

THE APPLICATION OF TORT LAW IN ADDRESSING ISSUES IN HALAL PHARMACEUTICAL PRODUCTS: SAFEGUARDING CONSUMER RIGHTS

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ABSTRACT

The demand for Halal pharmaceutical products in Malaysia has been on the rise, but this positive trend is accompanied by concerning issues such as the use of fake Halal logos and the inclusion of non-Halal ingredients in pharmaceutical products, which present risks to consumers and undermine trust in the industry. Accordingly, tort law emerges as one of the legal mechanisms for consumers seeking redress in cases involving fake Halal logos and non-Halal ingredients. With the application of a doctrinal method based on qualitative legal research methodology, this article analyses the remedies under tort law. The study investigates the effectiveness of remedies provided by tort law in dealing with these issues. Findings reveal that the existing remedies under tort law do not entirely safeguard consumers' apprehensions related to fake Halal logos and non-Halal ingredients. Therefore, there is a need for a comprehensive review of existing laws to ensure that they provide complete protection for consumers and help to promote the continuous growth of the Halal pharmaceutical industry in Malaysia.

Introduction

The halal pharmaceutical industry in Malaysia has witnessed remarkable growth, with a profit of US\$4.0 billion in 2021, which is predicted to increase to US\$4.8 billion by 2025 (Muhamad Suhaini, 2022). The surge in revenue indicates the sector's potential for the expansion and development of Halal pharmaceuticals. This positive trend has led the Halal Development Corporation (HDC) to be convinced that the export of Halal pharmaceutical products would reach an astounding amount of RM1.2 billion by the year 2030 based on the recorded revenue of RM425 million (Azman, 2020).

Malaysia is globally known as the leading Halal pharmaceutical industry hub after the establishment of the world's first Halal pharmaceutical standard, known as Halal Pharmaceutical Standard MS2424:2019. This pharmaceutical standard outlines the general guidelines in the manufacturing and management of Halal pharmaceuticals, making it an essential requisite for the Halal pharmaceutical industry in Malaysia. The existing laws have further contributed to Malaysia's position as a global leader in the Halal pharmaceutical industry. Furthermore, the laws related to Halal pharmaceuticals including the Sales of Drugs Act 1952, Medicines (Advertisement and Sale) Act 1956, and the Poison Act 1956 require manufacturers to provide safe, efficient, and good-quality products (Aziz et al., 2022). While these acts address certain Halal issues, they lack the specific provisions for Halal monitoring, which leads to Muslim consumers' vulnerability and affects their rights (Zakaria, 2008; Halim et al., 2014). Nevertheless, manufacturers that opt out of certifying their products as Halal are not obligated to reveal non-Halal ingredients, given that the acquirement of Halal certification by manufacturers is still considered voluntary and non-enforceable. This situation has caused Muslim consumers' unconscious consumption of non-Halal pharmaceutical products if they do not carefully inspect the ingredient list (Othman et al., 2009; Aziz et al., 2014).

Tort law is one of the consumers' methods of obtaining remedies to the issue of a fake Halal logo and the use of non-Halal ingredients. In Malaysia, this law is based on and influenced by English common law. According to Section 3(1) of the Civil Law Act 1956, the rules of common law and equity are persuasive in so far as the conditions of the States of Malaysia and their respective inhabitant permit, which is subject to and as necessitated by local circumstances. Tort law serves as a mechanism to obtain compensation for the injuries or losses suffered by the victims due to other parties' actions (Hashim & Rahim, 2013). The original aim of tort law is to prevent the wrongdoer from continuing the harmful behaviour (Stephenson, 2000). It also acts as a deterrent, given that the wrongdoer is obliged to compensate the victim, make themselves more accountable, and be aware of their future actions to refrain from inflicting damage on others.

The discussion in this article begins with an overview of halal pharmaceuticals and their related issues. The remaining sections of this article explore the remedies consumers could seek in situations that involve fake Halal logos and non-Halal ingredients in pharmaceutical products under tort law.

Methodology

This study adopts the qualitative approach of doctrinal research, which was conducted using the library-based method. This method was implemented to thoroughly investigate the contents of the relevant legal provisions. This is followed by secondary data that featured textual research based on the literature and academic texts related to this study. The analytical approach to the literature gathered involves careful examination and evaluation of the understanding of the laws or description to draw conclusions, while the critical method involves careful examination and evaluation of the laws, identification of weaknesses, expression of opinion, and rational agreement or disagreement (Anwarul, 2007). The related remedies under tort law were analysed to identify whether tort law is able to provide adequate protection to consumers on the issue of a fake Halal logo and non-Halal ingredients in pharmaceutical products.

Halal Pharmaceutical and Issues

The phrase "*Halal pharmaceutical*" involves two words, namely "*Halal*" and "*pharmaceutical*". Specifically, "*Halal*" stems from an Arabic word that is defined as "*allowed or permitted by Islamic Law*" (Halal Malaysia Official Portal, 2023). Meanwhile, the word "*pharmaceutical*", which denotes drugs or medications, refers to the substances used for medical purposes (Britannica, 2023). The word "*Halal pharmaceutical*" is defined as a pharmaceutical product produced and processed in line with

Islamic law. In this case, the ingredients used in the product must be Halal, while the manufacturing process should be free from any non-Halal practices (Khan & Shaharuddin, 2015).

Each Muslim is responsible for the principle of the consumption of Halal and the prevention of Haram. This responsibility originated from the Holy Quran, while the Prophet Muhammad PBUH leads humans towards the achievement of success and calmness of the soul in this world and the afterlife. Accordingly, a verse from the Holy Quran presents the order by Allah (SWT) obliges humans to Halal consumption, which is:

Translation: O ye people! Eat of what is on earth, lawful and good, and do not follow the footsteps of the evil one, for he is to you an avowed enemy.

(Surah Al-Baqarah, 2:168)

According to al-Tabrani, Prophet Muhammad PBUH stated that Muslims are obligated to seek Halal goods (Sahih Bukhari, n.d). This was followed by Abu Darda's citation of Prophet Muhammad PBUH's statement that Allah has granted the respective remedy for every illness. Thus, as narrated by Abu Darda, humans are obliged to obtain medical treatment without resorting to unlawful means (Abu Dawud, 2009). Given the strong focus of Islam on the consumption of Halal products by Muslims, they are obliged to assure that the pharmaceutical products consumed by them are in line with the Halal aspects of the Islamic religion.

The global and local developments of the Halal industry are accelerating due to the stronger awareness among Muslims worldwide regarding the obligation of consuming food that adheres to Islamic dietary requirements. This level of awareness has increased the demand for Halal food and pharmaceutical products (Asri & Aziz, 2019), although it has also led to various issues. Notably, one primary issue is the potential abuse of Halal certification for pharmaceutical products. In this case, companies use a Halal logo that is not recognised by legitimate Halal certification bodies or they may use outdated or expired Halal certificates. Additionally, false claims about product ingredients or manufacturing processes can mislead consumers. In some cases, companies may also sell products that contain Haram (forbidden) ingredients such as alcohol or gelatin. Gelatin sourced from pork and its derivatives remain Haram even if it undergoes substance transformation through natural or chemical processes (Tukiran et al., 2023). Therefore, providing remedies through appropriate laws is one of the essential approaches to address these concerns and safeguard the rights of consumers.

Discussion

Remedies: Damages

Tort law offers remedies to consumers. However, the question arises on whether the existing remedies allow consumers to claim reasonable compensation when a fake Halal logo and non-Halal ingredients in pharmaceutical products are used. When a tortious wrong has been committed, the claims for remedies are commonly in the form of awarding damages (Scaros, 2000), which aims to recompense the victim for the loss or damage (Ahmad & Hingun, 1998). To make a claim for damages, the victim should prove the occurrence of the tort and the losses or damages they have experienced (Talib, 2010).

The basic principle of tortious damage is *restitutio in integrum*, which is a Latin term that is translated to "restoration to the previous condition" (Curzon, 2006). This principle is fundamental in tort law and serves as the guiding principle for awarding damages in tort cases. *Restitutio in integrum* follows the idea that the injured party should be positioned in the place where the tortious act does not occur (Tumelty, 2023). In other words, its goal is to conduct an optimum restoration of the injured party to their pre-injury state. This principle also recognises that tort law aims to compensate for the damage and provide a remedy for the injured party.

The application of *restitutio in integrum* can be observed in the case of *Living Stone v. Rawyards Coal Co* (1880) 5 App Cas 25. To illustrate, the Court stated that *restitution in integrum* is the amount of money that would place the harmed party in a place that would subject them to compensation or reparation. As for the case of *Donoghue v. Stevenson* (1932) AC 562, Lord Atkin stated that damages in tort law ought to have the purpose of "restoring the plaintiff to the place he would have been in if the tort did not take

place”. The same principle was also stated in the case of *Ong Ah Long v. Dr S Underwood* (1983) 2 MLJ 324, Justice Syed Agil Barakbah of the Federal Court, in which harms continue to be compensatory, which would offer as much compensation to the injured party for the inappropriate actions and their natural and direct effects.

Despite the primary purpose of tort law to recompense the victim for the loss or damage he has suffered, the purpose of an award of damages may also be non-compensatory (Ghandhi, 1990). However, if the damages are not compensatory, the award of damages in tort may be nominal or exemplary (Cooke, 2007). When a fake Halal logo and non-Halal ingredients in pharmaceutical products are used, the relevant compensation for discussion includes exemplary damages due to inadequacy of compensation in the form of “*out-of-pocket*” expenses. To illustrate this point, the compensation that merely restores the money lost could be conveniently repaid by the guilty party, which could lead to the repetition of the same actions. Therefore, awarding exemplary damages in several cases including the use of a fake Halal logo could serve as a lesson to the parties involved.

Exemplary damages are intended to prevent the defendant from the repetition of the same actions in the future (Cooke, 2007). Thus, awarding damages is not made to provide compensation; the award acts as a punishment and hindrance to the defendant (Scaros, 2000). The awarding of exemplary damages could take place only when the damages fall under the categories set out in the case of *Rookes v. Barnard and Ors* (1964) 1 AC 1129. In respect to *Rookes v. Barnard*, these categories were specified by Lord Devlin: a) the action is oppressive; b) the defendant's conduct was “*calculated*” to make a profit for himself, or; (c) a statute promptly authorises the award of exemplary damages. In applying this to the use of a fake Halal logo on pharmaceutical products, the consumer is able to claim under the second category that the supplier will profit by committing a tort. In this case, the product is claimed to be Halal although it is vice versa. The conduct of manufacturers aims to gain the interest of Muslim consumers who prefer pharmaceutical products with Halal labels (Rusmita et al., 2021). Subsequently, the Halal logo will increase pharmaceutical products' marketability, which the manufacturer would significantly benefit from (Herdiana & Rusdiana, 2022). Thus, consumers who have been misled into purchasing fake Halal logo pharmaceutical products have the right to claim that the manufacturer has engaged in deceptive practices that constitute a tort.

Several approaches have been suggested regarding whether a plaintiff must demonstrate that they fit into one of the classifications outlined in the case of *Rookes v. Barnard*. A claim for exemplary damages was turned down in the case of *AB v. South West Water Services Ltd* (1993) 1 All ER 609 as it did not fall under any specified categories. However, the case of *AB v South West Water Services Ltd* was criticised for the introduction of unconscionability into the law, and the decision was reversed by the case of *Kuddus v. Chief Constable of Leicestershire Constabulary* (2001) 3 All ER 193. In the case of *Kuddus v Chief Constable of Leicestershire Constabulary*, the House of Lords determined that the adoption of these strict rules would place limit on the claim of exemplary damages in the future. However, the case of *Rookes v Barnard* has been used as a reference and adopted by the courts in Malaysia. The application of this case is reflected through the case of *Khaw Cheng Poon & Ors v. Khaw Cheng Bok & Ors and Another Appeal* (2005) 6 MLJ 540. The learned judge said that the exemplary damages are solely awarded in exceptional conditions, which are included in the judgement of Lord Devlin that is highlighted in the preceding paragraph. Based on this, no new classification is permissible to the Devlin list. When the issue of a fake Halal logo is evaluated, the court may consider whether the deception goes beyond the typical cases of mislabeling and whether it has caused substantial harm including health risks or financial losses. If the circumstances are deemed exceptional, exemplary damages might be considered as a means of punishment and deterrence.

Consequently, it can be seen from the case of *Khaw Cheng Poon & Ors v. Khaw Cheng Bok & Ors & Another Appeal* that the Court imposes limitations on awarding exemplary damages, which is in contrast to the guidelines established in the case of *Rookes v Barnard*. However, in *Goh Sze Ching v. Pizza Hut Restaurant Sdn Bhd* (2011) 5 LNS 33, the Court diverged from the *Rookes v. Barnard* guidelines. In this case, the Court awarded RM50,000 for the exemplary damages to the plaintiff who suffered from illness due to the cockroach legs found in their food at a Pizza Hut restaurant. While this particular case is not specifically related to non-Halal ingredients, it may be considered a valuable point of reference. To illustrate this point, the use of non-Halal ingredients in pharmaceutical products may be viewed as the

manufacturing of contaminated products. Thus, consumers are entitled to have a reasonable expectation that the pharmaceutical products they have purchased are safe for consumption.

Given the Court's awareness of the importance of consumer rights in the case of *Goh Sze Ching v. Pizza Hut Restaurant Sdn Bhd* (2011) 5 LNS 33, this case aims to set an example and warn other restaurant owners about the severity of this health risk. It was also highlighted that awarding damages is not solely restricted to the three categories outlined in *Rookes v Barnard* although they serve lessons to the offenders, punish offenders, and protect the public interest. In the issue of fake Halal logo products, the award of exemplary damages is not impossible considering that the Court will look at the entire context of the award of damages. However, this issue should not be taken lightly. Exemplary damages in the case of fake Halal logo products could serve as lessons to suppliers who deceive consumers to gain profit, which may indirectly affect the interests of Muslim consumers in general.

In examining the decision related to *Donoghue v. Stevenson* (1932) AC 562, the principle of negligence solely permits the claims made from physical injury and/or property damage (Oughton, 1991). The damages on goods that are not harmful go beyond the scope of the *Donoghue v. Stevenson* case (Ismail, 2007). If a product does not cause any harm to consumers despite the defects in it, the consumers would not be able to pursue legal action nor make any claims regarding the tort of negligence (Krishnan, 2006). Hence, the ability of consumers to pursue legal action against the manufacturer in situations that involve fake Halal logos and the use of non-Halal ingredients on pharmaceutical products is considered unachievable due to the absence of physical injury inflicted upon consumers within a short period.

Remedies: Injunction

An injunction is the Court's order preventing an individual from committing a disapproved action or committing continuous omission (Curzon, 2006). On the other hand, non-compliance with an injunction is considered to be a contempt of court. The jurisdiction's ability to offer an injunction is at the discretion of the Court based on the special circumstances of each case (Section 50 of the Specific Relief Act 1950). Injunctions can be employed as one of the methods to protect consumers, reducing the adverse effects of illegal actions and further ensuring that other consumers would not be affected by continued illegal activities. To illustrate, a court is able to order a company to stop the distribution and sale of products that use a fake Halal logo and non-Halal ingredients.

In the case of a fake Halal logo, obtaining an injunction is very significant to Muslim consumers. A company's use of a fake Halal logo could mislead consumers into believing that their products are Halal-compliant although they are not. This condition could cause significant harm and infringement of consumer rights. An injunction would be able to prevent certain parties from marketing products with fake Halal logos while preventing the occurrence of fraud in the entire Muslim community. The injunction's ability to prevent others from unfair business practices would be another factor contributing to its importance. Therefore, there is no justification to not grant an injunction to prevent the repetition or continuation of any party's harmful actions to consumers.

An injunction could be obtained to halt the sale of products that use non-Halal ingredients. In this case, the Court can order the company to recall or remove these products from the market to prevent further harm to consumers who follow Islamic dietary restrictions. In *United States v. S. Serra Cheese Co., 2015 U.S. Dist. LEXIS 142087*, the Court considered specific factors before granting an injunction, such as the nature of the violations, the defendant's recognition of his wrongdoing, and the potential for future violations. In that case, Serra Cheese Co had breached the Federal Food, Drug, and Cosmetic Act by presenting adulterated food despite the warning letters being distributed. The Court accordingly granted injunctive relief due to its obligation to protect the public from harmful activities and stop illegal conducts. While the case did not address the issue pertaining to non-Halal ingredients, it could still serve as a helpful reference, given that the use of these ingredients could be regarded as a production of adulterated products. The award of the injunction does not only protect the rights of Muslim consumers, but it also upholds the integrity of the Halal industry. By obtaining an injunction, the affected parties would be able to promptly stop the harmful practices and seek a legal remedy to rectify the situation.

Conclusion

In conclusion, tort law aims to gain compensation for the loss or injury suffered by a person. While this law comprises several branches of law that protect consumers, it is still unable to provide full protection to the consumers. The remedies under tort law would be meaningful with their ability to preserve the rights and interests of consumers upon being faced with unfair consumerism. Moreover, the use of fake Halal logos and non-Halal ingredients on pharmaceutical products could have several negative consequences. Specifically, this use can mislead Muslim consumers into believing that they are taking a Halal product although it is otherwise, which may lead to critical health implications due to the harm caused by Haram ingredients on Muslims. Following that, the use of fake Halal logos and non-Halal ingredients could damage the reputation of legitimate Halal certification bodies besides undermining public trust in the Halal industry.

Following the previously highlighted discussion, a conclusion has been reached that claiming damages under the tort law may present challenges. In this case, consumers are required to demonstrate the occurrence of the tort and the losses or damages they have experienced. The task of determining physical harm inflicted upon consumers is challenging, particularly when it is conducted within a brief period after the purchase of a fake Halal logo and the use of non-Halal ingredients on pharmaceutical products. Besides, doubts have also been expressed regarding the effectiveness of tort law in compensating consumers, given that the system is known to be complicated, expensive, burdensome, and time-consuming. Considering the inability of the tort law to provide full protection to the consumers, the government must ensure adequate implementation of the current laws, such as the Consumer Protection Act 1999 that expressly protect consumers. If any gaps are present in these laws, review and amendment should be made to them to guarantee optimal protection for the consumers.

To uphold consumer rights, particularly in relation to Halal pharmaceutical products, it is imperative that all relevant stakeholders, including the government, industry participants (suppliers, manufacturers, and sellers), legal and enforcement bodies, and consumers actively contribute to the prevention of the fake Halal logo and non-Halal ingredients on pharmaceutical products. In most cases, consumers are exposed to risky situations as they have inadequate capacity to protect themselves from manipulation by manufacturers. For this reason, only the law is able to impose liability on manufacturers in Halal pharmaceutical products, specifically the case of fake Halal logos and the use of non-Halal ingredients. Ultimately, it is through legal instruments that the rights of consumers in obtaining compensation for damages may be upheld.

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