International Journal of Engineering & Technology, 7 (3.30) (2018) 109-112

International Journal of Engineering & Technology

Website: www.sciencepubco.com/index.php/IJET

Research paper



Legal Protection of Muslim Tourists in Islamic Religious Tourism in Malaysia: Reality and Challenges

Wan Farahiyah Izni W Abd Rahman[1]*, Haniff Ahamat[1]

[1]Faculty of Law, Universiti Kebangsaan Malaysia
**Corresponding author E-mail: P87831@siswa.ukm.edu.my*

Abstract

Islamic Religious Tourism (Hajj and Umrah) services have emerged in recent years. Malaysia has become one of the key players in this fast growing segment. It is caused by better condition of the economy in Malaysia so that raising awareness of the Malaysian people to do the Sunnah (practice) that they believed. Despite this remarkable development, there have been many consumer complaints related to Umrah services in Malaysia. In fact, consumer claims against the travel agents related to Umrah package were the top in the list of services cases filed in the Tribunal for Consumer Claims (TCC) for the past many years. This article seeks to analyse the current application of the Hajj and Umrah services in Malaysia. It then attemps to identify problems related to it. The article then seeks to suggest proper ways on how to overcome the said challenge and problem. Being qualitative in nature, this study collects relevant framework which include laws, regulations and guidelines which are related to Umrah travel agencies services. The purpose is to analyse the adequacy of the existing consumer protection laws in protecting Muslim tourists. The study discovers the lacunae in the existing legal protection for Muslim tourists which renders the protection to be inadequate. The reserachers find that inadequacy of existing consumer legislation has led to the existing problem. Therefore, clear and definite legal instrument are needed to protect the rights of Muslim tourists as consumers in Islamic Religious Tourism.

Keywords: *Islamic Religious Tourism, Muslim Tourist, Consumer Protection*.

1. Introduction

Religious Tourism in the form of pilgrimage is not new, as it existed before the Holy Bible and Quran [1]. The annual number of pilgrimage tours globally is conventionally estimated to total of 155 million [2] whilst more generally, the UN World Tourism Organisation suggest that '300 to 330 million tourist visit the world's major religious sites every years [3]. In the case of Islamic Religious Tourism, Hajj (major pilgrimage) and Umrah (minor pilgrimage) are considered to be the largest religious tourism gathering. Twelve million pilgrims visit the holy cities of Mecca and Medina annually, with the numbers expected to increase to 17 millions by 2025 [4]. One of the reasons for the increasing number of pilgrims is that, the Muslim population of the world is increasing. According to Grim and Karim from the Pew Research Center, the Muslim population is projected to increase so that by the years 2030 it will account for 26.4% of the world population. Secondly, Hajj is compulsory for every Muslim. Every individual Muslim is obliged to perform the Hajj at least once in a lifetime [5, 6]. However, they can choose to perform it several times if they are financially and physically able. Hajj and Umrah are types of pilgrimages that were made obligatory in the holy Quran, based on the following ayat: "And complete the Hajj and Umrah for Allah..."[7]. Thirdly, air transportation is getting cheaper. This means that it is easier to get to Mecca and there is a less time involved. Lastly, more Muslims can afford the expense to go for Hajj and Umrah since country like Malaysia is developing rapidly.

2. Research Design and Methodology

The legal study conducted was indeed qualitative in nature. Being so, research methodologies of library research and critical analysis were used in analysing relevant materials, data and information. This legal study has collected relevant materials, data and information on Islamic Religious Tourism matters especially those involving the Muslim tourists protection issues. Figures from relevant governmental bodies such as Ministry of Tourism and Culture Malaysia and the Tribunal for Consumer Claims were critically assessed and analyzed. The approach to be applied involves a content analysis of existing laws, regulations and guidelines on the legal protection of Muslim tourists as consumer in Islamic Religious Tourism. This includes an examination of relevant provisions of Malaysia Consumer Protection Act 1999 [8], Tourism Industry Act 1992 [9] as well as the Contract Act 1950 [10]. By doing so, an evaluation could be carried out to discover related legislation which can be applied to protect Muslim tourist in Malaysia.

3. Problem Statement

In Malaysia, Umrah business has become an endless demand. The Umrah travel industry has seen a surge in recent years. Given the long waiting period of Hajj, many Muslims instead opt to perform the Umrah, which can be taken at any time. In 2017, at least 250,000 Malaysian went on their Umrah and this number is expected to increased to 300,000 in 2018 [11]. However, despite

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Muslim tourists showing a great interest to perform the Umrah, there have been many consumer complaints related to this Islamic Religious Tourism in Malaysia. Ministry of Tourism and Culture Malaysia (MOTAC), received 214 complaints involving Umrah travel fraud between 2012 to 2016. In the same period, 3,454 cases involving over RM21 million had been referred to the Tribunal for Consumer Claims (TCC) [12]. Police also received 231 complaints involving losses of more than RM9 million. The complaints include non-delivery of air tickets, failure to obtain visas for Umrah pilgrims, cancellation or postponement of the Umrah trips without prior notice or valid reasons, breach of terms and conditions as stated or promised in the package contract, reduction of the days in the Umrah trips and also services that come far differently from those advertised [13]. The increasing number of complaints againts Umrah travel package confirmed the assertion that their businesses are vulnerable to fraudulent practices [14]. Cases of Malaysians becoming victims of Umrah travel fraud are not new. Like a recurrent disease, they have surfaced every year in the last 10 years. The tragedy is that although reports of such fraudulent practices are often published, the cases continue to pile. Therefore, it is timely to study consumer protection issues on the Islamic Religious Tourism in Malaysia especially on Umrah services. Clear and definite legal instrument are needed to protect the rights of Muslim pilgrims as consumers of Hajj and Umrah.

4. Literature Review

4.1. Islamic Religious Tourism:

In tourism literature, religious tourism is not a new phenomenon. Religion has long been a motive for undertaking journeys [15]. Every year millions of people travel to major pilgrimage destinations around the world. [4] estimates that within a period of one year approximately 240 million people go on pilgrimages, the majority being Christians, Muslims and Hindus. Islam, with more than one billion adherents, is the dominant religion in the world. The most important travel event for Muslim is the fifth pillar of Islam, the pilgrimage to Mecca, which every Muslim is required to make at least once in a lifetime, in as much as he or she is physically and financially able [5, 6, 17]. The Hajj is seen as one of the world's largest tourist gathering [18, 19, 20, 21]. Each year between 3 and 5 million people gather in the city of Mecca [22, 23, 24, 25]. The number of tourists to Mecca has grown considerably. The data from 2003 and 2004 show that over two million Muslim traveled from all over the world each year to participate in the Hajj rituals. The numbers however have changed and increased up to millions of people nowadays [26]. The total number of pilgrims for Hajj and Umrah grew from 5.6 millions in 2010 to 8.3 millions in 2016. While the number has grown in recent years, the Saudi Arabian government's Ministry of the Hajj restrict the number of pilgrims that can visit the country at any one time by implementing quotas on arrivals from individuals countries [27, 28, 29]. Malaysia also provided the largest amount of pilgrims as they had the large Muslim populations [30, 31, 32]. However, since the demand for Hajj is very high the waiting period to get the Hajj visa is very long and may be between 5-15 years [33]. Alternatively, pilgrims choose to perform Umrah as it is significantly cheaper and easier to perform than Hajj, and unlike the Hajj, there is a much longer Umrah season. However, it shows that every year, there are always a number of complaints about the pilgrimage to Mecca especially Umrah services. The complaints for unsatisfactory of services usually started at the time of registration to the arrival of the pilgrims to Mecca.

4.2. Consumer Protection

There is little research about the consumer protection of Muslim tourist in Islamic Religious Tourism. One study has examined the legal protection againts Indonesian Umrah jemaah. This study examined the need to have a clear legal instrument in Indonesia to protect the rights of pilgrims as consumers of Hajj and Umrah. Another study is on the supervision against the implementation of Umrah worship trip [34]. Supervision is done because there are many travel agencies that provide Umrah services in Indonesia, but, there are no rules and regulations that have been able to protect the consumers i.e the Muslim tourist in the case of pilgrimage to Mecca. Improvement of the services and protection of all pilgrims is meant to ensure the best quality of mabrur (perform in a manner pleasing to Allah). The high interest of Muslims to perform pilgrimage, especially in Indonesia is not supported with the quota given by the government of Saudi Arabia, that creates a long queue. The number of pilgrims and the long queue of waiting list that is in turn triggered various of new problems especially regarding the lack of adequate legal protection against them [33]. The waiting listed pilgrim candidates should receive the same legal protection in the event as a pilgrim candidate whose departure is delayed. However, currently the protection of the pilgrims was only limited to the protection of pilgrims who are already set off departure at the time. Interestingly, however the existing literature has not provided a study on Malaysia perspective. Therefore, the study attemps to brigde the gap by examining the legal protection of Muslim tourists in Malaysia.

5. Inadequacy of Legal Protection for Muslim tourists in Malaysia

In Malaysia, the legal protection for Muslim tourist can be found in various laws depending on the type of services. The Consumer Protection Act 1999 (CPA) is the main legislation that provides protection to the Muslim tourist in Malaysia. Since Islamic Religious Tourism are part of services offered by tourism industry, the Tourism Industry Act 1992 and its regulations are very relevant. In addition, since services always involve contractual relationship, the general law of contract and the tort of negligence are also applicable. The following discussion provides insight into the protection accorded to Muslim tourists under relevant laws.

5.1. Protection under the Consumer Protection Act 1999

Section 3 of the Consumer Protection Act 1999 defines 'services' to include any rights, benefits privileges or facilities that are or are to be provided, granted or conferred under any contract but does not include rights, benefit or privileges in the form of the supply of goods or the performance of work under a contract of services. The services of Hajj and Umrah travel agency are obviously within the definition of this section. Nevertheless, if compared with the definition of services in Competition and Consumer Act 2010 (Australia) and Consumer Guarantee Act 1993 (New Zealand), CPA defines services broadly without mentioning any specific services as listed in these two legislation [35]. This Act also applies only where the service is supplied to a consumer. 'Consumer' in the context of supply of services is defined as a person who; (a) acquires or uses services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption; and (b) does not acquire or use the services, or hold himself out as acquiring or using the services, primarily for the purpose of (i) resupplying them in trade; (ii) consuming them in the course of a manufacturing process (Consumer Protection Act 1999, s. 3). The consumer is not necessarily the buyer or the contracting party [36]. This is very significant in cases of Hajj and Umrah travel services because only one person deals with the travel agent on behalf of others. All of them are entitled for the protection under this act.

Furthermore, Part II of the act deals with misleading and deceptive conduct, false representation and unfair practices [37]. This part seeks to explain the legal provision that ensure the tourists are not victimised by the sellers of services with misleading and false information about their services. This part also explains about the

criminal and civil liability imposed on the travel agents who provide misleading information about their advertise services that they did not intend to provide.
[38] illustrates about the protection of the consumer in the respect of supply of services in the form of implied guarantees. Part VIII of the CPA provides consumer with a right to receive services that are carried out with reasonable care and skill (Consumer Protection Act 1999, s. 53). This protection is very relevant for Muslim tourists who have opted for Umrah package. A failure of the travel agent to provide Umrah services as stated in their brochure is a clear breach of the guarantee. However, according to [39], the section does not elaborate on the degree of care and skill required. The act also provides tourists with procedure so they can cancel the contract due to the failure or dissatisfied services that provided by travel agents, in cases of breach of guarantees. Section 60 of the CPA states that consumer may require the supplier to remedy the failure within reasonable time. In other words, the act provides a right to Muslim tourist in a way of cancellation of the contract.

5.2. Protection under the Tourism Industry Act 1992

The main legislation that governs the tourism industry in Malaysia including Islamic Religious Tourism i.e Hajj and Umrah services is the Tourism Industry Act 1992. To avoid fraudulent practices among travel agents, the act makes the registration of the travel agencies to be mandatory. Thus, operating travel agency business without a license is an offence (Tourism Industry Act 1992, s. 5(3)). Furthermore, every person to whom a license has been issued must be a member of the Malaysian Travel and Tour Association (MATTA) or any other association of travel agencies recognized by the Commissioner (Tourism Industry (Tour Operating Business and Travel Agency Business) Regulations 1992) [40]. There are also other associations of travel agents, namely; Malaysian Chinese Travel Association (MCTA) and Bumiputra Travel and Tour Agents Association (Bumitra) [14]. The Tourism Industry (Tour Operating Business and Travel Agency Business) Regulations 1992 provides the details about travel agencies services. The regulation provides the standard terms and conditions of contract between the travel and tour operators and their holidaymakers. These include matters relating to rights and duties of the agencies and the tourists, payment of deposit, cancellation and refund. However, the law is applicable for general application and there is no provision relating to Islamic Religious Tourism services.

5.3. Protection under the Law of Contract and Negligence

The Contract Act 1950 provides protection to tourist against fraud. 'Fraud' includes any acts which are committed with the intention to induce another party to enter into a contract (Contract Act 1950, s. 17). The travel agency might use deceptive statement to allure the tourist to enter into the contract. Such contract is considered to be a voidable contract. [41] refers to the Contract Act and states that when a consent to an agreement is caused by coercion, fraud or misrepresentation, the contract is voidable at the option of the party whose consent was so caused. According to Section 40 of the Contract Act 1950, the contract can be discharged due the failure of travel agent in providing services. However, the legal protection under the law of contract is limited only to the contracting parties [42]. Furthermore, under the law of negligence, travel agents are under a duty of care to carry out their services with all reasonable care and skill. [43] say that there are quite difficult in filing the case under the law of negligence because the basic element of duty of care, breach of duty and damage need to be established.

5.4. Tourist Redress Mechanism

There is various mechanisms for the Muslim tourists to complaint for their problems and to settle their dispute with travel agents [44]. [45] Stated that the most important elements for the redress mechanism are the ability to solve tourists' complaint efficiently and with minimum cost. Tribunal for Consumer Claims is the main redress centre in Malaysia and its primary function is to hear and determine claims filed by tourists [46]. The tribunal have received quite a lot of response from tourists, but yet there are many improvements to be made. The tribunal has a lack of power to enforce the awards and accessibility [47]. To be able to function more efficiently, the current weaknesses of the tribunal must be remedied. Complaint Management Unit and Community Services, under the Ministry of Tourism and Culture Malaysia is another redress centre where the tourists can file their complaint. The function of the unit is to manage and monitor all complaints from tourists through various medium of communication. Furthermore, the centre also perform as an agents in preparing responses to complaints and recommends proper action to be taken. Tourists may also file a complaint relating to unsatisfactory services by travel agent and undelivered promises at the National Consumer Complaint Centre.
Based on the above discussion, we can clearly question the rights of Muslim tourist for the present laws are deemed inadequate in curtailing the fraudulent package of Umrah travel agents and consequently depriving and cheating the Muslim tourists of Umrah packages.

6. Conclusion and Recommendation

Islamic Religious Tourism (Hajj and Umrah) services have increased significantly in recent years. It is caused by better condition of the economy in Malaysia so that raising the awareness of the Malaysian people to perform this very important event that they believed. The study reveals that there are a number of existing laws which can be applied to protect the Muslim tourists in Malaysia. However, the increasing number of complaints againts Umrah packages provided by the travel agencies is an alarming indicator that the existing laws are inadequate. It has become the obligation of the government to protect the Muslim tourists from any form of cheating by travel agencies. Therefore, it is imperative for the government to ensure that the current laws are fully enforced and if there are loopholes in those laws, reviews and amendments must be made. This would ensure a set of laws that is effective for the optimization of Muslim tourist protection to its utmost level. It is desireable that a clear and definite legal instrument to be in place to balance between supporting the growth of the sector and for protecting the Muslim tourists as consumers of Hajj and Umrah services. Subsequently, to ensure that Muslim tourists right are safeguarded, especially in the context of Umrah packages, all parties involved namely, the government, consumer associations, NGO's, travel agencies and Muslim tourist themselves, must play a role to ensure that the misappropriations of travel agencies conduct can be curtailed while preserving the right of Muslim tourists.

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