

HEALTHCARE SERVICES: HALAL PHARMACEUTICAL IN MALAYSIA, ISSUES AND CHALLENGES

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Abstract

Halal industry is often associated with the many issues and is a global multibillion dollar business. More recently however Malaysia has taken the lead in an endeavour to label pharmaceutical products with the halal certification. As a new industry, numerous challenges exist. One of which is the need for an effective legal framework that governs the halal pharmaceutical products. This article examines the existing legal framework for the halal pharmaceutical products through the doctrinal studies and interview with the stakeholders. The findings reveal several challenges in implementing the law with regard to the halal pharmaceutical products.

Keywords: Healthcare Services, Halal, Pharmaceutical.

Introduction

The global halal industry has gone through tremendous changes and rapid expansion into several sectors, such as food and beverage, cosmetics, pharmaceuticals, supply chain and logistics, lifestyle, hospitality services including, banking and finance, trading among others. According to a research conducted by the World Halal Secretariat, it was estimated that the global halal market in 2010 was USD 2.3 trillion which 67% represents the food industry, 22% represents the pharmaceutical industry and the rest represents other potential areas. This is very much connected to the increased awareness of Muslim on the benefits to consume halal products. Global Muslim population is estimated to be 1.6 billion (refer to figure 1.1) and represents almost 25% of the global population (Global Pathfinder Report 2013; Raja Adam Z 2006; Nik Muhammad N M et al 2009). It is forecasted that the Muslim population will increase up to 2.2 billion (26%) by 2030 and will continue to grow to 2.6(30%) billion by 2050 (Fleishman-Hillard Majlis 2012). Demand from the Muslim population accompanied by the acceptance from the non-Muslim consumers, who acknowledge the benefit of consuming Halal product, will potentially contribute to the financial gain and economic growth of country producing halal products. Hence, the halal industry is expected to grow in tandem with this development. On this point, Abdalhamid David Evans and et al (2012) mentioned that the growth of halal food market implies the parallel growth of other halal products and services market.

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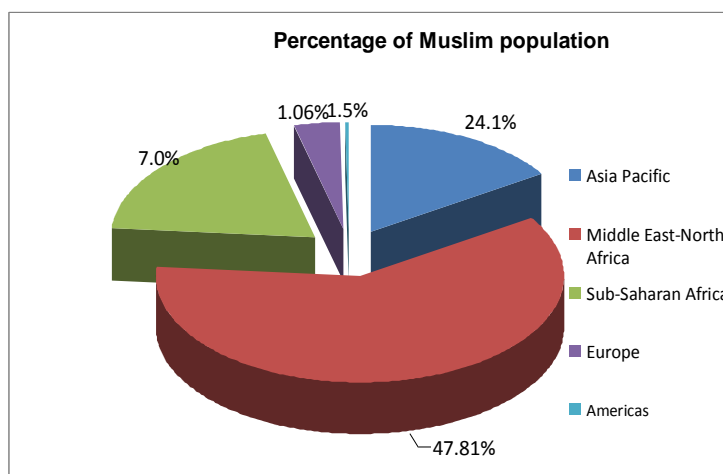


Figure: 1.1 -Percentage of Global Muslim Population (October 2009)

The strong economic growth and promising financial benefit have fuelled demand for diversified halal products. Significantly, Malaysia is recognized to have the potential in championing the halal pharmaceutical manufacturing due to our membership to the Organization of Islamic Committee (OIC) and being the only OIC country accepted as member under the Pharmaceutical Inspection Cooperation/Scheme (PIC/s). By being a member of Pharmaceutical Inspection Cooperation/Scheme (PIC/s), Malaysia has already owned her standing in the pharmaceutical industry globally. In line with the rise of world halal market, the halal pharmaceutical industry has made marked noticeable growth and is projected to continue developing from USD 72 billion in 2013 to 103 billion in 2019 (State of the Global Islamic Economy Report 2014/2015). The 2010 global market growth for pharmaceutical has expanded by 4% from 2009 to a value that exceeded USD 820 billion (CCM Press Release 2011) and halal pharmaceutical global demand is expected to grow up to RM11.26 billion in 2018(Munir A. Hamid 2014). This has somewhat influenced the growth of the Malaysian halal pharmaceutical industry. A statistic published by the Halal Development Corporation (HDC) in October 2013 indicated the potential for Malaysia halal pharmaceutical industry to hit a global record of 23% which stands the second place after the food and beverages industry which is 35% (Ismail Z 2014).

In responding to this opportunity, the government has paid noteworthy focus to the developing halal pharmaceutical industry. This can be clearly evident when pharmaceutical, cosmetic and personal care industry was named as one of the focus area under the Malaysia's Third Industrial Master Plan (IMP-3). Export opportunities could well be considered a potential revenue-earning sector. In responding to the government's vision, many of the important players which consist of people in the industry, policy maker, related agency and consumer organization have positively embarked into activities to promote the expansion of halal pharmaceutical industry.

However the halal pharmaceutical industry in Malaysia is not well supported with adequate legal and administrative framework. This is one of the factors that hampered the halal pharmaceutical industry. At present, there is no codified law to govern the halal pharmaceutical industry in Malaysia. Currently, the halal food industry and halal pharmaceutical are governed under the same law i.e., the Trade Description Act 2011 and Trade Description (Certification and Marking of Halal) Order 2011. Absent of a clear and proper legal and administrative framework may lead to the occurrence of many foreseeable risks and diminish the industry. There were abundance of literatures(Fischer J, 2005; Nik Muhammad N M 2009; Karijn Bonne and et al 2008; Azmi Sariiff 2013; Aznan Hasan 2011; M N Wan Norhana 2012; Ramli N 2011; Munawar N 2012) on the issues within halal industry in general and halal pharmaceutical in particular including the potentials of halal food market, legal issues within halal food industry, challenges faced by the certification body i.e., JAKIM, consumer's perception over JAKIM's halal certification however there were minimum literatures that addresses the fundamental issues that surround the halal pharmaceutical industry namely the legal and administrative requirements. Thus it is the intention of this study to attempt to fill the gap by studying the issues and challenges of the halal pharmaceutical industry with the aim suggesting an established and structured legal framework for the industry in Malaysia.

Reviewing the Role of JAKIM

The Trade Description Act 2011 which was created by-laws of Trade Description (Certification and Marking of Halal) Order 2011 has vested the power to issue halal certification to the government appointed body mainly Department of Islamic Development Malaysia (JAKIM) and State Religious Council (MAIN)(Section 27 and 28 of Trade Description Act 2011; Abdul Aziz N and et al. 2014). It is also within this power that JAKIM needs to monitor the preservation of compliance to the halal certification requirements. In carrying out this duty, JAKIM is vested with a wide power covering the legislative, executive and judiciary role. However by virtue of the provision in the Federal Constitution and the law on the setting up of a government agency (Faruqi S S 2007; Harding A 1996), there are several unresolved issues regarding the status and power of JAKIM in executing the existing assigned duty. It is to note that JAKIM is not an agency created under the statutory provision but a creation of the Conference of Rulers (Article 38 Federal Constitution 1957). By virtue of the Federal Constitution, the Conference has the power to control and govern all powers vested to JAKIM. However, under the Federal Constitution, the Conference of Rulers has been invested with a number of critical constitutional functions, including veto power over some constitutional amendments, right to be consulted on some key government appointments and right to deliberate on national policies, including matters relating to Islam and Malay privileges. The powers of Conference of Rulers to create Islamic religious authority like JAKIM is intrinsically provided under its power to performs functions of a religious or ceremonial nature(Article 38(2)(b) and 38(6)(d) Federal Constitution 1957). The significance of this function of the Conference lies in the fact that the Rulers are Heads of Islam in their States (Abdul Aziz N and et al. 2014).

It can be assumed that the Conference of Rulers has formed JAKIM under the function of deliberating matters relating to Islam. On this point, it is imperative to discuss on the provision in the Federal Constitution that provides the Conference power on Islamic matters. It is provided in the Federal Constitution that:

“The Conference of Rulers shall exercise its functions of..... to agree or disagree to the extension of any religious acts, observance or ceremonies to the Federation as a whole” (Article 38(2)(b), Federal Constitution).

From the above discussion it can be said that the status of JAKIM as the main governing body of halal affairs is unclear. Thus the role of JAKIM becomes blurred without a proper definition of its administrative and regulating power. With uncertain governance, the halal industry faced unreliable position as the protector of the Muslim consumer. There is a need to review and reset the role and establishment of JAKIM in governing the halal affairs as to acknowledge the notable efforts made by JAKIM since its establishment and to provide strengthened power for JAKIM to efficiently govern Islamic related affairs. This agency shall be given power to issue, monitor and control the halal certification and a wider enforcement power.

Regulating the Manufacturer

The economist explained (Harvey B W and et al 1992) on the differing aims of roles within the consumerism circle. The consumerism circle involves the manufacturer, the government and the consumer. Through the economist perspective, the manufacturer's primary goal is profit (Ramsay I 2007). Therefore their participation in making consumer policy is only to the extent that the protection of consumer welfare serves the goal of profitability (Wesley J and Alba J 1991). Thus, in this context, the preservation of the consumer welfare can be done by having a highly competitive market. High competitive market will control the ability of the producers/manufacturer to abuse their sovereignty (Geraint H and Ramsay I 2005; Ramsay I 2007).

From the economic perspective (Cartwright P 2001; Geraint H and Ramsay I 2005; Ramsay I 2007), producers of goods need to sell their product to the consumer for the sustainability of their business. Producers may only sell goods that the consumer requested. From this point of view, Geraint H(2005) mentioned that the issue of defective product and deceiving labeling shall not occur as the consumer has the power to dictate what they want and determine the continuity of producers business in the market. However this scenario occurs due to the mass-production system in the industry, where goods have become more complicated and expose to uncertain risk and this has threaten the consumer rights to information. Consumers are not able to exercise their rights to dictate when they are lack of information about the product. In responding to this view, consumer protectionist explains that the trending consumerism requires the consumer to be informed decision makers in the marketplace (Swagler R 1994; Brad Trutle 2012). Adam Smith in the book by Geraint H and et al(2005) explained that when the demand increases, the manufacturers or the suppliers will adopt resources in meeting the demands. The productive resources includes men laid off and retrained, plant renewed and adjusted in order to attract as much as they can of the consumer spending. In applying the statement of Adam Smith

to the increased demand for halal pharmaceutical product can be viewed to have invited the usage of new technology machinery to cater for mass production.

The findings from the Focus Group Discussion (2014) have highlighted that the ultimate focus point to ensure the pharmaceutical product is Shariah compliance is at the manufacturing stage. By regulating the manufacturer, the finished product will not encounter other problem relating to the assurance of halal. Difficulties arise on the part of the distributor of pharmaceutical product, the medical practitioner and the pharmacist as not many have the knowledge of the total halal requirements. Thus there will be deficiency on the part of parties involves in dispensing the halal pharmaceutical product to ensure that the pharmaceutical is halal. Not many pharmaceutical dispensers are able to advise appropriately on the question of halal assurance. Therefore, patients who require such information will not be addressed sufficiently. Due to the globalization and industrial revolution the consumer protection become more vulnerable as the manufacturer and supplier hold important information that may affect the upholding of other rights of the consumer namely; the right to safety and right to basic needs. Consumers' rights in the current halal pharmaceutical industry are not only threatened by the complexities of the product but also jeopardized by the diversion of lifestyle and consumption culture in the globalized society. These facts are important for the policy makers and regulators who are involved in formulating the consumer protection laws and policies.

Good Administrative Framework, Weak Task Force

The panels of Focus Group Discussion (2015) and representatives to the workshop (Bengkel Pemantapan Mekanisme Pengurusan dan Tadbir Urus Halal Malaysia, 2014) agreed that all related government department namely JAKIM, Ministry of Health (MOH), National Pharmaceutical Control Bureau (NPCB), Department of Veterinary (DVS), Ministry of Domestic Trade, Co-operation and Consumerism (MDTCC) provide a good administrative framework in promoting halal pharmaceutical. There is a good co-operation between JAKIM, Ministry of Health represented by the NPCB, Chemical Company Malaysia (CCM), academicians and small group of pharmacists to promote halal pharmaceutical. Nevertheless the current administration of halal industry in general and halal pharmaceutical in specific involves many private company and government department with complementary, overlapping and competing roles. Furthermore, the existing administrative framework is not supported with a strong task force (Zainaba C.P Veeravu 2010). There is a need for a specific authority consists of group of people assigned to monitor and enforce the administrative regulation prepared by the related department above. This task force needs to be given sufficient power to efficiently execute their function.

A few studies (Maizirwan Mel and et al 2013; Abdul Azim Idris 2010; Ibtisam @Ilyana Ilias and et al. 2012, Rezai Golnaz 2003) highlighted on the issue of JAKIM efficacy in handling issue of false halal logo and delay in the approval of application for halal certificate. It has been the responsibilities of JAKIM to ascertain policies pertaining to the development and advance of Islam affairs in Malaysia by fostering and promoting the sanctity of the *aqidah* and Islamic Syariah. For this function, JAKIM has been relied upon to enact and standardize the laws and procedures as well as to co-ordinate their implementation in all states (Shamsiah Aziz, Interviewed by Author,

Putrajaya, 5 September 2014). While JAKIM's role involves monitoring Halal Affairs, it lacks of legal authority to arrest and prosecute abusers of halal certified assurance had led some to challenge JAKIM's ability to restrict the activities of deviant halal manipulator and abuser (Bengkel Pemantapan Mekanisme Pengurusan dan Tadbir Urus Halal Malaysia, 2014). Another aspect that was commented is on the focus of the auditing team. Audit is conducted by at least one Shariah officer and one food technology /technical officer (Johari Ab Latiff, Interviewed by Author, University Malaya, Kuala Lumpur, 20 February 2015). It is suggested that the auditing team shall consist of officers which are experts in both technical and Shariah matters. There is imbalance evaluation done by these officers. The technical officer will focus on the technical aspect such as bathroom, dustbin, processing plant whilst the Shariah officer will focus on the halal assurance system. The discussion and report in a way do not involve a check and balance system, which is the base to the administrative law that promotes natural justice. There is an unanimous demand from the society and industry that there will be one sole government agency to govern halal sectors. Thus it is proposed that there shall be specific agency to be in charge of the whole matter within the halal pharmaceutical industry.

Acknowledging the Importance of *Maqasid Shariah*

Generally the concept of halal ensures the upholding of the rules on *Maqasid Shariah* (objectives of Shariah), Shariah Law is established to preserve five essentials for Muslim community, namely, religion, human life, progeny, material wealth and the human faculty of reason (Yusof al Qaradawi 2001; Basri Ibrahim and et al 2011). These are seen as absolute requirements to the survival and spiritual well-being of individuals. When those essentials are not preserved, it would cause chaos and demise normal order of the society. It has been explained in many writings (Basri Abdul Ghani 2008; Consumer Association of Penang 2006; H Salim Bahreisy and H.Said Bahreisy 1988; Imran Ahsan Khan Nyazee 2002) that the concept of halal in Islam has very specific motives which are to preserve the purity of religion, to safeguard the Islamic mentality, to preserve life, to safeguard property, to safeguard future generations and to maintain self-respect and integrity. Al-Syatibi explains the rules of Shariah in mankind which aims at protecting five basic needs which are life, mind, religion, descendants and wealth. This protection will ensure the *maslahah* of a man worldly life and after life. He further explains that the halal compliance way of life, is directed at protecting three out of the five stated basic needs which are life, mind and wealth.

Maqasid Shariah states that it involves *maslahah* that can support the needs of worldly and hereafter, material and spiritual, individual and society, sect and *ummah*, the *maslahah* of a certain nation and the *maslahah* of mankind in general and today's generation as well as future generations (Idris F and et al 2013). This findings show how important for the Muslim to search for halal materials as halal ensures the aims of *Maqasid Shariah*. The Focused Group Discussion (2015) panels proposed that the study on *Maqasid Shariah* should be included in the current education syllabus at the secondary level and tertiary education level. This will assist in alleviating the knowledge on the actual need for Muslims to consume halal and the thorough concept

of halal. By alleviating the knowledge of the society as a whole the people involved in the production will be educated as well thus the consumers will be well protected.

Al-Qaradawi (2001) defines *Maqasid Shariah* as the final conclusion aimed by Shariah passages such as passages in the forms of instructions, what are forbidden and what are allowed. Basri Ibrahim et al (2011). elaborate the thinking of al Qaradawi on *Maqasid Shariah* by stating that it involves *maslahah* that can support the needs of worldly and hereafter, material and spiritual, individual and society, sect and ummah, the *maslahah* of a certain nation and the *maslahah* of mankind in general and today's generation as well as future generations. In preserving the *Maqasid Shariah*, one of the factors that need to be taken care of is the intake and usage of food. Muslim believes that, to develop good worldly lives and hereafter depends on many factors and one of the major contributors is the intake and usage of good, healthy and quality food. The belief that governs the Muslim dietary is also extended to other matters including the intake of medicine. These have been explained above on the reasons for the prohibition of certain materials like pig, blood, wild animals and alcohol. The harmful effects that may relate to these prohibited materials have also been scientifically proven by various studies. These findings show how important for the Muslim to search for halal materials as halal ensures the aims of *Maqasid Shariah*.

Promoting Rights of Muslim Patients

There are few issues related to two universal rights of the consumer namely rights to knowledge which sometimes associated with the rights to be an informed consumer and the Rights to Education. Most of the modern consumer laws protect the consumers from being misled and to be positively informed so that they can make right choices. First issue is, how much information should be supplied? For the halal pharmaceutical product, will the supply of basic ingredients used in formulation of the product be sufficient? Do the sellers need to disclose ingredients of the packaging material as well? Basically, all pharmaceutical should be labelled or attached together with an information leaflet to caution the consumer on all potential risk of the products. However this basic rule is insufficient as the consumers need to be supplied with information that they want to know. In relation to the modern consumer, D Kennedy(1981-1982) introduces the notion of 'false consciousness' which describes a situation where consumers in the modern economy are not able to decide on the goods that they want due to lack of information. On the same point, disclosing of ingredients in its scientific names will defeat the purpose on informing the consumers the information that they require. G Howell et al.(2005), in support of this contention states that in some markets, consumers are not even aware that they are under-informed, so the growth of a market for information provision will not readily help.

Generally, consumer wants to know about information which they can digest to as simple as whether the pharmaceutical product is halal or not. This degree of information supplies has to be higher than the one imposed in the food making industry as there is higher risk attached to the pharmaceutical industry. This can be explain by the usage of ingredients in the pharmaceutical composition. Darhim Dali Hashim (2011) at the first Gulf Conference on Halal and its Services, reaffirmed the right of consumer to know the slaughtering method used to be written clearly on the product label. He also highlighted that the lack of collaboration for the world's halal-

certification authorities has created doubts for the Muslim consumers on the authenticity of the halal certification process.

At the same time the increase of false labeling on non-halal product can impeach the consumer's sovereign power to receive what they want. Some do suggest (Bengkel Pemantapan Mekanisme Pengurusan dan Tadbir Urus Halal Malaysia, 2014) that incentives be offered to the suppliers or producers who supply information of their goods to the consumer. However, halal labeling or information is sought after by the traders and suppliers due to its value of attracting the market (Abu Bakar E 2014), thus incentive is seen as unnecessary. Writers state (The Halal Journal, 2011) that the rights to know and to be informed will only be effective if the consumers require or demand the knowledge and information. However there are studies (Vedad Alihodzic 2012; Sulistyo Prabowoet and et al 2014; S.M Mohamed Idris 1987) that disclosed not many consumers depend on the information supplied on the products. In such a case, it can be said that Rights to Consumer Education become more important. Ruzman Mohd Noor et al(2014) mentioned that Islam promotes educational as oppose to legal formalistic approach to preserve consumer's rights. Thus priority must be given to the right to education rather than focusing mainly on the right to know. Education plants the seed that will grow to become the tree which is rooted strongly within the society. The ultimate aim of the consumer protection framework should be protecting what the consumer expects or desires. Therefore, imposing and enacting laws on labelling will not serve the purpose of protecting the consumer when what the consumer actually need is the education on the importance of consuming halal products. Education plants the seed that will grow to become the tree which rooted strongly within the society.

The ultimate aim of the consumer protection framework should be protecting what the consumer expects or desires. Therefore imposing and enacting laws of labeling will not serve the purpose of protecting the consumer when what the consumer actually needs is the education on the importance of consuming halal products. Moreover the upholding of the rights to know and becoming an informed consumer requires the consumer to ask. If the consumer is not well educated in the area of the product, asking question will not fulfill the aim of giving him his rights to know. In clinics where the patient is given pharmaceutical product in micro repackaging, the information of whether the pharmaceutical product is halal or not is not known. On the other hand, asking the dispensaries staff would also lead to a dead end if the clinics are not educated on what constitute halal. Given the speed of trade globalization, the advancement in science and technology, and the on-going initiatives to simplify manufacturing processes, it is essential that the manufacturers received halal education concept to ensure their understanding. Education shall not be confined to attending school environment.

Conclusion

Halal pharmaceutical is an important area which becomes a commodity that helps in elevating the country's economic growth. This industry is also important to the Muslim community in upholding their rights to practice their faith, which is to exercise the Islamic dietary law. Thus to sustain this industry it should be developed and updated taking into consideration the issue and challenges within this industry that includes the

governor source of power i.e JAKIM and the specific needs of consumers and pharmaceutical producers.

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