup>616</sup> The consumer will also need to allocate their own time to attend court hearings, which can be daunting. It is well known that court cases can take considerable amount of time before a final decision is made.<sup>617</sup> Thus, the process itself is complicated and it may not be the best option for the consumer to claim compensation for halal food abuse. Moreover, there is always the risk that a civil action may be unsuccessful and the consumer might face an order to pay the costs.<sup>618</sup>

These are some of the considerations that deter consumers from pursuing civil proceedings against irresponsible and unethical traders, suppliers, or manufacturers in

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<sup>611</sup> 'The Malaysian Bar - Exorbitant Legal Fees' <[http://www.malaysianbar.org.my/members\\_opinions\\_and\\_comments/exorbitant\\_legal\\_fees.html](http://www.malaysianbar.org.my/members_opinions_and_comments/exorbitant_legal_fees.html)> accessed 11 October 2015.

<sup>612</sup> 'Pencapaian Keadilan Menerusi "KPI" Di Kalangan "Teraju" Mahkamah-Adakah Telus Keadilan Yang Dicapai?' <[http://www.agc.gov.my/index.php?option=com\\_content&view=article&id=833:pencapaian-keadilan-menerusi-kpi-di-kalangan-teraju-mahkamahadakah-telus-keadilan-yang-dicapai&catid=71:admin%20ag&Itemid=91&lang=en](http://www.agc.gov.my/index.php?option=com_content&view=article&id=833:pencapaian-keadilan-menerusi-kpi-di-kalangan-teraju-mahkamahadakah-telus-keadilan-yang-dicapai&catid=71:admin%20ag&Itemid=91&lang=en)> accessed 11 October 2015.

<sup>613</sup> 'Laporan Tahunan Bahagian Kehakiman' (2004) 168 <<http://www.kehakiman.gov.my/sites/default/files/document3/POJ-LAPORAN%20TAHUNAN/BM/200405/LP-15.pdf>> accessed 10 October 2015.

<sup>614</sup> Abdul Aziz and others (n 605) 231.

<sup>615</sup> 'Types of Legal Fees - FindLaw' <<http://hirealawyer.findlaw.com/attorney-fees-and-agreements/types-of-legal-fees.html>> accessed 11 October 2015.

<sup>616</sup> 'Increase in Filing Fees: The Selangor Bar' <[http://www.selangorbar.org/content\\_dtl.php?id=36593](http://www.selangorbar.org/content_dtl.php?id=36593)> accessed 11 October 2015.

<sup>617</sup> 'Guide to Litigation: What Happens When a Case Goes to Court? | Brindley Twist Tafft & James LLP | Coventry' <<http://www.bttj.com/Articles/Guide-to-Litigation-What-happens-when-a-case-goes-to-court.shtml>> accessed 11 October 2015.

<sup>618</sup> Howells and Weatherill (n 497) 604.



civil courts, especially when the amount claimed is small.<sup>619</sup> Due to this, Ramsay indicated that consumer complaint and negotiation between seller and buyer might help the consumer in protecting them from defective goods.<sup>620</sup>

The small claims court is one of the avenues for consumers, where they can make a claim if the amount involved does not exceed RM 5,000.<sup>621</sup> The consumer can also resort to the small claims procedure of the Magistrate's Court which was set up in 1987,<sup>622</sup> while the procedure for the small claims court is governed by Order 93 of the Rules of Courts 2012. There are a few procedures that need to be fulfilled before the consumer can initiate small claims court proceeding.<sup>623</sup>

The special feature of small claim court is that cases are heard in a cheap, simple and speedy manner, and neither party involved needs to be represented by a lawyer, except where the defendant is a company.<sup>624</sup> Thus, the plaintiff himself will do everything, guided by the court staff. Here, the Magistrate's judgment is final, and hence there is no appeal to a higher court can be made by either party, unless it is on a point of law.<sup>625</sup>

Among the claims that are heard by the small claims court is refunds of money paid for goods that turned out to be faulty or not as advertised.<sup>626</sup> Therefore, this court can be utilized by consumers to claim for halal food that turned out to be non-halal. The cost to initiate the proceeding is cheap, but there may be difficulties for the consumer in terms of other factors as discussed above concerning witnesses and evidence.<sup>627</sup>

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<sup>619</sup> 'Background Tribunal For Consumer Claims Malaysia' <[http://www.kpdnkk.gov.my/kpdnkv3/index.php?option=com\\_content&view=article&id=279&Itemid=249&lang=en](http://www.kpdnkk.gov.my/kpdnkv3/index.php?option=com_content&view=article&id=279&Itemid=249&lang=en)> accessed 11 October 2015.

<sup>620</sup> Iain Ramsay, 'Consumer Redress Mechanisms for Poor-Quality and Defective Products' (1981) 31 *The University Of Toronto Law Journal* 117, 127.

<sup>621</sup> Rules of Courts 2012, O 93 R 2.

<sup>622</sup> MF Sabri, 'The Development of Consumer Protection Policies in Malaysia' 4 *International Journal of Business and Social Research* 98, 104.

<sup>623</sup> See Rules of Courts 2012, O 93 for detail procedure.

<sup>624</sup> Sabri (n 622) 103.

<sup>625</sup> *ibid.*

<sup>626</sup> 'The Small Claims Courts' <<http://www.consumer.org.my/index.php/complaints/rights/251-the-small-claims-courts>> accessed 11 October 2015.

<sup>627</sup> For the detail discussion on this issue, see Chapter 5.2.1.

In 1999, the Malaysian Government established the Tribunal for Consumer Claim as one of the alternative redress options for consumers that may help to make a litigation procedure less complicated. The Tribunal offers an alternative dispute resolution mechanism for consumers against food producers, traders or sellers involve in halal food abuse.

#### **5.3.1.1.2 Tribunal for Consumer Claims (The Tribunal)**

The Malaysian legal system experienced drastic changes in its civil dispute litigation with the establishment of the Tribunal in 1999.<sup>628</sup> The Tribunal is governed by section 85 of the CPA 1999. The Tribunal is one of the mechanisms established by the government to enable consumers to access justice, and the Tribunal is subject to the provisions of the CPA. The mechanism of the Tribunal is less complicated and more consumer-friendly than the courts. However, its jurisdiction is limited to RM 25,000, as stated in section 98(1) of the CPA. Thus, consumers may seek compensation through the Tribunal for claims whose value do not exceed RM 25,000.

According to Abdul Aziz, before the hearing, the President of the Tribunal will help the parties to negotiate and reach a solution to the dispute. If there is a solution, it will be recorded as an award but if it is not, a hearing will commence.<sup>629</sup> At the hearing, the parties to the dispute will represent themselves without a lawyer, unless it involves a corporation or business entity. However, the parties may bring their witnesses and produce relevant documents to support their claim, and the President of the Tribunal will assist the parties in the procedure.<sup>630</sup> In terms of burden of proof, Abu Bakar et al. stated that the burden of proof is lower in the Tribunal than in court proceedings. This is because the consumer need only prove that they are a consumer as define in the CPA, that the other party is a supplier or manufacturer, and that the relevant goods which were claimed to be halal were non-halal.<sup>631</sup> The Tribunal proceedings are also quicker than court proceedings. The award of the Tribunal must be made within 60 days from the first day

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<sup>628</sup> Nuraisyah Chua Abdullah, 'Civil Remedies In Malaysia: Developments And Challenges' <<https://www.law.cuhk.edu.hk/en/research/crj/download/presentations/20150130-nca-presentation.pdf>> accessed 11 October 2015.

<sup>629</sup> Abdul Aziz and others (n 605) 233. See discussion on Consumer Redress under the CPA in Chapter 5.2.1.1

<sup>630</sup> 'Background Tribunal For Consumer Claims Malaysia' (n 619).

<sup>631</sup> Abu Bakar, Ahmad and Kahar (n 20) 12.

of the hearing.<sup>632</sup> However, Noraisyah argued that speed sometimes denies justice. She is justifying this due to the reason that experts are rarely called during the hearing since the Tribunal is a speedy and less formal forum.<sup>633</sup> In halal food abuse disputes, the expert is important as he will identify whether the food is halal or not, since the relevant test to examine the food is conducted by the expert.

Furthermore, Chua Abdullah indicated that the success of Tribunal cases very much depends on two factors:<sup>634</sup> the capability of the consumer to present their case at trial, and the understanding of the President concerning the subject matter dispute.<sup>635</sup> The President of the Tribunal will be appointed from among those who have legal background. Ab. Hamid and Sheikh Ahmad Yusof suggested that the President of the Tribunal should be appointed from among those who fight for consumer issues.<sup>636</sup> However, this might cause conflict of interest because the President might favour the consumer.

Another disadvantage of the Tribunal, as provided in section 99(3) of the CPA 1999, concerns its jurisdiction. Not all types of cases can be heard in the Tribunal. It does not have the jurisdiction to hear claims for personal injury or death.<sup>637</sup> This presents a restriction for consumers who wish to claim remedies for non-physical injuries resulting from consuming false halal food. Abu Bakar et al. suggested that the nature of damages in halal food cases is not compensatory but more of the nature of non-pecuniary damages since the loss involves emotional suffering, spiritual damage and hurt feelings.<sup>638</sup> It may be difficult for a consumer to make a claim since the Tribunal does not have jurisdiction to hear claims for non-pecuniary loss, unless they initiate the proceeding in the court. In addition, the Tribunal does not have jurisdiction to hear a representative action. The issue of halal is not the issue concerning the individual, but involves the Muslim community. A representative action is a procedure which permits the representative of a group that has a common interest in a claim to initiate the proceeding on behalf of the others.<sup>639</sup> In

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<sup>632</sup> Consumer Protection Act (n 425).

<sup>633</sup> Chua Abdullah (n 628) 17.

<sup>634</sup> *ibid* 16.

<sup>635</sup> On technical issue, president of the tribunal might not have an adequate knowledge.

<sup>636</sup> Nor'adha Ab. Hamid and Sakina Sheikh Ahmad Yusof, *Pertikaian Perdagangan Pengguna: Penyelesaian Pertikaian Alternatif Di Malaysia* (Dewan Bahasa dan Pustaka 2011) 136.

<sup>637</sup> Consumer Protection Act 1999, S 99(3).

<sup>638</sup> Abu Bakar, Ahmad and Kahar (n 20) 14.

<sup>639</sup> Ramsay (n 595).

order to initiate the representative action proceeding, the consumer must go to court and the jurisdiction is provided by Order 15 Rule 12 of the Rules of Court 2012. This will be discussed further in the following subsection.

### 5.3.2 Representative Action

A representative action is one of the mechanisms to initiate legal proceedings for consumers involved in the abuse of halal status. It may be difficult to initiate legal proceeding as an individual, as discussed in Chapter 5.3.1.1.1, due to the nature of the claim and damages involved. Therefore, associations and unions may bring representative actions on behalf of others. A representative action is also known as a class action and the requirements for this representative action may differ in each and every jurisdiction depending on their statutory requirements.<sup>640</sup> Wright suggested that it may reduce the cost of redress, which is the major obstacle in dispute resolution in court.<sup>641</sup> Mills indicated that a class action may transform private trouble into public issues,<sup>642</sup> and Ramsay stated that it can increase public engagement by creating pressure.<sup>643</sup> In Malaysia, it is known as a representative action and is governed by Order 15 Rule 12 of the Rules of Court 2012.

Order 15 Rule 12 outlines three conditions to be fulfilled in order to successfully maintain a representative action: first, the plaintiffs are members of a class; second, they have a common grievance or interest; and third, the relief sought is in its nature beneficial to all parties represented by the plaintiffs.

However, there is no tested case yet for the representative action in the case of halal abuse. The conditions outlined in Order 15 Rule 12 can be applied towards halal abuse. First, the plaintiffs can claim to be members of a class, which constitutes consumers who have been affected by halal food abuse. Second, they also have a common grievance or interest

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<sup>640</sup>Deborah R Hensler, 'Class Actions, Colletive Actions and Group Litigation: A Status Report' (Stanford Law School, 2007) 8  
<<http://globalclassactions.stanford.edu/sites/default/files/documents/oxford%20conference3.pdf>>  
accessed 4 August 2015.

<sup>641</sup> G Wright, 'The Cost-Internalization Case for Class Actions' (1969) 21 *Journal of Law and Economics* 383, 383.

<sup>642</sup> C Mills, *The Sociological Imagination* (Oxford University Press 1961) 12.

<sup>643</sup> Ramsay (n 595) 255.

for consuming non-halal food. And third, the relief sought (to claim compensation and remedies for consuming false halal food) are in their nature beneficial to all parties represented by the plaintiffs.

### 5.3.2.1 Issues Concerning Representation in a Representative Action

Even though a representative action appears to be viable for halal abuse cases, there are also some issues regarding its use in court. This section identifies the issues concerning representative action in Malaysia. One of the positive attributes of a representative action under Order 15 Rule 12 is that it does not make it mandatory for every individual who is a member of the class and possesses a common grievance or interest to come forward or to be represented in the representative action. Additionally, Gopal Sri Ram JCA in *Tang Kwor Ham & Ors v Pengurusan Danaharta Nasional Bhd & Ors*<sup>644</sup> stated that it does not matter if the relief sought is in its nature useful to these persons who have not come forward or consented to be represented.

This mode of litigation can be explored further by reference to contemporary models as outlined by Nordh,<sup>645</sup> which are the private initiative model,<sup>646</sup> the consumer organization claim model,<sup>647</sup> and the administrative authority model<sup>648</sup>.

Therefore, the selection of who will represent the persons within the class that has a common grievance or interest, lies within the class. For instance, in cases of representative actions commenced by natives who claim their rights and other reliefs depending on their native customary rights, the representative(s) would usually be the elderly member(s) of the group or head(s) of families.<sup>649</sup> As for halal abuse cases, the

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<sup>644</sup> [2005] 5 Malayan Law Journal 60

<sup>645</sup> R Nordh, 'Group Actions in Sweden: Reflections on the Purpose of the Civil Litigation, the Need for Reforms, and a Forthcoming Proposal' 11 Duke Journal of Comparative and International Law 381, 396–398.

<sup>646</sup> Referring to the Individual consumer who initiates the claim in the name of a group of consumers.

<sup>647</sup> Consumer associations who have an authority to initiate class actions. Consumer associations have *locus standi* to apply for an injunction or prohibition order regarding unfair commercial practices.

<sup>648</sup> Authority has the power to sue in the interest of consumers.

<sup>649</sup> This is evident in cases such as *Adong bin Kuwau & Ors v Kerajaan Negeri Johor & Anor* [1997] 1 Malayan Law Journal 418, *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 Malayan Law Journal 23, *Nor Anak Nyawai & Ors v Borneo Pulp Plantation Sdn Bhd & Ors* [2001] 6 Malayan Law Journal 241; and *TR Lompoh Ak Dana & Ors v Government of Sarawak* [2005]

representative action may be initiated by any consumer who suffered due to the halal food abuse.

Furthermore, both solicitors and non-governmental bodies may also act for the plaintiffs, and the prominent Malaysian non-governmental organizations include the CAP, Friends of the Earth, Malaysia (Sahabat Alam Malaysia or SAM) and the Borneo Research Institute of Malaysia (BRIMAS).<sup>650</sup>

Thus, in situations involving members of clubs, associations or employees' unions, a leader will eventually emerge from among the members in the group. However, the number of members who will agree to become plaintiffs in such representative actions will differ from case to case. In some types of cases, the participation of non-governmental organizations may not be obvious. In general, the plaintiffs within these representative actions are generally represented by lawyers.<sup>651</sup>

### **5.3.2.2 Obstacles to Individuals and Groups Using the Representative Mechanism**

There can be obstacles in initiating the representative action. One of them is the cost.<sup>652</sup> People or groups filing a class or representative action, whether or not under Order 15 Rule 12 or Order 53, need to be consciously aware of the costs. This is because, regardless of whether it is a representative action or not, expenses are a prominent issue in all types of litigation.

Ramsay indicated that the primary beneficiaries may be the lawyers rather than the consumers.<sup>653</sup> In this context, lawyers may have interest in maximizing their fees from a case through a settlement that may not necessarily be in the best interests of the consumer

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<sup>650</sup>YC Choong and Sujata Balan, 'Class Actions in Malaysia: Principles and Procedural Obstacles' (2007) 12 <[http://globalclassactions.stanford.edu/sites/default/files/documents/Malaysia\\_National\\_Report.pdf](http://globalclassactions.stanford.edu/sites/default/files/documents/Malaysia_National_Report.pdf)> accessed 4 August 2015.

<sup>651</sup>ibid.

<sup>652</sup> Joan Esteban and Debraj Ray, 'Collective Action and the Group Size Paradox' (2001) 95 American Political Science Review 665 <[http://journals.cambridge.org/download.php?file=%2FPSR%2FPSR95\\_03%2FS0003055401003124a.pdf&code=425e62d7076f6f1ad36eebf438633b36](http://journals.cambridge.org/download.php?file=%2FPSR%2FPSR95_03%2FS0003055401003124a.pdf&code=425e62d7076f6f1ad36eebf438633b36)> accessed 12 October 2015.

<sup>653</sup> Ramsay (n 595) 255.

or they may advise their client(s) to refuse a reasonable settlement that might be in their best interest.<sup>654</sup>

Thus, any possible plaintiff contemplating a civil action needs to consider the possibility of expenses becoming awarded against them. Within the context of representative actions, it has been noted that persons who have consented to become plaintiffs within a representative action must bear the risks of costs being awarded against them. As in numerous other jurisdictions, the Malaysian courts adhere to the basic rule that fees shall follow the event.<sup>655</sup>

Choong and Balan indicate that, as funding problems may be a genuine concern or a barrier experienced by most litigants, some litigants are assisted by non-governmental organizations.<sup>656</sup> Although the common rule is that the award of expenses is claimed against the parties named within the action, there is a likelihood that funding and charges can be absorbed by these organizations. Thus, it might help a consumer to cover the cost and this will be explained in the next section.

### **5.3.2.3 Funding of Group Litigation**

Group litigation is often funded by the plaintiffs/claimants themselves. If an organization is behind a group litigation, the organization will usually bear the costs of the litigation. This eliminates issues on the expenses that is one of the obstacles in the representative action.<sup>657</sup>

Meanwhile, there are actually no specific rules relating to payment of costs among representative and the non-representative group litigation. This is because the common principles relating to the fees of an ordinary civil litigation claim apply to all sorts of actions,<sup>658</sup> and the formal guidelines that relate to expenses in Malaysia are identified in Order 59 of the Rules of Court 2012.

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<sup>654</sup> J Coffee, 'Class Wars: The Dilemma of the Mass Tort Class Action' 95 Columbia Law Review 1343, 1346–1347.

<sup>655</sup> Rules of Court (n 610) O 59 R 3(2).

<sup>656</sup> Choong and Balan (n 650) 29–30.

<sup>657</sup> *ibid* 29.

<sup>658</sup> *ibid* 30; Hensler (n 640) 16.

On the other hand, the second fundamental principle (noted earlier), states that the fees follow the event; in other words, the winner is entitled to claim the costs from the loser.<sup>659</sup> It is also important to note that despite not being expressly stated in Order 59, the court may well order costs on an indemnity basis, which can be a far more generous basis and could be helpful in group litigation involving public interests.<sup>660</sup>

In relation to this, a representative action seems to be a good mechanism for consumers to seek redress if it is properly utilized and is supported by the non-governmental organization for the sake of consumers. The issue concerning the costs and funding should be taken into consideration to make this avenue available for individual consumers. Malaysia has provided the legal framework for collective redress even though it is not supported by the Tribunal. Abu Bakar et al. suggest that the CPA is revised to include the collective redress mechanism, and this should be taken into consideration by the government in order to provide options for consumers to claim redress.<sup>661</sup>

### **5.3.3 Administrative Action**

This section discusses the implementation and mechanism of administrative action. As mentioned earlier in Part 1, there are various institutions that deal with halal issues in Malaysia. However, the religious authorities JAKIM/JAIN/MAIN<sup>662</sup> have been named as the authorities competent for providing halal certification in Malaysia and they will be the main reference for issues concerning the halal status in Malaysia. The mechanism for administrative action is based on the 2014 Manual,<sup>663</sup> pursuant to which suspension or withdrawal notices can be issued relating to halal certification. In addition, the MOH has power to deal with halal issues if they fall within the ambit of the Food Act 1983 and the Food Regulations 1985.<sup>664</sup>

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<sup>659</sup> Rules of Courts 2012, O 59 R 3(2)

<sup>660</sup> Choong and Balan (n 650) 30.

<sup>661</sup> Abu Bakar, Ahmad and Kahar (n 20) 13.

<sup>662</sup> JAKIM (The Department for Islamic Development) is the main authority for halal certification in Malaysia together with other religious bodies which are called JAIN/MAIN (Jabatan/Majlis Agama Islam Negeri) of each state.

<sup>663</sup> Will be referred as 'the Manual' in the entire writing of this section.

<sup>664</sup> See discussion in Chapter 5.2.2.



The detailed mechanism for the inspection and audit process is provided in Paragraphs 10.2 and 10.3 of the 2014 Manual. There are four types of inspections prescribed in the 2014 Manual: regular inspection, enforcement inspection with other enforcement agencies, follow-up inspection, and inspection based on the report on the misuse of halal.<sup>665</sup> Even though competent authorities mainly use the administrative action to deal with issues concerning the halal misuse in Malaysia, the number of halal food abuse incidents is not decreasing.<sup>666</sup> This begs the question whether there is something wrong with the implementation and mechanism of administrative actions that are currently applied and whether such mechanisms have made the enforcement less effective. Accordingly, this section identifies the issue concerning the effectiveness of administrative enforcement by JAKIM/JAIN/MAIN.

### **5.3.3.1 Issues on the Effectiveness of Administrative Enforcement by JAKIM/JAIN/MAIN**

Mazurek and Hilton indicated three elements that may cause failure to the protection of consumer which are: (i) mistaken producer/trader/retailer, (ii) mismanagement of planning directives by management, and (iii) corruption.<sup>667</sup> In order to prevent halal food abuse, the Malaysian legislature has covered the first and third elements through civil and criminal sanctions.<sup>668</sup> The second element is covered by the rules, regulations and manual of JAKIM.<sup>669</sup> However, there are issues involved in the implementation of administrative remedies by JAKIM/JAIN/MAIN.

#### **5.3.3.1.1 Lack of staff**

As mentioned earlier, even though the halal status in Malaysia has been governed by various statutes, agencies and is based on the Trade Descriptions Act 2011, the certification power has been fully given to JAKIM/JAIN/MAIN. There are several issues

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<sup>665</sup> JAKIM, 'Malaysia Halal Certification Manual 2014' (n 470) 10.3.

<sup>666</sup> See the statistical data provided by JAKIM and MDTCC in appendix.

<sup>667</sup> M Mazurek and M Hilton, 'Consumerism, Solidarity and Communism: Consumer Protection and the Consumer Movement in Poland' (2007) 42 *Journal of Contemporary History* 315, 327.

<sup>668</sup> See discussion concerning private remedy in Chapter 5.2.1 and Criminal remedy in Chapter 5.2.3. It is to be noted that even though the legislation is there to deal with private and criminal remedy, but there still a lacuna in the law as stated in that particular section that might hinder the consumer to claim for remedy.

<sup>669</sup> See administrative remedy in Chapter 5.2.2.

that are faced by the administrative enforcement, and the reliability of JAKIM to control the issue of halal abuse in Malaysia is being questioned. Fisher indicated that it is difficult for JAKIM to maintain standards through JAKIM inspections because this body is responsible for monitoring the entire country and there are insufficient staff to verify that correct practice is followed in the production of halal products.<sup>670</sup> He also suggested that JAKIM inspections are simply symbolic practices in legitimizing halal.<sup>671</sup>

However, the allegation that JAKIM inspections are simply symbolic practices can be denied by looking at the commitment of the government and JAKIM to halal certification. In 2011, JAKIM promised to provide efficient and effective services by guaranteeing the issuance of halal certificates within 30 days from the fulfilment of the halal certification requirement and in response to the complaint concerning halal certification within 24 hours on working days.<sup>672</sup> Regarding the lack of staff, this is a real problem in the Malaysian halal industry.<sup>673</sup> Solihin stated that only fifteen staff are assigned to the halal Management section in the Division of Research and Development of The Religious Department of Selangor (JAIS) to cover the halal certification issues in the whole of Selangor.<sup>674</sup> Out of the fifteen staff assigned, seven have been assigned under the Consultation and Accreditation Unit, with four working under the Supervision and Audit Unit, three given responsibility under the Halal Development Unit and one assigned as an administrative assistant.<sup>675</sup> In the State of Kelantan, Zawawi stated that only ten staff are working under the Assistant Director (Halal Management) in the Religious Department of Kelantan (JAHEAIK).<sup>676</sup> Out of ten officers, two are employed in the Faith and Sharia Unit, four assigned to the Halal Management Unit, and four allotted to the Administrative Unit.<sup>677</sup>

Based on the number of staff involved, it is difficult for the religious authorities in Selangor (JAIS) and Kelantan (JAHEAIK) to carry out the enforcement of halal

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<sup>670</sup> Fischer (n 157) 292.

<sup>671</sup> *ibid.*

<sup>672</sup> Iberahim, Kamaruddin and Shabudin (n 561) 763.

<sup>673</sup> This is based on JAIN which are based in 2 states in Malaysia which are Selangor and Kelantan. JAIN in Selangor known as JAIS and JAIN in Kelantan known as JAHEAIK.

<sup>674</sup> Ab Halim and Ahmad (n 24) 11.

<sup>675</sup> *ibid.*

<sup>676</sup> *ibid.*

<sup>677</sup> *ibid.*

certifications because they also have to deal with the application of halal certification and halal audit as well as providing education to the community.

### **5.3.3.1.2 Lack of Coordination Among Government Agencies Controlling the Halal Status**

One recent example on the lack of coordination among government agencies that regulates and enforces the halal status concerning halal misuse is the case of the Cadbury chocolate bar samples taken from stores in Langkawi, Kedah.<sup>678</sup> The incident is described in the following section.

#### **5.3.3.1.2.1 Case Study of the Halal Status of Two Cadbury Products in Malaysia**

As mentioned earlier, the MOH has responsibility for food safety in Malaysia. This power has been given by the Food Act 1983 and the Food Regulation 1985. In May 2014, there was a press statement made by the MOH regarding the halal status of Cadbury products in Malaysia that became polemic and, at the same time, triggered a heated debate among Muslim consumers on the authentication of halal certification status given by JAKIM/JAIN/MAIN.<sup>679</sup>

In May 2014, consumers in Malaysia were surprised by the revelations made by the MOH regarding the evidence of porcine (pork) DNA in two Cadbury products: the Cadbury Dairy Milk (Hazelnut) and Cadbury Dairy Milk (Roast Almond). Both had been certified halal by JAKIM based on tests conducted in the MOH laboratory test.<sup>680</sup> Thus, a press statement was made by the MOH and the report was distributed through social media among the public. Based on the report, the test result was actually obtained in February

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<sup>678</sup> Ministry of Health, 'Ministry of Health Result Report for Cadbury Product' (2014); Muzdalifah Mustapha, 'KP Kesihatan Jelas Isu Coklat Cadbury' (2014) <[http://ww3.utusan.com.my/utusan/Dalam\\_Negeri/20140605/dn\\_27/KP-Kesihatan-jelas-isu-coklat-Cadbury](http://ww3.utusan.com.my/utusan/Dalam_Negeri/20140605/dn_27/KP-Kesihatan-jelas-isu-coklat-Cadbury)>; Astro Awani, 'Coklat Cadbury Halal - Majlis Fatwa Kebangsaan' (2014) <<http://www.astroawani.com/news/show/coklat-cadbury-halal-majlis-fatwa-kebangsaan-36793>>.

<sup>679</sup> Ministry of Health (n 678).

<sup>680</sup> Muzdalifah Mustapha, 'KP KesihatanJelasIsuCoklat Cadbury' (2014) <[http://ww3.utusan.com.my/utusan/Dalam\\_Negeri/20140605/dn\\_27/KP-Kesihatan-jelas-isu-coklat-Cadbury](http://ww3.utusan.com.my/utusan/Dalam_Negeri/20140605/dn_27/KP-Kesihatan-jelas-isu-coklat-Cadbury)>.

2014.<sup>681</sup> Due to this revelation, JAKIM came under fire and, as a remedial action, announced an immediate suspension of the sale of the aforementioned products in the market for further investigation. JAKIM claimed that the result obtained by the MOH was not communicated to them, and therefore JAKIM conducted another test in the chemist lab by taking the direct sample from the Cadbury factory in Malaysia that showed no porcine (pork) DNA.<sup>682</sup> Due to this incident and the different result obtained from the different sample, management and legal issues surfaced involving halal abuse in Malaysia, even after the amendment of the Trade Descriptions Act 2011.

In this case, there are two results obtained by the MOH lab and the chemist lab used by JAKIM that showed different results. It is argued by the MOH that the difference is due to the different sample obtained in the tests, where the MOH obtained the sample from the market while JAKIM acquired its sample directly from the Cadbury factory.<sup>683</sup> Meanwhile, JAKIM's Director argued that it is not due to the sample, but the different lab standard used in analysing the sample.<sup>684</sup> It is further claimed that the MOH lab is not accredited by the Standard Department Malaysia to analyse porcine samples, while the chemist lab used by JAKIM has been accredited for that purpose.<sup>685</sup> This creates another issue on the differences between the standard of research laboratory concerning halal in Malaysia, particularly since the MOH also has the power to analyse food samples as stated in section 5 of the Food Act 1983. In addition, the MOH also has an authorized lab as provided in section 3A of the same Act.

Thus, since the MOH is one of the agencies involved in the enforcement of halal, it should be aware that the power to certify halal is vested in JAKIM, as provided by Order 3 of the Trade Descriptions (Certification and Marking of Halal) Order 2011 and that any issue regarding the halal status of food should be discussed with JAKIM as it can affect the reputation of JAKIM/JAIN/MAIN as the only halal certifiers in Malaysia. On the other

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<sup>681</sup> Ministry of Health (n 678).

<sup>682</sup> Astro Awani, 'Kenyataan media berkenaan keputusan ujian DNA babi dalam produk Cadbury' *Astro Awani* (2 June 2014) <<http://www.astroawani.com/news/show/kenyataan-media-berkenaan-keputusan-ujian-dna-babi-dalam-produk-cadbury-37022>> accessed 14 October 2014.

<sup>683</sup> Mustapha (n 678).

<sup>684</sup> Amizul Tunizar Ahmad Termizi, 'Jangan Salahkan Jakim' *Utusan Malaysia* (June 2014) <[http://www.utusan.com.my/utusan/Rencana/20140601/re\\_02/Jangan-salahkan-Jakim#ixzz33cS7WVRO](http://www.utusan.com.my/utusan/Rencana/20140601/re_02/Jangan-salahkan-Jakim#ixzz33cS7WVRO) Dengar> accessed 7 October 2014.

<sup>685</sup> *ibid.*

hand, the MOH cannot be solely blamed for this incident, since they also have power under section 16 of the Food Act 1983 to deal with false labelling. In this case, the two Cadbury products were labelled with the halal label, but the findings of the lab test made by the MOH showed them to contain porcine (pork) DNA and it has the power to initiate actions based on section 16 of the Food Act 1983 for false labelling.<sup>686</sup> This shows how the lack of collaboration between the agencies has created doubt among consumers on the authenticity of the halal certification process. In addition, the authorities of JAKIM as the world's halal certifier will be questioned.

The implementation problem is one of the main problems facing the government in its efforts to strengthen consumer protection in halal food. From the above discussion, there are two factors that have hindered the implementation of consumer protection in halal food: first, regular inspections must ensure compliance with the halal certification standard; and second, agencies involved in halal matters must have their own guidelines, regulations and practices and there must be lack of cooperation among the agencies. From this discussion, it can be understood why consumer protection in halal food abuse remains ineffective.

Based on the Cadbury incident, the management of halal needs to be strengthened and managed wisely since it involves different agencies. It is known that there are many institutions that have jurisdictions over halal issue, even though the halal status is under the sole jurisdiction of JAKIM, but its power is only limited to certification and prosecution can only be conducted by other agencies, depending on the types of halal misuse involved. Next section discusses on the prosecution involves in halal food abuse.

#### **5.3.4 Prosecution**

Part 2 discussed the criminal remedies available for the misuses of halal based on the Trade Descriptions (Certification and Marking of Halal) Order 2011, the Trade

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<sup>686</sup> Section 16 of food Act 1983 stated as follow :

'False labelling, etc.

16. Any person who prepares, packages, labels or sells any food in a manner that is false, misleading or deceptive as regards its character, nature, value, substance, quality, composition, merit or safety, strength, purity, weight, origin, age or proportion or in contravention of any regulation made under this Act commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to fine or to both.'

Descriptions (Definition of Halal) Order 2011, the Food Act 1983, the CPA 1999 and the Penal Code. This section identifies the prosecution issues involving halal abuse cases.

#### **5.3.4.1 Issues Concerning Prosecution of Halal Abuse**

In the case of halal abuse, administrative remedies play a vital role. This is because there are still no cases on the misuse of halal in Malaysia even though the legal framework has been provided and prosecution is possible. Based on the legislation and factual evidence discussed earlier, this thesis is able to identify that there have been no prosecutions for the misuse of halal certification. Hence, it will be useful to speculate on the reason for this.

The implementation of the Trade Descriptions Act 2011 named religious authorities (JAKIM/JAIN/MAIN) as the sole competent authorities for halal certification, but they do not have the power of prosecution.<sup>687</sup> According to Shaari, jurisdiction for prosecution is given to the MDTCC if it involves any halal-related offences under the Trade Descriptions Act 2011, and to other related enforcement agencies such as the MOH, if it involves health issues concerning halal foods.<sup>688</sup> This is based on paragraph 10.6 of the 2014 Manual, which states:

... prosecution procedure will be conducted by the Ministry of Trade, Cooperative or other enforcement agencies depend on the JAKIM/JAIN/MAIN input. JAKIM/JAIN/MAIN will be a witness in the court proceeding. Any decision made by the court will be announced to the public by JAKIM/JAIN/MAIN.

Therefore, even though JAKIM/JAIN/MAIN are the agencies entrusted with power on the halal status, but the prosecution can only be brought by other enforcement agencies such as the MDTCC or MOH. Thus, even though JAKIM/JAIN/MAIN have their own enforcement department, the law does not give them the right to prosecute offenders despite the certification power given to JAKIM/JAIN/MAIN that has been delegated through Trade Descriptions (Certification and Marking of Halal) Order 2011 by the Ministry of Trade. However, Azizan mentioned that JAKIM officers are appointed as

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<sup>687</sup> JAKIM, 'Malaysia Halal Certification Manual 2014' (n 470) para 10.6.

<sup>688</sup> Telephone conversation on 2.5.2015 with Mr Azizan Shaari, JAKIM enforcement officer. The purpose of this conversation is to obtain statistic on the halal abuse which is under JAKIM jurisdiction. The purpose of this conversation is to obtain verification concerning abuse of halal statistic and position of JAKIM enforcement officer in the halal abuse incidents.

assistant controllers for the MTDCC to assist on halal misuse issues pursuant to section 3 of the Trade Descriptions Act 2011.<sup>689</sup> Therefore, through this delegation of power, the MDTCC's involvement in the enforcement of halal abuses is in question<sup>690</sup> due to the lack of assistance after the introduction of Trade Descriptions Act 2011.

It is important to note that the MDTCC's key areas of enforcement involve various aspects, including but not limited to the protection of intellectual property rights, the eradication of exploitation of subsidized items, the protection of consumer rights and the monitoring of supplies and prices of goods based on the various laws and subsidiary legislation.<sup>691</sup> Hence, one might speculate that the lack of assistance given by the MDTCC in this issue is because it tends to focus on other problems which are not related to halal products.

In September 2013, 222 JAKIM officers were appointed as assistant controllers for the MDTCC, which means that JAKIM has enforcement power to deal with halal abuse under the TDA 2011 and the Trade Descriptions Order 2011.<sup>692</sup> These officers are trained by the MDTCC with the aim to improve the enforcement issues concerning halal abuse.<sup>693</sup> However, there are other issues that came with this appointment: issues on the training and placement of the JAKIM assistant controllers.<sup>694</sup> This is because the assistant controllers are not necessarily officers dealing with halal matters in the Halal Hub Division of JAKIM.<sup>695</sup>

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<sup>689</sup> Telephone conversation on 2.5.2015 with Mr Azizan Shaari, JAKIM enforcement officer.

<sup>690</sup> Shahidan Shafie and Md Nor Othman, 'Halal Certification : An International Marketing Issues and Challenges Halal Certification : An International Marketing Issues and Challenges' 5 <[http:// www.ctw - congress.de/ifsam/download/track\\_13/pap00226.pdf](http://www.ctw-congress.de/ifsam/download/track_13/pap00226.pdf)> accessed 15 April 2014.

<sup>691</sup> MDTCC website <<http://www.kpdnkk.gov.my/en/kpdnkk/org/penguatkuasa/fungsi>> accessed 6 October 2014.

<sup>692</sup> 'Majlis Penyerahan Kad Kuasa Pelantikan Penolong Pengawal Perihal Dagangan Kepada Pegawai JAKIM' (*JAKIM*) <<http://www.islam.gov.my/majlis-penyerahan-kad-kuasa-pelantikan-penolong-pengawal-perihal-dagangan-kepada-pegawai-jakim-di-ba>> accessed 26 September 2014.

<sup>693</sup> 'JAKIM Lantik 222 Pegawai Sebagai Aanggota Penguatkuasa Sijil Halal' (*mstar.com.my*, 24 September 2013) <[http://www.mstar.com.my/artikel/?file=/2013/9/24/mstar\\_berita/20130924192916](http://www.mstar.com.my/artikel/?file=/2013/9/24/mstar_berita/20130924192916)> accessed 26 September 2014.

<sup>694</sup> Ab Halim and Ahmad (n 24) 11.

<sup>695</sup> *ibid.*

Furthermore, even though there are many reported incidents of halal abuse, no prosecutions have been brought by the MDTCC or other related agencies that deal with halal issues. This creates doubt whether the MDTCC and other related agencies have taken administrative action parallel to JAKIM's effort to prevent the abuse of the halal status. For instance, even though the offence is related to halal, the agency that has authority to prosecute and take action is the MOH, if it pertains to food safety. Again, there is a difficulty for halal authorities like JAKIM/JAIN/MAIN to take action due to the limitation of their power and the only action they can take is to suspend or withdraw the halal certification of the offender. However, Nawang stated if the incidents involve the misuse of the halal status, the company will simply be given a fine and most of the time it will pay it.<sup>696</sup> Thus, even though there are many laws related to halal abuse, there are many reasons not to utilize prosecution.

#### **5.3.4.2 Issues Concerning Evidence**

There are also other challenges faced by JAKIM/JAIN/MAIN. One of these concerns the obtaining of evidence – for example, the accuracy of lab testing in analysing the evidence in halal disputes. This is because JAKIM/JAIN/MAIN currently do not have their own research and development facilities to run tests on samples or products if there is a dispute on any halal ingredient(s) in a product. They use the facilities of third-party labs to test and analyse the products or ingredients – for example, the lab in the Universiti Putra Malaysia.<sup>697</sup> This process often involves the chemist department, food technologists, and experts from local universities.<sup>698</sup> Therefore, as the religious authorities who possess the authority on halal, JAKIM/JAIN/MAIN should develop their own labs and employ their own team of experts. This would ensure that the interests of consumers can be fully protected.

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<sup>696</sup> Email by Othman Nawang dated 20 May 2015 stated the compound procedure and data for halal abuse under jurisdiction of MDTCC.

<sup>697</sup> Iberahim, Kamaruddin and Shabudin (n 561) 762.

<sup>698</sup> ShahidanShafie and MdNor Othman, *Halal Certification: An International Marketing Issues and Challenges* Halal Certification : An International Marketing Issues and Challenges 6 <[http:// www.ctw - congress.de/ifsam/download/track\\_13/pap00226.pdf](http://www.ctw-congress.de/ifsam/download/track_13/pap00226.pdf)> accessed 15 April 2014.



## 5.4 Conclusion

Chapter 5 has examined the misuse of halal in Malaysia and how the law responds to the problem. It has contributed towards identifying the problems concerning the protection of consumers in the case of halal misuse and how the agencies react to the misuse of halal since many agencies dealing with halal also have jurisdiction in other compliance issues.

The discussion also examined how the law concerning halal is violated. This has been followed by recognizing the remedies available to consumers and the mechanism for consumers to seek redress as well as the issues of halal abuse. It also explored how the authority works and how action is taken concerning the misuse of halal.

For some time now, the Malaysian government has been introducing different forms of legislative measures in order to protect the rights of consumers in the matter of halal food. However, while the sum total of all these measures is comprehensive, detailed and painfully complicated, the question is whether they achieve the desired ends, or whether there is a determination by the legislators to achieve the desired ends with their current legislation.

Naturally this raises a completely different question as to what the desired ends are, and it also raises the issue of the commitment of the Malaysian Government to consumer protection, especially in the area of halal food. This is a question which has to be addressed given that, in reality, there remain halal food abuses despite remedies for breaches and preventative enforcement mechanisms. There are several questions raised for comparative studies.

First, this thesis demonstrates the inadequacy of the law that protect consumers in the area of halal, particularly on consumer rights to civil action. The current Malaysian framework does not fully support consumers on the issue of halal in seeking civil redress for halal food abuse. This thesis examines the Contract Act 1950, SoGA1957 and the CPA1999 and found that it is difficult for consumers to claim for redress especially for non-physical injury for consuming non-halal food which is label as halal. The definition of non-physical injury suffered by the consumer should be identified because the CPA1999 is still silent on this issue. The Tribunal for Consumer Claims also does not have jurisdiction over personal injury. However, even if a case is brought to court, it is still difficult to

succeed due to evidential problems.<sup>699</sup> Abu Bakar et al. submitted that there is a great need to revise the regulating law concerning halal.<sup>700</sup>

Second, administrative action requires improvement. This thesis uses the comparative approach and will look at other jurisdictions' practices, specifically in the UK, in order to address the lacuna and gap in the administrative actions that are currently being enforced in Malaysia as discussed in section 5.3.3 of this thesis.

Third, the representative action as a redress mechanism for consumer claims should be taken into consideration after looking at the nature of the halal misuse in Malaysia as discussed previously. However, consumer should aware of the cost associated with this type of redress.

Fourth, this section was able to identify the issue concerning effective collaboration of agencies involved in halal food matters. This may raise the question on how to improve cooperation among agencies involved in halal food for the best interest of the consumer.

The next section will explore and analyse the halal legal framework in English law and further study its approach to the problem concerning misuse of halal food. It will then look for possible solutions in order to provide better protection for halal food consumers.

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<sup>699</sup> See Chapter 5.2.1.

<sup>700</sup> Abu Bakar, Ahmad and Kahar (n 20) 13.

## **CHAPTER 6: THE CURRENT HALAL LEGAL FRAMEWORK AND RESPONSES TO THE MISUSE OF HALAL IN THE UNITED KINGDOM FROM AN ENGLISH LAW PERSPECTIVE**

### **6.1 Introduction**

The previous Chapter<sup>701</sup> discussed the current halal legal framework in Malaysia and how it responds to the misuse of halal descriptions. The Chapter noted that the Trade Description (Certification and Marking of Halal) Order 2011 introduced a single halal standard for Malaysian food products and only recognized foreign certifiers who fulfilled Malaysian halal standard. The purpose of the legislation was to help consumers avoid confusion over various halal certification, however it did not resolve issues concerning halal food abuse that derive from various other reasons, for example;

- (1) The failure to fulfil requirements provided by Malaysian halal Standard MS 1500:2009, which include the inability to comply with the Sharia requirement of halal food,
- (2) The failure to address consumer redress concerning halal food abuse,
- (3) The failure to introduce best practice by competent authorities in Malaysia to prevent halal food abuse and the issue of the prosecution of producers/manufacturers in cases of halal food abuse.

These are the issues that emerge from the analysis in Chapter 5 and this thesis would like to see how they are addressed in the United Kingdom. The Malaysian law seems not to address all the problems concerning halal food abuse, specifically on consumer protection law. It raises intriguing questions regarding the nature and extent of the protection and remedy for individual consumers.

Therefore, one of the aims of this thesis is to compare how the misuse of halal food is dealt with from the perspective of English law. The choice of English law in the UK as a comparator is because it has a strong consumer protection regime as shown through an international benchmarking study of the UK consumer law and policy conducted by the Department of Trade and Industry (DTI) [Now known as Department for Business, Energy and Industrial Strategy (BEIS)] which concluded that the UK was among the best

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<sup>701</sup> See Chapter 5.

in terms of consumer rights and protection.<sup>702</sup> The study involved Australia, Canada, Denmark, France, Germany, Italy, Japan, The Netherlands, United Kingdom, United States and European Union.<sup>703</sup> Thus, this section will study the English law from a consumer protection law standpoint in terms of the available legal framework and the UK's long experience in this field and how it is applicable to halal food abuse.

Apart from the above, the aim of this section is also to identify the government involvement in regulating halal and the legal approaches used in dealing with halal-related issues in the UK from an English law perspective. In this section, the legal issue concerning the application of general food law to halal food will be examined. This is because general food law cover requirements that are also applicable to halal food, but there is a question whether general food law requirements are compatible with halal food requirements. The English law position concerning the legal status of halal food is also different from the position set by Malaysian law as discussed earlier in Chapter 5.

In addition to the above, the administration bodies and the enforcement forces that involved with halal food will be examined. This section will study how the authorities deal with halal food abuse to ensure that consumer rights in relation to halal food are protected and identify any approach that Malaysian law can learn from.

This section will also explore how the authorities deal with halal food abuse to ensure that consumer rights are protected, and will also examine the action that should be taken by authorities to prevent halal food abuse, and the prosecution of offenders in the criminal court. As previously discussed in Chapter 5, most of the halal abuse offender in Malaysia was offered fine and this is not preventing the occurrence of halal food abuse. There are enforcement failures in Malaysia concerning halal food abuse.

The section will be divided into 2 parts. The first will explore halal food legal requirements and then move on to the second part which will explore liability and remedy

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<sup>702</sup> Department of Trade and Industry, 'Autumn Performance Report 2003' (Department of Trade and Industry 2003) Cm 6067 16–17 <<http://webarchive.nationalarchives.gov.uk/20060715194329/dti.gov.uk/files/file24982.pdf>> accessed 8 February 2017.

<sup>703</sup> Department of Trade and Industry, 'Comparative Report on Consumer Policy Regimes' (Department of Trade and Industry) URN 03/1919 <<http://webarchive.nationalarchives.gov.uk/20070603164510/http://www.dti.gov.uk/files/file34828.pdf>> accessed 8 February 2017.

for halal food abuse in English law. After both parts are examined, the next chapter will look at the comparative analysis between Malaysian and English law based on the study of specific issues in consumer protection of halal food.

## **PART 1: HALAL-FOOD LEGAL REQUIREMENTS**

### **6.2 Legal Framework of Halal Food**

This section will analyse the legal framework applicable to halal food in English law. There is no specific legislation concerning halal food, but the general food law will be applicable to halal food and this will be examined further.

The absence of specific halal legislation does not mean that English law cannot deal with factual problems which Malaysian law would classify as a halal issue, because general food law and general consumer protection laws under English law are applicable to halal food abuse. This thesis also seeks to examine the way in which a country with a strong consumer protection regime from the same legal family deals with halal issues and how comparisons can be made with the various areas of English law which are related to the subject of discussion in this thesis.<sup>704</sup> Malaysian law is influenced by English law with relevant modification in order to suit local circumstances.<sup>705</sup>

This section will begin by examining the Food Standard Authority (FSA) in its dealing with halal foods. The FSA's role as a regulator will be studied. The FSA is governed by the Food Standards Act 1999. Section 1 of the Act provides that the two functions of the FSA are: (1) to protect the public from any risk derived from food consumption, and (2) to protect consumer interest in food.<sup>706</sup> The Act further provides that the FSA also has a role in the development of policies related to food matters and consumer interest in food, and also giving advice, information and assistance on food matters to public authorities.<sup>707</sup>

The FSA has adopted a strategic plan concerning the halal issue. The plan essentially promotes the idea of following the codes applicable when dealing with general food law

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<sup>704</sup> Geoffrey Samuel, *An Introduction to Comparative Law Theory and Method* (Hart Publishing 2014) 66–67.

<sup>705</sup> See Section 3 and 5 of Civil Law Act 1956.

<sup>706</sup> Food Standards Act (n 248).

<sup>707</sup> *ibid* 6(1).

by ‘acting independently and based on evidence ... [to] promote consistent and fair enforcement where appropriate and ensure that consumers have *accurate information in relation to food described as halal*’.<sup>708</sup>

The FSA is aware that it does not possess any specific regulatory responsibility for halal food; however, it is willing to use its power and role in the interest of consumers where food is concerned, as reflected in the following statements:

... FSA has no specific regulatory remit in relation to halal food. FSA officials are aware that discussions in relation to aspects of halal food can become contentious. However it is suggested that given the FSA’s statutory purpose to protect the interests of consumers in relation to food, and given the concerns for members of the Muslim community arising from aspects of the outcomes of the horsemeat investigations, it is proper for the FSA to exercise its functions in the manner proposed.<sup>709</sup>

One of the efforts of the FSA to deal with halal matters is to provide FSA guidance on halal food issues (‘the FSA Guideline’) which serves as a guideline in defining halal<sup>710</sup>. The FSA may ‘exercise its functions in the manner proposed’<sup>711</sup>, as provided by the FSA Guideline.<sup>712</sup> The FSA Guideline was prepared with the advice of relevant Muslim organizations and the Department for the Environment, Food and Rural Affairs (DEFRA)<sup>713</sup>. This is one of the materials on halal food matters which will be studied further. As a starting point, it is important to identify the legal status of the FSA Guideline since it is the only material that defined halal, provides the requirements of halal and specifically addresses the issue of halal food.

### **6.2.1 Legal Status of the FSA Guideline**

The status of the FSA Guideline is set out in the preface of the Food Law Practice Guidance (England), and it makes clear that the function of the Guidelines: ‘Non-

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<sup>708</sup> Ainsworth (n 245) para 3.1. Emphasis added.

<sup>709</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229); Food Standard Agency, ‘Food Law Code of Practice (England)’ 2687.

<sup>710</sup> Food Standard Agency, ‘Food Law Code of Practice (England)’ (n 709) 2687.

<sup>711</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229).

<sup>712</sup> Officers need to take action to food business operators who sell and mis-describe halal food in the same way they take action in general food law. See *ibid*.

<sup>713</sup> *ibid*; Food Standard Agency, ‘Food Law Code of Practice (England)’ (n 709) 2687.

statutory, complements the statutory Code of Practice, and provides general advice on approach to enforcement of the law where its intention might be unclear.<sup>714</sup>

The FSA Guidelines are designed: ‘To assist Competent Authorities with the discharge of their statutory duty to enforce relevant food law’,<sup>715</sup>

They ‘[s]hould not, however, be taken as an authoritative statement or interpretation of the law as only the Courts have that power’.<sup>716</sup>

Any examples given are illustrative and not comprehensive, and are there to act as a guidance in line with the Framework Agreement on Official Feed and Food Control by Local Authorities.<sup>717</sup> The Preface to the Framework Agreement on Official Feed and Food Control provides:

The Framework Agreement sets out what the Food Standards Agency expects from local authorities in their delivery of official controls on feed and food law ... The Agreement sets out the planning and delivery requirements of feed and food official controls, based on the existing statutory Codes of Practice.<sup>718</sup>

The existing statutory code of practice applicable here is the Food Law Code of Practice.<sup>719</sup> The Food Law Code of Practice gives power to the Secretary of State to issue codes of practice concerning the execution and enforcement by the competent authority, and the competent authority has duty under the law to enforce legislation relating to food.<sup>720</sup> It also provided in the Food Law Code of Practice that the authorized officer should familiarise themselves with the law, the Food Law Code of Practice and should seek guidance where they are not clear.<sup>721</sup> With regard to halal food abuse, the FSA Guideline should be used as a guidance.

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<sup>714</sup> ‘Food Law Practice Guidance (England)’ (October 2015) <<http://www.food.gov.uk/sites/default/files/Food%20Law%20Practice%20Guidance%20October%202015%20-%20FINAL%20.pdf>> accessed 14 March 2016 Preface.

<sup>715</sup> *ibid* Preface.

<sup>716</sup> *ibid*.

<sup>717</sup> ‘The Framework Agreement on Local Authority Food Law Regulation’ (April 2010) <<http://www.food.gov.uk/sites/default/files/multimedia/pdfs/enforcement/frameworkagreementno5.pdf>> accessed 1 July 2016.

<sup>718</sup> *ibid*.

<sup>719</sup> Food Law Code of Practice 2015, Chapter 1 ‘Introduction’.

<sup>720</sup> *ibid*.

<sup>721</sup> Food Law Code of Practice (n 719).

Even though the FSA Guideline is non-binding, it is complementary to the Food Law Code of Practice that gives advice to law enforcement bodies to take necessary action in the event of halal food abuse. Before the introduction of the FSA Guideline, there was no guideline relating to halal food and how to enforce the law in halal food abuse cases and ‘the approach to enforcement law where its intention might be unclear’.<sup>722</sup> The FSA Guideline defines halal, provides guidance to deal with halal food issues, and gives clarity to the approach to enforce the law.

Annex 2 of the Food Law Practice Guidance (England) draws attention to halal food issues and provides local authorities with some criteria on the action to be taken if it is suspected that infringements have occurred. The main halal infringements are identified as ‘mis-describing’ non-halal food as halal.<sup>723</sup> There is no legal requirement to label food as halal or non-halal.<sup>724</sup> However, if a manufacturer, trader or seller describes the food or meat as halal, it must be halal or they may risk prosecution for ‘mis-describing the foods on sale’.<sup>725</sup>

Therefore, it seems that action for halal food abuse is no different from any breach of general food law – for example, on hygiene issues, food safety, composition of food and labelling.<sup>726</sup> In other words, questions on halal food must comply with general food law and regulations,<sup>727</sup> which are equally ‘binding for halal food as for non-halal’.<sup>728</sup>

Arguably, halal has its own characteristics, and its requirements go beyond the requirements of general food law, particularly with regard to the spiritual perspective; yet what seems to be clear is that there will be no breach of halal requirements unless there is a violation of general food law.<sup>729</sup> In these circumstances, local authorities are advised

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<sup>722</sup> ‘Food Law Practice Guidance (England)’ (n 714).

<sup>723</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229) 250.

<sup>724</sup> Pointing, Teinaz and Shuja (n 229) 212; White and Samuel (n 229) 3.

<sup>725</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229) 250.

<sup>726</sup> *ibid.*

<sup>727</sup> Pointing, ‘Consensus Matters’ (n 244) 6.

<sup>728</sup> Pointing, ‘Strict Liability Food Law and Halal Slaughter | Westlaw UK’ (n 229) 387.

<sup>729</sup> This will be discussed further in Chapter 6.3.2 concerning the general-food-law requirements that are applicable to halal food. Among them are Food Safety (See Chapter 6.3.2.1), Hygiene (See Chapter 6.3.2.2), fulfil nature, substance and quality (See Chapter 6.3.2.3) and labelling (See Chapter 6.3.2.4).



to take appropriate enforcement action to protect the interests of the Muslim community.<sup>730</sup>

It is fair to conclude that local authorities will pursue breaches of halal food law only within the remit of pursuing breaches of other general food law,<sup>731</sup> and will not take into consideration some of the religious requirements of halal food as discussed in Chapter 2. As an example, the FSA Guideline is restricted to looking at incidents of false labelling, such as selling food containing pork as halal food.<sup>732</sup> The process of reasoning whether such an approach serves to undermine, or simply fails to recognize, the complex and sensitive issue of halal foods might be argued, but in terms of statutory involvement, this is the status quo. This is an important guideline to attitudes towards halal food. In the meantime, it is important to consider the definition and requirements of halal food.

## **6.2.2 Halal Definition and Requirements**

Under the FSA Guideline, halal food is defined as a ‘permissible’ food that fulfils Sharia law requirements and can be consumed by Muslims.<sup>733</sup> It provides examples of food that cannot be considered as halal – for instance, food that is detrimental to health, or food that is past its expiry date. Importantly, the Guideline states that if non-halal food is sold as halal, then such a sale constitutes ‘fraud or deception’.<sup>734</sup>

It follows that this definition indicates that the term halal not only deals with ‘permissible food’ but requires that food must be safe for human consumption. The FSA Guideline explains the opposite of halal, which is haram, and provides examples of haram food, which Muslims are not permitted to consume. It also sets out the categories of items prohibited to be consumed by Muslims such as pork, carrion and alcohol and the processes involved from farm to fork that need to be observed to ensure that the food is halal.<sup>735</sup>

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<sup>730</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229) 250.

<sup>731</sup> *ibid.*

<sup>732</sup> ‘Halal Meat in Birmingham Found to Contain Pork - BBC News’ (n 234).

<sup>733</sup> *ibid.*

<sup>734</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229) 2687.

<sup>735</sup> *ibid.*

Precautions for manufacturers or sellers of halal food in dealing with their halal food are also covered, and there is information on the need for suitable labelling and the need to separate non-halal food. The food will be rendered non-halal if it comes into direct contact with haram food, and the offence of mislabelling<sup>736</sup> will be committed if the food is not halal but is labelled as halal.<sup>737</sup>

The FSA Guideline also covers halal meat preparation, meat being obtained from halal sources, fulfilling food safety requirements, slaughtering in compliance with Sharia law, food not being mixed with pork or alcohol, and equipment used not being contaminated with non-halal food.<sup>738</sup> This is similar with the requirement of halal as discussed earlier in Chapter 2.3.

Similarly, the question of poultry slaughtering is addressed: the animal must be taken care of properly, only healthy animals must be slaughtered, other animals must be prevented from seeing the slaughtering process, there must be no cruelty, a sharp knife must be used, one must ‘pronounce *Bismillah Allahu Akbar* on each animal or bird’, and procedures must comply with hygiene regulations.<sup>739</sup>

Based on these requirements, there are two sets of criteria that halal food must satisfy to make it halal. The first are those of general food law that makes halal food similar to other food – for example, the requirements of hygiene, labelling, and being safe and fit for human consumption as stated under item (3) of the FSA Guideline. There must also be compliance with hygiene regulations to ensure the status of food is halal. If the date has expired or food might cause harm to the consumer, it should be removed from the market; otherwise, it will be presumed fit for sale.<sup>740</sup> All of these requirements will be discussed further in Chapter 6.3.2.

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<sup>736</sup> See Section 15 of the Food Safety Act concerning false or misled description of food and Article 1(1) of the Regulation (EU) No 1169/2011 on the provision of food information to consumers. The legal requirement for labelling is discussed in Chapter 6.3.2.4.

<sup>737</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229); Food Standard Agency, ‘Food Law Code of Practice (England)’ (n 709) 2687.

<sup>738</sup> *ibid.*

<sup>739</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229).

<sup>740</sup> ‘Food Safety and Standards’, *Tolley’s Health & Safety at Work Services* (Lexis Nexis 2016) F9007 <<http://www.lexisnexis.com/uk/legal/results/enhdisplayunit.do?level=1&linkValue=0&docViewState=default>> accessed 2 March 2016.

The second set of criteria of halal food are Sharia law criteria, which are religious requirements such as the recital of *bismillah* before slaughtering the animal, the absence of pork, alcohol or any ingredients which are prohibited by Sharia law, and the method of animal slaughter conducted by Muslim slaughtermen. Both sets of criteria must be presented in the preparation of halal food and without either of them, the food will not constitute halal. Compared to what has been previously examined from a Malaysian perspective, these two sets of criteria are also provided by Halal Standard MS1500:2009 and Malaysian Halal Certification Manual Procedure, and they are enforceable in law pursuant to Order 7(2) of the Trade Description (Certification and Marking of Halal) Order 2011,<sup>741</sup> but the legal effect of the FSA Guideline is different from the Malaysian position.

In this Guideline, the FSA indicates that halal food needs to be treated in the same way as general food law.<sup>742</sup> This raises a fundamental problem insofar as although halal might serve the requirements of general food, guidance on general food regulations might not serve halal food requirements. Moreover, there is a further issue relating to the legal status of the guidelines, particularly as they appear to be the only semi-official documents addressing the issue of halal food.

Consequently, it appears that the definition of halal, together with the legal status of the FSA Guideline, should not be taken as an authoritative statement or interpretation of the law, as only the courts have that power.

While the legal and statutory issues of halal may appear somewhat constrained, there is constant reference, in passing, to the input from and cooperation with the Muslim community on issues of halal food, and this may prove to be a way forward in terms of halal food inspection. For instance, halal certifiers<sup>743</sup> might have a role to play, particularly as the FSA recognizes the existence of systems of halal certification.

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<sup>741</sup> See discussion in Chapter 5.1.1.3, Whether Halal Standard MS1500:2009 and Malaysian Halal Certification Manual Procedure have any legal effect?

<sup>742</sup> Food Standards Agency, 'Guidance Note on Halal Food Issues' (n 229) 250.

<sup>743</sup> Halal certifier here is referring to an organisation or individual that supervised, inspect and audit the compliance of halal by providing certificate to those who fulfil their halal requirements. See example of halal certifier in <http://halalfoodauthority.com/> accessed on 3 September 2016.

There are two main certifiers that work closely with the authority on halal food issue: the Halal Monitoring Committee (HMC) and the Halal Food Authority (HFA).<sup>744</sup> However, these certifiers are not able to monitor all halal foods in the country and most of the time, they only inspect their certified products or report obvious false labelling of food products.<sup>745</sup> In addition, and perhaps problematically, there are other certifiers with a different standard of certification that play their role in the halal food framework, which have positive and negative impacts on the halal food industry, as discussed previously in Chapter 3.3.2.2.

In the meantime, the only legal framework applicable to halal food is the framework of general food law. Thus, it is important to identify the compatibility of English food law and halal food law requirements and this will be discussed in the next section.

### **6.3 Compatibility of General Food Law Requirements with Halal Food Law Requirements**

It is necessary to return to the original theme of this section – the law, the food law, and their compatibility with halal requirements.

At first glance it would seem that the requirements of halal food are not very much different from the requirements of general food law in terms of requirements of hygiene, avoiding contamination, proper labelling, and fitness for human consumption<sup>746</sup>. However, halal food requirements contain a spiritual aspect<sup>747</sup> and ‘the precise ritualistic

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<sup>744</sup> ‘Birmingham City Council Regulation and Enforcement : Trading Standards Service Plan 2014/2015’ <[<sup>745</sup> There is few example, where the incidents involving halal food abuse were reported to the authority. See ‘Birmingham Trading Standards - Halal Fraud Investigations’ <<http://halalfoodauthority.com/wp-content/uploads/2015/05/Halal-Fraud-Investigations.pdf>> accessed 10 January 2016.](http://www.birmingham.gov.uk/cs/Satellite?blobcol=urldata&blobheader=application%2Fmsword&blobheadername1=Content-Disposition&blobkey=id&blobtable=MungoBlobs&blobwhere=1223579347843&ssbinary=true&blobheadervalue1=attachment%3B+filename%3D14362Trading_Standards_Service_Plan_2014_15.doc.> accessed 10 November 2015.</a></p></div><div data-bbox=)

<sup>746</sup> Food Safety Act 1990 s 1; Food Labelling Regulations 1996; Food Safety and Hygiene (England) Regulations 2013.

<sup>747</sup> Riaz and Chaudry (n 6) 182; International Trade Centre, *From Niche to Mainstream – Halal Goes Global* (ITC 2015) 52

requirements of the method of slaughter are contested even among some groups of Muslims'.<sup>748</sup> This spiritual requirement is, not surprisingly, absent in general food law.

Therefore, it is useful to briefly revisit some of the issues outlined in this thesis, and consider the possible areas of legal and religious conflict. To achieve this objective, the religious elements in halal food will be discussed first, followed by the general food law requirements.

### **6.3.1 Religious Slaughtering in Halal Food**

This section will deal with the religious slaughter of animals in halal food. This is one of the contested areas in the halal food domain because most of the spiritual elements in halal food come from slaughtering practice. The general requirement for slaughtering has been discussed in Chapter 2.3.6. According to Sharia law, meat needs to come from an animal that was slaughtered ritually to make it halal and before it can be consumed by a Muslim.<sup>749</sup> In addition, the slaughtermen kill the animal by cutting the animal's arteries with a sharp device, the blood needs to be drained out, and the name of God must be mentioned during the slaughtering procedure.<sup>750</sup>

One of the issues in halal slaughtering is stunning. It is a matter of dispute among halal food certifiers in England and it is not covered by the FSA Guideline. The FSA might have preferred to leave this issue to be decided by the Muslim community, because some views allow animal stunning and others do not.<sup>751</sup> Under English law, pre-stunning is compulsory before slaughter.<sup>752</sup> However, the law gives an exception to Muslims not to stun the animal before slaughtering for religious reasons.<sup>753</sup> With regard to the stunning issue, item (4) of the FSA Guideline is important because to make it halal, the animal

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<[http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Halal\\_Goes\\_Global-web\(1\).pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/Halal_Goes_Global-web(1).pdf)> accessed 29 July 2016; Fischer (n 157) 285.

<sup>748</sup> M.Thomas and others (n 236) 1.

<sup>749</sup> 'Al-Qur'an' (*The Noble Qur'an*) <<http://quran.com/>> accessed 10 October 2013 Surah Al-An'am: 119; Qureshi and others (n 500).

<sup>750</sup> M.Thomas and others (n 236) 4.

<sup>751</sup> Ainsworth (n 245) para 1.4.

<sup>752</sup> The Welfare of Animals at the Time of Killing (England) Regulations 2015. See Regulation 25, Schedule 1.

<sup>753</sup> *ibid.* See Regulation 27 Schedule 3.

should be alive at the time of slaughtering, whether it has been stunned or not. In stunning, there are also some criteria that are difficult to observe – for example, to be sure that the animal dies due to slaughtering and not because of the stunning.<sup>754</sup>

According to Thomas and others, not many employees in halal food businesses are aware of the requirement of halal in food production, especially in slaughterhouses.<sup>755</sup> It is important to have detailed instruction for the requirement (which has not been covered by legislation); otherwise, abuse is likely to occur.<sup>756</sup> Halal food is a complex subject and requires proper management to ensure all of its requirements are satisfied to produce authentic halal food.

As well as the procedure for preparing halal food being properly observed, the welfare of animals in halal slaughtering should be taken into consideration if it involves a non-stunning procedure.

### **6.3.1.1 Religious Slaughter and Animal Welfare**

Religious slaughter is sometimes associated with animal welfare issues, and public perceptions. The media sometimes portray ritual slaughter as animals ‘slaughtered brutally with a knife cut but without pre-stunning’,<sup>757</sup> whereas in fact, halal meat is processed in the same way as other meat<sup>758</sup> except for the additional practice, such as uttering the prayer *bismillah* before slaughtering, and ensuring that the meat is not contaminated with non-halal ingredients.

According to Regenstein in his preliminary report concerning the opinion of experts in evaluating the methods of slaughtering, efforts ‘to prove that religious slaughter is inhuman...is beyond the scope of science. If scientific standards are used to define pain/suffering then that standard must be used to evaluate all competing methods of management/ slaughter when used properly and improperly’.<sup>759</sup> He gives examples of

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<sup>754</sup> Jais (n 105) 189; Riaz and Chaudry (n 6) 184.

<sup>755</sup> M.Thomas and others (n 236) 15–16.

<sup>756</sup> *ibid.*

<sup>757</sup> Susan Ghaiwal, ‘News: Confused about Halal’ (2014) 16 *Food Safety Newsletter* 5, 5.

<sup>758</sup> Susan Ghaiwal, ‘Press in Pickle over Halal’ (2010) 12 *Food Safety Newsletter* 1, 1.

<sup>759</sup> Joe M Regeinstein, ‘Expert Opinion on Considerations When Evaluating All Types of Slaughter: Mechanical, Electrical, Gas and Religious Slaughter Preliminary Report’ 4 <<http://webcache.googleusercontent.com/search?q=cache:Jl-pqzn0ISAJ:asknoah.org/wp->

what should be considered as inhuman, such as ‘bull fighting’, ‘cock fighting’, ‘horse racing’ and many more.<sup>760</sup> He further adds that the main aim to be achieved by both science and religion is to protect animal welfare in the context of producing food that is safe and fit for human consumption.<sup>761</sup>

As an expert in veterinary medicine, he added that it is difficult to compare different slaughter systems because of their advantages and disadvantages, and that the important aim is to ensure that the method used does not violate animal welfare provisions.<sup>762</sup> He also contended that non-stunning religious slaughter should be considered as a method that may achieve ‘satisfactory outcomes as these four methods’ (penetrating captive bolt, non-penetrating captive bolt, electrical stunning and gas stunning) in protecting animal welfare.<sup>763</sup>

On the stunning issue, there are reports, petitions and suggestions by animal welfare organizations to stop this practice, such as the reports prepared by the Farm Animal Welfare Council (FAWC) in 1985, The Royal Society for the Prevention of Cruelty to Animal in 1995 and 2009, and the Farm Animal Welfare Council in 2003. The Government looked at this issue as a matter of interest concerning consumers and the Prime Minister decided that religious slaughter will continue in the UK.<sup>764</sup>

Clearly, religious slaughtering and the issue of animal welfare are significant areas when exploring the issue of halal food in non-Muslim countries. Even though there are many misconceptions about religious slaughter, the animal welfare rules cannot be violated. This is in line with Regeinstein’s suggestion that non-stunning religious slaughter should be considered as one of the methods in protecting animal welfare.<sup>765</sup> However, stunning in Sharia is a matter of choice (*ijtihad*) and there is no clear rule preventing stunning

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content/uploads/HollandPreliminaryReport052311.pdf+&cd=2&hl=en&ct=clnk&gl=uk&client=firefox-b-ab> accessed 3 August 2016.

<sup>760</sup> *ibid.*

<sup>761</sup> *ibid.*

<sup>762</sup> *ibid.*

<sup>763</sup> *ibid.*

<sup>764</sup> Keith Perry, ‘Cameron Vows Never to Ban Religious Slaughter of Animals’ (13 March 2014) <<http://www.telegraph.co.uk/news/religion/10694276/Cameron-vows-never-to-ban-religious-slaughter-of-animals.html>> accessed 29 July 2016.

<sup>765</sup> Regeinstein (n 759) 6.

before slaughter of the animal as long as it does not kill the animal and this will be discussed further in Chapter 6.3.1.3.

The issue of religious slaughter has been debated since the 19th century and it is therefore useful to look at a brief history of religious slaughtering and set it in context against contemporary attitudes.

### **6.3.1.2 History of Religious Slaughter**

Historically, the regulation on stunning began in 1875 when the British Government sought to prevent cruelty in slaughterhouses by introducing the Public Health Act 1875, which required that animals to be stunned.<sup>766</sup> In 1904, a report recommended that all slaughtered animals should be stunned without exception.<sup>767</sup> The stunning exception for religious slaughter was introduced in 1933 by the Slaughter of Animals Act 1933 (applied to England and Wales) and national rules on religious slaughter were developed from time to time in order to provide protection for animal welfare.<sup>768</sup> The Humane Slaughter Association (HSA) in 1956 and 1968 supported two Private Members' Bills to remove the exemption of religious slaughtering but these Bills did not succeed and the Slaughterhouse Act introduced in 1974 maintained the exemption for religious slaughter.<sup>769</sup> This continued with the introduction of the Welfare of Animals (Slaughter or Killing) Regulations 1995 that provides additional provision for slaughter by a religious method, since repealed by the Welfare of Animals at the Time of Killing (England) Regulations 2015 (WATOK 2015).

### **6.3.1.3 Contemporary Issues of Religious Slaughter in English Law**

Before the introduction of WATOK 2015, the Government enacted The Welfare of Animals at the Time of Killing Regulations 2014 but before the legislation had come into force (due to be on 20 May 2014), they were revoked by the Welfare of Animals at the Time of Killing (Revocation) Regulations 2014 that came into force on 19 May 2014, and

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<sup>766</sup> Downing (n 221) 7.

<sup>767</sup> *ibid* 8.

<sup>768</sup> *ibid*.

<sup>769</sup> Humane Slaughter Association (HSA), 'Religious Slaughter' (July 2014) <<http://www.hsa.org.uk/downloads/related-items/religious-slaughter.pdf>> accessed 12 July 2016.



this was all due to the religious slaughter issue.<sup>770</sup> The proposed new law increased by 50% the volume of electricity that might kill the birds and therefore not be suitable for halal food, and was challenged in a judicial review by the Association of Independent Meat Suppliers (AIMS) and the Halal Authority Board (HAB) on behalf of 20 abattoirs.<sup>771</sup> While waiting for the new law to be enforced, WASOK 1995 remained in force.<sup>772</sup> In October 2015, WATOK 2015 came into force.<sup>773</sup>

Under WATOK 2015, it is a requirement for Muslim slaughtermen to obtain a certificate or temporary certificate from the FSA<sup>774</sup> before they can slaughter the animal but there are no requirements for additional licences from a halal certifier, unlike Jewish slaughtermen who must obtain a licence from the Rabbinical Commission as part of the requirement in their religious slaughter.<sup>775</sup> During the slaughtering process, in the case of non-stunning bovine animals, the animal must be put in an upright position in a restraining pen approved by the FSA.<sup>776</sup> After slaughtering the animal without stunning, the animal cannot be removed from the pen for at least 20 seconds for sheep and goats and 30 seconds for cattle.<sup>777</sup>

The controversy of religious slaughter is because of the stunning issue; it is a requirement under English law to stun the animal before slaughter. However, there is an exemption to this general rule as provided by WATOK 2015 that provides that an animal can be killed

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<sup>770</sup> 'Explanatory Notes to Consumer Rights Act 2015 - Data.Pdf' <<http://www.legislation.gov.uk/ukpga/2015/15/notes/data.pdf>> accessed 2 April 2016.

<sup>771</sup> 'UK: Defra Delay Stun Legislation for Poultry' (*halalfocus.net*, 23 May 2014) <<http://halalfocus.net/uk-defra-delay-stun-legislation-for-poultry/>> accessed 6 August 2016; 22 May 2014 | Kevin White, 'Poultry Producers Welcome Delay to Rule Change on Stunning' (*TheGrocer.co.uk*) <<http://www.thegrocer.co.uk/buying-and-supplying/categories/fresh/poultry-producers-welcome-delay-to-rule-change-on-stunning/357773.article>> accessed 6 August 2016.

<sup>772</sup> DEFRA, 'Explanatory Memorandum to the Welfare of Animals at the Time of Killing Regulations 2014 No.1240 and The Welfare of Animals at the Time of Killing (Revocation) Regulations 2014 No. 1258' para 10 <[http://www.legislation.gov.uk/uksi/2014/1240/pdfs/uksiem\\_20141240\\_en\\_001.pdf](http://www.legislation.gov.uk/uksi/2014/1240/pdfs/uksiem_20141240_en_001.pdf)> accessed 5 August 2016.

<sup>773</sup> The Welfare of Animals at the Time of Killing (England) Regulations (n 752).

<sup>774</sup> *ibid* 5 and 6 read together with Article 7(2) of Regulation (EC) 1099/2009.

<sup>775</sup> The Welfare of Animals at the Time of Killing (England) Regulations (n 752) Para 9 to Schedule 3 of Regulation 27.

<sup>776</sup> *ibid* para 3 to schedule 3 of Regulation 27.

<sup>777</sup> *ibid* para 6 to schedule 3 of Regulation 27.

without stunning in accordance with religious rites, as long as it is done in a slaughterhouse.<sup>778</sup> WATOK 2015 is annexed to Council Regulation (EC) No 1099/2009,<sup>779</sup> and Schedule 5 provides the list of provisions of the EU Regulation containing animal welfare requirement that is implemented in WATOK 2015.<sup>780</sup>

The British Government, in implementing Council Regulation (EC) No 1099/2009 on the protection of animals at the time of killing<sup>781</sup>, decided to maintain existing national rules concerning religious slaughter because they provide greater protection than the EU Regulations that limit the non-stunning of animals just for the meat produced for the Muslim and Jewish communities.<sup>782</sup> Paragraph 1(c)(ii) of Schedule 3 WATOK 2015 defines religious slaughter for halal as a ‘killing in accordance without the infliction of unnecessary suffering by the Muslim method (halal) for the food of Muslims by a Muslim who holds a certificate for that purpose’.<sup>783</sup> There are three requirements that need to be fulfilled under WATOK 2015 which are: the halal requirement; the food must be for Muslims; and the animal must be killed by a Muslim.

This requirement has been implemented since the 1960s through section 2(b) Slaughter of Poultry Act 1967<sup>784</sup> and is illustrated in the case of *Malins v Cole & Attard*<sup>785</sup>. In this case, the appellant was convicted of violation of animal welfare rules because he did not pre-stun the animal before slaughter. Even though he claimed that he was exempted from religious slaughter requirements and his premises were known as halal premises by locals, he failed to prove that he only sold halal meat to Muslims due to the fact that his premises were located in a market area famous among tourists. The tourists did not know that he

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<sup>778</sup> The Welfare of Animals at the time of Killing (England) Regulations 2015, s 2, sch 3.

<sup>779</sup> Preamble The Welfare of Animals at the Time of Killing (England) Regulations (n 752).

<sup>780</sup> Regulation 30(1)(g) *ibid*.

<sup>781</sup> (EC) No 1099/2009 will be discussed further in Chapter 6.3.1.4 on implementing European Union Council Regulation on religious slaughter.

<sup>782</sup> Department for Environment Food & Rural Affairs (DEFRA), ‘Animal Welfare - Summary of Responses to the Consultation on the Welfare of Animals at the Time of Killing from 13 September 2012 to 24 October 2012’ 54 <file:///C:/Users/User/Dropbox/halal%20material/Pdf-Halal%20Material/Animal%20Slaughtering/gov%20consultation-sum-resp-animal-welfare-time-killing-20130529.pdf> accessed 1 August 2016.

<sup>783</sup> The Welfare of Animals at the Time of Killing (England) Regulations (n 752).

<sup>784</sup> This legislation was repealed by The Welfare of Animals (Slaughter or Killing) Regulations 1995 (WASOK 1995). WASOK 1995 then repeal by WATOK 2015.

<sup>785</sup> [1986] CLY 89

served halal meat. Thus, the court held that the exemption of religious slaughter did not apply.<sup>786</sup> The court's decision might have been different if the premises had held a proper halal label and if customers had known that the premises served meat prepared in accordance with halal requirements.

#### **6.3.1.3.1 Issue of Non-Stunning Slaughter**

In the WATOK 2015, Schedule 3 of Regulation 27 introduced additional requirements for the killing of animals in accordance with religious rites, which does not involve stunning. There is now a new provision which provides that the killing of animals following religious rites should be done in a slaughterhouse.<sup>787</sup> Part 2 of the Schedule provides the non-stunning procedure to kill sheep, goats and bovine animals and Part 3 contains procedures for poultry.

The legal requirement for religious slaughter provided by both legislations shows that the main focus concerning religious slaughter is on the non-stunning issue as illustrated in Schedule 3 of Regulation 27. For example, in the handling of cattle for non-stun slaughter, animals should be restrained and not allowed to move until they become unconscious, not less than 20 seconds for a sheep or goat and 30 seconds for a bovine animal such as a cow.<sup>788</sup> However, there have been cases where sheep were pushed over before the end of 20 seconds after their throats had been cut. This happened in a halal slaughterhouse, Bowood Yorkshire Lamb slaughterhouse, in Thirsk, North Yorkshire (Bowood) and involved 86% of their slaughtered sheep.<sup>789</sup>

In addition to that the time element, each animal should be slaughtered 'by severance of both its carotid arteries and jugular veins by rapid, uninterrupted movements of a hand-held knife' which should be undamaged and sharp.<sup>790</sup> However, in the investigation of

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<sup>786</sup> *Malins v Cole & Attard* [1986] CLY 89 (Crown Court (Knightsbridge)).

<sup>787</sup> Regulation 27 The Welfare of Animals at the Time of Killing (England) Regulations, para 2, schedule 3 (n 746).

<sup>788</sup> Paragraph 6, Schedule 3, Regulation 27 *ibid*.

<sup>789</sup> Animal Aid, 'Animal Aid: Extreme Cruelty inside Yorkshire Slaughterhouse Exposed' <[http://www.animalaid.org.uk/h/n/NEWS/news\\_slaughter/ALL/3215//>](http://www.animalaid.org.uk/h/n/NEWS/news_slaughter/ALL/3215//>) accessed 10 August 2016.

<sup>790</sup> paragraph 5 and 7, Schedule 3, Regulation 27 The Welfare of Animals at the Time of Killing (England) Regulations (n 752).

Animal Aid at Bowood, the slaughterman made five attempts to sever the carotid arteries and jugular veins of the sheep.<sup>791</sup>

Universal Halal Agency Ltd stated that there is wrong information given to Muslims and they believe that stunning will cause pain, suffering and death which makes it unlawful.<sup>792</sup> It should be noted that some Muslims accept stunning as long as it does not kill the animal, but there is always a possibility that the animal might die from stunning. Out of the three stunning methods provided under WATOK 2015<sup>793</sup>, only electrical stunning is acceptable by some Muslims as long as the electrical stunning does not kill the animal.<sup>794</sup> The religious slaughter contains faith aspects and cannot be withdrawn just because of animal welfare issues, and thus, there will be continuous debate concerning non-stunning religious slaughter and animal welfare issues.<sup>795</sup>

In the Bawood incidents, Animal Aid claim:

The Bowood management is culpable for failing to address the disastrous shortcomings of the slaughter line design, but responsibility also falls on the Food Standards Agency, which is contracted by Defra to monitor and enforce welfare standards – a duty assigned to vets, who work full-time in UK killing plants. Those vets were nowhere to be seen during our recording of thousands of sheep being killed.<sup>796</sup>

Based on the above, there is a serious monitoring problem in halal abattoirs that needs immediate rectification in order to ensure that the requirements for halal production are fulfilled.

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<sup>791</sup> Animal Aid (n 789).

<sup>792</sup> Department for Environment Food & Rural Affairs (DEFRA) (n 782) 30.

<sup>793</sup> captive bolt stun, Electrical stunning, and exposure to gas.

<sup>794</sup> ‘Eblex Assurance Scheme Could Clear up Halal Confusion’ (*Farmers Weekly*, 30 January 2014) <<http://www.fwi.co.uk/livestock/eblex-assurance-scheme-could-clear-up-halal-confusion.htm>> accessed 6 August 2016.

<sup>795</sup> Farouk (n 228) 818.

<sup>796</sup> Animal Aid (n 789).

### 6.3.1.3.2 Difficulty in Observing the Requirement to Recite the Name of God in Halal Slaughtering

Another issue involving halal slaughtering is the difficulty to ensure that the slaughterman recites a prayer before slaughtering each and every animal.<sup>797</sup> This requirement provided by Sharia law is to recite the name of God (*Bismillah Allahu Akbar*) before slaughtering the animal as provided in the Muslim holy book, Al-Quran: ‘And for every nation we have appointed religious ceremonies, that they may mention the Name of Allah over the beast of cattle that He has given them for food’.<sup>798</sup> This requirement is also laid down in the FSA Guideline.<sup>799</sup>

However, there are different views on how to carry out this requirement – whether the *Bismillah Allahu Akbar* prayer should be taped, read at the beginning of the work or prayed individually by the slaughterman. A survey by the HMC found that 99.7% of imams agreed that *Bismillah Allahu Akbar* should be uttered to each animal, one by one, before it is slaughtered by the Muslim slaughterman<sup>800</sup>. This is a controversial issue in halal slaughtering because some Muslims believe that the prayer should be uttered by the Muslim slaughterman to each animal, while others believe that they can utter it at the beginning of the shift, or if using a slaughtering device, utter it at the device.<sup>801</sup>

The industry, due to cost-efficiencies, prefer mechanical slaughtering devices that can utter the prayer.<sup>802</sup> Previously, Kentucky Fried Chicken (KFC), which obtained halal certification by the HFA and uses mechanical machines to do the recitation, has been criticized by Syeikh Siddiqi<sup>803</sup> on the ground that such method does not satisfy the

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<sup>797</sup> Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229) 249–250.

<sup>798</sup> Translation of ‘Al-Qur’an’ (n 749) Al-Hajj 22:34.

<sup>799</sup> See Annex 1 of Food Standards Agency, ‘Guidance Note on Halal Food Issues’ (n 229).

<sup>800</sup> Halal Monitoring Committee, ‘UK Scholar Halal Survey’ (2009) <[http://www.halalhmc.org/userfiles/file/HMC%20Ulamah%20Report\\_FINAL\\_lr.pdf](http://www.halalhmc.org/userfiles/file/HMC%20Ulamah%20Report_FINAL_lr.pdf)> accessed 16 February 2015.

<sup>801</sup> M.Thomas and others (n 236) 5.

<sup>802</sup> *ibid.*

<sup>803</sup> Principal of Hijaz College, national convener of the Muslim Action Committee, Secretary General of the International Muslim Organisation and a barrister.

requirement of halal food.<sup>804</sup> He also makes a reference to the FSA Guideline to support his claim and urges Trading Standards to consider whether the food is properly labelled as halal.<sup>805</sup>

By way of response, the HFA President, Masood Khawaja, argues that he followed other school of thought that look for intention in slaughtering and that do not to recite the name of God to every animal.<sup>806</sup> However, on 2 December 2013, the HFA decided to reject mechanical slaughter and change its procedure to only using manual hand slaughter.<sup>807</sup> On its website, it is stated that the slaughtering procedure will be conducted manually by Muslim slaughtermen and that they are required to recite the name of God to every animal.<sup>808</sup> Even though there are different views on how to carry out this requirement, pronouncing the name of God is one of the religious requirements that must be fulfilled during the slaughtering procedure.

In Animal Aid's investigation into the incident involving Bowood Yorkshire Lamb slaughterhouse in Thirsk, North Yorkshire, the slaughterman did not recite the name of God to the slaughtered animal and there is a radio playing pop music and Christmas songs.<sup>809</sup> This did not fulfil the requirement of halal to recite '*Bismillah Allahu Akbar*' to each slaughtered animal and there was no mechanism in place to ensure that this requirement was fulfilled by the abattoir. This is a halal food abuse and a violation of the halal food requirement committed by the halal abattoir.

However, there are no rules prescribed by the WATOK 2015 and EC 1099/2009 Regulation on the requirement of prayer being given to the animal before slaughtering. The law currently in force is only concerned with ensuring that the religious slaughter

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<sup>804</sup> John Wood, 'Halal Chicken Sold at KFC 'may Not Be "Real Halal"' (*FoodManufacture.co.uk*, 19 September 2012) <<http://www.foodmanufacture.co.uk/Regulation/Halal-chicken-sold-at-KFC-may-not-be-real-halal>> accessed 19 July 2016.

<sup>805</sup> *ibid.*

<sup>806</sup> *ibid.*

<sup>807</sup> Halal Food Authority, 'KFC Support Hand Slaughter' (*Halal Food Authority*, 23 January 2015) <<http://halalfoodauthority.com/announcements/kfc-supports-hand-slaughter/>> accessed 12 August 2016.

<sup>808</sup> 'Halal Food Authority (HFA) FAQs' (*Halal Food Authority*) <<http://halalfoodauthority.com/faqs/>> accessed 29 July 2016.

<sup>809</sup> Animal Aid (n 789).

fulfils the requirements of animal welfare, food safety and hygiene and leaves ritual religious requirements to halal certifiers.<sup>810</sup>

As discussed earlier, Regulation 27 WATOK 2015 that provides the additional requirement for religious slaughter is only concerned with stunning and non-stunning procedures. This is the weakness of the law: it fails to cover the religious requirement in halal food. Thus, it is the responsibility of the slaughterhouse to make sure that the slaughter procedure is performed in accordance with the requirement of halal as provided by Sharia law.

It is argued that, even though the FSA Guideline provides religious requirement, there is no mechanism to ensure that the practice is done by the slaughterman. The only way is to check the procedure during an audit by halal food certifiers. However, the slaughterhouse might comply during the audit process and simply ignore it thereafter. It is difficult to observe and enforce this requirement. If the sources of ingredients and contamination of halal meat are concerned,<sup>811</sup> lab tests can be conducted, as suggested by Shafie and Othman<sup>812</sup>. However, lab tests are only helpful to identify the status of halal if halal food is contaminated with non-halal materials; they cannot detect whether religious requirements for the processing of food or meat have been fulfilled. The key issue here is how to guarantee compliance in order to ensure halal food requirements are fulfilled, especially the religious requirement. The failure to comply with the requirements will affect the authenticity of halal food.

It is submitted that the correct mechanism should be identified to ensure compliance, and one of the options currently supported by animal welfare groups is to introduce CCTV as an animal welfare measure<sup>813</sup> that can also be used to protect consumers and ensure the compliance of halal requirements. This could be part of the solution to resolve monitoring

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<sup>810</sup> Havinga (n 132) 246.

<sup>811</sup> Van Der Spiegel and others (n 175) 113.

<sup>812</sup> Shafie and Othman (n 690) 6.

<sup>813</sup> Farm Animal Welfare Committee (FAWC), 'FAWC Opinion on CCTV in Slaughterhouses - Publications - GOV.UK' (Farm Animal Welfare Committee (FAWC) 2015) para 89 <<https://www.gov.uk/government/publications/fawc-opinion-on-cctv-in-slaughterhouses>> accessed 13 July 2016; British Veterinary Association (BVA), 'BVA Policy Statement for CCTV in Slaughterhouse' (July 2015) para 2 <[https://www.bva.co.uk/uploadedFiles/Content/News,\\_campaigns\\_and\\_policies/Policies/Ethics\\_and\\_welfare/bva-position-on-cctv-in-slaughterhouses.pdf](https://www.bva.co.uk/uploadedFiles/Content/News,_campaigns_and_policies/Policies/Ethics_and_welfare/bva-position-on-cctv-in-slaughterhouses.pdf)> accessed 10 August 2016.

problems in order to ensure that the requirements of halal are fulfilled and there will be a detailed discussion on this subject in Chapter 6.8.1.

#### **6.3.1.4 Implementing Council Regulation (EC) 1099/2009**

The attitude of the British Government should be compared with the line taken by the European Union on halal slaughtering. At the European level, Council Directive 93/119/EC of 22 December 1993 on the protection of animals at the time of slaughter or killing was introduced to provide minimum rules for the protection of animals at the time of slaughter or killing in the European Community. The exception for stunning in religious slaughter was also provided by article 5(2) of Council Directive 93/119/EC. In 2009, the EU introduced Council Regulation (EC) 1099/2009 on the protection of animals at the time of killing, which came into effect in January 2013 and this Regulation is directly applicable in the Member States. Recital (18) of Council Regulation (EC) 1099/2009 states that there are inconsistencies among Member States in implementing Council Directive 93/119/EC concerning animal welfare. One of the issues involved is non-stunning in religious rite. 'Religious rite is defined as a series of acts related to the slaughter of animals and prescribed by a religion'<sup>814</sup> and preparation of halal food will involve religious rite if it involves an animal. Article 4(4) of Council Regulation (EC) 1099/2009 further provides that non-stunning in religious slaughter is only applicable in a slaughterhouse.

Council Regulation (EC) 1099/2009 maintains the previous derogation provided by the Council Directive 93/119/EC that allows non-stunning for religious slaughter to respect the freedom of religion as provided by article 10 of the Charter of Fundamental Rights of the European Union<sup>815</sup> and this provides for differences in the application to Member States. For example, Germany allows non-stunning but requires proof of 'religious need' before the licence is granted, while Denmark, Austria, Finland, Estonia and Slovakia require stunning before slaughtering an animal even in a religious rite.<sup>816</sup> The Netherlands requires post-cut stunning if the animal has not lost consciousness within 40 seconds and

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<sup>814</sup> Article 2(g) Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing (n 270).

<sup>815</sup> See Recital (18) *ibid*.

<sup>816</sup> Downing (n 221) 9.



France requires post-cut stunning for cattle if it is still conscious after 90 seconds.<sup>817</sup> Latvia and Sweden do not allow religious slaughter without stunning, but Sweden provides an exception for poultry and rabbits subject to Animal Welfare Agency approval.<sup>818</sup>

Council Regulation (EC) 1099/2009 come into force on 1 January 2013 to replace Directive 93/119/EC but a few of the Directive's provisions remain in force (as stated in article 28 of Council Regulation (EC) 1099/2009. These include provisions concerning requirements for the movement and lairaging of animals in slaughterhouses<sup>819</sup> and provisions concerning stunning or killing of animals other than animals reared for fur.<sup>820</sup>

### **6.3.1.5 Muslim Community Response to the Issue of Stunning**

It therefore appears that at the centre of the legal issue which concerns ritual slaughter is the question of stunning. How can this issue be resolved? A survey conducted by the HMC to identify the opinions of imams concerning halal indicated that 99% of them rejected stunning of halal meat.<sup>821</sup> The survey also provided details of stunning by various methods. It was found that 95% of respondents were against mechanical stunning, 90% were against electrical stunning for chickens, 85% were against electrical stunning for cattle, and all agreed that the religious exemption for non-stunning animals for Muslims should remain.<sup>822</sup>

From this issue alone, it can be seen that the Muslim community is divided concerning the use of stunning for halal, as some Muslims accept and some reject the stunning procedure. This supports Regenstein's claim that there is 'serious disconnect' between individual Muslims and the industry, since Muslims are looking for non-stun animal slaughter but actual practice shows that many establishments stun animals before

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<sup>817</sup> *ibid.*

<sup>818</sup> Silvio Ferrari and Rossella Bottoni, 'Legislation Regarding Religious Slaughter in the EU Member, Candidate and Associated Countries' (State University of Milan) 8 <<http://www.dialrel.eu/images/report-legislation.pdf>> accessed 2 June 2016.

<sup>819</sup> See Annex A of Directive 93/119/EEC.

<sup>820</sup> See Annex C of Directive 93/119/EEC.

<sup>821</sup> Halal Monitoring Committee (n 800).

<sup>822</sup> *ibid.*

slaughtering for halal meat production.<sup>823</sup> Only 0.82% of cattle,<sup>824</sup> 3.35% of poultry<sup>825</sup> and 15.21% of sheep and goats<sup>826</sup> were recorded as not stunned for halal slaughtering based on the FSA survey of animal welfare in 173 abattoirs that was conducted in 2013 and published in January 2015.<sup>827</sup>

This thesis will not examine the pro and cons of stunning since it is a matter of choice (*ijtihad*). Further, there is no clear rule under Sharia preventing stunning of animals before slaughter, and there are different opinions among Muslim scholars on the subject.<sup>828</sup> Hence some Muslims accept stunning as long it does not kill the animal. The HFA permits electrical stunning as long as it does not kill the animal, but the HMC rejects stunning in halal slaughtering and states that the majority of religious leaders in the UK reject stunning in halal slaughtering.<sup>829</sup>

This chapter simply seeks to highlight some of the many different legal, social and religious difficulties that arise in connection with the question of halal food products in non-Muslim countries, but what does become apparent is that there are three main issues: (1) the near-irreconcilable differences between animal welfare concerns and religious requirements; (2) the different levels of religious requirements of the Muslim community itself; and (3) the issue of labelling.<sup>830</sup> Despite these issues, the protection of consumer in halal food must be preserved. It seems appropriate therefore to explore the general food-law requirements in order to identify whether general food-law requirements are compatible with halal food requirements.

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<sup>823</sup> See Regeinstein (n 759) 7; Food Standard Agency, 'Results of the 2013 Animal Welfare Survey in Great Britain' <<http://www.food.gov.uk/sites/default/files/2013-animal-welfare-survey.pdf>> accessed 30 March 2016.

<sup>824</sup> This figure is based on the total amount of 366 of non-stun halal cattle out of 44,216 cattle of the whole slaughtered cattle.

<sup>825</sup> This figure is based on the total amount of 572,429 of non-stun halal poultry out of 17,067,641 of the whole slaughtered poultry.

<sup>826</sup> This figure is based on the total amount of 44,950 of non-stun halal sheep and goats out of 295,500 of the whole slaughtered sheep and goats.

<sup>827</sup> Food Standard Agency, 'Results of the 2013 Animal Welfare Survey in Great Britain' (n 823).

<sup>828</sup> Ferrari and Bottoni (n 818) 21; Regeinstein (n 759) 7.

<sup>829</sup> Department for Environment Food & Rural Affairs (DEFRA) (n 782) 30.

<sup>830</sup> The issue of labelling will be discussed further in Chapter 6.3.2.4.

### 6.3.2 General Food-law Requirements Applicable to Halal Food

Some of the legal requirements on general food law derive from the European Union. Article 288 of the Treaty on the Functioning of the European Union sets out the legal instruments through which EU law applies to Member States as follows:

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them. Recommendations and opinions shall have no binding force.

For the purpose of this section, reference will be made to Regulation (EC) No 178/2002 which lays down the general principles and requirements of food law (Regulation (EC) 178/2002) and which is directly applicable in all Member States.<sup>831</sup> Regulation (EC) 178/2002 provides protection for consumer and human health with regard to food, and provides 'common principles and responsibilities'; it creates efficient administrative management in food and also establishes the European Food Safety Authority<sup>832</sup>. It is also important to make reference to the General Food Regulations 2004, which implement Regulation (EC) 178/2002. The enforcement of articles 14, 16, 18 and 19 of Regulation (EC) 178/2002 is also important.<sup>833</sup>

There is no definition of halal food in Regulation (EC) 178/2002. Even though halal food is not legally defined, it nevertheless falls within the category of food which can consist of drink, articles and substances used for human consumption, chewing gum or other

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<sup>831</sup> Josephine Steiner, Lorna Woods and Christian Twigg-Flesner, *EU Law* (Oxford University Press, New York 2006) 56; Vaughne Miller and Eleanor Gadd, 'The European Union: A Guide to Terminology, Procedures and Sources - House of Commons Background Paper' (2016) 13 <<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN03689>> accessed 5 March 2017.

<sup>832</sup> Regulation (EC) No 178/2002 of The European Parliament and of the Council of 28 January 2002 Laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. 2002 Article 1.

<sup>833</sup> The General Food Regulations 2004 Regulation 6.

natural products and articles that are used in the preparation of food as defined in article 2 Regulation (EC) 178/2002.<sup>834</sup> Thus, this Regulation is also applicable to halal food.

Article 1(3) of Regulation (EC) 178/2002 states that the Regulation is applicable to all stages of food including production and processing up until distribution. It sets various objectives for food law that are also helpful in protecting halal food (article 5) such as food safety requirements,<sup>835</sup> labelling and presentation of food<sup>836</sup> and traceability<sup>837</sup>.

As discussed in Chapter 4.3 (Halal Food Abuses), the problems that commonly occur in halal food issues relate to food safety, hygiene, adulteration, traceability and labelling issues. Therefore it is useful to move on to look at English law and EU provisions that deal with common problems in halal food abuse, one of which is the issue of food safety.

### **6.3.2.1 Food Safety**

To examine food safety in halal food, the Food Safety Act 1990 (FSA 1990) is relevant (in addition to Regulation (EC) 178/2002 and the General Food Regulations 2004).

The FSA 1990 provides the framework for foods in the UK, and the main responsibilities for food businesses set out in this Act can be divided into two main divisions: food safety requirements to ensure that food is not injurious to health;<sup>838</sup> and consumer protection to ensure that the food complies with the law in terms of the nature, substance or quality demanded<sup>839</sup>, proper labelling, and the advertising or presenting the food to avoid false or misleading information<sup>840</sup>. Before further discussion, it is important to explain how various elements of English and EU law interact and fit together in the context of general food-law requirements.

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<sup>834</sup> Section 1 of the Food Safety Act 1990 also apply the same definition of food as provided by Regulation (EC) 178/2002.

<sup>835</sup> Regulation (EC) No 178/2002 of The European Parliament and of the Council of 28 January 2002 Laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. (n 832) Article 14.

<sup>836</sup> *ibid* Article 16.

<sup>837</sup> *ibid* Article 18.

<sup>838</sup> Food Safety Act 1990 (n 746) See Section 7, 8, 9, 23 and 24.

<sup>839</sup> *ibid* 14.

<sup>840</sup> *ibid* 15.

The FSA 1990 lays down two conditions to be satisfied. The first is that the food must be ‘injurious to health’ and be sold for human consumption<sup>841</sup>. Section 2 of the Act refers to article 14(4) subparagraphs (a) to (c) of Regulation (EC) 178/2002 in identifying whether the food is injurious or not. There are three situations where food can be considered as ‘injurious to health’: (1) it has an effect on health;<sup>842</sup> (2) it has a toxic effect;<sup>843</sup> or (3) it is injurious to ‘to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers’. This was discussed earlier in Chapter 5.2.1.1.1.<sup>844</sup>

Elmbridge Borough Council prosecuted Gastro UK Ltd in Redhill Magistrates’ Court for selling food that could be considered as ‘injurious to health’ on 19 May 2015.<sup>845</sup> This was in breach of regulation 19 of the Food Safety and Hygiene (England) Regulations 2013 and also in breach of article 14 of Regulation 178/2002. The company was found to have placed unsafe food on the market and was fined £1,400.<sup>846</sup>

The second element is that the food does not comply with food safety requirements as laid down in article 14 of Regulation (EC) 178/2002.<sup>847</sup> This includes foods that are ‘injurious to health, unfit for human consumption’.<sup>848</sup> Article 14(5) of Regulation (EC) 178/2002 further states that food will be considered unfit for human consumption if it is unacceptable according to its intended use because of contamination, and this is also applicable to halal food, as illustrated in the case of Alomgir Hussain Qureshi who was found guilty of selling chicken that was undercooked and likely to be contaminated with ‘pathogenic micro-organisms’.<sup>849</sup> He was prosecuted by Stockton-on-Tees Borough

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<sup>841</sup> *ibid* 7(1).

<sup>842</sup> Regulation (EC) No 178/2002 of The European Parliament and of the Council of 28 January 2002 Laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. (n 832) Article 14(4)(b).

<sup>843</sup> *ibid* Article 14(4)(b).

<sup>844</sup> *ibid* Article 14(4)(c).

<sup>845</sup> Food Standard Agency, ‘Food Law Prosecutions | Food Standards Agency’ <<https://www.food.gov.uk/enforcement/prosecutions>> accessed 4 March 2017.

<sup>846</sup> *ibid*.

<sup>847</sup> Food Safety Act 1990 (n 746).

<sup>848</sup> Regulation (EC) No 178/2002 of The European Parliament and of the Council of 28 January 2002 Laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety. (n 832) Article 14(2).

<sup>849</sup> Food Standard Agency, ‘Food Law Prosecutions | Food Standards Agency’ (n 845) para 301.

Council on 29 January 2016 for infringement of regulation 19 of the Food Safety and Hygiene (England) Regulations 2013 and article 14 of Regulation (EC) 178/2002.<sup>850</sup> This demonstrates how the general food law on food safety is also applicable to halal food.

Another example can be seen from the prosecution by Croydon Council of Babylon Inn Ltd in Camberwell Green Magistrates' Court for selling food that was unfit for human consumption and also injurious to health.<sup>851</sup> This was in breach of the Food Safety and Hygiene (England) Regulations 2013 and the company was fined £1,000.<sup>852</sup>

Therefore, the first element concerns the health risk that makes food injurious to health, and the second element is more general than the health effect where the food is not fit for human consumption. There can be various reasons why food is not fit for human consumption, such as the food is contaminated or not halal.

John Pointing is an English barrister and non-Muslim who is interested in halal food issues. In his experience of dealing with a case of meat that was not fit for human consumption but was sold as halal to a Muslim consumer, he states:

In one case, a consignment of illegally slaughtered mutton – termed “smokies”, where the carcasses involved were fit only to be rendered down and could not even be processed as pet food – was being transported from Wales to London in an unsuitable, non-refrigerated vehicle at the height of the summer. The meat was destined for eating in Indian and Pakistani restaurants in London, some to be sold by butchers as “halal mutton” or passed off as “goat” to members of London’s West Indian community. The meat posed a health risk because of its poor quality and the unhygienic condition of its processing, storage, transportation and retailing. The crude processing methods included retaining the internal parts of the animal within the carcass for a long period after slaughter and the deployment of a blow-lamp to give the skin its special, value-added, smoky barbeque flavour. The meat could not be halal, despite the efforts of Muslims involved in its preparation for sale to pass it off as such. It was filthy, very smelly and extremely unwholesome. The most serious problem was the health risks associated with consumption: a concern for both Sharia law and for State Food Law.<sup>853</sup>

In his experience, there is a serious food safety issue in the halal food market. In addition to the above, it has been reported that there are organized food criminals who sell meat

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<sup>850</sup> *ibid* 301.

<sup>851</sup> *ibid* 159.

<sup>852</sup> Food Standard Agency, ‘Food Law Prosecutions | Food Standards Agency’ (n 845).

<sup>853</sup> John Pointing, ‘Should Halal Conform to State Food Law?’ [2011] *The Halal Journal* 42.

unfit for human consumption and trade it as false halal meat and that this might provide a health risk.<sup>854</sup> Klaus Grunert defines food safety as food without risk and the example he gives is a no-disease effect of consuming that food.<sup>855</sup> If the food can give disease or present risk to the consumer, it should not be constituted as halal food since it does not fulfil the requirements of food safety and violates the FSA Guideline.

In terms of existing legislation concerning food safety in halal food, it fair to state that since the introduction of the FSA 1990, there have been numerous improvements: Regulation (EC) No 178/2002, General Food Regulations 2004, and the Food Standards Act 1999 (FSA 1999) which introduced the Food Standard Agency (FSA) which is responsible for food safety. However, Pointing has stated that the law cannot be successfully implemented unless there is adequate funding and systematic food-law enforcement in place.<sup>856</sup> The following section will identify and examine the law concerning hygiene in relation to halal food abuse.

### **6.3.2.2 Hygiene and Sanitation Aspects of Halal Food**

Currently, there are four legislations that deal with food hygiene and three of them are directly implemented by way of EU Regulations. The first is Regulation (EC) No 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs and provides general rules concerning hygiene of foodstuffs to food business operators.<sup>857</sup> The second is Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin. This sets out specific hygiene rules for food of animal origin because, by virtue of its nature, there is a risk that microbiological and chemical hazards are evident, as found in many reports.<sup>858</sup> The third is Regulation (EC) No 854/2004 of the European Parliament and of the Council

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<sup>854</sup> Zia Akhtar, 'Illicit Meat, European Directives and Enforcement Powers in the UK' [2011] European Food and Feed Law Review 336, 337; Pointing and Teinaz (n 57).

<sup>855</sup> KG Grunert, 'Food Quality and Safety: Consumer Perception and Demand' (2005) 32 European Review of Agricultural Economics 369, 381.

<sup>856</sup> Pointing, 'Should Halal Conform to State Food Law?' (n 853).

<sup>857</sup> Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs, art 1.

<sup>858</sup> Regulation (EC) No 853/2004 of the European Parliament and the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin Recital 2.

laying down specific rules for the organization of official controls on products of animal origin intended for human consumption.<sup>859</sup>

Another piece of legislation is the Food Safety and Hygiene (England) Regulations 2013 (repealing the Food Hygiene (England) Regulations 2006 and some of the law provided in the General Food Regulations 2004).<sup>860</sup> These Regulations provide for domestic enforcement and implementation of the three abovementioned EU Regulations.<sup>861</sup>

Hygiene is one of the concepts that must be fulfilled in halal food<sup>862</sup> preparation. According to Bonne and Verbeke, Muslim consumers do not put safety and hygiene as their priority in food-making decisions but focus more on other factors such as tradition and cost.<sup>863</sup> Exploratory research shows that consumers will buy halal meat from their butcher even though they are not confident about the hygiene requirement as long as the meat is halal.<sup>864</sup> However, the law also requires hygiene as one of the food-law requirements that need to be fulfilled.

In the case of *R v Yusuf (Yakub Moosa)*<sup>865</sup>, the defendant was the manager of an unauthorized halal meat-cutting plant and was found to have committed various offences under the Food Hygiene (England) Regulations 2006 including: selling meat without a health or identification mark; failing to keep the food premises clean; failing to ensure that the food equipment was clean; and allowing meat to be left exposed. He was sentenced to three and a half years in prison.<sup>866</sup> His premises offered halal meat that many Muslim consumers believed was of good quality and good hygiene whereas such elements were ignored.<sup>867</sup>

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<sup>859</sup> Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.

<sup>860</sup> 'Explanatory Note to The Food Safety and Hygiene (England) Regulations 2013' para 1 <<http://www.legislation.gov.uk/ukxi/2013/2996/note/made>> accessed 11 August 2016.

<sup>861</sup> The Food Safety and Hygiene (England) Regulations 2013.

<sup>862</sup> See *Tayyib* concept in Section 2.3.

<sup>863</sup> Bonne and Verbeke (n 472) 121.

<sup>864</sup> Bonne and Verbeke (n 472); Bonne and Verbeke (n 108).

<sup>865</sup> (2011) 1 Cr. App. R. (S.) 47.

<sup>866</sup> *R v Yusuf (Yakub Moosa)* (2011) 1 Cr. App. R. (S.) 47 [21].

<sup>867</sup> *ibid.*



On 22 February 2016, the FSA prosecuted Birmingham Halal Abattoir Ltd in Birmingham Magistrates' Court for the offence of leaving carcasses touching the floor, which contravenes regulation 19 of the Food Safety and Hygiene (England) Regulations 2013 and article 4(2) of Regulation (EC) No 852/2004. The company pleaded guilty and was fined £3,600.<sup>868</sup>

Umar Harif Ghalani was prosecuted by Stoke-on-Trent City Council on 3 February 2016 for failing to ensure a high degree of personal cleanliness when the staff of his food premises failed to wear clean protecting clothing.<sup>869</sup> This was a breach of regulation 19 of Food Safety and Hygiene (England) Regulations 2013 and Stafford Magistrates' Court fined him £1,960.<sup>870</sup>

Most prosecuted halal food abuses have been due to the violation of hygiene law. This is perhaps because the food hygiene laws are firmly established and their enforcement is effective.

### **6.3.2.3 Food Must Fulfil the Requirement of 'Nature or Substance or Quality Demanded'**

Section 14 of the Food Safety Act 1990 provides that the seller is guilty of an offence for selling any food which is 'not of the nature or substance or quality demanded' by the purchaser<sup>871</sup>. This provision also states that the reference to sale shall be construed as a reference to sale for human consumption.<sup>872</sup> Thus, if the non-halal food is sold as halal food, the nature and quality of halal food will not be satisfied, as illustrated in the case of Freeza Meats Ltd which sold false halal beefburgers which were not of the quality demanded by the consumer.<sup>873</sup> On 29 June 2015, he was prosecuted in Newry Magistrates' Court and fined £25,000.<sup>874</sup>

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<sup>868</sup> Food Standard Agency, 'Food Law Prosecutions | Food Standards Agency' (n 845) para 370.

<sup>869</sup> *ibid* 309.

<sup>870</sup> *ibid*.

<sup>871</sup> Food Safety Act 1990 (n 746).

<sup>872</sup> *ibid* 14(2).

<sup>873</sup> Food Standard Agency, 'Food Law Prosecutions | Food Standards Agency' (n 845) para 70.

<sup>874</sup> *ibid*.

Pointing argues that halal food misuse will deny the right of consumers to good, pure and wholesome halal food<sup>875</sup>. Food that does not fulfil the halal requirement but is labelled as halal will breach section 14 of the Food Safety Act in terms of its nature, substance and quality.

#### **6.3.2.4 Halal Food Labelling**

This section will explore the issues concerning halal food labelling. Labelling is important because it provides information to the consumer. Most of the labelling provisions are governed by EU legislation and directly applicable in Member States. The domestic law provides specific regulation which may be supported by advice and codes of practice that deal ‘with particular elements of food manufacturing, labelling and sales’ and which give effect to EU legislation<sup>876</sup>. How they interact with each other has been explained previously in Chapter 6.3.2.1.

Food labelling requirements are governed by the Food Labelling Regulations 1996 and Regulation (EU) No 1169/2011 on the provision of food information to consumers. Labelling is important to help the consumer make an informed choice and this is reflected in the objective of Regulation (EU) No 1169/2011.<sup>877</sup> Food information is defined therein as ‘information concerning a food and made available to the final consumer by means of a label, other accompanying material, or any other means including modern technology tools or verbal communication’.<sup>878</sup> Labelling is defined as ‘any words, particulars, trademarks, brand name, pictorial matter or symbol relating to a food and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such food’.<sup>879</sup>

Even though there are specific laws on labelling in English law, there is no legal requirement to label food as halal. In current practice, the food producer places the halal

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<sup>875</sup> Pointing, Teinaz and Shuja (n 229) 213.

<sup>876</sup> *ibid* 212.

<sup>877</sup> Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers 2011 Article 1(1).

<sup>878</sup> *ibid* Article 2 (a).

<sup>879</sup> Food Labelling Regulations (n 746) Regulation 2; Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers (n 877) Regulation 2(j).

label voluntarily to fulfil the requirements set by the certification agency, as discussed earlier in Chapter 6.1.3. However, if the food is labelled as halal but in reality is not, this will be deemed to be misleading to the consumer, as provided by the Food Safety Act 1990.<sup>880</sup>

There have been three cases brought by the authorities concerning false labelling and the companies were fined for the various offences and in the various sums as follows:<sup>881</sup> (1) Zaman Brothers, a meat supplier, was fined £20,000 for false halal labels after the HMC inspector found that they had been using a fake HMC halal sticker for their product. The matter was also reported to Birmingham City Council's Trading Standards; (2) The Real China Restaurant was fined £8,900 for selling false halal meat when inspected by Trading Standards; and (3) a Birmingham wholesaler was fined £35,000 for selling non-halal meat which was described and sold as halal to Muslim consumers.

Newry, Mourne and Down District Council also brought a court action against the meat processor Freeza Meats Ltd for displaying burgers with a label that was falsely described as halal but which contained non-halal ingredients. A £7,500 fine was imposed<sup>882</sup>. An inspection carried out at Yankee Halal doner Kebab found a trace level of pig DNA in food labelled as halal.<sup>883</sup>

Since halal labelling is not mandatory, some producers do not label their food as halal even though the food is halal.<sup>884</sup> For halal meat, it is not a legal requirement to label the

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<sup>880</sup> Section 15 of the Food Safety Act concerning false or misled description of food.

<sup>881</sup> 'Birmingham Trading Standards - Halal Fraud Investigations' (n 745).

<sup>882</sup> Food Standards Agency, 'FSA in Northern Ireland Welcomes Freeza Meats Ltd Guilty Plea to Food Fraud Offences | Food Standards Agency' <<http://www.food.gov.uk/news-updates/news/2015/14109/fsa-in-northern-ireland-welcomes-freeza-meats-ltd-guilty-plea-to-food-fraud-offences>> accessed 10 January 2016; Food Standard Agency, 'Food Law Prosecutions | Food Standards Agency' (n 828).

<sup>883</sup> Food Standards Agency, 'Results of Local Authority Testing of Meat Products' <<http://webarchive.nationalarchives.gov.uk/20150624093026/http://www.food.gov.uk/enforcement/monitoring/horse-meat/horse-meat-la-results/la-beef-testing>> accessed 4 January 2016.

<sup>884</sup> Simon Mcgee and Martin Delgado, 'Britain Goes Halal... but No-One Tells the Public: How Famous Institutions Serve Ritually Slaughtered Meat with No Warning' *Mail Online* (18 September 2010) <<http://www.dailymail.co.uk/news/article-1313303/Britain-goes-halal---tells-public.html>> accessed 28 February 2016; Sean Poulter, 'Millions Are Eating Halal Food without Knowing It' *Mail Online* (7 May 2014) <<http://www.dailymail.co.uk/news/article-2622830/Millions-eating-halal-food-without-knowing-How-big-brand-shops-restaurants-sell-ritually-slaughtered-meat-dont-label-it.html>> accessed 28 August

method of slaughter and whether the animal was stunned or not.<sup>885</sup> Thus, there is a big concern for consumers concerning meat that is prepared according to the religious slaughter that is not properly labelled. There have been calls by the public to label halal meat and state the method of slaughter.<sup>886</sup> Some supermarkets are hesitant to label halal meat because the percentage of Muslims in the UK is small but a quarter of the meat sold in Britain is halal.<sup>887</sup>

When pork DNA was found in halal pasties supplied to UK prisons in 2013,<sup>888</sup> Ghaiwal posed three questions concerning this issue:

we are now very familiar with defensive labelling such as “may contain nuts” so are we about to see “may contain pork”? Or will processors simply start to clean the equipment properly between batches? We guess that one of the key questions is how clean does it need to be to avoid a positive DNA test?’<sup>889</sup>

According to Jenny Willott<sup>890</sup>, domestic regulation on the requirement to label with the method of slaughter could be introduced under the Food Safety Act 1990 but it would not be the best approach, and to avoid ‘competitive’ issue, it should be introduced by the European Union.<sup>891</sup> The current Regulation (EU) No 1169/2011 does not require the label of information on the religious method of slaughter and the term ‘halal’ is not regulated at the European level and relies upon the various private certifiers existing in each and every member state.

However, a study undertaken by the European Commission in accordance with Recital 50 of Regulation (EU) No 1169/2011 concerning information to consumers on the stunning label found that ‘information on the method of stun is not relevant to the vast

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2016; Pamela Geller, ‘Freedom Outpost’s Polls’ (*LockerDome*) <<https://lockerdome.com/7919486942593089>> accessed 28 August 2016.

<sup>885</sup> Downing (n 221) 23.

<sup>886</sup> *ibid.*

<sup>887</sup> Aoife Boothroyd, ‘British Ministers May Consider Compulsory Labelling of Halal Meat’ (*Food & Beverage Industry News*, 16 May 2014) <<https://foodmag.com.au/british-ministers-may-consider-compulsory-labelling-of-halal-meat/>> accessed 26 August 2016.

<sup>888</sup> Ghaiwal, ‘Horsemeat Adulteration in Burgers’ (n 323) 1.

<sup>889</sup> *ibid* 2.

<sup>890</sup> She was a Liberal Democrat member of parliament for Cardiff Central from 2005-2015. See ‘Willott, Rt Hon. Jennifer Nancy: Who’s Who’ (*Who’s who 2017*) <<http://www.ukwhoswho.com/view/article/oupww/whoswho/U45668>> accessed 5 March 2017.

<sup>891</sup> Boothroyd (n 887).

majority of consumers in terms of providing a purchase decision criterion. However, to a minority of religious stakeholders providing information on all methods of stun would be seen as equal treatment should labelling of non-stunned meat become compulsory.<sup>892</sup> In addition to the above, halal is not only marketed in the UK market but also the EU, and thus it is important to look at the stand taken by the EU on the requirement to label with the method of slaughter since the EU market is larger than the national market.

However, many organizations including the Muslim Council of Britain, the HFA and Sechita UK support the move to have mandatory labelling for the method of slaughter in order to allow consumers to choose products based on animal welfare or religious belief.<sup>893</sup> This is the lacuna in current existing labelling legislation where Muslim consumers demand compulsory labelling to avoid fraud or misrepresentation of halal food as the HFA believes that it will be more appropriate to protect consumers through legislation on the subject.<sup>894</sup> Without proper regulation, producers can even certify their own products and this will affect the entire process compared to certification by an independent halal certification agency.<sup>895</sup> With the introduction of proper regulation on labelling in halal food and method of slaughter, the term 'halal' can be defined and this may protect consumers from the mislabelling of halal food.<sup>896</sup>

Proper regulation would give general consumers a choice and avoid confusion. A British Veterinary Association survey found that only 11% of the respondents understood the difference between stunned and non-stunned slaughter, and that the remaining respondents were either not sure or did not understand the difference.<sup>897</sup>

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<sup>892</sup> See Food Chain Evaluation Consortium (FCEC), 'Study on Information to Consumers on the Stunning of Animals' (European Commission Directorate General for Health and Food Safety 2015) iv <[https://ec.europa.eu/food/sites/food/files/animals/docs/aw\\_practice\\_slaughter\\_fci-stunning\\_exesum\\_en.pdf](https://ec.europa.eu/food/sites/food/files/animals/docs/aw_practice_slaughter_fci-stunning_exesum_en.pdf)> accessed 10 February 2017.

<sup>893</sup> Downing (n 221) 24.

<sup>894</sup> *ibid* 25.

<sup>895</sup> Halal Food Foundation, 'Halal Hysteria: To Label or Not to Label?' <<http://www.halalfoodfoundation.co.uk/index.php/8-news/35-halal-hysteria-to-label-or-not-to-label>> accessed 25 August 2016.

<sup>896</sup> Downing (n 221) 25.

<sup>897</sup> '9 in 10 Vets Say Consumer Should Be Better Informed about Slaughter Methods' (4 November 2014) <<https://www.bva.co.uk/News-campaigns-and-policy/Newsroom/News-releases/9-in-10-vets-say-consumers-should-be-better-informed-about-slaughter-methods/>> accessed 26 August 2016.

Thus, there is a gap in law concerning labelling in halal food that should be taken into consideration by the UK Government to protect the consumer. The introduction of compulsory labelling could benefit both Muslim and non-Muslim consumers as currently halal food not labelled as halal is being sold to consumers. Labelling would also help consumers to choose and make decisions based on their preference.

## **PART 2: REDRESS FOR HALAL FOOD ABUSE**

### **6.4 Sale of Halal Food**

This section will examine the sale of halal food under English law in order to identify the legal requirements to be fulfilled by the trader, their obligations and liabilities, and any redress/remedy available to the consumer.

The section will begin by identifying the definition of key terms discussed in this section, and examining legal requirements concerning the sale of halal food by referring to English law. It will then go on to examine the people involved and affected by such sale of halal food: the consumer, the trader, and the producer. This section will analyse the conformity requirements of halal food and identify the liability for lack of conformity. The obligations of the seller will be identified, and the right of redress will be discussed. This section will also examine the remedies provided for consumers in the event of non-conformity or halal food abuse. In this section, reference will be made to the Consumer Rights Act 2015 (CRA) as it is key to consumer rights.<sup>898</sup>

#### **6.4.1 Definitions of Consumer, Trader, Producer, and Sale of Halal Food**

First and foremost, it is important to identify the meaning of ‘consumer’, ‘trader’, and ‘producer’ under English law as per the CRA. Section 2 of the CRA defines consumer as ‘an individual acting for purposes that are wholly or mainly outside that individual’s trade, business, craft or profession’. A trader is defined as the opposite of consumer, which is ‘a person acting for purposes relating to that person’s trade, business, craft or profession, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf.’<sup>899</sup>

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<sup>898</sup> ‘Explanatory Notes to Consumer Rights Act 2015 - Data.Pdf’ (n 770) n 3.

<sup>899</sup> Consumer Rights Act 2015, s 2.

However, in relation to halal food abuse, it is also important to identify the producer and identify their liability in relation to halal food abuse. Section 59 of the CRA defines producers in three different categories, as follows:

- (a) The manufacturer, (b) the importer into the European Economic Area, or
- (c) any person who purports to be a producer by placing the person's name, trade mark or other distinctive sign on the goods ...<sup>900</sup>

These three entities play important roles in the halal food business. Consumers will consume the food and will mainly be affected if the halal food is not really halal. The trader is the one who sells the food to the consumer. The trader may also be a producer if he produces the halal food himself or becomes an importer of the food product. If a person uses his own branding on the goods, he also can be considered as a producer.

Before moving further, it is important to identify whether halal food constitutes a 'good' under English law. Section 2(8) of the CRA defines a good as 'any tangible moveable items ...' where this section provides two criteria of goods which are tangibility and moveability.<sup>901</sup> Halal food fulfils those two criteria, and thus falls within the meaning of goods under the CRA and therefore, if the consumer buys halal food from the seller, the contract is governed by the CRA.<sup>902</sup> Applying section (1)(1) of the CRA on the sale of halal food, there is an agreement by the trader to sell halal food to the consumer. The CRA further provides that it can be 'written or oral or implied from the parties' conduct'<sup>903</sup> and in the sale of halal food, it is mostly oral or implied by the conduct of the parties. However, the CRA is silent on what constitutes a contract, since the requirements of contract are not provided by the CRA.<sup>904</sup> To establish whether there is a contract, the general common-law rules on contract formation are applicable, ie there are no special rules for consumer contract. Thus, the trader will be liable under the relevant law if the food he sells is not halal.

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<sup>900</sup> *ibid* 59.

<sup>901</sup> *ibid* 3.

<sup>902</sup> See Section 1(1) of the CRA 2015.

<sup>903</sup> Consumer Rights Act (n 899).

<sup>904</sup> Joshua Rozenberg, 'Opinion: Statute Limitations' [2015] *Law Society Gazette* 1, 1.

## **6.4.2 Conformity of the Halal Food Sold to the Consumer Under the CRA**

Halal has its own requirements, as discussed earlier in Chapter 6.2.2. A consumer who buys halal food is looking for quality, since halal itself is a symbol of quality, hygiene, and safe food. The consumer also buys halal food for consumption, not only for physical energy but also spiritual energy.<sup>905</sup> Thus, the halal food must fulfil these implied terms: be of satisfactory quality<sup>906</sup>, be fit for its particular purpose<sup>907</sup>, and match the description<sup>908</sup>.

These requirements will be discussed to see how they fit halal food and, in the event that there is any breach of this requirement, whether there will be liability for lack of conformity with halal food requirements, and then if so, whether the food can be considered as non-halal and whether the consumer will have a private remedy and redress for the abuse.

### **6.4.2.1 Match the Description**

Section 11 of the CRA provides that the goods offered for sale must match the description. Thus, if it is halal food, the trader must ensure that the food fulfils all requirements of halal, otherwise it will not match the description. If the halal food is contaminated or adulterated, it no longer matches the description of halal food. If a consumer buys halal food by referring to the sample, any difference that exists in the sample must be communicated to the consumer before the contract is concluded,<sup>909</sup> and there will be no defect in the good that will then affect the quality to make it unsatisfactory.<sup>910</sup>

In halal food abuse, the infringement of this implied term sometimes overlaps, and this may give additional protection to the buyer if the halal food does not match the

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<sup>905</sup> Jalil and Musa (n 374) 687; Ambali and Bakar (n 400) 20; Al-Hasani Al-Azhari Basri and Wan Chik (n 90) 241.

<sup>906</sup> Consumer Rights Act (n 899).

<sup>907</sup> *ibid* 10.

<sup>908</sup> *ibid* 11.

<sup>909</sup> *ibid* 13(2)(a).

<sup>910</sup> *ibid* 13(2)(b).



description, is not of satisfactory quality, or is not fit for the purpose it was intended for.<sup>911</sup> For example, if halal food infringes the hygiene requirement, it may still be considered as halal food in terms of description and may still be fit for the intended purpose, but the implied term of satisfactory quality will not be fulfilled.

In 2013, there was an incident when food described as halal was contaminated with non-halal meat and the FSA made a response in relation to the contamination of halal food.<sup>912</sup> One interesting issue that was examined by the FSA was the minimum limit of cross-contamination for halal food. For general food, the FSA decided on 1% as a threshold limit for contamination, but this limit is not working in the case of halal food because ‘the presence of any non-halal meat in food presented as halal is unacceptable’.<sup>913</sup> Thus, it makes the food not match the description for halal.

When food is adulterated or contaminated, it is not necessarily change the description of the food but it might affect its utility.<sup>914</sup> This can be seen in the case of *Ashington Piggeries Ltd v Christopher Hill Ltd*<sup>915</sup> where the court held that the subject matter of the dispute (herring meal) was not a breach of the description even though it was contaminated with a substance that was not suitable for mink food because it was still described as herring meal.<sup>916</sup> The court also gave the following example:

although suffering from contamination or adulteration, have not lost their identity: butter containing a very small amount of arsenic; margarine that has become rancid; a rusty iron bar. In all these cases the butter still remains butter, the rancid margarine still remains margarine and the rusty iron bar an iron bar.<sup>917</sup>

However, the case of *Pinnock Bros v Lewis and Peat Ltd*<sup>918</sup> was decided differently. This case involved the sale of copra cake adulterated with castor seed that was poisonous to cattle by the plaintiffs, who sold it to B&Co, and B&Co then sold it to the farmers to feed

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<sup>911</sup> Christian Twigg-Flesner, Rick Canavan and Hector MacQueen, *Atiyah and Adams' Sale of Goods* (13th edn, Pearson Education Limited 2016) 120–121.

<sup>912</sup> Ainsworth (n 245).

<sup>913</sup> *ibid* 4.7.

<sup>914</sup> Twigg-Flesner, Canavan and MacQueen (n 911) 133.

<sup>915</sup> *Ashington Piggerie Ltd v Christopher Hill Ltd* [1972] AC 441.

<sup>916</sup> *ibid* 442.

<sup>917</sup> *ibid* 450.

<sup>918</sup> *Pinnock Bros v Lewis and Peat Ltd* [1923] 1 KB 690.

their cattle.<sup>919</sup> The court held that the goods were not properly described as copra cake, and thus there was a breach of the implied term as to description.<sup>920</sup>

Lord Wilberforce stated in the case of *Ashington Piggeries*:

The test of description, at least where commodities are concerned, is intended to be a broader, more common sense, test of a mercantile character. The question whether that is what the buyer bargained for has to be answered according to such tests as men in the market would apply, leaving more delicate questions of condition, or quality, to be determined under other clauses of the contract or sections of the Act. Perhaps this is to admit an element of impression into the decision, but I think it is more than impression which leads me to prefer the answer, if not all of the reasoning, of the Court of Appeal that the defect in the meal was a matter of quality or condition rather than of description.

Looking at the nature of halal food abuse, one of the common misuses of halal is adulteration or contamination with non-halal ingredients.<sup>921</sup> Thus, the food is no longer described as halal food as what has been stated earlier by the FSA that it is unacceptable in halal food even though general food law put 1% as a contamination threshold limit.<sup>922</sup>

#### **6.4.2.2 Be of Satisfactory Quality**

In halal food, the quality must be satisfactory, taking into consideration the ‘description’, ‘price’, and ‘relevant circumstances’ of the good.<sup>923</sup> Halal food must be fit for its intended purpose, ie can be consumed by the consumer, has quality appearance and finish, be free from any defect, and be safe and durable.

Halal food is about quality. To achieve this quality, certain procedures and requirements must be fulfilled before the food can be described as halal.<sup>924</sup> Satisfactory quality is one of the implied terms provided by the CRA, and this can apply to halal food. The reasonable man satisfactory consideration test is used in assessing the quality of the good by looking at the ‘description of the good’,<sup>925</sup> ‘the price or other consideration’ if

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<sup>919</sup> *ibid* 690.

<sup>920</sup> *ibid* 693.

<sup>921</sup> See Chapter 4.3.

<sup>922</sup> Ainsworth (n 245).

<sup>923</sup> Consumer Rights Act (n 899).

<sup>924</sup> See Chapter 2.3.7.

<sup>925</sup> Consumer Rights Act (n 899).

applicable,<sup>926</sup> and ‘relevant circumstances’ provided by section 9(5) of the CRA, which includes a statement about the attribute of the good in the opinion of the public.<sup>927</sup> In addition to the above, section 9(3) of the CRA provides another aspect of goods in term of fitness, appearance and finish, being free from defects, being safe and being durable.<sup>928</sup> This section will focus on this aspect in relation to halal food.

As mentioned earlier, the requirements sometimes overlap. However, there is one interesting issue concerning satisfactory quality. To fulfil the implied term of satisfactory quality, a person must satisfy with the description as provided by section 9(2)(a). There are situations where the quality may become part of description<sup>929</sup>, as with halal food. If the food is supplied, but the quality is not as expected, it will not constitute satisfactory quality, as decided in the case of *Amira G Foods Ltd v Rs Foods Ltd*.<sup>930</sup> In this case, the court had to identify the quality of the rice sent by the defendant. The court held that the mouldy rice delivered to the plaintiff was not of satisfactory quality.<sup>931</sup> The same applies to halal food, where the quality of halal food should be maintained by the producer or trader and they must ensure that halal food maintains its qualities.

#### **6.4.2.3 Be Fit for its Particular Purpose**

Halal food must be fit for its particular purpose. The test of fitness for purpose requires that ‘the good must be reasonably fit for the purpose’ which goods of that kind are usually used for.<sup>932</sup>

Muslims eat to live, and therefore they have to follow Islamic dietary guidelines to establish a good foundation of ‘spiritual, moral, intellectual and physical health’.<sup>933</sup> For the Muslim consumers, they eat halal food for their physical and spiritual energy as ordered by God in Al-Quran, An-Nahl: 14: ‘So eat of the lawful and good (clean) food

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<sup>926</sup> *ibid* 9(2)(b).

<sup>927</sup> *ibid* 9(2)(c) and 9(5).

<sup>928</sup> *ibid* 9(3).

<sup>929</sup> Twigg-Flesner, Canavan and MacQueen (n 911) 134.

<sup>930</sup> [2016] EWHC 76 (QB)

<sup>931</sup> *Amira G Foods Ltd v Rs Foods Ltd* [2016] QB EWHC 76 [244].

<sup>932</sup> Section 10 Consumer Rights Act (n 899).

<sup>933</sup> Hussaini (n 104) 24.

(halalan tayyeban) which Allah has provided for you, and thank the bounty of your Lord if it is Him that you serve or worship’.

To achieve this objective, the consumer should inform the trader that he intends to consume halal food for a particular purpose – for example, that he needs to eat halal food for his physical and spiritual being. If this is communicated to the trader, regard will be had to fitness for particular purpose.<sup>934</sup>

The CRA contains separate provisions on satisfactory quality, fitness for purpose, and matching the description, but all of them are related to each other. If halal food does not fulfil halal food requirements, the quality will not be satisfactory. It will also not be fit for the particular purpose of consuming halal food and will not fit the halal description.

## **6.5 Consumer Remedies**

After examining the requirements of halal and potential violations of halal food requirements, this section will identify the rights of consumers to claim remedies in relation to halal food abuse.

As previously discussed in Chapter 5, a consumer who has consumed non-halal food with halal status not only suffers loss from purchasing non-halal food but can also be said to suffer distress or other unnecessary feelings and they must prove the causative link between the purchase of the non-halal food and the effect of consuming it.

There is the possibility that the consumer may not become aware of the real halal status of the food until it is reported by the media, as was the case in the incident involving the Zaman Brothers in Bradford and a city restaurant that was held liable for abusing the halal label.<sup>935</sup>

While there have been many reported incidents relating to halal food abuse, very few consumers have sought legal redress. There might be reasons for this – for example, difficulty for the consumer to prove that the injury or damage was a direct consequence of the food abuse, or that their rights have been violated. Professor Christian Twigg-Flesner in his paper identified various reasons why consumers do not take action for post-

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<sup>934</sup> Consumer Rights Act (n 899).

<sup>935</sup> ‘Birmingham Trading Standards - Halal Fraud Investigations’ (n 745).

purchase problems, including: the problem is resolved; ‘the consumer might have assumed that there was nothing that could be done about the problem’; or other factors such as time, money, and effort.<sup>936</sup> In halal food abuse, since it involves food that is perishable, it is quite difficult for consumers to action a complaint or take legal action due to the difficulty of obtaining evidence and proving that their suffering is due to consuming non-halal food.

### 6.5.1 Remedies Under the CRA

If a consumer claims that food labelled as halal is actually not halal, the consumer can apply for a remedy pursuant to section 19 of the CRA on the basis that the food is not of satisfactory quality (section 9 of the CRA), is not fit for purpose (section 10 of the CRA), and does not match the description (section 11 of the CRA), and they may be entitled to a replacement of the good or have a right to reject the good.<sup>937</sup> However, the fact that the food is perishable and the fact that the status of the food is normally not discovered until reported by the media or has been consumed by the consumer, all make bringing a claim problematic.<sup>938</sup>

While the CRA provides various rights for consumers, whether there is a remedy suitable for selling non-halal food as halal, however, remains questionable. The remedies available to consumers in the CRA depend on the type of breach and are set out in the table below:<sup>939</sup>

**TABLE 2:** Remedies provided by section 19 of the CRA 2015

Breach involved	Remedies
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<sup>936</sup> Christian Twigg-Flesner, ‘Does the Codification of Consumer Law Improve the Ability of Consumers to Enforce Their Rights? - A UK-Perspective’ in B Heiderhoff and Reiner Schulze (eds), *Forthcoming in Consumer Rights and Consumer Behaviours* (2015) 5 <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2686688](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2686688)> accessed 16 March 2016.

<sup>937</sup> Consumer Rights Act (n 899).

<sup>938</sup> See example in ‘Halal Meat in Birmingham Found to Contain Pork - BBC News’ (n 234); ‘“Traces of Pork DNA” Found in Halal Prison Meat - BBC News’ (n 234).

<sup>939</sup> Twigg-Flesner, Canavan and MacQueen (n 911) 506.

<p>Section 9 (satisfactory quality)</p> <p>Section 10 (fit for particular purpose)</p> <p>Section 11 (Match the description)</p>	<p>Section 19(3) provide remedies as follow:</p> <p>(a) Short-term right to reject (sections 20 and 22)</p> <p>(b) The right to repair or replacement (section 23); and</p> <p>(c) The right to a price reduction or the final right to reject (sections 20 and 24).</p>
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Consumers of halal food might have the above remedies; however, given that the goods are foods, it is often very unlikely that they pursue remedies. For example, pursuant to section 19(3)(a), a consumer has a short-term right to reject but pursuant to section 20(7)(b), the consumer must return the food to the seller. Also, to apply section 23 (right to repair and replacement) is impossible<sup>940</sup> because the seller will not be able to repair or replace the non-halal food to make it halal? Thus, it is very unlikely that consumers will rely on the provision of section 23 of the CRA. Applying section 24 of CRA, the consumer will be entitled to reject the goods and receive a refund, yet it is likely that the good which is the subject matter of the dispute will have already been consumed.<sup>941</sup>

Section 19(11) of the CRA may provide more appropriate remedies to consumers following halal food abuse. Section 19(11) states:

Those other remedies include any of the following that is open to the consumer in the circumstances -

- (a) claiming damages;
- (b) seeking specific performance;
- (c) seeking an order for specific implement;
- (d) relying on the breach against a claim by the trader for the price;
- (e) for breach of an express term, exercising a right to treat the contract as at an end.

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<sup>940</sup> Consumer Rights Act (n 899).

<sup>941</sup> *ibid* 24(8).

It seems that remedy (a) (damages) will be a relevant remedy for halal food abuse. Nominal damages can be awarded to a consumer in the case of halal food infringement.

Nominal damages may be awarded if ‘there was an admitted breach of contract’ even though ‘no loss was proved’ by the plaintiff.<sup>942</sup> However, the amount of any award will be low. In the case of *Liverpool City Council v Irwin*<sup>943</sup>, the respondent was awarded £10 by way of nominal damages for the failure of Liverpool City Council to fulfil its duty as a landlord. However, on appeal, the House of Lords reduced the amount from £10 to £5.<sup>944</sup> In the case of *Surrey County Council v Bredero Homes Ltd*,<sup>945</sup> a breach of a covenant by the developer by building more houses than permitted on land acquired from the Council resulted in the Council being awarded £2 by way of nominal damages.<sup>946</sup> Such a low-value, it is argued, will not serve as a penalty for the defendant even though a breach has occurred.<sup>947</sup>

However, in some breach -of-contract cases, the plaintiff or applicant has been awarded nominal damages but not necessarily legal costs.<sup>948</sup> In some cases, the plaintiff or applicant has had to bear the costs of the defendant or respondent (as well as their own). In the case of *Anglo-Cyprian v Paphos*,<sup>949</sup> the plaintiff claimed damages for breach of contract amounting to £2,028, but the court awarded him £52 nominal damages. The plaintiff claimed that the wine sold to him was substandard and the defendant argued by saying that there was no real defect in the good, and even if there was a defect, it was insignificant and could be compensated by low-value damages.<sup>950</sup> Devlin J held that there was a breach of contract and awarded minor damages of £52, but that since the plaintiff had not been able to establish damage to ‘anything which was value to them’, he was to be considered as an ‘unsuccessful plaintiff’ by the court and was ordered to bear the costs

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<sup>942</sup> *Mappouras v Waldrons Solicitors* [2002] EWCA Civ 842 [9].

<sup>943</sup> [1977] A.C. 239

<sup>944</sup> *Liverpool City Council v Irwin and another* [1977] A.C. 239 270.

<sup>945</sup> [1992] 3 All ER 302

<sup>946</sup> *Surrey County Council v Bredero Homes Ltd* 1362.

<sup>947</sup> David Pearce and Roger Halson, ‘Damages for Breach of Contract: Compensation, Restitution and Vindication’ (2008) 28 Oxford Journal of Legal Studies 73, 76.

<sup>948</sup> Catherine Elliott and Frances Quinn, *Tort Law* (Eight, Pearson Education Limited) 386.

<sup>949</sup> *Anglo-Cyprian Trade Agencies Ltd v Paphos Wine Industries Ltd* [1951] 1 All ER 873.

<sup>950</sup> *ibid.*

of the defendant.<sup>951</sup> This decision was followed in the case of *Mappouras v Waldrons Solicitor*,<sup>952</sup> where the applicant was awarded £15 nominal damages but was ordered to pay the respondent's cost.<sup>953</sup>

Even though consumers may ask for nominal damages in order to receive the court's acknowledgement that there has been a halal food law infringement, what it looks like to the general public is that the court is making a low-value award of damages.<sup>954</sup> Thus, nominal damages are not helpful in addressing the remedy issue for individual consumers in halal-food-abuse cases.

A consumer may claim breach of contract on the basis of non-halal food being sold as halal food. However, a factor that may prevent consumers from pursuing a claim is that the loss is small. As Howells and Weatherill stated, a complaint or action can be deemed ineffective or worthless because the amount of money involved is too small to be worth litigating.<sup>955</sup> Since halal food is related to the spiritual well-being of Muslim consumers, some might suffer emotional or psychological injury. There are consequences for eating non-halal food<sup>956</sup>, such as the prayers may not be answered<sup>957</sup>, invoking God's anger<sup>958</sup>, and becoming a polytheist<sup>959</sup>.

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<sup>951</sup> *ibid* 875.

<sup>952</sup> *Mappouras v Waldrons Solicitors* (n 942).

<sup>953</sup> *ibid* 24.

<sup>954</sup> Pearce and Halson (n 947) 76–77.

<sup>955</sup> Howells and Weatherill (n 497) 604.

<sup>956</sup> Team (n 87) 11.

<sup>957</sup> Abu Hurairah narrated, The Messenger (saw) mentioned the case of a man who, having journeyed far, is disheveled and dusty and who spreads out his hands to the sky [saying]: "O Lord! O Lord!" While his food is unlawful, his drink is unlawful, his clothing is unlawful, and he is nourished unlawfully, so how can he be answered?" [Sahih Muslim] #2393

<sup>958</sup> Ali bin Abu Talib (ra) narrated the Messenger (saw) said, "And Allah curses him who sacrifices for anyone besides Allah" [Sahih Muslim] #5239

<sup>959</sup> Allah (swt) says in the Qur'an, Surah Al Anam 6:121, 'Eat not, Oh believers, of that meat on which Allah (swt)'s name has not been pronounced at the time of slaughtering the animal, for surely it is Fisq (a sin and disobedience of Allah) and certainly the evil do inspire their friends to dispute with you and if you were to obey them by making a dead (un-slaughtered) animal lawful and eating it, then you would indeed be Mushrikoun (polytheists)'.



In the case of *Wellesley Partners LLP v Withers LLP*,<sup>960</sup> the court held that ‘a contract breaker is liable for damage resulting from his breach if, at the time of making the contract, a reasonable person in his shoes would have had damage of that kind in mind as not unlikely to result from a breach.’<sup>961</sup> Will this rule also apply to emotional or physical injury resulting from a breach of halal requirements? There are no cases on halal food fraud or misrepresentation to illustrate this.

The question is, can a consumer claim for emotional and physical injury for consuming non-halal food? This question has not been addressed by the CRA 2015 and therefore it is helpful to see whether there are other remedies applicable to consumers in halal food abuse cases.

## **6.5.2 Remedies in Tort**

In addition to remedies in contract, consumer can claim a remedy in tort on the basis that the seller of halal food has a duty of care to ensure that the food is halal. This section will start with a general explanation as to the possible torts that could be relevant in the case of halal food abuse, namely: (1) negligence, and (2) deceit.

### **6.5.2.1 Negligence in Halal Food Abuse Cases**

The law of torts covers wide-ranging situations, such as consumers injured by manufacturers’ product, patients injured by negligent health professionals, and pedestrians injured in road traffic accidents.<sup>962</sup> To establish a tort, three elements must be proven: a duty of care, a breach of such duty, and damage suffered due to the breach of such duty.<sup>963</sup>

The development of duty of care started with the landmark case of *Donoghue v Stevenson*<sup>964</sup>, where Mrs Donoghue drank a bottle of ginger beer produced by Stevenson

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<sup>960</sup> [2015] EWCA Civ 1146 (CA).

<sup>961</sup> *Wellesley Partners LLP v Withers LLP* [2015] EWCA Civ 1146 (CA) [69].

<sup>962</sup> Elliott and Quinn (n 948) 2.

<sup>963</sup> Sir Percy Henry Winfield and John Anthony Jolowicz, *Winfield and Jolowicz on Tort* (Sweet & Maxwell 2014) 78.

<sup>964</sup> *Donoghue v Stevenson* [1932] A.C. 562; 1932 S.C. (H.L.) 31; 1932 S.L.T. 317; [1932] W.N. 139 (House of Lords).

that contained a dead snail. She claimed damages for £500 for the shock and illness suffered through drinking the ginger beer. The court allowed the claim and held that a manufacturer of products owed a duty of care to consumers in relation to any defect that can cause injury to health. Lord Atkin stated that ‘... in such a case as the present the manufacturer owes a duty to the consumer to be careful’.<sup>965</sup> The case developed the neighbour principle whereby one must take reasonable care to avoid acts or omissions that could reasonably be foreseen as likely to injure one’s neighbour.

The interpretation of duty of care was later expanded in the case of *Anns v Merton London Borough Council*.<sup>966</sup> This case introduced a two-stage test: first, whether there was a sufficient relationship between the parties involved (‘proximity’) where the carelessness or negligence may give effect to the claimant, and second, whether there was anything that may limit or not allow a duty of care in this situation.<sup>967</sup> After several years, the two-stage test established in the case of *Ann* was overruled by a new test as set down in the case of *Caparo Industries plc v Dickman*.<sup>968</sup> This set a three-stage test: (1) whether the harm is reasonably foreseeable, (2) whether there is sufficient proximity between the parties, and (3) whether it is ‘fair, just and reasonable’ to implement a duty of care.<sup>969</sup> The Caparo test is used by the courts today as a basic test to establish the existence of a duty of care.<sup>970</sup> This section will identify whether consumers can claim for emotional and physical injury for consuming non-halal food in the law of tort.

As stated above in Chapter 6.4.1, most consumers of non-halal food do not suffer physical injury, but they may suffer psychological injury. However, a psychological injury will not be accepted in the law of negligence unless it is medically proven, as held in the case of *Mcloughlin v O’Brian and others*,<sup>971</sup> where the plaintiff was held to be entitled to damages for nervous shock as a result of witnessing the injuries suffered by her family caused by the defendants’ negligence.<sup>972</sup> Other examples of psychological injury are clinical depression, personality changes, tension, sleeping problems, and post-traumatic

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<sup>965</sup> *Donoghue v Stevenson* [1932] A.C. 562 584.

<sup>966</sup> *Anns v Merton London Borough Council* [1978] A.C. 728.

<sup>967</sup> *ibid* 767; *Winfield and Jolowicz* (n 963) 85; *Elliott and Quinn* (n 948) 18.

<sup>968</sup> *Caparo Industries plc v Dickman and others* [1990] 2 A.C. 605.

<sup>969</sup> *ibid* 656; *Elliott and Quinn* (n 948) 20.

<sup>970</sup> *Elliott and Quinn* (n 948) 20.

<sup>971</sup> *Mcloughlin v O’brian and others* [1983] 1 A.C. 410.

<sup>972</sup> *ibid* 411.

stress.<sup>973</sup> In order to claim damages for the tort of negligence other than the duty of care, the plaintiff must prove that there is a breach of duty and that damage is not too remote.<sup>974</sup>

A case involving religious sensitivity concerning food where the tort of negligence was committed by the defendant was *Bhamra v Dubb*<sup>975</sup>. The claimant's husband attended a Sikh wedding as a guest. The defendant was a caterer for the event and was aware that the Sikh religion prohibited meat, fish, and eggs because he was a Sikh follower. However, food ran out and he got extra food from the supplier. That food contained egg and he was aware of this.<sup>976</sup> The claimant's husband died after eating the dishes that contained egg due to his allergy. The judge stated that 'the need to comply with the demands of religious observance would call for quite a high standard of care' and the additional fact that some of the guests were allergic to eggs and that he failed to take reasonable steps to ensure that the food did not contain egg were sufficient to prove that there was a breach of duty by the defendant.<sup>977</sup> In this case, the negligence of the defendant caused the death of the claimant's husband, but will the court still award damages if there was no physical injury, only psychological injury, the same as when Muslims eat false halal food?

There are cases where the courts have only allowed physical injury and not psychological injury in the tort of negligence, as illustrated in the case of *Watts v Morrow*.<sup>978</sup> In this case, the court only allowed the physical injury and not emotional injury where the defendant was negligent when carrying out a survey on a house purchased by the plaintiffs. The court held that 'the plaintiffs were not entitled to damages for distress and inconvenience but instead they would each be awarded damages of £750 for physical discomfort'.<sup>979</sup>

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<sup>973</sup> Elliott and Quinn (n 948) 39.

<sup>974</sup> Amin and Abdul Aziz (n 21) 298.

<sup>975</sup> *Bhamra v Dubb* [2010] EWCA Civ 13.

<sup>976</sup> *ibid* 2.

<sup>977</sup> *ibid* 3.

<sup>978</sup> (1991) 4 ER 937 (CA)

<sup>979</sup> *Watts and another v Morrow* [1991] 4 All ER 939, [1991] 1 WLR 1421, [1991] EWCA Civ 9. Law Commission Report No 199 on Consumer Redress for Misleading and Aggressive Practices also make reference to this case on the item no damages for physical discomfort.

However, in some deceit cases, the courts have allowed psychological injury and this will be discussed in the next section.

### 6.5.2.2 Deceit in Halal Food Abuse Cases

The tort of deceit occurs when a person makes an untrue statement or makes a statement not knowing whether it is true or not.<sup>980</sup> The tort of deceit was first established in the 1789 case of *Pasley v Freeman*<sup>981</sup> but which is still relevant today.<sup>982</sup>

The first element of the tort of deceit is that there must be a false representation, either written, spoken or by conduct, as illustrated in the case of *R v Barnard*,<sup>983</sup> in which the wearing of an academic cap and gown with the intention to receive good credit in a shop and to portray himself as a member of university was a false representation by conduct.<sup>984</sup> The second element is that the representation must be a fact.<sup>985</sup> The third element is that the defendant must know that he has made a false representation, as illustrated in the case of *Derry v Peek*,<sup>986</sup> where the court held that the defendant must know that the representation is false or not know whether it is a right or wrong statement. The fourth element is the intention of the defendant for the claimant to act on the misrepresentation, as illustrated in the case of *Langridge v Levy*<sup>987</sup> which involved the sale of a defective gun to be used by the claimant and his son where the defendant had claimed that it was good, safe and secure but in fact it was not. The fifth element is that the claimant must have acted on the false representation, as in the case *Edgington v Fitzmaurice*.<sup>988</sup> The sixth and final element is that the claimant must have suffered damage due to the deceit (either physical injury or mental distress), as illustrated in the case of *Shelley v Paddock*<sup>989</sup>

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<sup>980</sup> Elliott and Quinn (n 948) 206.

<sup>981</sup> *Pasley and another v Freeman* (1789) 100 ER 450.

<sup>982</sup> Elliott and Quinn (n 948) 206.

<sup>983</sup> (1837) 7 C & P 784, 173 ER 342.

<sup>984</sup> *R v Barnard* (1837) 7 C & P 784, 173 ER 342.

<sup>985</sup> Elliott and Quinn (n 948) 207.

<sup>986</sup> *Derry v Peek* (1889) 14 App Cas 337, 54 JP 148, 58 LJ Ch 864, 1 Meg 292, 38 WR 33, [1886-90] All ER Rep 1, 61 LT 265, 5 TLR 625.

<sup>987</sup> *Langridge v Levy* (1837) 150 ER 863.

<sup>988</sup> *Edgington v Fitzmaurice* (1885) 29 Ch D 459, 50 JP 52.

<sup>989</sup> [1979] QB 120, [1978] 3 All ER 129.

where the court allowed the claimant's claim for damages for her travelling expenses and the distress caused by the fraud.<sup>990</sup>

Applying these elements to false halal food, it can be stated that there will be a written false representation if food is not halal but is labelled as halal, and that the defendant will be aware that he is selling false halal food, and has the intention to do so, and the claimant will have purchased the false halal food and that this might cause psychological injury to them.

In the case of *Archer v Brown*<sup>991</sup>, Pain J held that 'there was no reason in logic or justice why aggravated damages could not be awarded in deceit to compensate the plaintiff for his injured feelings' and the court awarded the plaintiff £500 aggravated damages.<sup>992</sup>

Even though this case is not about food, it illustrates the physical and emotional claim as a contractual issue. Based on the above, it seems that the consumer can be entitled to a remedy for physical injury, but whether he can claim for emotional or psychological injury is arguable and for the court to decide.

Consumers in halal food abuse may claim psychological injury if it involves the tort of deceit, but it is difficult to grant a remedy for psychological injury (such as stress in the tort of negligence) unless the claimant can prove clinically that they are suffering from psychological because of consuming non-halal food. The next section will explore the competent authority to deal with halal food abuse in the UK.

## **6.6 Competent Authority to Deal with Halal Food Abuse in the UK**

Halal food is treated the same as general food, and thus general food law and policy are applicable to halal food, as discussed earlier in Chapter 6.2.2. There are some government agencies<sup>993</sup> with responsibilities for planning, implementing, and enforcing food law. The role and function of all these government agencies will not be discussed in detail since

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<sup>990</sup> *Shelley v Paddock* [1979] QB 120, [1978] 3 All ER 129.

<sup>991</sup> [1985] QB 401

<sup>992</sup> *Archer v Brown* [1985] QB 401, [1984] 2 All ER 267 [4].

<sup>993</sup> Department for the Environment, Food and Rural Affairs (DEFRA), Department of Health, Department of Energy and climate Change, FSA and local borough, district or county council

the focus of this section is to identify the relevant authority for enforcing food law in the light of halal food abuse.

Section 5(1) of the Food Safety Act provides:

The food authorities in England and Wales are (a) as respect each London borough, district or non-metropolitan county, the council of that borough, district or county; (b) as respect the City of London (including the Temples), the Common Council; (c) as respects the Inner Temple or the Middle Temple, the appropriate Treasurer.

From the above, it can be stated generally that the councils are the competent food authorities in England. However, in some circumstances, there will be other competent authorities, such as the Food Standards Agency which deals with the enforcement of hygiene regulations<sup>994</sup> and the Department of Health if health issues are involved<sup>995</sup>, and these also have the power to enforce the law.

One of the advantage of the enforcement of false halal labelling falling within the remit of the council is that action can be taken immediately. For example, there have been three incidents reported by Birmingham City Council's Trading Standards involving false halal labelling:<sup>996</sup>

(1) The Halal Monitoring Committee (HMC) inspector discovered that meat provided in Birmingham bore counterfeit HMC stickers and notified Birmingham City Council's Trading Standards team, who attended the premises and seized five boxes of meat which were traced to Zaman Brothers in Bradford. The company was ordered to pay nearly £20,000 for false halal labelling.

(2) A consumer reported to Birmingham City Council's Trading Standards a trader who was selling non-halal meat that was claimed to be halal and the trader was fined £35,000.

(3) The Real China Restaurant was ordered to pay £8,900 for selling false halal meat.

Barbara Dring, Birmingham City Council's chairwomen of the licensing and Public Protection Committee, in the incident concerning the Real China Restaurant stated that the halal label will mislead consumers if the food is not halal and she stated that 'Trading

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<sup>994</sup> Food Safety and Hygiene (England) Regulations (n 746) Regulation 4(1).

<sup>995</sup> Food Safety Act 1990 (n 746).

<sup>996</sup> 'Birmingham Trading Standards - Halal Fraud Investigations' (n 745).

Standards takes such breaches of legislation extremely seriously, and will take appropriate enforcement action to ensure customers are not duped'.<sup>997</sup> A representative from the English Beef and Lamb Executive's halal steering group stated that three quarters of poultry sold as halal in the UK is falsely labelled.<sup>998</sup>

Thus, it can be seen that enforcement of the law is very important to address halal food abuse since most abuses will involve false labelling. In addition, on 1 October 2015, the CRA widened the action that the competent authority may take in the civil court by introducing Enhanced Consumer Measures (ECMs) under Part 8 of Enterprise Act 2002.<sup>999</sup> ECMs are a range of measures that can be taken by the competent authority to deal with a violation of law involving consumers, such as an enforcement order<sup>1000</sup> and undertaking.<sup>1001</sup> ECMs will be discussed in the next section.

### **6.7 Civil Consumer Enforcement Power in Part 8 of Enterprise Act 2002**

Halal-food abuse involves a violation of consumer rights as discussed earlier in Chapter 6.2. The enforcement agency may use the provisions of Part 8 of the Enterprise Act 2002 (EA 2002) to stop or prevent the trader or manufacturer from abusing halal food and violating consumer law. This section discusses the measures provided by Part 8 of the EA 2002 following the introduction of Enhanced Consumer Measures (ECMs) as provided by section 79 of the Consumer Rights Act 2015. In this section, reference will be made to Part 8 of the Enterprise Act 2002 and the guidance for enforcers in consumer law: *Enhanced Consumer Measures*, published in May 2015 by the Department for Business Innovation & Skills (hereinafter 'The Guidance 2015'). This section examines the extent to which the measures under Part 8 of the EA 2002 may address halal food abuse issues.

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<sup>997</sup> Catherine Lillington, 'Restaurant Ordered to Pay out £8,900 over False Halal Meat Claim' (*birminghammail*, 12 February 2014) <<http://www.birminghammail.co.uk/news/midlands-news/restaurant-ordered-pay-out-8900-6697090>> accessed 18 December 2016.

<sup>998</sup> Hickman Martin, 'New EU Rules Require Compulsory Labelling of Halal Meat' *The Independent* (20 October 2010) <<http://www.independent.co.uk/life-style/food-and-drink/news/new-eu-rules-require-compulsory-labelling-of-halal-meat-2006114.html>> accessed 2 January 2016; Savvas Christina, 'Poultry Sold as Halal "Falsely Labelled"' (13 March 2010) <<http://www.jotformpro.com/form/22822675375965>> accessed 3 January 2016.

<sup>999</sup> Consumer Rights Act (n 899).

<sup>1000</sup> Enterprise Act 2002 s 217.

<sup>1001</sup> *ibid* 219.

Part 8 aims to ensure that traders comply with their obligations<sup>1002</sup> and do not repeat any offence in the future through the use of an enforcement order<sup>1003</sup> or undertaking by the enforcer.<sup>1004</sup> To apply this provision, the violation is effecting the collective interest of consumer either in domestic infringements involving any violation of laws that ‘harms the collective interest of consumers in the UK’<sup>1005</sup> or community infringements involving violation under EU laws that ‘harms the collective interest of consumer’<sup>1006</sup>. Section 213 of the EA 2002 classifies enforcers into four different categories:

(1) General enforcers such as the Competition and Markets Authority (CMA), Trading Standards, and the Department of Enterprise and Trade and Investment in Northern Ireland;<sup>1007</sup>

(2) Any designated enforcer (public or private agency that provides protection for consumers as one of its purposes and ‘designates by order’;<sup>1008</sup>

(3) A community enforcer, ie a body that qualifies ‘for the purpose of injunctions directive’<sup>1009</sup> for ‘cross-border enforcement’ and apply to enforce from European Economic Area (EEA) member states;<sup>1010</sup> and

(4) The Consumer Protection Cooperation (CPC), which is an agency appointed by the Secretary of State to deal with community infringement.<sup>1011</sup>

Section 14 of the EA 2002 further provides that an enforcer must approach the trader for consultation before it takes any further enforcement action. The purpose of such consultation is to bring about the ceasing of the infringement,<sup>1012</sup> and for the infringer not

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<sup>1002</sup> *ibid* 15.

<sup>1003</sup> *ibid* 19.

<sup>1004</sup> *ibid* 15.

<sup>1005</sup> *ibid* 211.

<sup>1006</sup> *ibid* 212.

<sup>1007</sup> *ibid* 213(1).

<sup>1008</sup> *ibid* 213(2).

<sup>1009</sup> *ibid* 213(5).

<sup>1010</sup> Competition & Markets Authority (CMA), ‘Consumer Protection - Enforcement Guidance’ (2016) para 13 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/546521/cma58-consumer-protection-enforcement-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546521/cma58-consumer-protection-enforcement-guidance.pdf)> accessed 25 February 2017.

<sup>1011</sup> Enterprise Act (n 1000).

<sup>1012</sup> *ibid* 214(2)(a).



to commit the violation again<sup>1013</sup> and to ensure community infringement does not take place.<sup>1014</sup> The application for an enforcement order can be made after the expiry of 14 days<sup>1015</sup> (in the case of an enforcement order) and 7 days (in the case of an interim enforcement order<sup>1016</sup>) after the consultation period. However, the consultation period can be extended up to 28 days if the trader is a member of or represents a body that operates a consumer code of practice set out in section 14(4A) of the EA 2002.<sup>1017</sup>

If the enforcer accepts an undertaking from the trader, it does not have to apply for an enforcement order.<sup>1018</sup> The undertaking must ensure that the trader will not continue or repeat the harmful conduct,<sup>1019</sup> ‘does not engage in such conduct’,<sup>1020</sup> and ‘does not consent to or connive in the carrying out of such conduct by a body corporate where he has a special relation’.<sup>1021</sup> The undertaking by the trader will not be limited to stopping or repeating the breach but they can give an undertaking in relation to ECMs as provided by section 219 (5ZA) of the EA 2002. ECMs will be examined below in Chapter 6.7.1, 6.7.2 and 6.7.3. If the trader breaches its undertaking, enforcement action can be taken against the trader and the court will make an enforcement order on the basis of the breach of the undertaking and as provided by section 217(4) of the EA 2002. The trader can also make an undertaking to the court, but failure to honour its undertaking will make it liable for contempt of court.<sup>1022</sup>

An application for an enforcement order can be made if it is not possible to resolve the issue by way of an undertaking.<sup>1023</sup> The trader will be notified of the procedure involved and it will have the opportunity to defend its case.<sup>1024</sup> If the court think it is necessary to make an interim order, such order will be temporary until the court makes a final

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<sup>1013</sup> *ibid* 214(2)(b).

<sup>1014</sup> *ibid* 214(2)(d).

<sup>1015</sup> *ibid* 214(1A)(a).

<sup>1016</sup> *ibid* 214(1A)(b).

<sup>1017</sup> *ibid* 14(4)(a).

<sup>1018</sup> *ibid* 219(2).

<sup>1019</sup> *ibid* 219(4)(a).

<sup>1020</sup> *ibid* 219(4)(b).

<sup>1021</sup> *ibid* 219(4)(c).

<sup>1022</sup> Competition & Markets Authority (CMA) (n 1010) para 4.14.

<sup>1023</sup> Enterprise Act (n 1000).

<sup>1024</sup> Competition & Markets Authority (CMA) (n 1010) para 4.16.

decision.<sup>1025</sup> In the final hearing, if the court decides in favour of the enforcer and makes the enforcement order, the trader must cease the violation, must not repeat the violation, and must consent not to carry out this violation in any body corporate connected with it.<sup>1026</sup>

Looking at previous practice, before the introduction of the CRA 2015, there was no flexibility for enforcers to obtain the best outcome for both the consumer and the trader. If it involved criminal proceedings, the traders had to pay a fine or face imprisonment and if it involved a civil action, it would stop the violation of the law but the consumer would receive no compensation for his financial loss unless the case was brought to the court.<sup>1027</sup> However, if the breach affected collective consumers, the enforcer could cease the violation by way of an enforcement order<sup>1028</sup> or undertaking<sup>1029</sup> to ensure that consumers were protected from the breach.

However, this measure was rarely used by enforcers; there was only an average of five enforcement orders and 135 undertaking each year from 2007 to 2012.<sup>1030</sup> In the event that the case was brought to court, it increased costs, and this is one of the reasons why enforcers were reluctant to apply to court.<sup>1031</sup>

Before the introduction of the CRA 2015, there was no mechanism for an enforcer to seek a remedy on behalf of consumers and therefore, consumers had to bring the case on their own to cover their loss.<sup>1032</sup> This was done by obtaining private redress and suing the trader

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<sup>1025</sup> Enterprise Act (n 1000).

<sup>1026</sup> *ibid* 217(6).

<sup>1027</sup> Department for Business Innovation & Skills, 'Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law' para 27 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/431158/bis-15-292-guidance-for-enforcers-of-consumer-law.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/431158/bis-15-292-guidance-for-enforcers-of-consumer-law.pdf)> accessed 16 January 2017.

<sup>1028</sup> Enterprise Act (n 1000).

<sup>1029</sup> *ibid* 219.

<sup>1030</sup> Department for Business Innovation & Skills, 'Civil Enforcement Remedies : Extending the Range of Remedies Available to Public Enforcers of Consumer Law - Impact Assessment' (*Civil Enforcement Remedies*, 2012) para 24 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32715/12-1194-civil-enforcement-remedies-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32715/12-1194-civil-enforcement-remedies-impact-assessment.pdf)> accessed 21 January 2017.

<sup>1031</sup> Peter Cartwright, 'Redress Compliance and Choice: Enhanced Consumer Measures and the Retreat from Punishment in the Consumer Rights Act 2015' (2016) 75 *The Cambridge Law Journal* 271, 278.

<sup>1032</sup> *ibid* 278–279.

in court. If the consumer had lost a small amount of money, they were reluctant to bring the matter to the court and this gave an advantage to the traders to use this position and profit from consumers.

With the introduction of the CRA 2015, the enforcement agency can now choose to use ECMs as provided under Part 8 of the EA 2002 in two circumstances: (1) after the court makes an enforcement order or obtains an undertaking from the trader, or (2) when the enforcer agrees with the undertaking that includes ECMs.<sup>1033</sup> The decision whether to apply ECMs depends on the enforcer, but the measures must be just, reasonable, and proportionate having regard to the loss suffered by the consumer.<sup>1034</sup> What is proportionate is provided by section 219(B)(2) of the EA 2002 as giving a benefit to consumers and the cost involved for the application of the measure being proportionate.<sup>1035</sup> The enforcer must also provide sufficient justification for implementing the measures in dealing with trader's behaviour and how they might impact the consumer.<sup>1036</sup> To ensure the enforcer provides just, reasonable, and proportionate measures, the guidelines provided by the regulator code lay down guidance in dealing with any enforcement action such as: supporting those they regulate to grow<sup>1037</sup>, engage with them<sup>1038</sup>, provide clear information and give advice to enable them to comply with the law<sup>1039</sup>, and be transparent.<sup>1040</sup> However, if the measures suggested by the enforcer are refused by the trader on the basis that they are not just, reasonable, and proportionate, the enforcer can ask for the matter to be decided by the court.<sup>1041</sup> This the new measure

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<sup>1033</sup> *ibid* 280.

<sup>1034</sup> Department for Business Innovation & Skills, 'Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law' (n 1027) para 35.

<sup>1035</sup> Enterprise Act (n 1000).

<sup>1036</sup> Department for Business Innovation & Skills, 'Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law' (n 1027) para 82.

<sup>1037</sup> Department for Business Innovation & Skills, 'Regulators' Code' para 1 <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/300126/14-705-regulators-code.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf)> accessed 6 February 2017.

<sup>1038</sup> *ibid* 2.

<sup>1039</sup> *ibid* 5.

<sup>1040</sup> *ibid* 6.

<sup>1041</sup> Department for Business Innovation & Skills, 'Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law' (n 1027) para 28.

was introduced by the CRA 2015 and gives enforcers of consumer law a flexible approach to deal with traders for better redress for consumers in the event of any breach.<sup>1042</sup>

Section 219A (1) of the EA 2002 sets out three measures: (a) redress for consumers<sup>1043</sup>, (b) compliance of traders<sup>1044</sup>, and (c) information for consumers to enable them to make choices<sup>1045</sup>. These measures can be combined or used individually.<sup>1046</sup>

### **6.7.1 Redress Measures**

There are three redress measures provided by the ECM to the enforcer, but if these three measures are not proportionate, then the redress measures for consumers to recover their monetary loss will take priority and there is no minimum amount of financial loss set by law before the measure can be used.<sup>1047</sup> This means that if the consumer loses a small amount of money due to the breach of law, the enforcer can still use these measures to recover the loss suffered by the consumer. However, it is up to the enforcer to decide whether this type of redress is appropriate or not.<sup>1048</sup> Applying this measure to halal food abuse would benefit a consumer where there is a chance for them to recover their loss.

Section 219A(1)(2) of the EA 2002 sets out three measures in the redress category:

- (1) Proposed compensation for consumers who have suffered loss;<sup>1049</sup>
- (2) In the case of breach of contract, offering consumers the termination of the contract;<sup>1050</sup> and

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<sup>1042</sup> *ibid* 1.6.

<sup>1043</sup> Enterprise Act (n 1000).

<sup>1044</sup> *ibid* 219A (3).

<sup>1045</sup> *ibid* 219A (4).

<sup>1046</sup> Department for Business Innovation & Skills, 'Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law' (n 1027) 13.

<sup>1047</sup> *ibid* 48–49.

<sup>1048</sup> *ibid* 13 FAQ 13.

<sup>1049</sup> Enterprise Act (n 1000).

<sup>1050</sup> *ibid* 219A (2) (b).

(3) If the consumer is unidentified, ‘measures should be taken for the collective interest of the consumers.’<sup>1051</sup>

Thus, in addition to consumers being able to recover their loss, the enforcer can also terminate the contract. In the case that the consumer is not able to be identified, which may happen in halal food abuse incidents, a measure can be taken for the collective interests of consumers where the money can be paid to charity.

Section 219B(4)(A) provides redress for consumers who have suffered loss. Whether it is limited to pecuniary loss or extends to non-pecuniary loss is not clear. To apply this measure to halal food abuse, it is helpful if the consumer can also claim for non-pecuniary loss. In ECMs, there is no amount of loss set by law to apply such measures but there are certain questions provided by the Guidance 2015 in identifying a consumer’s loss, such as: how much has the consumer lost? Does the business have records to identify the consumer who has suffered that loss? And how will the trader pay the consumer?<sup>1052</sup> The enforcer will work with the trader to identify the loss suffered by the consumer by referring to the trader’s payment record and any complaints made by consumers.<sup>1053</sup> This shows that ECMs only work for pecuniary loss because the loss will be identified through the trader’s payment record. If the consumer accepts the measures proposed, they will waive their right to recover the different amount that they lost.<sup>1054</sup> It is also stated in the Guidance 2015 that ‘some consumers may not get back 100% of the loss they have suffered ... it will be up to individual consumers to decide whether or not to accept this offer or redress’<sup>1055</sup>. Thus, if the consumer is not satisfied with the offer of redress, they can initiate court action to recover whatever loss they have suffered from consuming non-halal food. The example given in the Guidance 2015 as to when a consumer should not be compensated for their loss is if a large number of consumers are involved and the amount of loss varies for each consumer, can be criticized.<sup>1056</sup> It is argued that if the amount of loss and number of consumers in the dispute can be identified, they should be

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<sup>1051</sup> *ibid* 219A (2) (c).

<sup>1052</sup> Department for Business Innovation & Skills, ‘Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law’ (n 1027) para 54.

<sup>1053</sup> *ibid* 18.

<sup>1054</sup> Enterprise Act (n 1000).

<sup>1055</sup> Department for Business Innovation & Skills, ‘Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law’ (n 1027) para 59.

<sup>1056</sup> *ibid*.

compensated according to their actual losses irrespective of the numbers of consumers involved or the amount of loss varying among them. However, an exception can be made where there is a problem identifying the amount of loss or identifying the consumers involved. Since the enforcer has power and responsibility to decide on this matter, it should decide accordingly and choose the measure wisely because the main purpose of ECMs is to provide a better outcome for the victims of the infringement of law, which is the consumer.<sup>1057</sup>

In addition, court must take into consideration the cost of implementing the redress measure. In a case study provided in the Guidance 2015, if there is a breach and the loss suffered by 1,000 consumers is £10,000, and each consumer loses £10, the redress is proportionate if the business can provide records of the consumers and the cost involved to implement the measure is minimal.<sup>1058</sup> However, if the business is small and it has no proper records of the consumers and implementing the measure will cost it £12,000, more than the loss suffered by the consumer, then it will not be proportionate.<sup>1059</sup> Thus, the enforcer can decide whether the redress is proportionate and how much the consumers should receive to compensate them for their loss.

One of the interesting features of this redress measure is that the enforcer may seek action for the ‘collective interest of consumers’.<sup>1060</sup> This can be done if it is disproportionate for the trader to identify all consumers involved in the breach and the loss should be paid to charity.<sup>1061</sup> In the event that the consumer who can be identified refuses to accept the redress offer, the loss of that consumer should not be paid to charity.<sup>1062</sup>

Even though this measure is new and was only introduced in October 2015, it is helpful in dealing with halal food abuse. As mentioned earlier in Chapter 5.2.1, the consumer does not have much choice in terms of private remedies for halal food abuse. The amount involved is sometimes too small to be worth litigating and the introduction of ECMs will give consumers the hope of being compensated for the abuse. In addition, halal food abuse

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<sup>1057</sup> *ibid* 6.

<sup>1058</sup> *ibid* 14.

<sup>1059</sup> *ibid* 15.

<sup>1060</sup> Enterprise Act (n 1000).

<sup>1061</sup> Department for Business Innovation & Skills, ‘Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law’ (n 1027) paras 61–62.

<sup>1062</sup> *ibid* 64.

may involve collective consumers. Even though the amount of loss may be small, if the number of consumers involved in the infringement is large, it will have an impact on the business. For example, a trader sells non-halal food as halal for £5 to 10,000 consumers. Before the introduction of the CRA 2015, each consumer would have lost £5 but the trader would have made £50,000 and it is very unlikely that any of the consumers would take action for the infringement and claim compensation even though each consumer had the right to do so. This was one of the limitations of consumer law before the introduction of the CRA 2015 which provides a mechanism for the enforcer to give redress to consumers.<sup>1063</sup> The redress measure will not only compensate consumers for their loss but will also teach traders a lesson because the trader in the situation above would have to compensate consumers for their collective loss amounting to £50,000. Consequently, traders will be more cautious when dealing with halal food. This not only protects consumers but also prevents abuse from recurring. The next section will examine the second ECM: the compliance measure.

### **6.7.2 Compliance Measures**

Compliance measures are set out in section 219A(3) of the EA 2002:

The measures in the compliance category are measures intended to prevent or reduce the risk of the occurrence or repetition of the conduct to which the enforcement order or undertaking relates (including measures with that purpose which may have the effect of improving compliance with consumer law more generally).

These are preventive measures to ensure that the breach does not occur in the future. Cartwright suggests that ‘the focus here is not looking at how redress can be provided for past breaches, but on how future breaches might be best avoided’.<sup>1064</sup> For this type of measure, the enforcer must ensure that it is proportionate for the trader to comply with the measure set by the enforcer.<sup>1065</sup>

The Guidance 2015 provides an example of a compliance measure where the consumer paid an extra fee for next-day delivery but the product did not arrive on time. Upon investigation by the enforcer, it is found that the delay is due to the shortage of staff and

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<sup>1063</sup> Cartwright (n 1014) 281-282.

<sup>1064</sup> *ibid* 289.

<sup>1065</sup> Department for Business Innovation & Skills, ‘Enhanced Consumer Measures: Guidance for Enforcers of Consumer Law’ (n 1027) para 68.

staff not being properly trained. The business takes action by making a refund to the consumer for late delivery and advertises for temporary staff. The enforcer suggests that the business conducts staff training but the business refuses. Here, the enforcer may issue an enforcement order for the business to improve its staff training and appoint a customer complaints manager and the court will consider such compliance measure as just, reasonable, and proportionate to ensure against future breaches.<sup>1066</sup> Cartwright identified that the compliance measure is flexible and allows the trader to become responsive to the violation of law and stated that ‘the compliance category has changing behaviour at its core, not through deterrence, but through specifying what is necessary for future compliance’.<sup>1067</sup> It helps traders to abide the law and follow regulation, but its most important feature is to ensure that the abuse or violation of law does not occur in the future.

In halal food issues, there are various reasons why halal food becomes non-halal, as discussed earlier in Chapter 4. The compliance measure can be used against halal food establishment that violate any of the halal requirements to ensure that breach will not occur again in the future.

### **6.7.3 Information Measures**

Information measures are helpful to give consumers information on the past performance of a trader so that they can make informed choices. They are provided for by section 219A(4) of the EA 2002. They help make markets more disciplines because they impact negatively on any business affected.<sup>1068</sup> Cartwright suggests that this measure can work in two ways: first as a sanction, where negative publicity is deemed a sanction that can impact the trader’s profit and, second, by helping consumers make informed choices and choose a lawful trader.<sup>1069</sup>

For halal food, information concerning quality, hygiene, and halal food requirements as discussed earlier in Part 1 of this section are all of high importance for consumers. The trader who abuses halal food and may have an information measure applied to them.

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<sup>1066</sup> *ibid* 23.

<sup>1067</sup> Cartwright (n 1031) 290.

<sup>1068</sup> *ibid*.

<sup>1069</sup> *ibid*.



Consumers will be able to identify the right halal food supplier and ensure that the halal food requirements are fulfilled. This will be one of the mechanisms for consumers to ensure that they not purchase food from traders who have a history of supplying false halal food.

ECMs as provided by the EA 2002 give hope to consumers in terms of halal food abuse. The existence of ECMs strengthen consumers' position and give them positive power. However, Cartwright mentioned that there is a concern as to the application of ECMs in that the enforcer may look for the best result either to seek a 'positive outcome to a consumer' or 'the imposition of an appropriate penalty upon a wrongdoer'.<sup>1070</sup> This is where the enforcer must play their role and choose the option that can have the best impact and positive outcome for consumers and traders.

Yet the most important matter for consumers in terms of halal food abuse is to ensure that the abuse does not happen again in the future and the trader learns a lesson for the breach committed. ECMs not only provide redress for consumers'; they also ensure compliance by traders and ensure that breaches are not repeated. In addition, they also provide information to consumers and enable consumers to choose a trader that is not abusing halal food.

## **6.8 Conclusion and Potential Solutions**

Current legislation does not provide solutions to the problem concerning religious requirement. The only reference available for the religious requirement is the FSA Guideline, but it does not enjoy legal authority. This still presents a lacuna in the issue of halal food. Added to this problem is the fact that the Muslim community has differing views on what constitutes halal.

To fill in the gap, one of the steps that can be taken by the authorities is to incorporate the FSA Guideline into schedule 3, regulation 27 of WATOK 2015. This is because the FSA Guideline contains a halal definition and requirement as provided by Sharia law. Even though there are different opinions on the part of Muslims concerning certain procedures, the FSA Guideline remains the best reference for the requirement for halal food. The FSA

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<sup>1070</sup> *ibid* 299–300.

Guideline is only applicable to halal food. Further discussion and consideration should take place to ensure that the law is accepted by the Muslim community.

Other than the above, it is also important to admit that one of the difficulties in halal food is effective monitoring of the food process<sup>1071</sup> because the religious requirement in halal is very complex to fulfil.<sup>1072</sup>

Pursuant to article 17(6) of Council Regulation (EC) 1099/2009, for an abattoir handling more than 1,000 livestock units of mammals or 150,000 birds or rabbits per year, they should have an Animal Welfare Officer (AWO) to ensure that the abattoir complies with the rules and regulation. The FSA also will provide a veterinary officer (VO) and they will check the compliance with procedure by the AWO but in practice, they cannot continuously observe the process and there are risks of non-compliance.<sup>1073</sup>

### **6.8.1 CCTV as a Tool to Ensure Compliance**

As discussed earlier in Chapter 6.3.1.3.1 and 6.3.1.3.2 concerning issue of non-stunning slaughter and the difficulty in observing the religious requirement, CCTV can be used as a tool to ensure compliance. This is one of the options that is currently supported by animal welfare groups and could also be used to ensure the compliance of halal requirement. This could be part of the solution to resolving the monitoring problem in order to ensure the requirements of halal are fulfilled. Consumers would be more confident with the production of halal food especially as to the fulfilment of the religious requirement. Infringement of religious requirement is difficult to observe. For example, in the slaughtering process, how can a person tell whether the chicken has died in an electrical water bath or whether it has been properly slaughtered? Only the person on the scene can prove it and CCTV installation would be very helpful in this scenario.

Article 3 of Council Regulation (EC) 1099/2009 requires food business operators (FBOs)<sup>1074</sup> to take necessary measures to protect animal welfare provided in the

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<sup>1071</sup> Farouk (n 228) 818.

<sup>1072</sup> Bonne and Verbeke (n 472) 115.

<sup>1073</sup> Farm Animal Welfare Committee (FAWC) (n 813) para 21; British Veterinary Association (BVA) (n 813).

<sup>1074</sup> 'Food Business Operator (FBO) means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control' as provided in Article 3,

Regulation. Further, Article 5 provides the requirement for abattoirs to perform systematic checks to ensure that the animal is stunned properly and to check the signs of consciousness after slaughtering the animal in both stun and non-stun slaughter. In addition to the above, article 16 requires abattoirs to have appropriate monitoring procedures in their abattoir to ensure compliance with article 5. For this purpose, CCTV could be implemented as one of the measures to achieve this objective.

If there is infringement of the religious requirement, the status of halal food will be in doubt. It can also be argued that the audit is taken place to ensure the fulfilment of the halal requirement, but it is not conducted every day. The installation of CCTV would ensure compliance and help enforcers to obtain evident in the case of infringement and give confidence to consumers in consuming halal food.

In more recent times, and as a possible way forward, the UK Government considered compulsory CCTV at an abattoir in 2013 as part of the implementation of Council Regulation (EC) 1099/2009, but then decided not to make it mandatory.<sup>1075</sup> The Royal Society for the Prevention of Cruelty to Animals (RSPCA) was upset with the Government's decision not to introduce legislation for compulsory CCTV because it is one of the way to observe the welfare of animals during the killing process.<sup>1076</sup>

However, abattoirs have been encouraged to voluntarily instal CCTV in their premises by the FSA as best practice, as well as additional administrative devices for animal welfare, since 2010.<sup>1077</sup> This is often because officers are not able to observe the slaughtering of all animals and the space in a stunning pen is limited.<sup>1078</sup> CCTV demonstrates a high-standard operation and the FSA supports voluntary CCTV installation as best practice because it is not required by existing legislation.<sup>1079</sup>

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Paragraph 6 Regulation (EC) 178/2002 and Chapter 7 Enforcement Manual for FSA Official Controls <https://www.food.gov.uk/sites/default/files/chapter-7.pdf> accessed 11 August 2016.

<sup>1075</sup> Downing (n 221) 20.

<sup>1076</sup> *ibid* 21–22.

<sup>1077</sup> British Veterinary Association (BVA) (n 813) para 3.

<sup>1078</sup> Food Standards Agency, 'Slaughter Licensing and Animal Welfare | Food Standards Agency' <<https://www.food.gov.uk/enforcement/approved-premises-official-controls/meatplantsprems/animal-welfare#toc-5>> accessed 1 August 2016.

<sup>1079</sup> *ibid*.

Animal Aid, an organization supporting mandatory CCTV installation in abattoirs, has reported incidents concerning animal welfare where halal abattoirs are involved in the animal slaughtering process. In 2015, Animal Aid took secret video footage in Bowood Yorkshire Lamb halal slaughterhouse<sup>1080</sup> as a part of its investigation into animal cruelty in UK slaughterhouses.<sup>1081</sup> In 2016, there was another undercover video which exposed cruelty to animals involving Morrison supplier Simply Halal's which provided non-stun halal and kosher meat but failed to fulfil the halal and animal welfare requirements during the process.<sup>1082</sup>

Due to these incidents, slaughtermen's licences were suspended by the HFA and further investigations were made for the purposes of prosecution.<sup>1083</sup> Animal Aid has been involved in a campaign for mandatory CCTV and claims that it has found breaches of animal welfare law in nine out of the ten abattoirs involved in its investigation.<sup>1084</sup> In February 2016, 134 Members of Parliament (MPs) signed a parliamentary motion to support this campaign and the British Veterinary Association published its policy in supporting mandatory CCTV in abattoirs in November 2015.<sup>1085</sup> According to the FAWC, the motion was put forward in January 2013 and there have been a few motions since then but none has been brought to formal debate or legislation.<sup>1086</sup>

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<sup>1080</sup> Kathryn Snowdon, 'Bowood Yorkshire Lamb Halal Slaughterhouse Where Staff Abused Animals Goes Into Administration' *The Huffington Post* (13 August 2015) <[http://www.huffingtonpost.co.uk/2015/08/13/bowood-yorkshire-lamb-halal-slaughterhouse-animal-abuse-administration\\_n\\_7982256.html](http://www.huffingtonpost.co.uk/2015/08/13/bowood-yorkshire-lamb-halal-slaughterhouse-animal-abuse-administration_n_7982256.html)> accessed 10 August 2016; Dan Hyde, 'Secret Halal Slaughterhouse Film Reveals "horrific" Animal Abuse' *The Telegraph* (3 February 2015) <<http://www.telegraph.co.uk/news/shopping-and-consumer-news/11384505/Secret-halal-slaughterhouse-film-reveals-horrific-animal-abuse.html>> accessed 10 August 2016.

<sup>1081</sup> Downing (n 221) 20.

<sup>1082</sup> Lewis Panther, 'Halal Horror House as Undercover Video Exposes Cruel Abattoir' *mirror* (1 May 2016) <<http://www.mirror.co.uk/news/uk-news/halal-horror-house-undercover-video-7871779>> accessed 10 August 2016.

<sup>1083</sup> Food Standards Agency, 'FSA Statement on Abattoir Footage Released by Animal Aid | Food Standards Agency' <<https://www.food.gov.uk/news-updates/news/2015/13519/fsa-statement-on-footage-released-by-animal-aid>> accessed 10 August 2016.

<sup>1084</sup> 'Archived Petition: Make CCTV Mandatory for All Slaughterhouses' (*Petitions - UK Government and Parliament*) <<https://petition.parliament.uk/archived/petitions/64997>> accessed 10 August 2016.

<sup>1085</sup> 'Slaughterhouse CCTV | Animal Aid's Campaign for Mandatory CCTV and Independent Monitoring in All UK Slaughterhouses.' <<http://www.slaughterhousecctv.org.uk/>> accessed 3 August 2016.

<sup>1086</sup> Farm Animal Welfare Committee (FAWC) (n 813) para 15.

In relation to the uses of law and halal food in the UK generally, there appears to be support for the idea of CCTV. A report provided by FAWC in February 2015 claims there are many advantages of CCTV including the advantage of recording and monitoring the abattoir and the slaughtering process in the absence of a veterinary officer (VO).<sup>1087</sup> In addition, it can be useful as a security measure and the industry agrees on the potential of CCTV for administrative purposes.<sup>1088</sup> However, it cannot be used as a substitute for the physical observation of the processes.<sup>1089</sup>

CCTV should be seen more as an additional device to monitor the activity of abattoirs, detecting possible activity involving animal abuse or violation of the law.<sup>1090</sup>

Returning to the issue of halal, CCTV may well prove a benefit in helping to provide evidence for halal auditing and verify compliance with law or certification requirements.<sup>1091</sup>

However, the downside of CCTV for the industry as a whole is the cost involved, which could in some cases amount to between £3,000 and £10,000.<sup>1092</sup> George Eustice, the Defra Minister, said that the camera installation cost is ‘relatively modest’<sup>1093</sup>. Even though it is not mandatory, many abattoirs are installing CCTV in their premises.<sup>1094</sup>

Mohammed Saleem, who is an advisor to the UK and EU Parliaments, said, ‘all abattoirs, including halal should embrace [CCTV] at their killing stations’ to ensure the compliance of law and ensure animal welfare protection, health and hygiene.<sup>1095</sup> It is worth considering whether, apart from abattoirs, CCTV can also be applied to halal food

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<sup>1087</sup> *ibid* 32.

<sup>1088</sup> *ibid* 33.

<sup>1089</sup> *ibid* 62.

<sup>1090</sup> *ibid* 43.

<sup>1091</sup> *ibid* 49.

<sup>1092</sup> *ibid* 68.

<sup>1093</sup> ‘Slaughterhouse CCTV | Animal Aid’s Campaign for Mandatory CCTV and Independent Monitoring in All UK Slaughterhouses.’ (n 1085).

<sup>1094</sup> British Veterinary Association (BVA) (n 813) para 3.

<sup>1095</sup> Halalfocus, ‘UK: Birmingham MP Demands Cameras in Animal Slaughterhouses’ (*halalfocus.net*, 26 October 2014) <<http://halalfocus.net/uk-birmingham-mp-demands-cameras-in-animal-slaughterhouses/>> accessed 11 August 2016.

preparation in the case of some halal food, thereby offering a practical solution to protect halal food from abuse.

### **6.8.2 Mandatory Labelling as a Way Forward**

The issue of labelling may also offer some prospect of a way forward. A number of labelling cases were discussed earlier in Chapter 6.3.2.4. These are cases that were investigated concerning false labelling and which led to prosecutions.<sup>1096</sup> Currently, many organizations support mandatory labelling and it is very helpful for the consumer if domestic regulation concerning the requirement to label with the method of slaughter can be regulated, and the term ‘halal’ can be defined to avoid confusion among consumers.

This chapter set out to examine and understand the responses to the misuse of halal from an English law perspective, but in order to do so, it has been necessary to explore many different avenues that are relevant and critical to the subject. It has become clear that the issue of halal food, so important for the Muslim community, is fraught with internal and external difficulties which have serious complexities and which are not easily resolved. The positive aspect of looking at English law in this way is that it opens up the wider European perspective and it becomes clear that the issue of halal food is on the agenda and is recognized as being important. Further, the introduction of ECMs will help protect consumers from halal food abuse if they are utilized properly.

The next chapter analyses the findings of this thesis and how best to provide better protection of consumer in halal food. The Malaysian and English law position concerning the regulatory framework, remedies and administrative action as discussed earlier in this thesis will also be analysed. Recommendations will then be made to ensure effective protection for consumers and also to reduce/prevent infringement of halal food requirements in Malaysia.

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<sup>1096</sup> ‘Birmingham Trading Standards - Halal Fraud Investigations’ (n 745).

## CHAPTER 7: FINDINGS, RECOMMENDATIONS, AND CONCLUSIONS

### 7.1 Introduction

This chapter aims to discuss the findings of this thesis, identify the most important aspects of enhancing consumer protection in the halal food industry, and provide reflection on the current legal infrastructure of halal food in Malaysian law and English law.

This thesis analysed halal food abuses from a consumer protection perspective and found that some areas need to be improved in order to produce a positive impact on consumer protection law against halal food abuse.

In countries with large Muslim populations, such as Malaysia, government agencies place great emphasis on halal certification, and policing the certificate has become a top priority for enforcement agencies.<sup>1097</sup> This is contrary to the position in English law where there is no specific agency entrusted by the UK Government to deal with halal food certification. As discussed earlier in Chapter 3, halal food in the UK is certified by various certifiers; there is no central agency to regulate halal certification in the UK, as practised in Malaysia. This provides an opportunity to the trader to profit from the misuse of the halal label.<sup>1098</sup> However, Malaysia also suffers from halal food abuse even though there is central agency to control halal certification, and this was analysed in Chapter 4.

There are loopholes in halal food abuse in terms of consumers' private redress, the administrative sanctions, and the enforcement measures, as examined earlier in Chapter 5. Given the inadequate protection afforded by the law, consumers are in a vulnerable position and are 'less informed, less well funded, plagued by collective action problems, and overall less able to secure compliance with their side of the bargain' compared to the manufacturer or trader who has power and is more organized than the consumer.<sup>1099</sup>

This thesis assessed the current halal legal instruments on halal food in Malaysia. To achieve the objective of this thesis, it examined the consumer protection law relating to

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<sup>1097</sup> Pointing, Teinaz and Shuja (n 229) 4.

<sup>1098</sup> *ibid* 3; Johan Fischer, 'Feeding Secularism: Consuming Halal among the Malays in London' (2005) 14 *Diaspora: A Journal of Transnational Studies* 275, 276.

<sup>1099</sup> Omri Ben-Shahar, 'One-Way Contracts: Consumer Protection without Law' (2010) 6 *European Review of Contract Law* 221, 223.

halal food from both Malaysian and English law perspectives. Available remedies for halal food abuse, implementation, and mechanism of law were also studied. In addition, it analysed administrative authorities and how they monitor halal food and take action in the event of infringement to ensure that consumers are well protected.

This thesis also studied the halal legal framework and the responses to the misuse of halal under English law to identify any legal tool or measure from a different jurisdiction that can be used in Malaysia to provide the best protection for consumers in relation to halal food and to strengthen the existing law.

The next section will set out the findings of this thesis by referring to the discussion of the halal regulatory framework in Malaysian and English law as discussed in Chapters 4, 5 and 6. It will then provide recommendations for reform to ensure compliance and to prevent further abuse. Then, it will identify how this thesis is able to make a contribution to the body of knowledge in this area. Finally, it will conclude and provide suggestions for future research.

## **7.2 Findings**

The findings will be divided into two sections. The first section will discuss the observations on the halal food legal frameworks in Malaysian law and English law. The second section will discuss the obstacles arising from current halal food legal instruments in Malaysia.

### **7.2.1 Halal Food Legal Frameworks in Malaysian Law and English Law**

From the discussion in the previous chapters concerning the legal frameworks in Malaysian law and English law, it can be concluded that the regulatory framework for halal food is different in the two jurisdictions. From the discussion in Chapter 4, Malaysia attempts to position itself as a main player in the halal food industry and this is evidenced by the introduction of various legislative instruments on halal food and the rise of government agencies dealing with halal food. More power has been given to JAKIM and religious enforcement officers to deal with halal food issues. In Malaysia, only Halal Malaysia certification is accepted, and other foreign certifications are subject to JAKIM approval. In order to become a leader in the halal industry, Malaysia has exerted various



efforts and strategies to develop the halal food industry and is now recognized as one of the top halal players in the world<sup>1100</sup>.

English law is behind Malaysian law in terms of a halal regulatory framework as a whole. However, this can be explained in part by there being a Muslim minority in the UK. A summary of the regulatory framework in each country is illustrated in the table below.

**TABLE 3:** Regulatory framework of halal in Malaysian law and English law

Jurisdiction	Regulatory Specific Legislation	Framework General Legislation	For Halal Official Standards	Food Certification agency
Malaysian law	Yes	Yes	Yes	Government
English law	No	Yes	No	Private

In Malaysia, halal is certified by a government agency, with there being specific legislation, general legislation, and official standards to deal with halal, as discussed earlier in Chapter 3. The English law framework is complicated because the Government acknowledges the existence of halal food and regulates the law on religious slaughtering, but there is no specific legislation concerning halal<sup>1101</sup> and the certification of halal is certified by a private agency.<sup>1102</sup>

From the legal point of view, halal food needs to fulfil two requirements which are Sharia requirements and general food requirement. The table below summarizes the legislation governing the requirements of halal in Malaysia and English law.

**TABLE 4:** Sharia and General Requirements of Halal Food in Malaysia and English Law

	Malaysian Law	English Law
Sharia Requirements	(1) Trade Description Order (Definition of Halal) 2011	(1) The Guidance Note on Halal Food Issue (The Guideline) - Provided by Food Law Code of Practice (England) 2008

<sup>1100</sup> Kayadibi (n 202) 108.

<sup>1101</sup> See Chapter 6.2.

<sup>1102</sup> See Chapter 3.3.2.

General food-law requirements	(1) Food Act 1983 (2) Food Regulations 1985 (3) Trade Descriptions Act 2011 (4) Sale of Good Act 1957 (5) Consumer Protection Act 1999 (6) Trade Description Act (Certification and Marking of Halal) 2011	(1) Food Safety Act 1990 (2) Food Labelling Regulations 1996 (3) Food Safety and Hygiene (England) Regulations 2013 (4) Consumer Rights Act 2015 (5) Food Standards Act 1999
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The findings of this thesis reveal interesting facts on the legal framework of halal food in English law. One issue is the difficulty to observe the religious requirements of halal food due to the fact that halal food in English law is governed by general food-law regulation.<sup>1103</sup> There has been an effort to establish a uniform standard for halal food in the European Union as one of the measures to protect consumers in halal food but the initiative has failed for various reasons.<sup>1104</sup>

The FSA Guideline providing the Sharia requirements for halal food possesses no legal standing. It is clearly stated in the Guideline that if there is any dispute concerning halal food, general food law will be applicable. Consequently, many issues have arisen on halal food in English law.<sup>1105</sup> The examination of the legal requirement of halal under English law is important to identify the possible infringement of law in halal food abuse.

Even though halal food in English law is governed by the general food law, there are a few cases on halal food abuse where the manufacturers or traders have been prosecuted for halal food abuse, as discussed in Chapter 6. The long history of English law in the area of consumer protection provides suggestions to identify remedies and appropriate

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<sup>1103</sup> See Chapter 6.2.

<sup>1104</sup> See Chapter 3.3.3.

<sup>1105</sup> See Chapter 6.3.

measures to address the issues of consumer protection in the halal food industry in Malaysia.

In relation to consumers' private remedies, English law is not helpful, as can be seen in the argument that was made in the Malaysian context<sup>1106</sup>, that is not much different in terms of the remedy offered by English law. The table below summarizes consumers' remedies as provided under the law in both jurisdictions.

**Table 4:** Consumers' remedies as provided by consumer legislation in both jurisdictions

Remedy	Malaysian Law	English Law
Legislation	Consumer Protection Act 1999	Consumer Rights Act 1999 (CRA)
Repair	Section 42(1)(a)	Section 19(3) CRA 2015
Replacement	Section 42(1)(c)	Section 19(3) CRA 2015
Price Reduction	Section 41(1)(b)	Section 19(3) CRA 2015
Rejection of Food	Section 45	Section 19(3) CRA 2015
Other remedies		Section 19(11) CRA 2015

Based on the above, it can be argued that it is difficult for consumers to claim for their loss in view of the remedy of repair provided by both jurisdictions, as repair is pointless because the subject matter involved is food, which is perishable. Replacement as a remedy for halal food abuse is possible but its availability is limited due to the subject matter involved. The trader can instead offer a price reduction. Finally, the consumer has the right to reject the food if the food has not yet consumed. But looking at the subject matter involved and the facts which occur in halal food abuse, the food will most often have been consumed by the consumer and it is therefore very unlikely that they will reject the goods. In terms of general approach, it does not help Malaysian law to deal with halal food abuse.

The consumer's private remedy to claim compensation is therefore limited to the price of the food. The consumer also has common-law remedies such as nominal damages and punitive damages that will apply in halal food abuse cases, as discussed in Chapter 6. Neither jurisdiction provides a mechanism for consumers to claim for non-pecuniary loss in halal food abuse unless they became ill due to the consumption of non-halal food.

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<sup>1106</sup> See Chapter 5.2.1.

Proving distress or psychological injury will be very difficult for a consumer, due to the evidential issues as discussed earlier in Chapter 5. Individual consumers might suffer different levels of stress and psychological injury. Even though there is a suggestion to widen the definition of personal injury in the Consumer Protection Act (CPA) 1999 to include trauma and psychological injury as suggested by Abu Bakar et al.,<sup>1107</sup> this requires further research. This might involve a medical-legal study to identify the effect of trauma or psychological injury suffered as a result of food abuse. This may involve an interview with a psychiatrist in terms of the methodology for this study. This would help to identify whether the victim should be compensated for psychological injury and to quantify the appropriate damages for the victim.

However, remedying the consumer is not the main objective of this thesis because it does not resolve the problem of halal food abuse and that is why there is continuous violation. The main objective is to stop the infringement and prevent the abuse. These can directly help to resolve the direct problem of halal food abuse and to provide protection to consumers.

The following section will summarize the obstacles arising from the current halal legal framework in Malaysia and identify the appropriate tools to deal with such obstacles.

### **7.2.2 Obstacles Arising from the Current Halal Food Legal Infrastructure in Malaysia**

Even though the halal food industry in Malaysia is supported by the various law and government agencies, problems remain, as discussed in Chapters 4 and 5. Several problems highlighted earlier relate to consumer remedy and protection for halal food: consumer remedies are inadequate, the administrative practice requires improvement, and it is difficult for consumer to ensure the authenticity of halal food. This section will set out the general issues concerning halal food in Malaysia before identifying possible solutions.

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<sup>1107</sup> Elistina Abu Bakar, Sa 'odah Ahmad and Rojanah Kahar, 'Civil Liabilities for False Halal Logo under the Consumer Protection Act 1999', *Malaysia International Halal Research & Education* (Halal Product Research Institute 2014) <<http://www.slideshare.net/HadiAkbar1/mihrec-2014-conference-proceeding>> accessed 11 October 2015.

By way of summary, this thesis, first, demonstrates the inadequacy of the law that protects consumers in the area of halal food, particularly consumer remedies. The current Malaysian framework does not fully support consumers in seeking redress for halal food abuse.

It is disappointing to find that it is difficult for consumers to claim a private remedy, such as for the financial loss caused by halal food abuse, because sometimes the value involved is low and the time and cost involved in initiating the proceeding is prohibitive.<sup>1108</sup> It is also difficult to claim for non-pecuniary loss, and the consumer must specifically prove that he or she suffered emotional and psychological injury as a result of consuming non-halal food.<sup>1109</sup>

Second, the administrative system requires improvement. There are various agencies dealing with halal in Malaysia.<sup>1110</sup> It has been noted that some administrative bodies have discretion to determine whether to pursue administrative remedies or not.<sup>1111</sup> Administrative remedies vary from one agency to another, and remedies depend on the opinion of individuals in the department where action may be taken, including a fine, a notice of rectification, or the closure of premises. Here, JAKIM leads the multi-agency structure of the halal development system, but it does not have enforcement power. In less serious cases, JAKIM offers compounds, and in serious cases, halal certificates can be suspended or withdrawn. However, the current administrative remedy is not effective in preventing halal food abuse.<sup>1112</sup> Even though the law and facilities are present, the law is not functional in an appropriate way to protect consumers if their right to receive genuine halal food is abused.

Third, it is very difficult for consumers to identify the authenticity of halal food and it appears that it is based on trust. Manufacturers should be careful to adhere to halal food

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<sup>1108</sup> Omri Ben-Shahar, 'Consumer Protection Without Law' (Social Science Research Network 2010) SSRN Scholarly Paper ID 1632415 26 <<https://papers.ssrn.com/abstract=1632415>> accessed 2 March 2017.

<sup>1109</sup> See Chapter 5.2.1.

<sup>1110</sup> Hadijah Iberahim, Rohana Kamaruddin and Alwi Shabudin, 'Halal Development System: The Institutional Framework, Issues and Challenges for Halal Logistics' in *2012 IEEE Symposium on Business, Engineering and Industrial Applications Halal* (2012) 760.

<sup>1111</sup> *ibid.*

<sup>1112</sup> See Chapter 5.3.3.1.

practices and authorities should provide the relevant tools to ensure the legitimacy of halal food produced by the manufacturers.<sup>1113</sup>

There is a gap in the administrative action capable of being taken by the competent authorities (JAKIM/JAIN/MAIN) and this must be rectified. This thesis uses the comparative approach and will examine other jurisdictions' practices, specifically that in English law, in order to deal with the lacuna in the administrative actions currently being enforced in Malaysia.

### **7.3 Recommendations**

Consumers looking for halal food deserve protection from halal food infringement. Thus, to gaining consumer confidence and providing better protection for consumers is vital. Three solutions can be provided to remedy the shortcomings of consumer protection in the halal food industry. First, the consumer is likely to be better protected against halal food abuse if the correct measures and preventives schemes are put in place. This not only places the trader in a position to comply with halal requirements, but it also helps to prevent halal food abuse and prevent future infringement of halal food. Second, reforms could improve on available remedies and improve the effectiveness of halal administration in Malaysia. Third, compliance with halal requirements could be ensured by various measures including the introduction of a CCTV-like device to monitor the certain requirements of halal food that are difficult to observe.

#### **7.3.1 Injunctions, Undertakings and Enhanced Consumer Measures (ECMs) as Tools of Prevention and Remedy**

The objective of the legislation related to halal is to provide consumers with authentic halal food and protect them from abuses. Yet in real life, it seems that the consumer is being neglected. The Malaysian Government should take a holistic approach to this issue and not only rely on administrative action, as found in Chapter 5.3.3. If administrative action works, there will be no issue. However, misuse continues to occur and is in fact increasing. Even though there is the possibility of applying criminal sanctions to

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<sup>1113</sup> Angerlique M Thomas and others, 'Challenges and Practices in Halal Meat Preparation: A Case Study Investigation of a UK Slaughterhouse' [2015] *Total Quality Management & Business Excellence* 1, 15-16.

offenders for halal misuse, as discussed earlier in Chapter 5.2.3, the enforcement authorities such as JAKIM favour compliance. However, they need deterrence strategies.

In halal food abuse, discouraging and preventing traders from violating halal food requirements is more important than awarding compensation to individual consumers after infringement has occurred. This is supported by Smith and King.<sup>1114</sup> The primary concern should be to prevent the offender from repeating the infringement in the future.

Thus, Malaysia must have a relevant legal rule in place in order to discourage and prevent unethical traders from violating the legal requirements of halal food (as discussed earlier in Chapter 4). However, the infringement of halal food law still happens whereby the food is labelled as halal, but it does not comply with halal food requirements and the traders are selling goods not of satisfactory quality. Thus, an injunction can be used to prevent them repeating the infringement in the future.

The compliance order applicable in Malaysia (as discussed earlier in Chapter 5.2.2.6) is probably the same with the injunction order and undertaking under Part 8 of the Enterprise Act 2002 (EA 2002) before the introduction of Enhanced Consumer Measure (ECM) in English law. The objective of both, compliance order in Malaysian law and injunction and undertaking order in English law are to stop and prevent future infringement but this compliance order never been utilized to deal with halal food infringement in Malaysia. It is maybe because JAKIM or MDTCC prefer to use administrative measures – for example, to withdraw the approval of halal certification in a serious offence (as discussed earlier in Chapter 5.2.2.3).

In contrast, under English law, under Part 8 of the Enterprise Act 2002, the injunction procedure has gained effective modification with the introduction of a broader scheme under the Enhanced Consumer Measures (ECMs) with the introduction of the CRA 2015. This English law tool could be an effective tool for the protection of consumers in halal food abuse in Malaysia because it not only provides a corrective measure but also makes compensation available for the consumer.<sup>1115</sup>

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<sup>1114</sup> Rhonda Smith and Stephen King, 'Does Competition Law Adequately Protect Consumers?' (2007) 28 *European Competition Law Review* 412.

<sup>1115</sup> Mohd Jamilul Anbia Md Denin and Kasdi Ali, 'Perdaya Pelanggan (Cheating the Consumers)' (*My Metro*, 2011) <<http://www.hmetro.com.my/articles/Perdayapelanggan/Article>> accessed 10 November 2011.

In halal food abuse, sometimes the monetary loss suffered by the individual consumer might be too small – for example, if they bought food costing £1 which was claimed to be halal but was not. Rather than compensating the individual consumer, redress measures under ECMs provide the violating manufacturer or trader with the option to make a donation to a specific consumer charity in the event that the consumer involved in the infringement is not able to be identified or it is not proportionate to compensate the individual consumer. The compensation can be given to any charitable institution or charity who deals with consumers and halal in Malaysia. This kind of measure that the English law has might be the missing link in Malaysian consumer protection law for halal food.

It is argued that consumer protection law will only achieve its objectives if it is enforced effectively by the enforcement agencies. It is timely to adopt the English law approach of injunctions, undertakings, and ECMs as tools for prevention and remedy. Injunction, undertaking and the broad scheme of ECMs could be introduced in the Consumer Protection Act 1999 under Part XIII (enforcement) and it would not only benefit consumers of halal food but also help to strengthen the enforcement of consumer law. In addition, it is not only helpful in stopping and preventing the infringement, but consumer can also get compensation as provided under English law position as discussed in Chapter 6.6.

### **7.3.2 Possible Routes of Reform**

In addition to the introduction of ECMs in Malaysian law, it is also important to mention the general assessment of enforcement, as enforcement may present problems for the implementation of ECMs. Resourcing is also an important element (such as staffing) and this is one of the problems that has arisen in Malaysia (as discussed in the issues concerning the effectiveness of administrative enforcement by JAKIM/JAIN/MAIN which are lack of staff<sup>1116</sup> and lack of coordination among government agencies involved in halal matters<sup>1117</sup>).

The effective collaboration of agencies involved in the halal food industry is important. This may raise the question of how to improve cooperation among agencies involved in

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<sup>1116</sup> See Chapter 5.3.3.1.1.

<sup>1117</sup> See Chapter 5.3.3.1.2.



halal food for the best interests of the consumer. Even though JAKIM is a competent authority in Malaysian halal food with various powers to take precautionary measures, including fines (giving them a degree of freedom to determine which measures can be used against offenders<sup>1118</sup>), JAKIM's power is nonetheless limited to issuing notices and warnings, and suspending or withdrawing certification. The power to compound or order closure is within the jurisdiction of the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) or Ministry of Health (MOH)<sup>1119</sup>. Thus, effective coordination is important for ensuring that the appropriate action is taken against the offender.

This thesis also considered the possibility that the powers given to the competent authorities such as JAKIM/JAIN/MAIN appear inadequate, as the administrative actions taken are not able to tackle halal food abuse and it appears that there are administrative issues concerning the implementation of halal-related legislation, as discussed in Chapter 5.<sup>1120</sup> There have been incidents where JAKIM has failed to coordinate the incidents of halal food abuse with other related agencies which also have power to deal with halal issues, as identified in the Cadbury incident<sup>1121</sup>. From the data provided by JAKIM, it is surprising to find that there is generally no prosecution by the authority for halal food abuse; in most instances, the company will be given a notice or compound order<sup>1122</sup>.

However, the lack of coordination among the agencies can be overcome by strengthening the collaboration, with a final decision given to JAKIM as the lead agency on halal food in Malaysia. This could ensure the effective collaborative among agencies and help to improve the protection of consumers from halal food abuse.

### **7.3.3 CCTV Implementation as Compliance**

Another issue faced by halal food in Malaysia is the difficulty in observing the entire halal food process. The law should not be seen as the only way to regulate, because it is not always effective.<sup>1123</sup> For example of the law on speeding where the existence of a speed

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<sup>1118</sup> Buang and Mahmud (n 9) 274.

<sup>1119</sup> Malaysia Halal Certification Manual 2014, para 10.6.

<sup>1120</sup> See Chapter 5.3.3.1.2.

<sup>1121</sup> See Chapter 5.3.3.1.2.1.

<sup>1122</sup> See Chapter 5.2.2.

<sup>1123</sup> Lilian Edwards, 'Consumer Privacy, On-Line Business and the Internet: Looking for Privacy in All the Wrong Places' (2003) 11 *International Journal of Law and Information Technology* 226, 232–233.

bump cannot be ignored even though it is not the law, but it nevertheless works effectively to reduce speed.<sup>1124</sup>

There is an audit procedure in the halal food process to ensure compliance with halal food requirements.<sup>1125</sup> However, there are certain aspects of halal requirements that are difficult to audit, such as slaughtering, and CCTV implementation can be one solution to ensure compliance and to ensure that the requirements of halal are fulfilled, especially the religious requirement as discussed in Chapter 6.8.1. It can not only help to observe the process but can also stand as evidence in the case of a halal food abuse claim, as discussed earlier on Chapter 6.8.1.

If there is an infringement of a religious requirement, the status of halal food is called into question. It can also be argued that the audit takes place to ensure the fulfilment of the halal requirement, but it is not conducted every day. The installation of CCTV would ensure compliance and help the enforcing body to obtain evidence in the case of infringement and give confidence to consumers in consuming halal food. It could be implemented by the Government and it would not be necessary to make it mandatory in the first place, but rather to promote it as good practice, as currently implemented in English law.<sup>1126</sup> This may encourage FBOs to install CCTV in their premises to gain consumer trust and at the same time to ensure compliance. In turn, it could help to reduce infringement of halal food requirements because it is better than awarding compensation to consumers after their rights have been violated. For this purpose, CCTV can be implemented as one of the measures to protect consumers from halal food abuse.

#### **7.3.4 Contribution of the Thesis**

The contribution of this thesis is to add to the literature on the subject matter of halal food and consumer protection. Most literature in this area is not written in detail and often lacks objectivity. In contrast, this thesis specifically examines consumer protection regarding halal food in Malaysian law and English law in order to find a solution for halal issues in Malaysia and to identify effective measures to prevent halal food abuse.

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<sup>1124</sup> *ibid* 233.

<sup>1125</sup> See Chapter 2.3.7 on Halal food processing.

<sup>1126</sup> See Chapter 6.8.1.

This thesis explored consumer protection vis-à-vis halal food in Malaysian law and English law. The purpose of this thesis is to examine the law related to halal food and to identify its effectiveness in protecting consumers from halal food abuse. The remedies available for consumers have been analysed, including civil, administrative, and criminal remedies, and it was found that the current law is not effectively supporting consumers. This thesis further contributes to the literature by suggesting that measures adopted in English law be implemented into Malaysian law. The model proposed will not only help to prevent the infringement of halal food, but it also enables consumers to be compensated for their loss.

This thesis also proposed CCTV as a compliance measure and best practice in the halal food process in order to ensure compliance specifically with the religious requirement of halal.

This thesis also offered a suggestion to ensure effective collaboration among halal-related agencies which is led by JAKIM. It is important to achieve consistency among the agencies involved in halal food so as to provide adequate protection for consumers in halal food.

#### **7.4 Conclusions**

This thesis studied consumer protection concerning halal food in Malaysian law and English law. It first identified the requirement of halal food, examined the potential violation(s) of law, and analysed the remedies and implementation of consumer protection in the halal food industry.

This thesis identified the fundamental issues surrounding halal food and the various and different avenues provided by Malaysian law to see whether there is a possibility to resolve halal problems using current legal instruments. Apart from civil redress, this thesis also analysed the administrative and criminal measures to deal with halal food abuse in Malaysia. Implementation of the law was also examined, and it was found that there is a loophole in the Malaysian law in dealing with halal food issue. The legal framework of halal food in English law was also examined in order to study how English law deals with halal food abuse from a consumer point of view.

The findings of this thesis provide solutions to the problem concerning halal food infringement. Such solutions reflect the need to restructure the current consumer

legislation in Malaysia in order to deal with halal food abuse and provide consumer with greater protection and avenue for redress. The findings fulfil the objectives of this thesis and have contributed towards the establishment and systematization of knowledge in the consumer protection field.

### **7.5 Suggestions for Further Research**

Malaysia has a legal framework for halal food as provided by the Trade Description Act 2011, the Trade Description (Certification and Marking of Halal) 2011, and the Trade Description (Definition of Halal) 2011. Yet there are still issues concerning consumer remedies and the effectiveness of enforcement action. These include how to measure a remedy suffered by a consumer in a halal food abuse case from a psychological perspective. It is very unlikely for the consumer to be injured due to the consumption of non-halal food; however, it may affect them spiritually and emotionally.

From an English law perspective, even though halal food is recognized in the UK and there are guidelines and legal provisions dealing with halal food abuse and religious slaughtering as discussed earlier in Chapter 5, the legal framework for halal is unclear. There is no legal definition of halal, except as provided by the FSA Guideline and this is the only source available from which the enforcer may make reference if there is any issue or dispute concerning halal food. However, the FSA Guideline does not possess legal status, as discussed earlier in Chapter 6, and it is dependent on the enforcer following general food-law regulation if the incident involves halal food abuse. However, it is also important to state here that the English law position will be the better position if it manages to regulate the halal food legal framework appropriately. Even though the main purpose of this thesis is to identify the possible solution for halal food abuse in Malaysia, this might provide a new insight from English law perspective.

Finally, as a general point, it is possible to think about a more dedicated legal framework to tackle not only the issue but also the appropriate response – a truly responsive one to see in the law and whereby this thesis can be the opening gate for further investigation to establish a dedicated framework for halal that is not only limited to halal food but also to other halal goods in Malaysia.

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