

Consumer Protection of Halal Products in Malaysia

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Abstract: The objective of this article is to examine the consumer protection of Halal product in Malaysia and its application. The (USIM) industry is a highly potential market of the future that has not been fully explored. This is supported by the growing number of the world's Muslim community estimated to increase to 1.8 billion by 2011 with current Halal market value estimated to reach USD 2.3 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 arises as to whether the rights of Muslims were fully protected under the relevant laws and what will happen on the the lawful rights of Muslims if these laws were not adhered to? The outcome of this writing would be an improvement in consumer protection and consumer's understanding in matters related to Halal products, to protect and educate consumers and to educate producers to be more vigilant and responsible for the manufacturing of their products.

Key words: Consumer Law • Halal • Halal Standard • Consumer Protection

INTRODUCTON

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 *Shariah* 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 *Dhawabit* and methodology that enjoins together the *Shariah* 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 law [1]. In matters involving a purchase, Islam emphasizes the question of quality and consumer's rights. Quality of the goods sold shall be guaranteed to satisfactorily 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 arises as to whether the rights of Muslims were fully protected under the law relating to Halal and what are the lawful rights of Muslims, if these rules were not

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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, proves 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 restrictions and enforcement in terms of the law and legal action, whether they are sufficient to curb the fraudulent usage of Halal logo [2]. When debating the issue of Halal, the scope is very wide covering Halal food, Halal banking, Halal pharmaceutical products, Halal tourism and many other related services for Muslims [3].

Halal and Consumerism: Historically, 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 were; the right to safety, the right to be informed, the right to choose and the right to be heard [4].

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 were: 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 and 5. The right to representation [4]. For the protection of consumers from profiteering misconduct of producers and sellers, there have been various policies, statutes and plans 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). The United Nations Guidelines for Consumer

Protection or the guidelines for the United Nations Consumer Protection (UNGCP) which were the guidelines introduced by the world organization on 9 April Punctuation 1985. the proposal submitted by the United Nations Economic and Social Council, one of the administrative machinery of the Organization United Nations. 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 [5].

Generally, the main objective of these guidelines is to assist the government to provide 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 [5].

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 2015. 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). 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. In order 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 organizations [6].

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 responsibilities of the three

main entities; consumers, suppliers or manufacturers and the government. 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 areas [7].

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 government. 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 reinforcing 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 are: 1. Awareness to criticize, 2. Involvement and action, 3. Social responsibility and 4. United [7].

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 follows: 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 and 8. The right to consumer education [7].

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 in the domestic context, 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 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 moment [8]. Not to exclude animal based consumer products worn daily, 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 on the processing techniques and methods if it was done in accordance with the Islamic law. All these problems plaguing the consumers should be resolved immediately without haste by the relevant authorities [9].

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 enforced [10].

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 Malaysia [8]. The dangers arising from various products and food ingredients supposedly should not have the Halal status and if there was, the status is questionable.

Halal in *Shariah*: Some of the Muslims choose their favourite food based on affordability, wants and taste. This is done 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:

يَا أَيُّهَا الَّذِينَ آمَنُوا كُلُوا مِن طَيِّبَاتِ مَا رَزَقْنَاكُمْ

"O ye who believe! Eat of the good things that we have provided for you" [11].

The meaning of 'good things' from the above phrase includes hygienic food because when it is hygienic it means it is indeed good. A clean 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 أبى أن يدخل الجنة لحما نبت من سحت قالنار أولى به

“Indeed Allah prohibited flesh grown from forbidden source to enter paradise, on the contrarily, hell is the best place for it” [12].

Islam emphasizes on the aspect of good health among its disciples. A Muslim who always cares about the aspects of cleanliness and consuming 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:

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

“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” [13].

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 to *Shariah* requirements.

Fraudulent Halal Logo: In the case of fraud against Halal logo, there are several types of frauds including the subsequent misused of the Halal logo upon the business acquirement of the logo, the use of overdue or expired Halal compliance certificate, or companies that have never obtained the Halal certificate and instead have used forged certificates [2]. 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. Repeated occurrences of alcohol and pig DNA 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. To prevent loss of profits, some of the *kopitiam* restaurant owners began to panic and resorted in buying privately issued Halal logo to trick the Muslim consumers. 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 JAKIM [14].

In the case of slaughtered animal, The Royal Malaysian Custom (RMC) Selangor confiscated a total of 22,750 kilogram of frozen beef valued at (RM342,150). The status of its Halal is doubtful after RMC raided a container in North Port which was declared containing a load of carrots but after further checking only found three rows of carrots and the rest containing boxes of frozen beef believed to be originated from Argentina without any Halal certification [15].

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 non-compliance to the Halal standard of JAKIM and JAIN. Among the findings were the use of raw materials based on alcohol, doubtful contents, non-Halal certification of Halal raw materials, chicken from dubious 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 JAIN [16].

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.

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..." [17].

Thus to create a valid goods sales contract, all the basic elements of contract forming must be present as outlined in Contract Act 1950 [18]. Meanwhile, the detailed descriptive of goods can be found in Sales of Goods Act (SGA) 1957 [19]. 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 conditions or warranties as outlined in Section 14, 15, 16 and 17 of the Act [20]. 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 implied condition on the goods being sold must adhere to the descriptive given by the seller [21], the quality can be traded and appropriate with meaning deemed proper to the buyer [22] and the sample that is precise from the quality aspect of goods being sold [23].

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 manufacturers 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 - guarantee 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 [24].

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 [16]. Halal standards in Malaysia are developed through consensus by committees which comprised balanced representation of producers, users, consumers and others with relevant interest. Approval of such standard in Malaysia is governed by the Standards of Malaysian Act 1996 [2].

In the management of Halal Certification of JAKIM and JAIN, various laws and acts below are applicable [25]:

- 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 *shariah* law together with the offences of falsification of raw materials and halal documentation enforced by the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC);
- The Food Act 1983 and Food Regulations 1985 regarding labelling, hygienic practice and food safety enforced by the Ministry of Health (MOH);
- 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);
- The Customs Act 1967, Customs (Prohibitions of Import) Order 1998, regarding the import of Halal meat by the Royal Malaysian Customs;
- The *Shariah* Criminal Offences (Federal Territories) Act 1997 - Labelling of halal food by the State Islamic Departments;
- 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 Manual. 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 Logo. For imported food products, only the Halal logo issued by the foreign Halal operators recognized by JAKIM can be used [26]. 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 follows [27]:

- For an organization or corporation, a fine not exceeding RM200,000 (USD 63,160) and for the second or subsequent offences, a fine not exceeding RM500,000 (USD 157,901).
- For an individual, a fine not exceeding RM100,000 (USD 31,580), or an imprisonment for a term not exceeding three years, or both. For the second or subsequent offence, a fine not exceeds RM250,000 (USD 78,950), 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 Halal product consumption especially the Muslim consumers.

CONCLUSION

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. On the other hand, 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. In future, a model of consumer protection should be established to ensure

that the rights of all consumers are always protected. 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.

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