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Effectiveness of Trade Description Act 2011 in Eradicating Halal Fraud

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Abstract

Objectively, this article highlights the factor of violating the Trade Description Act 2011 and assessing the efficacy of the Trade Description Act 2011 in eradicating halal fraud issues with significant solutions. Next this article combines qualitative research and in-depth interviews with JAIS and KPDNHEP personnel. Hence, the research suggested that the Trade Description Act 2011 needs to be improved in some respects. It is hoped that the study can be contributed to the improvement of the Trade Description Act 2011 and the development of halal law in Malaysia.

Keywords: Effectiveness, TDA 2011, Halal Fraud, Food

Introduction

Allah SWT made it necessary for every Muslim to eat high-quality halal food that has the right amount of minerals and vitamins. These two things, which are both halal and of the best quality, will not only keep your body healthy and your mind sharp, but they will also act as a push to improve your taqwa (reverence) for Allah. From an Islamic point of view, the word "halal" is enough to show that a product is legal, safe, and of good quality. But because technology has improved, there are now a lot of new ingredients that can be made the old way or in a lab. This has made Muslim consumers wonder if the ingredient is 100% halal or if it has been mixed with ingredients that aren't halal. Malaysia has been putting in place halal certification, which is now run by the Department of Islamic Development, to ease Muslim concerns about the halal status of their food (JAKIM).

Recently, halal has attracted the attention of several industry leaders in Malaysia and beyond. The growth of the halal market has had a significant impact on industry players, who now use halal certification to entice consumers to purchase or utilize their products. This phenomenon must be regulated by the authority to guarantee that the label halal is not used inappropriately. Even though specific acts governing halal have not yet been drafted, there are supporting acts that can support the adoption and enforcement of halal,

including the Trade Description Act 2011, the Food Act 1983, the Animal Act 1953 (updated in 2006), and related Malaysian Standards.

In addition, from a worldwide standpoint, the halal industry is a market that has not yet been thoroughly explored and has a great deal of future potential. This is supported by the increasing number of Muslim communities throughout the world. However, there are national and international concerns regarding the Halal sector, particularly with the misuse of the halal emblem and other crimes involving the halal mark (Mustafa et al., 2014). Despite the positive rise of the halal industry, the Muslim population in this country still faces issues such as halal certificate forgery, non-Islamic food processing issues, ambiguous food content, and unsanitary conditions. The Trade Description Act of 2011 (TDA 2011) is being drafted to address the issues. However, difficulties persist, such as the fact that the act does not fear industry players. Therefore, we will determine whether the TDA 2011 is efficient or effective enough to eliminate halal fraud issues in this study.

To maintain halal authenticity, the authority body must take part and provide initiative on how to handle the problems. The government has taken initiative by creating the Trade Description Act 1972. The Malaysian government released two regulations under this Act, i.e. the Trade Description (Use of Word Halal) Order 1975 and the Trade Description (Making of Food) Order 1975, due to the strong demands of consumers. Nonetheless, there were some problems with the 1972 Act which did not control the halal issues effectively. At that time, only in terms of food, the halal meaning was limited. Other issues were the lack of a specific provision of jurisdictional exercise, who was assigned to handle halal matters, and which authority was required to issue the halal certificate. Then, the 1975 Trade Descriptions (Use of Expression Halal) Order allowed some individuals and private firms to issue halal certificates and halal logos.

The Malaysian lawmakers revised the TDA in 2011 after 39 years of this Act and it was implemented on 1 November of the same year. In addition to the by-laws, namely Trade Description (Use of Expression Halal) Order 1975 and Trade Description (Halal Labeling) Order 1975, the Trade Description (Definition of Halal) Order 2011, Trade Description (Certification and Marking of Halal) Order 2011 and Trade Description (Certification and Marking of Halal Fees) Regulations were also restructured and introduced (Rahman et al, 2018).

Therefore, this 2011 TDA aims to incorporate certain provisions and fix the loopholes in trade and halal laws (Rokhsana, 2018). Trade Descriptions (Certification and Marking of 'Halal') Order 2011 describes halal certification and authorizes JAKIM and the State Islamic Religious Council to create a standardized halal logo for Malaysian food and goods. Nevertheless, the above order considers JAKIM and the State Islamic Religious Council to be an element of authority, but general practice indicates that neither JAKIM nor the State Islamic Religious Council is a party to the violation of those laws and orders. Moreover, legislation and regulations do not place a requirement to use the halal label for all food and goods. Consequently, the right of Muslim consumers to receive halal food is not strictly guaranteed today (Rokhsana, 2018). Therefore, this study will discuss the effectiveness of the Trade Descriptions Act 2011 in solving the issues regarding Halal fraud and finding the alternative to cater to this problem.

The Trade Description Act

Trade Description Act 1972

The Trade Description Act (TDA) came into force on 3 November 1972. TDA 1972 aims at preventing the misdescription of food and goods, suggesting the price of goods in the course of trade and business, and prohibiting the production of misleading or misrepresentative claims of any services or goods (Rokshana, 2018). The key rules on halal food and description act (Zalina et al., 2014). Due to the strong demands from consumers, the Malaysian government enacted two regulations under this Act, i.e. the Trade Description (Use of Expression Halal) Order 1975 and the Trade Description (Making of Food) Order 1975. TDA 1972 can be considered the primary legislation to regulate the production of Halal foods. The Ministry that has been mandated to govern the TDA is the Domestic Trade, Cooperatives and Consumerism Ministry which was formerly known as the Ministry of Domestic and Consumer Affairs. The Act requires Halal food goods orders to be enforced by the Minister of Domestic Trade, Cooperatives, and Consumerism (Rahman et al., 2018).

At that time, halal's interpretation was:

Table 1

The Trade Description (Making of Food) Order 1975

Article	Description of Act
Halal's Interpretation	<p>“When any food in any form used about trade or business as or as part of, trade description applied to the food, the expression “Halal”, “Di-tanggung Halal” or “Makanan Islam” or any other expression indicating or likely to be understood as indicating that Muslims are permitted by their religion to consume such food such expression shall have the following meaning:</p> <p>(d) has not in the course of preparation, processing, or storage been in contact with or proximity to any food that fails to satisfy paragraphs</p>
Article 3	<p>a) neither is nor consist of or contains any part or matter of an animal that is prohibited by Hukum Syarak for a Muslim. b) does not contain anything impure to Hukum Syarak; c) does not intoxicate according to Hukum Syarak; d) does not contain any part of a human being or its yield which are not allowed by Hukum Syarak; e) is not poisonous or hazardous to health; f) has not been prepared, processed or manufactured using any instrument that is contaminated with impure according to Hukum Syarak; and g) has not in the course of preparing, processing or storing been in contact with, mixed, or close to any food that fails to satisfy paragraph (a) and (b).</p>
Article 4	<p>states that only JAKIM and MAIN are designated as competent authorities in the respective States to certify that any food, goods, or services relating to food or goods are Halal following the Trade Descriptions (Definition of Halal) Order 2011 (Rahman et al, 2018). No food, goods, or services shall be granted halal certification unless it is certified as halal by the above-mentioned authorities.</p>

Source: The Trade Description Act (Making of Food) Order 1975.

Nevertheless, there were some issues with the 1972 Act that did not regulate halal issues effectively. The main issue is the lack of a comprehensive halal definition (Rokshana, 2018).

At that time, only in terms of food, the halal meaning was limited. However, given Malaysia's status as one of the halal hub's front runners, this does not mean that the country is free from the problem of halal logo misuse and fake halal marking (Zalina et al., 2014). It was difficult to implement the Act and these regulations, especially in the implementation of Halal-related offenses since there was no reference in the order of the name of any particular authority allowed to issue halal certificates and halal logos (Rokshana, 2018).

Furthermore, the Trade Descriptions (use of "halal") order 1975 allows individuals or private firms to issue their certificate and halal logo. This was because the order did not mention the names of Jakim or the state Islamic religious department (JAIN)/MAIN as the qualified agencies approved to issue a halal certificate and logo (Kamilah & Mustafa, 2012). However, in the region, Jakim was always responsible for conducting halal audits and halal monitoring. The consequence of such situations was that Jakim could only take action when the officers of the ministry were present when the implementation was carried out, even though it was JAKIM who conducted everything on halal (Zalina & Siti, 2014). In addition, in the case of any allegation about the misuse of a halal certificate or halal logo, JAKIM must first inform the ministry to take action before implementation as JAKIM does not have the power to do so. However, with the enactment of the Trade Descriptions Act 2011 (TDA 2011), the loopholes under the TDA 1972 were resolved.

The Concept of Fraud in the Halal Industry

Increasingly, halal certificates are necessary for retail and wholesale market access for nearly every type of food. A halal product is frequently indistinguishable from its non-halal equivalent, making it impossible for buyers to check the halal status claims of food vendors. According to the Cambridge dictionary, fraud can be described as the crime of obtaining money by fooling others or as something that is not what it appears to be and is intentionally used to deceive others, especially in order to obtain money.

According to Spink and Moyer (2011), food fraud involves the intentional substitution, addition, abuse, or misrepresentation of food, food ingredients, or even food packaging, as well as fraudulent product labelling claims intended to maximize revenues and minimize losses. On the other hand, Jaswir et al (2016) defined food fraud or adulteration of food items as the substitution of expensive and high-cost ingredients with readily available low-quality and low-cost ingredients. According to Elliot (2018), food fraud is any action by firms or individuals that misrepresents food, food ingredients, or food packaging for monetary advantage. Therefore, it can be recognized that food fraud is the deception of consumers through the use of food items, ingredients, and packaging for financial advantage, and includes substitutions, unapproved changes, misbranding, counterfeiting, stolen goods, and others (Abdul Jabbar, 2012).

According to Siti Sara et al (2013), Islamic law writings use the terms fraud (*tadlis*), accident or misrepresentation (*ghabn*), extreme misrepresentation (*ghabn fahish*), deception (*al-khida'*), and trickery (*taghrir*) interchangeably. *Taghrir* is defined as the act of fooling people by employing fraudulent means in the shape of actions or words, thereby encouraging the other to transact where he would not have otherwise. In other words, *taghrir* can refer to either dishonest conduct or remarks (Sara et al., 2013). According to Islamic law, fraud is a grave moral error (Mohamed Azam et al, 2010), as stated in the Quran: "*Woe to those who engage in deception, those who, when they must receive by measure from men, exact full measure, but when they must give by measure or weight to men, give less than due. Do they*

not believe that they will be held accountable on a Mighty Day, a Day in which (all of) humanity shall stand before the Lord of the Universe?"

Consequently, Islam condemns those who are further harmed by dishonesty. There are dishonest persons among them when the measurement is provided. Since their understanding of *gharar* is restricted to the level of danger or uncertainty, many Muslim scholars consider the contract to be valid if it contains minimal *gharar* (Nehad & Khanfar, 2016). In conclusion, *gharar* in Islam refers to any exchange of conceivable objects whose presence or identification is questionable due to a lack of information and awareness of the contract's end or its essence and character (Uddin & Akhter, 2015). There are two sorts of *gharar*: *Gharar fahish* (extreme ambiguity) and *gharar yasir* (light ambiguity). According to the Al-Hadith, there are numerous examples of *gharar fahish* in contracts, and it is typically related with the reasons why *gharar* sales are prohibited. On the other hand, the ambiguity that is always present in all contracts and conducts is *gharar yasir*, which meaning small or insignificant, therefore its presence is accepted (Nehad & Khanfar, 2015).

Methodology of The Study

The author takes a qualitative approach in this work by conducting an in-depth interview with a law enforcement official from JAIS and KPDNHEP. The reported case of halal fraud and the efficacy of TDA in eradicating halal fraud issues form the empirical basis of this study. To achieve its goals, this qualitative study reflects on the process of content analysis based on the Quranic approach and the TDA document, as well as other associated resources such as journal papers and law reports.

Result and Discussion

“What is the factor leading to misconducting of Trade Description Act 2011?”

Based on the data collected, there are some factors of misconducting the TDA 2011.

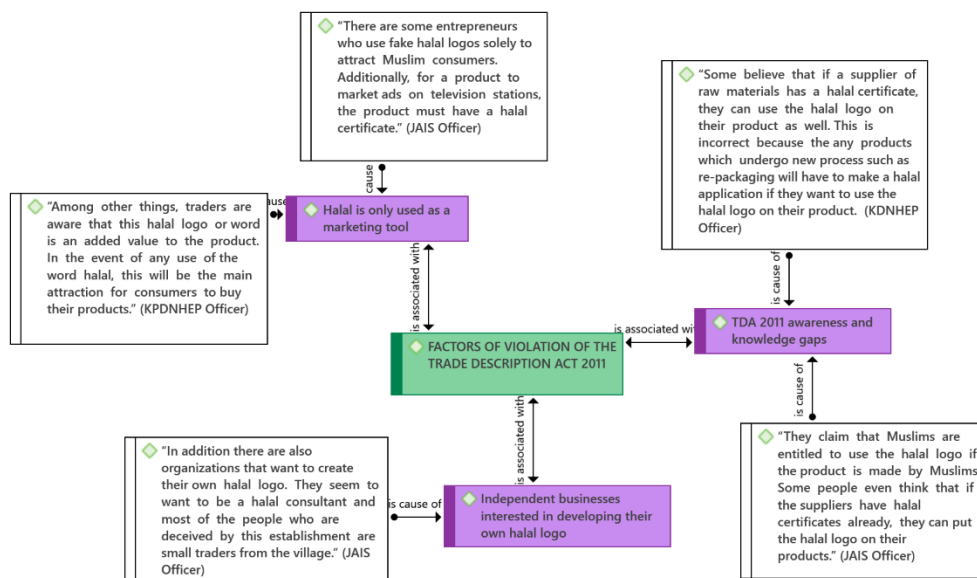


Figure 1: Factors of misconducting Trade Description Act 2011
 Source: (Researcher, 2019)

First, the entrepreneurs' lack of awareness and understanding of halal law, particularly the Trade Description Act of 2011. Some entrepreneurs, particularly those who reside in rural

areas, have limited understanding of halal law. Respondents stated:

“Some believe that if a supplier of raw materials has a halal certificate, they can use the halal logo on their product as well. This is incorrect because any products which undergo a new process such as re-packaging will have to make a halal application if they want to use the halal logo on their product. (KDNHEP Officer)

“They claim that Muslims are entitled to use the halal logo if the product is made by Muslims. Some people even think that if the suppliers have halal certificates already, they can put the halal logo on their products.” (JAIS Officer)

The second point is that entrepreneurs viewed halal merely as an added value and marketing tool for their products. Many businessmen use the halal emblem as part of their marketing strategy, thus they do not believe that halal credibility must be maintained. Therefore, some businessmen employ a phoney halal emblem or phrases like "shariah-compliant" to trick consumers into believing that their items have real halal certification.

“Among other things, traders are aware that this halal logo or word is an added value to the product. In the event of any use of the word halal, this will be the main attraction for consumers to buy their products.” (KPDNHEP Officer)

“There are some entrepreneurs who use fake halal logos solely to attract Muslim consumers. Additionally, for a product to market ads on television stations, the product must have a halal certificate.” (JAIS Officer)

Thirdly, independent businesses are interested in designing their own halal logo. In 2010, before to the 2011 TDA revision, JAIS ordered six companies to cease issuing halal certificates. Bahtera Lagenda Sdn Bhd, Islamic Food and Research Council, SAS-H Consultancy, Perak Religious Officer Association, Halal Food Council S.E.A, and IFANCA International were the six companies involved. Despite the 2011 introduction of TDA, the problem of false halal logos persists, indicating that certain irresponsible companies continue to offer such services. This is evident from the respondents' responses:

“In addition, there are also organizations that want to create their halal logo. They seem to want to be a halal consultant and most of the people who are deceived by this establishment are small traders from the village.” (JAIS Officer)

“There are about 30 halal-related cases that have been recorded since 2011 until today” (KPDNHEP Officer) “Meanwhile, there are 30 investigation papers regarding halal fraud that have been made from 2011-2019” (JAIS Officer)

As there are many industrial sites in Selangor, there are numerous instances of halal abuse. Cases that have occurred in Selangor serve as examples for other states. Selangor has the most halal-related incidents compared to other states. JAIS received 595 fraudulent halal food complaints in 2019.

“Among these cases were the mixing of raw materials between halal and non-halal (40 cases), slaughterhouse (80 cases), use of expired halal logo/use of the fake halal logo (63), halal debate (21 cases), confirmation of certificate status Malaysian halal certification (40 cases), Ramadhan buffet (17 cases), displaying Quranic verses at

premises (311 cases) and displaying other companies' halal certificates (23 cases)."
(JAIS Officer)

"Examples include the use of the word 'Bismillah' at Mamak stall even though the owner is not a Muslim. This will make Muslim users confused. Nevertheless, if the stall or premise is checked in the SSM, and its owner is Muslim, then the use of the word Bismillah" or hanging the Quranic verse are allowed to be used on the premises."
(KPDNHEP Officer)

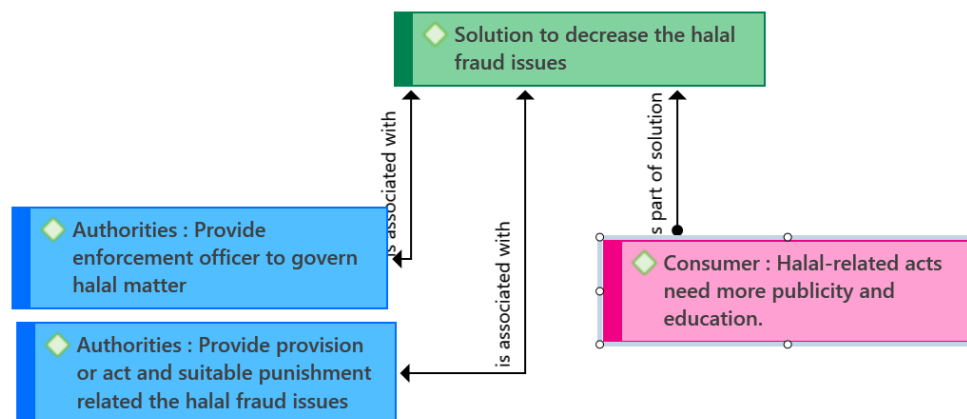


Figure 2: Solution to decrease the Halal fraud issues

Based on the findings, the researcher determined that the Trade Description Act of 2011 is ineffective in combating halal fraud and that some modifications are required. Respondents explained in their interviews why the Trade Description Act should be revised and reevaluated. During the interview, participants were questioned how the adoption of the Trade Description Act (TDA 2011) overcame the factor of Halal logo misconduct. Respondents stated:

"Among these are the enforcement powers of JAKIM and JAIS. KPDNHEP made the devolution in which they appointed JAIS and JAKIM as Assistant Trade Officers of 2011." (JAIS Officer)

Competent authorities are designated in section 3 of the Trade Description (Certifications and Marking of Halal) Order 2011 as JAKIM and MAIN. JAKIM and MAIN officials are permitted to investigate claims, conduct investigations, publish investigative documents, seize and implement TDA 2011 legislation provisions, and publish investigative records. JAIS agents have the authority to seize products suspected of involvement in halal fraud. Under this law, however, cases do not accumulate, but instead depend on the type of case. In the meantime, per a KPDNHEP officer:

"There are 2 halal orders and 1 regulation under the Trade Descriptions Act 2011 namely Trade Description (Definition of Halal) Order 2011, Trade Description (Certification and Marking of Halal) Order 2011, Trade (Regulatory Fee and Halal Fees) Regulations 2011" (KPDNHEP Officer)

According to the officer, if the halal logo is misappropriated, the case may be pursued in accordance with Order 8 of the Trade Description (Certification and Marking of Halal) Order

2011. Any person claiming to be the provider of any goods or services related to such food or goods is able to violate this order. If convicted, the maximum penalties is RM 200,000 for a corporation and RM 100,000 for a person, or a maximum 3-year prison sentence, or both. Respondents were also questioned about potential solutions to halal fraud problems. The respondent stated, based on the interview, that consumers and merchants must be aware of the halal law in Malaysia and acquire additional halal-related knowledge. Additionally, the respondent thinks that Malaysia requires a particular halal act to govern the halal issue.

“Consumers and traders need to be aware of the concept of halal.” (KPDNHEP Officer)
“A halal act needs to be enforced. But it's hard to implement because the halal act must be regulated by a particular minister. It is difficult to create a new halal ministry since halal is closely related to Islam.” (JAIS Officer)

Consequently, based on the findings of the interview, it can be concluded that the halal fraud issues can be resolved by having an authority that can govern and handle the halal fraud problem, having the appropriate provisions or acts and appropriate punishments related to the halal fraud issues, and by increasing consumer and trader exposure and knowledge about halal-related acts.

To determine the efficacy of the Trade Description Act 2011, respondents were asked, "Based on your expertise, is the Trade Description Act (TDA 2011) sufficient to control and eliminate Halal fraud in Malaysia?" The following conclusions can be drawn from the interviews:

“Until this date, this Act has been adequate to control the issue of halal fraud in the country, but if an ongoing need occurs, management will submit a proposal to amend the Act to ensure that the legislation remains relevant to current trends.” (KPDNHEP Officer)
“TDA 2011 is not enough to cater to all halal fraud issues and improvements need to be made.” (JAIS Officer)

Based on the aforementioned interview, the researcher discovered that both respondents hold differing opinions regarding the question "based on your expertise, is the Trade Description Act (TDA, 2011) sufficient to regulate and remove the Halal fraud issues in Malaysia?" The respondent from KPDNHEP argued that the Act has been sufficient to address the issue of halal fraud in the country, however the respondent from JAIS disagreed. Nevertheless, based on the findings of the interview, the researcher determined that both respondents concurred that the Act need additional evaluation and development. To buttress the finding, the respondent was questioned "should the Trade Description Act 2011 be modified, and should the government impose stronger penalties or rules on halal matters?" According to the KPDNHEP respondent:

“For your information, penalties for halal offenses are among the highest under this law.” (KPDNHEP Officer)

The respondent argued that this Act's penalties are the most severe for halal-related offences, thus there is no need for the government to increase them. Infractions of the Trade Descriptions (Definition of Halal) Order 2011 are punishable by fines not exceeding RM 5,000,000.00 for corporations and RM 1,000,000.00 for individuals, or prison terms not exceeding 3 years, or both. For Trade Descriptions (Certification and Marking of Halal) Order 2011, a conviction for a fine not to exceed RM 200,000.00 for the corporation and RM 100,000.00 for individuals, or imprisonment for not more than 3 years, or both. In the meanwhile, respondents from JAIS stated:

“My answer will be yes. There are many improvements that can be made to the TDA 2011.” (JAIS Officer)

The researcher concludes that several improvements can be made to the Trade Description Act 2011:

- a. Appoint more enforcement officers at each MAIN/JAIN.

The TDA 2011 falls under the KPDNHEP, where there are many more non-halal-related infractions; hence, the KPDNHEP relies heavily on JAKIM and JAIS for enforcement. On the other hand, certain State Islamic Religious Councils (MAIN) disregard their responsibilities since their department lacks enforcement officers. Since JAIS had difficulty handling all accusations related halal fraud, this issue must be resolved. This is evident from the respondent's responses:

“The TDA 2011 is placed under the KPDNHEP wherein there are many more non-halal related acts so KPDNHEP is very dependent on JAKIM and JAIS in terms of implementation. At the same time, the number of enforcement officers is still not enough to cater to all cases.” (JAIS Officer)

- b. Revise the Trade Description Act 2011 on the Foreign Halal Certification Bodies (FHCB) list.

In paragraph 5 of the Trade Description (Certification and Marking of Halal) Order 2011:

5. (1) All imported food and goods marketed in Malaysia shall not be described as halal unless the imported food and goods comply with the requirements in paragraph 4 or are certified as halal by the foreign halal certification body recognized by JAKIM as specified in the Second Schedule.

(2) The importer or manufacturer of the food and goods which have been certified as halal by the foreign halal certification body recognized by JAKIM as referred in paragraph (1) shall mark on the said food and goods, the name of the said certification body.

Trade Description (Certification and Marking of Halal) Order 2011 only stated 53 approved Halal Certification Bodies, but the JAKIM website as of December 10, 2019 lists 81 recognised Halal Certification Bodies. According to responses to the JAIS:

“One of the things to note in TDA 2011 is the list of Foreign Halal Certification Bodies. Although the list of Foreign Halal Certification Bodies (FHCB) has been updated on the JAKIM website, if the list in TDA 2011 has not yet been revised, then if there is a case where the company uses a halal certificate from the FHCB that has been revoked at JAKIM website but is not on the TDA 2011 list, action cannot be taken.”

The researcher suggests replacing the phrase "...certified as halal by the foreign halal certification body recognised by JAKIM as specified in the Second Schedule" with "...certified

as halal by the foreign halal certification body recognised by JAKIM as specified in the list of Foreign Halal Bodies updated on the JAKIM official website."

Therefore, if proven guilty, traders who claimed to employ revoked Foreign Halal Certification Bodies (FHCB) can be prosecuted. The findings indicate that the Trade Descriptions Act 2011 is only partially effective in eradicating halal fraud, and that the Act still needs to be revised and enhanced.

Conclusion

The objectives of the study were determined, and the acquired data were analysed. To address halal fraud difficulties, it has been determined that the effectiveness of the Trade Description Act of 2011 must be strengthened. In addition, this research identifies the causes of violations of the Trade Description Act of 2011 and offers improved methods to eliminate these issues.

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