

The Trade Description Act 2011: Regulating 'Halal' in Malaysia

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Abstract---Malaysia took its cue from the United Kingdom by passing the Trade Description Act in 1972. This act was to prevent manufacturers, retailers and service providers from manipulating and confusing consumers with false trade description and misleading conduct in the supply of goods and services. After 39 years in existence, it has now been repealed and replaced with the new Trade Descriptions Act of 2011. Enforced since 01 November 2011, salient changes have been made whilst maintaining its original objectives. One of the most significant features of the new Act is the creation of the Trade Description (Definition of Halal) Order 2011 and the Trade Description (Certification and Marking of Halal) Order 2011 giving specific legal proviso on matters pertaining to *halal*. This article discusses the Act and Orders and how are these provisions regulating *halal* in Malaysia.

Keywords---*Halal*, *halal* regulation, Trade Description Act, Malaysia

I. INTRODUCTION

MALAYSIA is on the verge of making itself as the world *halal* center. This is evident by the fact that Malaysia was the first Muslim majority country where the government declared the development of *halal* sector as one of the most potential engines for growth for the national economy. Although *halal* in Malaysia is voluntary, Malaysia was the first to incorporate *halal* into the scope of the long term economic planning; certainly the first to announce its ambition to become a global *halal* hub and the first to create specific agency for monitoring *halal* and to develop plans for the national *halal* sector. Due to developing interest on *halal* industries to both Muslim and non-Muslims enterprise, there have been some issues regarding the manipulation of *halal* logo and the use of false *halal* description to attract Muslim consumers into purchasing certain products. This is due to the fact Muslim consumers are the majority in the country and marketing products to Muslims means greater profit will be made. Owing to growing interest in this field, this research contends that there is a need to investigate the legal mechanism or regime, such as any regulation for *halal* consumer products; in specific; and if that regulation is adequate for protecting Muslim consumers.

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This is important, as regulation has often been sought to control and monitor activities relating to *halal* products, such as certification and the use or display of *halal* label.

II. THE TRADE DESCRIPTION ACT 1972 (APD 1972)¹

It must be admitted that the laws discussed below may not include every laws that are related to *halal* in Malaysia. As for general observation, it could be summarized that statutory provisions relating to *halal* in Malaysia are piece-meal in nature.² However, the main provisions on *halal* food and product can be principally found in regulations made under the general provisions of the Trade Description Act (hereinafter refer to as TDA). This law was in existence since 1972, when it was first introduced and enforced. There were two regulations made under the Act namely the Trade Descriptions (Use of Expression Halal Order) 1975 and the Trade Descriptions (Marking of Food) Order 1975. It must be noted that the Ministry that has been mandated to govern the TDA is the Domestic Trade, Cooperatives and Consumerism Ministry which was formerly known as Ministry of Domestic and Consumer Affairs.

Looking at the 1972 Act, there were some reasons that the law was not efficient in regulating *halal*. Previously, despite Malaysia's reputation that has been recognized as one of the frontrunners for *halal* hub, this does not mean that the country is free from the issue of abuse of the *halal* logo and fraudulent *halal* marking. Although APD 1972 and the orders made thereunder have been created, the Act and these regulations were difficult to be implemented especially in the enforcement of *halal*-related offenses. The main problem was the absence of specific provisions giving jurisdiction over certain agencies to handle the '*halal* matters'. This is due to the fact that the authority that is made the 'Controller' of this Act is the Domestic Trade, Cooperatives and Consumerism Ministry (formerly the Ministry of Domestic Trade and Consumer Affairs (MDTCA). Whereas, it was the Department of Islamic Development Malaysia (JAKIM) that has been mandated to issue *halal* certification.

The main issue at that time was that there was no legal provision that gave JAKIM legal authority to issue *halal* certification, as there is no law specifically provides with this power to JAKIM. Not only that, JAKIM has always been responsible to carry out *halal* audit and *halal* monitoring in the country. The effect of such scenarios was that when the enforcement was carried out, JAKIM could only take action

¹ Act 87 of Malaysia

² There are also other laws that are applicable to *halal* in Malaysia such as Food Act 1983, Animals Act 1953, Customs Act 1967, Trade Marks Act 1976, Control of Drugs and Cosmetic Regulations 1984.

when the ministry officers were present, even though it was JAKIM who administered everything on halal. Also, in the event there was any complaint about the abuse of halal certificate or logo, JAKIM must notify the Ministry first to take action prior to the enforcement being carried out. There were also some other agencies that issue halal certification before Trade Description Act 2011 coming into effect.³

As mentioned before in general, the Trade Description Act 1972 regulated *halal* affairs in Malaysia. Using the general provision of trade description, any non-*halal* food or products claimed as '*halal*' will be regarded as violating the Act because it signifies the false trade description. In 2011, the Trade Description Act 2011 (TDA 2011) was passed in August and came into force on 1st November 2011. The new Act replaced and repealed the 1972 Act and the regulations made under it. The purpose of the new Act is to reform the previous trade description law, as it contained some loopholes.⁴ The 2011 Act aims to promote good trade practices by prohibiting false trade descriptions and false or misleading statements, conducts and practices in relation to the supply of goods and services, thereby protecting the interest of consumers. One of the most significant features of the new Act is the introduction of the Trade Description (Definition of Halal) Order 2011 and the Trade Description (Certification and Marking of Halal) Order 2011 giving specific legal provision on matters pertaining to halal.

The first Order provides that when foods or goods are described as halal or are described in other expression to indicate that the food can be consumed or used by Muslim people, such expression means that the food or goods has followed the requirements that has been imposed by the Islamic law on foods and goods, which means, such foods or goods are neither consist nor contains any part or matter of an animal that is prohibited by *hukum syarak* (i.e Islamic law) for a Muslim to consumer or that has not been slaughtered in accordance with *hukum syarak*. Also, it does not contain anything which is impure according to *hukum syarak*, does not intoxicate according to *hukum syarak*, does not contain any part of human being or its yield which are not allowed by *hukum syarak*, is not poisonous or hazardous to health, has not been prepared,

processed or manufactured using any instrument that is contaminated with impurity according to any food that fails to satisfy the requirements mentioned above. It must be noted that the requirements do not only cover food and goods, but also the processes of transporting, storing and processing raw materials, serving and retailing of such foods and goods. If they are described as *halal*, such expression would mean that the services in relation to foods and goods must also be carried out in accordance with *hukum syarak*.

Whilst the first Order cover the definition of halal, the Trade Description (Certification and Marking of Halal) Order has made it specific that the agencies as the competent authorities mandated on this matter are the Department of Islamic Development Malaysia under the Prime Minister's Department (known as JAKIM-the federal agency) and the state's Islamic Religious Council (at state level) that can certify any foods, goods or services are *halal* in accordance with the previous mentioned Order. This provision denotes that all food, goods and services shall not be described as *halal* unless it is certified as *halal* by JAKIM, being the competent authority as mentioned above. As a consequence, only when the certification is done and satisfied, a specified *halal* logo can be used by the foods/goods operators.

The Domestic Trade, Cooperatives and Consumerism Minister is empowered by the 2011 Act to assign definitions to expressions or descriptions used for goods or services, and to appoint exclusive awarding bodies of such expressions and descriptions. A key purpose of the 2011 Act is to standardize the issuance of *halal* certificates. By virtue of the Trade Description (Marking of Halal) Order 2011, which has been made effective on January 1st, 2011, the Malaysia Islamic Development Department (JAKIM) is appointed as the sole issuer of *halal* certificates for any food, goods or related services. As mentioned earlier, prior to this Order, there are several bodies that also did halal certification. The other agencies/companies previously issued halal certificates would no longer be allowed to do so. This means that all premises and suppliers using halal certificates not issued by JAKIM will need to make fresh applications to these authorities, and ensure compliance by Dec 31, 2012.

III. PENALTY

For violating any provision stated under the Trade Description Act (Definition of Halal) Order 2011, any person who commits an offence upon conviction, shall be liable to a fine not exceeding RM1 million (USD 300,000.00) or imprisonment for a term not exceeding 3 years or both while any body corporate who violates the same offence shall be liable to a fine not exceeding RM5 million (USD 1.6 mil.). For the violation of the Trade Description (Certification and Marking of Halal) Order 2011, if it is committed by a person, then, upon conviction, he/she shall be liable to a fine not exceeding Malaysian Ringgit 100,000.00 (USD30,000.00) or imprisonment for a term not exceeding 3 years or both while the penalty for a corporate body who commits the same offence is a fine not exceeding Malaysian Ringgit 250,000.00 (USD 77,000.00).

³ Act 730 of Malaysia

⁴ There are numerous sections that have been added, for example Section 9(1) – Trade Description Orders (TDO) are reserved for owners of registered trade marks; in contrast to the 1972 Act where common law owners are also eligible. There is also Section 9(2) where a TDO is now valid for a mere one year, unless renewed by the High Court on such terms and for such further period as the Court may decide. This is more administratively burdensome but renewal would not be withheld unreasonably. Section 20 makes it a punishable offence to make false or misleading statement in relation to contests and games. This is to curb "scratch & win" games of chance, with false promises of prizes, that abound in Malaysia. Section 23 deals personal or domestic use which is a defence to a person charged under the Act. However, a body corporate is not entitled to rely on such defence. Section 44 makes it an offence to disclose information that is likely to prejudice an investigation under the Act. Some defences have been provided under this new "tipping-off" provision. There are also Sections 53 & 66 where these new sections allow admissibility of evidence obtained by agent provocateur (abetting the commission of an offence for the sole purpose of securing evidence) and rewarding whistleblowers with part (not more than 50%) of the fine imposed upon securing a conviction. This is to encourage the public's participation; in an Act that is ultimately meant to protect the same public.

The responsibility for making sure that a product is *halal* lies with manufacturers. It is the guiding principle, since, being the manufacturer they are the party that deals with the product from the very beginning of its formulation. When making *halal* application, they will be responsible to pre-marketing control, that is the control prior to the product being put on the market. The responsibility on the producer does not stop after the product is released onto the market, but continues beyond. They also have a duty to monitor the products when they are on the market. This is called post-marketing obligations.

IV. CONCLUSION

Malaysia is the only country in the world that has governmental regulations to penalize the violation of false *halal* description on products and services. The Trade Description Act 2011 seems to provide a new feature for greater statutory protection and tighter enforcement against false trade descriptions, including false *halal* description. Through the law, *halal* certification and surveillance in this country has been mandated to the government bodies. It therefore benefits Muslim consumers especially as Halal certification provides assurance to them because it fulfills the Syariah law, which is an obligation for Muslims to adhere to.

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