



Global Conference on Business & Social Science-2014, GCBSS-2014, 15th & 16th December,
Kuala Lumpur

Jurisdiction and Prosecution of *Halal* Related Matters in Malaysia: Challenges and Prospects

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Abstract

Malaysia is planning to be a global *halal* hub country in the near future. However, it must be noted that administration of *halal* related matters in this country is yet to be an efficient one especially when it comes to legal issues of prosecution and jurisdiction. This paper explores the conceptual arguments of the two legal issues particularly its challenges and prospects in strengthening *halal* related matters in the country. This conceptual paper highlights factors that could improve the jurisdiction and prosecution of *halal* related matters in the country.

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Peer-review under responsibility of GLTR International Sdn. Berhad.

Keywords: Halal; jurisdiction; prosecution; halal governance; halal agencies; administration of halal; halal toyiban

1. Introduction

The role of government to provide means for the Muslims in Malaysia to access and genuinely served with *halal* matters is a reflection of Article 3(1) of the Federal Constitution of Malaysia. Adherence to Shari'ah imposition of *halal* has been an important agenda for Malaysia since 1974 when the Research Center of the Islamic Affairs Division of the Prime Minister Office started to issue *halal* certification letters for products that met the *halal* criteria. Since

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then, the government of Malaysia has improved *halal* management in many areas of *halal* related matters which include *halal* products and services such as food and beverage products, food premises, consumer goods such as cosmetics, personal care, clothing and equipment, pharmaceutical, slaughter house, logistic, hospitality services and finance. There was also a plan to put Malaysia as a global *halal* hub country by 2020.

The main actors which deal with *halal* related matters in the country namely Jabatan Kemajuan Islam Malaysia (JAKIM), Jabatan Agama Islam Negeri (JAIN), Majlis Agama Islam Negeri (MAIN), Halal Industry Development Corporation (HDC), Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC), Ministry of Health (MOH) and Ministry of International Trade and Industry (MITI). These seven agencies shoulders huge responsibility to ensure *halal* related matters in Malaysia are well managed up to the desired standards. Undeniably, all the said main actors of *halal* related matters acted according to their terms of reference. However, it must be noted that there are shortcomings in the legal aspects of administering *halal* related matters in this country. Two legal issues of *halal* related matters pertinent to be reconsidered in terms of their effectiveness and comprehensiveness for the *halal* legal regime are the issues of prosecution and jurisdiction.

This paper highlights conceptual arguments on prosecution and jurisdiction, particularly its challenges and prospects in strengthening *halal* related matters in the country. The structure of this article is as follows: section 2 contains definition of *halal* and *halal* related matters; section 3 brings a discussion of an overview of incomprehensiveness of prosecution and jurisdiction issues in administering *halal* related matters in Malaysia; and section 4 explores a number of factors which could be considered in order to improve the jurisdiction and prosecution of *halal* related matters in the country and make recommendations for future research. The paper concludes with a brief suggestion for better *halal* practices in Malaysia.

2. Defining *Halal*

2.1. What is *halal*?

Originally, *halal* is an Arabic phrase which means allowed or permitted by Islamic Law. Another popular term is *halalan toyyiban* which merely means allowed and permissible for consumption with relation to Shari'ah law as long as they are safe and not harmful. The opposite of *halal* is *haram* or non-*halal* which means forbidden and prohibited. (JAKIM, 2005)

It is undeniable that the four sources of the Islamic laws are *Al Qur'an*, *Hadith*, *Ijma'* and *Qiyas*. Whichever food substances mentioned in any one of these four sources, be it *halal* or *haram* is interpreted as being Islamic Law. Since the main source of the Islamic law is *Al-Quran*, all Islamic rules are definitely Allah's law. It is not the law which is created by men and it is the law for human beings' own good and benefits in order to have a better living in this world as well as a bridge to have a good life hereafter. (Wahab, 2004)

The definition of *halal* according to Section 3 of the Trade Descriptions (Definition of Halal) Order 2011 is when food or goods 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, means the food or goods or service in relation to the food or goods:

- (a) neither is nor consist of or contains any part or matter of an animal that a Muslim is prohibited by Hukum Syarak to consume or that has not been slaughtered in accordance with Hukum Syarak and fatwa;
- (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).

Additionally, Section 4 of the Order provides that “service in relation to the food and goods” includes the storage, transportation and retail of such food and goods.

Al-Qur’an which is the supreme source of Islamic law has emphasized the issue of *halal* as follows:

“O ye people! Eat what is on earth, lawful (halal) and good (toyyib)...”
(Al-Baqarah, 2:168)

“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.”
(Al-Baqarah, 2:172-173)

Based on the above verses from Al-Qur’an, it is crystal clear that Islam as a beautiful religion has provided two important characteristics for consuming food namely *halal* (permissible by the Shari’ah) and *toyyib* (of good quality). Furthermore, it should be noted that every Muslim is obliged to eat *halal* food and avoid haram food. It is a very sharp discipline set by Islam on such practice which has its own *hikmah* and reasoning. (Zakaria, 2008)

However, there is another issue of food which relates to “*syubhah*”. Basically, “*syubhah*” refers to any food or drink which lies within the grey area and does not fall clearly under the *halal* or non-*halal* category, alternatively called questionable or dubious. Muslims must avoid consuming food which is “*syubhah*” until its status becomes clear. (Sakr, 1993). There is a Hadith on “*syubhah*” which was reported by Bukhari, Muslim, Abu Daud, Ibn Majah and Darimi that the Prophet Muhammad (Peace be upon Him) has mentioned:

“What is Halal is clear and what is Haram is clear. Midway between them there are things which many people do not know whether they are Halal or Haram. He who keeps away from them will protect his religion and will be saved. He who approaches them will be very near to Haram, like a herdsman wandering near Hima (the place set by the king to be used by his cattle only), who could soon fall into this protected area. Surely for every king there is such a protected area and God's is what He declared forbidden”.

Additionally, another factor which contributes significantly in determining “*halalan toyyiban*” is food safety which comprise of elements of safe, clean, nutritious and quality of food. The Malaysia Halal Food Standard MS1500:2009: Halal Food - Production, Preparation, Handling and Storage -General Guidelines (Second Revision) apparently includes those elements of food safety as food permitted under the Shari’ah law when fulfilling the following conditions:

- (1) Does not contain any parts or products of animals that are non-halal to Muslims or products of animals which are not slaughtered according to Shari’ah law;
- (2) Does not contain any ingredients that are Najs (filth or unclean) according to Shari’ah law;
- (3) Is safe and not harmful;
- (4) Is not prepared, processed or manufactured using equipment that is contaminated with things that are Najs according to Shari’ah law;
- (5) The food or its ingredients do not contain any human parts or its derivatives that are not permitted by Shari’ah law; and
- (6) During its preparation, processing, packaging, storage or transportation, the food is physically separated from any other food that does not meet the requirements stated in items 1, 2, 3, 4 or 5 or any other things that have been decreed as Najs by Shari’ah law.

By looking at the above description of halal from MS1500:2009: Halal Food - Production, Preparation, Handling and Storage -General Guidelines (Second Revision), it is crystal clear that product which is harmful, intoxicated and hazardous will not be certified halal under the Malaysian Standard.

2.2 Halal Related Matters

Additionally, there is a term called *halal* related matters which is often associated to the *halal* concept. Basically, *halal* related matters refer to anything within the *halal* sphere. *Halal* related matters can be any subject or area of *halal* matters. These include political, social and economics of *halal* matters. In relation to consumables, *halal* related matters categories include slaughtering animal method, animal welfare, animal feed, slaughter house, alcohol usage, presentation and storage, processing and cooking, services, premises, logistic, hygiene, utilized goods, pharmaceuticals, cosmetics and personal care, clothing, equipment, label, logo mark and certification. Other non-consumables matters such as finance, education, laboratory analysis and friendly hospitality services can be part of *halal* related matters together with any other areas in all walks of life of human beings. (Khalid, 2013)

3. The Challenges of Jurisdiction and Prosecution Issues of Halal Related Matters in Malaysia

There have been many debates and issues arose on problems and shortcomings of prosecution and jurisdiction of *halal* related matters in Malaysia. Basically, the issues surround on how the *halal* related matters are governed by different entities with different rights, duties and powers as well as conflict jurisdictions which results incomprehensiveness indications occur within both prosecution and jurisdiction field itself.

3.1 Legal Enforcement and Prosecution

In respect of legal enforcement of *halal* related matters, JAKIM together with other agencies such as MDTCC, Department of Veterinary Services (DVS), Ministry of Health (MOH) and Local Authorities (LA) have powers in doing so. JAKIM and such agencies will carry out their enforcement powers in accordance with their relevant rights and powers in *halal* related matters offences. (Hasan, 2009)

In fact, some issues and problems within the legal enforcement of *halal* related matters arise due to the limited legal powers of JAKIM itself. In this regards, JAKIM should be given more legal enforcement powers which could help execute its own *halal* enforcement work without depending on any other agency such as MDTCC, LA, DVD and MOH. In terms of training, JAKIM enforcement officers have their own auditing certification certified by Standards and Industrial Research Institute of Malaysia (SIRIM) which enables them to carry out auditing on their own on factory and premises. Now, JAKIM via its Halal Hub Division is working on Halal Act which will give more power and clear authority to JAKIM officers in dealing with *halal* related matters and issues in the country. (Hasan, 2009)

It is sad to say that JAKIM is simply playing its role as watchdog, confirmer of *halal* noncompliance offences as well as witnesses for the prosecution of *halal* related cases. Indeed, JAKIM as the one and only *halal* certification body in the country; it also should be given greater and wider powers in order to ensure effective enforcement with regard to *halal* products. Among the issues that arise here is the extent to which the effectiveness of the enforcement which is carried out by JAKIM from the legal perspective. The provisions of the existing law only provides for JAKIM to withdraw Halal Certification without having jurisdiction to prosecute any wrongdoer of *halal* related cases. Any prosecution of any *halal* related cases will be carried out by the prosecution team from the MDTCC even though most of the monitoring and enforcement matters are carried out solely by JAKIM. (Hasan, 2009)

On the other hand, if JAKIM would like to take the functions of prosecution, there are few things which JAKIM must seriously take into consideration. First is the need for qualified personnel to practise before the Civil Courts. This is because the prosecution jurisdiction of *halal* products is under the jurisdiction of the Civil Courts. Second is the need for legal provisions that empower JAKIM officers to become prosecutors. Third is that there is also a *halal*-related offence categorized as shari'ah offence such as Section 42 of the Syariah Criminal Offences (Federal

Territories) 1997 whereby under such law, the power to prosecute rests with the Chief Syar’ie Prosecutor of each state in Malaysia. (Hasan, 2009)

3.2 Courts Jurisdiction

Another important issue to note is that the Shari’ah Courts of each state in Malaysia has jurisdictions under the Shari’ah Criminal Offences Enactment of a respective state to hear cases involving Muslims only. By this virtue, non-Muslims are excluded to be prosecuted before the Shari’ah Courts for any *halal* related matters offences. This scenario is another thing which shows some weaknesses of legal governance with regard to *halal* related matters in the country. The limited powers of Shari’ah Courts to hear *halal* related matters cases which involve non-Muslims is obviously contradicting those *halal* related matters cases under civil laws which can be heard before the Civil Courts irrespective of religion of an offender. (Hasan, 2009)

4. Factors Which Could Be Considered to Improve Prosecution and Jurisdiction of *Halal* Related Matters in Malaysia

4.1 Uniformity of *Halal* Bodies

By looking at the scenario of prosecution issue of *halal* related matters in Malaysia, it can be said that something has to be done in order to build uniformity of governance of prosecution. This is a really important thing so as to settle the current conflicting powers and jurisdictions among different agencies. JAKIM as the sole body dealing with *halal* certification and *halal* logo as well as a partner in carrying out enforcement of *halal* related matters could be part of the prosecution team of *halal* related matters together with the MDTCC or be given full powers in carrying out prosecution of *halal* related matters by virtue of its wider works in dealing with *halal* related matters.

Uniformity should be an important agenda in handling prosecution of *halal* related matters in Malaysia. It is true that JAKIM by reason of law has no power to carry out prosecution of *halal* related matters which is absolutely under the powers of MDTCC. Indeed, MDTCC in nature has many portfolios to attend to besides *halal* prosecution matters. As such, it is a good move if MDTCC which is currently handling the prosecution part of *halal* pass its powers to JAKIM in doing so. However, the issue which should be looked into is the efficiency of governance of prosecution of *halal* related matters could be improved to a standardize administration whereby a body is centralized to carry out all matters which relate to *halal* so that it could ensure effectiveness and integrity of the body itself. Many shortcomings and problems will certainly occur if many bodies take in charge of a matter. It is advisable therefore for Malaysia have a legal reform over the prosecution provisions as well as other provisions of *halal* related matters in Malaysia in view of becoming a global *halal* hub.

4.2 Reforming the law

Malaysia has many laws which govern *halal* related matters. However, all those laws are formulated for different government agencies with different rights and powers. Table 1 defines those laws and the relevant agencies.

| Statutes/Policies/Regulations/Standards | Agency |
|---|--|
| Trade Description Act 2011 | Ministry of Trade, Co-Operatives and Consumerism (MTDCC) |
| Trade Descriptions (Definition of Halal) Order 2011 | Ministry of Trade, Co-Operatives and Consumerism (MTDCC) |
| Trade Descriptions (Certification and Marking of Halal) Order | Ministry of Trade, Co-Operatives and Consumerism (MTDCC) |

| | |
|---|---|
| Food Act 1983 | Ministry of Health (MOH) |
| Food Regulations 1985 | Ministry of Health (MOH) |
| Food Hygiene Regulations 2009 | Ministry of Health (MOH) |
| Poisons Act 1952 (Revised 1989) | Ministry of Health (MOH) |
| Malaysia Protocol for Halal Meat and Poultry Productions 2011 | Jabatan Kemajuan Islam Malaysia (JAKIM) |
| Guidelines of Food, Drinks and Goods Utilised by Muslim 1994 | Jabatan Kemajuan Islam Malaysia (JAKIM) |
| Animals Act 1953 (Reviewed 2006) | Department of Veterinary Services (DVS) |
| Animal Rules 1962 | Department of Veterinary Services (DVS) |
| Animals (Control of Slaughter) Rules 2009 | Department of Veterinary Services (DVS) |
| Animals (Importation) Order 1962 | Department of Veterinary Services (DVS) |
| Animals (In Transit) Rules 1965 | Department of Veterinary Services (DVS) |
| Meat Inspection Rules 1985 | Department of Veterinary Services (DVS) |
| Feed Act 2009 | Department of Veterinary Services (DVS) |
| Feed (Labelling of Feed or Feed Additive) Regulations 2012 | Department of Veterinary Services (DVS) |
| Feed (Methods of Analysis of Feed and The Form of Certificate of Analysis) 2012 | Department of Veterinary Services (DVS) |
| Feed (Licence to Import Feed or Feed Additive) Regulations 2012 | Department of Veterinary Services (DVS) |
| Feed (Prohibited Antibiotics, Hormones and Other Chemicals) Regulations 2012 | Department of Veterinary Services (DVS) |
| Feed (Manufacture and Sale of Feed or Feed Additive) Regulations 2012 | Department of Veterinary Services (DVS) |
| Abattoirs (Privatization) Act 1993 | Department of Veterinary Services (DVS) |
| Abattoirs (Fees) Rules 2005 | Department of Veterinary Services (DVS) |
| Federal Territory of Labuan (Extension and Modification of Animals Ordinance 1953) Order 2005 | Department of Veterinary Services (DVS) |
| Malaysian Standard MS 1500:2009 Halal Food – Production, Preparation, Handling and Storage – General Guidelines (Second Revision) | Jabatan Kemajuan Islam Malaysia (JAKIM) |
| Syariah Criminal Procedure Enactment of States | Syariah Court |
| Syariah Criminal Procedure Act of Federal Territories | Syariah Court |
| Syariah Criminal Offences Enactment of States | Syariah Court |
| Syariah Criminal Offences Act of Federal Territories | Syariah Court |
| Syariah Court Evidence of States and Federal Territories | Syariah Court |
| Custom Order (Prohibition of Imports) 1988 | Department of Customs and Excise |
| Local Government Act 1976 | Local Authority/State Authority |
| Environmental Quality Act 1974 | Department of Environment |

Undeniably, there is no mother law which can be a supreme law of *halal* related matters in Malaysia. In this view, it is really essential for formulating a so called Halal Act or whatsoever name could be to be a single roof and paramount law for all those scattered *halal* laws under those many kinds of agencies.

5. Conclusion

A contribution towards the enhancement and development of *halal* related matters can be achieved with exercising good legal administration of *halal* related matters particularly within the areas of prosecution and jurisdiction. This

exercise is really important in order to improve the exclusiveness and integrity of *halal* related matters in Malaysia so that it results great administration and efficient system for all matters and angles within the *halal* sphere.

It can be said that the recent rise and growth of *halal* market and *halal* economy can be a stepping stone to push the government, regulators and all the parties involved within the *halal* related matters in this country to agree upon the concept of great management system of *halal* legal regime. This paper suggests that the government to consider a legal transformation of *halal* related matters in the country as a vehicle to drive Malaysia to be a great country in promoting the goodness of *halal* related matters internationally. The picture of Malaysia as a country with an efficient legal system and administration of *halal* related matters can be a tool for shaping a good economy within the *halal* business and economy. Indeed, a target to be a global *halal* hub country in the near future is not really difficult for Malaysia with the support of a very organized and well standard of management system of *halal* related matters. It is for the government to take action in extracting all those good legal transformation principles to be implemented within all areas of *halal* related matters so that any shortcomings and conflicting legal issues of the said matters could be minimized and perhaps could be eliminated gradually.

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