

Legal Governance Frameworks of Logistics Service Providers Companies in Malaysia

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ABSTRACT

Currently, the halal supply chain is progressively expanding and manages to gain greater interest from the logistics industry not only in Malaysia but also worldwide as well. Logistics Service Providers (LSP) companies who deal with Halal goods warehousing and transportation in Malaysia are urged to be Halal-certified in order to promote their service to the demanding consumers. This conceptual paper aimed to examine different legal governance frameworks of LSP companies involved in Halal goods warehousing and transportation. The legal governance frameworks constitute of the conventional and the Halal-certified ones. This paper is qualitative in nature with the legal method approach, i.e. doctrinal analysis of legislations, standards and guidelines on transportation and warehouse of both conventional and Halal-certified in Malaysia. This was done to highlight the actual impact of Halal certification to LSP companies involved in Halal goods warehousing and transportation and the difference caused for the purpose of logistics performance measurement. Various studies which emphasized on the governance aspect of LSP companies were also analyzed to build the overall legal governance framework, which can be used to single out the impact and advantages or disadvantages of Halal certificate on LSP companies. The proposed legal governance framework exposed both the positive and negative sides of Halal-certified LSP companies. Although the legal governance framework for Halal-certified LSP covered loopholes found in the conventional one, in practicality, the system is new in nature and so is still inconsistent and not well-established. Hence, simplification of the system and further education or training on the application are necessary to bring out the full impact of the proper practice of Halal-certified legal governance framework for LSP companies.

KEYWORDS: Legal governance; Framework; Halal; Logistics Service Providers; Malaysia

INTRODUCTION

Article 3 of the Malaysia Federal Constitution states that Islam is the official religion of the country with Muslims amounting to 61% of the total population. Being the majority, the country can readily accommodate Halal practice in every aspect of life. According to Shariah, Halal refers to anything that is lawful and permissible. Its opposite, the forbidden and punishable is termed as Haram. Consumption of Halal products opens the door to another deeper concept-Toyyib, which means good and wholesome. Both Halal and Toyyib are key components in the Halal supply chain, a rapidly growing niche market that everyone wants to dive in. This paper focused on the Logistics Service Providers (LSP) companies directly involved in the Halal supply chain [19].

LSP companies involved in Halal goods warehousing and transportation in Malaysia are currently operating on two different legal governance frameworks-the conventional and Halal-certified ones. Any LSP company may work on Halal and non-Halal goods, but a Halal-certified LSP company must strictly comply with Shariah segregation practice [3]. Without a proper setting of Shariah segregation, the Halal integrity of the products can be easily jeopardized[7]. Therefore, it is assumed at the earlier stage of this paper that LSP companies with conventional legal governance framework are of lesser quality compared to the Halal-certified ones.

However, this single value-added feature cannot be the total benchmark for logistics performance measurement. Reliability, flexibility and cost-effectiveness in terms of top management support are also key features that must be taken into consideration as well [5]. However, these are proven to be lacking specifically with regards to the legal governance itself. A collaboration between the main Halal authorities are blurry as the legal framework itself is hay wired with the conventional one.

As such, this paper aimed to look deeper into the legal governance framework for LSP companies involved in Halal goods warehousing and transportation in Malaysia. Analysis of the Malaysian legislations, standards and guidelines encompassing conventional and Halal logistics were done to build the conceptual structure which then will be compared and contrasted

LITERATURE REVIEW

Conventional LSP Company

All LSP companies operating in Malaysia are required by the Bursa Malaysia Berhad (BMB) to be listed in the Bursa Malaysia Listing Requirements (BMLR), which resulting in LSP companies to be operating on the minimum corporate governance requirements set in the Companies Act 1965 (CA 1965) [16] and the Malaysian Code of Corporate Governance 2012 (MCCG 2012) [25]. The authorities for respective legislation and guideline are the Companies Commission of Malaysia (CCM) as per s. 2 of the CA 1965 and the Securities Commission Malaysia (SCM) as per mandate stated in Part III of the Companies Commission of Malaysia Act 2011 (CCMA 2011) [17]. Compliance to corporate governance is of hybrid approach, it is a mix of both mandatory and voluntary actions. CA 1965 and BMLR are compulsory in nature as the CCM is authorized to monitor company structure and misconduct, while the BMB is vested with the power to audit corporate governance performance of listed companies through the mandatory submission of company annual reports. SCM is about supervising function as it promotes good corporate governance practice of companies towards self-regulation for efficiency when possible [12].

LSP companies with warehouses are governed by either the Royal Malaysian Custom Department (RMCD) per s. 65 of the Customs Act 1967 when dutiable goods are involved or by the Local Government (LG) per bylaws on the warehouse [18]. Neither any of them set specifics on hygiene or Halal as their requirements for the establishment of a warehouse. As for transportation, the three modes in Malaysia i.e. air, land and water are led by the Ministry of Transport (MOT) as it formulate and implement policies governing different branches of transportation. The National Logistics Task Force which is chaired by the MOT was formed in 2015 to monitor the implementation of Malaysia's Logistics and Trade Facilitation Masterplan 2015-2020 [1]. As the Task Force is still new in nature, its operation and impact is yet to be found.

Cargo transport via aviation was once governed exclusively by the Air Transport Division (ATD) from the Department of Civil Aviation (DCA) as per the Civil Aviation Act 1969 (CAA 1969). As of current, the newly enacted Malaysian Aviation Commission Bill 2015 (MACB 2015) caused the power to switch to the Malaysian Aviation Commission (MAC) instead [24]. It governs licensing (ss. 35-38) with the requirements set in s. 40 to include submission of proper forms, documents and fees. As for the condition of the transport itself, nothing is mentioned and so reference to other regulations will be necessary. Since the law is still new in nature, only a few information is available at this point of time. So, further discussion on the topic is then restricted [14].

Previously, under the ATD, technical audit was done to the aircraft involving aspects such as safety, stability, punctuality, reasonableness of charges and general efficiency of it as per s. 11 of the Civil Aviation Regulations 1996 (CAR 1996). MASKargo, Federal Express (FedEx) and United Parcel Services (UPS) are examples of airlines that successfully applied for a license. As observed, nothing is mentioned on the hygiene aspect, much more on Halal. The closest reference to Halal in aviation is provided in s. 67 of the CAR 1996, which states that it is the responsibility of the good consignor to expressly inform the aircraft operator as to the nature of the goods and the danger it would possibly cause (if any). The responsibility also includes proper packaging, marking and labelling of goods as well. Nevertheless, there is still no evidence on how Halal goods are treated or whether they experience different handling than the non-Halal goods at all [15].

Transportation and warehousing of goods via land are mixed between the Road Transport Division Malaysia (or better known as JPJ) and the Land Public Transport Commission (or better known as SPAD) [23]. Road Transport Act 1987 (RTA 1987) [35] authorizes transport licensing to JPJ while Land Public Transport Act 2010 (LPTA 2010) authorizes transport hub licensing to SPAD. Neither hygiene nor Halal is made requirement for both licenses.

As for the maritime sector, the power to control port facility and ship seaworthiness is accorded to the Maritime Department Malaysia (MDM) as per the Port of Authorities Act 1963 (PAA 1963) [33], Port (Privatization) Act 1990 (PPA 1990) [34] and the Carriage of Goods by Sea Act 1950 (COGSA 1950). S.2 elaborates on the responsibilities and liabilities of a carrier in loading, handling, stowage, carriage, custody, care and discharge of goods. Similar to the previous modes of transportation, nothing is mentioned on hygiene or Halal aspect of the shipped goods. To fill the gap, the MDM adopts various international codes and standards for maritime such as the International Convention for the Safety of Life at Sea, 1974 (or better known as SOLAS Convention) [21], International Maritime Solid Bulk Cargoes Code and MS ISO 9001: 2015-Quality Management Systems-Requirements (ISO 9001) [22]. The Code amplifies the mandatory provisions of the SOLAS Convention on carriage of solid bulk cargoes and dangerous goods by highlighting the importance of segregation among solid bulk cargoes and cargoes that may liquefy (ss. 7-8) through stringent segregation requirements (s. 9) [13].

Although hygiene is not made the utmost importance in conventional warehouse and transportation, reference to other regulations may show that it is still on the list. Other than hygiene requirements, the Food Hygiene Regulation 2009 (FHR 2009) specifically prohibits the use of transportation to carry both swine and

non-swine food. Regardless, there is no specification of Halal goods whatsoever. Thus, reliant to conventional legal governance framework is still insufficient to cater the warehousing and transportation of Halal goods [20].

Halal-Certified LSP Companies

The Ministry of Domestic Trade, Cooperative and Consumerism (or better known as KPDNKK) are accorded the power to prohibit false trade descriptions and misleading statements, conduct or practice of goods or services as per s. 29 of the Trade Descriptions Act 2011 [36]. It authorizes KPDNKK to ‘impose requirements on certain goods or services to be certified, marked or accompanied with necessary information pertaining to the status of a competent authority’. The requirements on Halal goods or services are derived from this section of the TDA 2011, which can be seen in Table 1.

Table 1: Regulations on Halal goods or services set by KPDNKK

Regulation	Description
Trade Descriptions (Definition on Halal) Order 2011 (TDDHO 2011) [39]	Para 3: Definition of Halal food, goods or service according to Hukum Syarak and fatwa
Trade Descriptions (Certification and Marking of Halal) (Amendment) Order 2012 (TDCMHO 2012) [37]	Para 3: Department of Islamic Development Malaysia (or better known as JAKIM) and the State Islamic Religious Council (SIRC) as competent authority to certify Halal food, goods or service 1st Schedule: Introduce Halal mark 2nd Schedule: Recognize 53 foreign Halal certification bodies
Trade Descriptions (Certification and Marking of Halal Fees) Regulation 2011 (TDCMHFR 2011) [38]	Para 2: List down the stipulated fees for different category of application for Halal food, goods or service
Trade Descriptions (Goods Made from any Part of Pig or Dog) Order 2012 (TDGMPPDO 2012) [40]	Para 4: Requirements for goods made from any part of pig or dog.

JAKIM as the competent authority to certify Halal food, goods or service then collaborated with the Department of Standards Malaysia (DSM) to produce a set of standards on Halal which are shown in Table 2.

Table 2: List of Malaysian standards on Halal

Standard	Description
General Standard on Halal	
MS 1500: 2009	Halal Food-Production, Preparation, Handling and Storage-General Guidelines (Second Revision)
MS 1900: 2014	Shariah-based Quality Management Systems-Requirements with Guidance (First Revision)
MS 2300: 2009	Value-based Management Systems-Requirements from an Islamic Perspective
Specific Standard on Halal	
MS 2400: 2010	Halalan-Toyyiban Assurance Pipeline
	Part 1: Management System Requirements for Transportation of Goods and/or Cargo Chain Service
	Part 2: Management System Requirements for Warehousing and Related Activities
	Part 3: Management System Requirements for Retailing [31]

MS 1500: 2009 (MS 1500) prescribes general guidelines for Halal food handling in the industry as best depicted in Islam (Clause 1 and 3) and is enforced by these identified competent authorities (Clause 2.6) as in Table 3 [26].

Table 3: Competent authority for MS 1500: 2009 enforcement

Authority	Description
KPDNKK	Enforcement
JAKIM SIRC	Islamic affairs and Halal certification
Ministry of Health (MOH) Department of Health (DH)	Public health and food safety
Ministry of Agriculture (MOA) Department of Veterinary Service (DVS)	Animal health and slaughterhouse

Despite non-mandatory in nature, an LSP company certified with MS 1500 must strictly adhere to its guidelines which composition is in truth closely related and revolves around a number of other regulations (Clause 3.6) which are:

- Abattoirs (Privatization) Act 1993 (APA 1993) [8]
- Animals Act 1953 (AA 1953) [9]
- Feed Act 2009 (FA 2009) [10]
- Food Act 1983 (FA 1983) [11]

These extensive set of requirements prove credibility to MS 1500 Halal certification and so provide incentive to most LSP companies in Malaysia to aim for it as part of their sound Halal marketing plan [2, 4, 7]. However, it can also be argued that such requirements are meddlesome as they are difficult to comply with. Plus, the effect of MS 1500 incorporation is yet to be fully discovered as there is yet to be a Halal-certified LSP company who published a statement on the actual worthiness of the certification.

MS 1900: 2014 (MS 1900) is, in fact, an extension of ISO 9001. It incorporates Shariah compliance core organizational values framework for good governance [32]. When it was first introduced in 2005, highlights were given to high ideals of organizational governance that it overlooked practicality and so was criticized to be insufficient to cater for the actual quality[6]. It was revised in 2014 to include practical guidelines aim to achieve a Shariah-based quality management. This added value includes the requirements of Shariah Advisory and Shariah-compliance officer to advise on Shariah issues to ensure continuous conformity of Shariah requirements. The incorporation of good corporate governance is required before its application (Clause 5.1), thus it can be said that MS 1900 features complement that of the conventional corporate governance practice as previously discussed above [27].

MS 2300: 2009 (MS 2300) assists the application of MS 1900 in its certified LSP companies (Clause 1). Its value-based management system model includes a consistent definition of universal purpose and human values with the Islamic worldview which covers both the al-Dunya (physical world) and the al-Akhirah (hereafter). This differs from the concept of conventional corporate governance whereby life is restricted to include only sense and sensible experience of the world (Clause 2.1). As MS 2300 works as mere guideline, a Halal-certified LSP company is not actually required to embrace it. It can be argued that the concept of MS 2300 is close to the extent of being too idealistic, although it can also be counter-argued that such idealism is in truth vital to the working of the overall Malaysian standards on Halal. However, studies are yet to be done to prove or disprove such hypotheses [28].

MS 2400: 2010 Part 1 (MS 2400-1) and Part 2 (MS 2400-2) are more specific towards transportation and warehousing of Halal goods itself. The implementation is thoroughly consistent with the general standards on Halal (MS 1500, MS 1900 and MS 2300) save for the addition of Toyyib (Clause 3). It is deemed that Halal-certified LSP companies who are serious in venturing into a Halal supply chain must at some point consider to get certified to these standards as a proof of full commitment to provide not only Halal but also Toyyib logistics service. MS 2400-1 focuses on the management of Halal goods transportation, which differs from the conventional transportation as it highlights the Shariahcritical pointsthat resulting it to be strikingly interesting compared to the conventional one (Clause 4) [29]. This goes the same for MS 2400-2 as well, only that it focuses on warehousing of Halal goods instead. Hygiene and Halal requirements that are found lacking in the conventional transportation and warehousing are put into order with the incorporation of MS 2400-1 and MS 2400-2 [30].

Legal Governance Frameworks of LSP Companies in Malaysia

Based on the discussion above, the legal frameworks of both conventional and Halal-certified LSP companies can be summed up as per Figure 1.

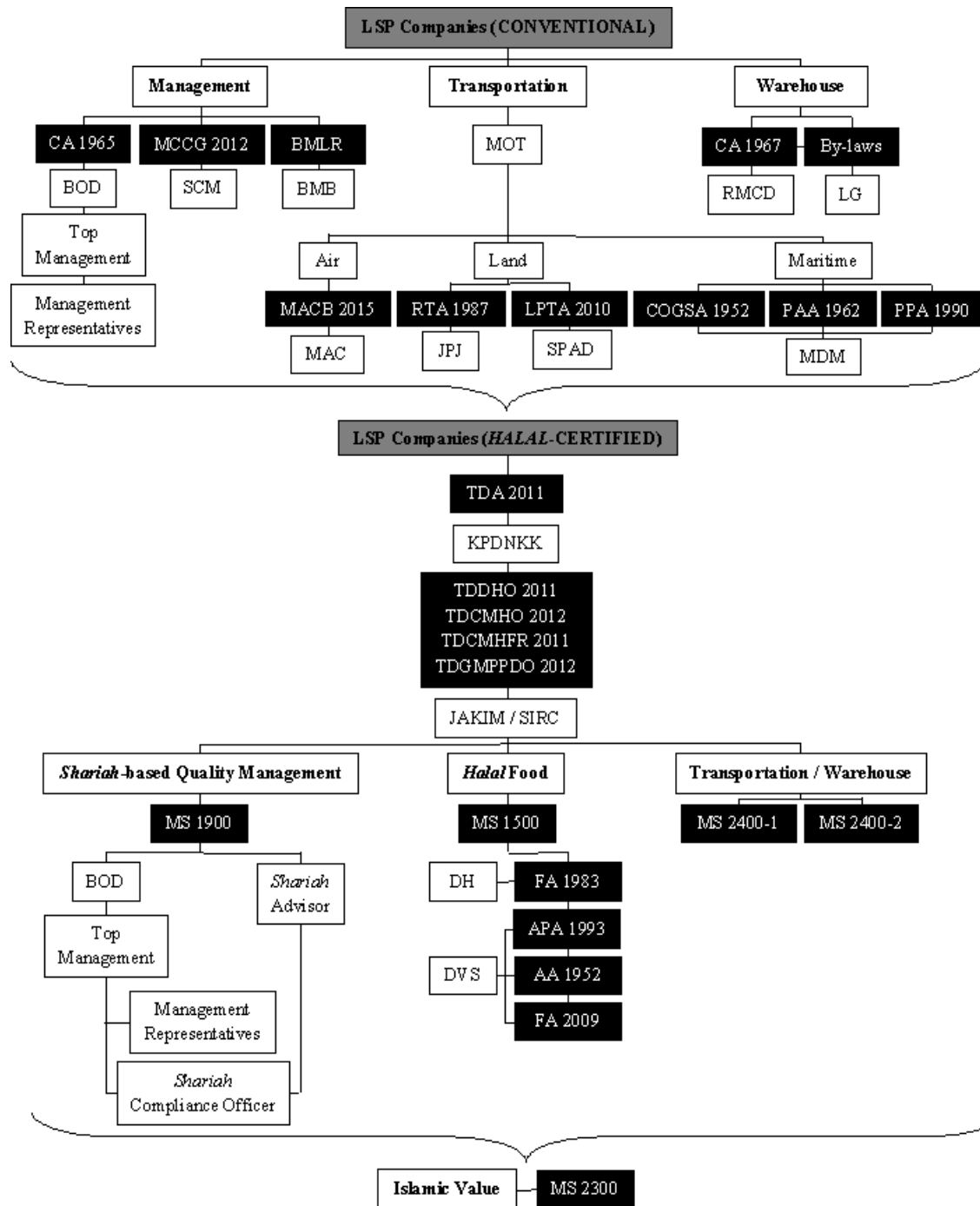


Figure 1: Legal governance framework of LSP companies in Malaysia

METHODOLOGY

This qualitative type of legal study used doctrinal analysis to assess the regulations surrounding LSP companies in Malaysia for the purpose of building a working legal framework for LSP companies in Malaysia. From these, two hypotheses were made which are:

- H1: Operation of a Halal-certified LSP companies is of better quality than the conventional ones in terms of proper hygiene practice in accordance to Shariah
- H2: Legal frameworks for both conventional and Halal-certified LSP companies are fragmented, which may cause confusion in term of implementation

FINDINGS AND DISCUSSION

The study intended to develop a legal governance framework of LSP companies in Malaysia comprises of two elements, namely the conventional LSP companies and the Halal-certified LSP companies.

Hypothesis 1 was made based on the gap of hygiene and Halal requirements in the conventional legal framework which is filled by the legal framework surrounding the Halal-certified LSP companies. Its focus on preserving Halal integrity would result in strict application of Halal practice in accordance to the Shariah, which would indirectly result in proper hygiene practice throughout the warehousing and transporting of Halal goods. There is less possibility of malpractice to happen as compared to what is experienced by the conventional LSP companies.

Hypothesis two was made based on the observation of the proposed framework itself. For a Halal-certified LSP company to exist, it must first adhere to the legal framework for conventional LSP companies which is already hay wired. Being Halal-certified may fill the gap of proper hygiene and Halal practice, but it does not however help simplify the whole legal framework. To add, the Malaysian standards on Halal touch a sensitive constitutional issue between the Federal and the 14 states in Malaysia, resulting in any step towards a simplified legal framework to be impossible for the time being.

CONCLUSION AND RECOMMENDATIONS

Based on the findings, it can be concluded that the legal governance of Halal-certified LSP companies is derived from the conventional one. Although it helps in filling the gap found in the practice of conventional LSP companies, the latter legal governance framework caused other problems to arise by further complicating the legal governance framework surrounding LSP companies in Malaysia.

A number of recommendations can be identified. In order to prove the actual impact of Halal certification for LSP companies in Malaysia, a case study needs to be done on the actual performance of Halal-certified LSP companies in Malaysia. Secondly, a separate study on constitutional issue surrounding the legal framework for Halal-certified LSP companies and the simplification of it is necessary to illuminate the full positive impact of Halal certification for LSP companies in Malaysia. This will also serve as giving awareness to not only the logistics key players, but also to all stakeholders as well.

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