

Legal Perspective of Homestay Concept in Malaysia: Hidden Facts or Truth Revealed?

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Abstract: Homestay became one of the famous form of openness lodging and accommodation whereby visitors can rest at the houses in a local city and where the places that has completed and fully furnished. Instead of leaving the house vacant without occupation, nowadays most of the house owners will rent their house or rooms in the house to the visitors for short term. This concept can be called as 'homestay' concept in which it provides one of the platform to allow the house owners to rent their homes, rooms or apartments to their customer visitors. Furthermore, this concept enable the house owners to generate income from this platform. Without realising by the home owners, this action may lead to violation of laws and to endanger the safety of customers. The consumer organisations in Malaysia have complained about the lack of protection for customers in homestay. As such, adequate legal protection should be implemented to protect all the customers and home owners. The writer will study the provisions in the National Land Code 1965, Street, Drainage and Building Act 1974 and the Town and Country Planning Act 1976 in order to identify the legality of the concept of homestay in Malaysia. Various methods will be adopted by the writer for this paper including study of documentary, historical archives, public record in order to arrive at the findings on the legal issues of homestay concept in Malaysia with aim to safeguard better legal environment of homestay concept in Malaysia. At the end of the discussion, organisations in Malaysia may refer to the recommendations as stated for better protection for home owners and consumers in Malaysia. Howsoever, at the end of the day, the real question that needs to be addressed is whether the homestay concept in Malaysia is legal or not.

1 INTRODUCTION

Generally, a homestay program refers to the experience of tourists or visitors living together with a selected host family while interacting and experiencing the day to day life of the family, including their cultural lifestyle (Kalsom& Nor Ashikin, 2005; Amran, 2006; Phonwiset et al., 2008; Muhammad Farid, 2009; Ministry of Tourism and Culture Malaysia, 2011). The hosts and the visitors will interact with each other in routine activities of the community in exchange of the knowledge, culture and experience. The program can also serve as a basic guide in managing natural resources and enhance the distribution of income to the local population thereby reducing the outflow of economic benefits (Jabil Mapjabil, 2015).

Due to overwhelming demand from the society, some of the owners of the houses have started to modify their houses into the concept of 'homestay'. Homestay became one of the famous form of

openness lodging and accommodation whereby visitors can rest at the houses in a local city and where the places that have completed and fully furnished. Instead of leaving the house vacant without occupation, nowadays most of the house owners will rent their house or rooms in the house to the visitors for short term. This concept has been known commonly by public as 'homestay' concept in which it provides one of the platform to allow the house owners to rent their homes, rooms or apartments to their customer visitors. Furthermore, this concept enables the house owners to generate side income from this platform. Without realising by the home owners, this action may lead to violation of laws and endanger the safety of customer visitors, namely who shall bear the responsibility if there are any accidents happened during the period of stay by the customer visitors. The consumer organisations in Malaysia have complained about the lack of protection for customer visitors in homestay. As such, adequate legal protection should be implemented to protect all

the customer visitors and home owners. The writer will study the provisions in the National Land Code 1965, Street, Drainage and Building Act 1974 and the Town and Country Planning Act 1976 and other relevant legislations in order to identify the legality of the concept of homestay in Malaysia.

However, this study centres around the analysis of legal issues of on homestay operations as general in Klang valley area. In particular, the ambit of the study is those homestays generally operating without registration with the Malaysian Ministry of Tourism and Culture (MOTAC), regulated and monitored by relevant agencies. There will be no legal issues with the home owners who run the homestay operations registered with MOTAC, regulated and monitored by relevant agencies.

2 LITERATURE REVIEW

Homestay programme is a community-based programme where the hosts and the visitors will interact with each other in routine activities of the community on day-to-day basis in exchange of the knowledge, culture and experience. (Thapaliya et.al, 2012). Wipada (2007) further elaborated that homestay is one of the type of lodging where tourist stay with the homeowners with the intention to learn culture and lifestyle from the homeowner who is willing to share their culture and experience of the day-to-day life of the community. Moreover, homestays gain their popularity as they enable visitors to experience life as it is lived day to day in the host country. These types of accommodations have the good potential to promote cultural exchange by sharing life and family experiences (Richardson, 2004).

Homestay is a type of product in accommodation sector which has appeared to address the issue of sustainable tourism development. Likewise it is also considered as a part of eco-tourism and village tourism which aims to build the local communities' capacity by consuming local resource wisely and helps to protect the environment. Thus it is acknowledged by practitioners as a tool of sustainable development in tourism industry. The concept of sustainable tourism development "consist with the tenets of sustainable development" (Stabler & Goodall 1996, 170).

In Malaysia, most of the rural communities and village residents started to operate homestay accommodation. However, this trend has also been extended to the communities and residents who reside in city nowadays. According to Ministry of Tourism

and Culture (MOTAC, 2014), a homestay programme will give tourists the opportunity to stay with a chosen family, interact and experience the daily life of their homestay family and learn the culture and lifestyle of the rural community in Malaysia including but not limited to cultural and economic activities.

Ex-Menteri Besar of Negeri Sembilan, Datuk Seri Mohamad Hasan has also raised his concern of using the word of homestay. According to him, "the parties concern can use the word 'homestay' when they have obtained the permit from the respective ministry and to comply with all the requirements including the involvement of the residents in the day-to-day local community activities which will develop the tourism of the said location." Otherwise, all activities of homestay without permit are considered illegal and action will be taken against the home owners.

Table 1 below highlighted that total homestay based on the various cluster which have been registered with MOTAC.

Table 1: Status of Registration of Homestay According to Cluster as at 31 March 2018

| No. | Items | Total |
|-----|---------------------------|-------|
| 1. | Total Cluster Homestay | 209 |
| 2. | Total Hosts/Owners/Houses | 4,025 |
| 3. | Total Rooms | 5,650 |

Source: <http://www.motac.gov.my/en/>, MOTAC 2018.

In any event, the above figures show the total homestay owners and houses which have been registered with MOTAC and it has not included for those who run the homestay business and/or programme without registration from MOTAC.

3 RESEARCH METHODOLOGY

In Malaysia, we do not readily available statistic representing specific data of unregistered homestay owners and customers. Hence, we explore the issues in hand by employing a qualitative method of data collection via face-to-face interviews with the unregistered homestay owners and customers. This paper deployed two data gathering methods, primary and secondary data. For the primary data, unstructured interview session was carried out on homestay operators in Klang valley area to identify factors relating to homestay quality and success, infrastructure support, as well as issues and problems relating to homestay's customers in general in Klang valley area. As such, focus group discussion were

held over a few sessions, in Klang valley area during data collection period. Owners and customers were interviewed to confirm and validate the findings of both content analysis and the transcribed or narration of focus group discussion. Focus group discussion were undertaken from January, 2018 until May 2018 at homestay locations as well as at the offices of the relevant agencies. In total, this research collected 40 interviews with homestay owners of their opinion for running this 'unregistered' business.

4 ANALYSIS AND DISCUSSION

From the feedback collected from these 40 interviewees, almost 97.5% of them are not aware that the unregistered operation of homestay is violating the current law provisions. From the study of the provisions of the law in Malaysia, although this business will benefit the home owners in which they are able to generate the income, however, without realising by the home owners, this action may lead to violation of laws and endanger the safety of customer visitors, namely who shall bear the responsibility if there are any accidents happened during the period of stay by the customer visitors. In the grant of title of a property, for example the houses or apartment, the category of usage for these buildings has been clearly stated in the grant of title, namely for residential only. Based on results of study, we find that few conspicuous problems, including few legal liabilities of these house owners to run the business of short stay accommodation.

4.1 Under National Land Code 1965 and Property Law

The issue arises when the home owners are running their residential building for the purpose of commercial, i.e. homestay, it is obviously the home owners have violated the express conditions as stated in the grant of title of a property. As a result, the home owners may be fined under section 127 (1A)(b) of National Land Code 1965 which reads as follows:

“Upon failure by the proprietor to show cause to the satisfaction of the Land Administrator, the Land Administrator may make an order for the payment of a fine of not less than five hundred ringgit, and in the case of a continuing breach, a further fine of not less than one hundred ringgit for each day during which the breach continues.”

As a result, the home owners not only will be fined under section 127(1A) of the National Land Code 1965 but they may face the consequence that

their land and/or property will be forfeited by the Land Administration pursuant to section 129(1) of the National Land Code 1965 which reads as follows:

“The Land Administrator shall take action under this section wherever any alienated land is liable under section 127 to forfeiture for breach of condition and ...”

Furthermore, each building which have been built on the land and according to the category of the building are required to obey the requirements set by the local council under the Street, Drainage and Building Act 1974. Prior to issuance of Certificate of Fitness for Occupation ('CFO') and/or Certificate of Completion and Compliance ('CCC'), a building is required to follow the building guidelines set by the local council. Thus, by modifying the residential houses into business premises, i.e. homestay, the home owners should obtain the approval from the local council under the section 74 of the Street, Drainage and Building Act 1974 failing which the action will be taken pursuant to section 72 and 73 of the same Act. Upon conviction, the home owners will be fined and the said homestay property will be demolished.

4.2 Tortuous Liabilities

House owners who run the unregistered homestay business in residential area may cause the public nuisance to other residents in the same area. The law of nuisance is concerned with the protection of the environment. Initially public nuisance is an act or omission which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects as decided in the case of *AG v PYA Quarries* (1957) 2 QB 169. However, the scope of the class of Her Majesty's subjects have been extended to all the public citizen as well. Section 8 (1) Government Proceedings Act 1965 provides that the Attorney General can sue in respect of public nuisance. An individual can take a civil action for public nuisance if he can prove that he has suffered some particular or direct damage, greater than that suffered by the public. This means, some damage over and above the ordinary inconvenience suffered by the public at large.

Provided always that the house owners provide sufficient car park lots to the customers, otherwise the visitors may face the parking problem. The act of visitors who simply park the cars will cause the obstruction to the road and caused inconvenience to other residents who stay nearby. This action in fact is in violation of Section 86 of Street, Drainage and Building Act 1974 and also the subsidiary legislations

under the Town and Country Planning Act 1976. The house owners must also be sensitive to the surrounding area of the said accommodation. The house owners must also be sensitive with the surrounding neighbourhood and the needs of the neighbours so as not to create nuisance and trespass.

Further thereto, the house owner must ensure that the tourist do no bring in illegal substance or use the accommodations as a place to operate illegal activities.

With regard to the safety of the home occupants and building, the physical house may not be protected under any insurance since the home owners have modify the category usage of the house from residential to commercial. It is clearly the home owners are in breach of the terms and conditions in their premium policy insurance and the insurance company will not compensate any compensation if something happens to the respective house. As such, it is suggested that those home owners who use their house to run the homestay business are required to register with the local council or MOTAC and to obtain the relevant permit to run the business. The home owners have to follow the building specification guidelines set by the local council. The home owners need to apply to the relevant land authority to change the category usage of their premises from residential to commercial usage so that it will not violent any provision in NLC 1965.

Once the permit has been issued to the respective home owners, they must follow the regulations set by the local council so that they will not cause any nuisance to the public and neighbours. Failing which the local council can terminate and revoke their permit immediately.

The suggestions above are not intended to bring any inconvenience to any home owners but to ensure that those who run this business will follow all the regulations and rules and for the best protection to the homestay customers.

Under the Homestay Programme the *homestay* operators are encouraged to obtain insurance coverage from any registered insurance company to ensure safety of the tourist and over the liabilities of the *homestay* operators. Poor maintenance by the house owners with regard to the structure of the accommodation, i.e. electrical wiring and other utilities and amenities. As such, under the Homestay Programme, the homestays will undergo a house inspection conducted by the Ministry of Tourism together with representatives from the Department of Health; the Tourism Malaysia; the Village Development and Security Committee (JKKK); and the Malaysia Homestay Association once in every

three years. The National Institute of Occupational Safety and Health (NIOSH) require the house owner to ensure the safety of the tourist and the occupiers of the homestay.

4.3 Advertising

In Malaysia, there are two main Code and Act, namely the Malaysian Code of Advertising Practice ('the Code') and Trade Description Act 2011 ('the Act') regulate the issue of advertising for product and services. The purpose of the Act is to promote good trade practices by prohibiting false trade descriptions and false or misleading statements, conduct and practices in relation to the supply of goods and services to the customers and end users. It also aims to provide for matters connected therewith or incidental thereto. The principles in the Code describe the good essence of advertising amongst others as:

- (i) All advertisement should be legal, decent, honest and truthful; and
- (ii) Should be prepared with a sense of responsibility to consumer and to society.

It means whatever advertisements which have the elements of false descriptions or misleading information are prohibition. For example, "when you buy the house, you will guarantee to obtain 8% per annum of the return."

Thus, since the Ministry of Tourism and Culture Malaysia has put a certain branding on the term homestay as per advertised in their website, the house owners using the same term for the purpose of advertising rental of their other houses for a short stay would amount to inaccurate, unethical and misleading or offensive which is against the Code and the Act.

The house owner who offer a short stay accommodation must ensure that the property they advertised for rental, are as claimed in the advertisement. Any misleading facts and statement may render the house owner to defend themselves against allegation of misleading advertising under the above Code and Act.

The accommodation advertised by house owners who are not registered under the Homestay Programme is not homestay as advertised by the Ministry of Tourism and Culture. That itself; is a misrepresentation and the house owner could be found guilty for failure to provide the services pursuant to the Homestay Programme. It can be concluded that if a house owner would like to maintain the status of the property for category of residential usage, they should use the term 'rent' and not 'homestay' when they advertise the advertisement.

For those home owners who wish to run the homestays operation without registered with MOTAC and/or any other relevant agencies, we can conclude that they are actually running the periodical tenancy. In such event, the rights and interest for both tenant and landlord will be protected under the law of tenancies, i.e. in the tenancy agreement or oral agreement.

From the results presented above, it can be concluded that if a house owner would like to maintain the status of the property for category of residential usage, they should use the term 'rent' and not 'homestay' when they advertise the advertisement. It shall be deemed as 'renting' the room or house to the occupants or tenants. This scenario will be in line with sections 213 and 223 of the National Land Code of the concept of tenancies exempt from registration as what has been decided in the case of *Tan Kiaw v Gan ChyeKhoon* [1983] 2 MLJ 109 FC that there is no definition of "tenancy" in section 5 but "tenancy exempt from registration" has the meaning assigned thereto by sub-section (1) of section 213. Pursuant to section 223(2) of the National Land Code, tenancies can be done orally or in writing form. Various type of tenancies can be found in current practice including but not limited to fixed and periodical tenancy, tenancy at will, tenancy at sufferance, tenancy with 'estoppel' and tenancy coupled with equity.

4.4 Recommendations

4.4.1 Licensing

The premises or accommodation and the house owners must be licensed. Since the license is being issued by the local authorities, proper records will be maintained and the house owners would be required to fulfil a certain requirement to obtain the license as well as to renew the license. This may be a huge task to the local authority.

4.4.2 Supervision or Monitoring Body

A body comprising of a member of the local authority, elected members of the unregistered house owners, an officer from the Department of Health and an officer from the Malaysia Royal Police Force should be formed to supervise and monitor the operations of these accommodations.

This body would also serve as the Complaint Bureau, avenue for tourist to lodge complaints wherein the complaints will be discussed and decided by the members of this body promptly before

deciding and/or advising on the next best action to be taken against the house owners. The body would have to have its standard operating procedure to ensure fast and efficient action without much delay.

4.4.3 Conduct Workshop on Entrepreneurships so That the House Owner Knows What to Do, and to Minimise Legal Risks

In addition to providing training and certification to registered homestay coordinators under the Ministry of Tourism and Culture for the purpose of managing and /or overseeing management of homestays within their area, the Institute of Rural Area, Ministry of Regional and Rural Development also provides training and certifications for registered homestay operators. Perhaps something similar can be established and provided for house owners too.

4.4.4 Maintenance of Premises

The periodical checks and preventive maintenance are to be conducted on the premises and surroundings to ensure the safety of the building and premises. This should also be made as one of the requirement for renewal of license wherein the same should be submitted to the license approving body.

5 CONCLUSION

It is also submitted that the actual concept of homestay should be emphasized to public in order dispersed to prevent misunderstanding among the public and various stakeholders. Guidelines issued by the Ministry of Tourism and Culture (MOTAC) must be followed and updated to ensure that the homestay program remains competitive and to legalise this industry in the future. Government tries to systematize homestay programme through registration so it can provide support for the respective community and to ensure that interest for the home owners and the customers are well protected.

By promoting homestay programme by the government, both country and community can address the unemployment and poverty problems by creating job opportunities and saves traditional practices, cultures, environments. The homestay programme also creates the social unity and harmony in the community and builds leadership skills, management skills and community people capacity on various areas, namely the skills to run and manage

the business and social networking skills when they deal with the customers. It can be the one of the important tools for sustainable tourism development in Malaysia.

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