

***Halal* Certification for Eateries in Malaysia: Legal Pitfalls & Possible Solutions**

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Abstract

The *Halal* food and beverage (*'Halal F&B'*) industry is a highly lucrative business venture. Malaysia, among many other countries, has decisively taken steps to penetrate the global *Halal* F&B market by expanding their business networks across the country and overseas. Malaysia is regarded as a major provider of *Halal* F&B and is *en route* to becoming the leading international *Halal* hub in *Halal* tourism. This success is believed to have stemmed from the *Halal* certification standards set up by the Department of Islamic Development Malaysia (*'JAKIM'*). To lure the Muslim-majority consumer pool, many eatery establishments in Malaysia strive to be *Halal*-certified by JAKIM. Nevertheless, they often bemoan the struggle in obtaining the *Halal* certificate; indicating the need to re-examine the *Halal* legal regime and the efficiency of Malaysia's *Halal* certification system. This paper seeks to explore the legal and institutional issues encompassing the *Halal* certification system and the challenges faced by eatery businesses as a consequence thereof. In an effort to address these issues, this author puts forth a list of proposals for the benefit of *Halal* governance and eatery businesses in Malaysia.

Keywords: *Halal*, JAKIM *Halal* certification, eateries or restaurants, Federal Constitution, demarcation of powers, pith and substance.

I INTRODUCTION

Malaysia offers a melange of culinary traditions, food culture, and cooking customs. The culinary diversity is primarily attributed to the country's ethnic communities, history of colonial rule, and the influx of foreign workers over the years.¹ The country's status as an international trading hub in the past has also influenced Malaysia's culinary scene where traders from Indonesia, India, the Middle East, China, and Thailand brought their food practices into the country.² These factors played a pivotal role in assimilating international culinary traditions with the local's, giving birth to Malaysia's unique gastronomical heritage.

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¹ Mohd Nazri Abdul Raji, Shahrin Ab Karim, Farah Adibah Che Ishak, et. al. "Past and Present Practices of the Malay Food Heritage and Culture in Malaysia", *International Journal of Food Ethics*, 2017, Vol. 4, pp. 222.

² Mohd Nazri Abdul Raji, Shahrin Ab Karim, Farah Adibah Che Ishak, et. al., n1.

According to the 2018 United States Department of Agriculture (Foreign Agricultural Service) Report, the availability of a plethora of international cuisine in Malaysia is one of the dynamics behind the significant growth of the country's food services industry.³ The growing demand for *Halal* food worldwide makes *Halal* certification vital in enhancing the industry's marketability, more so in the Malaysian climate where it has a Muslim-majority population.⁴ This is reinforced by the fact that food and beverage consumption is a prevalent concern for Muslims in Malaysia,⁵ among other aspects of *Halal*. *Halal* certification on food premises is important in instilling consumer confidence among Muslims.⁶ For this reason, many eatery operators in Malaysia make the effort to ensure that their premises are *Halal*-certified.⁷

Malaysia is regarded as the epicentre of the *Halal* industry and now positions itself as the global *Halal* hub.⁸ The country's *Halal* certification standards are backed by the government and established by the Department of Islamic Development Malaysia ('JAKIM'),⁹ which have been described as the 'platinum standard' for *Halal* certification internationally.¹⁰ Malaysia is also regarded as a suitable model when it comes to overseeing *Halal* food compliance in hotels and restaurants.¹¹ Malaysia's *Halal* portfolio has grown beyond the food and beverage sector, allowing the country to tap into another highly lucrative venture: *Halal* tourism.¹²

Fulfilling *Halal* certification's procedural requirements in Malaysia is reported to be challenging for eatery businesses.¹³ As such, this paper explores the challenges faced by eateries in acquiring the *Halal* logo. To do so, this author examines Malaysia's *Halal*

³ Rowena Ngumbang, 10th December 2018, "*Malaysia Food Service - Hotel Restaurant Institutional Annual 2018*", USDA Foreign Agricultural Service, <http://gain.fas.usda.gov/Recent%20GAIN%20Publications/Food%20Service%20-%20Hotel%20Restaurant%20Institutional_Kuala%20Lumpur_Malaysia_10-12-2018.pdf>.

⁴ Ibid.

⁵ Muhammad Hisyam Mohamad, 7 February 2017, "*Halal Initiatives and Sustainable Living*" The Star Online, <<https://www.thestar.com.my/opinion/columnists/ikim-views/2017/02/07/Halal-initiatives-and-sustainable-living-sustainable-production-and-consumption-are-consistent-with/#32GghuTVkv848yXI.99>>.

⁶ Bernama, 12 January 2019, "*Halal Status: Firms Can be Fined RM5 Mil for Misleading Consumers, Warns JAKIM*" Free Malaysia Today, <<https://www.freemalaysiatoday.com/category/nation/2019/01/12/halal-status-firms-can-be-fined-rm5-mil-for-misleading-consumers-warns-jakim/>>.

⁷ Aizyl Azlee, 23 February 2016, "*Halal Certification: What Malaysian Eateries Really Think*" Malay Mail, <<https://www.malaymail.com/s/1066439/Halal-certification-what-malaysian-eateries-really-think/>>.

⁸ Halal Development Corporation, 2018, "*Malaysia as a Global Halal Hub*", <http://www.hdcglobal.com/publisher/halal_park_about>.

⁹ Halal Development Corporation, 2018, "*Halal Certification*", <<http://www.hdcglobal.com/publisher/certification>>.

¹⁰ Amnah Shaari, 28th June 2018, "Capitalising Platinum Halal Trustmark Globally: Tapping into Existing GS1 Community", *19th Malaysian International Food & Beverage Trade Fair*, Kuala Lumpur Convention Centre, Malaysia.

¹¹ The Statistical, Economic and Social Research and Training Centre for Islamic Countries (Organisation of Islamic Cooperation), 2017, "*Strategic Roadmap for Development of Islamic Tourism in OIC Member Countries*", <<https://www.oic-oci.org/docdown/?docID=1777&refID=1071>>.

¹² Islamic Tourism Centre, 2019, "*Malaysia – The World's Leading Halal Hub*", <<https://itc.gov.my/tourists/discover-the-muslim-friendly-malaysia/malaysia-the-worlds-leading-halal-hub/>>.

¹³ Supra n7.

legal regime and the efficiency of the *Halal* certification system, whilst scoping their impact on eatery businesses in Malaysia.

The crux of this paper is the demarcation of powers (in accordance with the Federal Constitution) between Federal Parliament and the State Legislature in *Halal* legal governance, which include, *inter alia*, the issues as to the legislative competency of the federal and state assemblies, the conflicts between the civil and *Syariah* courts' jurisdictions, and the entities involved in *Halal* monitoring for F&B. Since *Halal-Haram* matters are most commonly associated with Islamic dietary obligations, the discussion on Islamic jurisprudence of *Halal-Haram* consumption is inevitable.

This author has employed qualitative research of a doctrinal nature where data collection and analysis were primarily library-based. In order to gain useful insight into *Halal* certification procedures in the food services industry in light of the abovementioned constitutional law issues, semi-structured interviews were conducted with various stakeholders, *inter alia*, legal practitioners, academicians, Islamic scholars, and representatives from the *Halal* industry, such as JAKIM's *Halal* Hub Division and Malaysia's leading restaurant chain operator, QSR Brands Sdn. Bhd. The issues laid down are then followed by their corresponding solutions. For the purposes of this paper, the term 'eatery' refers to restaurants.¹⁴

II THE HALAL LEGAL REGIME IN MALAYSIA

In this section, the author explains the fundamentals of *Halal* in Islam and the Malaysian *Halal* certification legal regime.

A *Halal Doctrine in Islam*

In the Islamic faith, Muslims are to serve Allah SWT by practising *Taqwa*, that is, to perform all acts commanded by Him and to avoid what He has forbidden. The word '*Taqwa*' does not simply mean 'God-fearing' as how it is commonly translated today.¹⁵ The word is better understood by looking at its root word '*wakaya*' (to take precautionary measures) and its collation with the verb '*ittaq*' (for one own's advantage); when amalgamated, it means "to safeguard oneself from something harmful".¹⁶

The concept of *Taqwa* can be analogised by recounting the conversation between close companions of Prophet Muhammad SAW, 'Umar bin Al-Khattab RA and Ubayy bin Ka'b. According to Tafsir Ibn Khathir, 'Umar asked Ubayy about the meaning of *Taqwa*, to which Ubayy responded: "Have you ever walked on a path that has thorns in it?" 'Umar said "yes". "What did you do then?", asked Ubayy. 'Umar replied, "I rolled up my sleeves (garments) and struggled (protected myself from the thorns)." Ubayy said, "That is *Taqwa*."¹⁷ Likewise, the natural act of keeping one's flowing garments up when

¹⁴ See Item 2.9, *Manual Procedure for Malaysia Halal Certification (3rd Revision) 2014*, Malaysia.

¹⁵ Murtada Mutahhari, "Taqwa Part I", *Books on Islam and Muslims*, 2011, Vol. 11, pp. 45.

¹⁶ Dr. Tanveer Hussain, 8th February 2014, "*Taqwa*" Quranic Teachings, <<http://quranicteachings.org/taqwa/>>.

¹⁷ Muhammad Saed Abdul-Rahman, *Tafsir Ibn Kathir Juz' 1: Al-Fatihah 1 to Al-Baqarah 141*, 2nd Ed., MSA Publication Limited, 2013, pp. lxvi.

walking through a potentially destructive thorny path is similar to *Taqwa*. It refers to behaving in accordance with Allah's wishes in order to complete one's journey through life without falling into disobedience to Him.

Halal means permissible or lawful to do, as opposed to *Haram* which means forbidden.¹⁸ This doctrine transcends a wide spectrum in life from banking, finance, fashion, to food consumption. Consuming *Halal* food is thus one of many sub-sets of *Taqwa*. With food and drinks, *Halal* refers to any item that is permitted to be consumed in Islam owing to its nature, source, and the way it was prepared for consumption by Muslims. The requirement to consume only *Halal* food and drinks is stressed in the *Quran* (the Holy Scripture for Muslims), where it endorses consumables as *Halal* except for pork, blood, intoxicants, impurities, and dead animals (as well as their by-products) which have not been slaughtered by way of *Dhabihah*.¹⁹

Halal must be read conjunctively with its counterpart '*Toyyiban*', which means good, pure, or wholesome.²⁰ '*Halal-toyyiban*' is a godly commandment to Muslims to ensure that in addition to the lawful state of food, the food must also be fit for consumption—of high quality, and is nutritious, ethically-sourced, and hygienic.²¹ The concept of *Toyyiban* is evident in *Dhabihah*, the Islamic practice of slaughtering animals for *Halal* meat.

Contrary to a popular belief, *Dhabihah* does not involve chanting magical slogans upon the animal and proceeding to kill it barbarically. Slaughtering animals for food is a delicate procedure governed by strict regulations pertaining to food safety and hygiene, working conditions and animal welfare;²² all of which are carefully observed during *Dhabihah*. As a starting point, the ritual slaughter is preceded by invoking the name of Allah SWT.²³ The mention symbolises respect towards Him as the animal's giver of life and is thus akin to asking for His permission to kill the animal for human consumption.²⁴

Moreover, when the slaughtering process is taking place, the device used to cull the animal's neck must be sharp enough to sever its throat, windpipe, carotid artery and jugular veins in one swift cut.²⁵ This expedites the death of the animal, thereby minimising its pain. The entire procedure must not distress the animal nor be witnessed by

¹⁸ Ibid.

¹⁹ Halal Development Corporation, 10 July 2018, "*Halalan Toyyiban*", <http://www.hdcglobal.com/publisher/bdh_halalan_toyyiban>. Site accessed on 23.07.2018. *Halal* dietary restrictions in the *Quran* are mentioned in Surah Al-Baqarah (verse 173), Surah Al-Maidah (verses 3 and 5), and Surah Al-Nahl (verse 114).

²⁰ Apnizan Abdullah, 14th April 2018, "*Difference between Halal and Halalan-Toyyiban*" New Straits Times, <<https://www.nst.com.my/opinion/columnists/2018/04/357046/difference-between-halal-and-halalan-toyyiban>>.

²¹ Ibid.

²² Nakyinsige Khadijah, Fatimah Abu Bakar, Zeiad Amjad Aghwan, et. al., "Bleeding Efficiency and Meat Oxidative Stability and Microbiological Quality of New Zealand White Rabbits Subjected to Halal Slaughter without Stunning and Gas Stun-killing", *Asian-Australasian Journal of Animal Sciences*, 2014, Vol. 27, pp. 407.

²³ Abdul Hamid Siddiqui, "*Kitab Al-Adahi (Book of Sacrifices) (Translation of Sahih Muslim, Book 22)*", <http://www.iiu.edu.my/deed/hadith/muslim/022_smt.html>. See also Surah An'am (verse 118) of the *Quran*.

²⁴ Muhammad Zahid Anwar, 2019, "*Dhabihah: The Method of Slaughter*" Global Islamic Research Organisation, <<http://globalislamicresearch.org/why-is-halal/>>.

²⁵ Ibid.

its companions.²⁶ Besides being a compassionate gesture, it is also observed that distress invigorates muscular activity which lessens the amount of lactic acid—the chemical responsible for tasteful and tender meat.²⁷

As part of *Dhabihah*, the blood residue from the culling must be discarded. Blood retention is liable to rapid bacterial spoilage and the meat's unpleasant appearance,²⁸ lower residual blood therefore reduces the chances of this happening. It is also noteworthy that blood drainage eliminates the meat's metallic iron flavour as more iron content is reduced with blood disposal, which in turn allows the natural taste of the flesh to surface when marinated with spices and seasonings.²⁹ Based on the above, it is clear that *Halal* dietary restrictions promises benefits in various aspects beyond religion, *inter alia*, animal psychology, hygiene, science and even gastronomy.

Unlike *Dhabihah* and the said forbidden consumables, the permissibility of a food item is at times not explicitly stipulated in the *Quran*. In reality, between what is *Halal* or *Haram* are the grey areas called *Mashbooh* (doubtful). It is doubtful either because of the ingredients in the food or because of differences in views among religious scholars.³⁰ In other words, the permissibility of certain types of food is sometimes debatable. This commonly arises in situations when a *Halal* substance is mixed with a non-*Halal* substance. For example, a food item that is originally *Halal* may descend to the status of *Mashbooh*, then *Makrooh* (disliked), and to completely *Haram* when mixed with non-*Halal* components, depending on the nature and amount of added impurities.³¹ Similarly, when a *Haram* matter is mixed with a much larger volume of *Halal* matter to the extent that the original taste, smell, and colour of the *Haram* attributes become extremely insignificant, the *Haram* matter becomes *Halal* and is now permitted to be consumed.³² Such a jurisprudence is founded upon the principle of “transformation and assimilation”.³³

To reiterate, the *Quran* expressly prohibits Muslims from consuming intoxicants,³⁴ but pursuant to this principle, a small percentage of alcohol may be “tolerated” under

²⁶ Javaid Aziz Awan and Muhammad Sohaib, “Halal and Humane Slaughter; Comparison between Islamic Teachings and Modern Methods”, *Pakistan Journal of Food Sciences*, 2016, Vol. 26, pp. 235, (citing Abdullah Abdur Rahim Al-Abbadi, “Rules and Regulations on Slaughtering”, 1988).

²⁷ United Nations Food and Agriculture Organization, 2001, “*Effects of Stress and Injury on Meat and By-Product Quality*”, <<http://www.fao.org/docrep/003/x6909e/x6909e04.htm>>.

²⁸ R. A. Lawrie and D. A. Ledward, *Lawrie's Meat Science*, 7th ed., Woodhead Publishing Press, Cambridge, UK, 2006, pp. 134.

²⁹ Eater, 5th May 2016, “*What Makes A Burger Halal? Cooking in America Continues with a Visit to a Halal Butcher and Burger Shop*”, <<https://www.eater.com/2016/5/5/11598970/halal-butcher-shop-honest-chops>>.

³⁰ Mian N. Riaz and Muhammad Munir Chaudry, *Halal Food Production*, CRC Press, 2004, pp. 7.

³¹ Personal interview with Fakhah Azahari, 11 July 2018. She is an Islamic Banking practitioner in Messrs Nik Hisham Fakhah & Co. She specialises in Islamic finance and banking, corporate finance and research and development of the law. From 2006 and 2009, Fakhah Azahari actively organised international *Halal* exhibitions in Singapore and Italy for the Ministry of Cooperative and Entrepreneur Development.

³² Fakhah Azahari, “Islamic Finance: Shariah Principles of ‘Transformation and Assimilation’” *Malayan Law Journal*, 2010, Vol. 1, pp. lxxxiii (citing the *Fatwa* issued by the *Fiqh* Council of North America).

³³ *Supra* n31.

³⁴ Abdul Hamid Siddiqui, “*Kitab Al-Ashriba (Book of Drinks) (Translation of Sahih Muslim, Book 23, Number 4964)*”, <http://www.iiu.edu.my/deed/hadith/muslim/023_smt.html>.

exceptional circumstances.³⁵ In Malaysia for example, the Fatwa Committee of the National Fatwa Council for Islamic Religious Affairs had issued a *fatwa* (religious edict) in 2011 to outline what these exceptions are. One of the decreed exceptions is food and beverages containing flavouring and colouring with alcohol is permitted to be consumed, provided that the alcohol in the food or beverage product is used for stabilisation purposes, the alcohol is not produced from a wine-making process and the alcohol content in the end product does not exceed 0.5% nor cause intoxication.³⁶ JAKIM agrees with this decree.³⁷

Interestingly, in view of the development of the Islamic finance industry, the principle of transformation and assimilation has also been applied to *Syariah* investments.³⁸ Since Muslims must only engage in *Halal* investments, Islamic scholars have established a set of “permissible limits” for Muslims investing in mixed areas of *Halal* and non-*Halal* activities. In the case of adding a diversified mix of investments to their portfolios, Muslim investors must ensure that their investments’ core revenue stem from *Syariah*-compliant business activities.³⁹

The *Shariah* Advisory Council of the Securities Commission of Malaysia (SAC) provides that there are two tiers to this benchmark, namely; 5% and 20%.⁴⁰ To illustrate, if the sale of alcohol of an airline company falls less than 5% of a company’s revenue, alcohol is thus not the core business of the company and investing in such a business would be generally permissible for Muslims. These benchmarks were established based on the concept of *Maslahah* (public interest) and *Umum Balwa* (common plight),⁴¹ which depict the jurisprudence behind the tolerance of *Haram* attributes if the amount is diminished by a substantial amount of *Halal* attributes.

B *Halal Certification in Malaysia*

Malaysia is a leading player in the global *Halal* industry.⁴² The country owes its success to JAKIM, the main accreditation body responsible for the granting of *Halal* approval. JAKIM’s accreditation schemes centre around products, premises or abattoirs.⁴³ In terms of products or premises, JAKIM conducts thorough investigations into food chain integrity systems to ensure food products are not only assured as *Halal* but are safe and

³⁵ Supra n31.

³⁶ Halal Hub Division, 2019, “*Alcohol*” Department of Islamic Development Malaysia, <http://www.halal.gov.my/v4/images/brosur/ENZIM.pdf>>.

³⁷ Supra n32 pp. lxxxi.

³⁸ Supra n32, pp. lxxxiv.

³⁹ Securities Commission Malaysia, 30 November 2018, “*List of Shariah-compliant Securities by the Shariah Advisory Council of the Securities Commission Malaysia*”, <<https://www.sc.com.my/api/documentms/download.ashx?id=f325b375-67e9-49c3-a45d-4864c8a6be7f>>.

⁴⁰ Ibid n39.

⁴¹ Bank Negara Malaysia Islamic Finance Centre, 2019, “*Shariah Compliant Securities*”, <http://www.mifc.com/index.php?ch=ch_kc_definitions&pg=pg_kcdf_products&ac=304>.

⁴² Amir Hisyam Rasid, 3 April 2019, “*Malaysia’s New Strategies to Retain Halal Market Leadership*”, New Straits Times, <<https://www.pressreader.com/malaysia/new-straits-times/20190403/281749860718190>>.

⁴³ *Halal* Development Corporation, 10 June 2018, “*Process and Requirements*”, <http://www.hdcglobal.com/publisher/gw_hc_pro_and_req>.

of high-quality.⁴⁴ The phrase ‘from farm to fork’ is used to describe the thoroughness of the traceability processes. Each step is seen as a continuum; if a non-*Halal* element is discovered at any stage, the chain breaks, and JAKIM will reject the *Halal* certification application.⁴⁵

Malaysia has a myriad of authorities aimed at regulating *Halal* certification procedures. Essentially, JAKIM implements the *Halal* Certification system.⁴⁶ The Ministry of Domestic Trade, Co-operatives & Consumerism (‘MDTCC’), the Ministry of Trade and Industry (‘MITI’), Ministry of Health (‘MOH’), and several other ministries also work in tandem with one another in *Halal* certification procedures.⁴⁷

Halal certification is statutorily governed by the Trade Description Act 2011 (‘TDA 2011’)⁴⁸ which prohibits false trade descriptions and practices for goods or services. The TDA 2011 comprises of two *Halal* by-laws, namely: the Trade Description (Definition of *Halal*) Order 2011⁴⁹ and Trade Description (Certification and Marking of *Halal*) Order 2011.⁵⁰ The first order defines *Halal* whilst the second one mandates JAKIM and the State’s Islamic Religious Council (at the Federal and State level, respectively) as the competent authorities to certify goods or services as *Halal*.⁵¹ Alongside the TDA 2011, other *Halal*-related laws in certification procedures exist. Among them are the Food Act 1983, Food Regulations 1985, Animal Act 1953, Animals (Importation) Order 1962, Abattoirs (Privatization) Act 1993, National Livestock Development Authority (Dissolution) Act 1983, Local Government Act 1976, Road Transport Act 1987, Customs Act 1967, Consumer Protection Act 1999,⁵² and *Syariah* Criminal Offences Enactments.⁵³

In terms of standards, the Department of Standards Malaysia has issued 14 *Halal* standards that need to be complied with.⁵⁴ These standards are concurrently used with the Manual Procedure for Malaysia *Halal* Certification 2014 (“*Halal* Manual 2014”)

⁴⁴ Mohd. Roslan Mohd. Saludin, 27 June 2018, “Halal Food Chain Integrity”, *19th Malaysian International Food & Beverage Trade Fair*, Kuala Lumpur Convention Centre, Malaysia.

⁴⁵ Ibid.

⁴⁶ *Halal* Development Corporation, 2018, “*Halal Agencies*”, <http://www.hdcglobal.com/publisher/gw_halal_agencies>

⁴⁷ Ibid.

⁴⁸ *Trade Descriptions Act 2011* (Malaysia) Act 730.

⁴⁹ *Trade Descriptions Act (Definition of Halal) Order 2011* (Malaysia) Act 430.

⁵⁰ *Trade Descriptions Act (Certification and Marking of Halal) Order 2011* (Malaysia) Act 431.

⁵¹ Zalina Zakaria and Siti Zubaidah Ismail, “The Trade Description Act 2011: Regulating “Halal” in Malaysia”, *International Conference on Law, Management and Humanities, Bangkok, Thailand*, 2014, pp. 9.

⁵² Apnizan Abdullah, “The Halal Regulatory Framework in Malaysia Should be Consolidated: A Proposal”, *Islam and Civilisational Renewal Journal*, 2016, Vol. 3, pp. 424.

⁵³ Nurhafilah Musa and Faridah Jalil, “*Halal* Products – Malaysian Constitution Perspective” *Social Science Research Network Electronic Journal*, 2012, pp. 695–701.

⁵⁴ Mohd. Safzan Muhd. Mukhtar, 28 June 2018, “Capitalising Platinum Halal Trustmark Globally: Tapping into Existing GS1 Community”, *19th Malaysian International Food & Beverage Trade Fair*, Kuala Lumpur Convention Centre, Malaysia.

and Malaysia Guidelines on *Halal* Assurance System 2011.⁵⁵ *Halal* food is produced, prepared, handled and stored in accordance with MS 1500:2009.⁵⁶

III PREVALENT ISSUES ON HALAL CERTIFICATION

Eatery businesses claim that the procedure to obtain JAKIM *Halal* certification is too bureaucratic.⁵⁷ In this section, issues on deficiencies behind the *Halal* legal regime and how they may account for the struggles (as alleged by the eateries) in obtaining the *Halal* certificate, will be discussed.

A *Crux: The Constitutional Dilemma*

1 *Jurisdictional Uncertainty of Halal Governance*

One of the factors behind the continuing inefficiency of *Halal* governance in Malaysia is the jurisdictional uncertainty of *Halal* matters in the Constitution. As mentioned above, the procedures encompassing the *Halal* certification bureaucracy are subject to a multitude of laws which involve several entities from different jurisdictions.⁵⁸ The provisions under TDA 2011 and the *Syariah* Criminal Offences Enactments depict this uncertainty. Section 28(3)(b) of the TDA 2011 (read together with the two *Halal* by-laws) criminalises the display of fraudulent *Halal* logos. The same offence is provided under the *Syariah* Criminal Offences Enactments of some states in Malaysia. In Selangor, for instance, abusing the *Halal* sign is an offence punishable by law under s 38 of the *Syariah* Criminal Offences (Selangor) Enactment 1995.⁵⁹

Under the TDA 2011, the offender shall be liable to a fine of up to RM1,000,000 or an imprisonment term not exceeding three years or both, whilst the Selangor *Syariah* Criminal Enactment 1995 imposes a maximum punishment amounting to only RM2,000 or to an imprisonment term not exceeding one year or both. The seemingly disproportionate punishments under the two statutes is due to the limitation imposed in s 2 of the *Syariah* Courts (Criminal Jurisdiction) Act 1965 which provides for the “3-5-6” rule.⁶⁰ A glitch is seen here; the TDA 2011 does not exclude its power and jurisdiction to charge Muslims for the *Halal* offence. The penalty thus applies to Muslims and Non-Muslims alike, unlike the Selangor *Syariah* Criminal Enactment 1995 which applies to Muslims only.

At this juncture, it is pertinent to discuss the constitutional law doctrine of demarcation of powers. ‘Powers’, in this context, refers to federal-state legislative powers and civil law-*Syariah* jurisdiction. The assignment of legislative powers between the Federal Parliament and State Legislatures is found in the Federal, State, and Concurrent Lists under the 9th Schedule of the Constitution.

⁵⁵ Apnizan Abdullah, n52, pp. 423.

⁵⁶ Department of Standards Malaysia, 2018, “MS 1500: 2009 - Halal Food”, <<http://www.jsm.gov.my/ms-1500-2009-halal-food>>.

⁵⁷ Supra n7.

⁵⁸ Supra n52.

⁵⁹ *Syariah Criminal Offences (Selangor) Enactment 1995* (Malaysia) Enactment No. 9.

⁶⁰ Section 2, *Syariah Courts (Criminal Jurisdiction) Act 1965* (Malaysia) Act 355. It provides that the *Syariah* Courts’ jurisdiction do not cover offences punishable with imprisonment for a term exceeding three years or with any fine exceeding RM5,000 or with whipping exceeding six strokes or both.

In relation to Islam, the State List empowers the State Legislatures to enact laws pertaining to personal Islamic law, *inter alia*, succession, marriage, Malay customs, guardianship, and creation and punishment of offences by Muslims against the precepts of Islam which are not covered in the Federal List.⁶¹ Enforcement of these laws can only be imposed upon Muslim offenders. As for matters enumerated in the Federal List, Parliament-enacted legislation must pass the “test of constitutionality and consistency” with other laws that are in operation.⁶² If inconsistencies exist between the Federal and State laws, the former prevails and the latter shall to the extent of its inconsistency be void.⁶³ However, contending that a state’s Islamic law is invalid merely because it is inconsistent with Federal law is simplistic; in fact, if the state’s Islamic law is made within the competency of the State Legislature, federal law cannot be said to take precedence over State law.⁶⁴

The case of *Bin Abdullah*⁶⁵ illustrates how the civil law-*Syariah* or federal-state dichotomies have brought about some legal difficulties. The first Appellant in this case is a Muslim child who was born out of wedlock. His name was registered with the patronymic surname “Bin Abdullah” by the National Registration Department as they had relied on *fatwas* concerning the Islamic ruling on patronymic surnames for illegitimate Muslim children. The issue before the court was whether the respondents, the National Registration Department of Malaysia, have the power under the Births and Deaths Registration Act 1957 (‘BDRA 1957’)⁶⁶ to decide on the patronymic surname of an illegitimate Muslim child. The Court of Appeal answered this question in the negative.

Matters concerning registration of births are within the purview of Parliament. The respondents, being a Federal entity, had acted beyond their statutory powers by referring to *fatwas* which are devoid of legislative force because they have not been gazetted into law. Even if they had been gazetted, such a process would have been done pursuant to a State law which cannot prevail over the BDRA 1957, a Federal law (unless the act of Parliament adopts the *fatwa*).⁶⁷ Contrary to what seems to have caused an uproar among the public,⁶⁸ the underlying issue in this case had nothing to do with contravening the tenets of Islam; it was purely an issue of encroachment of powers by an administrative body. The registration process ought to be dealt with under civil law by civil authority, not under *Syariah* by the religious authority.⁶⁹

⁶¹ Item 1, State List (List II), *Federal Constitution* (Malaysia).

⁶² Lim Heng Seng, 16th June 2016, “*Malaysia: The Federal Constitution, Islamisation and the Malaysian Legal Order*” Mondaq, <<http://www.mondaq.com/x/500882/Constitutional+Administrative+Law/The+Federal+Constitution+Islamisation+And+The+Malaysian+Legal+Order>>.

⁶³ Article 75, *Federal Constitution* (Malaysia).

⁶⁴ Pawancheek Marican and Mohamed Azam Mohamed Adil, “Apostasy and Freedom of Religion in Malaysia: Constitutional Implications”, *Yearbook of Islamic and Middle Eastern Law* (School of Oriental and African Studies, University of London), 2004, Vol. 11, pp. 169.

⁶⁵ *A Child v Jabatan Pendaftaran Negara* [2017] 4 MLJ 440.

⁶⁶ *Births and Deaths Registration Act 1957* (Malaysia), Act 299.

⁶⁷ *Supra* n65, pp. 456.

⁶⁸ Ida Lim, 8 February 2018, “*In ‘Bin Abdullah’ Case, Lawyer Claims Appellate Court ‘Lost the Plot’, Swayed by Emotions*” Malay Mail, <<https://www.malaymail.com/news/malaysia/2018/02/08/in-bin-abdullah-case-lawyer-claims-appellate-court-lost-the-plot-swayed-by/1572383>>.

⁶⁹ *Supra* n65, para 65.

In the author's view, what can be gleaned from *Bin Abdullah* is that the encroachment of power by a Federal entity, i.e. the application of Islamic scholarly opinion (which belongs to the state jurisdiction if it is gazetted into law) occurred even when there are clear and unambiguous terms in the Constitution to state that registration of births and deaths fell within the purview of the Federal Parliament. The legislative competency for *Halal* matters is, in contrast, not explicitly defined in the Federal or State Lists; which would explain why the making of both Federal and State laws for *Halal* was possible in the first place.

Having several laws from different jurisdictions creating the same offence poses a problem to *Halal* governance because a federal statute for this purpose is already in existence. Moreover, although the 3-5-6 bar in the *Syariah* criminal jurisdiction accounts for the punishment disparity between Muslims and non-Muslims, this disparity is unfair to non-Muslims and goes against the spirit of equality enshrined in art 8 of the Constitution. This loophole may be abused as the concerned authorities have the liberty to prosecute Muslim offenders under the Selangor *Syariah* Criminal Enactment 1995 for the strikingly lesser punishment it offers in comparison to the TDA 2011.⁷⁰

Malaysia is unique in that it has a dual-legal system which allows civil laws and *Syariah* to operate in parallel. Ideally, this would mean that both types of laws can co-exist, subject to the supremacy of the Constitution, i.e. legal practices involving civil laws and *Syariah* must be in line with the principle of conflict of jurisdiction. As mentioned above, the enforcement of a Federal law would prevail over State law if such a law is related to a subject matter that is not within the purview of the State, *inter alia*, Islamic legal practices.⁷¹ It is this issue that the author argues to be the key concern in *Halal* legal governance—the absence of the assignment of legislative powers on *Halal* matters in the Constitution has allowed for the legislation and enforcement of *Halal* matters to fall under both Federal and State laws.

More importantly, in creating sanctions for *Halal* offences that overlaps with those already provided for under an act of Parliament that covers *Halal-Haram* matters, the State Legislatures have encroached upon Federal legislative powers, thereby contravening the doctrine of demarcation of powers in the Constitution. This begs the following questions: Does the *Halal* legal regime truly belong in the Federal List where the Parliament has the legislative power to enact *Halal*-related laws? Are *Halal-Haram* affairs not a matter of Islamic personal law given the doctrine's origin in Islam? The answers to both these questions are discussed below.

2 *Jurisdictional Placement of Halal Governance in the Constitution*

Halal matters are intertwined between the Federal and State jurisdictions in at least two instances; firstly, *Halal* involves food control, trademark, scientific research and

⁷⁰ See Ibtisam @ Ilyana Ilias, Norazlina Abdul Aziz, and Irini Ibrahim, "Establishing Halal Legal Framework: Learning from Islamic Banking Experiences", *International Conference on International Business & Entrepreneurship*, 2012, Vol. 1, pp. 6. The same issue has been raised in relation to the Sabah *Syariah* Criminal Offences Enactment 1995 and how it may lead to double-standard treatments to non-Muslim offenders.

⁷¹ Constance Chevallier-Govers, "The Rule of Law and Legal Pluralism in Malaysia", *Islam and Civilisational Renewal Journal*, 2010, Vol. 2(1), pp. 92.

medicine, (hence, the Federal purview); and secondly, *Halal* relates to Islamic offences and the economic development of the Muslim community as the State Islamic religious authorities commercially benefit from *Halal* certification processing fees (hence, the State purview).⁷² This entanglement is said to be due to the interpretation of the word ‘*Halal*’ in its original sense. *Halal* matters reflect “Islam” under art 3(1) of the Federal Constitution.⁷³ This, however, is not entirely accurate.

The essence of art 3 was drafted during British colonisation of Malaysia where the British chose to eschew any form of involvement in the powers of the Malay rulers and customs.⁷⁴ At a time where a substantial portion of the Malayan legal system was dominated by Britain’s secular agendas and institutions, the insertion of the word “Islam” into art 3 was done to allocate a channel (albeit a minute one) for the administration of personal Islamic affairs. This was affirmed in the Supreme Court case of *Che Omar Che Soh*⁷⁵ which held that, although Art 3 declares Islam as the official religion of the Federation, it is only restricted to Islamic rituals and ceremonies. It is therefore wrong to say that all laws must be passed in adherence to *Syariah*’s injunctions in order to be valid, otherwise, there would have been an additional proviso in the Constitution to state so.⁷⁶

This article does not intend to disparage the importance of instilling *Syariah* principles within the Malaysian legal system; it aims to inquire into the constitutional status of *Halal-Haram* matters. Although Islam is an all-encompassing religion, how it came to be incorporated into the Constitution does not point towards that objective, as reflected in *Che Omar*. Malaysia operates by way of constitutional supremacy, making the Constitution run supreme above the *Syariah*.

This does not mean that civil laws and *Syariah* cannot coexist in harmony, they certainly can and they presently, do.⁷⁷ However, when there appears to be a conflict of jurisdiction on a subject matter that the Constitution is silent on, the true status of the subject matter must be ascertained in order to avoid the encroachment of powers by the wrong governmental entity. The encroachment can come in the form of enacting

⁷² Supra n53.

⁷³ Che Rosmawati, Suhaimi Ab. Rahman, Zahira Mohd. Ishan, et al., “Jurisdiction and Prosecution of *Halal* Related Matters in Malaysia: Challenges and Prospects”, *Procedia - Social and Behavioral Sciences*, 2015, Vol. 172, pp. 294.

⁷⁴ Rosli Dahlan and Fawza Sabila Faudzi, 15 May 2015, “*The Position of the Shariah Court in the Malaysian Legal System*” Malay Mail, <<https://www.malaymail.com/s/897377/the-position-of-the-shariah-court-in-the-malaysian-legal-system-rosli-dahla>>.

⁷⁵ *Che Omar Bin Che Soh v Public Prosecutor* [1988] 2 MLJ 55.

⁷⁶ Ibid.

⁷⁷ See, for example, the laws on Islamic succession. Civil law and procedure on probate and letters of administration are placed under Item 4, Federal List (List I) of the Constitution, whereas Islamic personal law relating to succession, testate, and intestate is placed under Item 1, State List (List II). Although the jurisdiction on succession law for Muslims seem to overlap, the enforcement of laws is clear. For Muslims, the general Islamic rule for estate property distribution is known as *Faraid* (the *Quranic* fraction or division of estate property to the Deceased’s heirs). A Muslim beneficiary (‘applicant’) is required to apply for a *Faraid* certificate at the *Syariah* Court as this is stipulated under Islamic state enactments, such as s 65 of the Administration of Islamic Law (Federal Territories) Act 1993. However, the *Faraid* certificate alone does not empower applicants to administer the Deceased’s estate. The administrative power only vests upon the applicant once a Grant of Probate or Letters and Administration is made by the Civil High Court. This is because procedures relating to probate and letters of administration are governed by the Probate and Administration Act 1959, which applies to both Muslims and non-Muslims. This illustrates how civil law and *Syariah* can co-exist without violating the constitutional doctrine of separation of powers nor compromising on Islamic values.

legislation that is beyond an entity's legislative competency or enforcing legislation that is beyond its executive competency.

In order to examine the true status of *Halal-Haram* matters pursuant to the Constitution, what needs to be observed is not the Islamic *Halal* doctrine *per se* but the *de facto* practice of *Halal* governance in Malaysia and how it legally operates in the country. Based on its *de facto* practice, the legal purpose of *Halal* certification lies in its underlying 'pith and substance', a doctrine commonly used for constitutional interpretation. Where the purpose behind a law is tainted with ambiguity, the courts will examine under which head of power the legislation ought to fall under. If the law is in its pith and substance within its permitted purpose, the court will not strike it down.⁷⁸ What, then, is the pith and substance of *Halal* governance in Malaysia? Based on how the Malaysia economy capitalises on *Halal* certification services, the answer to this question is 'commerce'.

The *Halal* certification scheme is a business of branding, logos and trademarks. Before the 1970s, *Halal* logos were unheard of.⁷⁹ Malaysia only became part of the global *Halal* food market when it opened international restaurants during this time.⁸⁰ This prompted the promulgation of *Halal*-related laws, regulations and standards in Malaysia and the supply of *Halal* food at the national and international level.⁸¹ Noting Islam as the fastest growing religion in the world and Muslim consumers' increasing demand for greater diversity of cuisine, flavours, and product offerings,⁸² *Halal* logos became an opportunity for entrepreneurs to generate greater profits for their businesses.⁸³

The Global Islamic Economy Report 2018/2019 estimates that the *Halal* food and beverage and lifestyle sectors valued at USD 2.1 trillion in 2017, are projected to reach USD 3 trillion by 2023.⁸⁴ By category, the food and beverage sector holds the biggest share in the *Halal* industry at USD 1.3 trillion, *vis-à-vis* fashion, media, travel, pharmaceuticals, and cosmetics.⁸⁵ Similarly, Muslim consumers in Malaysia have been the core driver of the country's *Halal* F&B industry. Acknowledging the prospects of the industry's lucrative returns, participating in *Halal* endorsements is nearly inevitable for businesses where it is the consumers—the industry's 'Kings and Queens'—that demand and dictate the acceptance of food products sold.⁸⁶ Such a mission is similarly held by eatery businesses in Malaysia.⁸⁷

⁷⁸ Shad Saleem Faruqi, *The Document of Destiny*, Star Publications (Malaysia) Berhad, Selangor, 2008, pp. 71.

⁷⁹ *Supra* n44.

⁸⁰ Zannierah Syed Marzuki, Collin Hall, & P Ballantine, 'Restaurant Manager and Halal Certification in Malaysia,' *Journal of Foodservice Business Research*, 2012, Vol 15, pp. 195–214.

⁸¹ Rokshana Shirin Asa, "Malaysian Halal Certification: It's Religious Significance and Economic Value", *Shariah Journal*, 2017, Vol. 25, pp. 138.

⁸² *Supra* n44.

⁸³ Sharifah Zannierah Syed Marzuki, "Halal Certification: A Viewpoint from Malaysian Restaurant Managers", *Asia-Pacific Journal of Business Review*, 2016, Vol. 1, pp. 24.

⁸⁴ Global Islamic Economy Getaway, 28October 2018, "State of the Global Islamic Economy Report 2018/19: Islamic Economy Marks Steady Growth", <https://www.salaamgateway.com/en/story/state_of_the_global_islamic_economy_report_201819_islamic_economy_marks_steady_growth-SALAAM28102018080936/>.

⁸⁵ Global Islamic Economy Report, n84.

⁸⁶ Mohd. Roslan, n44.

⁸⁷ Rahimah Mohamed Yunos, Che Faridah Che Mahmood, and Nor Hafizah Abd Mansor, "Understanding Mechanisms to Promote Halal Industry the Stakeholders' Views", *Procedia - Social and Behavioral Sciences*, 2014, Vol. 130, pp. 162.

According to Muhammad Bakhtiar bin Wan Chik, the Deputy Minister of Tourism, Arts, and Culture of Malaysia, Malaysia is currently the world's top-ranked Islamic destination among Muslim travellers around the world.⁸⁸ The country managed to attract 5.3 million Muslim tourists out of 26 million tourist arrivals in 2017.⁸⁹ It was revealed that the increasing number of *Halal*-certified restaurants and services as well as easy access to Muslim-friendly prayer facilities across Malaysia are the primary reasons attracting Muslim tourists.⁹⁰

In addition, based on the said number of Muslim tourist arrivals in Malaysia in 2017, Salam Standard's Global Economic Impact of Muslim Tourism and Future Growth Projection (2017 - 2020) forecasts Malaysia's *Halal* travel market to be worth USD 3.6 billion by the year 2020.⁹¹ It is apparent from these figures that Malaysia's *Halal* certification services in the food services industry is a highly desirable market need in *Halal* tourism. This places Malaysia as a front runner in this industry⁹² and strengthens the country's position as an international *Halal* hub.

Having looked at the *de facto* practice of *Halal* governance in Malaysia, i.e. how *Halal* certification services are greatly valued in the food and beverage, and tourism industries for commercial gains, it is submitted that *Halal-Haram* matters are in its pith and substance, more of a commercial pursuit rather than a religious one. This forms the premise as to why *Halal* governance, including the entire certification scheme, is most-suited to be placed under "trade, commerce, and industry" in Item 8 of the 9th Schedule of the Constitution, which is within the sole and exclusive jurisdiction of Federal Parliament and out of the hands of the State Legislatures.

B *Legal Repercussions Arising from the Constitutional Dilemma*

1 *Legion of Halal Laws and No Sole Competent Halal Authority*

Apart from the jurisdictional uncertainty issue, the need to make cross-referrals to many piecemeal *Halal*-related laws and agencies involved in *Halal* certification procedures attribute to the inefficiency of *Halal* governance. JAKIM's stand is subject to that of the Ministry of Health, Department of Veterinary Services, Customs, and other agencies authorised by the abovementioned *Halal* laws. Furthermore, although the two *Halal* by-laws under the TDA 2011 declare JAKIM as the competent authority to certify a food item or premise as *Halal*, the power of enforcement truly lies in the Ministry of Domestic Trade, Cooperatives, and Consumerism ('MDTCC'). With the lack of legal authority to

⁸⁸ Nation, 6 September 2018, "*Ministry to Push for Multi-Billion Dollar Halal Tourism*" The Star Online, <<https://www.thestar.com.my/news/nation/2018/09/06/ministry-to-push-for-multibillion-dollar-halal-tourism#qOOsIEgq5SIJRrxZ.99>>.

⁸⁹ Ibid.

⁹⁰ Crescent Rating, 2018, "*Malaysia's Prominent Role in Halal Tourism*", <<https://www.crescentrating.com/magazine/opinion/3659/malysias-prominent-role-in-halal-tourism.html>>.

⁹¹ Malaysia Healthcare Travel Council, 2019, "*ASEAN Scores Strongly on Muslim Travel Index*", <<https://www.mhtc.org.my/asean-scores-strongly-on-muslim-travel-index/>>.

⁹² Supra n90.

arrest and prosecute those who abuse *Halal*-certified assurances, JAKIM's role as the governor of *Halal-Haram* affairs is challenged.⁹³

2 *No Proper Avenue for Halal Adjudication*

Before 1988, there were instances where the civil courts had encroached upon the *Syariah* domain and *vice versa*. To rectify this, Article 121 of the Constitution was amended to include cl 1A to prohibit the civil and *Syariah* courts from assuming the jurisdiction that are not their own.⁹⁴ Unfortunately, the amendment appears to have caused more confusion than before;⁹⁵ the legal issues in *Halal* governance being discussed now illustrate this confusion. The TDA 2011 (applicable to both Muslims or non-Muslims) and the *Syariah* criminal enactments (applicable to Muslims only) show that the main *Halal* laws we have today permit either the civil or *Syariah* courts to adjudicate *Halal* offences. As the *Halal* industry knows no religion, there may be complications when legal disputes brought before judges involve Muslim and non-Muslim parties.

C *Other Issues Pertaining to Halal Certification*

1 *Non-Independence between Audit Review Committee and Approval Panel*

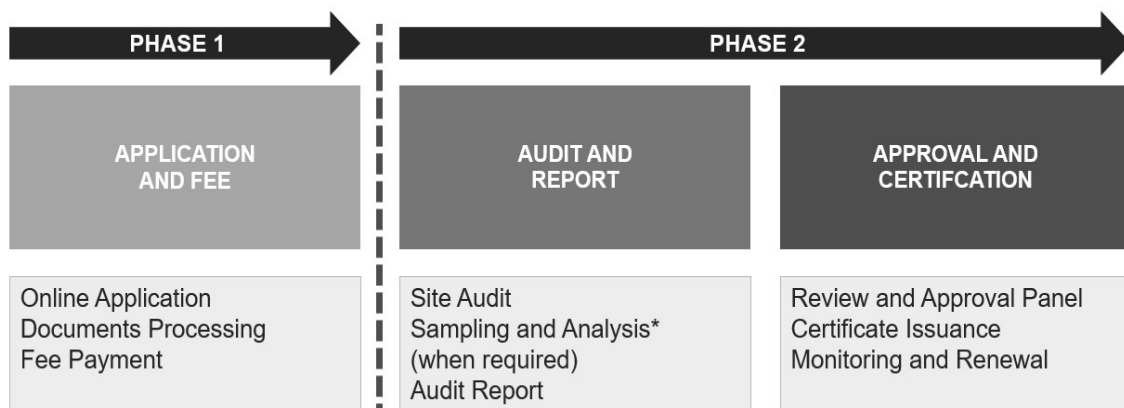


Figure 3.0: *Halal* Certification Process and Requirements

(Source: Dagang Asia)⁹⁶

⁹³ Norazlina Abdul Aziz, Noriah Ramli, and Nurazlina Abdul Raof, "JAKIM: Governors of Halal Affairs", *Contemporary Issues and Development in the Global Halal Industry*, edited by Siti Khadijah Ab. Manan, Fadilah Abd. Rahman, and Mardhiyyah Sahri, Springer, Singapore, 2016, pp. 136.

⁹⁴ *Mohamed Habibullah Bin Mahmood v Faridah Bte Dato Talib* [1992] 2 MLJ 793.

⁹⁵ A. L. R. Joseph, 6 August 2007, "Jurisdictional Conflict between Islamic law and Civil laws in Malaysia: A Review of the Judgment of the Federal Court in *Latifah Bte Mat Zin v Rosmawati Binti Sharibun*" Malaysian Bar, <http://www.malaysianbar.org.my/constitutional_law/jurisdictional_conflict_between_islamic_law_and_civil_laws_in_malaysia.html#f14>.

⁹⁶ *Halal* Development Corporation, n43.

Another important issue that has surfaced is the lack of independence between JAKIM's auditing and accreditation body. Figure 3.0 outlines the flowchart for JAKIM's *Halal* certificate application process. At Phase 1, applicants must go through the registration process where relevant documents sent to JAKIM are evaluated.⁹⁷ At Phase 2, an audit team consisting of two auditors well-versed in *Syariah* and technicalities will verify the *Halal* status of ingredients, processing and storage, *Halal* internal management, labelling and the quality assurance. The later stage of Phase 2 is Approval and Certification. The JAKIM Internal Committee reviews the audit report before it can recommend it to the JAKIM *Halal* Certification Approval Panel. Finally, the Approval Panel either rejects or approves the application. Emphasis is placed on this Approval Panel; following the audit review by JAKIM Internal Committee, it is also JAKIM that approves or rejects the certificate application. With no independent non-JAKIM party reviewing JAKIM's audit reviews, the integrity of the *Halal* certification system may be compromised.⁹⁸

2 *Stringent Criteria*

The JAKIM *Halal* logo is the most sought-after hallmark.⁹⁹ However, complaints about JAKIM *Halal* certification applications raise questions about this praise. According to several eatery applicants, applications take a long time to get through or fail despite their compliance.¹⁰⁰ For example, a Muslim proprietor of six *Mamak* chain restaurants lamented that despite preparing well for *Halal* logo procedures, their applications were still riddled with issues.¹⁰¹ The application criteria imposed are also said to be complex and difficult to adhere to. In one study, restaurants which had their applications rejected by JAKIM expressed that one of these criteria is employing Malaysian-Muslim staff to handle and prepare food, which was difficult for them to comply as they hired mostly non-local Muslims.¹⁰²

3 *Costly Procedure*

While many eatery businesses struggle to be granted with the *Halal* certificate due to the stringent criteria, circumstances are even tougher for small food traders ('SFT') such as mobile restaurateurs, food vendors, food trucks, hawkers, and those who run food businesses from home. This is particularly in relation to the *Halal* certification applications' high costs.¹⁰³ According to Datuk Nadzim Johan, a Malaysian Muslim Consumers Association of Malaysia (PPIM) chief activist, small traders could hardly

⁹⁷ Dagang Asia, 2018, "*JAKIM Halal Certificate Checklist*", <http://www.dagangasia.com/download/Checklist%20of%20JAKIM%20Halal%20Certificate_AGENT.pdf>.

⁹⁸ Supra n31.

⁹⁹ Islamic Tourism Centre, n12.

¹⁰⁰ Supra n7.

¹⁰¹ Ibid.

¹⁰² Herwina Rosnan, Ismah Osman, Norzannah Mat Nor, et. al., "Halal Certification: An Exploratory Study on Non-certified Restaurants", *Advanced Science Letters*, 2015, Vol. 21, pp. 1857.

¹⁰³ Supra n7.

cope with investments in *Halal* criteria which ranges from RM50,000 to RM200,000.¹⁰⁴ The same issue has been raised by Dato' Sri Ismail Sabri Yaakob, the former Rural and Regional Development Minister, who pointed out that JAKIM's stringent requirements for *Halal* certification burden Bumiputera business owners.¹⁰⁵ For instance, SFT cannot afford machines nor produce food in proper kitchens as requested by JAKIM; they can only do so in home kitchens or backyards.¹⁰⁶ Some SFT applicants also fail to fulfil the requirements although they already employ 100% Muslim staff and practice *Halal* methods.¹⁰⁷ The high costs coupled with the stringent criteria in satisfying the *Halal* certificate applications make it nearly impossible for SFT to benefit from JAKIM *Halal* logos, which has financial implications on their business.

4 *Non-Exemption of Alcohol-serving Eateries*

Another common problem among some eateries are those which sell alcoholic beverages on their premises. Those that serve alcohol—but are otherwise strictly compliant with JAKIM's *Halal* food requirements—cannot obtain the *Halal* certificate. It must be stressed that 'otherwise strictly compliant' refers to strictly observing the *Halal* food chain integrity as per JAKIM's requirements; sourcing, processing, transporting meat and poultry from *Halal* suppliers, using *Halal* cooking ingredients, maintaining a high degree of cleanliness, and nothing short of these precautions.¹⁰⁸ The only disqualifying factor that bars these eateries from obtaining the *Halal* status is the fact that they serve alcoholic beverages.

D *The Impact of the Halal Certification Bureaucracy on Eatery Businesses*

As a result of issues two to four above, eateries either forgo their applications, use 'pork-free' signs, utilise self-regulated *Halal* logos, or operate without the *Halal* certification altogether.¹⁰⁹ Some eatery operators admit that Muslim customers continue to visit their eateries based on trust, despite having no *Halal* logo.¹¹⁰ These recourses engender a few problems. For Muslim consumers who choose to dine at eateries without *Halal* logos or rely on "pork-free" signs, the consumers cannot report against the eatery if it is later discovered to be non-*Halal*. It is not mandatory to have *Halal* logos and using 'no pork' signs do not constitute an offence of "creating fraudulent JAKIM *Halal* logos" under

¹⁰⁴ Kow Gah Chie, 9th September 2016, "Consumer Group Urges Provisional Halal Cert for Small Traders" Malaysia Kini, <<https://www.malaysiakini.com/news/355172>>.

¹⁰⁵ Shakira Buang, 1st September 2016, "Minister Moots Less Stringent Halal Cert Requirements for Malay firms" Berita Daily, <<https://www.malaysiakini.com/news/354321>>.

¹⁰⁶ Supra n104.

¹⁰⁷ Supra n105.

¹⁰⁸ The kitchens of restaurants that serve liquor may be awarded the *Halal* status, if they do not use alcohol, pork, and cattle or poultry which were not slaughtered according to Islamic principles. This is common for hotel kitchens, but not restaurants in general. See Fauziah Ismail, 25 February 2016, "Halal, Pork-free and We, the Consumers" News Straits Times, <<https://www.nst.com.my/news/2016/02/129457/halal-pork-free-and-we-consumers>>.

¹⁰⁹ Supra n6; Supra n7.

¹¹⁰ Supra n102.

the TDA 2011. It is only when eateries apply for JAKIM *Halal* certification that they are bound by its criteria and must display the logo.¹¹¹ If *Halal* logos are fraudulently displayed, a three-year jail term or a RM1,000,000 compound awaits the offender.¹¹²

During a talk at the 19th Malaysian International Food & Beverage Trade Fair 2018, the issue as to the Malaysian *Halal* certification system being too JAKIM-centric was raised by an audience member. The response was similar; applying for the *Halal* certificate is not mandatory but once they do so, it is JAKIM's terms that they should abide by, just like one would with other countries' *Halal* standards.¹¹³ With regards to eateries' plight in getting their *Halal* certification applications approved, Mr. Mohd. Safzan the Assistant Director of the Industrial Relations Unit, Corporate Communications Division of JAKIM's Halal Hub stated that some applications take time to process because applicants do not adhere to the terms from the start.¹¹⁴ One of the terms, for example, is the appointment of a *Halal* executive or a supervisor well-trained by JAKIM's strategic partners.¹¹⁵ By having the *Halal* executive, the internal affairs of the company could be thoroughly studied beforehand; making it easier and faster for JAKIM to give their approval or rejection later. This was JAKIM's intention, but some applicants do not comply with this; hence, the long wait or rejection.¹¹⁶

With respect, although the responses given by JAKIM show the importance of obtaining the *Halal* logo and complying with the application terms, this does not explain the reason for JAKIM's *Halal* application criteria being too stringent to begin with, in that they demand technical requirements which are beyond the requirements of *sunnah*. It is unfortunate that the bureaucratisation has caused JAKIM's *Halal* certification scheme to be perceived as "a source of government income".¹¹⁷

IV PROPOSED SOLUTIONS

The issues discussed in III above outlined the pitfalls of *Halal* certification application procedures which are a burden to eatery businesses in Malaysia. In this section, the author sheds some light on what can be done to fill in the legal uncertainty of *Halal* governance.

A *Enacting a Principal, Federal, Halal Statute*

With regards to the jurisdictional uncertainty issue, it is stressed again that Parliament is the rightful entity to have sole and exclusive jurisdiction over *Halal* governance. As for

¹¹¹ Manjit Kaur, 18 February 2016, "JAKIM Has No Power to Take Action over 'Pork Free', 'No Pork' Signs" The Star, <<https://www.thestar.com.my/news/nation/2016/02/18/jakim-no-action-pork-free-free-pork/#RDzEfgKlhBRxBH0y.99>>.

¹¹² Section 28(3)(b), *Trade Descriptions Act 2011* (Malaysia) Act 730.

¹¹³ Amnah Shaari, n10.

¹¹⁴ Personal interview with Mohd. Safzan Muhd Mukhtar, 28 June 2018. He is the Assistant Director of Industrial Relations Unit Corporate Communications Division of JAKIM's *Halal* Hub.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ S. Neesha, 4 October 2016, "*Halal Status: Self-regulation Better than Certification*" Berita Daily, <<https://www.beritadaily.com/Halal-status-self-regulation-better-than-certification/>>.

the piecemeal *Halal* laws governing *Halal* certification procedures, this paper proposes for a principal Federal *Halal* statute ('the *Halal* Act 201X'). The *Halal* Act 201X will be instrumental in coordinating all *Halal*-related laws and agencies under one umbrella. It is worth noting that the proposal for a single *Halal* statute is not foreign in legal research for the last one decade. Time and again studies have either mentioned about its absence or proposed its enactment.¹¹⁸ This paper, however, attempts to discuss the need for a *Halal* statute in light of the legislative history of Tabung Haji Act 1955.

In the past, Muslims who intended to perform the *Hajj* (Islamic pilgrimage) saved up money and kept savings under their pillows, mattresses, or in earthen jars.¹¹⁹ Some resold land or livestock to cover their expenses to Makkah. Muslims carried out these saving methods because conventional banks that were around then engaged in *riba* (usury) which is not permitted in Islam.

Prior to 1963, Malaya was not equipped with institutions for Muslims' financial requirements for the *Hajj*, but in December 1959, Malaya's leading economist Royal Professor Ungku Abdul Aziz proposed the establishment of a *Hajj* savings corporation to the Federal government to provide an avenue for *Hajj* savings management.¹²⁰ In 1963, the Prospective *Hajj* Pilgrims Savings Corporation ('PHPSC') was established. The *Hajj* savings regime expanded with PHPSC merging with the *Hajj* Affairs Management Office which subsequently caused the formation of Lembaga Tabung Haji institution in 1995 and the enactment of Tabung Haji Act 1995 by Parliament. Today, the Tabung Haji financial institution manages more than RM73 billion worth of deposits for *Hajj* operations and Islamic investments.¹²¹

Accordingly, as the Tabung Haji Act 1995 manifested based on the acceptance of its pith and substance (a multi-billion-ringgit enterprise) despite being enacted for the purposes of the *Hajj* (the fifth pillar in Islam; an undeniably religious pursuit), the contention that the Malaysian *Halal* legal regime is primarily an Islamic personal law matter and thus should be governed by the states is untenable. For the foregoing reasons, the *Halal* statute ought to be enacted by Parliament. To date, no principal *Halal* statute has been enacted. There have only been whisperings of the tabling of the *Halal* Bill in 2016 by Datuk Seri Dr. Ahmad Zahid Hamidi, the Deputy Prime Minister, as he then was.¹²²

¹¹⁸ See Azis Jakfar Soraji, Mohd Daud Awang, and Ahmad Nasir Mohd Yusoff, "Gaps in the Legislation Halal in Malaysia: A Study of Literature", *International E-Journal of Advances in Social Sciences*, 2017, Vol. 3, pp. 181; Apnizan Abdullah, supra n52; Ibtisam @ Ilyana Ilias, Norazlina Abdul Aziz and Irini Ibrahim, supra n70, pp. 6.

¹¹⁹ Islamic Research and Training Institute, 1995, "*Tabung Haji as an Islamic Financial Institution*", <http://ieaoi.ir/files/site1/pages/ketab/english_book/63.pdf>.

¹²⁰ Tabung Haji, 2018, "*The Incorporation of Lembaga Tabung Haji*", <<https://www.tabunghaji.gov.my/en/corporate/corporate-information/about-us>>.

¹²¹ Tabung Haji, 2018, "*Corporate Profile*", <<https://www.tabunghaji.gov.my/en/corporate/corporate-information/about-us>>.

¹²² Hashini Kavishtri Kannan and Fairuz Mohd Shahar, 11 February 2016, "*Malaysia Halal Council Set Up to Address National Halal Industry Issues*" News Straits Times, <<https://www.nst.com.my/news/2016/02/127000/malaysia-Halal-council-set-address-national-Halal-industry-issues>>.

B *Incorporating Halal Adjudication under the Muamalah Division at the Civil High Court*

Enacting the *Halal* Act 201X is insufficient without a solid judicial device. As stated above, the present *Halal* legal regime permits either the Civil or *Syariah* courts to prosecute people for *Halal* offences; it is only a matter of time that jurisdictional conflicts crop up due to this. This paper has argued that *Halal* governance ought to be placed within the Federal List and thus within the jurisdiction of the civil court. On this note, it is further argued that the adjudication of *Halal* disputes must be accorded its own avenue under a specific division at the civil High Courts.

A specialised ‘*Halal* Court’, however, is not necessary. Given the fused dual nature of *Halal* governance like that of Islamic banking law, *Halal* adjudication can be put under the *Muamalah* Division at the Kuala Lumpur High Court. This division was set up to hear disputes relating to Islamic banking law which coincides with civil commercial transactions.¹²³ This has led to tremendous improvements in solving Islamic banking disputes.¹²⁴ To do the same with *Halal* adjudication, provisions on referring *Halal* disputes to the civil High Court must be incorporated into the *Halal* Act 201X.

A careful distinction must be made between regular civil cases and harmonised civil law-*Syariah* cases like Islamic finance. In Islamic finance proceedings, should judges require guidance on *Syariah* rulings on Islamic finance, s 56 of the Central Bank Malaysia Act 2009 compels them to refer the dispute to the Shariah Advisory Council (‘SAC’) where the council’s rulings shall be binding upon the courts.¹²⁵ Following the Federal Court decision in *JRI Resources v Kuwait Finance House*,¹²⁶ the SAC’s role is to ascertain Islamic law in respect of Islamic banking. This ascertainment, however, is only confined to the Islamic jurisprudence portion of the Islamic banking dispute, and not determination as to the liability of the litigants, which should be left to the presiding judge. The Federal Court went on to state that the courts are to apply the ascertained Islamic law to the facts of the case and based on the evidence presented before them.¹²⁷

Similarly, in view of *Halal*-related legal disputes brought before judges at the *Muamalah* Court, it is argued that, if judges require guidance on the *fiqh* aspect of *Halal*, *Syariah* experts from the SAC are to lend their support on the matter through their rulings. Although such rulings are binding upon the courts, it is ultimately the presiding judge who will determine the liability of the *Halal* offender. It must be borne in mind that the *Halal* offence would in prospect fall under the *Halal* Act 201X, pursuant to Parliament’s power to legislate *Halal* matters, as submitted in IV(A) above.

¹²³ Practice Direction No. 1 of 2003.

¹²⁴ Zulkifli Hassan, 2008, “*The Effectiveness of the Legal Framework of the Islamic Banking System in Malaysia*”, <<https://zulkiflihasan.files.wordpress.com/2008/07/the-effectiveness-of-legal-framework.pdf>>.

¹²⁵ Sections 56 and 57, *Central Bank Malaysia Act 2009* (Malaysia), Act 701.

¹²⁶ *JRI Resources v Kuwait Finance House* [2019] 3 MLJ 561.

¹²⁷ *Ibid* 654, 661.

C *Adjustments within the Institution*

1 *Appointing an Independent Body to Review JAKIM's Audit*

For the purposes of advancing transparency features of JAKIM's work, an independent non-JAKIM body must be appointed to review JAKIM's audit processes after it audits *Halal* food chain integrity within the ambit of its own regulations and standards. Only upon the satisfaction of this independent body's review would an applicant be granted the *Halal* certificate. The appointment can also prevent conflict of interests within the institution and increase career opportunities as competent personnel and experts are required to complete *Halal* audit tasks. Nevertheless, given that this suggestion would mean adding another tier to the *Halal* certification decision-making process, it is advisable that reasonable time-limits be imposed on the final audit so as to not impede the process further.

2 *Omitting Non-obligatory Criteria*

As for the problem with stringent criteria and high costs, it is in the author's view that since JAKIM is established for the development of Islam in Malaysia, the criteria imposed in *Halal* certification applications must therefore reflect the essence of the Islamic *Halal* doctrine. Muslims have a duty to uphold fundamental Islamic principles and propagate the same; but such rules should not be imposed in a burdensome manner, let alone in ways that discourage people from following the fundamentals. On the contrary, Islam is meant to accommodate and ease.¹²⁸

Halal logos aim to facilitate Muslim consumers when making purchasing and consumption decisions. Nevertheless, some of the criteria mentioned above, *inter alia*, hiring Malaysian staff, installing proper machines, kitchens, and flooring, or appointing a *Halal* committee, are not requirements imposed in Islam to constitute food as *Halal*. *Halal* demands consumables to be permissible to eat, clean, and healthy; any requirements beyond the bare minimum restrictions can thus be re-evaluated.

By maintaining only the requirements obligatory in Islam and prescribed under global standards for food quality, hygiene and safety (which should not be seen in isolation), the costs and time incurred by applicants to prepare for *Halal* certification applications may be lessened. When the application terms are much more compliant from the start, the likelihood of applicants making mistakes in their applications is lesser as their tasks are now eased. With higher compliance on their part, *Halal* audits by JAKIM and other bodies can take shorter time to complete and simultaneously the time taken to give approval. As can be seen here, the issues move in a cycle, all of which may be resolved by first lessening the overly strict application criteria.

¹²⁸ See the view of Dr. Mohd. Asri Zainul Abidin in his book, *Islam in Malaysia: Perceptions & Facts* (translated by U-En Ng), Matahari Books, 2010, pp. 27.

3 Creating JAKIM Halal Sub-logos

With regards to the challenges faced by SFT and alcohol-serving eateries, the author proposes the implementation of *Halal* sub-logos as per Figure 4.1.



Figure 4.0: The Primary JAKIM *Halal* Logo¹²⁹



Figure 4.1: The Proposed Additional Sub-Logos

(a) SFT Sub-logo

In order to implement the SFT sub-logo, it is suggested that a low “initial capital threshold” be fixed as one of the application terms. Small food truck businesses require RM15,000 to 20,000 to start up.¹³⁰ Presuming that small home-based food businesses require less than RM20,000 (and even lesser for hawker stalls), it is suggested that RM20,000, for instance, be set as the “initial capital threshold” criterion when SFT apply for this sub-logo, whereby in order to be eligible to apply, SFT applicants must furnish supporting

¹²⁹ Halal Development Corporation, 2018, “*Malaysia Halal Logo*”, <http://www.hdcglobal.com/publisher/bdh_malaysia_halal_logo>.

¹³⁰ SME Info, 2018, “*Food Truck Business*”, <<https://staging.smeinfo.com.my/starting-your-business/going-into-food-truck-business>>.

documents and business plans to show that their initial capital does not exceed the fixed threshold.

(b) Exceptional Sub-logo

While the small-scale food business sub-logo ('SFB sub-logo') is straightforward, the exceptional sub-logo for alcohol-serving eateries ('the exceptional sub-log') merits elaboration. The exceptional sub-logo does not and cannot bear complete resemblance with the primary JAKIM *Halal* logo as alcohol is clearly non-*Halal* and suggesting otherwise would, on the surface, seem reprehensibly un-Islamic. Thus, the words "All Food is Halal" and a highlighted disclaimer positioned below it, stating "Alcoholic Drinks Present" in Malay and English are good indicators.

4 Food for Thought: Potential Criticisms against Exceptional Sub-logo

One of the concerns among some discerning Muslims would be the potential use of alcohol present in the premises to 'contaminate' *Halal* food. For reasons which have been stressed above, the exceptional sub-logo shall apply only to eateries which already comply with the *Halal* food chain integrity; all other aspects of the *Halal* food integrity at this point must be 'cleared'. It is only the presence of alcoholic beverages aspect that should warrant them the exceptional sub-logo. Eateries using the exceptional logo can establish separate refrigerated storages for alcoholic beverages in the premises or store them on a different floor. This arrangement can be monitored and adjusted to the existing rules of storage and separation of liquor under the *Halal* Manual 2014.¹³¹

If some argue that the presence of the alcohol in the premise might induce such eateries to use alcohol in their cooking, then the short answer is that one can never really tell; this is beyond anyone's knowledge. It is readily admitted that it is better to consume what one is certain to be free from non-*Halal* elements (and that the presence of alcoholic drinks clouds certainty as to the *Halal*ness of an eatery). While avoiding *Syubhah* is a must for Muslims,¹³² the attitude of dismissing food as *Haram* without clear first-hand sight as to what makes it *Haram* is incorrect. In Islam, there are only a few sound and explicit religious texts on prohibitions.¹³³ If the prohibition is not explicit, the original principle of permissibility applies.¹³⁴ Hence, what is explicitly prohibited and clearly seen as *Haram* must be avoided at all costs. If the *Haram* status is not verified, it is improper to declare it as such as this can result in mistruth.

¹³¹ See Item 5.5 (viii), *Manual Procedure for Malaysia Halal Certification* (3rd Revision) 2014, Malaysia.

¹³² Sahih Al-Bukhari 52, English reference: Vol. 1, Book 2, Hadith 50, <<https://sunnah.com/bukhari/2/45>>. Site accessed on 01.08.2019. It was reported that Al-Nu'man Ibn Bashir heard the Prophet SAW said, "The *Halal* is clear, and the *Haram* is clear, and in between them there are some things that are doubtful, which most people do not know. Thus, whoever avoids the doubtful, safeguards his religion and honor, but one who engages in the doubtful, falls in the *Haram*."

¹³³ Syekh Yusuf Qardhawi, *The Lawful and Prohibited*, Muslim Youth Assembly, Singapore, 1980, pp. 15–16. In this regard, the Prophet SAW said, "What Allâh has made lawful in His Book is *Halal* and what He has forbidden is *Haram*, and that concerning which He is silent is allowed as His favour..", compiled by Al-Hakim (classified as Sahih) and quoted by Al-Bazzar.

¹³⁴ Ibid.

Another concern is the use of utensils that have been used for non-*Halal* consumables. As outlined in II above, what is prohibited is the consumption of alcohol. If Muslims fear that bits of alcohol cling onto their utensils that was similarly used in serving alcohol, then the Prophet SAW's approach on this issue must be observed. When asked on the permissibility of using vessels that were used to prepare pork dishes or drink alcohol from, the answer was, if such utensils are thoroughly washed, then one can use them.¹³⁵ This ruling is supported by a *Hadith* narrated by Abu Tha'laba Al-Khushni RA who reported: The Prophet SAW said: "As for what you have mentioned about the people of the Scripture, if you can get utensils other than theirs, do not eat out of theirs, but if you cannot get other than theirs, wash their utensils and eat out of it."¹³⁶

The concept of explicit permissibility discussed earlier is similarly applied to the case of using such utensils. As long as they have been thoroughly cleaned until all impurities—in this context, alcohol—are removed, the same utensils can be used.¹³⁷ These rulings are relevant to multi-religious Malaysia. If such a stance is absent, Muslims residing in hotels, student dorms, and other public lodging areas would face difficulties in cooking or eating as the same accommodations have been used by non-Muslim guests who cook and consume non-*Halal* food.

In this regard, it is wise to mull over the fact that it is perfectly commonplace for aircrafts to provide the 'Halal option' or 'Muslim menu' for Muslim passengers while making alcoholic beverages available for non-Muslims. Most hypermarkets in Malaysia sell liquor, and although located in separate aisles, they are still in proximity of *Halal*-certified beverages. In the context of a meal, if a glass of juice is put beside a plate of roasted chicken which is not slaughtered according to *Dhabihah*, is the juice (a *Halal* consumable) rendered non-*Halal* because of the chicken (a non-*Halal* consumable) beside it? Certainly not. In fact, the juice remains *Halal* unless it comes in contact with the chicken. Until that happens, the juice can be consumed. The same concept applies here.

The final issue is with regards to the income from alcohol sale. This requires consideration by the Muslim partner who intends to share an eatery business partnership with a non-Muslim who wants to sell alcohol in the eatery. *Syariah* is clear in this aspect in that it says obtaining revenue from alcohol sale is adverse to *Syariah*, and so is any other form of involvement by a Muslim with alcohol.¹³⁸ For this reason, the application for the proposed exceptional sub-logo should be restricted to non-Muslim eatery operators only.

¹³⁵ Sunan Abi Dawud 3839, Sahih Al-Albani, English reference: Book 27, Hadith 3830, <<http://sunnah.com/abudawud/28/104>>.

¹³⁶ Ibid.

¹³⁷ This author has consulted with Shaykh Hussain Yee on this issue, in a personal interview with him on 3 August 2019. Shaykh Hussain Yee is an International *Daee* who is also the President of Pertubuhan Al-Khaadem, a Malaysian humanitarian charitable organisation committed to *Da'wa* and social work. It is pertinent to note that the issue of explicit permissibility that is highlighted by this author in this paragraph only refers to use of the abovementioned utensils, *not* the consumption of alcoholic beverages of any kind.

¹³⁸ According to Ibn 'Umar RA, wine is cursed from ten angles, *inter alia*, the wine itself, the one who sells it, buys it, carries it, consumes its price, pours it, etc. See Sunan Ibn Majah, Hasan Darussalam, English Reference: Vol. 4, Book 30, Hadith 3380, <<https://sunnah.com/urn/1277410>>.

D *Closing the Floodgates*

When the suggestion of the exceptional sub-logo was raised in an interview with Ustaz Adli Mohd. Saad, a *Da'wa* and Curriculum Executive at Yayasan Ta'lim, the author was reminded to be cautious in this matter. Such a proposal, he says, may open floodgates for unscrupulous eateries to abuse the *Halal* doctrine under the pretext of necessity and use it as a leeway to first open doors to alcohol and later extend this to other non-*Halal* consumables.¹³⁹ Fakhah Azahari similarly gave a word of caution in respect of this unorthodox suggestion. If it is improperly implemented that it transgresses the parameters of the *Maqasid* (objectives of *Syariah*) and *Maslahah* (public interest), one may be held accountable in the Hereafter.¹⁴⁰

The author notes this and understands that the concept of necessity is inapplicable in this situation as neither death nor danger is imminent. Muslims in Malaysia also have far too many eatery options to choose from. However, considering that eatery businesses involve Muslims and non-Muslims where both are affected by the bureaucratic *Halal* certification system, this scenario is a communal concern, making the exceptional sub-logo relevant for non-Muslim eatery operators.

If the exceptional sub-logo stirs doubt, eateries intending to serve non-*Halal* beverages can establish separate franchises that offer only *Halal* options. Some eateries already do, and they are called 'sister chains'.¹⁴¹ It is also common to have non-*Halal* sections of restaurants on separate floors to avoid *Halal* contamination.¹⁴² These are good alternatives, but only to eateries with multiple franchises or floors. Those which do not can utilise the proposed exceptional sub-logo and strictly monitor the separation of the alcoholic beverages on the premises.

The upside of having the exceptional sub-logo is that eateries which have it are spared from having to explain the *Halal* veracity of their food products to Muslim customers. This author believes that the exceptional sub-logo indicates "the food offered in the premises is *Halal*, save for the availability of alcoholic beverages" much clearer than 'No Pork' or 'No Lard' signages, which can be quite misleading. The exceptional sub-logo would enable Muslim customers to make a quick informed choice about dining there; reducing the *Syubhah* they once had. If doubts remain, they are welcome to dine at other eateries. In any event, the implementation of the exceptional sub-logo would not serve its purpose if it is unaccompanied by Muslim customers' own initiatives to educate themselves about it and its underlying caveat.

Considering the two proposed sub-logos' departure from the primary JAKIM *Halal* logo, it is vital to have JAKIM implementing them so as to preserve Muslim consumer confidence which it has managed to vastly conquer. This paper does not intend to diminish

¹³⁹ Personal interview with Uztaz Adli Mohd. Saad on 10 July 2018. Uztaz Adli specialises in various disciplines, namely; Kitab Sahih Musim, Kitab Al-Mughni, Tafseer Faidul Qadir Syaokani, Ikhtisar Ulum al-Hadith, Bidayat Al-Mujtahid. He is inclined to *I'jaz al-Quran* and *Sunnah* (the study of Quran and Modern Science).

¹⁴⁰ Supra n31.

¹⁴¹ Nur Diyanah Anwar, 27th April 2018, "Halal is the Way to Go" New Straits Times, <<https://www.pressreader.com/malaysia/new-straits-times/20180427/281788514670968>>.

¹⁴² Siew Fun Vivienne Soong, "Managing Halal Quality in Food Service Industry", *UNLV Theses, Dissertations, Professional Papers, and Capstones*, 2007, pp. 701.

JAKIM's mission in using the *Halal* expression purely; it only aims to aid *bona fide* SFTs and eateries that truly wish to join the *Halal* logo bandwagon, by way of the proposed visuals in Figure 4.1. If they are implemented, greater consuming confidence among Muslims can be attracted, as opposed to before when either sub-logos were absent. This could widen SFTs and eateries' Muslim clientele and business incentives, while promoting an atmosphere of inclusivity and respect to adherents of Islam; a win-win situation for all.

V CONCLUSION

This paper has attempted to highlight the challenges faced by eateries, small-scale or otherwise, as a result of the bureaucratic *Halal* certification system. The discourse is done through the lens of constitutional law, highlighting issues like the jurisdictional uncertainty of *Halal* matters and the ideal jurisdictional placement of *Halal* matters in the Constitution, both of which arise because law-making powers on *Halal* are not entrenched in the legislative lists in the Constitution. This very problem entails a number of other legal issues, such as the improper application of Federal and State *Halal* laws, the confusion as to the sole competent authority for *Halal* monitoring, and the absence of a proper avenue for adjudication of *Halal* offences. Apart from the legal issues, institutional issues pertaining to JAKIM's *Halal* certification procedures were also addressed, such as the non-independence between *Halal* audit and accreditation teams, the imposition of overly stringent *Halal* criteria, the costly application procedures, and the non-exemption of alcohol-serving eateries in being awarded the *Halal* status.

In order to sprout changes in *Halal* legal governance, this author has outlined several solutions to the abovementioned issues. In brevity, this author has proposed the enactment of a principal, Federal statute, *Halal Act 201X*. The *Halal Act 201X* would be instrumental in incorporating and coordinating piecemeal *Halal* laws and monitoring bodies under one umbrella. The statute may help define the entities responsible for governing *Halal* certification procedures more clearly and allow the incorporation of provisions on the *Muamalah* Court's jurisdiction to adjudicate *Halal* disputes. The *Halal Act 201X* would not only improve the status of the *Halal* certification scheme among the eatery industries, but also elevate the *Halal* industry as a whole.

As for the implementation of the sub-logos by JAKIM, it must be reinstated that although the Muslim community may not be completely agreeable to the sub-logo proposals, they do invite several benefits. Displaying the sub-logos on eatery premises may attract greater consumer confidence among Muslims. Since what is considered *Syubhah* has been most Muslims' primary concern, the proposed sub-logos may lessen their doubts and enable them to identify which eateries suit their dietary needs or preferences better. Having the proposed sub-logos would also benefit eatery operators financially with the increase in Muslim patronage.

The efficiency of *Halal* certification system in Malaysia is dependent upon a sound *Halal* organisational legal regime which Malaysia currently lacks. Eatery businesses in Malaysia, in particular, have been affected. Malaysia is a multi-religious country where Muslims and non-Muslims coexist, very much like the era of Prophet SAW. For Muslims, the *Maqasid* and *Maslahah* of *Syariah* cannot be compromised, but complicating the

execution of *Syariah* principles is not exactly in line with the *Maqasid* either. By and large, this paper highlights the legal and institutional problems encompassing *Halal* governance and its certification scheme, which can be tackled with some innovation. Although these proposals come with their own set of challenges, it is nevertheless hoped that they would lead to reforms in the *Halal* industry.