



AN ANALYSIS OF THE LAWS AND POLICIES
GOVERNING THE TOURISM INDUSTRY IN
MALAYSIA: A QUEST FOR A REGULATORY
FRAMEWORK

BY

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ABSTRACT

Tourism industry plays a key role in Malaysia's economy. However, there has been an absence of comprehensive policies on the industry and part of the reasons lies in the fact that there is no one set of laws that could be said as comprehensive and able to provide the framework for the tourism industry. By acknowledging that tourism industry, being one of the oldest industry in the world, is influenced by Islamic teachings, therefore, it follows that reference to the *Shari'ah* can be the ideal option in designing the complete framework for laws and policies for the tourism industry. However, such approach has not been taken in Malaysia. Findings indicate that the laws and policies to regulate the industry have been put in place mostly as a reaction to developments in the industry. This underlines the lack of planning and coordination between the states and between federal and state governments. To a large extent this has been due to the existence of overlapping of powers between the federal, state and local authorities. The problem has escalated when certain states were controlled by political parties in opposition to the central government. However, the overlaps in jurisdiction should not be a reason not to cooperate to formulate laws to regulate tourism industry in Malaysia. Political parties and rivalries should not be a problem indeed. Here lies the importance of realising the crucial role of tourism in the economy and of course the democratic nature of politics. Apart from that, inconsistent policies adopted by the federal government so far—despite the novel objective of facilitating the tourism industry—have not been good to national identity. These policies have also been at odd with the environment. Thus, the study proposes that while the management of the globalisation process is for federal authorities to deal with, the states and local authorities should be allowed to handle matters not falling under the former. Local communities should also be given more space to get involved in tourism ventures. This leads to the next proposition of this study; namely, the participation of public interest groups and public participation in the proceedings of the courts. Indeed, there is enough justification for this under the existing public law theory. As far as the research methodology is concerned, while fact-finding is primarily library-based, some interviews have also been conducted. These include discussions and interviews with the policy-makers and major players in the industry. Since tourism is concerned with wide combination of sub-sectors, laws and policies from selected ASEAN as well as the Commonwealth and European countries, United Kingdom and the United States are referred to in situations where it is necessary and suitable for the Malaysian context.

ملخص البحث

أن صناعة السياحة تلعب دورا أساسيا لإقتصاد ماليزيا. ولكن هناك تفقد السياسة الكاملة تجاه هذه الصناعة، وبعض أسبابه قد ترجع إلى غياب مجموعة من القوانين التي تستطيع أن تقدم هيكلًا مبتكرا لهذه الصناعة. أن صناعة السياحة من أقدم الصناعات في العالم. فهي قد تأثرت بتعاليم الإسلام. ولأجل ذلك ستكون الشريعة الإسلامية خيارا أمثل في تخطيط المشروع الكامل للقوانين والسياسة لهذه الصناعة. ولكن هذه المنهج لم يأخذ سبيله في ماليزيا. أن نتائج البحث تشير إلى أن القوانين والسياسة التي تنظم هذه الصناعة أكثرها كانت نتيجة للتطورات الملموسة لهذه الصناعة فحسب. هذا الوضع يشير إلى عدم وجود المشروع والتعاون المشترك به الولايات وحكومة ماليزيا المركزية. زيادة على أن هذا الوضع ينشأ لأجل وجود القوى السياسية المتصارعة بين الحكومة المركزية والولايات من جانب، ومن جانب آخر بين الحكومة المركزية والسلطات المحلية. وتزيد المشكلة من حدتها عندما كانت بعض الولايات تتحكم فيها الأخراب السياسية المعارضة للحكومة المركزية. ولكن هذا التنازع القانوني لم يكن ذريعة إلى عدم وجود التعاون المشترك لتصحيح القوانين التي تنظم صناعة السياحة في ماليزيا. حقا إن وجود الأحزاب السياسية المتعارضة لا تكون مشكلة من المشاكل. هنا يظهر مدى أهمية الدور المحاسم للسياحة في الإقتصاد بجانب التنفيذ الصحيح للديمقراطية في السياسة. وبجانب ذلك هناك التضارب وعدم الثبات علي السياسة الواحدة التي تمارسها الحكومة المركزية. وهذا يتعارض مع الهدف الجدى في تيسير الصناعة وقد يكون عنصرا غير مرغوب فيه للهوية الوطنية، والبيئة. لأجل ذلك أن هذا البحث يقترح أنه عندما كانت معالجة مشكلة العولمة تحت سلطة الحكومة المركزية فمن الأرجح أن يمنح الحق للولايات والسلطات المحلية تدبير بعض الأمور التي لم تكن تحت سلطة الحكومة المركزية. وكذلك من الأجدى أن تعطي للمجتمعات المحلية فرصة التداخل والممارسة في مشروعات سياحية. هذا يمهد السبيل إلي أن يقترح البحث ممارسة الجماعة التي لها المصلحة العامة ومزاولة العامة في مرافعات المحاكم. حقا هناك مبرر قانوني في هذا الصدد بناء على نظرية القانون العام. وعلى قدر ما يهتم به أسلوب البحث ومنهاجه فإن البحث عن الحقائق والمعلومات مبنى علي البحث المكتبي، ولكن هناك بعض المقابلات قد جرت تنفيذها. هذه تتضمن المشاورات والمقابلات مع واضعي السياسة وممارسي الكبار لهذه الصناعة. وعندما كانت السياحة تهتم بمجموعة مؤتلفة من القطاعات الفرعية، فقوانين وسياسات بعض الأعضاء المختارة من دول 'ASEAN' وكذلك 'COMMONWEALTH'، ودول أوروبا، وإنجلترا، وأمريكا تكون مراجعا في مواقع ومواضع مناسبة وضرورية بالنسبة إلى ماليزيا.

APPROVAL PAGE

The thesis of Nuraisyah Chua Abdullah has been examined and approved by the following:

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DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Nuraisyah Chua Abdullah

Signature

Date

INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA

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Common Gaming Houses Act 1953 (Revised 1983) (Act 289)
Companies Act 1965 (Revised 1973) (Act 125)
Consumer Protection Act 1999 (Act 599)
Contracts Act 1950 (Revised 1974) (Act 136)
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Control of Rent Act 1966 (Act 363)
Control Supplies Act 1983 (Act 122)
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Innkeepers Act 1952 (Revised 1981) (Act 248)
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National Park Act 1980 (Act 226)
National Parks Act 1980 (Act 226)
Occupational, Safety and Health Act 1994 (Act 514)
Persons With Disabilities Act 2008 (Act 685)

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Japanese Law for the Protection of Cultural Properties 1950
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Minnesota Environmental Improvement Act 1995
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Sri Lankan Archaeological Ordinance No 9 of 1940
Standards New Zealand “New Zealand Standard Model General By-Laws 1999
UK Accreditation Standards and Guidelines for ART Laboratories
UK Code of Practice and Guidelines for Assisted Reproductive Technology (ART)
UK Health and Safety at Work Act 1974
UK Human Fertilisation and Embryology (Research Purposes) Regulations 2001
UK Human Fertilisation and Embryology Act 1990
UK Merchant Shipping Act 1995
UK Merchant Shipping Act 1995
UK National Health Service Act 1977
UK National Health Service Act 1977

UK Occupiers Liability Act 1957
UK Occupiers' Liability Act 1984
UK Package Travel, Package Holidays and Package Tours Regulations 1992
UK Police Act 1996
UK Town and Country Planning Act 1990
UK Trade Descriptions Act 1968
UK Tribunals of Inquiry Act 1921
UK Unfair Terms in Consumer Contracts Regulations 1999
US Clean Air Act 1970
US Clean Water Act 1977
US National Forest Management Act 1976
US National Historical Preservation (Amendments) Act 1992
US Toxic Substances Control Act 1976

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Hague Declaration on Tourism (1989)
International Health Regulations (1969)
International Health Regulations 2005
Montreal Convention (1999)
United Nations Convention of the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979
Warsaw Convention (1929)

LIST OF ABBREVIATIONS

| | |
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| AC | Appeal Cases |
| AGS | Australian Geographical Society |
| AIR | All Indian Reports |
| AJISS | American Journal of Islamic Social Sciences |
| ALJ | Australian Law Journal |
| ALJR | Australian Law Journal Report |
| ALR | Argus Law Reports |
| ALR | Administrative Law Review |
| Am. Indian L. Rev. | American Indian Law Review |
| AMR | All Malaysian Reports |
| Ariz. St. L. J. | Arizona State Law Journal |
| Asian J. WTO & Int'l Health L. & Pol'y | Asian Journal of World Tourism Organisation & International Health Law and Policy |
| ASR | American Sociological Review |
| ATR | Annals of Tourism Research |
| Bull. World Health Org. | Bulletin World Health Organisation |
| Can. J. Admin. L. P. | Canadian Journal of Administrative Law and Practice. |
| CE | Christian Era |
| Ch | Chancery Division |
| Chi. J. Int'l L. | Chicago Journal of International Law |
| Chi. Sun Times | Chicago Sun Times |
| CLJ | Current Law Journal |
| CLR | California Law Review |
| CLR | Current Law Reports |
| CLR | Current Law Review |
| Cornell J. L. & Pub. Pol'y | Cornell Journal of Law and Public Policy |
| DBP | <i>Dewan Bahasa dan Pustaka</i> |
| Duke J. of Comp. & Int'l L. | Duke Journal of Comparative & International Law |
| EIPR | European Intellectual Property Review |

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|--------------------------|---|
| EJBO | Electronic Journal of Business Ethics and Organisation Studies |
| Environ. Res. Lett. | Environmental Research Letters |
| ER | English Reports |
| et al. | (<i>et alia</i>): and others |
| etc | (<i>et cetera</i>): and so forth |
| FLR | Faulkner Law Review |
| Ga. J. Int'l & Comp. L | Georgia Journal of International and Comparative Law |
| Harv. J. L. & Pub. Pol'y | Harvard Journal of Law & Public Policy |
| Hong Kong L. J. | Hong Kong Law Journal |
| HPP | Health Policy and Planning |
| i.e. | that is |
| IBFL | International Banking and Financial Law |
| ibid. | (<i>ibidem</i>): in the same place |
| id | (<i>idem</i>): the same below |
| IIC | Journal of Intellectual Property and Competition Law |
| IJEM | International Journal of Economics and Management |
| IJHTA | International Journal of Hospitality and Tourism Administration |
| ILBS | International Law Book Services |
| ILR | Industrial Law Reports |
| ILTC | Independent Living and Training Centre |
| Ind. L.J. | Indiana Law Journal |
| Int. J. Const. L. | International Journal of Constitutional Law |
| Int. J. Tourism Res. | International Journal of Tourism Research |
| Int'l J Const L | International Journal of Constitutional Law |
| Intl. Soc. Movement Res. | International Social Movement Research |
| Iowa L. Rev. | Iowa Law Review |
| IPQ | Intellectual Property Quarterly |
| IRIPCL | International Review of Intellectual Property and Competition Law |
| ISSJ | International Social Science Journal |
| ITD | International Institute for Trade and Development |

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| ITLJ | International Travel Law Journal |
| J. Env'tl. L. | Journal of Environmental Law |
| J. Env. L. & Prac. | Journal of Environmental Law and Practice |
| JAMA | Journal of the American Medical Association |
| JBL | Journal of Business Law |
| JCL | Journal of Comparative Law |
| JEL | Journal of Environmental Law |
| JH | <i>Jurnal Hukum</i> |
| JIA | Journal of Islam in Asia |
| JIAEA | Journal of the Indian Archipelago and Eastern Asia |
| JICL | Journal of International Comparative Law |
| JLP | Journal of Legal Pluralism and Unofficial Law |
| JMBRAS | Journal of the Malayan Branch, Royal Asiatic Society |
| JOP | Journal of Politics |
| JPL | Journal of Planning and Environmental Law |
| JR | Judicial Review |
| JST | Journal of Sustainable Tourism |
| JTR | Journal of Travel Research |
| KB | King's Bench |
| Law & Soc'y Rev. | Law and Society Review |
| Lloyd's Rep. | Lloyd's List Law Reports |
| LNS | Legal Network Series |
| LQR | Law Quarterly Review |
| LR | Law Review |
| Med. L. Rev. | Medical Law Review |
| MJTG | Malaysian Journal of Tropical Geography |
| MLJ | Malayan Law Journal |
| MLJA | Malayan Law Journal Articles |
| MLJU | Malayan Law Journal Unreported |
| MMJ | Malaysia Museum Journal |
| MNJ | Malayan Nature Journal |
| n. d. | no date |
| n. p. | no place |

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| NGO | Non-governmental organisation |
| NLJ | New Law Journal |
| no. | number |
| NSWLR | New South Wales Law Reports |
| OECD | Organisation for Economic Cooperation and Development |
| PAR | Public Administration Review |
| Phil Topics | Philosophical Topics |
| PL | Public Law |
| PSR | Political Science Reviewer |
| QB | Queen's Bench |
| QBD | Queen's Bench Division |
| r.a. | <i>Radhiallahu anhu</i> (May Allah be pleased with him) |
| s.a.w. | <i>Sallallahu alaihi wasallam</i> (Peace be upon him) |
| SC | Supreme Court |
| SDR | Special Drawing Right |
| Sing. J. Stud. | Singapore Journal of Studies |
| St. Louis U. J. Health L & Pol'y | Saint Louis University Journal of Health Law & Policy |
| Suffolk U. L. Rev. | Suffolk University Law Review |
| SWT | Subhanahu Wa Ta'a'la (Praise be to Allah and the Most High) |
| TEAM | Tourism Educators Association Malaysia |
| TJE | Telemedicine Journal and e-Health |
| TM | Tourism Management |
| UCLA J. Env'tl. L. & Pol'y | University of California Los Angeles Journal of Environmental Law & Policy |
| UK | United Kingdom |
| UKM | University Kebangsaan Malaysia |
| UM | University Malaya |
| Univ. Chicago Law Rev | University of Chicago Law Review |
| US | United States of America |
| Vict. U. Wellington L. Rev. | Victoria University Wellington Law Review |

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|---------------------|--------------------------------------|
| VJEL | Vermont Journal of Environmental Law |
| vol. | Volume |
| W. New Eng. L. Rev. | Western New England Law Review |
| WHO | World Health Organisation |
| WLR | Weekly Law Reports |
| WLR | Weekly Law Review |
| Yale L. J | Yale Law Journal |
| Yale L. R | Yale Law Review |

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF STUDY

Today, in Malaysia, the tourism industry is one of the most important industries, which has contributed greatly to the income of the country.¹ This industry is not new to our country as since the time of the Malacca sultanate in the early history of Tanah Melayu, tourism was an important industry which contributed to the economy of the state.² Hence, one of the first written code during that time, *Undang-Undang Melaka* impliedly provides the rules which were applied to the travellers then. From the various provisions of the code, it can be construed that the law that applies to the travellers then were the natural law based on the grounds of morality, where the rules of obligation were the core concept. Since trade was the main purpose of the travellers, tortuous aspect of travellers and occupants for example, were illustrated impliedly in many of the provisions in the *Undang-undang Melaka*.³ During the British rule, the introduction of the Innkeepers Ordinance which was then replaced with the Innkeepers Act 1952⁴ (herein after referred to as the 1952 Act) was the only specific statute that governed the travellers and the providers of accommodation.

As tourism industry grew around the world and became an integral part of the fabric of modern life, its international dimension increased and national governments

¹ Tourism is the second biggest source of income for Malaysia as a nation. This is in line with the government's intention to accelerate the domestic private sector and stimulate the services sector to spearhead economic growth. (See Datuk Seri Mohd. Najib Razak's speech, "The 2010 Budget," *New Straits Times*, 23 October 2009, 1.)

² The evidence can be found in the discussion on *Undang-Undang Melaka*, edited by Hassan Ahmad, Yayasan Karyawan, 2003.

³ Examples can be found in Article 21 and 24.

⁴ (Revised 1981), (Act 248).