

LEGAL COMPLIANCE AND CHALLENGES IN ENTERING HYPERMARKETS BY SME BUSINESSES IN MALAYSIA

Rozanah Ab. Rahman¹, Mohani Abdul², Saadiatul Ibrahim³, Nitty Hirawaty Kamarulzaman^{4,5}

¹Faculty of Economics and Management, Universiti Putra Malaysia, 43400 UPM, Serdang, Selangor Darul Ehsan.

²Institute of Social Science, Universiti Putra Malaysia, 43400 UPM, Serdang, Selangor Darul Ehsan.

³Faculty of Economics and Management, Universiti Putra Malaysia, 43400 UPM, Serdang, Selangor Darul Ehsan.

⁴Faculty of Agriculture, Universiti Putra Malaysia, 43400 UPM, Serdang, Selangor Darul Ehsan.

⁵Halal Products Research Institute, Universiti Putra Malaysia, 43400 UPM, Serdang, Selangor Darul Ehsan.

For correspondence; Tel.+(60) 3 89472047, E-mail: rozanah@upm.edu.my

ABSTRACT: Legislations on food standard and quality are enforced to regulate manufacturing of food for consumers' consumption in Malaysia. The regulatory control is mandatory under the statute and also under the local and international standards, including 'halal' certification. In exploring the challenges faced by the Small and Medium Enterprise (SME) businesses in entering hypermarkets in Malaysia, a focus group discussion was conducted with the SME food manufacturers in Klang Valley to inquire into their knowledge on the legal requirements related to standard and quality of manufactured food; factors affecting compliance with the standard and quality of manufactured food by the SME food manufacturers; and the reaction of the SME food manufacturers when facing with issue of compliance with the legislations. It is evident that matters relating to compliance with legislations, standards and certifications for safe and quality food manufactured by the SMEs, have their relations with cost for compliance, the need for 'halal' certification, other restraining factors and appropriate time for compliance, as well as other challenges faced by the SME food manufacturers before entering hypermarkets.

Keywords: Small medium enterprise (SME), Food safety, Food legislations

1. INTRODUCTION

Are small and medium enterprise (SME) entrepreneurs breaching elements of food safety regulations and contributing to expose the population to food safety hazards? According to the World Health Organization's expert committee on food safety, food borne illness caused reduction in economics productivity being the most widespread health problem in the world. The observation was that within the developed countries, food borne illness had affected the ten per cent to thirty per cent of the population each year (Food Standard Agency, 2002). The contribution by the SMEs in exposing the population to food safety hazards has not been quantified, but the search conducted by the Food Standard Agency in the UK on every premise around the state revealed that in the year 2000, 45 per cent of the premises inspected had breached the elements of food safety regulations [16].

A business is deemed as an SME if it meets the qualifying criteria, either sales turnover or full-time employees, whichever is lower. The review of the new SME definition in 2013 was endorsed at the 14th NSDC Meeting in July 2013 as Manufacturing, (with sales turnover not exceeding RM50 million or full-time employees not exceeding 200 workers); and Services and Other Sectors, (with sales turnover not exceeding RM20 million or full-time employees not exceeding 75 workers [12]. According to Yapp and Fairman [17], the different characteristics of SMEs from large businesses in terms of their financial, expertise and staffing capabilities, have impacted their performance in compliance with safety regulations, and had gone through debates about optimizing their levels of compliance.

2. LEGISLATIONS ON FOOD STANDARD AND QUALITY

Enforcement of law is carried out to ensure conformity with the law. In Malaysia, the main food legislations and subsidiary legislations are the Food Act 1983, Food Regulations 1985, Food Hygiene Regulations 2009, and Food

(Issuance of Health Certificate for Export of Fish and Fish Product to the European Union) Regulations 2009.

The Food Act 1983 is the parent Act and the remaining subsidiary legislations are made by the Minister pursuant to his power conferred under Section 34 of the Food Act 1983. All the Regulations made under the Food Act 1983 are relevant to regulate manufacturing of food for consumer consumption in Malaysia. The objective of the Food Act 1983 is to prevent health hazard against public food consumption as well as, to abolish fraudulent conduct in food preparation and any incidental thereto and connected therewith.

Section 34 of Food Act 1983 confers power to the Minister of Health to make regulations for the better carrying into effect the purposes and provisions of the Food Act 1983. Pursuant to such power, the Minister made regulations compiled under the Food Regulations 1985, which govern multi food processes and procedures such as labelling, food warranty, sampling for nutrition process, food additive and nutrition supplement and food packaging. These Regulations, complemented with 27 Schedules, accommodate most of the related conducts in complying with food regulations. The Food (Issuance of Health Certificate for Export of Fish and Fish Product to the European Union) Regulations 2009 is meant for the issuance of health care certificates for export of fish and fish products to the European Union, whereby any person who intends to export fish products to the European Union needs to apply for a health care certificate in writing to the competent authority, and the exporter must comply with the European Union requirements [10]. The Food Hygiene Regulations 2009 were made by the Minister as the regulatory requirement for sanitary measures in food handling and processing.

Part II of the Food Act 1983 elaborates about administration and enforcement of the statute by the authorized officer i.e. any Medical Officer of Health or any Health Inspector of the Ministry of Health or of any local authority, or any suitably

qualified person, appointed by the Minister to be an authorized officer under Section 3 of the Act. Such enforcement officer (as authorized under the Act) would have general enforcement power and authority under Section 4 of the Act against all food processor, food manufacturer and other people who are related incidental to the effect of such Act.

This regulatory control is mandatory under the Act and inflicts punishment against that food manufacturer who fails to comply with the stipulated terms of the Act generally. Part III of the Act elaborates the offences and the punishments that can be inflicted against wrongdoer in food manufacturing industry (including SME food manufacturers). For example, section 13(1) of the Act stipulates any person who prepares or sells any food that has in or upon it any substance which is poisonous, harmful or otherwise injurious to health commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both. The penalty can be observed as punitive and deterrence in nature since the offence inflicts health hazard against public.

3. MALAYSIAN STANDARDS FOR FOOD QUALITY IN MALAYSIA

Food manufacturers including SMEs must comply with all minimum requirements of the Malaysian Standards to align with the open market requirement. Apart from the legislations, the Malaysian Standards under SIRIM BERHAD, formerly known as the Standards and Industrial Research Institute of Malaysia (SIRIM) or Code of Practices should be observed and complied with by the industry, and the regulator of such standard has specified a specific body to carry out certain checking in ensuring optimum compliance thereto (SIRIM, 2005).

Good Manufacturing Practice (GMP) sets regulations, codes and guidelines that control the conditions relating to safe food production. The practice assists manufacturers of food products to provide assurance that they have manufactured their products in accordance with the best manufacturing practices and hygienic. The MS 1514:2009 Good Manufacturing Practice (GMP) for Food provides GMP on food safety and hygiene. The Good Manufacturing Practice (GMP) lays down the requirements for certification bodies seeking accreditation by the Department of Standards Malaysia (Standards Malaysia) to certify organizations for their GMP for food sector.

The Standard Development Committee develops the Malaysian Standards and approved by the Minister of Science, Technology and Innovation. SIRIM and the Ministry of Health require food industries and food manufacturers to adopt all standards voluntarily under self-regulatory approach rather than command and control legal framework (SIRIM, 2005). Main standards and other relevant Malaysian Standards to be adopted by the food manufacturers include:

- MS 1480: 1999 [Food Safety According to HACCP (Hazard Analysis and Critical Control Point)]
- MS 1500: 2004 [Halal Food Production, Preparation, Handling and Storage]
- ISO 15161: 2001 [Guidelines on the Application of ISO 9001:2000 for the Food and Drink Industry]

In summary, food industries are regulated mostly under the Malaysian Standards while predominantly under the control of the Food Act 1983. However, studies in the UK and Europe found that small companies are less likely to invest in hygiene and food safety than larger companies and having hazard analysis and critical control point in place [14].

The single most important international reference point associated with food standards is the Codex Alimentarius Commission, which was established by the Food and Agricultural Organization of United Nations (FAO) and the World Health Organization (WHO) in 1963. In facilitating continuous contact with member countries, the Commission established country Codex Contact Point to coordinate activities nationally, in collaboration with the national governments. The Malaysian Codex Contact Point is under the Food Safety and Quality Control Division of the Ministry of Health Malaysia. For Malaysia Codex Committee, Department of Chemistry became the national secretariat committee on Method of Analysis and Sampling (CCMAS) by the Ministry of Health (Department of Chemistry Malaysia, 2014).

4. TOWARDS HALAL HUB

Notwithstanding the legal requirements stipulated by the specific legislations mentioned above, the potentiality for Malaysia to develop and promote 'halal' products and services for global market is promising. Three main specifications laid down under the Third Industrial Master Plan (IMP3) 2006-2020 are the encouragement for Malaysia to become a global 'halal' hub for production and trading in 'halal' goods and services for the global market:

- i. Muslim population is about 1.6 billion and is spread out across the world;
- ii. 'Halal' products and services are gaining an increasing acceptability among non-Muslims;
- iii. The global market value for trade in 'halal' food and non-food products is estimated to be at US\$2.1 trillion annually. This market thus created an interest for food production by both Muslim and non-Muslim countries.

In fact, the SMEs dominated the food processing industry in Malaysia and therefore among the 'halal' hub potential are to create opportunities for SMEs to venture into the 'halal' market. SMEs involve more than 80 per cent of the total number of corporations in the food processing industry and the biggest of SMEs segment involved in cereal and flour based products, bakery foodstuff, noodles and other similar products. For Malaysia to become global 'halal' hub, both halal standards and international standards need to be complied with by food manufacturers, while ensuring the production of quality 'halal' products [8].

'Halal' means allowed or permitted by the Islamic Law. In the early 1980s, Malaysia is the pioneer in establishing 'halal' laws and in matters relating to 'halal' certification globally [9], and now the 'halal' concept is internationally understood by the food manufacturers and open them to trading into the international market [11]. The 'halal' concept is becoming an important element in a supply chain. The entire supply chain starting from production, logistics to consumption must be 'halal' without any broken chain as to have 'halalan

toyyiban' products. Producing 'halalan toyyiban' products is part of SMEs approach to the global market.

5. CHALLENGES TOWARDS COMPLIANCE WITH LEGISLATIONS ON STANDARD AND QUALITY OF FOOD BEFORE ENTERING HYPERMARKETS IN MALAYSIA

An important question was raised regarding the possible barriers faced by the SME food manufacturers that prevent compliance with the legislations on food standard and quality. What are the challenges towards compliance? Obviously, in penetrating the hypermarkets, the SME food manufacturers need to satisfy all related matters involving food safety and quality, preparation, manufacturing practice, hygiene, production, packaging, labeling, handling, and storage. Since the stores require the food delivered to be fitted to the consumption that can gain consumers' confidence with regard to quality, the challenge would be for the SME food manufacturers to satisfy all the legal requirements and standards so that they can make through their products to the hypermarkets in the country.

Most food manufacturers in food industry demonstrate lack of knowledge throughout the compliance process stipulated by various standards approved and governed under the Standards of Malaysia Act 1996. High percentage of SMEs did not understand the real meaning of hazard analysis and the requirements, as well as the implementation of the analysis in their business or the evaluation and monitoring steps to be taken. For food safety legislation, there was evidence of lack of understanding on the basic food safety principles and the related legislations [17].

It was observed that one-third of the SMEs in food industry exhibited lack of awareness of food safety problems within their businesses. This awareness dilemma mostly derived from inadequate knowledge of food safety requirements stipulated under the food legislations. This group believes that an increase in food procedural legislations would have no impact on their businesses. Previous research examining barriers to food compliance implies that SMEs are generally skeptical of the relevance and importance of legal requirements in food standard and quality. In brief, SMEs have significantly different characteristics from large businesses in terms of their financial, expertise and staffing capabilities and these issues affect the performance of SMEs in terms of compliance with food standard and quality regulations [17].

A focus group discussion was conducted with the SME food manufacturers in Klang Valley to inquire into their knowledge on the legal requirements related to standard and quality of manufactured food; the factors affecting compliance with the standard and quality of manufactured food by the SME food manufacturers; and the reaction of the SME food manufacturers when facing with issue of compliance with the legislations.

i. COMPLIANCE WITH LEGISLATIONS

As far as the willingness of the SME food manufacturers to comply with the legislations or standards required by the authorities, including halal certification is concerned, the respondents were of the view that for SME food manufacturers, the obstacle for them to comply with the food

safety regulations to venture into hypermarkets is more towards paper documentation required which is tedious. SME food manufacturers would usually opt out from complying with the legal requirements and choose to sell off their products at small retail shops. In terms of marketing, selling products at the hypermarkets might be attractive for long-term investment. However, economically, SME entrepreneurs would prefer to venture into online marketing where there is a pool of willing buyers who have full liberty either to buy or not to buy the products although there is no proper food certification. Most of the buyers are usually consumers who are familiar with the food quality produced by the SME food manufacturers.

Most SME food manufacturers sometimes avoid from complying with the regulations due to the cost involved. There are mandatory regulations for the food products to be certified in order to enter into the hypermarkets. Requirements for food standards are imposed by SIRIM Berhad and other regulatory bodies. Most SME food manufactures opted to put the certification as supplementary and not mandatory in their operation target. Based on our focus group discussion, it was noted that a compliance strategy should be the adoption of a more flexible, conciliatory approach available to enforcers when faced with non-compliance as suggested by Bardach and Kagan [1] Hawkins [5] and Hutter [6]. However, they need to be aware about the existence and meaning of food safety legislation that could affect their performance since most of the SMEs relied upon external agencies to advise them of the legislation relevant to their businesses and interpret the legal requirements for them.

ii. COST FOR COMPLIANCE

Whether cost is part of the reason for difficulty in complying with the legislations, the SME food manufacturers expressed their concern with regard to the actual cost required. They mentioned that the cost percentage varies from one SMEs businesses to another but most SME food manufacturers have to set aside almost quarter to half of the monthly income in order to comply with the food regulations since the licences are quite costly. The financial involvement for business licence renewal or intellectual property registration maintenance usually take almost half of the monthly profit and that is part of the compliant need in food standard requirements. Some SME food manufacturers have to spend their entire profit of the first month in business to fulfil the legislations and standard requirements for the very reason that they do not want to be taken action by the enforcement body.

iii. 'HALAL' CERTIFICATION

For food product in Malaysia, which are largely produced and consumed as 'halal' product, the SME food manufacturers stated their views on the importance of obtaining the 'halal' certification by JAKIM to get their products into the hypermarkets.

As far as 'halal' certification by the Department of Islamic Development Malaysia (JAKIM) is concerned, the SME food manufacturers were of the view that the certification is crucial since most of foreign bakery ingredients in the market are produced by non-Muslim manufacturers. In fact, 90 per

cent of the bakery ingredients in the market are not locally produced. Looking at the demand, no doubt that 'halal' certification would attract more consumers in purchasing bakery ingredient produced by the SME food manufacturers.

It was also agreed that the SME food manufacturers need to comply with the food regulations in general before selling their products for public consumption. As manufacturer of soda beverages, for example, there is a need to obtain 'halal' certification from JAKIM to avoid misconception on the products with other 'non-halal' beverages. In local market, there are few SME food manufacturers who ventures into production of soda beverages. They are mostly dominated by foreign branding such as Coke, Pepsi and others, despite the beverages are locally produced and manufactured.

Nevertheless, upon personal observation at some of the hypermarkets in Malaysia, there are quite a number of beverages sold without 'halal' certification from JAKIM, and yet the products are still marketable, saleable and do not lead to public confusion in differentiating 'halal' beverages from 'non-halal' beverages. Still, SME products are sometimes viewed as sub-standard than a foreign product due to the later branding is known to the public.

The advantages for the SME food manufacturers who obtained halal certification would be, their products could be seen as of equal standard to other food products at hypermarkets. But, in terms of market and practicality, most SMEs entrepreneurs produce their products for chain stores like 7 Eleven or 99 Speedmart which is not picky in requiring halal certification from JAKIM. Furthermore, to obtain JAKIM halal certification, there are many components, which not only the raw material of the food products to be fulfilled but also other bits and bobs. This will add a lot more complication to the SME entrepreneurs.

iv. RESTRAINING FACTORS AND APPROPRIATE TIME FOR COMPLIANCE WITH LEGISLATIONS

It is agreed that cost becomes the dominant factor that refrains SMEs food manufactures from complying with the food standards and policies, with a minimum budget allocated especially at the beginning of the business. Apart from costs, it is observed that all provisions stipulated under the Food Act focus on food safety. Thus, SME food manufacturers are obliged to produce good food products for the consumers to avoid public complaint and to build up trust and confidence in establishing good sales. This understanding becomes the business principle for SME food manufacturers in producing food products, which are not only healthy but also safe for consumption.

As for the appropriate time for the SME food manufacturers to comply with the food standards and policies, they agreed that it should be appropriate to comply with the necessary standards at the beginning of the business. However, practically, most SME food manufacturers cannot afford to cover such cost in the beginning of the food process since the price of food raw materials is tremendously increasing.

V. ENFORCEMENT BY THE AUTHORITIES

In terms of enforcement issue by the authorities, the SME food manufacturers mostly responded by sharing their

experience having to begin their manufacturing work at shop-lot premises or commercial areas which are not permissible under certain legislation that requires them to obtain the manufacturer licence and operate their manufacturing activities in designated areas, not in the commercial areas. This is actually one of the big hurdles for the SME food manufacturers having to comply with the authority's requirements for such permits and they wish for the enforcement to issue them special permits to operate their business at the shop premises, since the industrial work processes by the SMEs is different than other factory owner doing manufacturing at a bigger scale.

The enforcement authority shall enforce those requirements and the manufacturers are aware of the need to obtain all licenses and permits (whichever applicable depending on their type of businesses) from the relevant authorities. In view of that, the manufacturers hoped for the compliance procedures to be made more relaxed for the SMEs, as to some SMEs the penalty for such non-compliance is very punitive.

VI. OTHER CHALLENGES

Other challenges include consumers support as well as pricing of food products manufactured by the SME food manufacturers. It is quite difficult to adopt standard or minimum price because the pricing costs that the SME food manufacturers have to fix is almost equal or more in terms of pricing with other big food manufacturers. This is due to very few subsidies offered to the SME food manufacturers. The SME food manufacturers have to compete with big manufacturers in purchasing raw material (sold at market value) and are under force to sell their products at higher price but because of their SME's status, consumers are expecting for cheaper price from the SMEs businesses.

Notwithstanding that, there are consumers who are willing to purchase products from the SMEs businesses at a higher price for its quality and specialty including their trust on such products. In this case, the SMEs businesses have different target group of consumers and find no importance of entering into hypermarkets for their product promotions and marketing. Most of their marketing strategies involve direct communication with the consumers via online marketing, either through their own companies' promotional activities or using services offered by the advertisement provider companies. Indeed, it creates good economic growth for the SMEs food industry for the diversity in the products offered would promote better choices for the consumers, especially in the era where consumers choose to shop online at their own convenience.

6. CONCLUSION

It is of great importance for the SME food manufacturers to comply with the legislations on standard and quality of food manufactured and to observe the elements of food safety requirements in operating their businesses. This is to ensure safety of consumers in buying their products besides boosting their business image. Nonetheless, three crucial challenges needed attention from various stakeholders within this industry. Vital challenges are the requirements for required standards and 'halal' certification to be obtained by the SME businesses, financial assistance in penetrating the

hypermarkets and finally the assistance from the enforcement authorities to ease the hurdles faced by the SMEs.

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