



INTERNATIONAL NORMS ON THE TRADE OF
HALAL FOOD: CONFLICTS AND PROSPECT OF
HARMONIZATION

BY

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ABSTRACT

At present, halal certification is not common practice. As a result, halal certification has become one of the most sought-after sectors in the global economy. The expansion of halal markets across the globe has driven both Muslims and non-Muslims countries to invest substantially in the development of their own halal certification system. The lack of a unified global halal standard has made the halal industry more competitive in terms of pushing forward technical standards alongside halal food products. Consequently, the halal legal framework in Malaysia has experienced constant developments and amendments since the 1970s as Malaysia, one of the leading forces in that halal industry, has been protecting the integrity of the halal industry through enforcing various laws and regulations. Although these laws are mainly meant for local execution, some of the rules and regulations are designed for imported products. In the meantime, halal certification in Malaysia is compulsory for imported meat poultry and their derivatives products. On the other hand, halal certification for locally made food products is a voluntary undertaking. Such measure is crucial to protect the Muslim consumers against deceptive practices as it is viewed that the lack of labelling will make tracing and monitoring difficult. The compulsory halal certification for imported meat and poultry is perceived as an unjustifiable restriction by some importers, including the United States of America. It is alleged that these restrictions are some forms of non-tariff trade barriers which are inconsistent with the principles and rules of the World Trade Organization (WTO). It is also argued that the Malaysian halal certification process goes beyond what prescribed by the Codex Alimentarius guidelines. In this paper, although Malaysian halal import rules have not been brought upon the contemplation of the WTO Dispute Settlement Body (DSB), the WTO's decisions on two Indonesian trade disputes relating to its halal certification measures are examined. This study took into account the perspectives of Malaysian agencies responsible for halal monitoring. This is to understand the implication of Indonesian trade disputes' decisions towards the Malaysian halal certification scheme through semi-structured interviews. The outcome of this research can be used as arguments to defend the Malaysian halal certification measure for imported meat and poultry. In addition, this study proposes several recommendations for the improvement of both local and international halal standard and guidelines. From the findings, it can be concluded that halal certification should not be perceived as a form of technical barriers to trade as it is necessary to protect Muslim consumers against deceptive practices.

خلاصة البحث

تعدّ شهادة الحلال في الوقت الحاضر ممارسة غير شائعة، وهو ما جعلها من القطاعات المرغوبة في الاقتصاد العالمي، حيث أنه ومع توسُّع أسواق الحلال، دعت إليه الحاجة الكثير من الدول المسلمة وغير المسلمة إلى الاستثمار في تطوير نُظُم شهادات الحلال الخاصة بها. إلا أن عدم وجود معيار عالمي موحد لمنتجات الحلال كان مدعاةً للتنافس لتدعيم المعايير الفنية لمنتجات الأغذية الحلال. ونتاجاً لذلك فقد شهد الإطار القانوني للحلال في ماليزيا تطورات وتعديلات واسعة منذ سنة 1970 مما جعل منها إحدى أهم الدول الرائدة في صناعة الحلال، لاسيما من حيث ضمان إنفاذ معايير الحلال. إلا أنه وعلى الرغم من أن هذه النُظُم كانت مُخصَّصة للتطبيق المحلي، إلا أن جانباً منها كان مُخصَّصاً للمنتجات المستوردة. حيث أن هذه الشهادة تعتبر إلزامية في منتجات اللحوم والدواجن المستوردة ومشتقاتها، فيما أنها إختيارية في منتجات الأغذية المصنوعة محلياً. إلا أن عملية الإلزام هذه، وعلى الرغم من أهميتها لحماية المستهلكين المسلمين من حيث التدقيق، فقد أعتبرت من بعض الدول المصدِّرة، لاسيما الولايات المتحدة الأمريكية بمثابة قيود غير مبررة تُشكِّل حواجز تجارية غير جمركية لا تتسق مع مبادئ وقواعد منظمة التجارة العالمية (WTO)، فضلاً عما يُؤخِّد عن شهادة الحلال الماليزية من حيث تجاوزها لما تنصُّ عليه توجيهات هيئة الدستور الغذائي. وفي هذه الدراسة، وعلى الرغم من عدم إصدار قوانين لإستيراد الحلال في ماليزيا وفقاً لما جاء في إتفاقية تسوية المنازعات التجارية في منظمة التجارة العالمية (DSB)، فقد محّصت (WTO) نزاع تجاري بين إندونيسيين يتعلَّق بتدابير إصدار شهادات الحلال للتوصُّل إلى الآثار المترتبة عنه تجاه شهادة الحلال الماليزية. وضمن ذلك فقد أخذت الدراسة في إعتبارها من خلال مقابلات شبه منتظمة وجهات نظر الوكالات الماليزية المسؤولة عن رصد الحلال لإستقصاء آثار النزاع المُتقدِّم تجاه شهادة الحلال الماليزية للدفاع عن هذه الشهادة، وانتهت إلى عدم إعتبار شهادة الحلال من العوائق الفنية نظراً لضرورتها لحماية المستهلكين المسلمين.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Comparative Laws.

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I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Guidelines on Halal Assurance Management System of Malaysia Halal Certification
2011
Local Government Act 1976 (Act 171)
Malaysian Protocol of Halal Meat and Poultry Productions 2011
MS 1500:2009 Halal Food - Production, Preparation, Handling and Storage - General
Guidelines
Trade Description Act 2011 (Act 730)
Trade Descriptions (Certification and Marking of Halal) Order 2011
Trade Descriptions (Definition of Halal) Order 2011
Tourism Industry Act 1992 (Act 482)

LIST OF TREATIES

Agreement on the Application of Sanitary and Phytosanitary Measures
Agreement on the Technical Barrier to Trade 1995
Agreement on Trade-Related Aspects of Intellectual Property Rights
General Agreement on Trade in Services
General Agreement on Tariffs and Trade 1994
Vienna Convention on the Law of Treaties 1969

LIST OF ABBREVIATIONS

AC	Appeal Court
ARB	Amanah Raya Berhad
ASEAN	Association of Southeast Asian Nations
AWGHF	ASEAN Working Group on Halal Food
BSE	Bovine Spongiform Encephalopathy
CAC	Codex Alimentarius Commission
CCAsia	Codex Coordinating Committee for Asia
CEN	European Committee for Standardization
DDA	Doha Development Agenda
DSB	Dispute Settlement Body
DSM	Department of Standardization Malaysia
DSU	Dispute Settlement Understanding
DVS	Department of Veterinary Services
FAO	Food and Agricultural Organization
FSQD	Food Safety and Quality Division
GATT	General Agreement on Tariffs and Trade
GHP	Good Hygiene Practices
GMO	Genetically Modified Organism
GMP	Good Manufacturing Practices
HACCP	Hazard Analysis and Critical Control Point
ISPHM	Inisiatif Segera Pensijilan Halal Malaysia
IPPC	International Plant Protection Congress
ILC	International Law Commission
ITC	International Trade Centre
JAIN	Jabatan Agama Islam Negeri
JAKIM	Jabatan Kemajuan Islam Malaysia
MFN	Most Favoured Nation
MATRADE	Malaysia External Trade Development Corporation
MAQIS	Department of Malaysian Quarantine and Inspection Services
MEA	Multilateral Environmental Agreement
MDTCA	Ministry of Domestic Trade and Consumer Affairs
MHC	Malaysia Halal Council
MIHAS	Malaysia International Halal Showcase
MITI	Ministry of International Trade and Industry
MOH	Ministry of Health
MPPHM	Manual Procedure for Malaysia Halal Certification
OIC	Organisation of Islamic Cooperation
OIE	International Office of the Epizootics
SME	Small and Medium Enterprises
SMIIC	Standards and Metrology Institute for Islamic Countries
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TDA	Trade Description Act
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development

VCLT	Vienna Convention on the Law of Treaties
VCLT-SIO	Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations
WHF	World Halal Forum
WHFC	World Halal Food Council
WHO	World Health Organization
WTO	World Trade Organization
WTOAB	WTO Appellate Body

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The history of the global *halal* market can be traced back to the 1980s. Its growth is due to two major contributing factors, the first, the emigration of Muslims to non-Muslim countries, which contributed to the development of commercial food trade between the Muslim countries and non-Muslims to fulfil the demand for *halal* food.¹ This is made possible by the development of technology in food processing and packaging. The second contributing factor is the principle of ‘free trade’ brought by various treaties and international agreements signed by both importing and exporting countries.²

Issues concerning *halal* food trading are not limited to *halal* certification alone. Apart from *halal* certification that requires constant monitoring by the industries to ensure *halal* assurance, food ingredients, such as additives and colorings, method of preparation, packaging and transportation, the uses of *halal* logo, and the usage of Genetically Modified Organism (GMO) in the product are among the examples of issues that requires attention. At the international level, the *halal* food production has face challenges on issues concerning *halal* certification, labelling and religious slaughtering. As a matter of fact, these issues have been brought forward to the World Trade Organization (WTO) by several State Members alleging that they are forms of technical barriers to trade. Discussions have also been made on whether *halal*

¹ Florence Bergeaud-Blackler, “Islamizing Food: The Encounter of Markets and Diasporic Dynamics” in *Halal Matters: Islam, Politics and Markets In Global Perspectives*, edited by Florence Bergeaud-Blackler, Johan Fischer, and John Lever (New York: Routledge, 2016), 93.

² Ibid.

certification is necessary to protect the public moral and thus, be ruled an exception to the rule against trade-barrier.

Halal certification procedure varies from one country to another. The inconsistency of the process has caused numerous debates and arguments, especially when it comes to international trade. Some WTO members, including the United States, argue that imposing halal certification requirement is a form of trade-barrier and in violation of the WTO Agreements. Some import restrictions are put in place with the purpose of safeguarding its local interests. However, this import restriction is often been regarded as a form technical barrier on trade. This is especially true for halal products as there is yet an uniform global halal logo and each country has its own unique procedure relating to the importation of halal products to its territory. Consequently, countries must lower its import restriction to reduce trade barriers, this creates concern on lowering the halal certification standard to facilitate trade, which is the basis of the groundwork for the research.

1.2 STATEMENT OF PROBLEM

As a nation cannot always isolate itself from the outside world, globalization and trans-border interaction between nations has been developing for many years. Import and export is required to fill the needs of trading, intelligence, expertise and so forth. Nevertheless, this interaction between nations must be regulated by certain international laws and treaties through various agreements and measures.

After the evolvement of General Agreement on Tariffs and Trade (GATT) which was signed by 23 nations in 1947 and morphed into the WTO in 1993, the WTO presides over a rule-based trading system which is founded on norms that are

almost universally accepted and respected by its current 163 members.³ In regulating the world trade, WTO has laid down five specific principles which are; non-discrimination, transparency, reciprocity, flexibility and consensus decision-making.⁴ These principles are to be observed and respected during the interactions between countries.

One form of interaction between nations is food-trading. Trading of food, according to Nau (1978), it is part of world diplomacy and has been considered the source of strength and an important influence of diplomatic behavior since the early years of the modern state.⁵ The WTO's Sanitary and Phytosanitary (SPS) Agreement is the international agreement that needs to be adhered by member countries to avoid conflict and disputes. However, it is uncertain whether the SPS Agreement can be extended to matters pertaining *halal* including the position of *halal* slaughtering. The lack of a uniform global *halal* standard has raised questions on whether the *halal* certification process by Malaysia and Indonesia violate the international treaties due to the fact they impose strong barrier to trade to exporting countries.⁶ In addition to the issue on the strict standard set for *halal* certification, *halal* food production also faces challenges, for instance in Europe where in 2010, the European union dictates labelling meat products that gone through inhuman form of slaughtering. In this regard, due to the slaughtering practice, *halal* meat is often considered as inhumane.⁷

³ Richard Baldwin, "The World Trade Organization and the Future of Multilateralism", *The Journal of Economic Perspectives*, vol. 30, no. 1 (2016): 95.

⁴ *Ibid.*, 97-98.

⁵ Henry R. Nau, "The Diplomacy of World Food: Goals, Capabilities, Issues and Arenas", *International Organization*, vol. 32, no. 3 (1978): 775.

⁶ Alaa Alaabed et al., "Global Islamic Finance Report 2013," ed. Humayon Dar et al., Edbiz Consulting, 2013, 172, http://gifr.net/gifr_2013.htm (accessed 6 March, 2017).

⁷ Abdalhamid Evans, "European Parliament Aims to Make *Halal* Meat 'second Class,'" European Muslim Union, <http://www.emunion.eu/jupgrade/index.php/component/content/article/51-news-a-reports/news/192-halal-meat-second-class> (accessed 6 March, 2017).

As Malaysia is a member of the WTO, the focus of this research will be on the international norms on *halal* food trading and to discuss whether *halal* certification puts forward by Malaysia can be deemed as trade-barrier which violates the international norms. Currently, there are limited studies conducted to answer the questions relating to *halal* food trading in the international context.

1.3 RESEARCH QUESTION

The researcher seeks to answer the following questions:

- i. What are the WTO and WHO treaties that govern *halal* food trading?
- ii. Are the *halal* certification process and import restrictions related to *halal* products considered as acceptable measures under WTO?
- iii. Is the concept of *toyyibban* corresponds to the concept of food safety under the SPS Agreement?
- iv. What is the impact of international treaties on food and safety measures on *halal* certification process by JAKIM in Malaysia?

1.4 OBJECTIVES OF THE RESEARCH

This study is aimed to analyze the related international norms which regulate the *halal* food industry at the international level and to examine its effect on matters pertaining to *halal* food trade. The research is aimed to:

- i. To examine international norms and obligations on *halal* food trading.
- ii. To establish that Malaysia's *halal* certification process is in undoubtedly, compliance with international standards and does not go against international treaties.

- iii. To determine whether the concept of *toyyibban* and food safety corresponds with each other.
- iv. To analyze Malaysia's *halal* import rules and to see how they may be challenged on the basis that it is a form of a trade barrier.

1.5 CONCEPTUAL BACKGROUND

Consuming *halal* food is part of Muslims' observance of the Islamic faith in their everyday lives. Surah Al-Maidah: 4 provides the general commandment on choosing *halal* food where it states:

They ask thee what is lawful to them (as food). Say: lawful unto you are (all) things good and pure: and what ye have taught your trained hunting animals (to catch) in the manner directed to you by Allah. Eat what they catch for you but pronounce the name of Allah over it: and fear Allah. For Allah is swift in taking account.⁸

In the meantime, although *halal*, in general, covers all aspect of a Muslim's life, the notion of *halal* goes beyond the consumption of *halal* food as the dietary requirements of Muslims. The Holy Quran, in verse 168 of Surah Al-Baqarah, explicitly commands Muslims to eat what is lawful:

O ye people! Eat of what is on earth, lawful and good; and do not follow the footsteps of the evil one, for he is to you an avowed enemy.⁹

The discussion above shows the importance of *halal* consumption among Muslims. Over the years, the increase in the Muslim population has increased the demand for *halal* food throughout the globe. With such business opportunities, the *halal* food industry has emerged to accommodate such demands. Despite the turmoil

⁸ Al-Maidah: 4.

⁹ Al-Baqarah: 168.

faced by the international economy, the *halal* market has continued to grow to satisfy the demand from the Muslim community. The current value of the global *halal* industry is estimated at USD 2.3 trillion¹⁰ and Malaysia is internationally recognized international as the major contributor and producer of *halal* food products.¹¹ In a report published in 2015 by the Pew Research Centre, Islam has the become the world's second largest religion after Christianity and it is estimated that there are 1.6 billion people who identify as Muslims, making up to 23% of the total global population.¹² According to the report, based on how religions are expanding, it is estimated that by the year 2050, the number of Muslims will almost be equal to the number of Christians globally . It is projected that the number of Muslims will be 2.8 billion, making up 30% of the total population, closely standing the Christians which are estimated to be made up of 2.9 billion and making up 31% of the population in that year. The growth of the Muslim population shows the significance of having *halal* framework recognized internationally and for it to have international monitoring system implemented globally in order to safeguard the *halal* standards.

The increasing demand for *halal* food is not only caused by the growth of the global Muslim population, it is attributed by other sectors including the tourism industry which has increased the demand for *halal* food as *halal* tourism or Muslim-friendly tourism is becoming more recognize. The growth of Muslim-friendly tourism is contributed by several factors, such as the increase in the number of Muslim tourists

¹⁰ Hussein Elasrag, *Halal Industry: Key Challenges and Opportunities*, (Middletown, DE: Createspace Independent Publishing Platform, 2016), 23.

¹¹ "Global *Halal* Market," Dagang Halal, <http://www.daganghalal.com/HalalInfo/WorldOfHalal.aspx> (accessed 5 December, 2016).

¹² Conrad Hackett et al., "The Future of World Religions: Population Growth Projections, 2010-2050," Pew Research Center, 2015, http://www.pewforum.org/files/2015/03/PF_15.04.02_ProjectionsFullReport.pdf (accessed 1 November, 2016).