

ISSUANCE OF HALAL CERTIFICATES IS A FEDERAL MATTER

By
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Introduction

Not all matters regarding Islam are under the jurisdiction of the states. Of course, to know whether a product is halal or not, it should be referred to the State Fatwa Committee. However, the fatwa is only in force in that state.

However, the "halal" mark placed on a product and evidenced by the halal certificate is a trade description under the Trade Description Act 2011 (TDA 2011) which lies under federal jurisdiction. It is similar to Islamic banking and Islamic finance. Banking and finance are under federal jurisdiction. Whether they are "Islamic" or "conventional" are the descriptions of the type of banking and finance.

We can summarise the current position on the issue of halal certificates as follows:

1. Issuance of *halal* certificates lies under the jurisdiction of the Ministry of Domestic Trade, Cooperatives and Consumerism (KPDNKK).
2. The law is the TDA 2011 which lies under the KPDNKK portfolio.
3. "Halal" is one of the trade descriptions under the act;
4. All authorities with regard thereto vest on the Controller, Deputy Controllers and Assistant Controllers appointed by the Minister in accordance with section 3 of the act.
5. The power to prosecute, as always, lies with the Public Prosecutor.
6. The Department of Islamic Development Malaysia (JAKIM) and the State Islamic Religious Council (MAIN) are appointed by the Minister as the Authoritative Authority to issue halal certificates.
7. All applications for halal certification are made to JAKIM or MAIN.

Why it should not be placed under state jurisdiction?

First, halal certification is a trade description which lies under federal jurisdiction. The states have no power to issue the certificates. I'm not saying that what is being done now is unconstitutional, because halal certification is still under the KPDNKK, but JAKIM and MAIN are appointed to do the work on behalf of the KPDNKK. The point is, since it is a matter under the portfolio of KPDNKK, the work relating to it should be done by KPDNKK in the same way as in the case of other trade descriptions. All matters relating thereto should be under the ministry. If religious officials are required, they may be absorbed from JAKIM. KPDNKK may obtain the services of the Department of Chemistry, the Ministry of Health, the Department of Veterinary Services, where required.

Secondly, the issuance of halal certificates does not only involve issues of Islamic law. Before the ruling on the law could be made, we need to know the contents of a product. If it is an animal, you will be able to determine from how it looks and its characteristics. However, for products that have been processed, scientific tests need to be done. *Muftis, ulamas or ustazs* do not know everything. Expertise other than in Islamic law is also required. These include services contributed by the Department of Chemistry, the Ministry of Health, the Department of Veterinary Services and others. These departments are the federal departments.

Thirdly, the certificate issued by MAIN of a state is only effective in the state. Therefore, a company wishing to market its products in Malaysia needs to apply for *halal* certificates from each of the states to make it enforceable throughout Malaysia. This will slow down the process of obtaining the certificates and will cost more. Upon receipt of the application, each state will conduct similar examinations and tests, duplicating the work.

Fourth, investigation and prosecution are two very important matters. If it is placed under state jurisdiction (in my opinion it cannot be done because it lies under federal jurisdiction), will the offenses be tried by the civil or the syariah courts? Syariah courts have no jurisdiction over non-Muslims, including companies. (A limited company is not "a person professing the religion of Islam" because a company is neither a Muslim or a non-Muslim.) The effect is that, a non-Muslim individual and a company cannot be charged in syariah courts for halal certification offences.

At the same time, KPDNKK should also strengthen its enforcement, investigation, and prosecution units. Subject to correction, to this day, there has been no prosecution done. Offences are compounded.

This shows the weakness of enforcement, investigation and prosecution. I find it difficult to believe that, so far, only minor offences have been committed all of which should be compounded. In my experience, cases were often compounded because the officers were inexperienced and had no confidence to stand up against experienced lawyers in court.

Halal certification cases may involve large companies which are capable of obtaining the services of experienced lawyers. Therefore, the ministry must also have experienced Deputy Public Prosecutor (DPP). We cannot expect MAIN to do so because it is a state government department, while DPPs are federal officials. Moreover, there is not enough work for a TPR to be stationed in every state, not to mention Perlis.

Proposed changes need to be made

I think the existing federal jurisdiction over the matter should not be changed. It will cause more problems. The matter should remain under the responsibility of KPDNKK. That Ministry should be made responsible to do what need be done in respect of it.

Now KPDNKK only acts as a "Controller". Certification, supervision, investigation and prosecution are delegated to JAKIM and MAIN, all of which are religious departments and most of its officers are qualified in syariah, Islamic studies and Arabic language and literature, which are not directly relevant to the work.

I think that all work in relation to halal certification should be carried out by KPDNKK just like any other trade description matters. If there is no *halal* certification department in the ministry at present, a new division may be established, under which certification, enforcement, investigation, prosecution and other necessary units, may be placed

I understand that KPDNKK has its branches in the states. All of them could be used to handle matters relating to the issuance of halal certificates, just like matters pertaining to other trade descriptions are currently being done.

For scientific tests, the cooperation of relevant departments in the states may be requested.

Determination of syariah issues

I think syariah issues seldom arise. What is permissible (*halal*) and prohibited (*haram*) are known. For example, extracts from prohibited animals, like pigs, are prohibited. It does not require another fatwa. The problem is to determine whether or not its extract is in a product. What is required is a scientific test, not a *syariah* ruling (*fatwa*).

However, I propose that the determination of the *syariah* issues for the *halal* industry under TDA 2011 be done by the National Fatwa Committee (NFC). For that purpose, the NFC may be given legal powers similar to the Syariah Advisory Council of Bank Negara (SACBN) and the Syariah Advisory Council of the Securities Commission (SACSS) in accordance with Paragraph 4 (k), List I (Federal List), Ninth Schedule of the Federal Constitution which provides:

“(k) Ascertainment of Islamic law and other personal laws for purposes of federal law; and”

It should be done by enacting an act of Parliament which could be called the National Fatwa Council Act (NFCA). Power may be granted to it to determine and issue rulings of Islamic law for the purpose of federal law other than matters under the SACBN and SACSC. It should not duplicate matters under the jurisdictions of SACBN and SACSC. To know the reasons, please refer to my speeches, working papers and articles on the subject, available on my websites.

Conclusion

1. Power to issue *halal* certificates and matters related thereto is a federal matter and should remain as a federal matter under the portfolio of KPDNKK. It should be the responsibility of the ministry to undertake all works related thereto in the same way as it does in respect of other trade description matters.

2. For the purpose of determining syariah issues and issuing rulings thereon for the purpose of federal law including syariah issues pertaining to *halal* industry, but excluding matters falling under jurisdiction of the SACBN and SACSS, the NFCA should be enacted. This will give legal authority to NFC and its rulings enforceable throughout Malaysia.

Final words

I fear that, because of misunderstanding on jurisdiction plus the prejudice against JAKIM, *halal* certification will be handed over to the states. Such action is not only contradictory to the Constitution, but I believe, it will undermine Malaysia's *halal* industry and will impede Malaysia's efforts to become the hub for *halal* industry. Similar to Islamic banking and finance, Malaysia is already in the forefront, therefore, we should not do something that might jeopardise Malaysia's position, what more, due to our misunderstanding of the true position.

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