

THE ENFORCEMENT ACTIVITIES UNDER POST-MARKET CONTROL OF *HALAL* CERTIFICATION IN MALAYSIA

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Abstract

Malaysia's halal regulation has undergone some shifts after the introduction of the Trade Description Act 2011 (which replaced the Trade Description Act 1972) which is under the purview of the Ministry of Domestic Trade and Consumer Affairs. The most significant effect from the law in terms of halal is that the legal framework of halal has been within the governmental control when it has mandated a regulatory agency to become the sole issuer of the halal certificate in this country i.e. to the Department of Islamic Development Malaysia or globally known as JAKIM. That fact has also extended the power of JAKIM to become part of halal enforcement body apart from the said Ministry through the delegation of power to JAKIM's enforcement officers as Assistant Controllers of Trade Descriptions (for halal). All of this came about from the noble intention of the government to become the world halal hub where it needs a stringent set of pre-market control and post-market controls for halal. This would benefit the country to shape Malaysia's halal industry by balancing the halal practice of industry and at the same time to protect the consumers from any abuse of halal. There are a number of reports regarding the misuse of the halal logo. This paper gives some glimpse of post-market control of halal through some of the enforcement activities carried out by JAKIM. The article found that the current Trade Description Act 2011 (TDA 2011) has strengthened the aspects of enforcement, supervision and monitoring of the halal logo as well as prosecution of related offences.

Keywords: Post-market control, halal enforcement, halal certification, Malaysia

1. Introduction

Pre-market controls are an obvious form of regulatory intervention in the market to promote the safety and quality of any products available to consumers. This includes products of specific quality available to cater to a specific market group — Muslim consumers which are called *halal* products. *Halal* products are not only safe products, they are products that are prepared from *halal* ingredients which have undergone clean and proper production. In a Muslim majority country like Malaysia, the *halal* certification has extended to non-food products such as pharmaceutical, cosmetic and other consumer products. In addition, *halal* now has also surpassed services, such as logistics and also financial¹ services (Aiedah Abdul Khalek & Sharifah Hayaati Syed Ismail, 2015). Although *halal* certification in Malaysia is voluntary, Malaysia's current/existing *halal* framework has been considered stringent due to

¹ More well-known as Shariah compliant.

the fact that the framework has incorporated the important elements of pre-marketing control and post-marketing control. Both sets of control complement each other when it comes to providing effective solutions for problems concerning the non-compliance of *halal* products. Pre-marketing control refers to all types of obligations imposed on the manufacturers prior to getting the *halal* certificate. Pre-marketing obligations are one of the important regulatory controls deployed under the product regulations that are able to control the potential risks. This type of obligation includes auditing process which is normally done through the submission of relevant document requirements and also rules of *halal* compliance auditing to determine the *halal* standard.

Therefore, requiring control prior to placing the product on the market is a key procedure that is fundamental to ensure *halal* compliance of the product. However, sole reliance on the observance of pre-marketing obligation is generally inadequate. There is a need to observe the *halal* compliance requirements by other obligations on manufacturers/producers of consumer products to prevent non-compliant *halal* products from risking consumers once they are in the marketplace or to take action even if they are in the hands of final consumers. This rule, therefore, is concerned with monitoring *halal* products in the marketplace and ensuring that action can be taken once the *halal*-risk is comprehended. This is known as post-market control.

2. Post-market control for *halal*: Minimising ‘Halal-risk’

With many more *halal* products in the market today, the potential risks of non-compliant *halal* are increasing. It could be any risks of contamination from non-*halal* products and also from the environment. Therefore, the regulation also needs to cover a wide variety of potential *halal* risks. The rules are generally directed at the producers/distributors and traders in order to influence the manner in which *halal* products are marketed and manufactured. Apart from that, a post-marketing dimension covering the inspections, several types of offences, complaints, prosecution process and recall of products are found to be the most relevant enforcement activities. Generally, the post marketing obligations are concerned with monitoring products in the marketplace and ensuring that action can be taken once the risks are traced (Nottage, 2015).

This aspect is imperative to control and minimize any products with a potential risk of *halal* contamination or *halal* non-compliance from reaching the consumers. The essential purpose of this system is to enable the producer to be informed of the *halal*-risks that might appear when the products are used, to evaluate them and to take appropriate actions in relation to the *halal* products already on the market or yet to be produced. It is also important to note that often post-marketing action needs to be invoked with urgency as problems suddenly reveal themselves. It is suggested that the law seems to recognise the difficulty enforcement authorities face when having to react at speed to developing situations in which there is uncertainty about the extent and real nature of *halal*-risk, if any, posed by the product (Micklitz & Roethe, 1994). Here, consumers should be prioritised.

3. Legal sources for *halal*

In the current *halal* framework, post market control is comprised of inspection for monitoring and other enforcement activities. These activities are bound by related laws enforced in the country (Asa, 2018). The relevant laws are Trade Description Act 2011; Food Act 1983 (Act

281), Food Regulations 1985 and Food Hygiene Regulations 2009, Animal Act 1953 (Revision 2006), Animal Ordinance 1953, Animal Rules 1962, Animals (Importation) Order 1962, Abattoir Act (Corporatisation) 1993; Custom Act 1967, Custom Order (Prohibition of Import 1998); the Local Government Bylaws 1976 (Act 171) and Local Council Bylaws; Act/ State Administration Enactment of Islamic Affairs; and the Trade Mark Act 1976. Apart from the laws, there are also guidelines and *halal* standards available to dictate the enforcement team as well as the industry on what to observe in their activities of *halal*. Malaysia's Manual for *Halal* Certification² issued by JAKIM as well as *halal* standards issued by the Department of Standard Malaysia are also other pertinent references to be used for the *halal* application. They were developed with the involvement of all stakeholders with a view to strengthening the *halal* certification system as well as assisting the industry to understand more clearly the procedures and requirements of Malaysia's *Halal* certification implementation.

From the above-mentioned list of legal provisions, it must be noted that the main source of power for issuing *halal* certification is the Trade Description Act 2011 (Aspalella A. Rahman *et al.*, 2018). It emanated from section 28 of the Act whereby the provision states that the power is given to the Minister of Domestic Trade and Consumer Affairs (MDTCA) to give specific definitions to any term. Through the provision of section 28 APD 2011, consumers are prevented from being misled or deceived by certain expressions which clearly contradict the goods and services offered and also be specifically related to *halal* products. Based on this section, the Minister has issued the Trade Descriptions (Definition of *Halal*) Order in 2011. The term *halal* is therefore regarded as one of the trade descriptions for the purposes of this Act. The Trade Descriptions (Definition of *Halal*) Order 2011 states that when food or goods described as *halal* or in any other expression to show food or other goods that can be consumed or used by Muslims, such an expression means the food or other goods must follow the specified requirements: first, it must not contain any part of an animal or thing prohibited by Islamic law for Muslims to eat, nor slaughtered according to Islamic law; second, it must not contain anything that is unclean according to Islamic Law; third, it must not be intoxicating according to Islamic Law. The requirements also denote that foods and other goods must not contain any part of a human limb or product thereof which is not permitted by Islamic laws, as well as not being toxic or injurious to health. It must also not have been prepared, processed or manufactured using any faecal contaminated equipment. It has also been provided that when services related to food or goods, including transportation, storage and processing of raw materials, catering and retail foods or goods as described as *halal*, the expression means that the service must be carried out in accordance with Islamic Law.

From the provision, another important note to make is that any self-declaration of *halal* is illegal under this Order. Examples of self-declaration are 'Muslims' food,' *halal* guarantee', 'Ramadhan Buffet', '*halal* *toyiban*', (merely means allowed and permissible for consumption with relation to Shariah law as long as they are safe and not harmful) *etc.*, which are completely prohibited under this order. Many of those who self-claim *halal* are restaurants.

While Section 28 deals with powers related to the Minister to give a specific definition to the term '*halal*,' Section 29 of this act provides power to the Minister to appoint

² The Manual Procedure for Malaysia *Halal* Certification (Third Revision) 2014 which is currently under review.

the “competent authority” to issue the certification and marking of ‘*halal*’. The appointment of the “competent authority” to do the certification and marking of ‘*halal*’ is by virtue of the by-laws passed under the TDA 2011, namely the Trade Description (Certification and Marking and of *Halal*) Order 2011, which was made effective on 1st January 2011. Through the said Order, it has been made specific that it is the Department of Islamic Development Malaysia (JAKIM) and the Islamic Religious Council of the States (MAIN) are the respective appointed authorities to certify *halal* for any food, goods or related services. It denotes that, under this Order, all food, goods or services cannot be described as *halal* unless certified as *halal* by the competent authority, i.e. JAKIM / MAIN which also means that no other bodies or agencies are allowed to issue *halal* certification. And as a result, such foods and goods can be marked with a specified logo that is issued by the competent authority (Nor Anita Abdullah *et al.*, 2018).

Therefore, JAKIM, through its *Halal* Management Division³, has been given the responsibility to monitor and supervise matters pertaining to *halal* certification either within this country or overseas, as well as taking charge of other *halal* related matters, including *halal* enforcement and supervision (Faradina Ahmad *et al.*, 2018). The *Halal* Management Division consists of a few sections, including the Monitoring Enforcement Section. In April 2010, there had been a significant change with regard to the power of conducting *halal* enforcement which was fully enforced in 2012. The officers of this section have been given the authority to carry out any *halal* enforcement processes in accordance with the provisions of the law (Lembaga Penyelidikan Undang-Undang, 2011). As mentioned earlier, prior to April 2010, JAKIM’s enforcement officers could only conduct enforcement when ministry officers were present. However, they have now been delegated with the power of being ‘Assistant Controller of Trade Descriptions’ by the Ministry which makes them very important personnel in carrying out *halal* enforcement as well as in-charge of initiating investigation paper. As a result of this, they can carry out *halal* enforcement on their own since they are the persons that are well-trained in such matters, and the presence of the officials from the Ministry to carry out any operation is no longer required, as the former has been equipped with the power to act alone in enforcing the APD of 2011. The delegation of power has been done by the issuance of an ‘authorisation card’ to the officers from the Ministry. Having said that, the Ministry is still the ‘controller’ of the Act and therefore can still interfere in any matters, if necessary, in order to ease the implementation of any trade description in this country.

4. Enforcement activities for *halal*-certified products

Inspection is one of the important activities under post-marketing obligation for *halal* products. Some of *halal*-risk are not able to be detected during document and compliance audit. The inspection provides the authority with the implementation of the companies’ actual *halal* activities they pledged during the *halal* application process as well as on the documentation. Inspection is also an integral part of *halal* monitoring activities under the post-marketing obligation because this activity could identify existing and potential *halal*-risk, determine the underlying causes of *halal*-risk as well as monitor *halal* controls. Inspection is also important as it could listen to the concerns of workers and supervisors of any risk involved, if any. Under the *halal* enforcement system, there are four types of inspection activities conducted by the JAKIM. The four types are scheduled inspection, enforcement inspection, follow-up inspection, and complaint-based inspection. Scheduled

³ It was previously known as ‘*Halal* Hub Division’.

inspection is a continuous and planned inspection on Malaysia *Halal* Certificate holders to verify its compliance to certification requirements, use of the logo and *halal* standard. It is normally conducted once a year by the enforcement authority. However, inspection priority is also given to high-risk companies, i.e. companies producing meat- and poultry-based products, oils and fats, and abattoirs in which it is conducted more frequently than the low-risk companies. On the other hand, enforcement inspection is an inspection conducted by JAKIM/MAIN/JAIN together with other enforcement agencies as a result of public complaint or from scheduled inspection activities. Follow-up inspection is an inspection on any company which failed to comply with the *Halal* Certification Procedures based on the earlier inspections. Public-complaint inspection meanwhile means apart from the periodic monitoring, the inspection could also be carried out if there is any public complaint in respect of any suspected execution of a *halal* offence. Upon such complaints, these officers will perform thorough investigations together with other relevant enforcement agencies including the Ministry of Domestic Trade, Cooperatives and Consumerism, Ministry of Health, Department of Veterinary Services, Customs, local authorities, and other agencies deemed necessary.

Inspection based on a complaint is conducted after receiving a public complaint pertaining to abuse of the *halal* logo/certificate or doubts on products and consumer goods, food premises, slaughterhouses, logistics or companies which have been awarded the Malaysia *Halal* Certification, use of the logo or *halal* term.

However, for major offences, they bear different consequences. The three types of offences are minor, major and serious offences. A minor offence usually involves technical offences whereby the Inspection Officer only issues warning requesting for specific corrective actions. Such technical offences that fall under the category of minor offences are offences relating to premise cleanliness, equipment's cleanliness, workers' hygiene, environmental cleanliness, pest control, and other offences related to hygiene and sanitation, food handler who does not have anti-Typhoid vaccination. Minor offences could also include issues of failure to produce documents requested by the inspection officers and failure to inform the authority for any changes and additions of raw material manufacturers which have the *halal* certification.

A major offence means it can result in the suspension of the Malaysian *Halal* Authentication Certificate by inspecting officers and must be submitted to the *Halal* Authentication Panel for the final decision. Examples of such offences that can fall under this category are changes/additions to suppliers/producers without *halal* authentication from JAKIM/MAIN/JAIN, changes/additions to suppliers/producers without *halal* authentication from a recognised *halal* certification body, use of the Malaysian *halal* logo on products that have not received the Malaysian *Halal* Authentication Certificate or use and display of a *halal* authentication certificate that has expired, falsification of the *halal* certificate or misuse of the Malaysian *halal* logo, lending/passing of an original *halal* authentication certificate to other premises or companies, alteration of the information on the Malaysian *Halal* Authentication Certificate, and any change or addition of ingredients declared in the application form without prior written approval from JAKIM/ JAIN/MAIN. Apart from that, the *halal* certification can also be suspended if it is found that none or fewer than two Muslim Malaysian workers work in the processing area/kitchen; placement of religious items in the processing area/kitchen, failure to meet any relevant *halal* standards, and failure to comply with a directive for remedial action for a minor offence. In addition, the presence of any

animal at the premises as well as the location of workers' accommodation can also result in a *halal* certificate being suspended.

The third category of offence is a serious offence. It refers to any Shariah and technical offences that can result in the withdrawal of the Malaysian *Halal* Authentication Certificate by inspecting officers and must be submitted to the *Halal* Authentication Panel for the final decision. As for Shariah offences, they are the offences against Islamic law such as the use of '*haram*' status authentication by recognised religious authorities for products/ingredients/equipment, *etc.* as well as the use of *haram* materials after obtaining a Malaysian *Halal* Authentication Certificate. The mixing and storing of *halal* items with *haram* items, storage of *halal* products with *haram* products; equipment used with both *halal* and *haram* materials, processing of animals that have not been slaughtered properly, and the use of stunning tools that cause the animals to die or reach a near-death state will also cause the withdrawal of a *halal* certificate. There are also technical offences (offences not against Islamic law but are still serious) such as the transfer of a premise or factory without notifying JAKIM/MAIN/JAIN, changes in management and company name without notifying JAKIM/MAIN/JAIN, a slaughterer and checker without certification or with an expired certification, stunning for the purpose of sedating the animals, which does not adhere to prescribed standards and bringing in '*haram*' materials to premises that have not obtained *halal* certification.

5. Recalls of *halal* products

As explained, post-market controls are measures directed at traders who have potential goods that they intend to market or they have already marketed. Some of the most serious risks to consumers arise from non-compliant *halal* products that have already found their way into the possession of consumers. In order to justify whether recall is feasible it depends on the ability to trace the product and purchaser (Woodroffe & Weatherill, 1990). Such ability varies greatly according to the type of products involved. For *halal* recall, companies shall recall products in the market upon contamination of *haram* material and as directed by JAKIM/MAIN/JAIN usually when involving any issue.

In ensuring the success of recalls, there are important elements to be considered, for example whether the product manufacturer or retailer has the lists of consumers available, and it is also necessary that the media are used including social media. Such products may have passed through more than one distributor and retailer after leaving the manufacturer and before reaching the consumer; therefore, their actual ownership is seen to be more difficult to trace because of no record of sale. It is noted that it is an effective instrument and also an appropriate way of communicating precise information about the issue with the products (for example, withdrawal of the *halal* certificate) to the public in a timely manner.

6. Conclusion

Regulation is always well-understood as an instrument of economic and industrial policy, acting especially through the mechanism of ensuring a competitive market. Government control for *halal* has been regarded as necessary in order to protect consumers from the abuse of *halal* by unscrupulous manufacturers or traders. The governmental control of *halal* in Malaysia is collated in a set of obligations imposed on *halal* manufacturers that are called pre-market and post-market controls. Enforcement activities that come under post-market

control allow the law enforcer to take action when there is any violation of the laws in regard to *halal*. These controls essentially help shape the tenacity of the stringent requirements for *halal* in this country.

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