

READINGS IN SUSTAINING GLOBAL HALAL ECOSYSTEM

(Collection of Articles from The 2nd International Halal Management Conference)

Editors:
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PREFACE

Sustaining Global Halal Ecosystem covers 20 articles of a wide range of interesting insights on Halal and Islamic perspectives, represents collaborative efforts by academicians who have presented their papers at International Halal Management Conference in Maldives, 2018 organised by Faculty Economic Muamalat (FEM), Universiti Sains Islam (USIM) and Maldives Centre for Islamic Finance. The conference was held in effort to provide a more comprehensive understanding of current global Halal challenges that integrates the Naqli and Aqli knowledge.

The global halal market is valued at more than US\$2 trillion and is one of the fastest-growing global consumer markets. Growing at an estimated annual rate of 20%, the industry is valued at about USD560 billion a year. Hence, making it one of the fastest growing consumer segments in the world. The global halal market of 1.8 billion Muslims is no longer confined to food and food related products. The halal industry has now expanded beyond the food sector to include pharmaceuticals, cosmetics, health products, and medical devices as well as service sector components such as tourism, logistics, marketing, print and electronic media, packaging, branding and financing—presenting a major global opportunity.

Since the establishment of the university, the field of halal has been one of USIM research niche areas. USIM has published many halal researches papers, developed halal products/food and conducted halal courses for undergraduate and postgraduate students as well as industrial players. USIM has also collaborated with many local and international organizations in halal research, consultancies, trainings, and discussions.

The conceptual and empirical studies in this book serve as a holistic for development of global halal from different areas. The Sustaining Global Halal Ecosystem is recommended for the students and practitioners of the halal business industry. This book offers a complete relationship of halal and Islamic principles with diverse practices as highlighted in each theme. The editors would like to extend their gratitude to all the contributors who for their great efforts, invaluable knowledge and passion have made this e-book an exceptional one and to all the committee members of IHMC2018 who have given their support and time in making this book a reality.

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A SHARIAH ANALYSIS ON THE USE OF ISLAMIC ELEMENTS IN FOODS BRANDING AND MARKETING

INTRODUCTION

The term halal is not an extraterrestrial concept anymore. This is due to the growing trend of global halal industry and also the growing Muslim population worldwide. Currently, there are about 1.84 billion Muslims globally, making up about 24.4 per cent of the world's population. By 2030, the number is expected to reach 2.2 billion (New Straits Times Online, 9 April 2018). While halal is perhaps most often associated with food and drink, there are in fact a wide range of halal services which can be offered including healthcare, travel, tourism and financial services. With all the development and growth of this industry, it is important for all related entities especially the halal industrial players to understand halal-related issues. Islam is a sacred religion, and it should not be used as a tool for marketing per-se. Consumers should not be misled into choosing the product or service with Islamic label, but the end-result is not as good as what they get.

HALAL INDUSTRY IN MALAYSIA

There are a lot of bodies involved in empowering Malaysia's halal industry. Among the most important body is the government itself. The vision for Malaysia to be an international halal hub was developed during the early reign of the fifth Prime Minister, Datuk Seri Abdullah Ahmad Badawi. This initiative has led to the strong role of the Malaysian government to lead and support initiatives and efforts by players in the halal industry. This includes establishing the Halal Industry Development Corporation (HDC) as the driving machine to manage key areas of the Malaysian halal industry, particularly in terms of certification and logo recognition. The role of the Malaysian government in halal certification has also increased the credibility of the Malaysian halal logo as compared to other halal-producing countries (Raja Nerina Raja Yusof, 2013).

There are several organizations involved directly and indirectly in the Malaysia Halal food industry locally as well as globally. They can be classified according to their functions either as a policy-maker, supervisory bodies and others. Among the most important organization that was established is the Department of Islamic Development Malaysia or Jabatan Kemajuan Islam Malaysia (JAKIM). JAKIM plays an important role in certifying and approving halal applications from various sectors e.g. the halal suppliers, halal premises as well as the halal products. JAKIM halal logo has been accepted and recognized worldwide. Besides, JAKIM has also developed the Halal portal whereby the consumer may check and be kept updated on current issues relating to halal.

Additionally, Halal Development Corporation (HDC) which was established in September 2006 aims at standardizing the development of halal industries in Malaysia. HDC focuses on the development of halal standard, halal audit and certification and also the development of halal products and service capacity. Further, HDC also supports the participation of the Malaysia's halal companies in the global market. Among the activities offered is the halal-related training for example Halal Executive Program (HEP), Halal Awareness Program (HAP) and many more (Nurul Aini et.al, 2016).

With reference to Malaysia's Halal Certification, The MS1500:2004 was the first documented standard on halal food established by the Malaysian government as an initiative to produce a more coordinated halal guideline in the country. Prior to 2004, the country had no national standards for producing halal products and only referred to informal documents and procedures produced by the Department of Islamic Development Malaysia (JAKIM). Standards Malaysia, under the Ministry of Science, Technology and Innovation, has been given the responsibility to develop the local halal standards. However, in October 2009 this standard was replaced by MS1500:2009 –Halal Food – Production, Preparation, Handling and Storage –General Guidelines (Second Revision).

This standard MS1500:2009 is best used with two other standards which are MS1480 –Food Safety according to the Hazard Analysis and Critical Control Point (HACCP) system and MS 1514 – General principles of food hygiene. Elements from GMP (Good Manufacturing Practices) are included in the halal standards to strengthen the safety and hygiene components in the manufacturing process. Now, there are various standards that have been developed by Standards Malaysia and although it is still optional for firms to adopt these standards, many advantages await those that are halal-compliant (Halal Industry Development Corporation, 2012).

Other than what has been stated above, there are various initiatives that have been taken by Malaysia in empowering the halal industry. Malaysia has established a Technical Committee on Halal Food and Islamic Consumer Products which provides seminars and courses to educate people on the halal standard and certification. Malaysia initiated the World Halal Forum, Malaysian International halal Showcase (MIHAS) and World Halal Research as annual events since 2004, which became the largest events in gathering global halal industry players, entrepreneurs and academicians. Currently it seems that Malaysia has a lot of positive development and will continue its effort in developing this industry.

THE USE OF ISLAMIC ELEMENTS: PROBLEM BACKGROUND AND STATEMENT

The concern for the misuse of the Quranic verses and Prophetic traditions for marketing purposes has been overwhelming due to the non-existence of Shariah guidelines and parameters by regulators. In some cases, non-Muslim business owners have been identified to utilize Islamic names for their food labelling and branding such as “Pau Ahmad”, “Mi Cap Masjid” and “P.Ramly Burger”, which some of them are clearly non-halal foods.

Therefore, this study aims to analyze the use of Islamic elements in marketing of food products, particularly in the Malaysian market. The outcome of this study could highlight some of the Shariah parameters relevant to the regulators in determining the permissible extent of this practice.

Issue 1: The Use of Islamic Elements in Foods Branding and Marketing

The use of Islamic elements in marketing and labelling of food products is increasingly popular and is becoming a widespread in the Malaysian market. There are so many examples of such practices e.g. labelling the food products as “Prophetic food”, “Quranic water therapy” and “Chicken with Quranic therapy”. Based on the authors’ preliminary observations, the use of these Islamic elements could be categorized as follows:

1. Quran-related such as *ruqyah* where Quranic verses are claimed to be recited or written on specific products.
2. Sunnah-related such as “*makanan Sunnah*” or Prophetic foods with certain combinations between them or other ingredients in ways that are not reported in the traditions of the Prophet PBUH.
3. Islamic icons and pictures such as pictures of mosques.
4. Islamic performance of worships such as prostration in prayers and supplication/prayer.
5. Islamic or Muslim names such as masjid, Sunnah and Ahmad.
6. See the two below figures for examples.



Figure 1: White Rice with Masjid’s Name and Picture



Figure 2: “Bihun Istimewa” with the Picture of Masjid

Both rice and noodle are products of non-Muslim-owned company.

Issue 2: The Misuse of Islamic Elements for *Haram* Foods Branding and Marketing

The misuse on Islamic elements could also be found for non-halal foods. One of the major outcries in Malaysia on this subject was the misuse of a Muslim’s icon name and a well-known halal brand for burger to promote a pork burger. This case took place in 2016 where a local burger joint known as “Ninja Joe” naming its pork burger as “P.Ramly”. See the below figure.

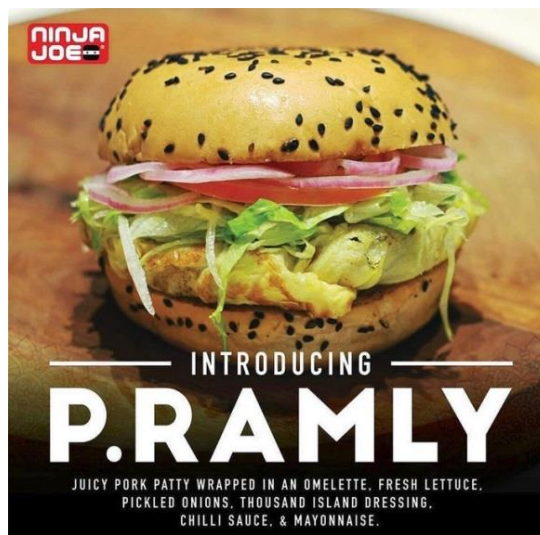


Figure 2: A Pork Burger Named as “P.Ramly” in 2016

Source: www.straitstimes.com

Ninja Joe’s owner, Mr. Kelvin Tan claimed that the company chose the name “P.Ramly” as an admiration to the first well-known burger brand in Malaysia, i.e. Ramly Burger, as the pork

burger was launched on the Malaysia's Independence Day (31st August) [B Harian]. However, the owner of Ramly Burger's brand did not welcome and appreciate the approach. The founder and owner of Ramly Group, a popular Malaysian food brand operator Ramly Burger, questioned Ninja Joe's actions. According to him, it was just misleading and wrong because the brand name would cause confusion to the public who may think that Ramly Burger also issued a non-halal burger. Ramly added that the actions of Ninja Joe could also cause other conflict due to his name's equality to the country's artist, Tan Sri P. Ramlee, who was also a Muslim.

The Malaysian Islamic Consumer Association (PPIM) also opposed the actions of Ninja Joe and claimed that the name was capable of misleading the public, although the product poster at the shopping centre in Petaling Jaya clearly stated that it was pork burgers. (Malaymail online, October 25, 2016). The Muslim Consumers Association of Malaysia (PPIM) demanded the Malaysian government to take legal action on the company (Straits times). PPIM's Activist chief Datuk Nadzim Johan described the restaurant's misleading and illegal acts were against the Consumer Protection Act 1999, which should be dealt with immediately by the authorities [B Harian]. Consequently, Selangor Islamic Religious Department (JAIS) and Negeri Sembilan's Islamic Affairs Department (JHEAINS) started investigation on the case based on two potential outlaws: (i) the use of misleading words, and (ii) deceit on Muslims to use non-halal goods [B Harian]. The company could be charged RM5 million at maximum and RM10 million at maximum for the respective outlaws.

On the other hand, human rights lawyer, Fahri Azzat, said the product's name does not show the halal status of a particular product; instead, a halal certificate and a halal logo would define the halal status of the product. According to him, the Trade Descriptions Act 2011 and its subsidiaries such as the Trade Description Act (Halal definition) 2011 apply only if the company or person puts a 'halal' label on their product, which means that they would only apply if Ninja Joe claimed its products as halal or edible by Muslims (Malaymail online, Oct 31, 2016).

However, according to the Selangor Islamic Religious Department (JAIS), Ninja Joe was allegedly have violated Section 4 (1) of the Trade Descriptions (Halal Certification and Marking) Order 2011, which prevented any food from being described or indicated in other ways as halal and could be consumed by Muslims unless the product is authorized by a competent authority and marked with a halal logo.

JAIS with the Negeri Sembilan Islamic Affairs Department (JHEINS) has investigated the Ninja Joe's shop following public complaints that the "P. Ramly" burger is said to have misled Muslims (Malaymail online, 31 Oct 2016). This case and its similar prove the needs of having a comprehensive legal standard to prevent the misuse of Islamic elements on food branding and marketing.

Current State

Until now, there is no specific law on the misuse of Islamic elements in food branding and marketing. There is only one legal verdict issued by the National Fatwa Council for Islamic Affairs in Malaysia related to this issue in 2015. The National Fatwa Council for Islamic Affairs in Malaysia, in its 108th meeting on 2-3 November 2015, has discussed the ruling for the use of *ruqyah* (recitation of selected Quranic verses for medical purposes) for commercial purposes. The Council has ruled that the use of *ruqyah* on any product for commercial purposes is not allowed either on labelling, advertising or promotion.

As a result, the Malaysian Islamic Development Department (JAKIM) on February 4, 2016 issued a 2-year 2016 Malaysian halal certification circular which addresses the prohibition of using the *ruqyah* verse, "sunnah food"/ "makanan Sunnah" and the like for labelling, advertising or promotion of products effective from 15 February 2016 for all Malaysian halal certification certificate applicant. The circular has been issued pursuant to the Trade Descriptions (Halal Certificate and Marking) Order 2011. Therefore, all companies or Malaysian halal certification applicants are required to observe and be aware of the implementation of this circular. But this circular only applies to products that apply for halal certification but does not apply to other products that do not apply for halal certification. This raises the question of non-exhaustive application of the law. The misuse of Islamic elements on food branding and marketing should be constrained prudently to prevent Halal consumers from being misled in making choices. The absence of specific law provisions led to this widely abused matter among the public. As a

country that places Islam as the official religion of the Federation, this issue should be given special attention to protect the sanctity of Islam.

In Utusan Malaysia press dated May 30, 2017, there were more than 40 complaints received by the Malaysian Islamic Consumers Association (PPIM) on products and brands using the Malay or Islamic names to outline their goods. PPIM's activist Datuk Nadzim Johan said most of the terms used have caused confusion to consumers as the brand's status of the product is dubious. Subsequently, he called on the Companies Commission of Malaysia (SSM) and the Ministry of Domestic Trade, Cooperatives and Consumerism to look for new methods in addressing the issue. Among the suggestions given is that responsible parties can issue instructions to product manufacturers using classifications or labels to specify the product whether it is issued by a Muslim company or not. If the status of the product is known, it is up to the consumer to either purchase the item or not. According to Nadzim, the use of the product brand is also not in line with the aspect of halal expressions subject to the Trade Descriptions Act. In other words, the product brand *per se* should not lead to implying that the product is halal. Product brand status should be clarified so that it does not cause improper use.

The Islamic Development Department of Malaysia (JAKIM), in responding to the above issue, has admitted that it is difficult to provide a new system to differentiate the products of Muslims with the non-Muslim products. On the other hand, JAKIM can only ask the relevant product manufacturers to choose the appropriate symbol for avoidance of confusion, while consumers are advised to only purchase products that have Halal JAKIM certificates or their accredited ones. JAKIM's Director-General Tan Sri Othman Mustapha said it was difficult for Jakim to provide a system to differentiate the two products. (Ismaweb, June 2, 2017).

SHARIAH ANALYSIS AND DISCUSSION

The need to extend the discussion of this issue from a Shariah perspective is deemed necessary as the misuse of Islamic elements might pose a reputational threat to the religion of Islam itself and jeopardize the halal industry. According to Kelantan Mufti Datuk Mohamad Shukri Mohamad, Islam does not encourage the names and terminologies of the religion to be exploited for marketing purposes, thus leveraging sales of products. This is because labelling products like 'Prophetic Food' or 'Makanan Sunnah' can confuse and deceive others. However, this act does not come to the destructive level of the faith, but it must be curbed because of the sun's phenomenon that causes each race to produce sunnah products whereas no one can make sure that it is really sunnah. Moreover, there is no clear justification to claim that the product meets the characteristics of the sunnah. This is alarming as more and more traders are daring to use the term solely in the pursuit of business including claims that their products have been used by Prophet Muhammad SAW. In Islam, any production that meets the concepts and rules of Islamic law has fallen in the category of *sunnah* because they are prepared according to Rasulullah's teachings. What is important is to seek the pleasure of God and therefore it is not necessary to claim any product as a *sunnah* with the intention of lining up the goods. It is important that the product does not have any deceiving elements or tricks that are associated to Islam; Islam does not specify that any product must be labelled with the word *sunnah*. This includes the claims of drinking water which has been laundered or read aloud with the verses of the Qur'an and so forth, while, in actuality, it is just mineral water alone. So, thesis not necessary to be associated with any act of worship and then sold at an expensive price. According to Datuk Mohamad Shukri Mohamad, if one product uses special materials so that the price is higher, then it is no longer the *sunnah*. (Utusan Online, February 8, 2017).

Shariah Basis for Constraining the Use of Islamic Elements in Foods Branding and Marketing: An Analysis

The Shariah bases for prohibiting the misuse of Islamic elements in food branding and marketing are:

1. The Quranic provisions
2. The Sunnah of the Prophet Muhammad PBUH in Prohibiting Deceitfulness in Business
3. Siyasah Shar'iyah for the protection of Maqasid al-Shariah (Shariah Objectives)
4. Sadd al-Dhari'ah (Blocking the Means to Unlawful and Evil Consequences)

The Quranic Provisions

The Quranic teachings emphasize on the values of honesty, fairness and mutual consent in business dealings. Mutual consent between the dealing parties is fundamental from an Islamic perspective. This is illustrated by verse 29 of al-Nisa' as follows:

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ

“O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent.”

The Quranic teaching also calls attention to the realization of fairness in all dealings. In this context, verse 90 of al-Nahl states:

إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَنِ وَإِيتَايِ ذِي الْقُرْبَىٰ

“Indeed, Allah orders justice and good conduct and giving to relatives.”

Mutual consent and fairness in business dealings could not be built on malpractices. The misuse of Islamic element in food branding and marketing does violate the principles of mutual consent and fairness. False information or misinformation of products by the misuse of Islamic element may render a transaction as void or voidable or non-binding. Therefore, proper constraint should be enforced upon the misuse of Islamic elements in food branding and marketing.

The Sunnah of the Prophet Muhammad PBUH in Prohibiting Deceitfulness in Business

This misuse of Islamic element in marketing business products could be traced back to the era of Prophet PBUH. During his time, some merchants used to make oath by the name of Allah in order to persuade the customers to buy their products. In order to prohibit such practice, the Prophet PBUH was reported to say:

الْحَلْفُ مُنْفِقَةٌ لِلسِّلْعَةِ مُمَحِقَةٌ لِلْبَرَكَاتِ

“The oath may sell the product, but at the same time it nullifies the blessing”

(al-Bukhari, No. 2087).

The use of deceit in marketing is also condemned by the Prophet PBUH where he said:

مَنْ عَشَّنَا فَلَيْسَ مِنَّا

“Anyone who cheated us is not amongst us”

(Ibnu Majah, No. 2225).

The first hadith is one of the Shariah evidences for the prohibition on the misuse of Islamic element such as the name of Allah in business marketing. Furthermore, cheating and deception in business are critically condemned in Islam. The misuse of Islamic element in food branding and marketing carries both prohibited elements, hence, should be prohibited based on the Prophetic teachings in Islam.

Siyasah Shar’iyyah for the Protection of Maqasid al-Shari’ah (Shariah Objectives)

Protection of *maqasid al-Shariah* is one of the fundamental tasks held on the responsibility of the authorities and regulators. One of the paths for this function is through *Siyasah Shar’iyyah*. *Siyasah Shar’iyyah* refers to good practices in management and regulations that are compliant to the principles of Islam. The misuse of Islamic element in food branding and marketing could tarnish the image of Islam and mislead the halal-seeking customers. Therefore, Muslim regulators and authorities should consider *Siyasah Shar’iyyah* by constraining the use of Islamic elements in foods branding and marketing to preserve the sanctity of Islam and evade the unjust misconception of Islam due to badness of the products and services using Islamic elements in their branding and marketing.

Sadd al-Dhari'ah (Blocking the Means to Unlawful and Evil Consequences)

Constraining of the use of Islamic element for food branding and marketing in several circumstances could also be based on the principle of *sadd al-dhari'ah* from the Shariah perspective. *Sadd al-dhari'ah* literally means blocking the means. This principle means that the Shariah may prohibit some matters due to their consequences, with several conditions laid down in the literatures of *Usul al-Fiqh*. The misuse of Islamic element in food branding and marketing could cause misunderstanding amongst halal-seeking customers. They may pay unreasonably higher price due to the appearance of Islamic element on the food. Although, in reality, the food does not satisfy the Islamic concept that it carries. Confusion, misconception and false selection could be the results of the misuse of Islamic element in food branding and marketing. Therefore, these practices could be prohibited and constrained based on the principle of *sadd al-dhari'ah*.

Critical Need for Legal Standard Preventing the Misuse of Islamic Elements in Foods Branding and Marketing

Based on the previous discussion, it is observable that Malaysian Halal industry does require specific enforceable legal parameters for constraining the misuse of Islamic elements in food branding and marketing. This need has its grounding in the Quranic injunctions, the Prophetic traditions, *Siyasah Shar'iyah*, *Maqasid al-Shari'ah* and *Sadd al-Dhari'ah*. Some of the potential parameters for considerations are as follows:

1. The use of Islamic element for non-halal food branding and packaging is strictly unlawful and punishable accordingly.
2. The use of Islamic element which could tarnish the image and reputation of Islam is strictly prohibited.
3. The use of *ruqyah Shar'iyah* for differentiating food products and increasing their prices is prevented due to uncertainty element.
4. The branding of food products as “*makanan Sunnah*” or “Prophetic foods” is disallowed due to non-clear definition and non-existence of guidelines for the practice.

CONCLUSION

Preventing the misuse of Islamic elements is in line with the first and main Shariah objective of protecting the religion (*hifz al-din*). Regulation on food branding and marketing with the use of Islamic elements is necessary to protect the sanctity and reputation of Islam. It is time for the regulators, particularly JAKIM (Department of Islamic Development Malaysia) and HDC (Halal Development Corporation), to come up with a comprehensive standard that provides guidelines on the use of Islamic elements in food branding and marketing, especially products with Halal logo and certification.

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