

Harmonization between the Traditional *Al-'Urf* and Modern Approaches in Halal Food Industry

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Abstract

The process of Islamic legal deduction continuously happens due to the need of problem-solving for the contemporary. In relation to this matter, *al-'urf* could be seen as one of the significant references for the *fuqaha'* (jurists) to deal with the arising issues since *al-'urf* is regarded as so accommodative with the reality. Since the halal food industry becomes one of the lucrative industries all over the globe, thus there is an urge for the *fuqaha'* in ensuring that the rulings deduced are concrete and rational to deliver to the society. In view of this matter, there is a need for the *fuqaha'* to be skillful in understanding the issues in ensuring the rulings are in line with the objective of Shariah. Thus, this paper seeks to discuss the role of *al-'urf* in determining related halal food legal rulings by rationalizing the traditional *al-'urf* with the modern approaches. This paper adopts qualitative research methodology in which document analysis techniques were used to collect the data i.e. ranging from classical books related to *al-'urf*, journal articles, the Malaysian fatwas related to halal food and any other authoritative articles that deem suit to this study. Then the data was analyzed by using content analysis and constant comparative techniques simultaneously. The finding has shown that, the interpretation of *al-'urf* could be distinguished between one *fuqaha'* to another from one issue to other issues because of several factors like the legislations, locality, evolvement of science and technology, and the different expertise in food related fields. This study proposed that the *fuqaha'* need to be well-equip with the food science and technology knowledge in ensuring the rulings deduced is compatible the reality.

Keywords: *Fuqaha'*, Halal Food, Halal Food Industry, Modern Approaches And Traditional *Al-'Urf*.

Introduction

The demand for the halal food and beverages keeps increasing from day to day due to the demographic of the consumers of halal food and beverages are not limited from Muslim population per se but it caters for the non Muslims also. There is a lot of studies have been proven that consumers give more preference for the halal food products instead of other

remaining products and among of the findings are the halal logo are more trusted rather than ISO and other certifications (Shafie & Othman, 2006) and buying of the halal food products is part of religious obligation (Yaakob, 2006). Indeed, the higher demand for halal creates the halal food industry as a new important segment for the food industries. The connotation of 'halal' here associates with the religious element where all the supply chain of producing the food products from the halal food industry must be in line with the Shariah principles and its requirements. Since the halal food is industrialized, therefore lots of the processes involved in manufacturing of the halal food products involved many technologies and this consequently leads to the increasing handlings of the food itself. Therefore, many Shariah related issues trigger that need for the Shariah clarification.

Pertaining to this matter, there are general rulings related to food in the legal evidences from al-Quran and Sunnah as most of them touched more on the legalities of animals for consumption as well as plants that are considered as permissible (*mubah*) as long as there is no element of poisonous, intoxicant and hazardous to the humankind (Department of Standards Malaysia, 2009). Based on the observation, the limited discussion on the legalities of food is due to the reality (*waqi'*) at that particular time whereby the food is not industrialized yet. But now, with the advances of science and technology, a lot of things continuously tend to change (Hashim, 2013) such as food ingredients and its sources, the process of food and introductions lots of certification schemes for food safety. As a result, many arising issues in the realm of food emerge that need for the best solution from the method of Islamic legal deduction.

On top of this, *al-'urf* could function as one of the tools for the *fuqaha'* to deal with the halal food related issues since the *fuqaha'* in consensus agreed that *al-'urf* can legitimately influence in determining Islamic legal rulings (Al-Zaydan, 2001; Al-Zuhayli, 2007; Aznan, 2011), albeit there is dissension among the *fuqaha'* on its position as part the secondary sources of Islamic law (*adillah al-ahkam*). According to al-Jurjani (2003); al-Suyuti (2011); Ibn Nujaym (1993), *al-'urf* means something that always been practiced continuously whereby the practice is accustomed and accepted in ordinary life in the way that they could easily understand the practice reasonably. In fact, *al-'urf* refers to the common practices that well established among the society and it affects more on the life of the society. In short, it is regarded as part of societal values where it could be articulated as tradition (Taiwo, 2013). Definitely, Islam celebrates the life of the society because the prevalent actions in certain things that been done continuously represent that there is a need (*hajah*) and common plight (*umum balwa*) there (Abu Sinnah, 2004). The recognition of *al-'urf* in Islamic law is only when *al-'urf* does not against the Shariah and it will not harm the people. This aligns with what Allah says in the Quran, "He has chosen you, and has imposed no difficulties on you in religion" (Al-Hajj (22): 78). In relation to this matter, this paper seeks to discuss on the rationalization of using of *al-'urf* to solve the issues in halal food industries since the recognition of *al-'urf* in Islamic law is due to the element of preservation the need of the society. Thus *al-'urf* is so accommodative to face the halal food related issues that are not clearly discussed in the divine revelation texts (al-Quran and Sunnah).

Research Methodology

This paper adopts for the qualitative research methodology whereby document analysis technique was used to collect the data from authoritative sources like classical books related to Islamic legal deduction, contemporary books related to halal food, journal articles, muzakarah paperwork, fatwa decisions from National Fatwa Committee and State Fatwa

Committee and any other documents suit to this study. Thereafter, the data was analyzed by using content analysis and constant comparative techniques simultaneously in ensuring that the objective of the study was achieved accordingly.

Findings and Discussions

The recognition of halal food industry as a new extended segment under the food industry showing that this industry is very significant to many groups of people globally regardless of which countries there are belonged to. Halal food industry today not represents as niche segment, but it is recognized as the main player in the halal industry as a whole (Zulfakar, et al., 2014). Conventionally, there is no standard definition on the meaning of food industry highlighted by the people. Among of the definitions on the food industry is based on the definition from the Collins English dictionary, in which the food industry means "the industry surrounding the production of food". Another definition is, "the complex network of farmers and diverse businesses that together supply much of the food consumed by the world population" (New World Encyclopedia, n.d.). From both meanings, it denotes that the food industry covers from production until sale or serve to the consumers. When relates to the halal food industry, the understanding of the industry could be expanded with its limitation based on Islamic law. This is owing to the upmost drive for the emergence of the halal food industry is due to the religious element solely in which all the supply chain processes from each point in halal food industry cannot disregard the food legality elements that have already enshrined in the divine revelation texts. This is because the main objective of halal food production is ensuring the food is made available to the society and Muslim populations comply with Shariah principles and its requirements. The efforts to make halal food is available considers as part of *jihad* as to sustain Muslims get access for the halal food. This has been done by the prophet Yusuf a.s in managing the availability of food to their society in the surah Yusuf: 47-48,

"(Joseph) said: "For seven years shall ye diligently sow as is your wont: and the harvests that ye reap, ye shall leave them in the ear, - except a little, of which ye shall eat."Then will come after that (period) seven dreadful (years), which will devour what ye shall have laid by in advance for them,- (all) except a little which ye shall have (specially) guarded."

As the halal food industry reaps more profit due to demand for the halal food keeps increasing with the urge from the government to the manufacturers to adopt for the modern technologies in their business to remain competitive (The Sundaily, 2018), thus it is important for the authoritative people and the *fuqaha'* in observing the each of the processes happens in halal food industry. Indeed, the requirement for the 'halal' does not only guarantee that the food is free from any elements that is forbidden clearly in Islam, in fact, it includes the *tayyiban* aspects as well. As Allah says in the Quran about the characteristics of *halalness* of food, for instance in surah al-Araf (7):157, "He allows them as lawful for what is good (*al-tayyibat*) and prohibits them from what is bad (*al-khabaith*)". The room for *ijtihad* could be seen through the interpretation of *tayyiban* in the verse where the *fuqaha'* distinguish on its meanings. The classical *fuqaha'* such as the Maliki School for instance is quite strict on the interpretation of the meaning of *tayyiban* whereby it means halal itself as long as the food is not endangered to mankind (Ali Mustafa, 2009). In contrast, the Shafi'e, Hanbali and Hanafi Schools opined that the criteria of *tayyibban* are evaluated based on the '*urf al-arab* (al-

Bahuti, 1982; al-Nawawi, 2000; Ibn Rushd, 1995). Nevertheless, the discussion of the classical *fuqaha'* before was more on the criteria of the animals, likewise the halal related issues nowadays are more diversify where it needs for more in depth understanding on the reality happens in the halal food industry since the realm of food related issues nowadays is more complex.

Based on the exploration, the viability of *al-'urf* in facilitating the issues faced in the halal food industries could be identified in several aspects as follows;

Legislation

In Malaysia particularly, the fatwa institutions namely National Fatwa Committee and State Fatwa Committee have the power to solve the Shariah related issues and of course halal food issues fall under the same jurisprudence. The study apparently has elucidated that the method of *ijtihad* in Malaysia is in the mazhabic form except for the state of Perlis, where the view of Shafi'e School has a most priority. When the Naemah (2007) has stated that this practice indirectly influences the lifestyle of the society once the society follow the rules. As mentioned in the Administration of Islamic Religious Affairs of Terengganu Enactment, Section 54 (1-3), 2001) where the priority is given to the *qawl mu'tamad* of Shafi'e School first as long as the opinion does not contravene to the *maslahah*. Based on this occasion, it has shown that the process of *ijtihad* in producing the rulings or fatwa is influenced by the classical opinion of Shafi'e School of thought whereby the characteristics of the animals are based on the repulsiveness (*khabilityah*). However, the approach is more on the locality whereby it based on the perception of the general perception of the Muslim society in particular state if the ruling is derived from the state fatwa committee or Muslim people as a whole in Malaysia, if the rulings are from National Fatwa Committee. The issue of worms for instance has been discussed by the several states of Malaysia due to the need for that since there is a lot of Malaysians involve in breeding the worms for making the *jamu* and cosmetic purposes. Based on Fatwa Committee of National Fatwa Committee (e-Fatwa, 2008a), Johor (e-Fatwa, 2009), Kelantan (e-Fatwa, 2008b), Kedah (e-Fatwa 2008c) in opinion that the animals is haram for consumption because the society perceive the animals as *khabilityah* (National Fatwa Committee, 2008) as compared to Kelantan Fatwa Committee (e-Fatwa, 2008b) in viewed that the animals are not repulsive and it is allowed to consume.

Based on the fatwa highlighted, the study has found that legal deduction considers *al-'urf* of the local society to evaluate the repulsiveness of the animals. The common acceptance of the animals as food in their daily lives plays important roles in influencing the process of determining Islamic legal rulings.

Food Processing

Furthermore, the functions of *al-'urf* could be seen via the changing of the process involved in food manufacturing. Since the halal food industry mostly relates to food science and technology particularly in its process, thus there is a requirement for the *fuqaha'* to take into consideration the reality of this industry where it shall be scientifically understood. Undeniably, with the progressive innovation made by the food scientists in order to increase the quality of food, this sometimes could trigger the halal issues. The bacteria normally found in yogurt products like *lactobacillus acidophilus*, *lactobacillus bulgaricus* and *streptococcus thermophilus* (Wollowski, I. et al., 1999) for instance create the issue in halal food industry. The bacteria are cultured and usually it was taken from the faeces of the baby. Of course, this could be a challenge for the *fuqaha'* to solve the problem since the process is commonly

carried out in the laboratory that involve scientific tools. Certainly, it was reported that the usage of the bacteria was initiated in the 1980 (Fatwa Management Department, 2004). This depicts that the issue is so contemporary where it is not yet happened before during the classical *fuqaha'* period.

Owing to this, understanding the current *al-'urf* (reality) is very significant for the *fuqaha'* in ensuring the rulings deduced is accurate. The issue could be viewed with two angles namely the status of the bacteria itself and latter taking the bacteria from the faeces of the baby. Based on the decision made by the fatwa committee members with consideration of the food scientists, it shows that the practice is permissible since the status of the bacteria already proven that it provides benefit to the consumers (Fatwa Management Department, 2004) for their digesting system (Gottschall, 2014). Even though the general society views bacteria are *khabaith* because of their bad perception on its that was inherited from the older generation, but the opinion is not so significant to influence the *fuqaha'* to finalize the rulings. This is due to the practice of the specialized people in the culturing the bacteria already proven that the bacteria are free from *najs* and benefits to mankind compared to the society that just based on psychologically basis.

Food Product Naming and Branding

Naming or branding of the food products plays significant roles to the manufacturer of the halal food company as part of strategy in attracting the customers to buy their products. However, when the halal food company would like to obtain halal certificate from the Department of Islamic Development Malaysia (commonly known as JAKIM), they have to ensure that the name or brand of the products is from the good name in Islam. The clause 3.7.4 in MS1500:2009 mentions that "Halal food and halal artificial flavor shall not be named or synonymously named after non halal products such as ham, bak kut teh, bacon, beer, rum and others that might create confusion (Department of Standard Malaysia, 2009). In Manual Procedure for Malaysia Halal Certification (Third Revision) (2014) also states the similar things whereby the clause 4.8 (x) stresses that, "products which use the name or synonymous names with non halal products or confusing terms such as ham, bak kut teh, bacon, beer, rum, hotdog, chawsiew and the like" are not eligible to apply for the halal certification. This shows naming or branding of the products is taken seriously by the policy maker where this is regarded a pre-requisite requirement in getting halal certificate.

According to the present Mufti of Wilayah Persekutuan, Sohibul Samahah Datuk Dr. Zulkifli Mohamad al-Bakri (2016), the halal food products should be named with the good names because the bad names will give negative implications to Muslim society. He further explained that the naming of the food is related to the concept of *al-'urf* in which Islam only regards the '*urf sahih* (valid *al-'urf*) in influencing the rulings. In another meaning, the '*urf fasid* (invalid *al-'urf*) cannot be followed because it will not help in preserving the *maslahah* of the Muslim society. In view of this matter, the wisdoms from the prohibition of naming with the bad names are likely as part of *sadd adz-dzari'ah* (blocking the mean) concept that is to avoid from confusion and manipulation among the sellers in order to attract the Muslim consumers to purchase the products. Thus, in securing the benefits of the society, thus, the names that lead to the confusion are strictly not allowed if the food company would like to obtain an authorized halal logo.

Conclusions

The evolution of time changes the way of food is reached to the consumers. It is important to note that there is emerging of halal food related issues in line with the development of halal food industry today since the handling of food multiply increasing throughout the supply chain processes. Thus, *al-'urf* functions well in accommodating the justifiable rulings to the society and the halal practitioners as well by having in depth understanding on one particular issue. The issues of legalities of food today are more complicated because the issue does not only cover sources of the origin of the food, nevertheless it includes the process, equipment and tools, sensitivity of the society, changing of the locality and the different legislation as well. Therefore, this study proposes to the *fuqaha'* to be well-equipped themselves with the contemporary knowledge in ensuring they could solve the problems in line with the reality. Moreover, the combination of the committee members from different related background is significant in ensuring the rulings deduced conform to the life of the society.

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