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Halal Meat, Food Fraud, and Consumer Protection: A Comparison of Islamic, European and Malaysian Perspectives

Nehaluddin Ahmad*

Lilly Suzana Binti Haji Shamsu**

Muhammad Danish Iqbal Ariffin***

Abstract: The broader implications of food fraud are global and can affect consumers across the religious line. In Islamic belief, meat is considered the most strictly regulated food product. The awareness of seeking authentic *halal* meat is the highest among Muslim consumers because it is an essential part of their faith. It is devastating for Muslims that they might have consumed meat considered *halal*, which actually was not. For example, a meat-fraud scandal was uncovered in December 2020 by the local newspaper in Malaysia, which also involved a few other countries. Fraudulent advertising by food companies clearly spells doom for the Muslim community as they would want to know who the legitimate dealers of *halal* meat products are. The discussion on *halal* meat unavoidably boils down to animal rights and the way animals are slaughtered to comply with the requirements of *halal* meat. Muslims argue that the practices of traditional Islamic slaughter are humane. However, many animal rights campaigners argue that religious slaughter causes animals unnecessary suffering and should adopt stunning before slaughter. This article uncovers various types of fraud relating to *halal* meat globally with specific reference to European and Malaysian laws to analyse the legal rights available to consumers and their protection. The analysis in this article reveals that authorities should further strengthen their role in enforcing consumer laws and continuously seek ways to educate consumers about *halal* food fraud.

Keywords: Consumer Protection Laws; *Halal* Food; Islamic Law; Food Fraud; Consumer Rights

I. INTRODUCTION

'*Halal*' is a legal term of Islamic law. It essentially means 'permissible' or 'lawful'. Generally, the meaning of '*halal*' in Islam is much wider, and it refers to any action or behaviour that is permissible in Islam, while its opposite, '*haram*' refers to impermissible or unlawful actions. *Halal* foods in general, are foods that Muslims are allowed to eat or drink under Islamic law. It specifies what foods are allowed and how they must be prepared. When used for meat, it refers to the slaughter and preparation of meat in accordance with Islamic practices. In order to be deemed *halal*, Islamic law requires that the meat must be drained of blood as the eating of blood is forbidden in Islam. The animal must be killed by a swift and profound incision into the neck of the animal, cutting its jugular vein. This process is claimed by Muslims to be both efficient in removing blood and being merciful to the animal. The most well-known example of non-*halal* (or *haram*) food is pork. Pork is meat that cannot be eaten by Muslims at all due

to its specific prohibition in Quran.¹ Meat other than pork can also be *haram* due to its source, the cause of the animal's death, and how it was processed. *Halal* food may not be mixed with anything that is *haram*, for example, mixing alcohol with *halal* meat will make the consumption of that meat *haram*.²

There are around 1.6 billion Muslims in the world today making up 23.4% of the global population. If current trends continue, Muslims will make up 26.4% of the world's total projected population of 8.3 billion in 2030. The Muslim market spans an estimated US\$2 trillion, making it one of the fastest-growing consumer segments in the world. According to Reuters, the *Halal* food market alone accounts for 12% of global trade in agro-food products and is estimated at US\$560 billion.³

The growth in the Muslim population will directly increase the preference for *halal* food.⁴ However, the growing demand for *halal* food nowadays is not only restricted to Muslim consumers. In relation to the meat industry, non-Muslim consumers have started consuming *halal* meat due to food safety concerns with other meat and the increasing awareness that *halal*-certified food adheres to stringent standards in hygiene and sanitation.⁵ It is also observed that animal slaughtered by *halal* means has better meat quality.⁶ The *halal* system improves the meat industry in terms of providing high-quality and safe product, contributing to its marketability.

Halal food is essential for people of the Islamic faith. This makes them particularly vulnerable to fraud and adulteration compared to non-*halal* food. While there are specific problems for Muslims regarding the authenticity of *halal* meat and associated certification practices, the wider implications of food fraud are global and can affect people of all religions and beliefs. The various types of food fraud include substituting a cheaper ingredient, adulteration, dilution, counterfeiting, inclusion of unapproved enhancements, and mislabelling. They also include the diversion of unfit meat into the human food chain and the deliberate selling of non-*halal* (*haram*) meat as if it were *halal*. In December 2020, a meat-fraud scandal roiled in Malaysia after a news channel uncovered the cartel that allegedly bribed customs officials in order to smuggle in all kinds of meat and label it *halal*, triggering outrage in the Muslim-majority country.⁷ The news report claimed that the conspirators allegedly bribed senior officers from

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¹ Qur'an, Surah Al-Baqarah 2:173, Al-Ma'idah 5:3, Al-An'am 6:145.

² M. M. Chaudry and J. M. Regenstein, 'Implications of biotechnology and genetic engineering for kosher and halal foods' (1994) 5 (5) Trends in Food Science & Technology 165-168.

³ 'About Us' (2012) Halal Council of India <<https://halalcouncilofindia.com>> accessed 20 December 2020.

⁴ I. A. Adams, 'Globalization: Explaining the dynamics and challenges of the halal food surge' (2011) 19 (1) Intellectual Discourse 123-145.

⁵ S. Lada, G. Harvey Tanakinjal, and H. Amin, 'Predicting intention to choose halal products using theory of reasoned action' (2010) 3 (4) International Journal of Islamic and Middle Eastern Finance and Management 66-76.

⁶ The Times of India Mar 27, 2012, Delhi Edition <http://timesofindia.indiatimes.com/articleshow/11672654.cms?utm_source=contentofinterest&utm_medium=te xt&utm_campaign=cppst> accessed 20 December 2022.

⁷ Mohamed Basyir, 'Meat Cartel Bribing Government Officers' *New Straits Times* (21 December 2020) <<https://www.nst.com.my/news/nation/2020/12/651038/meat-cartel-bribing-government-officers>> accessed 28 December 2022.

several government agencies to import meat from non-*halal* certified slaughterhouses including China, Ukraine, Canada, and South America for more than 40 years. Some of the imports included kangaroo and horse meat (both considered *makrooh* by Hanafi and Maliki scholars)⁸, which were then mixed with and sold as *halal* beef.

Likewise, in 2001 the Indonesian Ulema Council (MUI) accused a Japanese company of using pork products in the production of the flavour enhancer monosodium glutamate (MSG), and demanded that the Indonesian government take appropriate action.⁹ It was a serious accusation. If true, the company would have violated *halal* rules, which forbid Muslims from eating pork or pork-derived products. As a consequence of the scandal, several employees of the company were arrested, and a public apology was issued by.¹⁰

Today, there are so many small to big food retailers and other food outlets around the globe are selling food advertising it as *halal* without proper *halal* certification. The issue of *halal* food has long been debated, but now it has become increasingly complex issue as a result of food innovation and technological processing of food that is rapidly expanding. This issue is gaining attention not only in Malaysia and Indonesia but has also expanded globally. In Malaysia, consumers are also facing consumerism issues that are not limited to matters of *halal* products alone. Dishonesty in business practices such as poor quality of the goods, counterfeiting of goods, lack of quality control or standards in merchandise control, and other forms of fraud are also widely prevalent in Malaysia.¹¹ Thus, the right of consumers needs to be strengthened and safeguarded.

Consumers are the obvious victims in these cases of food fraud. The public is taking to social media to voice their concerns on the authenticity of genuine *halal* food in Malaysia and insist on action against vendors caught with fake labels of *halal* food. From this, the questions arise whether laws and procedures to ensure the authenticity of *halal* food are put in place in Malaysia? Are those laws and procedures effective in ensuring compliance by the suppliers and retailers of *halal* food? This article will examine these question from the perspectives of the consumer rights to *halal* food as provided by the legal statutes in Malaysia as well as by provisions of Islamic law. Discussions in this article provide an overview of food fraud in Malaysia and Europe including its different categories, and governing legislations. The discussions also engage with a rather scientific question of whether slaughtering of animals in accordance with the requirements of Islamic law causes animals unnecessary suffering than stunning before slaughter.

The following parts of this article are structured as follows: Part II provides a detailed explanation of what *halal* means with respect to meat in Islamic law. Discussion in this part engage with the arguments of animal suffering due slaughtering requirements for *halal* meat and the counter arguments addressing those concerns. Part III provides an overview of the

⁸ Abu Bakar Mas'ud Al-Kasani, *Bada'i al-Sana'i fi Tartib al-Syara'i* (in Arabic) [*Unseen artistry in the arrangement of the religious-legal regulations*], vol 5 (2nd edn, Dar al-Kutub al-Ilmiah 1986) 38; Ibnu 'Abd al-Bar Yusuf bin Abdullah al-Namiri, *Al-Kafi Fi Fiqh 'Ala Madhhab Ahl Al-Medina* (in Arabic) [*Al-Kafi on jurisprudence on the doctrine of the people of Medina*], vol 1 (Riyadh: Maktabat al-Riyadh al-Hadithiyah 1980) 436.

⁹ 'International outrage over Ajinomoto's use of pork enzyme in halal food escalates' *Just Food News* (9 January 2001) <<https://www.just-food.com/news/indonesia-international-outrage-over-ajinomotos-use-of-pork-enzyme-in-halal-food-escalates/>> accessed 28 December 2022.

¹⁰ *ibid.*

¹¹ C. Y. J. Ding and S. S. Ahmad Yusoff, 'Perkembangan Perlindungan Pengguna: Cabaran dan Hala Tuju Institusi Pelindung Pengguna di Malaysia' (2016) 20 *Malaysian Journal of Law and Society* 71-82.

nature and kinds of food fraud and how the existing laws and regulations in Malaysia and European Union (EU) tackle the food fraud. Malaysia has a unique regulatory regime to govern *halal* food and its comparison with the relevant EU laws dealing with food safety and consumer protection provides insightful outcomes. As Malaysia also has a separate body of law on consumer protection, Part IV analyse this body of law to assess its efficacy. The article concludes that although laws and regulations exist in Malaysia aiming to ensure provision of *halal* food to consumers, there are visible gaps in the existing regime that must be addressed.

II. DEFINING ‘HALAL’

The term *halal*¹² is particularly associated with Islamic dietary law and especially meat processed and prepared in accordance with those requirements. *Halal* is an Arabic word meaning lawful or permitted in reference to food. The words *halal* and *haram* are the usual terms used in the Quran to designate the categories of lawful or allowed and unlawful or forbidden.¹³

“O ye who believe! Eat of the good things wherewith We have provided you, and render thanks to Allah if it is (indeed) He whom ye worship.”¹⁴

Halal foods are foods that Muslims are allowed to eat or drink under Islamic law, which specifies what foods are allowed and how that food must be prepared. The most well-known example of non-*halal* (*haram*) food is pork. Pork is meat that cannot be eaten by Muslims at all because it is specifically prohibited in Quran.¹⁵ Meat other than pork can also be *haram* as a result of its source, the cause of the animal’s death, and how it was processed. *Halal* food may not contain any other prohibited contents such as alcohol or traces thereof.¹⁶ Quran states:

“He has only forbidden you what dies of itself, and blood, and flesh of swine, and that over which any other (name) than (that of) Allah has been invoked; but whoever is driven to necessity, not desiring, nor exceeding the limit, no sin shall be upon him; surely Allah is Forgiving, Merciful.”¹⁷

In the context of dietary rules, pork and blood as well as meat from birds of prey and reptiles, are defined as *haram* and so forbidden to be consumed by practicing Muslims. Additionally, an animal that has been strangled, beaten (to death), killed by a fall, cut into gores, sick, body mutilated or sacrificed on a stone altar cannot be eaten. Carrion (carcasses of dead animals, such as animals who died in the wild) are also *haram* and cannot be eaten.¹⁸ There are two types of *haram* things.

¹² Means permissible. Laws governing *halal* are derived from the Quran and the Hadith (the traditions of the prophet Muhammad).

¹³ Juan Eduardo Campo (ed), *Halal: Encyclopaedia of Islam* (Infobase Publishing 2009) 284.

¹⁴ Qur’an, Surah al-Baqarah, 2: 172.

¹⁵ Quran, Surah Al-Baqarah 2:173; Al-Ma'idah 5:3; Al-An'am 6:145; and Al-Nahl 16:115.

¹⁶ Chaudry and Regenstein (n 2).

¹⁷ Qur’an, Surah al-Baqarah 2:173.

¹⁸ Qur’an, Surah An-Anam 6:145.

A. Haram Li'aynihi (Lizatihi) (Prohibited by its Own)

Things that have been clearly forbidden by Allah and the Messenger as mentioned in authentic hadith “The lawful is clear and the unlawful is clear...”¹⁹ Their prohibition is explicitly mentioned in the Qur'an and Sunnah, their abstinence has been commanded, and they are generally things that harm one's mind, property, life, and lineage. Examples are murder, gambling, extra-marital affairs, stealing, marrying a milk-sibling, and consuming unlawful food such as alcohol, pork, carrion, the meat of carnivores, and animals that died due to illness, injury, stunning, poisoning, or slaughtering not in the name of God.

B. Haram Lighayrihi (Prohibited Due to Another Factor)

Things that are *halal* in their essence, however, have become *haram* due to an external factor. For example, a sheep slaughtered purposely without mentioning Allah's name, the meat of this sheep is *haram*. The unlawfulness of this sheep's meat is not due to the sheep itself, but the act of not slaughtering it according to the requirements of Islamic law. That is what has made it *haram* (to eat) although the meat of sheep is not unlawful on its own.²⁰

III. SLAUGHTER PROCESS OF HALAL MEAT

There are debates among various Islamic schools of law on the requirements for slaughter according to religious rites called *Zabiha* in Arabic²¹ and usefully referred to as *Schächten* in German language.²² *Zabiha* is based on the dietary commands of the Quran, especially its precept that meat becomes fit for human consumption consequent to exsanguination. Thus, the process of *zabiha* was developed, where animals were slaughtered by the severing of the throat with a very sharp instrument, while the animal remained conscious.²³ Ṣaḥīḥ Muslim recounts:

“When you kill, kill well; and when you slaughter, slaughter well. Let one of you sharpen his blade and spare suffering to the animal he slaughters.”²⁴

This method of slaughtering lawful animals has several conditions to be fulfilled. Reciting a short blessing beginning with ‘*bismillah*’²⁵ (in the name of Allah) is a prerequisite for Muslims before embarking on any significant task, which includes performing *zabiha*. *Bismillah* must be called by the butcher upon the slaughter of each *halal* animal separately. After reciting the blessing, the person who slaughters uses a surgically sharp instrument to cut the animal's throat, windpipe, and the blood vessels around its neck. It should consist of a swift, deep incision on the throat cutting the windpipe, jugular vein and carotid arteries of both sides but leaving the spinal cord intact.²⁶ The blood is then allowed to drain from the body.²⁷ Only one

¹⁹ Narrated by Abū ‘Abdullah Muḥammad bin Ismā‘il al-Bukhari in *Ṣaḥīḥ Bukharī* (1422H), *Dar Tuq al-Najah* vol 3, no 2051; Muslim bin al-Hajjaj, *Ṣaḥīḥ Muslim* (n.d.) Dār Ihyā al-Turāth al-‘Arabī, vol 3, no 107, 1219.

²⁰ *ibid.*

²¹ *Zabiha* is the way that defines how animals must be slaughtered in a humane way in Islam.

²² Collins Dictionary, a German word which means to slaughter according to religious rites.

²³ H. Moussa, ‘Schächten in Islam’ in R. Potz, B. Schinkele, & W. Wieshaider (eds), *Schächten, Religions-freiheit und Tierschutz* (Plöchl and Kovar, Freistadt and Egling 2001) 16-26.

²⁴ Authentic *hadith* narrated by Muslim in *Ṣaḥīḥ Muslim*, vol 3, 1548.

²⁵ Qur'an, Surah al-An'am 6:121, “And do not eat of that upon which the name of Allah has not been mentioned, for indeed, it is grave disobedience. And indeed do the devils inspire their allies [among men] to dispute with you. And if you were to obey them, indeed, you would be associators [of others with Him].”

²⁶ Mufti Muhammad Taqi Usmani, *The Islamic Laws of Animal Slaughter* (White Thread Publishers 2006) 65.

²⁷ *ibid.*

animal can be ritually slaughtered at a time and the other animals must not witness any death. The slaughter can be performed by a Muslim, or an adherent of religions traditionally known as People of the Book.²⁸ Blood must be completely drained from the veins. Blood is an excellent medium for the growth of microorganisms and more blood than the critical level in the meat is liable to bacterial spoilage,²⁹ hence blood should be fully drained from the body of slaughtered animals for healthy food.³⁰

Notably, Islamic law also makes provisions on how animals must be treated during their life. Mistreating animals or causing pain to them is prohibited.³¹ Animals must also be provided with enough space to roam, clean water, food, and fresh air.³² The meat of an animal is considered detestable (in Arabic '*makrooh*' meaning a disliked or offensive act)³³ if the animal experienced cruelty. Killing wildlife is also prohibited in many cases, along with hunting for 'sport'.³⁴ Islamic law laid down numerous rules to inflict the least amount of pain and suffering during the slaughter process. For example, before slaughter, animals must have rested and been well fed. Slaughter must be quick and occur in one attempt. Any further dismembering must be done only after the animals are dead.³⁵ Animals not killed by ritual slaughter (*zabiha*) are considered carrion meat, which is *haram* (prohibited) in Islamic law.³⁶

A. The practice of Stunning before Slaughter

Most developed and many developing countries of the world require by law an animal to be rendered unconscious before it is slaughtered. This is in order to ensure that the animal does not suffer pain during slaughter. However, exceptions are made for the Jewish (*kosher*) and Muslim (*halal*) slaughter of livestock as it is forbidden to use the methods of stunning (stunned electrically before their throats are slit, known as 'pre-stunned slaughter') that can actually kill the animal, such as bolt guns.³⁷ When animals are stunned, animals are rendered unconscious through blunt force, electric shocks, gassing, or a steel bolt that penetrates an animal's skull. Some *halal*-certifying bodies do not agree to stunning, but others do allow non-penetrative stunning before slaughter.³⁸ But *kosher*-certifying authorities say that no form of stunning before slaughter is permissible as described by Rabbi Menachem Genack, who oversees certification for the Orthodox Union, the world's largest *kosher* certifier.³⁹

A majority of Muslim scholars argue that the animal should be fully conscious before being killed and so should not be stunned. The discussion on whether religious slaughter is more or

²⁸ Josef Meri (ed), *The Routledge Handbook of Muslim-Jewish Relations* (Routledge 2016) 311.

²⁹ Amélie Rouger, Odile Tresse, and Monique Zagorec, 'Bacterial Contaminants of Poultry Meat: Sources, Species and Dynamics' (2017) 5 (3) *Microorganisms* 50.

³⁰ Qur'an, Surah Al-Anam 6: 145-146. also al-A'raaf 7:157.

³¹ *Ṣaḥīḥ* Muslim 2582.

³² Qur'an, Surrah Ar-Rahman 55:8-10.

³³ Mū'il Yūsuf 'Izz al-Din, *Islamic Law: From Historical Foundations to Contemporary Practice* (Edinburgh University Press 2014) 98.

³⁴ *ibid.*

³⁵ Usmani (n 26).

³⁶ *ibid.*

³⁷ Carla M. Zoethout, 'Ritual Slaughter and the Freedom of Religion: Some Reflections on a Stunning Matter' (2013) 35 (3) *Human Rights Quarterly* 651-72.

³⁸ Karen Zraick, 'Is Stunning an Animal before slaughter more humane? Some religious leaders say no' *The New York Times* (9 January 2020) <<https://www.nytimes.com/2019/01/09/world/europe/halal-kosher-humane-slaughter.html>> accessed 16 September 2022.

³⁹ *The Hamilton News* (11 January 2019) <<https://www.newspapers.com/newspage/521606629/>> accessed 16 September 2022.

less humane than other forms, such as stunning, is a matter of debate.⁴⁰ It is an established fact that the majority of conventional meat slaughterhouses in various countries use some form of stunning to subdue and immobilize the animal before the slaughter. There are different types of stunning used for different species including turkeys, chickens, lamb, and other cattle.⁴¹ Therefore, the Islamic ruling of stunning is an issue of paramount importance which has tremendous implications for Muslim consumers. All forms of stunning have the motive to induce a state of insensibility in an animal about to be slaughtered. If done properly it may achieve this aim immediately.⁴² That is rendering the animal's brain unable to process the noxious stimulus associated with the stun before the information actually arrives in the brain. The insensible animal then needs to be effectively bled (killed) before the effect of the stun wears off.⁴³

The various types of stunning including the pneumatic stunner which delivers a blow to the head of the animal, the captive bolt pistol which shatters the brain of the animal; electric water which delivers an electric shock to poultry, and the electric brain stunner for sheep. Some methods are reversible, and others are irreversible. When irreversible methods of stunning are applied, the animal will die if it is not slaughtered within a few minutes. Other methods are reversible in theory and the animal can get up and walk around if not slaughtered in a few minutes. The common factor in all these methods of stunning is causing extra pain to the animal above and beyond the pain experienced during the slaughter itself.⁴⁴ For this reason, many Islamic law scholars have declared that the act of stunning is extremely disliked and close to being impermissible and *haram*.

With all forms of stunning fast and effective bleeding is an essential part of the slaughter process. It is usually achieved by opening major blood vessels and the bleeding technique is specific to each species. If the meat is to be used for human consumption, the removal of blood from the carcass is very important to ensure product quality, health, and life. Indeed, stunning is a very serious matter and some scholars have used extremely strong language when describing the practice of stunning such as 'against the spirit of Islam' and an 'evil innovation'.⁴⁵ Therefore, a Muslim should avoid using this practice as much as possible when slaughtering an animal. So as stunning is not unanimously unacceptable practice and the person who stuns will be sinful for causing extra pain to the animal. Other scholars have argued that the legal status of an animal that has been stunned is dependent on whether the animal was alive at the time of slaughter. If the animal was indeed alive at the time of a proper *halal* slaughter after stunning, then the meat of such an animal will be lawful to consume. On the other hand, if it is established that the animal was indeed dead at the time of slaughter, such an

⁴⁰ T. J. Gibson et al, 'Electroencephalographic responses of halothane - anesthetized calves to slaughter by ventral-neck incision without prior stunning' (2009) 57 (2) New Zealand Veterinary Journal 77. A 1978 study relying on EEG measurements led by Wilhelm Schulze of the University of Hanover, Germany, concluded that *halal* slaughter was more humane than slaughter following stunning. However, Schulze warned in his report that the stunning technique may not have functioned properly.

⁴¹ A. Onenç and A. Kaya, 'The effects of electrical stunning and percussive captive bolt stunning on meat quality of cattle processed by Turkish slaughter procedures' (2004) 66 (4) Meat Science 809-815.

⁴² *ibid*.

⁴³ H. Anil et al, 'Comparison of religious slaughter of sheep with methods that include pre-slaughter stunning, and the lack of differences in exsanguination, packed cell volume and meat quality parameters' (2004) 13 Animal Welfare 387-392.

⁴⁴ *ibid*.

⁴⁵ Zeiad Amjad Aghwan and Joe Mac Regenstein, 'Slaughter practices of different faiths in different countries' (2019) 61 (3) Journal of Animal Science Technology 111-121.

animal will be unlawful to consume despite the fact that it was slaughtered in accordance with Islamic law.⁴⁶

Orthodox Jews recite similar everyday blessings like *bismillah* (in the name of Allah), including a prayer used before performing the *kosher*⁴⁷ slaughter.⁴⁸ *Kosher* meats are permitted to be eaten by Muslims. This is due to the similarity between both methods of slaughter and the similar principles of *kosher* meat which are observed by the Jews.⁴⁹ In both Muslim and Jewish religious slaughter, the act of slitting the throat “stuns the animal”, and “there is no delay between stun and subsequent death.”⁵⁰ But the British Veterinary Association (BVA) and the Royal Society for the Prevention of Cruelty to Animals (RSPCA) disagree with this view. The BVA says that “all animals should be effectively stunned before slaughter to improve the welfare of these animals”, and likewise Dr Marc Cooper of the RSPCA says that killing animals without stunning them causes “unnecessary suffering.”⁵¹

Everyone agrees that an animal’s suffering should be kept to a minimum. It is up for debate among the *halal* meat producers, certifiers, and consumers, whether stunning accomplishes that goal. The argument that stunning itself causes great suffering, particularly if it is not carried out properly, is equally strong.⁵² If the animal dies after stunning and before it is slaughtered, it is unquestionably *haram* to be consumed by Muslims. For large animals, 19th century European slaughterers used to strike the animal on its forehead with a hammer, club, or pole-axe to make the animal unconscious before slitting its throat and exsanguinating it. In time, electricity and gas-based techniques were used for stunning some animals. The public rhetoric of humane animal welfare objectives did not exhaustively disclose all the industrial advantages of these new stunning techniques. More convincing reasons were to protect slaughter men from unpredictable and violent reflexive reactions of the animal to its being mortally attacked,⁵³ events kept far from the public gaze.

B. Animal Suffering

Cruelty to animals occurs during production, handling, transport, and slaughter in most countries where Islam is a major religion. Most of the people involved in this, such as those involved in the transport of animals, animal handlers and butchers, are mostly Muslims in such countries.⁵⁴ However, many Muslims and Islamic religious leaders have not directly addressed such cruelty in their scholarship. Islam shows compassion to animals as mentioned in the Quran and Hadith.⁵⁵

⁴⁶ Sira Abdul Rahman, ‘Religion and Animal Welfare-An Islamic Perspective’ (2017) 7 (2) *Animals* 11.

⁴⁷ “*Kosher*” is a term used to describe food that complies with the strict dietary standards of traditional Jewish law.

⁴⁸ Chaudry and Regenstein (n 2).

⁴⁹ Meri (n 28).

⁵⁰ *ibid.*

⁵¹ Katie Harris, ‘The RSPCA is calling for a ban on non-stun slaughter to prevent “unnecessary suffering” for millions of animals’ *Daily Express* (16 February 2019) <<https://www.express.co.uk/news/uk/1087781/rspca-bva-end-non-stun-slaughter-halal-kosher>> accessed 27 November 2020.

⁵² *The Hamilton News* (n 39).

⁵³ K. Troeger, ‘Schlachten von Tieren’ in H. H. Sambras & A. Steiger (eds), *Das Buch vom Tierschutz* (Ferdinand Enke 1997) 510-524.

⁵⁴ Sira Abdul Rahman and Aidaros H. Islam, ‘An animal welfare with special reference to cruelty to animals during transport and slaughter’ (2012) 28 *Journal of Commonwealth Veterinary Association* 27–30.

⁵⁵ Rahman (n 46).

Generally, the killing of wildlife for any other reasons than food is always prohibited, as is the caging of birds, sports hunting, and animal baiting.⁵⁶ Meat of an animal is forbidden if the animal has in any way been subjected to inhumane treatment.⁵⁷ Because animals are living creatures with feelings and connections to the larger spiritual and physical world, Muslims must consider their lives as worthwhile and cherished.⁵⁸

Some other cruel practices on factory farms are also void of ethical concerns and should be considered inevitably detestable. Animals are castrated and branded, and their horns are burned or gouged out of their skulls without any painkillers.⁵⁹ They face a hellish trip to the slaughterhouse, crammed onto trucks where they typically go without food, water, and rest for the duration of the journey, which can sometimes be days. Many animals are slaughtered while kicking and screaming, and many are dismembered while conscious.⁶⁰ Ramon Moreno, a long-time slaughterhouse worker, told *The Washington Post* that he frequently has to cut the legs off completely conscious cows. “They blink. They make noises,” he said. “The head moves, the eyes are wide and looking around. They die piece by piece.”⁶¹

IV. FOOD FRAUD AND APPLICABLE LAWS

The criminal intelligence unit of the European Food Standards Agency (FSA), the National Food Crime Unit (NFCU), defines food fraud as a dishonest act or omission, relating to the production or supply of food, which is intended for personal gain or to cause loss to another party.⁶² Food fraud is, therefore, a type of food crime. It is considered as such when the scale and possible consequences of the activity are serious because the risk is posed to public safety. Food fraud can overlap with other types of food crime, for example, substitution of beef with horsemeat leads to misrepresentation.

Food fraud is also known as economically motivated adulteration (EMA). The example of the horsemeat scandal is just the tip of the iceberg in terms of what it covers. The scandal was actually an example of substitution in that horsemeat was deceptively sold as beef. It was identified in 37% of beef burger products by the Food Safety Authority of Ireland and the UK Environment, Food and Rural Affairs Select Committee.⁶³ The discovery caused a seismic shift in consumer trust in food and beverage supply chains and the advent of increased regulatory scrutiny.

The horsemeat scandal was detected when meat from horses entered the supply chain as beef and ended up being sold in many products in the UK. Initially identified in Ireland, the scandal

⁵⁶ R. Foltz, F.M. Denny, and A. Baharuddin (eds), *Islam and Ecology: A Bestowed Trust* (The Harvard University Press 2013) 87.

⁵⁷ H. B. A. Al-Masri, *Animals in Islam* (The Athene Trust 1987) <<http://www.chai-online/islam.htm>> accessed 26 April 2020. See also Rahman (n 46).

⁵⁸ Qur'an, Surah An-Nur 24:41; Surah Ar-Rahman 55:10.

⁵⁹ R. C. Foltz, *Animals in Islamic Tradition and Muslim Cultures* (Oneworld Publications 2006) 116.

⁶⁰ *ibid.*

⁶¹ Jo Warrick, ‘They Die Piece by Piece’ *The Washington Post* (10 April 2001) <<https://www.washingtonpost.com/archive/politics/2001/04/10/they-die-piece-by-piece/f172dd3c-0383-49f8-b6d8-347e04b68da1/>> accessed 16 September 2022.

⁶² European Food Safety Authority and European Medicines Agency, ‘Joint Statement on the Presence of Residues of Phenylbutazone in Horsemeat’ (2013) 11 *European Food Safety Authority Journal* 3190-3235.

⁶³ UK Parliament, ‘Environment, Food and Rural Affairs Committee Supplementary written evidence submitted by the Food Safety Authority of Ireland’ (23 April 2013) <<https://publications.parliament.uk/pa/cm201314/cmselect/cmenvfru/141/141we09.htm>> accessed 21 November 2021.

stretched across Europe and beyond. The horsemeat scandal infiltrated numerous supply chains and led to millions of products being withdrawn. Additionally, there was a huge loss of consumer confidence in some of the biggest brands in the UK market. In December 2012, the Food Standards Agency Ireland (FSAI) tested a range of frozen foods. The tests showed unknown DNA present in the samples, and so they were tested again for bovine (cow), porcine (pig) and equine (horse) DNA. The results came back with over a third of the products containing equine DNA, and 85% of the total products containing pig DNA. The FSAI released their findings in January 2013, and the horsemeat scandal broke in the following weeks throughout the industry.⁶⁴ The horsemeat scandal taught us how susceptible to fraud and crime the food industry can be and what the extent of food fraud and food crime has previously remained undetected.⁶⁵

A. Food Fraud Laws in Europe

In today's globalized marketplace, protecting consumers from food fraud is an intercontinental task. There are multiple bodies in the UK, including the FSA and NFCU, who share information to help prevent fraudulent activity.⁶⁶

Food fraud is explicitly covered in Regulation (EC) No 178/2002 of the European Parliament and of the Council.⁶⁷ This regulation outlines the general principles and requirements of food law,⁶⁸ emphasizing the importance of food safety. Specifically, Article 8 on the protection of consumers' interest states that:

“Food law shall aim at the protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume. It shall aim at the prevention of:

- (a) fraudulent or deceptive practices;
- (b) the adulteration of food; and
- (c) any other practices which may mislead the consumer.”⁶⁹

In England, the Food Safety Act 1990 provides the framework for all food legislation in England, Wales and Scotland. The Food Safety Order 1991 provides a similar one for Northern Ireland. Under these regulations, food businesses are required to guarantee that what they sell to the public is of the quality or the substance that the consumer is led to expect. Crucially, they must also ensure that food is advertised, presented, and labelled correctly so as to not mislead customers.⁷⁰ Overtime, legislation is becoming tougher, increasing public awareness, and making it harder to get through legal loopholes. If you knowingly commit food fraud then the

⁶⁴ ‘FSAI Survey Finds Horse DNA in Some Beef Burger Products’ Food Safety Authority of Ireland (2013) <<https://www.fsai.ie/details.aspx?id=11878>> accessed 21 November 2021.

⁶⁵ European Food Safety Authority and European Medicines Agency (n 62).

⁶⁶ M. Brenig and T. Proeger, ‘Putting a price tag on security: Subjective well-being and willingness-to-pay for crime reduction in Europe’ (2018) 19 (1) *Journal of Happiness Studies* 145-166.

⁶⁷ Regulation (EC) No 178/2002 of the European Parliament and of the Council (OJ L 31, 1.2.2002) 28 January 2002.

⁶⁸ M. Gallagher and I. Thomas, ‘Food Fraud. The Deliberate Adulteration and Misdescription of Foodstuffs’ (2010) 6 *European Food and Feed Law Review* 347-353.

⁶⁹ Article 8 of the Regulation 178/2002 of 28 January 2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31/1, 2002).

⁷⁰ Home Office, Crime, Justice and Protecting the Public, (London: HMSO, 1990) para 2.8.

consequences can include prosecution, resulting in fines and potential jail time.⁷¹ The following are two recent examples of food fraud in European countries.

B. Pret a Manger, UK

Pret a Manger has been in the news due to its mislabelling of food that contained undeclared allergens.⁷² In 2017, A Pret a Manger customer Celia March tragically died after eating a flatbread contaminated with dairy yogurt despite the product being labelled as dairy-free. Pret a Manger argued that the company, CoYo, which supplied the yogurt that was then used to make the flatbread, was to blame for mislabelling their product as free from dairy.⁷³ In February 2018, it was revealed that some of the CoYo's yogurts were contaminated with dairy. However, until October 2018, CoYo continued to deny Pret a Manger's claims that they are responsible. This example demonstrates how severe the consequences of misrepresenting a food product can be and how food labelling within supply chains must be closely monitored and controlled.

The debate in this case continues over which company is actually legally responsible.⁷⁴ The incident is not the only one of its kind to make headlines in the last few years and shows just how crucial it is to carry out checks and importance to choose suppliers with a transparent supply chain who demonstrate the same commitment to preventing food fraud. Retailers and suppliers should be proactive as well as the consumers in checking products, especially for foods containing allergens.

C. Food Fraud Gangs in Cáceres, Spain

January 2022, The Guardia Civil confiscated 1,790 pieces of ham, 760 kilograms of different sausages and 4,500 kilograms of frozen meat and have arrested nine people. The raid took place in Cáceres (Spain) where the meat was processed with no sanitary controls in place, incorrect labelling and storage, and manipulation of consumption dates and traceability. The processing of the meat was made by the gang that is believed to have had direct links with companies based around the area of Cáceres. This case of food fraud gang has been referred by the Guardia Civil to the Court of First Instance and Instruction No. 1 of Plasencia (Cáceres).⁷⁵

V. HALAL MEAT SCANDALS AND FOOD LAWS IN MALAYSIA

Malaysia is a multi-religious country, but its official religion is Islam and over 60% of the population is of Muslim faith. This has had a significant impact on the food culture in the

⁷¹ John Spink, 'Safety of food beverage: risks of food adulteration' in Y. Motarjemi, G. Moy, and E. Todd, *Encyclopedia of Food Safety* (Elsevier 2014) 413-416.

⁷² Joe Whitworth, 'Two die because of reactions to undeclared allergen ingredients' *Food Safety News* (10 October 2018) <<https://www.foodsafetynews.com/2018/10/two-die-because-of-reactions-to-undeclared-allergen-ingredients/>> accessed 16 September 2022.

⁷³ Richard Partington, Sarah Butler, and Rupert Neate, 'All 12,000 Pret a Manger staff to get £1000 each as chain is sold for £1.5bn' *The Guardian* (29 May 2018) <<https://www.theguardian.com/business/2018/may/29/pret-a-manger-sold-jab-holdings-krispy-kreme-sandwich-shop#:~:text=4%20years%20old-.All%2012%20C000%20Pret%20a%20Manger%20staff%20to%20get%20%20C2%A31%20C000,sold%20for%20%20C2%A31.5bn&text=Every%20one%20of%20Pret%20a,billionaires%20for%20%20C2%A31.5bn>> accessed 30 September 2022.

⁷⁴ *ibid.*

⁷⁵ Peter McLaren-Kennedy, 'The Guardia Civil breaks food fraud gang in Cáceres' *Euro Weekly News* (22 January 2022) <<https://euroweeklynnews.com/2022/01/22/the-guardia-civil-breaks-food-fraud-gang-in-caceres/>> accessed 30 November 2022.

country as Muslims strictly abide by the dietary standard prescribed by the Quran, which means that the food they consume must be *halal*. Malaysia spearheaded the global *halal* industry by first introducing *halal* certification letters to those who meet the *halal* criteria in 1974, an effort by the Research Centre of the Islamic Affairs Division in the Prime Minister's office. In line with the Malaysian government's goal of establishing Malaysia as a halal hub, Malaysia then pioneered the establishment of a comprehensive standard for halal products and introduced the Malaysian Standard: Halal Food-Production, Preparation and Storage-General Guidelines, known as MS 1500:2004, which was later revised in 2009.⁷⁶ However, the country has faced some of the worst halal food scandals in recent past.

A. Halal Food Scandals in Malaysia

Royal Malaysian Custom (JKDM) confiscated large quantities of frozen beef in 2011 after it raided a container in North Port. The container was declared to contain a load of carrots but after further checking only found three rows of carrots and the rest containing boxes of frozen beef believed to be originated from Argentina without any *halal* certification.⁷⁷

In December 2020, a meat-fraud scandal roiled Malaysia after a local news outlet uncovered a cartel that allegedly bribed customs officials in order to smuggle in all kinds of meat and label it *halal*, triggering outrage in the Muslim-majority country. For more than 40 years, the conspirators allegedly bribed senior officers from several government agencies to import meat from non-*halal* certified slaughterhouses including China, Ukraine, Spain, South America and Canada.⁷⁸ Some of the imports included diseased kangaroo and horse meat, which were then mixed with and sold as *halal* beef.⁷⁹ The cartel's operations begin at slaughterhouses where government agency officers supervise *halal* standards. The officials would fraudulently certify dubious or low-grade meat products, according to the report. The meat then entered Malaysia via ports, often avoiding inspection, then transported to warehouses where they were mixed with *halal*-certified meat and repacked with fake *halal* logos.

Halal certification confirms that products have been prepared in accordance with Islamic law. A reliable *halal* certification process is extremely important for Muslims globally and in Malaysia, where they make up about 60% of the population. *Halal* meat is also a big business in Malaysia as the country has been trying to become a global hub for the \$2.3 trillion international *halal* market. Currently it exports about \$9 billion in *halal*-certified products including food, cosmetics and pharmaceutical products to China, Singapore, the US, Japan and elsewhere.⁸⁰ In December 2020, the Islamic Development Department of Malaysia (JAKIM) announced that it would tighten enforcement of food laws and procedures for *halal* certification

⁷⁶ Rokshana Shirin ASA, 'Malaysian Halal Certification: It's Religious Significance and Economic Value' (2017) 25 (1) Jurnal Syariah 137-156.

⁷⁷ 'Kastam Rampas Daging Beku ekor Lembu Diragui Halal (Custom Seizes Suspicious Halal Frozen Meat).' *Utusan Malaysia* (8 July 2011).

⁷⁸ 'Malaysian Cartel Allegedly sold fake halal meat to Muslims for 40 years' *Hma Canada* (n.d.) <<https://hmacanada.org/malaysian-cartel-allegedly-sold-fake-halal-meat-to-muslims-for-40-years/>> accessed 16 September 2022.

⁷⁹ Anuradha Raghu, 'Fake Halal Meat Scandal in Muslim-Majority Malaysia Fuels Anger, Cartel mixed horse, kangaroo meat with beef and sold as halal' *Bloomberg* (30 December 2020) <<https://www.bloomberg.com/news/articles/2020-12-30/fake-halal-meat-scandal-in-muslim-majority-malaysia-fuels-anger>> accessed 4 January 2022.

⁸⁰ *ibid.*

for imported goods. JAKIM was also considering to establish a Royal Commission of Inquiry, which the religious affairs minister said is the best way to investigate the issue.⁸¹

In the case of fraud by using fake *halal* logo, there are several types of frauds including the subsequent misuse of the *halal* logo upon the business acquirement of the logo, the use of expired *halal* compliance certificate, or companies that have never obtained the *halal* certificate and instead have used a forged one.⁸² Sometimes *halal* logo is used on products that contain traces of alcohol and DNA of pig in their contents, which is clearly prohibited in Islam. Many cases of occurrence in Malaysia have been reported by the mainstream media in Malaysia such as the news of fake *halal* meat uncovered in December 2020. The source from the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) reported the presence of six forged *halal* logos in the market, which resembled the JAKIM's *halal* logo.

Due to fear of a drop in sales, some of the Kopitiam Restaurant (restaurant chain in Malaysia serving traditional Malay and Chinese fare) owners have resorted to display fake *halal* logos to trick the Muslim consumers.⁸³ The fake *halal* logo is usually displayed on the door at the payment counter of the premises to convince the already increasingly cautious customers after knowing that not all Kopitiam Restaurants have applied for *halal* certification from JAKIM. Most consumers are not aware of the scam following the imitation of a *halal* logo that is similar to the *halal* logo issued by JAKIM.⁸⁴ There are still many Kopitiam Restaurants in Malaysia that refuse to apply for *halal* certification from JAKIM. JAKIM's inspection found some ingredients in the food served at the Kopitiam contained pig Deoxyribonucleic Acid (DNA).⁸⁵

B. Halal Food Regulation in Malaysia

In Malaysia, 'food' is defined in Section 2 of the Food Act 1983 to include every article manufactured, sold, or represented for use as food or drink for human consumption or which enters into or is used in the composition, preparation, and preservation, of any food or drink and includes confectionary, chewing substances and any ingredient of such food, drink, confectionery or chewing substances. In Malaysia, food adulteration receives serious attention from the Government. The offence of food adulteration is provided in the Food Act 1983, and also in the Penal Code Section 272, which provides:

"Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand ringgit, or with both."

Likewise, Section 13B(1) of Food Act 1983 prohibits any person from preparing or selling any adulterated food, which is an absolute prohibition. Food shall be deemed to be

⁸¹ *ibid.*

⁸² Mustafa 'Afifi Ab. Halim and Mohd Mahyeddin Mohd Salleh, 'Hak Pengguna Berkaitan Produk Halal (Consumer Rights Related to Halal Product)' (2011) Proceeding of the International Conference on Consumer Law 357.

⁸³ Mohd Jamilul Anbia Md Denin and Kasdi Ali, 'Perdaya Pelanggan (Cheating the Customers)' *My Metro* (2011) <<http://www.hmetro.com.my/articles/Perdayapelanggan/Article/>> accessed 12 August 2022.

⁸⁴ *ibid.*

⁸⁵ M. J. A. Md Denin and K. Ali, 'Kopitiam tak peduli' *My Metro* (2011) <<http://www.hmetro.com.my/articles/Kopitiamtakpeduli/Article/>> accessed 12 August 2022.

adulterated if:⁸⁶

- a it contains or is mixed or diluted with any substance which diminishes in any manner its nutritive or other beneficial properties as compared with such food in a pure, normal or specified state and in an undeteriorated and sound condition, or which in any other manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer;⁸⁷
- b any substance or ingredient has been extracted, wholly or in part, or omitted, from the food and by reason of such extraction or omission, and nutritive or other beneficial properties of the food are less than those of the food in its specified state, or the food operates or may operate to the prejudice or disadvantage of the purchaser or consumer;⁸⁸
- c it contains or is mixed or diluted with any substance of lower commercial value than such food in a pure, normal or specified state and in an undeteriorated and sound condition;⁸⁹
- d it contains any substance the addition of which is not permitted by this Act or any regulations made under this Act;⁹⁰
- e it does not comply with the standard or specification prescribed by any regulations made under this Act;⁹¹
- f it contains a greater proportion of any substance than is permitted by this Act or any regulations made under this Act;
- g it is mixed, coloured, powdered, coated, stained, prepared or otherwise treated in a manner whereby damage or inferiority may be concealed; or
- h it is in a package, and the contents of the package as originally packaged have been removed in whole or in part and other contents have been placed in the package.

Based on the provisions in paragraphs (a) to (h), food adulteration does not only cover the act of mixing the food with unsafe substances or prohibited substances, but also covers the act of mixing the food with permitted substances in greater proportions than is permitted by the Food Act 1983 or Food Regulations 1985.⁹²

The power of enforcement in relation to the *halal* certification in Malaysia vests in JAKIM and the State Islamic Religious Department (JAIN) or State Islamic Council (MAIN). In an attempt to standardize *halal* certification, JAKIM has been appointed as the sole and official issuer of *halal* certification.⁹³ JAKIM has published the Manual Procedure of Halal Certification Malaysia (hereafter 'Manual') as supplemented by other relevant guidelines. JAKIM has the authority to issue *halal* certification for both national and international markets.⁹⁴ In order to use JAKIM's *halal* logo (also known as the Malaysian Halal Logo), the business must first

⁸⁶ Food Act 1983, Section 13B(2).

⁸⁷ An example of this adulteration is adding water to fresh milk or to soya sauce.

⁸⁸ One example that can be given is when coconut milk has been extracted from fresh coconut and the latter is sold as fresh coconut.

⁸⁹ This can happen when rice is mixed with stone or sand.

⁹⁰ Ice-cream containing colours not permitted by Food Regulations is an example of this adulteration.

⁹¹ The Food Regulations 1985 have prescribed compositional standards for food. If these standards have not been complied with, the food can be considered as adulterated food.

⁹² Basyir (n 7).

⁹³ Adha Ab Hamid et al, 'Challenges and Ways Improving Malaysia Halal Food Industry' (2017) 29 (2) Science International Lahore 149-153.

⁹⁴ *ibid* 138.

obtain *halal* certification from JAKIM. The logo has been well recognised and trusted by not only Malaysians but also Muslims worldwide.⁹⁵ Because of the JAKIM's stringent requirements in this regard, *halal* certification remains widely sought after in Malaysia given its status as a mark of trust for Muslims in Malaysia. The Malaysian *halal* standard is also adopted by multinational companies, including Nestle, Ajinomoto and Unilever.

JAKIM conducts inspections upon receiving the applicant's application for *halal* certification to ensure that the applicant has fulfilled all the required criteria. Further, JAKIM may continuously monitor the activities of the applicant and reserve the right to withdraw its *halal* certification.⁹⁶ Legal authority has been given to JAKIM to not only issue *halal* certification but also take action in the event of the abuse of the *halal* certificate or logo.⁹⁷ In this regards, the Trade Descriptions Act 2011 (TDA 2011) was passed to replace its 1972 predecessor and was aimed at promoting good trade practices by prohibiting false trade descriptions or misleading statements.

The TDA 2011 promotes better trade practices, protecting the consumers' interests.⁹⁸ It introduced the Trade Description (Definition of Halal) Order 2011,⁹⁹ and the Trade Description (Certification and Marking of Halal) Order 2011,¹⁰⁰ giving legal effect to matters of *halal*.¹⁰¹ These requirements cover food and goods, as well as those processes used for storing, transporting, and processing the raw materials, and the retailing and serving to consumers of such foods and goods. Thus, if described as *halal*, all those services relating to *halal* foods and goods must also be in accordance with the *hukum syarak* (Sharia Laws).¹⁰² Belsen defined a certification mark as follows:

“A certification mark is a mark, which indicates that certain characteristics of goods or services, in connection with which the mark is used, are certified Thus a certification mark is a guarantee that goods or services, in connection with which the mark is used, conform to certain standards”¹⁰³

Thus, a violation of a certification mark may be litigated in the tort of passing-off.¹⁰⁴ The TDA 2011 empowers the Domestic Trade, Cooperatives and Consumerism Minister to define expressions or descriptions in connection with goods or services, and to appoint bodies to designate certification marks incorporating these descriptions and expressions.¹⁰⁵ The TDA 2011 standardized *halal* certificates,¹⁰⁶ through the Trade Description (Marking of Halal) Order 2011.¹⁰⁷

⁹⁵ Ismail Abd Latif et al, 'A Comparative Analysis of Global Halal Certification Requirements' (2014) 20 (1) Journal of Food Products Marketing 85-101.

⁹⁶ *ibid* 138-39.

⁹⁷ Che Rosmawati Che Mohd Zaina et al, 'Jurisdiction and Prosecution of Halal Matters in Malaysia: Challenges and Prospect' (2015) 172 Procedia-Social and Behavioral Science 294-300.

⁹⁸ Trade Description Act 2011 (ACT 730), part II.

⁹⁹ Trade Description (Definition of Halal) Order 2011.

¹⁰⁰ Trade Description (Certification and Marking of Halal) Order 2011.

¹⁰¹ Z. Zakaria & S. Z. Ismail, 'The Trade Description Act 2011: Regulating "Halal" in Malaysia' International Conference on Law, Management and Humanities, Bangkok (2014) 9.

¹⁰² *ibid*.

¹⁰³ J. Belson, *Certification Marks* (Sweet & Maxwell 2002) 1.

¹⁰⁴ *ibid*.

¹⁰⁵ Trade Description Act 2011 (ACT 730) part I, section 2.

¹⁰⁶ *ibid*, part III.

¹⁰⁷ Trade Description (Marking of Halal) Order 2011.

VI. FOOD FRAUD AND CONSUMER RIGHTS

The former US President John F. Kennedy voiced the recognition of consumer's right in his 'The Consumer Bill of Rights',¹⁰⁸ which was introduced to the US Congress on 15 March 1962.¹⁰⁹ The Bill declares four basic rights of consumers, namely: 1) the right to safety; 2) the right to be informed; 3) the right to choose; and 4) the right to be heard.¹¹⁰ Subsequently, the International Organization of Consumers Union (IOCU) has developed other rights of consumers including the right to environmental health, the right to redress or remedy, the right to consumer education and the right to be represented.¹¹¹

Every consumer has the right to get safe food for their consumption. Food is one of the basic needs and is essential to consumers. Therefore, it is important to ensure that only safe food is supplied to consumers. In 1992, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) recognised that access to safe and adequate food in terms of nutritional values is the right of each individual.¹¹² In relation to this, comprehensive legal provisions are needed to protect consumers from risks associated with food because there is a proven relationship between food intake and illness, where food that is unsafe for consumption will pose a health risk to consumers.¹¹³

On 10 April 1985, consumer protection guidelines were approved by the United Nations (UN) and it was adopted unanimously by the UN members including Malaysia.¹¹⁴ The UN guidelines are based on the proposal submitted by the Economic and Social Council, which is one of the administrative machinery of the UN.¹¹⁵ Although the UN guidelines are not binding, they provide a framework to be used by the UN member states for the implementation of consumer protection.

A. Consumer Protection in Malaysian Law

Most countries in the world have their own consumer legislation to ensure that food supplied to consumers is safe. Similarly, Association of Southeast Asian Nations (ASEAN) countries also have legislation in relation to food. The consumer protection laws are in addition to the food related laws. In the consumer protection regime, three types of legal instruments are normally used in the fields of criminal law, civil law and administrative law. The criminal law instrument requires the state's involvement in enforcing the law. In consumer protection, the state's involvement can be seen when there is a market failure to protect consumers. The government will intervene by enacting relevant laws to balance the rights of traders and the rights of the consumers. This criminal law instrument is used in all food legislation of ASEAN

¹⁰⁸ 108 CONG. REC. 4167, 4263 (1962) (message from President Kennedy to Congress concerning strength of programs to protect consumer interests) <<https://www.presidency.ucsb.edu/documents/special-message-the-congress-protecting-the-consumer-interest>> accessed 25 Feb 2023.

¹⁰⁹ M. H. H. Adnan, *Hak anda sebagai Pengguna* (in Malay) [*Your rights as a consumer*] (Fajar Bakti Sdn Bhd 1990) 67-69.

¹¹⁰ 'United Nations guidelines for consumer protection (as expanded in 1999)' European Consumer Centres (n.d.) <<http://europa.eu.int.com>> accessed 15 November 2021.

¹¹¹ Adnan (n 109).

¹¹² Rahmah Ismail, 'Food and Consumer Protection: A study on food legislation of selected countries' (2011) 17 Asian Law Institute 1.

¹¹³ Geraint Howells and Stephen Weatherill, *Consumer Protection Law* (Dartmouth Publishing Company Limited 1995) 400.

¹¹⁴ Adnan (n 109).

¹¹⁵ United Nations guidelines for consumer protection (n 110).

countries except for Indonesia. The ASEAN Consumer Protection Laws and Regulations¹¹⁶ allow consumers whose health has been affected as a result of consuming unsafe food to claim damages from the food producer.

In Malaysia, there are six pieces of legislation that deal with food. These are the Food Act 1983, Food Regulations 1985, Food (Extensions of the Food Act 1983 to Tobacco and others) Regulations 1993, Control of Tobacco Product Regulations 2004, Food (Issuance of Health Certificate for Export of Fish and Fish Product to the European Union) Regulations 2009, and Food Hygiene Regulations 2009. The objective of the Food Act 1983 is to protect the consumers against health hazards and fraud in the preparation, sale, and use of food. The rights of consumer are defined as follows:¹¹⁷

1. Protect consumers from any danger to their health and safety.
2. Promote and protect the interest of consumers.
3. User access to an adequate description to enable them to make informed choices according to individual needs and desires.
4. Consumer's education.
5. Provide effective consumer demand.
6. Freedom to form groups or consumer organizations and opportunity to express opinions in the decision-making process in order to preserve their interests.

Malaysia has outlined the rights that should be available to the consumer including the right to safety, right to information, right to choice, freedom of expression, the right to compensation damages, the right to education, the right to a healthy environment.¹¹⁸

In debating the rights of consumers in *halal* products, two main rights, namely: 1) the right to information; and 2) the right to compensation if deceitful happened in cases that involve *halal* products. The right to information is perhaps more important because the information often presented to the consumer in *halal* matters is questionable. Truthful labelling is extremely important for the consumers because it can be used as guideline in making decisions before buying the products. All depends on the true and accurate information that is labelled in an understandable manner. A number of laws are available in Malaysia to regulate labelling of products such as the Trade Description Act 2011, the Foods Act 1983, the Foods Regulation 1985, and the Price Control (Labelling by Manufacturers, Importers and Wholesalers) Act 1980. Additionally, there are also implied terms in the Sale of Goods Act 1957, which apply if there are no express terms between seller and buyer. The implied terms can be applied in counterfeiting of the *halal* label or *halal* abuse. If the seller fails to provide the same items as described, the buyer has the right to reject the goods (Section 12, Sale of Goods Act, 1957). On the issue of abuse of the *halal* label, the buyer has the right to make a claim for compensation if the seller is found by the authorities to have abused the *halal* label.

However, despite all these comprehensive laws, issues related to *halal* food fraud including false labelling and fraudulent practices in *halal* food persist.¹¹⁹ In the present of such

¹¹⁶ ASEAN Consumer Protection Laws and Regulations, the ASEAN Committee on Consumer Protection launched the 2nd edition of the Handbook on ASEAN Consumer Protection Laws and Regulations in 2021.

¹¹⁷Adnan (n 109).

¹¹⁸ Nor Akhmal Hasmin¹, Najwa Azizun, and Siti Marina Amit, 'Right to Food Information and Food Choice from the Perspective of Fundamental Liberties' (2022) 6 (2) ESTEEM Journal of Social Sciences and Humanities 56-70,

¹¹⁹ M. A. Halim and M. M. Mohd Salleh, 'Peranan Jakim Dan Jain Dalam Kes Yang Melibatkan Penyalahgunaan Label Halal Pada Produk Makanan' (2018) 7 Malaysian Journal of Syariah and Law 51-60.

comprehensive laws to curb food fraud, repeated incidents of food fraud mean that authorities have not been able to implement these laws effectively.

VII. CONCLUSION

The government and its authorities are responsible to protect consumers from any form of cheating and misappropriation of *halal* products. Therefore, it is imperative for the government to ensure that the present laws are fully enforced and if there are ambiguities in those laws, review and amendments must be made. This would ensure a set of laws that is efficient and effective for the optimization of consumer's protection to its utmost level. As the cases of food fraud keep on coming, the existing lack of accountability of government authorities does not help in the war against food fraud. Because of loopholes in the implementation of food safety and consumer protection law, the criminals have been able to get away with food crimes successfully. The horsemeat scandal is an example of how criminals, though illegal means including corruption of government authorities, can infiltrate supply chains of legitimate businesses without their knowledge causing huge impact both across the industry and down to individual consumers.

European and international rules regarding animal welfare are very similar to Islamic prescriptions on *halal*. So it can be said that the Islamic perspective of food is not far away from the European perceptions. The Islamic law, once vehemently against stunning, has now found ways to accommodate reversible stunning in its *halal* certification process, provided the animal is both alive and not sick when it reaches the foreign destination. Despite the accommodation of this innovation by some Muslim scholars, *zabih halal* remains a sensitive and serious matter to Muslim consumers. There is a need to develop awareness in Muslim consumers about the *zabih halal* through the stunning process.

Regarding the perception of consumers about marketing and sale of *halal* food, analysis in this article indicates a significant association between socio-demographic profiles of consumers and their awareness of *halal* food fraud. In other words, the analysis suggests that consumers' knowledge and awareness of *halal* food fraud influence their perception of *halal* food in their social-demographic settings. Thus, understanding consumers' awareness of *halal* food fraud is crucial for Islamic authorities in improving services geared towards educating consumers.

Increased knowledge and awareness among Muslim consumers on issues pertaining to *halal* food fraud products is likely to reduce the possibility of consuming fraudulent products. This is only possible if the recognized Islamic authorities improve services relating to consumer education, while the government enforces law and penalties to irresponsible industry players. This will ensure that consumers are alert to *halal* food fraud when choosing and buying food products. The *halal* meat produced not only fulfil the demands of Muslim consumers but also non-Muslim consumers due to the stringent standard in hygiene and sanitation. Therefore, by implementing a reliable *halal* food system, the industry players will be able to obtain the *halal* certification that has been considered as the precondition in entering the global *halal* market.

The sensitivity of the consumers regarding the quality of *halal* food is not restricted to Muslims alone as non-Muslim consumers have also accepted the *halal* products increasingly. The finding of this research shows that the rights of the consumer have been provided impliedly in legal statutes and also in the Islamic law. This paper made some suggestions to ensure the rights of the consumer will be fully protected by laws specifically in relation to *halal* products. The consumption of goods in Islamic law is permissible unless prohibited by Islamic law. To ensure

a safe food supply to the consumers, needed the effective enforcement of the legislation. If legislation is enforced effectively, the problems of unsafe food which still exist can be overcome, and consumer safety can be guaranteed.