

## MEAT CARTELS AND THEIR MANIPULATION OF HALAL CERTIFICATION IN MALAYSIA

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### ABSTRACT

A cartel is an agreement between several individuals or companies and others to engage in a scheme for the purpose of maintaining the business status quo by *inter alia* regulating and controlling prices and marketing territories. This is usually done with the aim of curbing competition and maximising profit, especially in the food supply chain. Qualitative research methods were used to investigate meat cartels falsifying halal certifications. Legal provisions, case law, journals, and articles were examined as sources of information and analysed to gather information related to the research topic. Presently, the perpetrators can be charged under Trade Descriptions Act 2011 and the Trade Descriptions (Certification and Halal Marking) Order 2011. There are more than 20 Acts that relate to halal standards which could be enforced under the law to ensure heavier punishments are meted out on the 'food criminal'. The article also looks at the extent of the issue of corporate liability of companies that can be imposed on individuals involved with halal

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criminal offenses based on legislations other than the Trade Descriptions Act 2011 and the Trade Descriptions Order (Halal Certification and Marking) 2011. Hence the objectives of this article are to analyse the issue of meat cartels in Malaysia and to study the laws related to halal matters in terms of corporate liability within the provisions of the law. It is suggested that there is a need for a legal improvement relating to company liability in criminal cases relating to halal meat in Malaysia.

**Keywords:** Cartel, Halal Crime, Trade Descriptions Act 2011, Law Enforcement, Corporate Liability.

## **KARTEL DAGING DAN MANIPULASI PENSIJILAN HALAL DI MALAYSIA**

### **ABSTRAK**

Kartel ialah perjanjian antara beberapa individu atau syarikat dan lain-lain untuk melibatkan diri dalam skim bagi tujuan mengekalkan status quo perniagaan dengan antara lain mengawal harga dan wilayah pemasaran. Ini biasanya dilakukan dengan tujuan untuk mengekang persaingan dan memaksimumkan keuntungan, terutamanya dalam rantaian bekalan makanan. Kaedah penyelidikan kualitatif digunakan untuk menyiasat kartel daging yang memalsukan sijil halal. Peruntukan undang-undang, kes undang-undang, jurnal, dan artikel dianalisis sebagai sumber maklumat dan dianalisis untuk mengumpul maklumat yang berkaitan dengan topik penyelidikan. Makalah ini bertujuan untuk menganalisis situasi apabila kartel daging terlibat dalam pemalsuan pensijilan halal semata-mata untuk mengekalkan kehadiran mereka dalam industri. Pada masa ini pelaku boleh didakwa di bawah Akta Perihal Dagangan 2011 dan Perintah Perihal Dagangan (Pensijilan dan Penandaan Halal) 2011. Terdapat lebih daripada 20 Akta yang berkaitan dengan piawaian halal yang boleh dikuatkuasakan di bawah undang-undang untuk memastikan hukuman yang lebih berat dikenakan ke atas 'penjenayah makanan'. Makalah ini juga melihat sejauh mana isu liabiliti korporat atas syarikat boleh dikenakan ke atas individu yang terlibat dengan kesalahan jenayah halal berdasarkan perundangan selain Akta Perihal Dagangan 2011 dan Perintah Perihal Dagangan (Pensijilan dan Penandaan Halal) 2011. Oleh itu, objektif makalah ini adalah untuk menganalisis isu kartel daging di Malaysia dan mengkaji undang-undang berkaitan halal di Malaysia dari segi isu liabiliti korporat yang terdapat

dalam peruntukan undang-undang. Adalah dicadangkan bahawa terdapat keperluan penambahbaikan undang-undang berkaitan isu liabiliti syarikat dalam kes jenayah daging halal di Malaysia.

**Kata Kunci:** Kartel, Jenayah Halal, Akta Perihal Dagangan 2011, Penguatkuasaan Undang- Undang, Liabiliti Korporat.

## INTRODUCTION

The word “cartel” is defined in the Cambridge Dictionary as a group of individuals or companies who join together and agree on prices between them in order to increase profits and limit competition.<sup>1</sup> The word “meat” meanwhile is referred to as the flesh of an animal when it is used for food, or even a regeneration of it.<sup>2</sup> “Cartel” or “syndicate” is defined as an association between individuals or companies and others of the same kind to regulate and control prices, marketing territories etc., with the aim of curbing competition and making a profit.<sup>3</sup>

Food fraud, also called as economically motivated adulteration (EMA), refers to the deliberate contamination of food for financial gain. Until 2013, there have been more than 137 reviews in journals of ‘food fraud’ since 1980 and all of them were committed due to the criminal’s desire to maximise any profits that they would gain.<sup>4</sup> These ‘food crimes’ occur in more than ten categories of food such as seafood, fish, fruit juice, dairy products, cereal, oil and fat, honey and natural sweeteners, alcohol, spices and formula milk. Since the financial crisis of 2007, criminal activities relating to these ‘food crimes’ have been on the rise with criminals engaging in activities such

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<sup>1</sup> “Cartel”, Cambridge Dictionary, laste accessed May 20, 2023, <https://dictionary.cambridge.org/dictionary/english/cartel>.

<sup>2</sup> Mohammad Shahadat Hossain, “Consumption of Stem Cell Meat: An Islamic Perspective,” *IIUM Law Journal* 27, no. 1 (2019): 233–257, <https://doi.org/10.31436/iiumlj.v27i1.384>.

<sup>3</sup> Philip Kotler et al, *Principle of Marketing*, 4<sup>th</sup> Edition (Harlow, Pearson Prentice Hall, 2012).

<sup>4</sup> Karen Everstine, John Spink, and Shaun Kennedy, “Economically Motivated Adulteration (EMA) of Food: Common Characteristics of EMA Incidents,” *Journal of Food Protection* 76. no. 4 (2013): 723-735.

as stealing sheep, labelling foods wrongly, adding ‘ingredients’ into formula milk as is happening in China, adding colouring additives in chilli powder, turmeric powder and shrimp paste as well as the trade of fake halal meat.<sup>5</sup>

In 2020, there were Malaysian news reports of the seizure of 1500 tons of *haram* meat distributed by smuggling cartels in four countries; China, Ukraine, Brazil and Argentina.<sup>6</sup> The meat cartel syndicate has been established in Malaysia for many years and with this news, it has opened the eyes of Malaysians regarding the existence of syndicates that carry out halal meat crimes in Malaysia. These criminal syndicates are involved in a number of issues namely the safety hazards imposed by imported meat, the integrity of the supply chain, illegal slaughtering houses and the processing of non-halal meat.<sup>7</sup> In doing this, the cartels utilised proxy companies to speed up their processes and to hide their criminal tracks. The cartels even utilise the Malay language and Islamic sounding names for their companies so as to gain the trust of Malaysians that their products are halal.<sup>8</sup>

In Malaysia, the bodies that deal with the issue of halal meat are the Department of Islamic Development of Malaysia (JAKIM) and the State Islamic Religious Council of each state which are responsible for

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<sup>5</sup> Everstine, Spink, and Kennedy, “Economically Motivated Adulteration,” 723-735.

<sup>6</sup> Mohd Farhan Md Ariffin et al. “Halal Food Crime in Malaysia: An Analysis on Illegal Meat Cartel Issues,” *Journal of Contemporary Issues in Business and Government* 27, no. 2 (2021): 1407-1412, <http://dx.doi.org/10.47750/cibg.2021.27.02.152>. See, Four remanded in Malaysia's fake halal meat scandal as corruption probe gets under way, *The Straits Times*, 04.01.2021 at <https://www.straitstimes.com/asia/se-asia/four-remanded-in-malaysias-fake-halal-meat-scandal-as-probe-into-corruption-begins> (visited 07 08 2023)

<sup>7</sup> Ariffin et al, “Halal Food,” 1407-1412.

<sup>8</sup> See Mohamed Basyir, Meat cartel: Proxy companies conduit for operations, *The Straits Times*, 21.12.2020 at <https://www.nst.com.my/news/nation/2020/12/651043/meat-cartel-proxy-companies-conduit-operations> (Visited 07.08.2023)

ascertaining the halal status of food in Malaysia.<sup>9</sup> According to JAKIM, the origin of the term halal is rooted in the Arabic language, where it translates to "permitted" or "allowed" under the Islamic Law. The Trade Description Order (Usage of the Term "Halal") 1975 provides a definitive explanation of halal.<sup>10</sup> JAKIM plays the role to ensure products or services that are declared halal are really halal (among the responsibilities). On the enforcement and control aspect, JAKIM is assisted by the Ministry of Domestic Trade and Cost of Living (KPDN) (previously known as Ministry of Domestic Trade and Consumer Affairs; KPDNHEP), Department of Standards Malaysia, Department of Veterinary Services, Ministry of Health (MOH), Royal Malaysian Customs Department and Local Authorities (PBT) to help maintain the halal status in the Malaysian market.<sup>11</sup> Other than those listed, JAKIM is also aided by the Halal Industry Development Corporation (HDC) in Malaysia.

There are at least twenty (20) laws pertaining to halal matters in Malaysia specifically in controlling the use of halal certificate.<sup>12</sup> Some of these laws are the Trade Descriptions Act 2011, Trade Descriptions (Definition of Halal) 2011, Trade Descriptions (Certification and Marking of Halal Fees) Regulations 2011, Trade Descriptions (Certification and Marking of Halal) Order 2011, Food Act 1983, Animals (Importation) Order 1962, Abattoirs (Privatization) Act 1993, Food Regulations 1985, Lembaga Kemajuan Ternakan Negara (Dissolution) Act 1983, Animals Rules 1962, Animals Act 1953 (Revised 2006), Local Government Act 1976, Local Authority By-

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<sup>9</sup> Liziana Kamarul Zaman and Mariam Setapa, *Undang-undang Produk Halal di Malaysia: Akta Perihal Dagangan 2011* (2014).

<sup>10</sup> See, JAKIM's Halal Malaysia Official Portal at <https://www.halal.gov.my/v4/index.php?data=bW9kdWxlcu9uZXdzOz s7Ow=&utama=panduan&ids=gpl> (visited 07.08.2023)

<sup>11</sup> See JAKIM's Halal Malaysia Official Portal. See also Zulkifli Hassan, "Undang-undang Produk Halal di Malaysia: Isu Penguatkuasaan dan Pendakwaan," *Konvensyen Kebangsaan Undang-undang: Isu Penguatkuasaan dan Pendakwaan*, August 11-12, 2007, 1-21.

<sup>12</sup> See also Zalina Zakaria and Siti Zubaidah Ismail, "Perkembangan Pengaturan Halal Menerusi Akta Perihal Dagangan 2011 di Malaysia," *Jurnal Syariah* 23, no. 2 (2015): 189-216.

Laws, Consumer Protection Act 1999, Customs Act 1967, State Syariah Criminal Offenses enactment and a number of other Acts.<sup>13</sup>

‘Food crimes’ increase each year. Data through the literature shows an increase in crimes such as the finding of horse meat in processed cow meat products in 2013.<sup>14</sup> Internationally, incidents that occur such as the finding of pig DNA in the halal food products in the United Kingdom, discoveries made which show that 22.5% of fish products imported from Italy are involved in ‘food crimes’ as the listed labels were found to be inconsistent with the actual content of the products, a 2018 finding in Corsica exposing the marketing of fake honey for export to other countries and the issue of manipulation involving fresh and used palm oil in Malaysia.<sup>15</sup> In 2020, an incident of falsification of a halal meat was discovered in Skudai, Johor Bharu. The introduction of non-halal meat into Malaysia was carried out through illicit meat cartels. This event highlights the importance of ensuring the integrity of the supply chain and the need for strict measures to prevent such activities. It is crucial to maintain food safety and transparency in the industry, and this event serves as a reminder to all stakeholders to remain vigilant in their efforts to uphold these values.<sup>16</sup> Although there are procedures and introductions to new technology such as the Radio-Frequency Identification (RFID) system to detect the halal food status which should be utilised by JAKIM in regulating the issue of halal food products,<sup>17</sup> if cartels are involved in food-related crimes, there may be uncertainty about how the perpetrators will be prosecuted and punished. If the crime involves halal issues, the perpetrators may face corruption charges in addition to charges under the halal legislation, particularly if they are company owners. The charge is a complex matter since the perpetrator is both a

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<sup>13</sup> Zakaria and Ismail, “Perkembangan Pengaturan Halal,” 189-216.

<sup>14</sup> See Ariffin et al, “Halal Food,” 1407-1412.

<sup>15</sup> Ibid.

<sup>16</sup> See Mohamed Basyir, Meat cartel: Proxy companies conduit for operations, The Straits Times, 21.12.2020 at <https://www.nst.com.my/news/nation/2020/12/651043/meat-cartel-proxy-companies-conduit-operations> (Visited 07.08.2023)

<sup>17</sup> See JAKIM Halal Malaysia Official Portal

member of the company and the company itself, which is a separate legal entity.<sup>18</sup>

There has also been misappropriation of the halal logo in Malaysia by both individuals and companies.<sup>19</sup> The term "cartel" refers to companies that are primarily responsible for committing crimes.<sup>20</sup> Based on past cases, it appears that enforcement tends to focus on punishing the individual as the perpetrator rather than holding the company accountable as a legal entity. Nevertheless, it is possible for the Trade Descriptions (Certification and Marking of Halal) Order 2011 to be utilised to prosecute 'food crime' offenders in this issue of non-halal meat.

The list of legislation provided above concerning the halal issues. There are several laws that can be enforced for criminals involved in 'food crime' activities in Malaysia, but the reason for poor implementation is due to issues of court jurisdiction and individual experience related to the halal prosecution issues in Malaysia.<sup>21</sup>

From the angle of consumerism, the rights of consumers with reference to the 'Declaration of Consumer Rights' by the former President of the United States, the late J.F. Kennedy on March 15, 1962 may be resorted to.<sup>22</sup> Although the Trade Descriptions Act 2011, the

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<sup>18</sup> See section 3 of the Interpretation Acts 1948 And 1967 which defines "person" includes a body of persons, corporate or unincorporate;

<sup>19</sup> Rokshana Shirin Asal, "Illegal Labeling and the Abuse of Halal Certificate: Case Study of Malaysia," *Jurnal Syariah* 27, no. 2 (2019): 367-388.

<sup>20</sup> See e.g. Four remanded in Malaysia's fake halal meat scandal as corruption probe gets under way, *The Straits Times*, 04.01.2021 at <https://www.straitstimes.com/asia/se-asia/four-remanded-in-malysias-fake-halal-meat-scandal-as-probe-into-corruption-begins> (visited 07 08 2023)

<sup>21</sup> Azis Jakfar Soraji, Mohd Daud Awang, and Ahmad Nasir Mohd Yusoff, "Gaps in the Legislation Halal In Malaysia: A Study of Literature," *IJASOS- International E-Journal of Advances in Social Sciences* III, no. 7 (2017): 175-182.

<sup>22</sup> Nasihah Naimat et al, "Hak dan Perlindungan Pengguna dalam Produk Halal," *Jurnal Pengguna Malaysia* (2017): 54-68.

Food Act 1983 and the Consumer Protection Act 1999 may be applied, it is still debatable as to whom can be held responsible for food crimes committed and whether the current laws have protected the rights of consumers regarding the halal matters. There are also a number of provisions relating to halal matters such as the Trade Descriptions (Definition of Halal) 2011, Trade Descriptions (Certification and Marking of Halal Fees) Regulations 2011, Trade Descriptions (Certification and Marking of Halal) Order 2011, Animals (Importation) Order 1962, Lembaga Kemajuan Ternakan Negara (Dissolution) Act 1983, Animals Act 1953, Abattoirs (Privatization) Act 1993 and Animals Rules 1962.<sup>23</sup>

The speed of technology and the Industrial Revolution 4.0 are the main reasons for the occurrence of food crimes that are happening now because the halal Logo can be easily imitated by any company.<sup>24</sup> Hence there is a need for improvement measures in dealing with the issue of halal Logo fraud in food such as improvements in terms of legislation or technology that can help control the issue of halal misappropriation in Malaysia.

Among the food mixtures that occur in ‘food crimes’ are mixtures of meat formalin, carcass, mixed meats, meat from cows that were forced fed with water before being slaughtered, fake meat, meat from wild animals, meats containing zoonotic and meats mixed with synthetic drugs.<sup>25</sup> There is also a number of methods that can be used to identify the validity of the meat’s halal status that is brought in Malaysia. These methods are Microscopy, FTIR spectroscopy (Fourier

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<sup>23</sup> Aspalella A. Rahman, Che Thalbi Ismail and Nor Anita Abdullah, “Regulating Halal Food Consumption: Malaysian Scenario,” *International Journal of Law, Government and Communication* 3, no. 13 (2018): 313-321.

<sup>24</sup> Mohd Anuar Ramli and Muhamad Afiq Abd Razak, “The Emergence of Halal-Related Food Crimes in the Era of Industry 4.0,” *Al Qanatif International Journal for Islamic Studies* 24, no. 2 (2021): 45-50.

<sup>25</sup> Afiqah Salahudin et al, “Issues in Halal Meat Product and Authentication Technology from Islamic Perspectives,” *International Journal of Academic Research in Business and Social Sciences* 7, no. 12 (2017): 1305-1315.

Transform Infrared (FTIR) Spectroscopy), Electronic Nose (E-Nose), ELISA which is an immunochemical technique that is protein-based, DSC, and PCR.<sup>26</sup>

It cannot be denied that facing criminal prosecution is a dreadful experience.<sup>27</sup> There are several laws which could be used to prosecute offenders of the halal crimes in Malaysia and usually only one or two laws are used by the prosecution, namely, the Trade Descriptions Act 2011, Trade Descriptions (Definition of Halal) 2011, and the Trade Descriptions (Certification and Marking of Halal Fees) Regulations 2011.<sup>28</sup> Such a phenomenon occurs due to the weakness in the investigating officers on other related laws such as those under the Food Act 1983 which leads to a subpar preparation in the charges brought against these ‘food crimes’ offenders.

The problem raised in this article is that those who stand accused of these ‘food crimes’ only face charges under the Trade Descriptions Act 2011 and Trade Descriptions (Certification and Marking of Halal) Order 2011 as well as under the Malaysian Anti-Corruption Commission Act 2009. There are more than 20 Acts which relate to halal standards which could be enforced under the law to ensure heavier punishments are meted out on the ‘food criminal’. The article will also look at corporate liability and as far as it is concerned, companies may be accused of these ‘food crimes’ should individuals in the said companies commit the ‘food crimes’ based on Acts other than the Trade Descriptions Act 2011 and Trade Descriptions (Certification and Marking of Halal) Order 2011.

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<sup>26</sup> Salahudin et al, “Issues in Halal Meat Product,” 1305-1315.

<sup>27</sup> Muh Endriyo Susila, “Criminal Prosecution of Doctors in Indonesia: Issues and Problems,” *IIUM Law Journal* 23, no. 3 (2015), <https://doi.org/10.31436/iiumlj.v23i3.195>.

<sup>28</sup> Che Rosmawati Che Mohd Zaina et al, “Jurisdiction and Prosecution of Halal Related Matters in Malaysia: Challenges and Prospects,” Global Conference on Business & Social Science-2014, GCBSS-2014, 15th & 16th December, Kuala Lumpur.

At the end of this article, it would be found that both JAKIM and KPND need to utilise a system that can track the journey of a particular food stuff especially meats through “Special Applications”. These food stuff would ideally be first registered on these “Special Applications” through the Radio Frequency Identification (RFID) system, where this technology is able to help track the country of origin of imported meat and its movement before reaching Malaysian consumers.

Amendments need to be made to the Animals Act 1953 by extending the jurisdiction of the Act to the company’s management and above because the issue of the illegal slaughter of animals is done by large companies and these companies conduct their business by distributing meats not slaughtered according to the Shariah Law. Amendments should also be done to increase the current fine and imprisonment term limit which is a fine of around RM 5,000.00 and imprisonment not more than two (2) years as specified in section 5 (1) of the Act 1953.

Subsection 7(1) of the Consumer Protection Act 1999 prescribes that KPND has the power to appoint any public servant as the Controller or Deputy Controller of Consumer Affairs to help consumers lodge reports on any consumer related matters. These reports would then be further investigated by the Consumers Tribunal. Appointing police officers in every district across the country as Controllers or Deputy Controllers of Consumer Affairs may help ease aggrieved consumers who have been affected by these ‘food crimes’. This is because ‘food crimes’ usually happen in the community and more often than not, the general public would lodge police reports at Police Stations near their residence as opposed to go straight to the Consumers Tribunal. The Consumers Tribunal is also limited in all states. For example, in Selangor, there are only four (4) branches which are located in Shah Alam, Selayang, Kuala Selangor and Kuala Kubu Bharu. This lack of branches makes it particularly difficult for members of the community to lodge any complaints or reports with the Consumers Tribunal. The duties of police officers who are appointed as Controllers or Deputy Controllers of Consumer Affairs would thus be to only take reports or complaints from the community which will be passed on to the Consumer Tribunal who will handle the proceedings.

The Trade Descriptions Act 2011 (APD 2011), Trade Descriptions (Definition of Halal) Order 2011 and Consumer Protection Act 1999 in subsections 5(1)(A) [Prohibition of false trade description] and subsection 29 (2)(a) [Informative marking and certification orders] APD 2011 have prescribed that the company is one of the entities that can be held accountable other than the individual for the crimes committed by any individual in the company as well as all the management and above can be prosecuted for the offenses committed. However, in the Animals Act and in the Syariah Criminal Acts/Enactments of the states, there are no provisions which could put liability on the company for crimes committed by individuals in the said company as in section 14 of the Animal Act and Regulation 17 of the Animals (Slaughter Control) Regulations 2009 which states that only the individual involved in the crime can be prosecuted. In the absence of a clear provision referring to the company as a perpetrator, the prosecution may find it difficult to frame a charge targeting a company.

## **ILLEGAL MEAT CARTEL SYNDICATE IN MALAYSIA**

The issue of non-halal meat ‘began to be investigated in 2017 by MAQIS when it successfully confiscated four (4) shipping containers weighing 120 tons at Pelabuhan Tanjung Pelepas, Gelang Patah, Iskandar Puteri, Johor Bahru which contained pork meat mixed with sheep meat from Spain with a value amounting to around RM 2,000,000.00.<sup>29</sup> In 2019, MAQIS again confiscated 10 shipping containers containing buffalo meat with a value amounting to RM3,500,000.00 which was brought into Malaysia from India via Pangkalan Kontena Butterworth Utara.<sup>30</sup>

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<sup>29</sup> Nurul Amanina Suhaini, “Kontena Daging Kambing Campur Babi Dirampas,” *Berita Harian*, July 17, 2017, <https://www.bharian.com.my/berita/nasional/2017/07/303117/4-kontena-daging-kambing-campur-babi-dirampas>.

<sup>30</sup> Syajaratulhuda Mohd Rosli, “10 Kontena Daging Kerbau dari India Dirampas,” *Sinar Harian*, November 18, 2019, <https://m.sinarharian.com.my/mobile-article?articleid=54091>.

Authorities have, during a raid on a case of illegal meat which happened near the end of 2020 in Senai, Johor, other than the prevailing issue of sketchy slaughtering methods for the cow meat brought in, found horse meat, buffalo meat and kangaroo meat being brought into the country as well as finding records of pig meat being imported.<sup>31</sup> This particular factory had also repacked meat that they had in storage with fake labels and fake halal logos on the box packaging of the meat which was then distributed in the Malaysian domestic market. On top of that, the meat which was believed to be of halal cow meat was changed to meat with no quality and diseased meat.

There are several clashing media reports and government agencies in this illegal meat cartel issue. One of which is the report of the finding of kangaroo meat during a raid done which had caused anxiety amongst Muslim consumers in Malaysia which KPDNHEP denied this issue. This has become the main focus when it came to the matter of status of halal on meat products. The majority of Malaysians are Muslims which explains why the issue of the halal status of their meat products which they have been enjoying thus far becomes a hot topic.<sup>32</sup>

The exposure of this criminal meat cartel has shown the weakness of the authorities in ensuring the integrity of halal food in Malaysia which leads to the conclusion that the meat cartels commit this 'food crime' because they are driven to make purely profits without looking at the sensitivities of the Muslim population in Malaysia.<sup>33</sup> This illegal meat cartel activity was successful due to two factors, namely using the illegal routes (rat routes) to bring illegal meat into Malaysia with the help of mafia or thugs who have a global network and the help of "insiders" in the Royal Malaysian Customs Department.<sup>34</sup> Accordingly, forgery of documents such as customs forms, import permits, halal certificates, and payment receipts can be done easily without being noticed by the authorities. The dirty tactic in

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<sup>31</sup> Ariffin et al, "Halal Food," 1407-1412.

<sup>32</sup> Ramli and Razak, "The Emergence," 45-50.

<sup>33</sup> Ariffin et al, "Halal Food," 1407-1412.

<sup>34</sup> Ramli and Razak, "The Emergence," 45-50.

the issue of illegal meat cartels is that proxy companies would import halal certified meat sources before mixing them with illegal meat. The smuggling of prohibited goods and products that do not meet the criteria is brought in smoothly, orderly and thoroughly.<sup>35</sup>

Various legal provisions have been imposed on the ‘food crime’ offenders or illegal meat criminals but usually only one or two laws are used by the prosecution, namely, the Trade Descriptions Act 2011 and Trade Descriptions (Definition of Halal) 2011 due to the investigating officer’s weakness or the weakness of the existing legal provisions itself.<sup>36</sup> A news report from 2021 shows that a frozen goods company, its director as well as manager was charged for using fake halal logos being implicated in the illegal meat cartel case. Several charges were drawn up against them namely under section 17(b) of the Malaysian Anti- Corruption Commission Act 2009 and sections 5(1)(a) and 5(1)(c) of the Trade Descriptions Act 2011, paragraph 4(1) of the Trade Descriptions (Certification and Marking of Halal) Order 2011 which if found guilty may be fined anywhere between RM100,000.00 to RM500,000.00 or imprisonment up to 5 years or both as per subsection 5(1)(A) and (B).<sup>37</sup>

## **LEGISLATIONS REGARDING HALAL STATUS AND CORPORATE LIABILITY**

### **Trade Descriptions Act 2011**

For the cases that are charged in court regarding offences which involve the issue of illegal meat or ‘food crimes’ in Malaysia, offenders are usually charged under the Trade Descriptions Act 2011 (TDA 2011) as the TDA 2011 is applicable to both Muslims and non-Muslims

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<sup>35</sup> Ariffin et al, “Halal Food,” 1407-1412.

<sup>36</sup> Zaina et al, “Jurisdiction and Prosecution.”

<sup>37</sup> Mohamed Farid Noh, “Kartel daging: Pengarah, pengurus dan syarikat didakwa bekal daging tak halal,” Berita Harian, February 9, 2021, <https://www.bharian.com.my/berita/nasional/2021/02/784580/kartel-daging-pengarah-pengurus-dan-syarikat-didakwa-bekal-daging-tak>.

in Malaysia in the civil courts.<sup>38</sup> In fact, there is a specific provision for the Minister to appoint any civil servant to be a Controller, Deputy Controller, Assistant Controller, etc. as provided in section 3 (1) TDA 2011 which gives an advantage to JAKIM and other State Islamic Religious Council or Department (MAIN/JAIN) in conducting and monitoring activities of entrepreneurs who violate the halal issues in Malaysia, by expanding the jurisdiction of JAKIM or MAIN/JAIN. Officers of JAKIM and MAIN/JAIN have also been appointed as Assistant Trade Description Officers with KPND authority card.

The TDA 2011 also clearly involves or includes individuals and companies where a number of provisions state specifically that the liabilities to be borne by the corporate body are higher than that of the individual. This ensures that the parties involved in ‘food crimes’ or halal status cannot escape legal liability, especially companies as contained in subsection 5(1)(A) [Prohibition of counterfeit trade] and 29(2)(a) [Informative stamp orders and certificates] TDA 2011 where for any of the offences a body corporate may be fined RM 250, 000.00 for the first offense and for the second offence, RM 500, 000.00.

In relation to corporate liability on halal status, JAKIM is also empowered with the same power to prosecute as KPND as compared to them only being a witness in any proceedings prior to the amendment of the TDA 2011. The prosecution will be conducted in a civil court based on the provisions of TDA 2011 and other relevant civil laws, as the civil courts have a much wider jurisdiction which includes Muslims and non-Muslims, on top of being able to mete out heavier sentences as compared to the Syariah courts.<sup>39</sup> However, for offenses related to halal products which are categorised as Syariah criminal offenses, the power to prosecute lies with the State Chief Syariah Prosecutor.<sup>40</sup> This prosecution process becomes easier for JAKIM when Paragraph 4 (3) of the Trade Descriptions (Definition of Halal) Order 2011 provides that

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<sup>38</sup> Zaina et al, “Jurisdiction and Prosecution.”

<sup>39</sup> Zaman and Setapa, *Undang-undang Produk Halal*.

<sup>40</sup> Ibid.

the evidential burden of proof lies with the accused where the accused has to establish that he did not commit the offence.<sup>41</sup>

### **Trade Descriptions (Definition of Halal) Order 2011**

The Trade Descriptions (Definition of Halal) Order 2011 [Definition of Halal Order 2011] is a subsidiary law under TDA 2011 that is relevant to be discussed pertaining to corporate liability on halal status. The prosecution often charges halal criminals under this Order, which provides for the definition of halal under Article 3 of the Trade Descriptions (Definition of Halal) Order 2011. The reason is that the Order has a clear interpretation of the issue of deception and misleading representation of the halal status. For example, a premise offers food, goods or services that are not halal but the employees wear *kopiah*, *songkok* or *hijab* as commonly worn by Muslims or place the words “Allah” and “Bismillah” in the premise, which indirectly implies that the food served is halal for Muslim customers.<sup>42</sup>

On top of that, the Definition of Halal Order 2011 provides that all individuals or companies can be prosecuted under Paragraph 8 (a) where the punishment is a fine not exceeding RM5,000,000.00 and for a second or subsequent offense fine not exceeding RM10,000,000.00. In contrast, the punishment for individuals is a fine not exceeding RM1,000,000.00 and can be imprisoned not exceeding 3 years or both. For a second or subsequent offense; a fine not exceeding RM5,000,000.00 and imprisonment not exceeding 5 years or both.

### **Animals Act 1953 (Revised 2006)**

The Animals Act 1953 empowers the Ministry of Health Malaysia (MOH) and the Department of Veterinary Services (JPV) under the Ministry of Agriculture and Food Security (MAFS)<sup>43</sup> regarding animal husbandry and disease control, especially for the halal certificate

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<sup>41</sup> Ibid.

<sup>42</sup> Harlida Abdul Wahab and Alias Azhar, “Halalan Tayyiban dalam Kerangka Perundangan Malaysia,” *KANUN* 1 (2014):103-120.

<sup>43</sup> Previously known as The Ministry of Agriculture and Food Industries (MAFI).

application process for imported meat. This Act should be read in conjunction with the Abattoir (Privatization) Act 1993 and its regulations such as the Animals Regulations 1962 and the Animals (Importation) Order 1962. It is a condition under this Act that slaughter houses abroad need to get recognition to export meat into Malaysia and MOH is the body playing the role of verifying the safety of foreign slaughter houses that have applied for the recognition of the halal certification abroad. The imported meat products also need the halal certification from overseas' halal certification bodies recognised by JAKIM. Before all meat are imported into Malaysia and recognised as halal, three officials from Malaysia will visit the slaughterhouse, namely an officer from JPV who will inspect the conditions of the livestock, an officer from the MOH who will inspect the safety of the livestock's feed and an officer from JAKIM who will ensure the slaughtering process of the animal is in compliance with Syariah law.

In the context of halal meat, the aspect of animal welfare and health is very important. Halal meat is prepared by slaughtering the animal in a specific way, which ensures that the animal is healthy and free from disease and pathogen infestation. The meat is also drained of all blood, which reduces the risk of foodborne illnesses. In most cases, food is contaminated by bacteria or a virus such as campylobacter, the most common cause of food poisoning.<sup>44</sup> Everyone has a right over his

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<sup>44</sup>NHS Inform. Food Poisoning. (2023).  
<https://www.nhsinform.scot/illnesses-and-conditions/infections-and-poisoning/food-poisoning#:~:text=Food%20poisoning%20is%20an%20illness,common%20cause%20of%20food%20poisoning>

own health<sup>45</sup> as medicine and health are important things on the agenda of society.<sup>46</sup>

Referring to section 14 of the Animals Act and Rule 17 of the Animals (Slaughter Control) Regulations 2009, it states that only the individuals involved can be prosecuted and if committed by the company then the directors or management of the company cannot be prosecuted under this Act. There is not a single term in this Regulation where an offense can be imposed on the company thus making it difficult for the prosecution to conduct any legal prosecution whenever it is done by the company.

To date, no company has been charged with this offense. Moreover, the punishment provided is also low and does not invoke fear in the perpetrators of the halal crimes.

### **Syariah Criminal Act/Enactment of the States**

The current legal provisions in the Syariah Criminal Act/Enactment of the states are quite limited in its usage and are only applicable to Muslims. The punishments are also meagre and do not serve as a lesson to perpetrators of 'food crime'.<sup>47</sup> For example, section 42 [Abuses of Halal sign] of the Syariah Criminal Offences (Federal Territories) Act 1997 and section 38 [Abuse of Halal sign] of the Syariah Criminal Offences (Selangor) Enactment 1995 set out punishment if convicted, a fine not exceeding RM5,000.00 or imprisonment for a term not exceeding three years or both. Compare this to the TDA 2011 which prescribes a punishment of a fine not more than RM 5,000,000.00 to

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<sup>45</sup> Khairil Azmin Mokhtar, "Health and Human Rights Within the Context of International Human Rights Laws and the Malaysian Constitution," *IJUM Law Journal* 29, no. 1 (2021): 103-127, <https://doi.org/10.31436/iiumlj.v29i1.536>. See also Mohd Zamre Mohd Zahir et al, "Prospect and Legal Challenges of Medical Tourism in Relation to the Advance Medical Directive (AMD) in Malaysia," *Pertanika Journal Social Sciences and Humanities* 29, no. S2 (2021): 17-28.

<sup>46</sup> Mohd Zamre Mohd Zahir ed., *Isu Semasa dalam Undang-undang Perubatan dan Kesihatan di Malaysia* (Bangi: Penerbit UKM, 2021).

<sup>47</sup> Zaina et al, "Jurisdiction and Prosecution."

RM 10,000,000.00. In addition, Syariah courts only have the jurisdiction over people who profess Islam.<sup>48</sup> Hence, this provision does not apply to non-Muslims or to companies owned by non-Muslims.

In addition, the provision is also clearly weak in terms of enforcement. Only individuals can be prosecuted but not companies despite the fact that many misuses of the halal logo are done by corporations. On top of that, the preparation of investigation papers by religious investigating officers needs an improvement and get specific exposure.<sup>49</sup> Besides, Zaina et al have emphasise two main obstacles pertaining to the halal crime is that the limited jurisdiction of Syariah Courts to hear non-Muslim parties who are involved in the halal-related cases and second, civil proceedings involving halal issues which may be handled in the civil courts regardless of the offender's religion.<sup>50</sup>

### **Consumer Protection Act 1999**

The law gives certain protections or powers for consumers to enforce their rights through the Tribunal for Consumer Claims as provided in the Consumer Protection Act 1999 (CPA 1999).<sup>51</sup> Section 8 and 10 CPA 1999, provide that any act which causes the consumer to be misled by fraud or misrepresentation of the halal label on any product is an offense under the CPA 1999 with the offender if convicted, may be liable to a fine not exceeding RM25,000.00 for the first offense and RM50,000.00 for the second offense. Even though the CPA 1999 does not specifically touch on the issue of the logo or halal labeling, its purpose is still to protect consumers who feel wronged over the deception committed by the perpetrators.<sup>52</sup>

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<sup>48</sup> Shamrahayu A. Aziz, "Islamic Criminal Law in the Malaysian Federal Structure: A Constitutional Perspective," *IIUM Law Journal* 15, no. 1 (2012): 101-120, <https://doi.org/10.31436/iiumlj.v15i1.62>.

<sup>49</sup> Zaina et al, "Jurisdiction and Prosecution."

<sup>50</sup> *Ibid*.

<sup>51</sup> Naemah Amin, "Consumer Redress Mechanisms in Malaysia: Prospects and Challenges," *IIUM Law Journal* 15, no. 2 (2012): 231-252, <https://doi.org/10.31436/iiumlj.v15i2.70>.

<sup>52</sup> Hassan, "Undang-undang Produk Halal," 1-21.

The breadth of the CPA 1999 in terms of prosecution issues is not limited to individuals but even companies can be prosecuted as provided under subsection 25(1)(b), including the matter that is related to corporate liability and halal issues. However, one weakness of this Act is that the Tribunal can only act when there is a complaint from the consumer by filing form 1. If no complaint was made, no proceedings will be initiated since usually a victim will lodge a report at a Police Station rather than filing a claim before the Consumer Tribunal. Amendments need to be made in terms of the breadth of the appointment of Controllers or Deputy Controllers of the Consumer Tribunal from among the police to facilitate consumer affairs as provided in subsection 7 (1) which empowers the Minister to appoint controllers and deputy controllers from any government servant.

## **FINDINGS AND DISCUSSION**

As previously discussed, the integrated cooperation of all agencies such as JAKIM and other relevant agencies is very important to deal with this cartel meat issue. In terms of law and enforcement, it must be tightened so that offenders can be brought to justice. In addition, some existing laws should be revised to expand the powers of agencies such as JAKIM and it is also necessary to strengthen the jurisdiction of the Syariah courts, especially in relation to corporate crimes in this issue related to halal status.

In line with advancements in technology, the control system for the halal status in Malaysia must be improved by JAKIM and KPDN, where both JAKIM and KPDN need to utilise a system that can track the journey of particular foodstuff especially meats through “Special Applications”. This foodstuff would ideally be first registered on these “Special Applications” through the Radio Frequency Identification (RFID) system, where this technology is able to help track the country of origin of imported meat and its movement before reaching Malaysian consumers. Blockchain technology should also be utilised.<sup>53</sup> The details

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<sup>53</sup> Ramli and Abd Razak, “The Emergence of Halal-Related Food Crimes,” 45-50.

of every halal product would be verifiable through a halal database. Therefore, product information along the food chain starting from the authenticity of reputable bodies, raw material suppliers, manufacturers, wholesalers, logistics and retailers will be known. Consumers would be able to check the halal status of any product and provide feedback by scanning a QR code with their smartphones. Therefore, digitally coordinated halal data storage at the global network level facilitates various parties to check the halal status and ensure it is in line with Malaysian halal standards.

Other than being charged under the TDA 2011 and the Trade Descriptions (Definition of Halal) Order 2011, ‘food criminals’ can also be charged under other legal provisions such as the Animals Act 1953 (Revised 2006), the Syariah Criminal Act/Enactment of the States and the CPA 1999. However, amendments need to be done to rectify a few restrictions to ensure that severe punishment is imposed on individuals and companies who have committed crimes on halal issues in Malaysia.

The weakness of the Animals Act 1953 is that the authority can only issue fines to individuals and does not have the power to impose fines on companies based on the jurisdiction granted by law pursuant to section 14 of the Act and Rule 17 of the Animals (Slaughter Control) Regulations 2009. This is upsetting since in reality offenses involving the issue of illegal slaughter of animals are committed by large companies.

The issue of corporate liability must also be included in the new amendment to ensure that all individuals involved in the company can be punished under the Animals Act. This is a better situation as oppose to the current stance of the law which only allows individuals to be prosecuted. It is so unjust when only company employees who engaged in the illegal act are punished but not the company management personnels.

Every citizen implicated in a criminal act may face criminal prosecution in accordance with the concept of equality before the law.<sup>54</sup> Hence, there is a need for an amendment to include the company as one of the parties that can be prosecuted as well as the management personnel together with the accused employees. There should also be an amendment to the fine and jail sentences that can be imposed since the Animal Act only prescribes a RM5,000.00 fine and jail not more than two years. The current prescribed punishment is too light and is no longer relevant in this time and age and thus should be revamped to include more severe punishments. It should also be noted that punishments imposed on these criminals should differ according to the party committing it. Companies who are involved in such ‘food crimes’ should be imposed with much heavier sentences and punishment as compared to individuals who commit the same ‘food crimes’. This is because companies are established in order to generate profits and with higher punishments imposed on them, other companies would be more careful in running the company’s operations.

Attention should also be given to the Syariah Criminal Act/Enactment of the states as they have the potential to be utilised in charging criminals involved in the halal issue through amendment of the law. The amendment that needs to be done here is on the party that can be charged with the offence; specifically, it must now allow charges to be pressed against companies and corporate bodies since this issue of falsification of halal meat is usually done by them.

Amendments must also be made regarding police reports on halal falsification issues, as the report must be in a certain format and template so that it can then be applied by religious enforcement officers to prepare investigation papers for the purpose of prosecution in the Syariah Court. Meanwhile, investigating officers are not skilled in handling such cases in the Syariah Courts.<sup>55</sup> Therefore, these investigating officers need training from KPDM by appointing investigating officers in the enforcement division of these states as

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<sup>54</sup> Susila, “Criminal Prosecution of Doctors.”

<sup>55</sup> Zaina et al, “Jurisdiction and Prosecution.”

Assistant Trade Description Officers based on the powers given by law under section 3 (1) TDA 2011 as has been done by JAKIM.

In addition, an amendment also needs to be done to the Consumer Protection Act by changing the way reports or claims are made according to the current system, via the appointment of any eligible police officer as the Controller or Deputy Controller of the Consumer Tribunal based on the power of the Minister provided in subsection 7 (1) The Consumer Protection Act.

## **CONCLUSION**

It is pertinent for the authorities to ensure that the issues of halal manipulation, in particular by meat cartels are handled in accordance with the existing laws and procedures. Nevertheless, legal and institutional improvement is required to address many issues including the meat cartel and halal status. Legislation, be it primary or subsidiary need to be examined from time to time to ensure that they are relatively relevant to catch up with complex modus operandi of the offenders.

It is believed that every single enforcement personnel will be more engaged if proper amendments as suggested in this article are initiated. Only through solid laws would the current issues be handled more effectively. Hence there is a need for the legal fraternity to constantly raise the matter to induce the will of the government towards effecting those necessary amendments.

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