

Available online at www.sciencedirect.com**ScienceDirect**

Procedia - Social and Behavioral Sciences 121 (2014) 68 – 78

Procedia
Social and Behavioral Sciences**INHAC 2012 Kuala Lumpur**

International Halal Conference, PWTC, Kuala Lumpur, Malaysia, 4-5 September 2012

Consumer Protection of Halal Products In Malaysia: A Literature Highlight

Mustafa 'Afifi bin Ab. Halim^{a1}, Kamilah Wati binti Mohd^b
Mohd Mahyeddin Mohd Salleh^c, Dr. Asming Yalawae^d,
Tuan Syed Mohd Najib Syed Omar^e, Asmidah Ahmad^f, Azlin Alisa binti
Ahmad^g, Mohd Izhar Ariff bin Mohd Kashim^h

^aLecturer Faculty of Syariah and Law, Research Fellow of Institute of Halal and Research Management (IHRAM),
Universiti Sains Islam Malaysia, Malaysia

^{b-c}Lecturer Faculty of Syariah and Law, Research Fellow IHRAM, Universiti Sains Islam Malaysia, Malaysia

^{d-f}Lecturer Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Malaysia

^{g-h}Lecturer of Faculty of Islamic Studies, Syariah Department, Universiti Kebangsaan Malaysia, Malaysia

Abstract

The *halal* industry is a highly potential market of the future that has not been fully explored. This is supported by the growing number of world's Muslim community estimated to increase to 1.8 billion by 2011 with current *halal* market value estimated to reach USD2.3 billion. However, there are some issues regarding the *halal* industry either domestically or internationally, particularly in relation to the abuse of *halal* logo and other offenses relating to the *halal* logo. The question is arised whether the rights of Muslims were fully protected under the relevant laws and their lawfully rights if these laws were not adhered to? The objective of this article is to examine a preamble to the highlight of consumer protection in Malaysia and its application. The research methodology is by documentations analysis based on literature review and the outcome of this writing would be an improvement in consumer protection and consumer's comprehension in matters related to *halal* products, to protect and educate consumers, and to educate producers to be more vigilant and responsible for the manufacture of their products.

© 2013 The Authors. Published by Elsevier Ltd. Open access under [CC BY-NC-ND license](http://creativecommons.org/licenses/by-nc-nd/3.0/).

Selection and peer-review under responsibility of Centre for Islamic Thought and Understanding (CITU), Universiti Teknologi MARA, Malaysia.

Keywords: Consumer Law; Halal; Halal Standard; Consumer Protection

¹ Corresponding author. Tel.: +606-7988467; fax: +606-7988530.
E-mail address: afifusim@gmail.com.

1. Introduction

Consumerism is perceived as an essential component of the Islamic economic system that brings together the elements of material and *maknawi*. It also considers the *maslahat* of individuals and groups. The Islamic jurists have created the theory of consumer product consisting of three elements: 1 – the contracting element or *aqad*, 2 - moral element, and 3 – the *sharia* element. The members of Islamic jurisprudence are also linking consumerism with Islamic economic theory. Thus, they make consumerism as a basic component of the Islamic economic system as mentioned earlier. With this, the jurists apply conditions or *dawabit* and methodology that enjoins together the *sharia* principles and changes of *ijtihad*.

In general, the term consumerism in Islam refers to a person who obtains such goods or services to meet their needs while achieving legitimate purposes in accordance with the Islamic law². In matters involving a purchase, Islam emphasizes the question of quality and consumer's rights. Quality of the goods sold shall be guaranteed and satisfactory and meet the needs of consumers in return for the price they paid. In discussing the issue of consumerism, *halal* (lawful) or *haram* (unlawful) status of a product is very important for Muslim consumers as it relates to religious claims. Therefore, any law or regulation designed must take these claims into account.

There are a lot of abuse relating to the use of *halal* logo, especially when it relates to food and products. The question then arised whether the rights of Muslims were fully protected under the law relating to *halal*, and what are their lawfully rights if these rules were not adhered to or ignored? For example, the question of whether the basic ingredient of a food product complies with *sharia* and how Muslim consumers are protected in issues like this?

The objective of this article is to look at past studies related to consumer protection and its application in *halal* products. The mass media exposures of fraudulent use of *halal* logo, and *haram* food ingredients illegally sold as '*halal*' in the market in this country, from time to time, prove the problem is not a new issue. *Halal* issue boils down to three basic things; Muslim consumer attitudes towards the value of *halal* food purchased, the seller attitude whether they respect the Muslim taboos, and enforcement in terms of the law³ and legal action, whether they are sufficient to curb the frauds of *halal* logo.

When debating the issue of *halal*, the scope is very wide covering *halal* food, halal banking⁴, *halal* pharmaceutical products, *halal* service financing, *halal* holiday and others.

2. Halal and Consumerism

Based on historical fact, John F. Kennedy, the late president of the United States was the first to highlight the idea of consumer protection for the public through the Declaration of Consumer Rights. This Declaration was presented to the U.S. Congress on March 15, 1961. There were four basic rights declared during that time, which were⁵:

1. The right to safety
2. The right to be informed
3. The right to choose
4. The right to be heard

² Abdul Karim, Faris Hamid. 2009. *Himayatul Mustahlik Wa Huququhul Insaniyyah Fi As-Syariah Wal Qanun*.

³ Mustafa 'Afifi Ab. Halim dan Mohd Mahyeddin Mohd Salleh. 2011. *Hak Pengguna Berkaitan Produk Halal (Consumer's Rights Related to Halal Product)*. The Proceeding of the International Conference on Consumer Law 2011. Pp. 356.

⁴ Mustafa 'Afifi bin Ab. Halim. 2011. Enhancing the effectiveness of legal Infrastructure: A Study on Legal Issues and other challenges of Islamic Banking and Finance in Malaysia. Proceeding 8th International Conference on Islamic Economic and Finance. P.1.

⁵ Mohd. Hamdan Hj. Adnan. 1990. *Hak Anda Sebagai Pengguna (Your Rights as Consumers)*. Fajar Bakti Sdn Bhd: Petaling Jaya. Pp. 2-3.

The concept of consumer rights then expanded its scope to other rights as was mooted by Anwar Fazal, the President of the International Organization of Consumers Unions (IOUC), which were⁶:

1. The right to satisfaction of basic needs
2. The right to healthy environment
3. The right to redress
4. The right to consumer education
5. The right to representation

For the protection of consumers from profiteering misconduct of producers and sellers, there have been various policies, statutes and plannings introduced by the government of many countries, world organizations, and consumer organizations at national and international levels such as the United Nations Guidelines for Consumer Protection, the EU Consumer Policy Strategy (2007 - 2013), the Regulation (EU) on Consumer Protection Cooperation, ASEAN Economic Community (AEC) Blueprint, Consumer Basic Act (Japan), and the National Consumer Policy (Malaysia)⁷.

The United Nations Guidelines for Consumer Protection or the guidelines for the United Nations Consumer Protection (UNGCP) were the guidelines introduced by the world organization on 9 April 1985 based on the proposal submitted by the United Nations Economic and Social Council, one of the administrative machinery of the Organization United Nations⁸. Although it is not binding, however, it provides a framework of term of references to be used by the United Nations countries with regard to the implementation of consumer protection.

Generally, the main objective of these guidelines is to assist the government to provide for adequate protections to consumers, prevent unethical acts among businesses, and help create an independent consumer body or association in a country. In addition, it has also outlined seven consumer rights and requirements entitled to consumers to be provided by businesses, namely: protection from hazards to health and safety; improve and safeguard the interest of the consumer economy; the right to have access to adequate information on the product; the right for education including the implications of consumer choices on the environment, economy and social; the existence of an effective law to consumers; freedom to form associations or consumer organizations; and the opportunity for the organizations to present their views in decision-making processes in order to promote for sustainable consumption.

In Southeast Asia, the Association of Southeast Asian Nations (ASEAN) has proposed for an Asean Economic Community (AEC) Blueprint in their mission to form an independent economic community by 2015⁹. Among the plans being made to prepare the consumers on the emergence of the free market community is through the establishment of ASEAN Committee on Consumer Protection (ACCP)¹⁰. The function of ACCP would be to act on behalf of the protection of consumer's interests. In addition, a consumer agency network will be established with aims to promote information sharing and exchanges on products, services and other relevant matters. To ensure that all ASEAN citizens have the knowledge and skills to enforce consumer protection laws and regulations, trainings will be conducted from time to time for government officials and leaders of consumer organizations¹¹.

The National Consumer Policy (NCP) was introduced in 1990 by the National Consumer Advisory Council established under the Consumer Protection Act 1999, with aims to balance the rights and

⁶ *ibid*

⁷ United Nations guidelines for consumer protection (as expanded in 1999). European Consumer Centres (Euroguichets). <http://europa.eu.int.comm>. (Accessed on 15 May 2012).

⁸ *ibid*

⁹ Asean Economic Community Blueprint (2007) B2 Consumer Protection, Part II Characteristics and Element of AEC. Association of Southeast Asian Nations: Indonesia.

¹⁰ *ibid*

¹¹ *ibid*

responsibilities of the three main entities; consumers, suppliers/ manufacturers and the government¹². The main goal of NCP is to provide for full protection to consumers through the cooperation of supplier/manufacturer in implementing the concept of self-protection, as well as government involvement. To ensure this can be achieved, a number of areas need to be emphasized, namely: the legislature, trade practices, education, health, public facilities, and other related areas¹³.

The objective of NCP is the utmost level of consumer protection; accountable and fair trade practices; education; sustainable consumption in the present globalization era; and relationship between consumers, suppliers/manufacturers and the government¹⁴.

The target mission of NCP is to improve consumer welfare; improve socio-economic well-being; and increase sustainable consumption practices. Several strategies have been outlined which can be categorized into two, i.e. consumer protection in terms of social, and also legal. The adoption of social strategy would be to improve quality of life; increase self-protection; increase support and assistance to consumerism movements; and encourage participations of consumer organizations in the formulation and implementation of government programs at the state and district levels. Whilst from the legal point of view, the strategy would be to strengthen the laws of consumer protection by reenforcing the existing laws and regulations, to amend the laws in accordance with the current development, creating new laws that take into account the impact of globalization, trade liberalization and sustainable consumption, ensuring for the laws to guarantee consumer's welfare and well-being.

NCP does not clearly state the rights of consumers but on the other hand states the responsibilities essential to all consumers and those are¹⁵:

1. Awareness to criticize
2. Involvement and action
3. Social responsibility
4. United

The National Consumer Advisory Council, a body that serves to advise the Minister in the Ministry of Domestic Trade, Cooperatives and Consumerism, has outlined eight rights the consumers must know, as follows¹⁶:

1. The right to choose
2. The right to safety
3. The right to be informed
4. The right to be heard
5. The right to redress and remedy
6. The right to environmental health
7. The right to service
8. The right to consumer education:

Halal has been a long-debated issue, but today, this issue has become increasingly complex as a result of rapid expansion in innovation and technology. *Halal* has also been gaining attention not only locally and domestically, but also globally. The era of globalization has brought many challenges to consumers. In Malaysia, consumers are also facing many problems in consumerism issues which are not limited in

¹² t.p. National Consumer Policy. <http://www.nccc.org.my>. On-line. Accessed on 16 May 2012.

¹³ *ibid*

¹⁴ *ibid*.

¹⁵ *ibid*.

¹⁶ *ibid*.

matters of *halal* products alone. Dishonesty in business practices such as poor quality goods, exorbitant prices, cheating in weighing, counterfeiting of goods, lack of quality control or standards in trade merchandise control and other forms of frauds that exist in Malaysia at the moment¹⁷. Not to exclude animal based daily consumer products such as handbags, belts, shoes and many more. The issue is the source of the products if they were taken from the animals *halal* to be consumed by the Muslims? Even if the source is *halal*, the next issue would be the processing techniques and methods if it was done in accordance with the Islamic law or not? All these problems plaguing the consumers should be resolved immediately without haste by the relevant authorities¹⁸.

Whenever the word *halal* is mentioned, it indirectly relates to consumerism issues. Consumerism is an important issue that should be addressed by all nations, how they can best look after the welfare and well-being of their people is reflected through the policies and laws they enacted and enforced¹⁹.

There have been various goods flooding the business market in Malaysia and amongst these goods are, imitation and counterfeit goods, misleading advertisements, causing further grievances and problems to consumers due to harmful preservatives and dyes in foods and drugs, that are banned in developed countries but are sold without restrictions in developing countries like Malaysia²⁰. The dangers arising from various products and food ingredients supposedly should not have the *halal* status, and if there was, the status is questionable.

3. *Halal in Sharia*

Some of the Muslims choose their favourite food based on affordability, wants and taste. They are doing so by only looking at the deliciousness and the nutrients contents without assessing whether it is edible especially from the aspect of hygiene and its permissibility in Islam. Allah says in *Surah Al-Baqarah* (The Heifer 2:172):

يَا أَيُّهَا الَّذِينَ آمَنُوا كُلُوا مِن طَيِّبَاتِ مَا رَزَقْنَاكُمْ

“O ye who believe! Eat of the good things that we have provided for you.”

The meaning of ‘good things’ from the above phrase includes hygienic food because when it is hygienic it means it is indeed good. A cleanse and hygienic food will guarantee a healthy body. Therefore, beside choosing a healthy and nutritious food, it is best to emphasize the aspect of cleanliness and hygienic according to the teaching of Islam. The Prophet SAW (peace be upon him) said:

إن الله أبقى أن يدخل الجنة لحما نبت من سحت فالنار أولى به

“Indeed Allah prohibited flesh grown from forbidden source to enter paradise, on the contrarily, hell is the best place for it.” (Hadis riwayat Al-Hakim).

¹⁷ Sakina Shaik Ahmad Yusoff. 2000. *Perlindungan Pengguna di Malaysia (Consumer Protection in Malaysia)*. The Law. Vol. 5. Pp. 313-330.

¹⁸ Mustafar Muhammad Arjawi. 2000. Al-Tanzim al-shari‘i wa al-qanun li al-tadawi bi al-muharram aw al-mujarram. *Al-Shar‘iyyah wa al-dirasat al-Islamiyyah Magazine*. No.42. Kuwait: Al-Majlis al-nashr al-Ilmi, Jamiah al-Kuwait. Pp. 162.

¹⁹ Rahmah Ismail. 2000. *Keselamatan Produk dan Perlindungan Pengguna – Satu Tinjauan (Product Safety and Consumer Protection – An Oversight)*. Malaysian Journal of Law and Societies 4:53.

²⁰ Sakina Shaik Ahmad Yusoff. 2000. *Perlindungan Pengguna di Malaysia (Consumer Protection in Malaysia)*. The Laws. Vol. 5. Pp. 313-330.

Islam emphasizes on the aspect of good health among its disciples. A Muslim who always cares about the aspects of cleanse and hygienic food daily will surely emit a spiritual ray of light within his body to maintain the same hygienic approach in his clothing, abode and bodily upkeep and et cetera.

Allah says in *Surah al-Nahl* (The Bee 16:114-115)

فَكُلُوا مِمَّا رَزَقَكُمُ اللَّهُ حَلَالًا طَيِّبًا وَاشْكُرُوا نِعْمَتَ اللَّهِ إِنَّ كُفْرَكُمْ إِيَّاهُ تُعْبَدُونَ (114) إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهِلَّ
 بِهِ لِغَيْرِ اللَّهِ بِهِ فَمَنْ اضْطُرَّ غَيْرَ بَاغٍ وَلَا عَادٍ فَإِنَّ اللَّهَ غَفُورٌ رَحِيمٌ (115)

which means:

“So eat of the sustenance which Allah has provided for you, lawful and good; and be grateful for the favours of Allah, if it is he whom ye serve. He has only forbidden you dead meat, blood, flesh of swine, and any food over which the name of other than Allah has been invoked. But if one is forced by necessity, without wilful disobedience, not transgressing due limits, then Allah is oft forgiving and most merciful.”

Based on the verses above, it is clear that Islam has its own guidelines on how to source for a good and *halal* food. The same is translated to the *Halal* Standard MS1500:2009 food preparation by which *halal* food is defined as food and beverages with contents that are permissible according *sharia*.

4. Fraudulent *Halal* Logo

In the case of fraud against *halal* logo, there are several types of frauds including the subsequent misuse of the *halal* logo upon the business acquirement of the logo, the use of over expired *halal* compliance certificate, or companies that have never obtained the *halal* certificate and instead have used a forged one²¹. If the fraud is only confined to the cheating of *halal* logo per se, it may not pose as a big issue to consumers. However, what would be critical is the businesses that use *halal* logo in their products but after further investigation and testing were showed traces of alcohol and DNA of pig in the content which is clearly prohibited in Islam. Many cases of occurrence in Malaysia which have been reported by the mainstream media in Malaysia.

The source from the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) reported of six forged *halal* logo, resembling the Islamic Development Department of Malaysia (JAKIM's) *halal* logo, are in the market. Due to fear of drop in sales, some of the kopitiam restaurant owners began to panic and resorted in buying privately issued *halal* logo to trick the Muslim consumers²². The fake *halal* logo is displayed on the door at the payment counter of the premises to convince the already increasingly cautious customers after knowing not all kopitiam restaurants have applied for *halal* certification from JAKIM. Most consumers are not aware of the scam following the imitation of *halal* logo that is similar to the *halal* logo issued by JAKIM²³.

In the case of slaughtered animal, The Royal Malaysian Custom (JKDM) Selangor confiscated a total of 22,750 kilogram of frozen beef valued at RM342, 150. The status of its *halal* is doubtful after JKDM raided a container in North Port which was declared containing a load of carrots but after further checking

²¹ Mustafa 'Afifi bin Ab. Halim dan Mohd Mahyeddin Mohd Salleh. 2011. *Hak Pengguna Berkaitan Produk Halal (Consumer Rights Related to Halal Product)*. Proceeding of the International Conference on Consumer Law 2011. Pp. 357.

²² Mohd Jamilul Anbia Md Denin and Kasdi Ali. 2011. Perdaya Pelanggan (Cheating the Customers). *My Metro*. <http://www.hmetro.com.my/articles/Perdayapelanggan/Article/>. Accessed on 10 July 2011.

²³ *ibid*.

only found three rows of carrots and the rest containing boxes of frozen beef believed to be originated from Argentina without any *halal* certification²⁴.

During the month of Ramadan in 2010 (1431H), JAKIM and MDTCC jointly conducted Buffet Ramadan Operations from 1st until 28th Ramadan 1431H. It was found that 50 hotels and restaurants (52%) of the 96 premises checked were *halal* noncompliance to the *halal* standard of JAKIM and JAIN²⁵. Among the findings were the use of raw materials based on alcohol, doubtful contents, non*halal* certification of *halal* raw materials, chicken from unclear sources and the mixing of *halal* and non*halal* raw materials at the loading bays, storage and the use of Malaysian *halal* logo without the valid *halal* certificate issued by JAKIM and JAIN²⁶.

Based on the cases mentioned above, the acts of trickery and false misrepresentations on the part of the sellers were profound especially in the use of *halal* logo, which was alarming. However, it was difficult for the authorities to take actions due to limited enforcement powers of JAKIM and States Religious Departments as well as lacked of evidence for prosecution.

It is a clear persecution to the consumers especially to the Muslim consumers wanting a *halal* food or product. Thus, an establishment and development of a consumer protection model is critical to safeguard the rights of consumers essentially the *halal* products and products as a whole.

5. The *Halal* Laws and Consumers Protection in Malaysia

Among the laws in Malaysia that oversee the distribution of goods that give protection to the rights of consumers are Contract Act 1950, Sales of Goods Act (SGA) 1957, and Consumer Protection Act 1999. The Contract Act for example only emphasizes the existence of a contract, escape clause and remedy without detailed analysis of the contract contents. The Sales of Goods Act (SGA) was drafted to counter and remedy the loopholes. Unfortunately, SGA is only applicable to the states in the Peninsula Malaysia. For the states of Sabah and Sarawak, most of the case judgements relating to mercantile were adjudged by the application of Section 5(2) of the Civil Law Act 1956 which among other stated that goods sales laws applicable in East Malaysia "...must be the same as what being administered in England in matters similar at the time as though the issue is raised or ought to be adjudged in England..."²⁷.

Thus to create a valid goods²⁸ sales contract, all the basic elements of contract forming must be present²⁹ as outlined in Contract Act 1950. Meanwhile, the detailed descriptive of goods can be found in Sales of Goods Act (SGA) 1957. Among others it centred on the provision which gives advantages to consumers regarding the liability of the sellers if they default on any implied terms either conditions³⁰ or warranties³¹ as outlined in Section 14, 15, 16 and 17 of the Act. Section 14 covers three implied terms – implied condition which gives the seller a legal ownership of goods sold, implied warranty which gives the buyer the pleasure to ownership of goods without harassment and implied warranty that the goods are free from any encumbrances or claims from a third party. In addition, Section 15 to Section 17 relate to

²⁴ Anon. 2011. Kastam Rampas Daging Beku ekor Lembu Diragui Halal (Custom Seizes Suspicious Halal Frozen Meat). *Utusan Malaysia*. 8 July.

²⁵ Wan Mohamad bin Dato' Sheikh Abdul Aziz. 2010. Keberkesanan Undang-Undang dan Penguatkuasaan Mengenai Makanan dan Produk Halal di Malaysia (Effectiveness of the Laws and Enforcement on Halal Food and Products in Malaysia). Pp. 4.

²⁶ *ibid*.

²⁷ This provision invites debate among academics on the law applicable to Sabah and Sarawak whether Act 1979 or Act 1893 (*Sale of Goods Acts 1893 or 1979*) as discussed by (Yusoff, 2007).

²⁸ Section 4 of the Sale of Goods Act 1957 defines a contract of sale of goods, a contract that allows the seller to transfer, or agree to transfer the rights of a product to a buyer in return for payment of the price quoted.

²⁹ The basic elements of the contract are offer, acceptance, consideration, intention, certainty and ability.

³⁰ Section 12 (2) Sale of Goods Act 1957 defines the conditions as to the principal provisions of the basic purposes of a breach of contract and raise the right to consider the contract to be canceled.

³¹ Warranty is ancillary to the fundamental purpose of the provisions of a contract and breach of the right to claim compensation poses only and is not a cancellation of the contract as per section 12 (3) Sale of Goods Act 1957.

implied condition on the goods being sold must adhere to the descriptive given by the seller³², the quality can be traded and appropriate with meaning deemed proper to the buyer³³, and the sample that is precise from the quality aspect of goods being sold³⁴.

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 Consumer Protection Act 1999 (Act 599) which provides for additional legal frameworks to monitor consumer rights on the issue of supply of goods against the suppliers or manufactures of the goods concerned. Act 599 contains 14 parts involving 150 legal provisions to for consumer protection, the setting up of National Consumer Advisory Council and Consumer Claims Tribunal. Apart from that, under the 599 Act, the use of a new term – guarantee³⁵ was inserted to highlight the seriousness of a guarantee default in supplying and manufacturing of goods to consumer among others, detailing the level of guarantee default as a minor default that could be rectified, or involving a substantial default.

The establishment of Standard Halal Malaysia (MS 1500:2004), the application of ISO/IEC Guide 65 guidelines, and Malaysia Halal Certification Procedure Manual, are proofs of Malaysia's commitment on the handling and management of *halal* products. These standard, guidelines, and manual have the potential for utilization as terms of references by other countries (Wan Mohamad, 2010:1). Halal standards in Malaysia are developed through consensus by committees which comprised balanced representation of producers, users, consumers and others with relevant interest³⁶. Approval of a standard as a Malaysian standard is governed by the Standards of Malaysian Act 1996³⁷.

In the management of Halal Certification of JAKIM and JAIN, various laws and acts below are applicable:

1. The Trade Descriptions Act (TDA) 2011, Trade Descriptions (Definition of Halal) Order 2011, and Trade Descriptions (Certification and Marking of Halal) Order 2011 state the definition of halal and halal food preparation in accordance to the *sharia* law together with the offences of falsification of raw materials and halal documentation enforced by the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC);

2. The Food Act 1983 and Food Regulations 1985 regarding labelling, hygienic practice and food safety enforced by the Ministry of Health (MOH);

3. The Animals Act 1953 (Revision 2006), Abbatoirs (Privatisation) Act 1993, and Animals Rules 1962, Animals (Importation) Order 1962 regarding animals rearing and diseases control by the Department of Veterinary Services (DVS);

4. The Customs Act 1967, Customs (Prohibitions of Import) Order 1998, regarding the import of halal meat by the Royal Malaysian Customs;

³² Section 15, Sales of Goods Act 1957

³³ Section 16, Sales of Goods Act 1957

³⁴ Section 17, Sales of Goods Act 1957

³⁵ 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).

³⁶ Mustafa 'Afifi Ab. Halim and Mohd Mahyeddin Mohd Salleh. 2012. *The Possibility of Uniformity on Halal Standards in Organization of Islamic Countries (OIC) Country*, World Applied Science Journal 17 (Towards the Traceability of Halal and Thoyyiban Application):06-10,2012. IDOSI Publication. p.8.

³⁷ *ibid.*

5. The Syariah Criminal Offences (Federal Territories) Act 1997 – Labelling of halal food by the State Islamic Departments;
6. The Local Government Act 1976 and Local Authorities By-Laws; and Trade Marks Act 1976 by MDTCC.

Not all the laws and acts above, however, are fully under the jurisdiction of JAKIM and JAIN. JAKIM and JAIN administer the halal certification operations by using the halal standard, that is, Standard Malaysia (MS) and Malaysia Halal Certification Procedure Manual³⁸. For enforcement purposes, JAKIM and JAIN are dependent of the laws of other agencies. This makes the enforcement action less effective.

On the issue of the use of *halal* logo in Malaysia, the amendment of TDA 2011 only allows one (1) *halal* logo to be used, i.e. the Malaysian *Halal* Logo³⁹. For imported food products, only the *halal* logo issued by the foreign halal operators recognized by JAKIM can be used⁴⁰. Without the halal certification recognized by JAKIM or JAIN, it is an offence under the Trade Descriptions (Certification and Marking of Halal) Order 2011 by which the penalties are as follows⁴¹:

- (i) For an organization or corporation, a fine not exceeding RM200,000, and for the second or subsequent offences, a fine not exceeding RM500,000.
- (ii) For an individual, a fine not exceeding RM100,000, or an imprisonment for a term not exceeding three years, or both. For the second or subsequent offence, a fine not exceeding RM250, 000, or an imprisonment for a term not exceeding five years of imprisonment, or both.

Based on the above scenario and phenomenon, we can clearly question the rights of consumers for the present laws are deemed inadequate in curtailing the fraudulent use of *halal* logo and consequently depriving and cheating the consumers of a *halal* product consumption especially the Muslim consumers.

6.0 Conclusion and Suggestions

Trade Descriptions Act 2011 was enforced on 1 January 2012 but yet so far to be tried in court. This is because there has not been a single case of abuse of *halal* logo or *halal* product filed in court under the provision of this act.

The government is responsible to protect consumers from any form of cheating and misappropriation of *halal* products. Therefore, it is imperative for the government to ensure that the present laws are fully enforced and if there are loopholes in those laws, reviews and amendments must be made. This would ensure a set of laws that is efficient and effective for the optimization of consumer's protection to its utmost level.

³⁸ *ibid.*

³⁹ Rule 4, Trade Descriptions (Certification and Marking of Halal) Order 2011 (P.U.[A] 431).

⁴⁰ Rule 5, Trade Descriptions (Certification and Marking of Halal) Order 2011 (P.U.[A] 431).

⁴¹ Rule 8, Trade Descriptions (Certification and Marking of Halal) Order 2011 (P.U.[A] 431).

Subsequently, to ensure that consumer rights are safeguarded, especially in the context of *halal* products, all parties involved namely, the government, suppliers, manufactures, traders, consumer associations, NGOs, and consumers themselves, must play a role to ensure that the perversion and misappropriations of *halal* products can be curtailed and while preserving the right of consumers to obtain products that are really clean and *halal*.

A model of consumer protection should be established to ensure that the rights of all consumers are always protected. One of the recommendations towards ensuring the realization of this resolution would be the formation of an authoritative and dedicated body responsible and accountable in the administration of *halal* products. The roles played by JAKIM and JAIN cannot be dismissed, but it would be appropriate to propose for an establishment of a governing body e.g. a Halal Commission with primary function to regulate and monitor all *halal*-related affairs and at the same time making full enforcement on matters related to *halal* products. This commission may be established by upgrading the role and function of the Division of Halal Hub in JAKIM and JAIN where there will be coordination between the federal bodies and state bodies in the administrative and legislative.

Acknowledment

This Research is funded by Fundamental Research Grant, Ministry of Higher Education of Malaysia (USIM/FRGS-FSU-32-51512).

References

Al-Qur'an

Abdul Karim, Faris Hamid. 2009. *Himayatul Mustahlik Wa Huququhul Insaniyyah Fi As-Syariah Wal Qanun*.

Anon. 2011. Kastam Rampas Daging Beku ekor Lembu Diragui Halal (Custom Seizes Suspicious Halal Frozen Meat). *Utusan Malaysia*. 8 July.

Asean Economic Community Blueprint (2007) B2 Consumer Protection, Part II Characteristics and Element of AEC. Association of Southeast Asian Nations: Indonesia.

Mohd. Hamdan Hj. Adnan. 1990. *Hak Anda Sebagai Pengguna (Your Rights as Consumers)*. Fajar Bakti Sdn Bhd: Petaling Jaya.

Mohd Jamilul Anbia Md Denin and Kasdi Ali. 2011. Perdaya Pelanggan (Cheating the Customers). *My Metro*. <http://www.hmetro.com.my/articles/Perdayapelanggan/Article/>. Accessed on 10 July 2011.

Mustafa 'Afifi Ab. Halim and Mohd Mahyeddin Mohd Salleh. 2012. *The Possibility of Uniformity on Halal Standards in Organization of Islamic Countries (OIC) Country*, World Applied Science Journal 17 (Towards the Traceability of Halal and Thoyyiban Application):06-10,2012. IDOSI Publication.

Mustafa 'Afifi Ab. Halim dan Mohd Mahyeddin Mohd Salleh. 2011. *Hak Pengguna Berkaitan Produk Halal (Consumer's Rights Related to Halal Product)*. The Proceeding of the International Conference on Consumer Law 2011.

Mustafa 'Afifi bin Ab. Halim. 2011. Enhancing the effectiveness of legal Infrastructure: A Study on Legal Issues and other challenges of Islamic Banking and Finance in Malaysia. Proceeding 8th International Conference on Islamic Economic and Finance.

Mustafar Muhammad Arjawi. 2000. Al-Tanzim al-shari'ī wa al-qanun li al-tadawi bi al-muharram aw al-mujarram. *Al-Shar'īyyah wa al-dirasat al-Islamiyyah Magazine*. No.42. Kuwait: Al-Majlis al-nashr al-Ilmi, Jamiah al-Kuwait.

n.a. National Consumer Policy. <http://www.nccc.org.my>. On-line. Accessed on 16 May 2012.

Rahmah Ismail. 2000. *Keselamatan Produk dan Perlindungan Pengguna – Satu Tinjauan (Product Safety and Consumer Protection – An Oversight)*. Malaysian Journal of Law and Societies 4:53.

Sakina Shaik Ahmad Yusoff. 2000. *Perlindungan Pengguna di Malaysia (Consumer Protection in Malaysia)*. The Law. Vol. 5.

United Nations guidelines for consumer protection (as expanded in 1999). European Consumer Centres (Euroguichets). <http://europa.eu.int.comm>. (Accessed on 15 May 2012).

Wan Mohamad bin Dato' Sheikh Abdul Aziz. 2010. Keberkesanan Undang-Undang dan Penguatkuasaan Mengenai Makanan dan Produk Halal di Malaysia (Effectiveness of the Laws and Enforcement on Halal Food and Products in Malaysia).

Statutes:

Contract Act 1950

Sale of Good Act 1957

Trade Description Act 2011

Trade Description (Definition of Halal) Order 2011

Trade Description (Marking and Certification) Order 2011

Food Act 1983

Food Rules 1985

Animal Act 1953 (Revised 2006)

Abattoir Act (Private) 1993

Custom Act 1967

Syariah Criminal Offences (Federal Territories) 1997