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Constitutional Issues in Halal Certification and Enforcement in Malaysia: Reassessing Federal-State Jurisdiction

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1. INTRODUCTION

- ❖ Driven by strategic government initiatives and a robust ecosystem, Malaysia has steadily evolved into a premier global halal hub, leading the world in Islamic finance, halal food production, and regulatory standards.
- ❖ Halal certification is vitally important because it provides consumers with ethical and religious assurance, offers industries a competitive market advantage, and serves as a trusted benchmark that facilitates seamless international trade



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- ❖ The governance of the halal sector is complicated by the inherent friction within Malaysia's constitutional framework of federalism, which distributes legislative authority between the central government and individual states.
- ❖ The core research problem lies in the jurisdictional overlap of halal governance, as it simultaneously intersects with Islamic law, which falls under the constitutional purview of individual States and commercial regulation, which is strictly a Federal jurisdiction



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2. Constitutional Framework of Federal-State Powers

Key Issues

A. Federal List (List I)

- **Trade and Commerce:** The Federal Government holds exclusive legislative authority over trade and commerce
- **Industries:** The development, licensing, and regulation of manufacturing and service industries fall under federal purview
- **Consumer Protection :** The Federal Government is empowered to enact laws that protect consumers from fraudulent practices, misrepresentation, and unsafe products.
- **Public Health:** Legislative control over public health rests with the federal authorities
- **Food Regulation:** The Federal Government mandates and enforces food safety, quality, and hygiene regulations.
- **Criminal Law:** The definition, enforcement, and punishment of major criminal offences are centralized under federal jurisdiction



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B. State List (List II)

- **Islamic Law:** Individual States retain absolute legislative authority over the codification and enforcement of Islamic law (*Syariah*) as it applies to persons professing the religion of Islam.
- **Islamic Administration:** The governance, management, and administrative control of Islamic institutions including state religious councils and mufti departments, are strictly state prerogatives.
- **Religious Offences:** State legislatures are empowered to create and punish offences by persons professing the religion of Islam against the precepts of that religion,
- **Halal Matters as Part of Islamic Affairs:** Because the definition of halal is fundamentally rooted in Islamic dietary laws and theology, individual States view the oversight of halal matters as an intrinsic part of their constitutional jurisdiction over Islamic affairs.



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Constitutional Provisions

Article 74 of the Federal Constitution delineates the legislative powers of Parliament and the State Legislatures.

Article 75 establishes the supremacy of federal law, stipulating that if any state law is inconsistent with a federal law, the federal law shall prevail.

Article 76 grants Parliament the exceptional power to legislate on matters within the State List under specific conditions.

Ninth Schedule serves as the definitive legislative blueprint, dividing specific subject matters into the Federal List (List I), the State List (List II), and the Concurrent List (List III) to govern the distribution of legislative power.



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The Question is:

Can halal certification be constitutionally classified as:

1. A religious matter?
2. A commercial regulatory matter?
3. Both?



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3. Legal Basis of Halal Certification

- ❖ **Most Important Federal Statute is the** Trade Descriptions Act 2011 (Act 730) which serves as the primary federal legislative framework governing the commercial trade, labelling, and representation of halal goods and services in Malaysia.
- ❖ **Definition of Halal:** The Act legally prescribes what constitutes "halal" or any equivalent term in trade, ensuring that commercial entities adhere to specific Islamic dietary laws and standards when using these descriptions.



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- ❖ **Authority to Regulate Halal Claims:** Act 730 empowers the federal government to strictly regulate, monitor, and restrict the use of halal expressions, logos, and advertisements in the marketplace to prevent exploitation.
- ❖ **Enforcement Powers:** The statute grants robust enforcement powers to regulatory officers, primarily from the Ministry of Domestic Trade and Cost of Living allowing them to investigate, raid, seize, and prosecute businesses making fraudulent halal claims.



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Subsidiary Legislation Under Act 730:

- ❖ **Trade Descriptions (Definition of Halal) Order 2011:** This subsidiary order explicitly defines the parameters of "halal" for trade purposes.
- ❖ **Trade Descriptions (Certification and Marking of Halal) Order 2011:** This order designates the Department of Islamic Development Malaysia (JAKIM) and the respective State Islamic Religious Councils (MAIN) as the only authorized bodies capable of issuing halal certificates and regulating the official national halal logo.



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Food Act 1983

- ❖ **Food Safety Aspects:** The Food Act 1983 complements halal regulations by focusing heavily on food safety, hygiene, and the prevention of adulteration.
- ❖ **Ministry of Health Involvement:** Under this Act, the Ministry of Health works alongside halal enforcement agencies to monitor food premises, ensuring that the physical safety, chemical composition, and preparation environments of products do not jeopardize public health.



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Consumer Protection Act 1999

- ❖ **False Halal Claims:** The Consumer Protection Act 1999 acts as a vital safety net for buyers, providing explicit legal avenues for consumers to seek redress when they are deceived by false halal claims or misleading certifications on products.
- ❖ **Misrepresentation:** This statute penalizes businesses for unfair trade practices and misrepresentation, ensuring that any commercial entity falsely implying a product is halal can be held civilly and criminally liable for misleading the public.



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4. Institutional Governance and Jurisdictional Overlap

Key Institutions

Federal Agencies

- ❖ **Department of Islamic Development Malaysia (JAKIM):** Operating under the Prime Minister's Department, JAKIM serves as the central federal agency responsible for drafting halal standards, managing the national halal certification process, and issuing the globally recognized Malaysian Halal Logo.
- ❖ **Ministry of Domestic Trade and Cost of Living (KPDN):** As the primary custodian of the Trade Descriptions Act 2011, KPDN possesses the legal enforcement mandate to conduct raids, investigate corporate compliance, and prosecute businesses guilty of making fraudulent halal claims or using unauthorized logos.



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- ❖ **Ministry of Health Malaysia (KKM):** KKM collaborates closely in the governance framework by enforcing food safety, hygiene, and trace contamination standards under the Food Act 1983, ensuring that certified products are not only *halal* (permissible) but also *toyyiban* (wholesome and safe).
- ❖ **Department of Veterinary Services (DVS):** DVS plays a critical technical role by auditing and monitoring abattoirs, livestock farms, and animal-based processing plants to guarantee that animal welfare, slaughtering techniques, and meat production strictly comply with federal veterinary and Islamic slaughter laws.



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State Authorities

- ❖ **State Islamic Religious Councils (MAIN):** MAIN are the supreme legal authorities on Islamic affairs within their respective states, advising the Malay Rulers (Sultans) and holding the absolute constitutional right to govern all religious matters, including the determination of halal status.
- ❖ **State Islamic Departments (JAIN):** Acting as the executive and administrative arms of MAIN, the *Jabatan Agama Islam Negeri* (JAIN) manage day-to-day Islamic enforcement, conduct local halal inspections, and coordinate directly with federal agencies within their state territories.

Critical Issue

- ❖ **The Jurisdictional Paradox:** The central crisis in Malaysia's halal ecosystem stems from a constitutional paradox: while JAKIM operates as a federal agency managing and standardizing halal certification on a national and international scale, the Federal Constitution explicitly dictates that all Islamic and religious matters fall under the exclusive sovereignty and jurisdiction of the individual States.



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5. Constitutional Challenges in Enforcement

Issue 1: Enforcement Fragmentation

- ❖ **Agency Mandates:** The enforcement landscape of Malaysia's halal industry is split across multiple regulatory bodies, where **JAKIM** holds the mandate for halal certification, the Ministry of Domestic Trade and Cost of Living (**KPDN**) enforces commercial integrity via the Trade Descriptions Act 2011, the Ministry of Health (**MOH**) regulates food safety, and **State Religious Authorities** retain absolute jurisdiction over the spiritual and theological aspects of Islamic affairs.
- ❖ **Duplication of Authority:** This division of labor frequently results in a duplication of authority, forcing businesses to undergo redundant audits and navigate overlapping compliance procedures from both federal and state inspectors.
- ❖ **Enforcement Gaps:** Fragmentation creates regulatory loopholes and enforcement gaps, as communication bottlenecks between federal ministries and state religious departments can delay critical punitive actions against non-compliant entities.
- ❖ **Jurisdictional Confusion:** The lack of a singular, overarching regulatory body breeds deep jurisdictional confusion.



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Issue 2: Uniformity Across States

- **The Aims of the Government:** To maintain its competitive edge on the global stage, Malaysia aggressively pursues a unified national identity for its halal sector, anchored by a single, universally recognized Malaysian Halal Logo and a standardized certification system.
- **The Reality of Federalism:** However, under the Federal Constitution, Islamic affairs are strictly decentralized matters reserved for the states.
- **The Erosion of State Power:** This tension sparks an ongoing academic debate regarding whether the drive for national commercial uniformity covertly undermines state sovereignty and erodes the constitutional powers guaranteed to the Malay Rulers.



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❖ **Issue 3: Constitutional Validity of Centralisation**

- ❖ **Centralization Proposals:** policy discussions frequently advocate for the establishment of a centralized Federal Halal Commission and the enactment of a comprehensive, standalone Halal Act to strengthen federal oversight.
- ❖ **The Encroachment Dilemma:** Question: can the Federal Parliament legislate comprehensively on halal matters without unconstitutionally encroaching upon the legislative domains explicitly reserved for the States?
- ❖ **Constitutional Mechanisms:** To navigate this impasse, legal scholars look to specific constitutional mechanisms:
 - **Article 76(1)(b):** Parliament may legislate on state matters for the purpose of promoting the uniformity of the laws of two or more States.
 - **Article 76(1)(c):** Parliament may enact laws on state matters if explicitly requested by a State Legislative Assembly.
 - **State Consent Legislation:** Any federal law enacted under these provisions requires formal adoption or consent legislation by the respective state assemblies before it can take legal effect within those states.



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6. Judicial Perspectives

- ❖ **Precedent and Context:** While Malaysian courts have rarely adjudicated cases dealing explicitly with the collision of federal-state halal jurisdictions, the judiciary has established a robust body of jurisprudence regarding the broader constitutional division of powers and the limits of Islamic administration.
- ❖ **Important Cases**
- ❖ **Mamat bin Daud & Ors v Government of Malaysia (1988):** the Supreme Court ruled that Parliament cannot use its federal lawmaking powers (such as criminal law) to legislate on religious matters reserved exclusively for the states.
- ❖ **Sulaiman bin Takrib v Kerajaan Negeri Terengganu; Kerajaan Malaysia (Intervener) (2009):** The Federal Court in this case clarified the extensive scope of state legislative power over Islamic matters, affirming that states have the constitutional right to define and penalize offences against the precepts of Islam, which supports the states' claims over dietary and halal restrictions.
- ❖ **Iki Putra Mubarak v Kerajaan Negeri Selangor & Anor (2021):** Federal Court judgment strongly reinforces constitutional boundaries by striking down a state religious law that duplicated an existing federal criminal law.



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7. Comparative Analysis

- ❖ What structural, legislative, or administrative lessons Malaysia can adopt from foreign jurisdictions to streamline its halal sector without violating its foundational principles of federalism.

Jurisdictional Profiles

- ❖ **Indonesia:** Indonesia transitioned from a non-governmental model to a highly centralized, mandatory state regime managed by the *Badan Penyelenggara Jaminan Produk Halal (BPJPH)*, demonstrating how a singular government body can successfully unify nationwide certification.
- ❖ **Brunei:** As a unitary absolute monarchy, Brunei utilizes a strict, **centralized, state-controlled halal governance system** where religious laws and commercial regulations are seamlessly integrated without the friction of federal-state divisions.
- ❖ **United Arab Emirates (UAE):** The UAE relies on a model of **national halal standardization** driven by the Ministry of Industry and Advanced Technology, showcasing how a federal state can effectively decouple commercial standardization from regional religious administration to facilitate international trade.



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8. Reform Proposals

- **Proposal 1: Comprehensive Federal Halal Act:** Parliament should enact a standalone Federal Halal Act focused strictly on the commercial, trade, and consumer protection aspects of halal products, thereby remaining within the legal boundaries of the Federal List.
- **Proposal 2: Federal-State Halal Coordination Council:** To bridge institutional divides, Malaysia should establish a statutory Federal-State Halal Coordination Council, mirroring the National Land Council, to institutionalize policy alignment and communication between JAKIM and individual state religious councils (MAIN).
- **Proposal 3: Constitutional Clarification Regarding Halal Governance:** A formal amendment or judicial clarification should be sought to explicitly categorize halal governance as a shared responsibility under the Concurrent List of the Ninth Schedule, legally validating joint federal and state participation.
- **Proposal 5: Codified Division of Regulatory Powers:** There should be a clear, codified division of regulatory powers, whereby the federal government maintains exclusive control over international trade, industrial standards, and lab testing, while state authorities retain absolute veto power over theological fatwas and spiritual compliance.

THANK YOU FOR ATTENTION



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