

Delay as a Challenge in Prosecuting Non-Compliance in the Halal Industry

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Abstract— This is a research identifying the causes and consequence of delay in prosecuting halal industry violation. In determining the reasons for the delay, the authors will look into firstly the procedures and process which shows non-uniformity of legal administration, secondly the scattered laws, policy, standards for the halal industry. The authors will refer to a reported local case law, making comparative study on previous legislation and the current one, to see the elaborated scope of law in relation to the court's decision as a result of delay.

Keywords— *halal, prosecution, case law, limitation period, delay*

1. Introduction

This paper is a discussion of a reported local case law on the dismissal of a charge of false trade descriptions on the sale of halal food product. The authors elaborate on the comparison of local legislations: Trade Description Act 1975, Trade Description Act 2011 and the relevant sections under the Limitation Act 1953. References on current journals to determine the process and procedures are also discussed to reflect on the causes of delay in taking legal against the offending parties. This is important as the demand of the halal industry shows the importance of ensuring legal compliance of the halal laws, standards and policy by the halal production companies or the service providers, nevertheless this is impossible to do if there are causes which result with delay on the prosecution. Currently, there is very little academic research on this issue and the case law cited in this research is an opportunity for the author to expand the academic and practical knowledge in this field. This research will be a stepping point for the

expansion of future point of better understanding and application in its field of study.

2. Literature Review

In order to proceed with the discussion, a basic description or definition of the term logistic, halal, halal logistic is necessary. Firstly, what is logistics? According to the Council of Supply Chain Management Professionals, logistics is the process of planning, implementing, and controlling procedures for the efficient and effective transportation and storage of goods including services, and related information from the point of origin to the point of consumption for the purpose of conforming to customer requirements. [1] This definition includes inbound, outbound, internal and external movements. Logistics is described as all activities, which facilitates movement and the coordination of supply and demand in the creation of time and place utility [2][3].

On the other hand, Halal Logistics is the process of managing the procurement, movement, storage and handling of materials, parts livestock and (semi) finished inventory both food and non-food (and related information & documentation flows) through the organization and the supply chain in compliance with the general principles of Syariah Law [4]. Discussion on halal logistics must at all time includes the fact that it is part of the halal supply chain. As the concept of from farm to fork is the main focus of halal holistically. All logistic process within the supply chain products must be handled separately with non Halal products according to Syariah to avoid cross contamination in order to maintain their Halal integrity [5].

The scope of halal originates from Quranic principles and with the quick emergence of halal brand in local market, this has spurs from the needs to have an Islamic halalan toyibban type of business. Taking the first and foremost importance reference on halal, al-Quran itself in surah Al-

Baqarah, 2:168 that says “O ye people! Eat what is on earth, lawful (halal) and good (toyyib)...” and surah (Al-Baqarah, 2:172-173) “O you who believe! Eat of the good things that we have provided to you and be grateful to God, if it is He ye worship. He hath only forbidden you dead meat, and blood, and the flesh of swine and that on which any other name hath been invoked besides that of God.”

The main authoritative body regulating halal matter that is Jabatan Agama Kemajuan Islam Malaysia or JAKIM, it has its own definition of halal: halal is an Arabic phrase, which means allowed or permitted by Islamic Law. Another popular term is *halalan toyibban*, which merely means allowed and permissible for consumption with relation to Syariah law as long as they are safe and not harmful. The opposite of halal is *haram* or non-halal, which means forbidden and prohibited.

In completing the quranic principles, the muslims also refer to the guidance of their prophet Muhammad, the elements of halal must be as per his saying or hadith. On the authority of Abu Ya'la Shahddad ibn Aus, the Messenger of Allah said: “Verily Allah has prescribed proficiency in all things. Thus, if you kill, kill well; and if you slaughter, slaughter well. Let each one of you sharpen his blade and let him spare suffering to the animal he slaughters” (Muslim). In an incident narrated by Rafi' bin Khadij, the Prophet told Muslims who wanted to slaughter some animals using reeds, “Use whatever causes blood to flow, and eat the animals if the Name of Allah has been mentioned on slaughtering them...” (Bukhari). Narrated Abu Thalaba: Allah's Messenger forbade the eating of the meat of beasts having fangs (Bukhari). Narrated Ibn Umar: The Prophet cursed the one who did Muthla to an animal (i.e. cut its limbs or some other part of its body while it is still alive (Bukhari).

2.1 Importance of legal enforcement in the halal logistic industry

Recent commercial trend reflects the popularity of halal product and services; this can be seen worldwide in the food production sector, tourism sector, and logistic sectors [6]. With the common news of fraudulent halal logo which can be easily obtained by manufacturer, it is not impossible to imagine the many type of abuse of the logo within our country. It was stated in the local news article [7] that there were syndicate selling fake halal logos to small and medium enterprises without the approval of the Department of Islamic Development Malaysia or JAKIM. An authoritative figure with a title of a "Datuk" leading the syndicate were in cahoots with muslim association

offering the seminars and giving our accreditation of halal logo at a price of RM250.00 per participation. The seminar supposedly was approved by JAKIM and will entitle them to issue halal certificate to the attendees. With reference of the above newspaper report, it shows that halal certification does indeed plays a role in making the products more attractive to the mass in Malaysia, which make it even vital for such activity to be protected by the enforcement of the existing laws. Failing which, not only will it jeopardize millions ringgit business but also put the consumer at risk of purchasing non-halal products and services due to fraudulent action by non-licensed holder of halal certification [8].

Currently there are several government bodies and agencies responsible to ensure the compliance of the halal standards. JAKIM and Jabatan Agama Islam Negeri or “JAIN”, each has the power to monitor the proper usage of the logo issued by JAKIM. By virtue of Section 3 of the Act [9], they were given the power to investigate and enforced as per Section 30 until 55 of the Act which includes the power to investigates complaints, to access to records, to arrest, to enter premises, to seize goods, to test purchases, to take sample but so far none of these Acts gave them the power to prosecute. In fact. Section 62 of the Act clearly states that any prosecution commencement must begins with the consent of the Public Prosecutors, which eventually lead to a longer delay in the process of legal enforcement of the issue.

Basically, JAKIM and JAIN function is only to determine via investigation whether there is any non-compliance by the licensed holder, and later if necessary, they will become witness to the prosecution. JAKIM's having the duty as the issuer of halal certification and monitoring the compliance of the standard. Upon discovering the failure of the license holder to comply with the existing standards, JAKIM will not however have the power to immediately prosecute as only the Kementerian Perdagangan Dalam Negeri Koperasi dan Kepenggunaan (“KPDNKK”) has the jurisdiction to do so. These stages of issuance of licenses, monitoring, finding prima facie case, passing the pass book to KPDNKK for a legal suit result will delay and result with other legal consequences which is detrimental to the case. Furthermore, [10] in the journal stated that “ Not all the laws and acts above, however, are fully under the jurisdiction of JAKIM and JAIN. JAKIM and JAIN administer the halal certification operations by using the halal standard, that is, Standard Malaysian (SM) and Malaysia Halal Certification Procedure Manual. For enforcement purposes, JAKIM and JAIN

are dependent of the laws of other agencies. This makes the enforcement action less effective."

3. Methodology

The author refer to secondary data being reported case from Malaysian Law Journal, local legislation, online published journals and books that are Trade Descriptions Act 1975, Trade Descriptions 2011 and Limitation Act 1953.

4. Discussion

4.1 Reported case law

In the local law case [11], in this discussion, the researcher discuss on the first charge, which was dismissed by the court in the first instance. The first charge was whether the defendant applied a false trade description "Halal" on packets of instant noodles, which their company was selling to the muslim consumer in Sabah.

On appeal by the Prosecutor on the acquittal of the first charge, with regards to the issue of delay the judge, Justice Tan Chiaw Thong explained the following in verbatim: "before the confirmation of the suspicion of the prosecution by the chemist report, it cannot be said that the necessary facts necessary to found a prosecution against thee accused had in fact been discovered on May 14, 1980 when the goods were seized in the shop of the respondent because on that day it was not known whether in fact material facts existed which were necessary to found a prosecution against the respondent. The learned Magistrate did not err therefore when he found that the charge was not brought out of time, that is outside the time limit imposed by section 19 of the Trade Description Act 1972."

Facts of the case showed that the chemist report on the material in fact was not done immediately to determine the halal status of the products. Or, it was not done within a reasonable time limit or within the time frame given under the Act. Nevertheless, the matter was only prosecuted after the expiry of the 12 months as required by Section 19 (b) of the Act. In the current case the prosecution against the accused was discovered on May 14, 1980 but the report of the chemist were only made known to the prosecutor on August 13, 1981, which was one year, 2 months later from the date of discovery of the cause of action. From the

court explanation, it is vital for the parties to determine the lawfulness of the material via a chemist report within the specified time period, failing which a similar result will occurs. Eventually, this delay result with the court finding of the expiration of the limitation period for the case and the appeal was dismiss.

Here, the researchers' emphasis on the issue of delay, which result which the acquittal of the first charge. By referring to Section 19 of the Trade Description Act 1972 (Time Limit for Prosecution), it is stated that "No prosecution of an offence under this Act shall commence after the expiration of - (a) three years from the commission of the offence, or (b) one year from the discovery by the prosecutor which is the earlier; provided that it shall not be a case to the commencement of a prosecution for an offence under this Act notwithstanding paragraph (b) if the Public Prosecutor certifies in writing that the accused by his own conduct contributed to the delay in the commencement of the prosecution.

Nevertheless, the said Act 1972 is no longer applicable as it has been replace by Trade Description Act 2011, which does not specify on the limitation period. Now, the prosecutors must look into relevant statute of limitation or acts to ensure that the case is filed within time and evidence are given as per stated within the statutes.

One of the important and relevant Act applicable here is the Statute of Limitation Act 1953, Section 6 of the Act states that for actions in contracts or torts generally the action must be taken with the first 6 years of the discovery of the cause of action. Similarly to that, is Section 19(b) of Trade Description Act 1972, there is an exception to this as per Section 29 of the Limitation act 1953 which states that if there were an action is based upon the fraud of the defendant or his agent or where any fact relevant to the plaintiff's cause of action was deliberately concealed or where such an action is based on mistake, the time of six years does not run until the discovery of the fraud, concealment or mistake by the plaintiff.

In discussing the issue of delay in submitting the chemist report into court, it should be clear here that it was the duty of the inspecting officer from JAKIM or JAIN to send the sample to the chemist department to determine the material facts was in fact not halal to the case [11].

Based on [9] the authors emphasis the reasoning of delay due to non-uniformity of the prosecution procedure as it can be seen here that despites the fact that JAKIM or JAIN were the ones who send

the sample for testing nevertheless, they were not the prosecuting party hence contribute to the delay in prosecution. It can be summarized by many previous literature review that, [10] despite the fact that monitoring and administrating the halal logo is done by JAKIM, nevertheless, it does not has the power to prosecute which is given to KPDNKK and Hal-Ehwal Pengguna department. Time again is an issue, which cause delay in prosecution and could be prevented by given such power directly to JAKIM.

On the other hand, JAKIM does some form of power to penalise the licensed offender. JAKIM within its power may elect to issue a notice of default, which either resulting with a suspension or for a serious matter, or JAKIM will terminate, the license issued to the owner of the halal logo. It does not however, state Any power to JAKIM to proceed with prosecution despites the fact that initial investigation especially on the determination of material facts was done by JAKIM.

In 2003, by virtue of Trade Description Act 2011, despite the fact that JAKIM or JAIN as the Assistant controller has the 'kad kuasa' or power to investigate, inspect or report it does not warrant these department to prosecute. They may become the potential witness but not the prosecuting party, which again defeat the purpose of a having a smooth prosecution process without any delay.

4.2 Further red tape

Overlapping jurisdiction between JAKIM and all 14 states own Jabatan Agama Islam Negeri (JAIN) also contributes to the delay in prosecution. Under 'Akta Bidang kuasa Mahkamah Syariah (Jenayah) Pindaan 1984', jurisdiction over criminal offences is under each of the Malaysian state and in this instance all 14 states have jurisdiction over halal cases and all halal matters of the states may also fall under each state Syariah Court's jurisdictions. Each states has their own Head of Syarie Prosecuting Officers to lead the case, which means more red tape and further delay in ensuring a smooth prosecuting journey.

5. Conclusion

Based on the discussion above, delay in proceeding with prosecution of the case may lead to a severe consequence of having the case dismiss or the defendant being acquitted from the charge. The authors' emphasis here that the cause of delay is firstly due to the non-conformity of administration

of legal enforcement in matters relating to halal. Second reason of delay is the fact that JAKIM being the body responsible for licensing, monitoring, investigating usage of halal logo does not have the power to prosecute. Third reason of delay is the existence of red tape, the process of passing of cases from JAKIM to KPDNKK [12]. The whole process consumer time and eventually lead to the inaction taken against the offender. As it is faster enforcement to suspend or revoke the license.

Despite the fact that the current Act's does not limit the time period as compare to the previous Act, nevertheless, the red tape within the process of prosecution will result with difficulties of ensuring the success of taking legal enforcement against the violators [13].

With the current limitation period of 6 years, which is a longer time which should be sufficient for prosecution proceeding, nevertheless, due to the facts that administration and monitoring is being done by JAKIM but prosecution meanwhile is conducted by KPDNKK, the process of transferring all evidence of the case takes time and this result with the delay in prosecution of the halal matter [13].

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