

# TOURISM REDRESS MECHANISM: TOURISM COURTS IN WEST MALAYSIA FOR THE PROTECTION OF CONSUMERS

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## ABSTRACT

Malaysia is recognized as a pioneer in offering Muslim Friendly Hospitality Service (MFHS). The country is able to offer a wide range of Muslim friendly products and services to the consumers/travelers from all around the world. These include Muslim friendly accommodations, tour packages, spas, tour guides, Islamic tourism destinations, as well as halal food and beverages. Malaysia was declared as the world's top Muslim friendly destination for Muslims for six consecutive years (Global Muslim Travel Index (GMTI) 2011-2018). Basically, Malaysian tourism provides proper and convenient services which are in line with Shari'ah to cater to the needs of Muslim tourists without the non-Muslim tourists being deprived from enjoying the same quality of services. Nonetheless, almost impossible to avoid complaints from the consumers. This Paper is prepared with the objective of seeking the necessary elaboration and endorsement from the Ministry of Tourism, Arts and Culture, Malaysia (MOTAC) to adopt the proposals made in this Paper for a uniformed tourism redress mechanism which includes the establishment of Tourism Courts not only in East Malaysia but also the Northern region, Central Region and Southern region of West Malaysia in order to provide adequate consumer protection in the tourism industry.

**Keywords:** Muslim friendly hospitality services, redress mechanism, tourism court, consumer protection

## INTRODUCTION

Malaysia has become one of the most renowned tourist destinations in the world. According to the Ministry of Tourism and Culture Malaysia, tourist arrivals to Malaysia have continued to grow since 2005. Malaysia recorded 25.7 million tourists' arrivals in 2015 compared to 24.6 million in 2010. Besides, as reported by the Euromonitor International in its annual Top City Destinations Ranking which covers 100 of the world's leading cities in terms of international tourist arrival, Malaysia's capital is one of the top 10 city destinations for tourist in the world. Kuala Lumpur came in at No.10 on the list, showing a 4.5% increase in 2015 from 2014. According to the rank, there are approximately 12.15 million international visitors made a beeline for Kuala Lumpur in 2015. Malaysia also was name as the Asia's Leading Destination at the 22nd World Travel Awards. These achievements may be influenced by the most attracting activities for tourists which are leisure, business-related events and shopping (Aissa & Mohamed Saleh, 2014). Other than that, attributable to the various tourism landscapes, unique blend of cultural and heritage, abundance of biodiversity, cuisines, arts, crafts and architecture, these qualities have always put Malaysia on the map as a must-visit global destination.

Due to this outstanding achievement, tourism sector in Malaysia has become an important contributor to this country economy and catalyst to the economic growth (Aissa & Mohamed Saleh, 2014). Nevertheless, this fast growth and remarkable development is not spontaneous as Malaysia has a long history of promoting the Travel and Tourism industry. Since 1970s, tourism development in Malaysia had steadily grown from an alternative sector to become a major component in the national economic structure (Azizan, 2010). This is due to the reason that government realizes tourism can be a tool of development and should be given priority as it can protect the environments and traditions with minimum negative impacts (Liu & Wall, 2006). Consequently, the government has played a dynamic role in the process by adopting and formulating several laws providing the appropriate institutional and legal framework to ensure sustainable tourism (Giap, T. K., Gopalan, S., & Ye, Y., 2016). The tipping point in the tourism industry in Malaysia has actually taken place in the early 1980s when there was a global tourism boom growth (Aissa & Mohamed Saleh, 2014). This was the highpoint when the Malaysian government has truly recognized the immense potential of this sector as a tool

to foster economic and social development as well as promoting greater national and also regional integration. The government also views tourism as a tool for infrastructure development, job opportunities, earning foreign exchange, balance of payments, regional development and generating benefits for local communities (Glasson, Godfrey, Goodey & Absalom, 1995).

## OVERVIEW OF COMPLAINTS RECEIVED

Nature of Complaint/Category	YEAR				Total No. of Cases/Complaints
	2013	2014	2015	2016	
Travel Agent/Travel Agency	215	249	316	241	1,021
Accommodation	28	28	22	26	104
Tour Guide	7	17	16	12	52
Transportation	0	0	0	0	0
Tourism Institution	0	0	3	0	3
Public Transport	0	3	1	0	4
Others	14	6	55	55	130
<b>Total cases</b>	264	303	413	335	1,314

Table 1: Overview of complaint received related to tourism industry (source: Ministry of Tourism Malaysia (MOTAC))

## RESEARCH METHODOLOGY AND MATERIALS

This research adopts qualitative and doctrinal methodology. Relevant data are gathered from textbooks, articles, thesis, reports, statutes and cases to assist this research. As the internet is very useful in providing the latest information regarding the development on the redress mechanism and hospitality services especially from other countries, the researcher also utilized

it especially online databases and library online. This research also conducts an interview in order to obtain data to support the findings obtained from the thesis, textbooks, articles and reports, etc. as the data from the interview are analysed and categorized according to the significant statements and themes which become the findings for this study. The design of the interview is in semi-structured and there is a selected respondent (making a total of 5 participants) each whom are personnel from the Tribunal for Consumer Claim (TCC), the Complaint Management Unit and Community Services under the Ministry of Tourism Arts and Culture (MOTAC), the National Consumer Complaint Centre (NCCC), Senior Assistant Registra, Session Court Sabah, Principal Assistant Secretary (Tourism & Research Division) of Ministry of Tourism, Culture and Environment Sabah.

## **MUSLIM FRIENDLY HOSPITALITY SERVICES**

Currently, the Halal industry has expanded to areas that concern all aspects of Muslim consumers and is no longer just about food. The industry has grown considerably in areas such as cosmetics, pharmaceuticals, banking and finances. More recently, the local and global halal industries have further expanded to include hospitality and tourism services. (Noriah Ramli 2009/2010). This idea of creating MFHS is not strange as it addresses how Muslim needs are met and how they want to be treated whenever they travel. This follows the rapid growth in the Muslims around the world. Halal Tourism or MFHS can be explained as “any tourism object or action which is permissible according to Islamic teachings to use or engage by Muslims in the tourism industry” (Battour, M. & Ismail, M.N, 2016). In addition, the researchers mentioned that all tourism products and services that are designed for travelers who are mainly Muslims in Muslim and non-Muslim countries based on Islamic law can be considered as Halal tourism or MFHS. Contemporary forms of MFHS are closely associated with obligatory nature of travel, specifically Hajj and Umrah. Other religiously motivated journeys are known as ‘Ziyarah’ where this is usually associated with visiting sites of religious interests such as mosques and travelling to participate in religious events and festivals. All of these also may include any tourism products and services such as Muslim friendly hotels, Muslim friendly

resorts, Muslim friendly restaurants, Muslim friendly trips, Muslim friendly airlines and so on and so forth (Battour, M. & Ismail, M.N (2016).

Malaysia retains top spots in the MasterCard-Crescent Rating Global Muslim Travel Index's list (hereinafter known as GMTI) for the second year running, in 2015 as well as in 2016. This GMTI list has covered 130 destinations and Malaysia keep its number one ranking on the list of Organisation of Islamic Cooperation (hereinafter known as OIC) destinations leading UAE which is in the second rank of the list. In 2019 Malaysia once again has taken the top spot in the MasterCard-Crescent Rating Global Muslim Travel Index (GMTI) for the ninth year in a row, but however, in 2019 for the first time Malaysia is sharing that position with Indonesia.<sup>i</sup> In the year 2020 Malaysia has been named as the best country in four out of six sectors in the State of Global Islamic economics (Report 2020/2021) and this includes being the top ranked country in the Muslim friendly travel.<sup>ii</sup> In 2009, Malaysian the government has taken an initiative in further developing Islamic tourism in Malaysia. The Tourism Ministry has set up an Islamic Tourism Centre to enhance the development of this industry with the aim of thriving the potential of global Muslim market. On 16th March, 2009 this centre has been launched with the ideas of promoting and developing the Islamic tourism activities along with the intention to contribute towards the economic development in Malaysia. Other than that, the government also has taken another initiative in building strong foundation for Islamic tourism through standardisation. In 2015, Malaysia has become the first Muslim country to introduce and adopt an Islamic tourism standard in recognizing Islamic tourism as a new booming category in the tourism industry by introducing MS2610:2015 MFHS– Requirements.<sup>iii</sup> This Standard has been approved in 2014 then launched in 2015. This is the first Standard developed for the Islamic tourism sector in Malaysia as a reference in establishing an assurance system to safeguard the integrity of products and services catered for Muslim tourists in three sub segments: accommodations, tour packages and tourists guides. Nevertheless, this standard is not obligatory on the tourism stakeholders, it is only to guide them in providing the best products and services for the consumers in the industry as well as to ensure that products and services provided for Muslim tourists are in accordance with the *Shari'ah* principles.

## SPECIAL NEEDS OF CONSUMERS IN MUSLIM FRIENDLY HOSPITALITY SERVICES

There are a lot of initiatives which have been taken by the government in fulfilling the needs and perceptions of the tourist especially the tourists in MFHS; nevertheless, there will be challenges that must be tackled in MFHS. This is by reason of the religious obligations which will affect the needs of the tourists in MFHS either directly or indirectly (Fatin, Siti Rahayu, Raja Nerina, Haslinda, Yuhanis & Hossein, 2015). The needs and expectations of tourists in Muslims friendly hospitality services can vary as well according to the level of religiosity of the Muslim which can be based on his belief, piety and practice (Zamani & Musa, 2012).

In Malaysia, the consumer redress mechanism in MFHS focuses more on the need to address issues surrounding Hajj and Umrah packages. This can be illustrated from few cases of consumers regarding Umrah package. In the case of *Sharier bin Pawanchik v Madain Al Taqwa Travel & Tours Sdn Bhd* (TTPM-P-(P)-349-2014), the claimant in this case has booked an Umrah package from the travel agency for himself, his wife and daughter. The travel agent in this case had cancelled the Umrah package and consequently, the agent had made an official letter stated that they will refund the payment of RM11100 that has been paid by the claimant. However, no refund was made to the claimant who prompted the claimant to file his claim to the TCC. Another case involving Umrah package can be seen in *Rohaida binti Ideros v Zafa Kirmas* (TTPM-J-(P)-446-2013). In this case the claimant has made a payment of RM16470 for an Umrah package for herself and her family. As the travel agent kept changing the flight ticket, the claimant decided to cancel the Umrah package. The claimant asked for a full refund from the travel agent. Instead, they gave many absurd reasons and ended paying her only half of the amount paid by the claimant. The claimant then filed her claim to the TCC. The last case to show the special needs of the consumers in MFHS towards an Umrah package is in the case of *Mat bin Mat Taha v Syamar Smart Venture* (TTPM-WP-(P)-1042-2014). The claimant filed his claim in the TCC to get a full refund for his cancelled Umrah package from the travel agency.

## PROBLEMS IN THE EXISTING CONSUMER REDRESS MECHANISM

The study identified the following flaws facing the existing consumer redress mechanism in the hospitality services industry in Malaysia. Firstly, the existing redress mechanism in Malaysia is inadequate and inefficient for the consumer in hospitality services, particularly for the consumers in MFHS due to the significant increase in the complaints of the consumers; secondly there are weaknesses in the existing redress mechanism in Malaysia which need to be remedied in order to make it effective to the consumers in hospitality services especially in MFHS Malaysia needs a specific consumer protection guideline for the consumers in the hospitality services including Muslim Friendly Hospitality Services industry; and thirdly, there is an urgency in establishing a special agency/unit/one-stop-service-centre to deal with consumers' complaints and disputes relating to hospitality services including Muslim Friendly Hospitality Services industry.

The above-mentioned problems require an immediate attention from the relevant government agencies and it is timely that the existing redress mechanism and tourism court which discussed in the following paragraph to be expanded to the whole of Malaysia.

## EXISTING REDRESS MECHANISM BODY AND ITS ROLE

At present in Malaysia there are several agencies/bodies/Organization that involve in receiving and settling consumer complaints.

Bil	Agency/Body/Organizati on	Function(s)	Weaknesses(s)
1.	The Ordinary Civil Courts	To hear and award civil claims of a general nature. This takes a long time.	1. Civil court system has been generally considered a failure and ineffective in dealing with consumer claims because the process is time- consuming, complex,

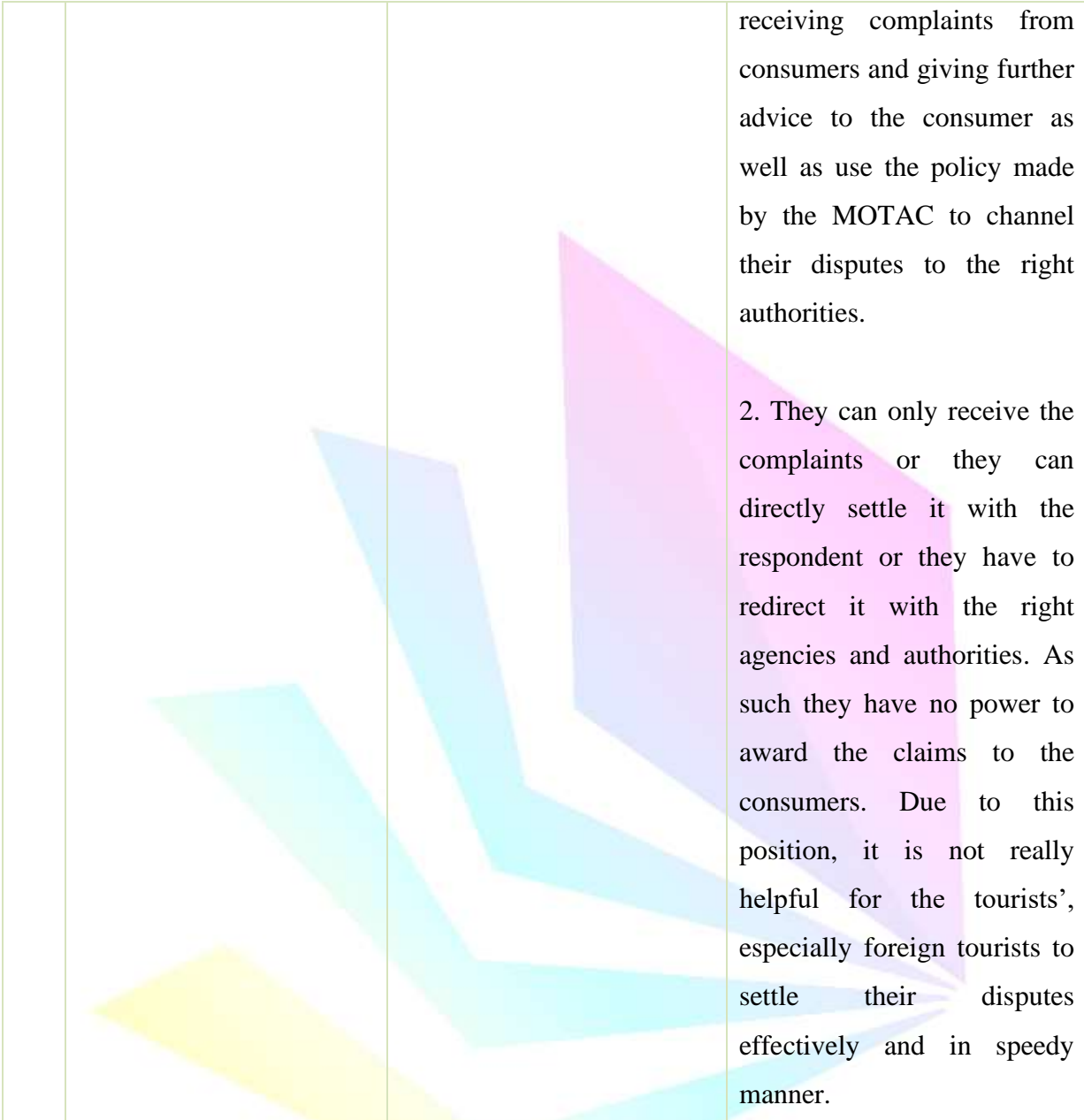
			<p>expensive, imbalance and unreasonable (Naemah Amin 2012).</p> <p>2. Most of the consumers claims consist of small claims with low value, thus it is not practical to use the ordinary court system (Naemah Amin, 2012)</p>
2.	The Small Claim Court (SCC)	<p>There are few advantages of SCC which are the trial is easy and fast as it usually settled only for one to two days, the proceedings are also conducted in private which is in magistrate's chamber, there will be no representative for both plaintiff and defendant, magistrate plays an active role in resolving claims and the cost for filing is relatively low as it is only RM10</p>	<p>This court also has several weaknesses:</p> <p>1. It operates within the ordinary court processes as it uses the Magistrate court as a forum to solve the disputes. The simple, cheap and fast way also may lead to unfair judgement for the plaintiff and defendant.</p> <p>2. For the private proceedings, it is contrary with the fundamental principles of judicial proceedings as it should be conducted openly. This will increase public</p>



			<p>confidence on the fairness of the proceedings.</p> <p>3. No right to be represented also become a weakness to this court as the absent of legal counsel causing stress among the parties involved when there is a complicated trial process and legal jargons are being used by the magistrate. For those reasons, consumers are also rarely resort to this redress.</p>
3.	The Tribunal for Consumer (TCC)	<p>This body is operated under the Ministry of Domestic Trade, Cooperative and Consumerism</p> <p>The main objective of this body is to provide an alternative channel to get redress for their disputes and grievances subject to the provision under the Consumer Protection Act 1999.</p>	<p>1. The TCC only acts as a body that only act as a negotiator and mediator only. It is suggested that for the betterment of the consumer protection.</p>

		<p>Will hear and determine claims filed by consumers including claims relating to supply of goods, services and unfair trade practices such as misleading advertisements, misleading price indications etc., provided that the claim does not exceed RM25,000.00</p> <p>The objective of this tribunal is to provide a channel and alternative dispute resolution facilities to consumer.</p>	
4.	<p>The Complaint Management Unit and Community Services (A unit under the purview of the MOTAC)</p>	<p>The purpose of this unit is to manage and monitor all feedback and complaints from consumers which relate to tourism industry through various medium of communications. In addition, this unit also monitors and analyses tourism related issues which are advertised in the mass media. The unit also</p>	<p>Their weakness is:</p> <p>1. They cannot directly settle the disputes and redress the consumers as they need to redirect it to the right agencies for instance the TCC, the police and others. This will make the process longer and if the consumers are foreign tourists, they will be burdened with the whole</p>

		acts as agents in preparing and coordinating responses to complaints and also recommends proper actions to be taken. For the betterment of consumer protection and to encourage consumers to seek redress, this unit monitors complaint through online public system and conducts the customer satisfaction study as well.	process and it is not really effective for them.
5.	The National Consumer Complaints Centre (NCCC) (Anon-profit organization managed by the Federation of Malaysian Consumers Associations (hereinafter known as FOMCA).	The NCCC as a non-governmental body that is really helpful in assisting the consumer with their complaints and dissatisfaction. However, they cannot redress the consumers with monetary or legal action as they have no legal authority.	MOTAC and NCCC have almost similar job functions i.e. to receive complaints from the consumers and it is quite overlapping. Hence, to further enhance consumers/ protection and effective implementation of policy, guideline, school of practice and laws, it is proposed that MOTAC should only focus on policy making while the NCCC will focus on



			<p>receiving complaints from consumers and giving further advice to the consumer as well as use the policy made by the MOTAC to channel their disputes to the right authorities.</p> <p>2. They can only receive the complaints or they can directly settle it with the respondent or they have to redirect it with the right agencies and authorities. As such they have no power to award the claims to the consumers. Due to this position, it is not really helpful for the tourists', especially foreign tourists to settle their disputes effectively and in speedy manner.</p>
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1. There is redundancy in the task performs by The National Consumer Complaints Centre (NCCC) and The Complaint Management Unit and Community Services (MOTAC);
2. The duty to look into consumer complaints are scattered in various agencies and for the betterment of its function and performance it should be centralized under one body i.e Tourism Court;
3. The ordinary Civil Court should not be burdened with complaints related to hospitality services;

4. The redress mechanism/Tourism Court should function vice versa i.e to receive complaint from both consumer as well as service provider.

## **THE PROBLEMS OF EXISTING REDRESS MECHANISM IN TOURISM INDUSTRY**

This part of the Paper highlights the problems faced by the existing redress mechanism in the Malaysian tourism industry.

- a) The fundamental problem with the existing redress mechanisms in Malaysia is that there is no specific place for tourists to channel their complaints and settle their disputes especially in the Peninsular Malaysia. The redress mechanisms are scattered as they can go to the Civil Court, the Tribunal for Consumer Complaint (TCC), the Corporate Communication Unit (CCU) under the Ministry of Tourism and Culture Malaysia and the National for Consumer Claim (NCC). There are Tourism Courts in Malaysia but the courts are only in Sabah and Sarawak. These courts are still not being expanded to the peninsular part.
- b) The Small Claim Court is not efficient and effective for the consumer as it involves the procedures of an ordinary court, which is the Magistrate court. The procedures are time consuming, expensive and complicated for the consumers in hospitality services as well as in MFHS. The Tourism court on the other hand also still under the purview of the Session court in Sabah and Sarawak only.
- c) For the Ministry of Tourism and Culture Malaysia and the National for Consumer Claim, these organisations as a redress mechanism can handle complaint from tourists and it covers travel agencies services, transportations, accommodation etc. Even though these two organisations are significant in receiving complaints and act as the third party to solve the conflicts between the tourist and the trader/supplier by discussion and negotiation, still these organisations cannot directly compensate if there is any loss on the part of the tourist as they cannot issue any award.

- d) In the case of Tribunal for Consumer Claims, this redress mechanism can handle complaints and resolve disputes but there are some weaknesses in this mechanism as it is not specifically for tourists but for consumers in general. There are also several limitations in terms of monetary jurisdiction and procedures. The ability of the claimant to establish serious allegation such as non-Shari'ah compliance services or products may be affected as no solicitor and advocate can represent the claimant. Other than that, the TCC is less effective as this organisation cannot enforce the judgement, accessibility and judicial review.
- e). The most significant problems for the existing redress mechanism are manpower and operating hours. There is inadequate manpower to handle all the tourism industry issue and the operating hours may not be considered as consumer-friendly by foreign tourists who need immediate solution to their disputes and claims. Foreign tourists do not stay for a long time in certain places; thus, they need to settle their disputes as soon as possible. To make the operating hours reasonable for the foreign tourists, the office needs adequate manpower in order not to burden their staffs and officers, consequently they will do their task efficiently and effectively if they do not overwork and the foreign tourists will be satisfied with the services. This will improve the existing redress mechanism in Malaysia.

Based on the discussion above, it can be concluded that there is existing redress mechanism in Malaysia for consumers in tourism industry as well as in MFHS. The consumers also aware about these redress mechanisms as they have filed their claims and channel their complaint to fight for their right and get redressal for their loss. However, these existing redress mechanisms still need to be improved to make it more efficient and adequate for the betterment of the consumers. As it can be seen from the discussion above, the TCC may be the best option so far as it offers cheap, fast and uncomplicated procedures, however, the TCC performance needs to be assessed continuously to ensure its effectiveness and the inadequacy can be remedied. For instance, in the MFHS cases, there are the same pattern of cases in Umrah travel agencies; the consumers have been cheated by the agencies, the agencies did not act according to the contract between them, the affected party then claims for redressal and the travel agents pay the amount according to the decision. If this situation prolongs for a long time, the issue will not be settled

properly, thus, some strict action must be done by all the authorities including the TCC, the MOTAC and other agencies in order to minimize the issues.

## CONSUMER PROTECTION

### *Consumer Protection Act 1999 (hereinafter known as CPA)<sup>iv</sup>*

In 1999, Malaysia has enacted its Consumer Protection Act and it came into effect on 15th November of the same year. This Act offers a comprehensive protection towards consumers as well as providing simple and inexpensive redress to consumers' grievances and specific relief. Consumer Protection Act is under the jurisdiction of the Ministry of Domestic Trade, Cooperatives and Consumer Affairs (hereinafter known as KPDNKK). Before the enactment of CPA, there was no single Act which can give direct and thorough protection to consumers. There is other principal legislation already in force to protect Malaysian consumers since colonial period, however, the protections are scattered on various statutes and have many shortfalls due to the reason that the main objectives of the legislations are not to specifically protect consumers. CPA has been cherished since 1999 until these days as it is a positive development towards consumer protection. By virtue of this Act, the National Consumer Advisory Council and the Tribunal for Consumer Claims have been established. The council has come out with the National Consumer Policy with the vision to have just and balanced cooperation and sense of responsibility between the government, consumers and trader in pursuance of a dynamic and progressive consumer society (Mohammad Fazli, 2014). Nevertheless, the Consumer protection Act 1999 is inadequate to ensure consumer protection in tourism and hospitality services.

**Weakness:** Although consumer can be protected under the Consumer Protection Act 1999 as it is the main statute which provides protection to consumer of goods and services in Malaysia (Hamidah & Naemah, 2016) nonetheless the Consumer protection Act 1999 only provides general protections. It does not contain a provision that address matters related to tourism and hospitality services. Hence complaints related to tourism and Muslim Friendly Hospitality services are beyond the scope of the Consumer Protection Act 1999.

***National Consumer Policy (hereinafter known as NCP)***

On 26 July 2002, National Consumer Policy<sup>v</sup> was first launched by the government. The ultimate goal of the establishment of NCP are to instill self-protection in consumers, self-regulations in traders as well as to increase the effectiveness of consumer protection by vesting the responsibilities in protecting the consumers to all parties i.e. the consumers, the traders/the manufacturers and also the government, even though the government is the one who plays an important role in the enforcement and overall coordination of the welfare of the consumers and traders/manufacturers. As a result, there will be a conducive environment to establish a fair market and sustainable development to conform to developments of local and global economy (Muhammad Fazli, 2014).

The rationale of NCP is to improve the quality of life of consumers as they play an important role in the local and global economic development. Consumers must be smart, well-informed, proactive and responsible, able to influence the activities of suppliers/manufacturers and sensitive to their actions and behaviours. The trading communities who are the suppliers and manufacturers also play a significant role in determining the well-being of consumers. They must be ethical, practise self-regulation, responsible and honest in order to be able to contribute to the well-fare and well-being of the consumers. For the government, NCP assist the Government's vision to improve the awareness and knowledge among the consumers and traders on their rights and their responsibilities. NCP forms the basis, principles and guidance in formulating all the policies and laws regarding consumer welfare, mainly on the aspects of consumer protection as well as all consumerism-related activities by government agencies, consumers' associations, other governmental associations and non-governmental organisation and the private sector in order to enhance the culture of consumerism and sustainable production.

Few strategies should be implemented in order to achieve the establishment goals of NPC which are to raise the standard of living, laws to protect consumers, fair and ethical trade, consumer education, sustainable consumption, redress mechanism, consumer forums between government, manufactures and consumers and international cooperation in consumer matters.



Later in 2010, the government had revised back the NCP and added a new element that is consumer value. This is an important principle that can drive the consumers towards a prosperous life. This element refers to the principles held by the consumer based on the five basic values (Norazlina, Elistina & Aini, 2016).

In order to achieve the goals for NCP 2002 as well as the revised version in 2010, there must be a concerted effort of all parties; consumers, traders, the government and non-governmental bodies. This will create a consumer community which is well-protected, well-informed, dynamic, progressive and possessing a consumer value to drive a fair and ethical market.

**Weakness:** the general objective of NCP Policy is to create awareness among consumers of their rights and to instill self-protection in consumer. The Policy is also to educate the consumer to be more aware about their rights and to avoid manipulation by the traders. Nonetheless the NCP Policy is not a mechanism which can be used to settle disputes.

#### ***Tourism Court (Sabah and Sarawak only)***

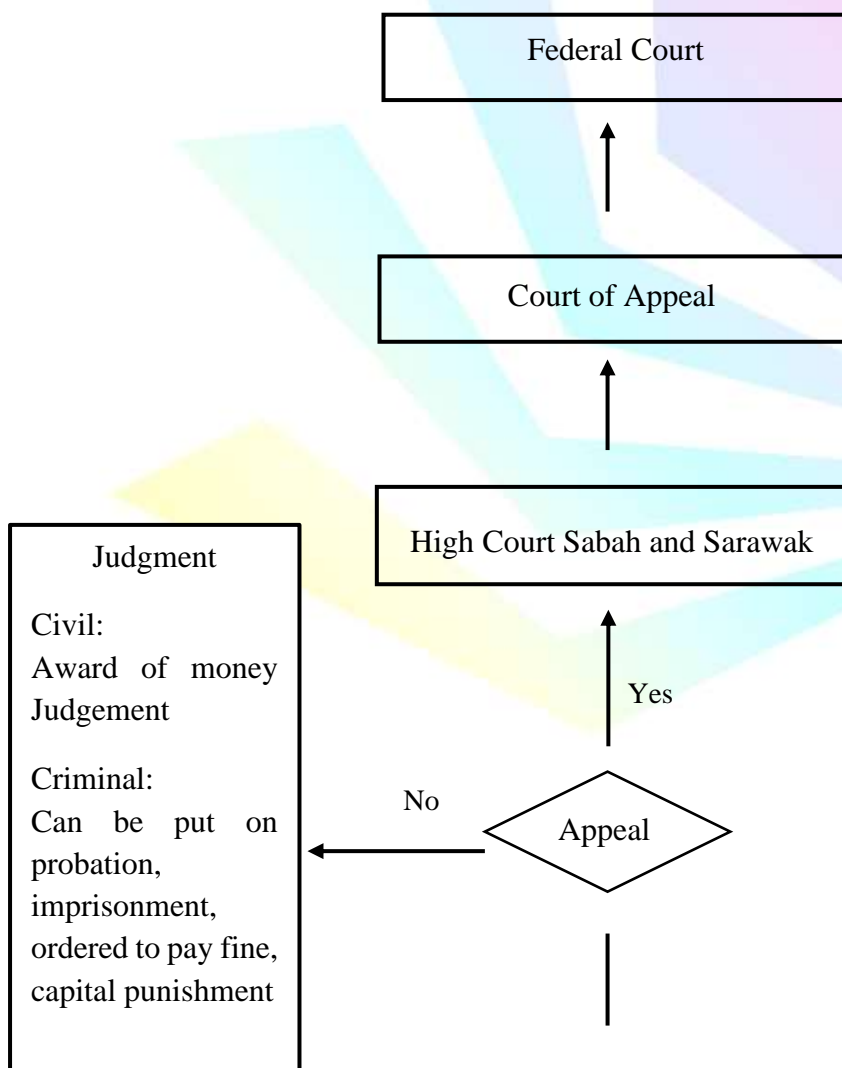
Despite all the ineffectiveness and inefficiency of the ordinary courts, there is a great news for consumers especially in tourism industry that an establishment of a dedicated Tourism Court has been made in Sabah and Sarawak since 2015 and this court has handled several tourism cases of criminal and civil nature.

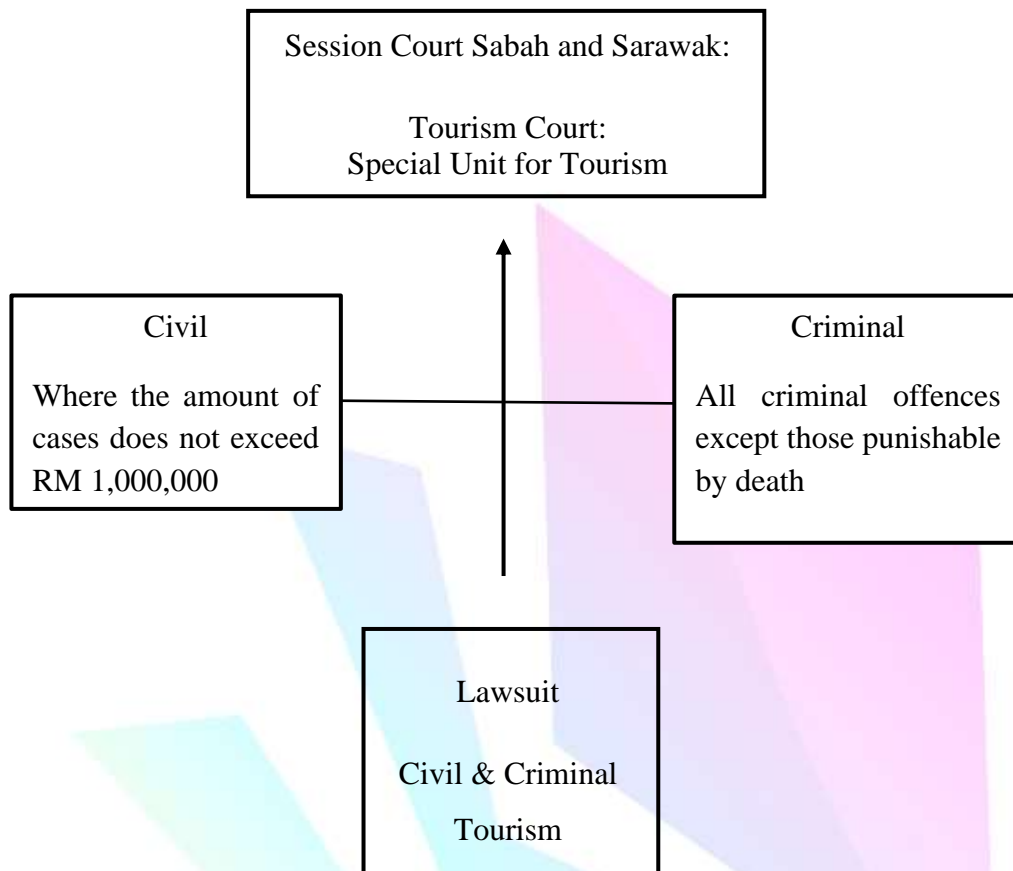
This idea had been proposed by the Chief Judge of Sabah and Sarawak, Tan Sri Richard Malanjum in his speech at the Legal Year 2015 in the High Court of Sabah. He mentioned in his speech that tourism is a serious and an important business as it is one of the main revenues for East Malaysia. In order to make sure that this industry will always maintain as one the contributor that will strengthen the economy, the well-being of the consumer in the industry must be protect and guard. According to a newspaper article, in 2014 alone, there are 34 tourists that were charged for various offences in the Magistrate Court in Sarawak and another 4 tourists in Sabah. Regardless of all those circumstances, on the part of the tourist, there were no civil claim filed by any of them due to the reason that there is no special court for tourist to file claim as they may think that to undergo the ordinary civil court process will be time-consuming and they only stay for a short time, thus they opt to let their claim go.

Besides, in Sabah there is another authority that can handle minor cases relating to tourism and environment which happened in Sabah national parks which is the Ministry of Tourism, Culture and Environment Sabah (herein after known as KePKAS). Unlike the peninsular Malaysia, MOTAC will be the most credible authority to handle tourism complaints from tourists, on the other hand in Sabah, KePKAS will received the complaints relating to the state matters and try to handle it competently first and if it cannot be settled by KePKAS, it will be channel to the other rightful authorities.

## CONCLUSION AND RESULT

*Figure 1: Tourism Court Procedure*





**Figure 2:**

**Proposed Guideline for a Comprehensive Redress Mechanism in Muslim Friendly Hospitality Services (Malaysia)**

**1 Introduction**

**1.1** This guideline will assist the existing government organisations, non-government organisations as well as individuals. These include policy makers and service providers /industrial players in carrying out their crucial duties and responsibilities in handling complaints, claims and disputes in MFHS.

**1.2** This guideline will improve the efficiency and the adequacy of the existing redress mechanism as well as remedied the dissatisfaction of tourists especially in the existing MFHS redress system.

## **2. Scope**

**2.1** This guideline will assist the organisations and individuals in managing tourism and hospitality services in tour operators, food and beverages, accommodation and airlines. This will refer to the MFHS Standard.

**2.2** Type of complaints can be Tourist to Trader/Supplier disputes; where there is any illegal or wrongful acts witnessed or experienced by the tourists in MFHS such as when there is contradiction with *Shari'ah*.

**2.3** All the jurisdiction and limitation as stated in the Consumer Protection Act 1999 must be followed, however, the claims must be specifically related to MFHS.

## **3. Terminology**

### **3.1 *Trader/Supplier***

A trader/supplier is anyone who in trade or commerce, sells, exchanges, leases, hires or provides products and services to a consumer. In MFHS, it includes traders/suppliers in travel agencies, airlines, hotels and resorts and Halal products i.e. foods and drinks

### **3.2 *Consumer***

A consumer in this guideline can be a Muslim or non-Muslim who buys any of the following services as mentioned above and the amount of the claim will follow the current amount of the TCC which is not more than RM25, 000.

### **3.3 *Redress Mechanism Agencies***

The existing and related redress mechanism agencies in Malaysia which are the MOTAC, the TCC and the NCCC

#### **4. Common Issues**

4.1 The common problems that always happen in MFHS must be discussed and included in the guideline for an easy reference towards the supplier/trader, consumer and the organizations.

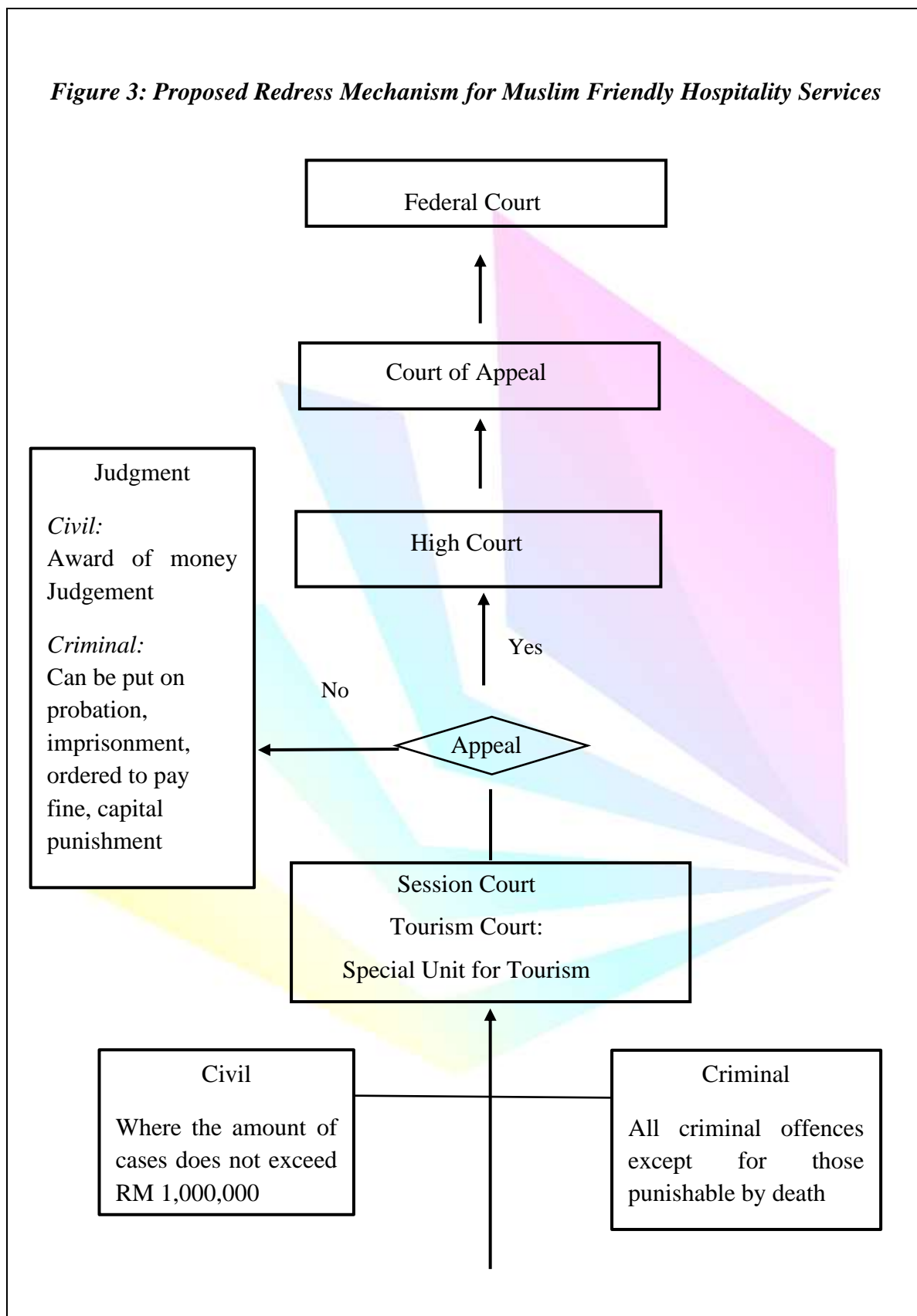
4.2 The issues include online bookings, representations and expectations of holiday accommodation, service provider cancellations and so on

4.3 In MFHS, it can be elaborated in the case of travel agency which handle umrah package. For online booking website, the agent must provide clear information in relation to deposits, booking fees and cancellations. The agent must also not make any misrepresentation in the online booking; for example, *Shari'ah* compliance accommodation, Islamic destination and so on, as well as quality rating. If the quality star is self-rated, it must be clearly disclosed.

#### ***4.4 Redress Mechanism/Dispute Resolution***

At first instance, all parties relevant to the case including the complainant/the plaintiff, the respondent and the existing and related redress mechanism agencies shall discuss properly and thoroughly to settle the dispute out of the court. The existing and related redress mechanism agencies are the MOTAC, the TCC and the NCCC, shall be the 3<sup>rd</sup> party which will be assisting the two parties throughout the discussion. If settlement between the parties cannot be reached, then the process will be as the following flowchart where there will be court involvement in settling the case;

**Figure 3: Proposed Redress Mechanism for Muslim Friendly Hospitality Services**



Lawsuit  
Civil & Criminal  
Tourism and  
Environmental cases

## CONCLUSION

Based on the discussion in this paper, it can be concluded that there is existing redress mechanism in Malaysia for consumers in tourism industry as well as in MFHS. The consumers also aware about these redress mechanisms as they have filed their claims and channel their complaint to fight for their right and obtain redress for their loss. However, these existing redress mechanisms still need to be improved to make it more efficient and adequate for the betterment of the consumers. As it can be seen from the discussion above, the TCC may be the best option so far as it offers cheap, fast and uncomplicated procedures, however, the TCC performance needs to be assessed continuously to ensure its effectiveness and the inadequacy can be remedied. For instance, in the MFHS cases, there are the same pattern of cases in Umrah travel agencies; the consumers have been cheated by the agencies, the agencies did not act according to the contract between them, the affected party then claims for redress and the travel agents pay the amount according to the decision. If this situation prolongs for a long time, the issue will not be settled properly, thus, some strict action must be done by all the authorities including the TCC, the MOTAC and other agencies in order to minimize the issues. It is submitted that there is a need to form Specific Tourism Courts throughout Malaysia and only in Sabah and Sarawak. The mechanics of setting of these courts could be through the system that is already in place in Sabah and Sarawak. Finally, it is also recommended that these Tourism Courts be made available in all major cities in Malaysia. However, if this is not

possible, then it is suggested that these courts be set up according to the Northern, Southern, Eastern and Western regions.

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## ENDNOTES

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<sup>i</sup> Bernama, (2019). "Malaysia, Indonesia tie for top spot among Muslim-friendly travel destinations", Assessed on 10 December, 2020. <https://www.nst.com.my/news/nation/2019/04/477803/malaysia-indonesia-tie-top-spot-among-muslim-friendly-travel-destinations>

<sup>ii</sup> AGENCY, (2020). Assessed on 10 December, 2020. "Malaysia is the top country for Muslim-friendly travel", <https://www.thestar.com.my/lifestyle/travel/2020/12/09/malaysia-is-the-top-country-for-muslim-friendly-travel>

<sup>iii</sup> The request for proposal for the development of Malaysian Standard MS2610:2015 was made by the International Islamic University as one of the research outcomes under the Niche Research Grant Scheme (NRGS 130010001).

<sup>iv</sup> The government has recognised the need for specific enactments to provide better consumer protection. Today, there are more than 30 statutes that have elements of consumer protection incorporated into them. Many of these 30 statutes pertaining to the sale of goods and provision of services were based on the caveat emptor principle which places the burden on the consumer not to be cheated in any transaction. To address these weaknesses, the government enacted a more comprehensive consumer protection legislation. The Consumer Protection Act 1999 came into force on Nov 15, 1999 (further info see Malaysian Bar, <https://www.malaysianbar.org.my/article/news/legal-and-general-news/general-news/protecting-consumers>)

<sup>v</sup> The National Consumer Policy (NCP) was launched on July 26, 2002. The NCP's focus is the formulation of national economic and social policies based on enhancing consumer welfare and raising Malaysians' quality of life. (see Malaysian Bar, <https://www.malaysianbar.org.my/article/news/legal-and-general-news/general-news/protecting-consumers>).