

CONCEPTUAL FRAMEWORK OF A UNIFIED LEGAL CONTROL OF HALAL MEAT IMPORT FOR A SUSTAINABLE HALAL INDUSTRY IN MALAYSIA

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ABSTRACT

The recent discoveries of smuggling non-halal meat within the halal meat industry have impeached the reliability of the existing legal framework governing the import of halal meat to Malaysia. The existing halal legal framework that is scattered and non-unified contributed to the uncertain jurisdiction of multi-authority that controls the import of halal meat, lack of coherence, over-regulation, and inadequate regulatory activities. Thus this study aimed to examine the conceptual framework of unified legal control of halal meat import in Malaysia. This study adopts a qualitative method utilizing doctrinal research where data is gathered using documentation methods from books, journal articles, reports, and online data-based. The data gathered are analyzed using a document and content analysis approach. The finding shows that a more effective unified legal framework should replace the current scattered and non-unified legal framework. The unified legal framework may assist in identifying the role of each agency to avoid duplication of effort, consolidation of resources, and finding measures that help improve coherence among these agencies.

Keywords: Halal, Imported Halal Meat, Malaysia, Sustainability, Unified Legal Control.

1. INTRODUCTION

The recent discovery of a local meat cartel that had been smuggling frozen meat from abroad before repackaging it using the halal logo and selling it throughout Malaysia (Bernama, 2020; Akmal, 2020) has raised public concern. This has greatly impeached the credibility of the multi-authority agencies that control the importation of halal meat and the existing legal framework. The weaknesses of the current legal framework lie in the uncertainty of laws and the ongoing debate on jurisdiction to make laws on the regulation of halal between federal and state governments (Zainalabidin et al., 2019; Nor Adha, 2018,). Thus, the problem is why the existing legal framework has weaknesses in controlling halal meat imports into Malaysia.

The inadequacy of the existing legal framework that is scattered and non-unified has contributed to the non-effective control by multi-agencies involved throughout the control chain. The authorities involved which include JAKIM, Custom of Malaysia, Ministry of Domestic Trade and Consumer Affairs (MDTCA), Department of Veterinary Services, and Ministry of Health were made answerable to the current scenario and conflict (Zainalabidin et al., 2019). Some issues have been identified and attached to these different agencies' uncertain and scattered coordination and jurisdiction (Soraji & Mohd Yusoff, 2016). The current control system which is uncertain and scattered has led to several issues (Hadi et al., 2017). The downsides of the multi-agency approach in a national food control system have always been a major problem that contributes to lack of coherence, over-regulation, and time gaps inadequate regulatory activity (FAO & WHO, 2003).

The multi-agency approach makes the overall management control more complex, and this may affect transparency and the free flow of information between the different agencies (Al-Busaidi & Jukes, 2015; Alomirah et al., 2010). Thus the problem is why the jurisdiction, role, and power accorded to these agencies by the existing statutory provision contributed to the non-efficient control. The inefficient current legal framework remains an ongoing threat to the sustainability of halal food industries. In response to this, this study intends to suggest that a more effective unified legal framework replace the current scattered and non-unified legal framework. The unified legal framework may assist in identifying the role of each agency to avoid duplication of effort, consolidation of resources, and to find measures that help improve coherence among these agencies. Thus, the outcome of this study is to develop a unified legal framework to control the Halal meat import in Malaysia.

2. METHODOLOGY

This study aimed to examine the conceptual framework of unified legal control of halal meat imports in Malaysia. The conceptual aspect of the framework mainly focuses on the concept of halal meat, the administration of Halal Meat Import based on multi agencies and its weaknesses, as well as challenges faced in administering the multi agencies in halal meat import. To achieve the objective, this study adopts a qualitative method utilizing doctrinal research and library research. The data is gathered through documentation collected from primary and secondary data including from books, journals, bulletins, newspapers, annual reports, records, online data-based, and others that are related to the scope of research. The gathered data are analyzed using a document and content analysis approach through the inductive and deductive approaches on the collected data.

3 RESULTS AND DISCUSSIONS

3.1 *Concept of Halal Meat*

The rules and principles dictating the halal status of meat can be divided into two categories which are the fundamental rules and the ancillary rules. The non-compliance with the fundamental rules will render the slaughtered animal to become prohibited while the non-compliance with the ancillary rules causes the person involved in the whole process of slaughter to commit a sinuous act. In the second category, the slaughtered animal is deemed halal if it complies with the fundamental rules of slaughter. The rules require the slaughtering of animals to be carried out skillfully and perfectly so that the animal is not tortured in the process (Al Kaysi, 2007).

Islamic slaughtering is also known as dhabbah which means the slaying of animals (Hamilton, 1957). Al- Qaradawi (2011) divides the types of animals that need to be slaughtered into two which will later determine the method of slaughtering. His division consists of the first animals that are reared by humans or easily captured animals such as camels, cows, buffaloes, chickens and etc. Secondly, these are the animals that are difficult to capture. A different method of slaughtering applies to each category. Most of the Muslim jurists as quoted in various writings (Imam al-Ghazali, 2013; Shaykh Mufti Muhammad, 2013; Jabar Zaman, 2011; Mohammad Mazhar, 1993) agree that there are basically three conditions for a valid slaughter according to Shariah where all of these conditions need to be performed individually and separately on each of the animals. The three conditions consist of firstly, the methods of slaughtering which include the usage of tools, the vein that needs to be cut, and

the position of the animals during slaughter. In addition, the second condition is the invocation of the name of Allah, and lastly is the criteria of the place of the slaughterer. Non-compliance with the shari'ah rule of slaughter will turn the animal into carrion and thus become prohibited.

Al -Mawdudi (2011) in explaining the lawful animals said that the word "Anam" in the Holy Quran means cattle which also include camels, oxen, sheep, goats and cattle.

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ ۖ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَىٰ عَلَيْكُمْ غَيْرَ مُجَلِّي الصَّيِّدِ وَأَنْتُمْ حُرْمٌ ۗ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

"O ye who believe! Fulfil (all) obligations. Lawful unto you (for food) are all four-footed animals with the exceptions named." (Surah Al-Maidah 5:1)

On the other hand, prohibited animals are spelled out in some of the verses of the Holy Quran. The pig is the most popular animal stated in the Holy Quran. Pig appears in the words of Allah (SWT) (Refer to Al-Maidah,5: 3; Al-A'raam,6: 145; Al-Baqarah,2: 173) on the other hand other animals are prohibited as they fall under one of the categories described in the words of Allah (SWT) or Hadith of the prophet saw. Although the Quran mentioned only pig flesh, Qurtubi (2006) mentioned that pig derivatives and by-products are also prohibited.

In relating the above explanation to halal meat, it can be concluded that halal meat requires the meat or meat-based product to comply with both the Islamic rule of slaughter and permissible animals. Upon compliance to this ruling the authority to certify halal, namely JAKIM, may issue the halal certificate.

4.2 Existing Administration of Halal Meat Import

a) Department of Islamic Development Malaysia (JAKIM)

At present, JAKIM is the governing authority that issues halal certificates for local and export markets (Trade Description (Certification and Marking of Halal) Order 2011). In line with the halal governing function, JAKIM holds power to monitor and enforce compliance with all halal guidelines. The establishment of JAKIM in the very beginning was not set up under an enabling statute. Thus, the control over the powers given to JAKIM is uncertain. However, the enactment of the Trade Description Act 2011 gives JAKIM a specific power to issue halal certification under this Act. This can also be interpreted indirectly as JAKIM is also empowered to conduct any process relating to pre-certification and post-certification of halal. This involves the power to conduct audits, monitoring, and enforcement. However, till today

JAKIM does not own a specific power to conduct enforcement activities on its own. JAKIM officials need to wear different roles as the Ministry of Domestic Trade, Cooperative, and Consumer Affairs (MDTCC) officials while doing their enforcement tasks. This scenario does not portray JAKIM as a strong agency for protecting the right of consumers in the area of halal meat supply. The power and administrative action taken by JAKIM are monitored by two ministries, namely the MDTCC and the Islamic Affairs Division, Prime Minister's Department. The halal certification system is seen as vulnerable with many disclosures of raids on the wrongful use of the halal logo (Noraine, 2010). This has affected JAKIM's reputation as the main administrator of halal matters. If JAKIM is to be considered as a government agency, it falls short due to inadequate power to regulate and adjudicate the abuse of the halal logo. This weakness is not solely attached to JAKIM but to the government system that assigns the governing task to JAKIM and this needs to be reviewed and analyzed.

b) Royal Custom Malaysia

Royal Malaysian Customs Department also monitors the management of importation and exportation of products into Malaysia. This department will control the entrance point of Malaysia by executing several inspections of the products based on the nature of the imported products (Daud, 2021). Some of the products need to document inspection such as Halal Certificate, Certificate of Analysis, Importation of Permit, a cosmetic notification from NPRA for cosmetics products and many more (National Pharmaceutical Regulatory Agency 2017). RMC has the authority to approve or deny and block the products from entering Malaysia to guarantee the imported products are safe for human consumption and complies with all stipulated regulations by Malaysian authority bodies. According to Daud et al. (2021), the inspection includes the sampling process and enforcement activities such as holding and rejecting non-compliance products, for a product to be non-compliance products because the imported products do not comply with Food Act 1983 and its regulation or any other regulations in Malaysia after a thorough inspection and sampling results.

c) Ministry of Health

Ministry of Health is also involved in these procedures where MOH has built a system for importation purposes to monitor the imported food products into Malaysia. This department has developed a Food Safety Information System of Malaysia or FoSIM. This system has been linked with RMC, known as Customs Information System (CIS) where the customs can get the

information of the imported products and manage the activities upon the arrival of the products at the entry point (Daud et al., 2021). They are responsible to safeguard all imported and exported food products comply with Food Act 1983 and its regulations (guidebook). As mentioned in the Food Act 1983, for fish and fish products, the MOH officer or specifically to Food Safety and Quality Division officer will be issued a health certificate to the importer that intended to export its product to European Union based on Food Act 1983. Upon approval, MOH officers from the various units will inspect the entry point in collaboration with other enforcement products.

d) Malaysian Quarantine and Inspection Services (MAQIS)

Furthermore, Malaysian Quarantine and Inspection Services (MAQIS), under the Ministry of Agriculture and Agro-Based Industry, is also involved in the importation and exportation of products. One of their roles is to ensure all imported and exported products are safe for human and animal consumption through documentation. MAQIS acts to provide quarantine services at the entry points for imported and exported items. The items will be placed in the quarantine station for a certain period while waiting for the decision from the authorized body to release them (Malaysia National Trade Repository, 2022). Besides, MAQIS is also accountable for issuing import and export permits to the importers and exporters who are intended to import or export their products into Malaysia, especially for animal-based products. MAQIS also has the power to conduct an inspection of the imported products and perform an investigation if necessary. According to MAQIS Services Act 2011, under paragraph 19, the officers have the power to search or open the consignment for inspection and gaining information or evidence for the items. If the products are found to be against the law, MAQIS officers, together with several authority bodies such as the Ministry of Domestic Trade and Consumer Affairs (MDTCA) under its Trade Description Act 2011, are entitled to arrest importers and obstruct the items from entering Malaysia.

e) The Ministry of Domestic Trade, Cooperative, and Consumerism (MDTCC)

The jurisdiction of MDTCC includes trade objects and consumer issues. The ministry oversees enforcing the provisions under the Trade Description Act 2011 (TDA 2011). The MDTCC in responding to the increased demand to have a halal statute proposed the enactment of the Trade Description Act 2011 which later repealed the old Trade Description Act 1972 (discussed in chapter four). In connection with this function, MDTCC provides enforcement and monitoring programme to protect halal integrity, halal logo and consumer's

interest. Hence, the MDTCC is viewed to be the most relevant government body to take charge in governing the halal industry. In connection with this function, MDTCC provides enforcement and monitoring programme to protect halal integrity, halal logo and consumer's interest. The relevance of the MDTCC in governing halal meat can be seen through its role as the administrator of trade-related matters. As halal meat is a category of trade object, the role of the MDTCC in administering halal meat is seen as significant. However, in handling trade issues, the MDTCC is limited to addressing the fraudulent trade practices. From this point, it can be said that the governing of halal meat will also be limited to reducing and handling fraudulent trade practices. Whereas assuring that halal consumers are well protected requires the administrator to administer beyond fraudulent trade practices.

f) Department of Veterinary Services (DVS)

The Department of Veterinary Services (DVS) is an agency of the Federal Government under the Ministry of Agriculture. The DVS in Malaysia was established in 1888 as an agency to control exotic and domestic animal diseases. Over the years, the structure and functions of the organization have evolved to meet the growing demand for veterinary services (Mohd Noor, 2003). The regulations provide for control by the DVS on the issuance of the license for a new processing plant/abattoir. All new processing plants/abattoirs are required to fill in the form of information on the Islamic organization for the issuance of the halal certificate (DVS, 2013). The submitted information in the form becomes the vital determinant for the veterinary department to grant the license of operations for a new plant/abattoir. Prior to submission, the form needs to be endorsed by the local authority. This would be a double control to ensure the validity of the information submitted. The DVS also provides consultancy and advisory services on Halal livestock.

4.3 Weaknesses of the current administration of Halal Meat Import

a) Overlapping Jurisdiction

The involvement of many different agencies in this industry is due to the scope of the Halal industry in extensive jurisdiction which overlap is unavoidable. In addition, the absence of a single piece of legislation that specifically regulates the industry also plays a role in the involvement of various government agencies (Soraji et al., 2017). There are several laws relating to inspection and enforcement of Halal in Malaysia such as the Trade Descriptions Act 2011, Manual Procedure for Malaysian Halal Certification 2020, the Food Act 1983 (Act 281), Regulations Food Act 1985, and the

Regulation of Food Hygiene Regulations 2009, Animal Rules 1962, the Animal Act 1953 (Revised 2006), the Animals, 1962, the Abattoirs (Privatization) Act 1993, the National Livestock Development Authority (Dissolution) Act, 1983, Customs Act 1967 (Prohibition imports 1998), the Local Government Act 1976 (Act 171) and the laws of Local Authorities, Act / Administration of Religious Affairs and the Trade Marks Act 1976. These legislations are listed, giving authority to the different agencies according to the scope of the task and the specific cause.

b) Uncertain Legal and Administrative Power

The powers of halal certification and halal enforcement in Malaysia fall under the jurisdiction of different agencies. The halal certification authority is currently fully under the jurisdiction of JAKIM and the State Islamic Religious Departments (JAIN)/State Islamic Religious Councils (MAIN), while enforcement is under various agencies including the Ministry of Domestic Trade and Consumer Affairs (KPDNHEP), Ministry of Health Malaysia (MOH), the Royal Malaysian Police (PDRM) and the Royal Malaysian Customs Department (JKDM). In the issue of regulating the import of meat supply to Malaysia, it is not only under the absolute authority of JAKIM but also various other agencies involving several levels including the Department of Veterinary Services (DVS), Department of Quarantine and Inspection Services Malaysia (MAQIS), and JKDM in the entry ports in Malaysia (Harian Metro online, 2020). Basically, this is seen as an overlap in jurisdiction especially when it involves the implementation of monitoring and enforcement. This is because various agencies are involved in this monitoring and enforcement but no focus is given to the class on halal-related issues.

c) Lack of Information Sharing Across Agencies

Information sharing between each government agency is considered an important approach to improve the efficiency and performance of the organization. Nowadays, with advances in information and communication technology, information sharing across organizations has become easier to implement. In the public sector, government agencies also recognize the importance of information sharing to address policy issues such as public safety and health. However, information sharing can be a complex task. Identifying factors that influence information sharing is important. This is since there are certain procedures based on government service instructions, there are levels and classifications of security in accordance with the category of information or files, this is to ensure the confidentiality of information. Through it, government secrets will be saved from being leaked by irresponsible parties.

(Perintah-Perintah Am, 1997). This is seen as a constraint in the sharing and coordinating information among agencies.

d) Poorly Co-Ordinated Integrated Activities across Agencies

The public service delivery system plays an important role in the development and progress of a country. If there are weaknesses in governance, it can affect the public service delivery system. Inconsistencies in policies and work procedures will result in chaotic implementation, building a negative image among the people. This inconsistency of policies and work procedures will also result in the slow implementation of public service delivery and inconvenience to customers. This delay may be due to the implementers who may be confused, and unclear with tasks and areas of work to affect the delivery system. Problems due to bureaucracy will hinder the smooth running of work procedures. This situation also will further increase the negative sentiment towards government agencies. Low service quality and lack of coordination between government agencies as policymakers and implementers are also factors that affect the delivery system (Hamden, 2007). At the same time, the government of Malaysia has introduced the National Blue Ocean Strategy (its English acronym NBOS) adapting and beginning to implement this approach. More than 80 ministries and agencies are planning to collaborate in formulating and implementing the country's creative and transformative Blue Ocean Strategy initiatives (Anwar Ridhwan, 2014). However, the implementation of the NBOS is still not able to resolve halal issues, especially those involving halal governance, there are at least 300 institutions from both Federal Government agencies, state to private that are directly involved in the aspects of regulation, certification, enforcement, and development of the national halal industry (Harian Metro online, 2020). To overcome this matter, in 2016 the government took the initiative to introduce the Malaysian Halal Council (MHM) (Irwan Shafrizan, 2016) however, it is seen to stall until 2019.

e) Unclear Chain of Accountability

Establishment intending to produce halal meat, poultry, and their products for approval establishment of the importing country such as Malaysia shall be registered with the competent authority in their respective country and shall be subjected to inspection by the Department of Veterinary Services (DVS) and the Department of Islamic Development Malaysia (JAKIM) (JAKIM, n.d.). While the Halal Certification Body in the exporting country shall be recognized by JAKIM and ensure the Malaysia protocol for halal meat and poultry production, Malaysian Standard MS 1500, and Malaysia Fatwa Council decree continued to be complied, so that approval for that market is maintained in the

approved establishment (JAKIM, n.d.). Whereas for the purpose of shipment or supply chain starting from the establishment or manufacturer to the importing country, in any case when transported, halal products must be fully controlled from mixing with najis that fall under the category of najis mughallazah (i.e. pigs or dogs and their products, including any discharge of liquids and objects from the orifice, its derivatives, and derivatives), and the establishment of the manufacturer shall identify and separate non-halal products in complete packaging from halal products during transportation (JAKIM, n.d.). Basically, the government has set rules related to this matter however, there are a handful of parties who try to commit fraud and irregularities on this matter by bringing in non-halal products and labeling them with halal labels as reported before.

4.4 Proposed Concept of Unified Administration over Halal Meat Import

Unified administration or collaborative administration is a type of collective action and governance that brings together agencies to collaborate across organizational boundaries to solve problems that no agency or organization can effectively address. When an objective or social issue cannot be completed or handled by working alone due to fragmented authority or when the acts of one organization affect the actions of another, collaboration is sought (Resetar, S., 2020). The study by Abdeen (2021) highlighted the advantages of collaborative work between the Federal government and local authorities in handling the disaster. He contended that the capacity of local authorities alone without assistance from other federal agencies results in a non-efficient solving of disaster issues. Although this study research on a bigger scale problem, like a natural disaster, the core of discussion provides a good idea for this study. Countries should move away from overlapping legislation and a hazy division of responsibilities between the federal, regional, and local levels of government in order to achieve vertical collaboration (Abdeen, 2021). Similarly, in studying the management of flood disasters in Sarawak, Sulaiman (2019) propounded some useful suggestions on cross agencies collaboration. According to this study, a strong collaboration between agencies requires a clear understanding of their roles and organizational structures.

The proposed concept of unified administration lies in the fundamental aspect of legal and regulatory governing on the importation of Halal meat. The proposed establishment of Majlis Halal Malaysia (MHM, or the Malaysia Halal Council), announced by former Deputy Prime Minister, Ahmad Zahid Hamidi on 11 February 2016, marked a significant milestone toward streamlining the halal industry in Malaysia under centralised supervision. Although this

initiative has yet to be enforced, it will empower JAKIM to focus on matters related to halal certification, governance and other shariah matters. Besides the halal matters should be centralised under the federal government's jurisdiction, as they fall within the ambit of Item 8 of List I of the Ninth Schedule of the Malaysian Federal Constitution (Apnizam & Mohamed Azam, 2019).

Apnizam & Mohamed Azam (2019) also suggest in the study that the proposed National Halal Council Bill should fall under the federal government's purview and the Malaysian Halal Council (MHC) should become the apex authority for halal supervisory and governance functions. Besides, the study further suggest that centralised coordination must be effective to avoid unnecessary overlap between ministries and halal-related agencies. Halal trading practices can be harmonized through a centralised regulatory and supervisory regime. Thus, the concept of unified administration to cater the issues relating to halal meat import by putting the halal industries under centralized supervision of federal government is a key for safeguarding the halal meat industry. Besides the improvement on integration of multi agencies in term of supervision and enforcement is also a significant aspect for maintaining the sustainability of Malaysia as a main halal industry player worldwide.

5. CONCLUSION

In a conclusion, the halal meat import is currently administered by multi agencies namely Jabatan Kemajuan Islam Malaysia, the royal custom of Malaysia, the Ministry of Health, and the Department of Veterinary. The multi-agency administration is governed by different statutes highlighting weaknesses due to overlapping of the jurisdiction and uncertain legal and administrative power. Besides the study also indicate the weaknesses of the lack of information sharing across agencies and an unclear chain of accountability. Thus the current scattered and non-unified legal framework should be replaced by a more effective unified legal framework. The unified legal framework may assist in identifying the role of each agency to avoid duplication of effort, consolidation of resources, and to find measures that help improve coherence among these agencies. In addition, in the proposed unified administration JAKIM should be empowered to focus on the halal certification, Halal governance and shariah matter. The halal matters should be centralised under the federal government's jurisdiction. Besides the improvement on integration of multi agencies in term of supervision and enforcement also needs to be look into in order to maintaining and safeguarding halal matters relating to halal meat import in Malaysia.

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