

# **SHARIAH- COMPLIANT MEDICAL TOURISM: AN EVALUATION OF THE LEGAL IMPEDIMENTS OF ITS IMPLEMENTATION IN MALAYSIA**

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## **ABSTRACT**

Malaysia is one of the first countries in the world to introduce the halal standards MS1500: 2004 in its vision to become the global halal hub. With the inception of halal standards in 2004, the practical guidelines for the food industry on the production, preparation, handling and storage of halal food are now available in a more structured and convenient form. With the advancement of technology in today's world, the focus of halal standards is no longer confined to the food industry. The initiative to introduce halal standards has now been extended to include other industries such as cosmetics, finance, fashion and healthcare. In the healthcare industry, the demand for halal products is accelerating, thanks to the growing awareness of Muslims on the obligation to consume and use halal products. The healthcare industry too has a major potential for demand since the products are also consumable, specifically pharmaceutical products such as medicines and vaccines. Nonetheless, there are legal challenges that pose impediments to further promoting shariah-compliant medical tourism in Malaysia. This study which is doctrinal in nature, analyses the existing legal framework of the healthcare system and medical tourism in Malaysia. Despite the promising demand for halal medical products, there are challenges in promoting this special segment of the industry to everyone. Uncertainty regarding the correct term to portray Islamic medical tourism, various versions of shariah-compliant medical tourism, lack of standardisation of shariah principles, the inadequacy of legal regulatory framework, and

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the proliferation of international halal certification bodies, will subsequently impede the growth of shariah-compliant medical tourism in Malaysia. The study attempts to discuss these aspects and provides some suggestions to promote shariah-compliant medical tourism globally.

**Keywords:** Medical Tourism, Halal, Shariah-Compliant, Health Care, Legal Impediments.

## **PELANCONGAN PERUBATAN PATUH SYARIAH: PENILAIAN MENGENAI HALANGAN UNDANG-UNDANG TERHADAP PELAKSANAANNYA DI MALAYSIA**

### **ABSTRAK**

Malaysia adalah antara negara yang pertama di dunia yang memperkenalkan standard halal MS1500: 2004 dalam visinya untuk menjadi hab halal global. Dengan penubuhan piawaian halal ini pada tahun 2004, garis panduan praktikal untuk industri makanan mengenai pengeluaran, penyediaan, pengendalian dan penyimpanan makanan halal kini lebih berstruktur dan mudah. Dengan kemajuan teknologi dalam dunia hari ini, tumpuan standard halal tidak lagi tertumpu kepada industri makanan semata-mata. Inisiatif untuk memperkenalkan standard halal kini telah diperluaskan untuk merangkumi industri lain seperti kosmetik, kewangan, fesyen dan penjagaan kesihatan. Dalam industri penjagaan kesihatan, permintaan terhadap produk halal semakin meningkat berikutan peningkatan kesedaran umat Islam tentang kewajipan mengambil dan menggunakan produk halal. Industri penjagaan kesihatan mempunyai potensi permintaan yang besar memandangkan produk tersebut juga boleh diguna pakai khususnya produk farmaseutikal seperti ubat-ubatan dan vaksin. Namun begitu, terdapat cabaran undang-undang yang menjadi halangan untuk terus mempromosikan pelancongan perubatan patuh syariah di Malaysia. Kajian yang bersifat doktrinal ini menganalisis rangka kerja perundangan sedia ada, sistem penjagaan kesihatan dan pelancongan perubatan di Malaysia. Walaupun terdapat permintaan yang menggalakkan untuk produk perubatan halal, namun terdapat pelbagai cabaran dalam mempromosikan segmen industri istimewa ini kepada orang ramai. Ketidakpastian istilah yang betul untuk menggambarkan pelancongan perubatan Islam, pelbagai sifat pelancongan perubatan patuh syariah, kekurangan penyeragaman prinsip syariah, ketidakcukupan rangka kerja kawal selia undang-undang, dan pertambahan badan pensijilan halal antarabangsa, ini seterusnya

menghalang pertumbuhan pelancongan perubatan patuh syariah di Malaysia. Oleh itu, kajian ini memberikan beberapa cadangan untuk mempromosikan pelancongan perubatan patuh syariah kepada dunia.

**Kata Kunci:** Pelancongan Perubatan, Halal, Patuh Syariah, Penjagaan Kesihatan, Halangan Undang-Undang.

## INTRODUCTION

Health plays an important role in human life. From the scientific perspective, good health is a focal point for the happiness and well-being of a human that will consequently contribute to prosperity and economic progress because healthy communities are known to be more productive and live longer. In Malaysia, health is given priority by the government to ensure that everyone can have access to the health care services. The current healthcare system provides a variety of treatments that are substantial to treat patients. An ideal healthcare system is the kind of system that not only provides quality treatment but is also offered at an affordable price and accessible to all. The demand for healthcare comes from the value of improved health produced by healthcare.<sup>1</sup>

The demand for quality healthcare is emerging because people can now travel anywhere in the world to get the best treatment. Economically speaking, these people sometimes dubbed as ‘patients without boundaries’ are contributing economically to the countries they are visiting. The idea of medical tourism that spawned from this trend has also had an impact on Muslims for religious reasons. Since Islam makes it mandatory for Muslims to consume only halal food and use halal products, Muslims are now willing to go far to receive healthcare treatment that adheres to Islamic principles. It should be noted that the global Muslim population is growing at the rate of 3% per annum with an approximate total of 1.8 billion Muslims at present.

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<sup>1</sup>The Scientific World,  
<https://www.scientificworldinfo.com/2019/12/importance-of-good-health-in-our-life.html> accessed on 25 August 2021.

It is forecasted that the number will increase to 2.2 billion by 2030.<sup>2</sup> At the same time, medical tourism has become a giant pillar for economic purposes.<sup>3</sup> With the combination of both the Muslim population and quality healthcare that is confined to religious purposes, this segment of tourism has indirectly opened opportunities for the halal industry to grow. Realising the importance of the halal requirement in every aspect including in the healthcare industry, the healthcare system that complies with the Shariah requirements seems necessary and needs to be promoted at the international level.

Globalisation has a significant impact on the rise of medical tourism on the world scale. In this context, Malaysia, along with its neighbours Thailand and Singapore, as well as India, has emerged as major players in Asian medical tourism.<sup>4</sup> Malaysia, in particular, is well-known for its excellence in medical tourism and is regarded as one of the leading Shariah-compliant destinations. In 2020, Malaysia was again crowned as the ‘Destination of the Year’ by the International Medical Travel Journal (IMTJ). As a point of context, Malaysia won the same championship from 2015 to 2017.<sup>5</sup> This triumph reinforces Malaysia's reputation as a worldwide healthcare marvel, demonstrating the unwavering dedication of relevant organisations to ensuring a flawless continuity of treatment during the difficult days of the COVID-19 epidemic.<sup>6</sup> The current success not only underlines Malaysia's continued competence in medical tourism but also stands as

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<sup>2</sup>Pew Research Centre, *The Future of the Global Muslim Population* (Washington, DC: Paw Research Centre: 2011), <https://www.pewresearch.org/religion/2011/01/27/the-future-of-the-global-muslim-population/>

<sup>3</sup>Hui Nee Au Yong, “Positioning Malaysia in Medical Tourism: Implication on Economic Growth in ASEAN Integration”, *Indonesian Journal of Business and Economics*, 1 (1) (2018), 49 -73.

<sup>4</sup>“Malaysia: An Emerging Global Giant in Medical Tourism,” n.d <https://www.magazine.medicaltourism.com/article/malaysia-an-emerging-global-giant-in-medical-tourism>

<sup>5</sup>Suseela Devi Chandran et. al., “Key drivers of medical tourism in Malaysia,” *Journal of Tourism, Hospitality & Culinary Arts (JTHCA)*, 10 no. 1 (2018): 1-12.

<sup>6</sup>“Malaysia Wins Esteemed ‘Destination of the Year’ Title Once Again,” Tourism Malaysia, accessed September 24, 2020. <https://www.tourism.gov.my/news/trade/view/malaysia-wins-esteemed-destination-of-the-year-title-once-again>

a monument to the continuous dedication of key organisations in guaranteeing uninterrupted and high-quality healthcare especially complying with Shariah principles, making it an attractive destination to Muslims worldwide.

Few studies have provided an arrangement of some fundamental qualities and characteristics of Shariah-complaint hospitals which incorporate: serving halal nourishments and drinks; providing prayer mats and praying space; providing arrows indicating the direction of qiblat; having the Al-Quran; enforcing the Islamic code of dress; prescribing halal ingredient medicines; providing gender-concordance care, halal products, halal medical treatments; and providing Islamic funding.

## **LITERATURE REVIEW: THE OVERVIEW OF THE LEGAL FRAMEWORK OF HEALTHCARE SYSTEM AND MEDICAL TOURISM IN MALAYSIA**

As of 2019, there were around 154 government hospitals and 250 private hospitals in Malaysia.<sup>7</sup>There is a potential for a special sector among the healthcare providers in Malaysia to cater to the Muslim community's needs in searching for halal medical treatment. The growing number of Muslim populations worldwide should not be undermined too as it will serve prospective customers in the area of medical tourism. By adopting the Shariah-compliant concept in healthcare services in Malaysia, shariah principles could be integrated into the healthcare system and this would meet the demand of Muslim patients and could ultimately make Malaysia the model for shariah-compliant medical tourism.

### **Legal Framework of Healthcare System in Malaysia: An Overview**

Prior to the establishment of the Federation of Malaysia, the country was divided into several parts namely the Straits Settlements, the Federated Malay States and Unfederated Malay States which were

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<sup>7</sup>Hirschmann, R. "Number of public and private hospitals in Malaysia 2013-2019", Statista, 2021, <https://www.statista.com/statistics/794860/number-of-public-and-private-hospitals-malaysia/> accessed August 12, 2022.

under British colonial rule. During the period of late 19<sup>th</sup> century to early 20<sup>th</sup> century, the British marked their footprint in the Malay Peninsula and introduced the English common law and rules of equity. Healthcare legislations in Malaysia have developed tremendously even before the independence. Prior to the 1950s, during the colonial era, government hospitals and clinics were predominantly staffed by British physicians and nurses. In addition, traditional healers contributed significantly to the delivery of healthcare in rural areas.<sup>8</sup>

Following Malaysia's independence in 1957, the government started concentrating on enhancing the healthcare services and infrastructure. This involved establishing the Ministry of Health, as well as building additional hospitals and clinics and training more regional medical professionals.<sup>9</sup> In the 1950s and 1960s, Malaysia's medical and healthcare system was still in its infancy, and the majority of the medical care was delivered by British physicians and nurses in public clinics and hospitals.<sup>10</sup> Traditional healers contributed significantly to the delivery of healthcare in rural areas. Malaysia, a newly independent country, began investing in healthcare infrastructure and services after realising how important it was to improve healthcare for its inhabitants.<sup>11</sup> Malaysia experienced a number of healthcare issues during this time, including high newborn and maternal death rates, restricted access to healthcare services in rural areas, and a physician shortage.<sup>12</sup>

Malaysia's economy accelerated in the 1970s and 1980s, which prompted an increase in spending on healthcare services and infrastructure. During this time, new medical schools were established, new medical technologies were introduced, and both public and private

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<sup>8</sup>Heng Leng Chee and Simon Barraclough, *Health care in Malaysia: The dynamics of provision, financing and access*. (Oxford: Routledge, 2007).

<sup>9</sup>Ministry of Health Malaysia, *National Strategic Plan for Health 2016-2020*, 2016

<http://www.moh.gov.my/moh/resources/Penerbitan/Other/National%20Strategic%20Plan%20for%20Health%202016-2020.pdf> accessed May, 10, 2023.

<sup>10</sup>Susan Thomas et.al., "Health care delivery in Malaysia: changes, challenges and champions", *Journal of Public Health Africa*, 2 no. 2 (2011): 93 -97.

<sup>11</sup>Susan Thomas, "Heath care delivery in Malaysia", 93.

<sup>12</sup>Susan Thomas, "Heath care delivery in Malaysia", 93.

healthcare systems were expanded.<sup>13</sup> The development of laws regarding healthcare was in line with the government's policies to widen the horizon of providing a better system to everyone in the country. This is evident from a number of legislations that were legislated to give effect to medical, medicines and health issues. This strategy is also in tandem with the Malaysia Plans that was initiated.<sup>14</sup> During this era, there is a piece of legislation that is worth highlighting namely the Private Hospitals Act 1971. This statute has now been repealed and substituted with the Private Health Care Facilities and Services Act 1998 (PHCFSA). This Act provides for the registration and inspection of private hospitals, nursing homes and maternity homes and purposes connected therewith. From here, the interdependence of the healthcare system in Malaysia between public and private hospitals was apparent.<sup>15</sup>

Entering into the 1980s, more advanced progress was made in medicine and healthcare. The statute regulating the fees for instance proved the government's effort in standardising the fees for all medical practices. This is particularly important in ensuring medical and healthcare system are accessible to all people. This is when one of the most relevant legislations at the time of the pandemic was introduced; the Prevention and Control of Infectious Diseases Act 1988 (PCIDA) which was enacted to govern the prevention and control of infectious disease.<sup>16</sup> The 1980s and the 1990s saw more progress in medical and healthcare wherein together with the initiatives in the Malaysia Plans and the increase in wealth in the country, has accelerated the government's focus and purpose on healthcare service and protection

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<sup>13</sup>Wong, Mary Lai Lin. "The Development of the Health Care System in Malaysia with Special Reference to Government Health Services." Doctoral, National University of Singapore, 2008.

<sup>14</sup>Second Malaysian Plan. See The New Development Strategy, <https://www.pmo.gov.my/dokumenattached/RMK/RMK2.pdf> accessed 4 August 2021 accessed 30 April 2023.

<sup>15</sup>Dental Act 1971, Medical Act 1971 and regulations 1974 - Human Tissues Act 1974, Pesticides Act 1974, Destruction of Disease-bearing Insects Act 1975 and Medical Assistant Registration Act 1977.

<sup>16</sup>Fees (Medical) Order 1982 - Food Act 1983, Child Care Act 1984, Atomic Energy Licensing Act 1984, Optical Act 1991 and Telemedicine Act 1997.

not only towards individual healthcare but public healthcare has been the focal point as well.

Due to Malaysia's rapid economic expansion and the government's dedication to enhancing access to healthcare services, the country's medical and healthcare systems underwent major modifications and modernisation in the 2000s. Malaysia made significant investments in the development of new hospitals and healthcare facilities during this time, as well as in the creation of cutting-edge medical technologies and procedures.<sup>17</sup> The government also launched measures to provide access to healthcare services for underserved communities and developed new medical schools to train additional healthcare professionals.<sup>18</sup>

The creation of the Social Security Organisation (SOCSO), a national health insurance programme that offered coverage to both employees and self-employed, was one of the major healthcare changes during this time.<sup>19</sup> Low-income and underserved individuals were able to receive healthcare services more easily thanks to this.<sup>20</sup> The emergence of novel medical procedures and therapies, such as laparoscopic surgery, gene therapy, and stem cell transplantation, which enhanced patient care and increased their options for treatment, was another significant development during this time.<sup>21</sup>

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<sup>17</sup>David Quek, "The Malaysian Health Care System: A Review", *Health System in Transition*, 3 no 1 (2013): 29 - 30.

<sup>18</sup>David Quek, "The Malaysian Health Care System", 30.

<sup>19</sup>Tharani Loganathan et.al, "Healthcare financing and social protection policies for migrant workers in Malaysia", *PLoS Medicine*, 15 no 12 (2020): 1 20.

<sup>20</sup>Tharani Loganathan, "Healthcare financing and social protection policies", 7 – 8.

<sup>21</sup>Siti Aminah Muhammad Imran et.al., Regenerative Medicine Therapy in Malaysia: An Update, *Frontiers in Bioengineering and Biotechnology*, 10 (2022).



Below in Table 1 are some of the instrumental legislations in relation to medical services and healthcare in Malaysia.<sup>22</sup>

Table 1: Health Legislations in Malaysia

Title of Legislation	Purpose of the Legislation
Private Healthcare Facilities and Services Act 1998 (PHFSA)	This act regulates the registration, licensing, and operation of private healthcare facilities and services in Malaysia, including hospitals, clinics, and other medical institutions.
Medical Act 1971	This act governs the practice of medicine in Malaysia, including the registration and licensing of medical practitioners and the establishment of the Malaysian Medical Council.
Pharmacy Act 1951	This act regulates the practice of pharmacy in Malaysia, including the registration and licensing of pharmacists and the establishment of the Pharmacy Board Malaysia.
National Health Act 2019	This act provides for the establishment of a national health system to ensure access to quality healthcare services for all Malaysians.
Control of Drugs and Cosmetics Regulations 1984	This regulation governs the import, export, sale, and distribution of drugs and cosmetics in Malaysia, including requirements for licensing, registration, and labelling.
Private Hospitals and Other Healthcare Facilities (Amendment) Act 2018	This act amends the PHFSA to provide for the regulation of private hospitals and other healthcare facilities, including new provisions on clinical trials and healthcare data protection.

Source: Ngah, Baroni & Mahdi, 2017.<sup>23</sup>

<sup>22</sup>Author's own table.

<sup>23</sup>Ngah, A.C., Baroni, A., & Mahdi, Z.A. The development of health care legislation in Malaysia: An overview (2017).

## Medical Tourism in Malaysia: A Legal Perspective

Owing to its beautiful landscape, cultural and religious diversity, Malaysia has become one of the regular tourist destinations in the world. Through tourism, the economic sector has shown significant growth that helps to boost foreign exchange. Malaysia's position is even stronger with the development of medical tourism. Historically speaking, medical tourism can be traced back as far as the ancient Greeks. The Greeks built shrines as a symbol of worship to Asclepius (Greek god of medicine). These shrines were considered to be the first medical centres that attracted people from all over the ancient world to travel in search of medication. There were historical evidences of travelling that took place from modern-day Switzerland to present-day German and French lands to visit the shrines and the iron-rich hot springs that were believed to have healing powers from any kind of illness.<sup>24</sup>

By definition, medical tourism could be defined as the activities of travelling outside the country of residence to receive medical care.<sup>25</sup> This trend continues until today with people travelling to either developed or developing countries to find the best medical treatment. While some people travel to developed countries such as the United States of America or European countries to receive cutting-edge medical care, some prefer to go to developing countries that provide the same quality of treatments and procedures at significantly lower prices. With these varied reasons, medical tourism is no longer exclusively centered on Western countries. People now have a number of options, allowing them to choose from premium yet affordable medical treatment.

Malaysia is one of those countries that is currently making a big impact in healthcare tourism. With excellent track records proven internationally through the winning of esteemed awards, Malaysia Healthcare Travel Council (MHTC) was established to support the medical tourism sector in this country. As far as the legislation is

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<sup>24</sup>Les Simpson, The History, Evolution and Future of Medical Tourism, *Coloradobiz*, (August, 2017) <https://www.cobizmag.com/the-history-evolution-and-future-of-medical-tourism/> accessed April 20, 2023.

<sup>25</sup>Suseela Devi Chandran et. al, "Medical Tourism: Why Malaysia is a Preferred Destination?", *Journal of Computational and Theoretical Nonscience*, vol. 23 no 8 (2017): 7861-7864.

concerned, the Tourism Industry Act 1992 (TIA) is the most important legislation with the aim of providing a legal framework for the development of tourism, preservation of cultural values and natural resources. The law is also vital to facilitate the involvement of the private sector and local communities in tourism activities by providing the licensing and regulation of tourism enterprises and for matters incidental thereto or connected therewith.<sup>26</sup> Another important legislation is the Civil Aviation Act 1969. Tourism and civil aviation co-exist in a symbiotic relationship. This is because the tourism industry relies heavily on-air transport to commute people from one place to another especially international travel. Likewise, the tourism industry provides passengers for the air transport sector. Like all other countries in the world, there are entry requirements before a person can step foot in Malaysia. The travelling law is generally provided under the Immigration Act 1959/63 which lists down conditions for a tourist such as possessing a valid passport that is recognised by the Malaysian government and meeting the visa requirements. So long as a person abides by all the rules and conditions stated therein, he or she is welcomed.

Although Malaysia does not have specific legislation in relation to medical tourism, the PHCFSA would be essential to the discussion. Foreign patients who seek treatment in Malaysia are mostly found in private healthcare. The private sector includes medical clinics, dental clinics, hospitals and other services. The Act requires private healthcare to apply for a licence from the Ministry of Health (MOH) and to fulfil the standards listed therein. To ensure standards are met, authorised officers from MOH will do inspections and investigations whenever there are serious concerns. Few private healthcare providers have been prosecuted for not complying with the standards while disciplinary actions such as revocation of approval or licence have been

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<sup>26</sup> Marlysa Razak and Wai Leng, C, Introduction to Tourism & Hospitality Law, Richard Wee Chambers, <https://www.richardweechambers.com/introduction-to-tourismhospitality/#:~:text=According%20to%20the%20United%20Nations,private%20sector%20%26%20local%20communities%20in> accessed May 10, 2023.

taken against some private healthcare providers.<sup>27</sup>

### **Existing Halal Standards in the Healthcare Industry in Malaysia**

According to Frost & Sullivan, it is estimated that the global halal-friendly medical and health tourism market's worth USD 60 billion in 2017 with a steady growth rate of 20% annually.<sup>28</sup> In tandem with this estimation, pharmaceutical and medical devices need to undergo procedures before they can be halal-certified. A pharmaceutical product which also refers to medicine or drug are used as a treatment for diseases and protection of public health. Halal pharmaceuticals contain ingredients that are halal,<sup>29</sup> and are produced according to Islamic regulations. To be halal certified, any animal-derived product must strictly avoid substances sourced from pigs, predatory animals, or insects, in accordance with Quranic standards.<sup>30</sup> Moreover, the ingredients used must also be safe for humans and should not be made from intoxicating substances such as alcohol. The products should be prepared free from equipment contaminated by impurities or *najis*<sup>31</sup>

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<sup>27</sup>Lee Kwee-Heng et.al., The Implications of Legislative Controls on Private Hospitals in Malaysia, *Institutions and Economies*, 10, no. 2 (2018): 62-94.

<sup>28</sup>Halal friendly Hospitals Supply Chain, World Intellectual Property Organization (WIPO), [https://globalhalaltourism.org/hospitals\\_health\\_care\\_centers\\_clinics.php](https://globalhalaltourism.org/hospitals_health_care_centers_clinics.php) accessed April 20, 2023.

<sup>29</sup>Halal refers to Halal, originating from Arabic, refers to much more than only dietary restrictions. It encompasses a larger understanding of what is allowed and lawful in everyday life. While typically connected with food and drink, it encompasses many elements of daily life, reflecting a comprehensive ethical framework that guides behaviours and decisions in conformity with Islamic teachings. See Islamic Services of America isahalal.com <https://www.isahalal.com/halal-information> accessed March 25, 2024.

<sup>30</sup>Mohd Izhar Ariff Mohd Kashim et. al., "Scientific and Islamic perspectives in relation to the Halal status of cultured meat", *Saudi Journal of Biological Sciences*, 30 (1) (2023): 1 – 9.

<sup>31</sup>Najis refers to something unclean and disgusting. Kassim, Norrahimah& Hashim, Puziah& Hashim, Dzulkifly& Jol, Hamdan. "New Approach of Samak Clay Usage for Halal Industry Requirement." *Procedia - Social and Behavioral Sciences*. 121 (2014): 186-192. 10.1016/j.sbspro.2014.01.1119.

such as blood.<sup>32</sup> The halal procedure is not only involved in the product itself; it is also crucial in the preparation; processing; handling; packaging; storage and distribution. It is also clear that halal pharmaceutical products need to be separated from any other pharmaceutical products that do not meet the halal standards to avoid any confusion.<sup>33</sup> There are three main legislations for pharmaceutical products in Malaysia namely the Sale of Drugs Act 1952, Dangerous Drugs Act 1952 and Poisons Act 1952. The Drug Control Authority is the Ministry of Health (MOH) which is a body responsible for enforcing these legislations. The authority is entrusted with registering pharmaceutical products and cosmetics, licensing premises of importers, manufacturers and wholesalers and monitoring the quality of registered products in the market.

For pharmaceutical products, two important pharmaceutical halal standards were introduced by the Department of Statistics Malaysia (DSM) in 2019; they are MS 2424: 2019 and MS 2634: 2019. The scope of MS 2424: 2019 is generally to provide guidelines in the manufacturing and handling of halal pharmaceuticals. This guideline makes it mandatory for the participating manufacturers of pharmaceutical products to comply with the requirements stipulated in these guidelines and shall be verified through site inspection as deemed necessary by the competent authority. MS 2634: 2019 on the other hand is the halal standards specifically designed to cater for halal cosmetics. The guidelines that must be complied including to make sure that the source of ingredients comes from a halal-certified supplier and repackaging application must also be accompanied by a recognised halal certificate.<sup>34</sup>

Another aspect that needs to be given attention is medical devices. In Malaysia, the legal and regulatory framework of medical devices is governed by the Medical Device Act 2012(MDA) under the purview of the MOH. The main objectives of the statute are to respond to the public health and safety issues related to medical devices and to facilitate the development of medical device trade and industry. At

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<sup>32</sup>Mohd Izhar Ariff Mohd Kashim, "Scientific and Islamic perspectives", 5.

<sup>33</sup>Mohd Izhar Ariff Mohd Kashim, "Scientific and Islamic perspectives", 5.

<sup>34</sup>Ahmad Sahir Jais, Halal Related Malaysian Standards, Halal Note Series - Collection of Halal related articles  
[https://www.researchgate.net/publication/332523155\\_Halal\\_Related\\_Malaysian\\_Standards](https://www.researchgate.net/publication/332523155_Halal_Related_Malaysian_Standards) accessed April 20, 2023.

present, the Act does not require any product to be halal certified. This means all registered medical devices may be placed in the Malaysian market without halal certification. However, it should be noted that medical devices need to comply with MDA before they can be certified halal. MS 2636: 2019 deals with halal standards for manufacturing and handling of medical devices that are based on organic material, chemical and animal-derived. Among medical devices or products are surgical mesh, contact lenses, dental floss, and dialysis solution to name a few.

## RESEARCH METHODOLOGY

This research employs a doctrinal method in analysing health care regulations in general. Doctrinal studies use legal materials to uncover unknown facts about the legal system, policies, laws, and judicial decisions, rather than relying on primary field research. Law professionals have always relied on doctrinal research to reach rational conclusions about legal issues.<sup>35</sup> By adopting a doctrinal approach and referencing diverse sources, this research aims to provide a comprehensive understanding of the legal aspects impacting healthcare practices and their relation to tourism. The research which is qualitative in nature also refers to other sources such as textbooks, academic journals and relevant websites specialising in healthcare and tourism. It is worth noting that international instruments also serve as main references for this research.

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<sup>35</sup>Pradeep, M. D, "Legal Research- Descriptive Analysis on Doctrinal Methodology," *International Journal of Management, Technology, and Social Sciences (IJMTS)*, 4 no 2 (2019): 95-103. DOI: <http://doi.org/10.5281/zenodo.3564954>.

## LEGAL IMPEDIMENTS IN PROMOTING SHARIAH-COMPLIANT MEDICAL TOURISM IN MALAYSIA

Muslim customers were reported to be one of the fastest-growing market segments in the tourism industry.<sup>36</sup> As the halal industry is ready to take over the world by storm, the technology along with the accreditation body and implementation of the laws should also be in place. Despite proper health and medical legislations in the country, there are still challenges in promoting shariah-compliant medical tourism in Malaysia as a preferred destination for foreign patients.

### Definition Dilemma: Muslim-Friendly or Shariah-Compliant?

Before analysing the legal regulatory framework, it is wise to first decipher the common terminologies associated with the word halal. The word halal was the most commonly used term before Muslim-friendly and Shariah-compliant terms came to prominence.<sup>37</sup> “Muslim-friendly” and “Shariah-compliant” are the two most interchangeable terms used although these terms vary greatly. Muslim literally means a person who professes the religion of Islam while friendly in this context would mean things that are designed or intended to accommodate particular needs or users. This term is usually used in combination such as Muslim-friendly.<sup>38</sup> From tourism perspective for example; Muslim-friendly tourism includes many aspects of the services provided. Muslim-friendly in itself refers to the fact that the service or products in the specific industry are guided by Shariah requirements that provide facilities suitable for Muslims’ usages.<sup>39</sup> The term Muslim-friendly can easily be defined based on faith-based needs and services.<sup>40</sup> According to Akyol and Kilinc, Muslim-friendly tourism includes halal hotels, halal transport (halal airlines), halal food

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<sup>36</sup>Mohamed Battour and Mohd Nazari Ismail, “Halal tourism: Concepts, practises, challenges and future”, *Tourism Management Perspective*, 19 no 1 (2016): 150 – 154.

<sup>37</sup>Battour and Ismail, “Halal tourism”, 151.

<sup>38</sup>“Hacker.” *Merriam-Webster.com*. 2011. <https://www.merriam-webster.com> accessed August, 10, 2023.

<sup>39</sup>Syarifah Hasanah, “Muslim Friendly Tourism and Western Creative Tourism: The Conceptual Intersection Analysis”, *International Journal of Islamic Business Ethics*, 5 no. 2 (2020): 21.

<sup>40</sup>Syarifah Hasanah, “Muslim Friendly Tourism”, 21 - 32.

restaurants, halal tour packages and halal finance. Hence, Muslim-friendly tourism consists of different sectors which are related to one another.<sup>41</sup> Sureerat on the other hand defines halal tourism as offering tour packages and destinations that are particularly designed to cater for Muslim considerations and address Muslim needs.<sup>42</sup> This would mean that Muslim-friendly is a kind of service that would be able to respond to the Muslims' needs, and not necessarily the whole industry needs to be certified as halal. Take the airline industry for instance, an airline company can self-claimed to be Muslim-friendly for providing a prayer mat and halal food on board but that does not mean the whole food range must be halal certified as the airline company may still serve alcoholic drinks to the non-Muslims.

Another term used to represent services that follow Islamic guidelines is Shariah compliant. Shariah which literally means a path leading to water, figuratively refers to the path taken by all humans to attain Allah's reward in the hereafter. Shariah-compliant on the other hand is an act or activity that complies with the requirements of the Shariah. The term is often used in Islamic banking industry as a synonym for "Islamic" such as shariah-compliant financing or shariah-compliant investment.<sup>43</sup> Unlike Muslim-friendly, the term shariah is ensuring the entire operation of a service operates in accordance with the Shariah principles.<sup>44</sup> To give an example, a "Shariah-Compliant Hotel" is defined as a service that is in accordance with the Shariah principles, not only limited to the availability of halal food and drink, but also the entire operation of the hotel to the extent that the service provided should be funded by Islamic finance.

Hence, Shariah-compliant by definition, is a stricter approach of following Islamic law compared to the term Muslim-friendly. This is because the former requires the entire operation of the service to fully

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<sup>41</sup>Akyol, M. and Kilinc, O, Internet and Halal Tourism Marketing. Turkish Studies, 9, (2014): 171-186.

<sup>42</sup>Sureerat Chookaew, "Increasing Halal Tourism Potential at Andaman Gulf in Thailand for Muslim Country", *Journal of Economics Business and Management*, 3 no 7 (2015): 739-741.

<sup>43</sup>Islamic Markets, <https://islamicmarkets.com/dictionary/s/shariah-compliant> accessed August 8, 2022.

<sup>44</sup>Zakiah Samori and Fadilah Abd Rahman, "Establishing Shariah Compliant Hotels in Malaysia: identifying Opportunities, Exploring Challenges", *West East Journal of Social Sciences*, 2 no 2 (2013): 96.



adhere to Islamic law while the latter aims at providing services that cater to Muslims' needs. Ramli and Zawawi have discussed at length the confusion between these two terms. It is worthy to note that the term Muslim-friendly refers to a kind gesture in welcoming the guest or customer in the contemporary business by ensuring that the basic needs comply with the religious requirements such as providing prayer room, halal food, and many others.<sup>45</sup> They added that both terms have different characteristics that define them and place them under different categories. Although the study was confined to the tourism industry, it is worth noting that the characteristics provided are also relevant to other industries such as the healthcare industry.

While Shariah-compliance and Muslim-friendliness can overlap in some areas, they are not necessarily the same thing. For example, a hotel may offer halal food options and prayer rooms (making it Muslim-friendly), but it may not be shariah-compliant if it offers alcohol or allows mixed-gender socialising. In the context of tourism, shariah-compliant tourism may include facilities that adhere to Islamic dress codes, offer prayer facilities, and provide halal food options. Muslim-friendly tourism, on the other hand, may go beyond this to include activities and experiences that align with Muslim values, such as visits to historical Islamic sites or participation in Islamic cultural events.

As far as the healthcare industry is concerned, the usage of any of these two terms would bring a different impact. As mentioned earlier, shariah-compliance is rigid as compared to Muslim-friendly making it difficult to be implemented. This is because many factors need to be considered such as ensuring the pharmaceutical conforms to the halal standards. This would serve as a major challenge as it is understood that not all drugs contain permissible ingredients and are produced according to Islamic rules and conditions although the halal pharmaceutical market has steadily shown progress throughout the world. Nevertheless, to fully attain the shariah-compliant industry, the development of halal drugs should be given special attention. For this industry to develop despite having a niche market as it will only cater to Muslims, research and development must be accelerated. Despite

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<sup>45</sup>Norah Ramli and Majdah Zawawi, "Shari'ah compliant hospitality services" or "Muslim friendly hospitality services": Searching for a balance, *Malaysian Journal of Consumer Family Economics*, 20 no 1 (2017): 28 – 37.

this, halal products are gaining recognition globally because of the safety and quality assurance benchmark. Thus, Muslim consumers, as well as those from other religions, confidently accept products that come with halal accreditation.<sup>46</sup> According to Zulkefly Mohamad, the term Muslim-friendly is preferable since the healthcare service providers in Malaysia are not ready to comply with the shariah-compliant concept as it requires conforming to shariah principles in all aspects including facilities, products and services and would require strenuous efforts and participation from public and private entity.<sup>47</sup>

### **Identifying Characteristics of Shariah-Compliant in Medical Tourism**

The importance of identifying characteristics of Shariah-compliant cannot be hardly over-emphasised. This is because healthcare providers can make sure that their services are in accordance with Islamic principles and satisfy the requirements and expectations of Muslim patients. Further, identifying the attributes would encourage moral and responsible behaviour including observance of secrecy, privacy, and human dignity. Healthcare practitioners can spread these principles and win patients' trust by identifying these characteristics. Table 2 below discusses scholars' list of attributes of Shariah-compliant medical tourism.

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<sup>46</sup>Halal Pharmaceuticals Market 2020 forecasts Muslim consumer market, *Bispectrum*, (January, 2020) <https://www.biospectrumasia.com/news/52/15307/halal-pharmaceuticals-market-2020-forecasts-muslim-consumer-market.html> accessed 7 August 2021.

<sup>47</sup>Zulkefly Mohamad, Focus Group Discussion, Attributes of Shariah Compliant Hospital, 9 September 2020, De Palma Hotel Ampang.

Table 2: Various Authors' Approaches to Shariah-Compliant Medical Tourism

Authors	Characteristics
Amini Amir Abdullah (2022) <sup>48</sup>	Orientation of common good, enlightenment and orientation of tranquillity, avoiding idolatry and superstitious elements, free from immorality, maintaining security and comfort, preserving environmental sustainability, prioritising important fundamentals and respecting social and cultural values and local knowledge.
Ahmed Kamassi (2021) <sup>49</sup>	Follow Islamic values and principles, including truthfulness, uprightness, and regard for human dignity, Halal food and beverages are those that are produced and served in compliance with Islamic dietary requirements, Modesty and privacy in ensuring that treatments are administered in a way that respects the patient's modesty and privacy, in line with Islamic principles, to adhere to Islamic regulations for gender segregation by separating facilities and accommodations for male and female patients, using funding options that abide by Islamic financial principles, like profit-sharing agreements, instead of interest-based loans, access to Islamic scholars: Patients who use Shariah-compliant medical tourism services may have access

<sup>48</sup>Amini Amir Abdullah et.al., Shariah-compliance Tourism Malaysia, *Al-Sirat*, 22 no 1 (2022). The characteristics mentioned here is also similar to characteristics for Islamic tourism by the same author in a different study. See Amini Amir Abdullah, Islamic Tourism: The Characteristics, Concept and Principles, International Conference on Islam, Economy, and Halal Industry, Malang, Indonesia, 30 July 2019, organised by KnE Social Sciences): 196 – 215.

<sup>49</sup>Ahmed Kamassi et.al., The need of international Islamic standards for medical tourism providers: A Malaysian experience, *Journal of Islamic Marketing*, 12 no 1(2020): 113 – 123.

	to Islamic clerics for spiritual assistance, cultural sensitivity by showing respect for the patient's religious and cultural heritage, health and wellness is by encouraging a holistic approach to healing in addition to medical therapy, ability to offer superior medical know-how and equipment on par with non-compliant medical tourism services, uphold ethical standards in line with Islamic principles including honesty, integrity, and regard for human dignity.
Muhammad Khalilur Rahman et.al (2021) <sup>50</sup>	Amenities and services that conform to Islamic principles, Islamic physician services, Islamic nurses services, physician-patient interaction and Islamic accommodations.
Raimi (2018) <sup>51</sup>	Covers two broad areas Fiqh Ibadah and Fiqh Muamalat. These two areas concern people, structure, work process and technology.
Suhana (2014) <sup>52</sup>	Halal Medicine products unless no alternative, Halal foods and beverages only served, Muslim staff with a proper Islamic code of dressing, Islamic funding, permissible medical procedures, prayer room available on the hospital premises, female patient is examined and treated by female doctor only unless not available,

<sup>50</sup>“Medical Tourism: The Islamic Perspective” in *Tourism Products and Services in Bangladesh: Concept Analysis and Development Suggestions* ed. By Azizul Hassan (London: Springer, 2020).

<sup>51</sup>Raimi Rahmat Yahaya, “What is Shariah Compliant Hospital Criteria and Scope?”, *International Journal of Academic Research in Business and Social Sciences*, 8 (5) (2018): 1058 – 1065.

<sup>52</sup>S Mohezar et.al., “Establishing Islamic Medical Tourism In Malaysia: Understanding the Motivation and Challenges”, (paper presented at Annual International Conference on Management and Technology in Knowledge, Service, Tourism & Hospitality, Jakarta, Indonesia, 23 – 24 August 2014).

	having the holy book Quran, prayer mat and qiblat direction indicator.
Padela and Curlen (2013) <sup>53</sup>	Serving halal nourishments and drinks; providing prayer mats and praying space; providing arrows indicating the direction of qiblat; having the Al-Quran; enforcing the Islamic code of dress; prescribing halal ingredient medicines; providing gender-concordance care, halal products, halal medical treatments; and providing Islamic funding.

Source: Author’s original findings.

Scholars delve into Islamic teachings and sources, such as the Quran, Hadith, and Sunnah, to find key principles and values. They then identify features based on these Islamic principles. Additionally, they take into account the viewpoints of Islamic scholars and jurists who have published voluminous writings on a range of topics related to Islamic law and ethics, including medical ethics.

Scholars identify characteristics of Shariah-compliant medical tourism based on Islamic principles and values.<sup>54</sup> A complete and pertinent framework for Shariah-compliant medical tourism has been developed by scholars by fusing their understanding of Islamic tenets, jurisprudence, and ethics with actual data and professional opinion. For instance, they might do a thorough analysis of the literature on Islamic medical ethics or consult subject-matter experts.<sup>55</sup> To confirm that their features are realistic and achievable, scholars also confer with authorities in a variety of disciplines, including healthcare, finance, and tourism. They also take into account the culture that affect how

<sup>53</sup>Aasim Padela & Farr Curlin, “Religion and Disparities: Considering the Influences of Islam on the Health of American Muslims”, *Journal of Religion and Health*, 52 (4) (2013): 1333- 1345.

<sup>54</sup>Abdullah, Amini & Awang, Mohd & Abdullah, Norsazali. “Islamic Tourism: The Characteristics, Concept and Principles”. *KnE Social Sciences*. (2020). 10.18502/kss.v4i9.7326.

<sup>55</sup>Based on the studies presented here, all of them formulate the attributes based on the literature of other scholars and reference made to primary sources of Islamic law i.e. Quran and Hadith.

Shariah-compliant medical travel is implemented in various locales. Traditional Malay medicine is one example of a cultural aspect that is incorporated into Malaysia's shariah-compliant healthcare system alongside contemporary medical procedures.<sup>56</sup> This type of medicine which has been used for generations in Malaysia and is based on the use of natural medicines and cures, is now being included in healthcare services that adhere to shariah.<sup>57</sup>

### **Lack of Standardisation of Shariah Principles**

One of the legal impediments to shariah-compliant medical tourism is the lack of standardisation of Islamic laws across different countries. This is because Islamic laws vary depending on the interpretation of religious scholars, and there is no universally accepted authority to regulate these laws. In the context of Islamic banking and other industries, such as Islamic tourism and medical tourism, the lack of standardisation of Shariah principles has long been a problem.<sup>58</sup> This is because different scholars and institutions have varied interpretations and applications of Shariah. After all, there is no single Islamic authority or agency that controls and harmonises Islamic principles.<sup>59</sup>

At this juncture, it is worthy to note that the term "Islamic school of thought" refers to the different theological and jurisprudential schools that make up Islam, each of which has its own unique set of guiding ideals and approaches to understanding Islamic teachings. The most well-known *madhabs*, sometimes referred to as schools of

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<sup>56</sup>Park, J. E., Yi, J., & Kwon, O. "Twenty years of traditional and complementary medicine regulation and its impact in Malaysia: achievements and policy lessons", *BMC Health Services Research*, 22(1) (2022): 102. <https://doi.org/10.1186/s12913-022-07497-2>.

<sup>57</sup>Ji-Eun Park et.al., "Twenty years of traditional and complementary medicine regulation and its impact in Malaysia: achievements and policy lessons", *BMC Health Services Research*, 22 (102) (2022): 1 -13.

<sup>58</sup>Aysan, Ahmet & Belatik, Abdelilah & Bouheraou, Said & Disli, Mustafa & Oseni, Umar & Chachi, Abdelkader & Zadjali, Fatin & Nagayev, Ruslan & Yaş, Murat. "Standardization Efforts in Islamic Finance." (2020). 10.13140/RG.2.2.18309.42720.

<sup>59</sup>For Islamic banking, see Younes Soualhi, "Bridging Islamic Juristic Differences in Contemporary Islamic Finance", *Arab Law Quarterly*, 26 no 3 (2012), p. 313 – 337.

thought, are the Hanafi, Maliki, Shafi'i, and Hanbali.<sup>60</sup> When various schools of thought disagree, it might result in different interpretations and decisions being made on certain matters like financial transactions, family law, and criminal law. These institutions do, however, share a significant deal of overlap and common ground, and they are all dedicated to defending Islamic teachings and promoting justice and fairness in society.<sup>61</sup>

Since the principles for interpreting and applying Shariah are different for each school of thought, the countries that practise these various schools of thought can also differ in their practice of Islamic principles based on a range of elements, such as historical and cultural elements, the impact of local academics and institutions, and political considerations.<sup>62</sup> For instance, the Shafi'i school of thought focuses on the Qur'an and the Sunnah as the two main sources of Islamic law, but it also considers the consensus of Islamic scholars and analogical reasoning.<sup>63</sup> It is renowned for its fair-minded approach to interpreting the law, emphasising both the letter and spirit of the law, as well as its adaptability to changing conditions.<sup>64</sup> It predominates in regions of Southern Arabia, Bahrain, the Malay Archipelago, East Africa and several parts of Central Asia, while the Hanafi school is more common in countries such as Turkey, Egypt, Bosnia and other Balkans, the Levant, Central Asia, Morocco, Pakistan and Bangladesh.<sup>65</sup> This school of thought prioritises rationality and flexibility in the interpretation of Islamic literature.<sup>66</sup> The Maliki school of thought on

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<sup>60</sup>Emad Hamdeh, "What is a Madhhab? Exploring the Role of Islamic Schools of Law", Jurisprudence, Yaqeen Institute, <https://yaqeeninstitute.org.my/read/paper/what-is-a-madhhab-exploring-the-role-of-islamic-schools-of-law> accessed April 29, 2023.

<sup>61</sup>Emad Hamdeh, "What is a Madhhab?".

<sup>62</sup>I. Bruce Watson, "Islam and Its Challenges in the Modern World", *Insight*, 12 no 33 (1997).

<sup>63</sup>Wan Zulkifli Wan Hassan et.al., "The impact of the Shafi'I school in the implementation of laws during the reign of Sultan Zainal Abidin III in Kuala Terengganu, Malaysia", *IIUM Law Journal*, 21 no 1 (2013): 119 – 141.

<sup>64</sup>Wan Zulkifli Wan Hassan, "The impact of the Shafi'I school", 120.

<sup>65</sup>M. Cherif Bassiouni, Schools of Thought in Islam, Introduction to Islam: An Online Text, Middle East Institute, <https://www.mei.edu/bassiouni/intro-to-islam> accessed May 10, 2023.

<sup>66</sup>M. Cherif Bassiouni, "Schools of Thought in Islam".

the other hand focuses more stress on the practises and customs of the people of Medina when interpreting Shariah.<sup>67</sup> It is prevalent in North Africa (excluding northern and eastern Egypt), West Africa, Chad, Sudan, Kuwait, Bahrain, Qatar, the Emirate of Dubai (UAE), and northeastern parts of Saudi Arabia. The Hanbali school is renowned for its strict interpretation of the Quran and Hadiths. It is distinguished by its conservative approach to interpreting the law and emphasis on maintaining the customs of early Islamic culture.<sup>68</sup> The Hanbali school, especially in Saudi Arabia and other regions of the Arabian Peninsula, has had a substantial impact on Islamic law and practise around the world. It has helped advance Islamic research and education and played a significant role in forming the legal and social structures of many nations with a majority of Muslims.<sup>69</sup> Issues on termination of pregnancy for fetal anomalies in Islam serve as the best example. The Hanafi and many of the Shafi'i schools state that abortion is permissible until the end of four months, only if one has legitimate grounds for abortion. While the Maliki and Hanbali schools state that abortion is permissible at the request of both parents for up to 40 days with a legitimate cause, this is principally prohibited from day 40 onwards.<sup>70</sup>

Lack of standardisation can lead to discrepancies in the interpretation and application of Shariah principles in the context of Islamic tourism and medical tourism, which could cause problems with the certification and accreditation of Shariah-compliant facilities and services.<sup>71</sup>

According to some scholars, the lack of standardisation could be resolved by creating an international authority to establish Shariah standards or by creating best practises and guidelines that are generally

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<sup>67</sup>M. Cherif Bassiouni, "Schools of Thought in Islam".

<sup>68</sup>M. Cherif Bassiouni, "Schools of Thought in Islam".

<sup>69</sup>Mansoor Moaddel, *Islamic Modernism, Nationalism, and Fundamentalism: Episode and Discourse*, (Chicago: University of Chicago Press, 2005).

<sup>70</sup>Abdulrahman Al-Matar and Jaffar Ali, "Controversies and considerations regarding the termination of pregnancy for Foetal Anomalies in Islam", *BMC Medical Ethics*, 15 no 10 (2014): 1 – 10.

<sup>71</sup>Ali Abdallah, "Has the Lack of a Unified Halal Standard Led to a Rise in Organised Crime in the Halal Certification Sector?", *Forensic Sci*, 1 (3) (2021): 181 – 193.



embraced and adhered to by Islamic institutions and scholars.<sup>72</sup> For instance, there have been instances where separate Shariah boards have issued contradicting judgements, which has caused ambiguity and possibly dangerous reputational issues for Islamic financial organisations. Below are some of the instances illustrating different Shariah principles in regulating medical tourism in Islamic states.

1. Saudi Arabia: Saudi Arabia is home to two of the holiest sites in Islam and is known for its strict adherence to Islamic law. In the context of medical services, the Saudi Arabian government has established the Saudi Commission for Health Specialties (SCFHS) to regulate and standardise medical education, training, and practice in the country. The SCFHS requires that all healthcare providers working in Saudi Arabia be licensed and adhere to strict ethical and professional standards, which include adherence to Shariah principles.<sup>73</sup>
2. Malaysia: Malaysia is a Muslim-majority country that has become a hub for Shariah-compliant medical tourism in recent years. The Malaysian government has established the MHTC to promote and regulate medical tourism in the country. The MHTC has developed a set of guidelines for shariah-compliant healthcare services, which covers a range of issues such as dress code, prayer facilities, and halal food options. However, there is some variation in the implementation of these guidelines across different healthcare providers in Malaysia.<sup>74</sup>
3. United Arab Emirates (UAE): The UAE is an Islamic state where Shariah principles are integrated into the healthcare system. The UAE's Ministry of Health and Prevention has established guidelines and regulations to ensure that healthcare services are provided in accordance with Islamic values. For example, there are separate facilities for male and female patients, and medical staff must dress modestly following

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<sup>72</sup>Ahmed Kamassi et al., "The need of international Islamic standards for medical tourism providers: A Malaysian experience," *Journal of Islamic Marketing*, 12 no 1 (2020): 113 – 123.

<sup>73</sup>See Saudi Commission for Health Specialties (SCFHS) standards at [scfhs.org.sa](https://scfhs.org.sa).

<sup>74</sup>See Malaysian Healthcare Travel Council (MHTC) and its regulations at <https://www.mhtc.org.my/>.

Islamic dress codes. The UAE also has several halal-certified hospitals and clinics.<sup>75</sup>

### **Inadequacy of Legal and Regulatory Framework**

Legal provisions and establishing procedural rules and regulations are essential to ensure the efficient management, operation and maintenance of a particular industry. Through proper legislation, the registration of healthcare providers and the accuracy of information given can be verified via an appointed government agency. Further, penalties for non-compliance can also be enforced through legislation. Legal and regulatory framework is vital for every industry to work without which, monitoring and management of the same would be impossible.

The absence of legal and regulatory structures to control Islamic medical tourism in Malaysia has long been a problem for the sector. The legal and regulatory foundations for Islamic medical tourism are still insufficient, despite the fact that Malaysia has built a sophisticated halal certification system for food and other consumer goods.<sup>76</sup> Additionally, the absence of defined legal and regulatory frameworks has made it easier for dishonest business people to engage in unethical or unlawful practises because there is little scrutiny.<sup>77</sup>

The halal requirements for healthcare services are still insufficient, despite the fact that Malaysia has built a strong halal certification system for food and other consumer goods. Although halal certification for pharmaceuticals is available, it may not cover the whole range of medical treatments, such as medical devices, surgical

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<sup>75</sup>Fatma Al-Maskari, "A new era in healthcare in the UAE", *Journal of Health Specialties*, 1(4) (2013): 169–172. <https://doi.org/10.4103/1658-600X.122779>

<sup>76</sup>Moghavvemi, Sedigheh & Zailani, Suhaiza & Ali, Suhana & Musa, Ghazali. Islamic Medical Tourism in Malaysia: Challenges and Opportunities, (paper presented at Annual International Conference on Management and Technology in Knowledge, Service, Tourism & Hospitality, Jakarta, Indonesia, 14 – 15 December 2013).

<sup>77</sup>Leitzes, J. Dishonesty in Business. *Michigan Journal of Economic*. <https://sites.lsa.umich.edu/mje/2023/04/07/dishonesty-in-business/> accessed March 25, 2024.

instruments, and other healthcare products.<sup>78</sup> The lack of a thorough halal standard that addresses all facets of healthcare services, including medical procedures, medications, and medical equipment, is one of the key problems.<sup>79</sup> Due to this, patients looking for halal medical care now lack both clarity and confidence in the halal status of hospitals and other healthcare providers.

At present, there is no legislation enacted for this purpose. Although the enactment of legislation may seem far-fetched in the near future, the establishment of an accreditation body to assess systems and procedures, and monitor performance seems relevant.<sup>80</sup> The collaboration between DSM and the Department of Islamic Development Malaysia (DIDM, also known as JAKIM) would be sufficient for the time being but for shariah-compliant medical tourism to flourish, more efforts are needed. To ensure long-term viability, a comprehensive approach to halal certification across the healthcare system is required. This involves assuring the use of halal healthcare items and upholding strict standards throughout all aspects of healthcare delivery.<sup>81</sup> Islamic banking system in Malaysia could be replicated for this purpose. A guideline was issued by the Bank Negara Malaysia to govern the business of Islamic financial institutions. Via Islamic Banking Act 1983, there is a requirement to establish a Shariah advisory body for Islamic banks while a Shariah supervisory council is set up for takaful operators. Not only that, a Shariah consultant is also required to be appointed by Islamic financial institutions. This is

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<sup>78</sup>Muhammad, M.A. & Bakar, Elistina & Ahmad, Sa'odah. "The challenges faced by halal certification authorities in managing the halal certification process in Malaysia," *Food Research*. 4 (2020): 170-178. 10.26656/fr.2017.4(S1). S17.

<sup>79</sup>Muhammad, M.A. & Bakar, Elistina & Ahmad, Sa'odah. "The challenges faced by halal certification authorities in managing the halal certification process in Malaysia," *Food Research*. 4 (2020): 170-178. 10.26656/fr.2017.4(S1). S17.

<sup>80</sup>Ahmed Kamassi et.al., The need of international Islamic standards for medical tourism providers: A Malaysian experience," *Journal of Islamic Marketing*, 12 no 1(2020): 113 – 123.

<sup>81</sup>Ahmed Kamassi et.al., "The need of international Islamic standards for medical tourism providers: A Malaysian experience," 113 – 123.

regulated under the Development Financial Institutions Act 2002.<sup>82</sup> From this example, it is safe to conclude that for the Shariah-compliant healthcare industry to be recognised internationally, a Shariah advisory body seems necessary. The advisory body is important to coordinate any shariah issues concerning halal medication and products apart from establishing the relevant attributes for shariah-compliant healthcare providers. The advisory body also plays an important role in analysing and to evaluate shariah aspects of new products to ensure compliance.

### **Proliferation of International Halal Certification Bodies**

In response to the rising demand for halal goods and services globally, there are an increasing number of International Halal Certification Bodies (IHCBS). Halal in this context refers to goods and services that are allowed by Islamic law, and the IHCB certification is important to make sure that they adhere to the necessary requirements. More than 500 IHCBS are currently in operation worldwide, a notable increase in recent years. Due to this expansion, there are now worries about the lack of uniformity and standardisation in halal certification, as well as problems with accountability, transparency, and fraud.<sup>83</sup>

The absence of universal halal standards or accreditation systems is one factor contributing to the proliferation of the IHCBS.<sup>84</sup> As a result, different regional and national standards have been created with unique certification procedures and requirements.<sup>85</sup> The growth in

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<sup>82</sup>The Islamic Financial System, Bank Negara Malaysia, <https://www.bnm.gov.my/documents/20124/830679/cp05.pdf> accessed August 13, 2023.

<sup>83</sup>Paul Cochrane, "Seeking Accountability and Transparency: Is it time for global oversight of halal certification bodies?" Halal Industry, Salaam Gateway, <https://www.salaamgateway.com/story/seeking-accountability-and-transparency-is-it-time-for-global-oversight-of-halal-certification-bodie> accessed May 10, 2023.

<sup>84</sup>Md Siddique E. Azam & Moha Asri Abdullah. "Halal Standards Globally: A Comparative Study of Unities and Diversities Among the Most Popular Halal Standards Globally," *Halalsphere*, 1 (1) (2021): 11 – 31.

<sup>85</sup>Latif, I.A. & Mohamed, Zainalabidin & Sharifuddin, Juwaidah & Abdullah, Amin & Ismail, Mohd. "A Comparative Analysis of Global Halal Certification Requirements". *Journal of Food Products Marketing*. 20 (2014): 85-101. 10.1080/10454446.2014.921869. Here are a few

demand for halal goods and services, particularly in non-Muslim nations, is another factor causing IHCBS to proliferate.<sup>86</sup>

The effect of the proliferation of IHCBS can be detrimental. Firstly, with the lack of uniformity and standardisation in halal certification has resulted from the growth of IHCBS, which may confuse customers and businesses.<sup>87</sup> Further, the lack of accountability and transparency from these certification bodies may raise questions about fraud and corruption.<sup>88</sup> Lastly, the growth of IHCBS has resulted in various approaches to interpreting and putting halal standards into practise, which has led to uncertainty and potential disputes between certifying organisations and stakeholders.<sup>89</sup>

To give an example, the largest meat cartel was charged in December 2020 with allegedly buying off customs officers for 40 years so they would let them import frozen meat from China, Ukraine, Brazil, and Argentina, including kangaroo and horse meat. The meat was repackaged as halal even though it had not been slaughtered according to Islamic law.<sup>90</sup>

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examples of IHCBS around the world: Islamic Foods and Nutrition Council of America (IFANCA), the Islamic Services of America (ISA), and Halal Food Council International (HFCI) in the US; the Australian Federation of Islamic Councils (AFIC); the Federation of the Islamic Association of New Zealand (FIANZ); the Islamic Development Department of Malaysia (JAKIM), the Islamic Religious Council of Singapore (MUIS).

<sup>86</sup>Naif Saud Alsofyani, Halal Economy Thrives as Product Demand from Muslims and non-Muslim Nations Surges, PR Newswire, 2022, <https://www.prnewswire.com/in/news-releases/halal-economy-thrives-as-product-demand-from-muslims-and-non-muslim-nations-surges-852430134.html> accessed March 25, 2024.

<sup>87</sup>Abdallah, Ali. "Has the Lack of a Unified Halal Standard Led to a Rise in Organised Crime in the Halal Certification Sector?" *Forensic Sciences*, 1 (2021): 181-193. 10.3390/forensicsci1030016.

<sup>88</sup>Abdallah, Ali. (2021). "Has the Lack of a Unified Halal Standard Led to a Rise in Organised Crime in the Halal Certification Sector?" *Forensic Sciences*, 1 (2021): 181-193. 10.3390/forensicsci1030016.

<sup>89</sup>Paul Cochrane, "Seeking Accountability and Transparency".

<sup>90</sup>Mohamed Basyir, "Cartel crackdown: Neither beef, nor halal, Nation," New Straits Times, <https://www.nst.com.my/news/nation/2020/12/651322/cartel-crackdown-neither-beef-nor-halal> accessed May 10, 2023.

## FUTURE OF SHARIAH-COMPLIANT MEDICAL TOURISM

To keep up with the demand of the Muslim community around the world for Shariah-compliant medical tourism, certain areas need to be improved to ensure the growth of this industry specifically in Malaysia. First and foremost, to coordinate emerging issues relating to healthcare such as devices, pharmaceuticals and management, a Shariah Advisory Council must first be established.<sup>91</sup> This way, the body will help screen before certification can be given to healthcare providers that wish to provide Shariah-compliant medical services based on the Shariah principles. This body is particularly important for the Islamic banking industry to evaluate and do Shariah-screening to financial institutions offering shariah-complaint services. By adopting the same method, it would be easier for the relevant authorities such as JAKIM to proceed with certification. It is important to develop attributes that represent shariah-compliant medical tourism. At this moment, the absence of such characteristics or attributes makes it harder to assess the compliance of healthcare providers that claim to be shariah-compliant. Further, to bridge the gap between the medical industry and the tourism industry, a legal and regulatory framework should be developed to govern the healthcare providers and provide standardisation for them to follow.<sup>92</sup> As medical and tourism are two separate industries, bringing these two sectors together through the introduction of Shariah-compliance-related policies would facilitate the governance of the industry. Lastly, at the moment, the halal standards relating to medical tourism are only on pharmaceutical and medical devices. The halal standards should be widened to cover every angle of the healthcare industry such as management.<sup>93</sup>

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<sup>91</sup>This is the practice emulated from the Islamic banking industry establishing Shariah Advisory Council for the purpose of providing advice on all matters related to the comprehensive development of shariah-compliant medical tourism.

<sup>92</sup>Ahmad Sahir Jais and Azizan Marzuki, Proposing a muslim-friendly hospitality regulatory framework using systems approach, (paper presented at the 2nd Mini Symposium on Islamic Tourism, Putrajaya, Malaysia, 19th -20th April 2018, organized by The Islamic Tourism Centre (ITC), Ministry of Tourism and Culture Malaysia).

<sup>93</sup>Mohammad Aizat Jamaludin et.al., "Muslim-friendly hospital services framework", *Halal Journal*, 3 no 1 (2019): 11 - 24.

## **CONCLUSION**

In conclusion, the aforementioned legal impediments such as various attributes of shariah-compliant medical tourism, lack of standardisation of shariah principles, the inadequacy of legal regulatory framework, and the proliferation of international halal certification bodies need to be addressed with careful consideration to pave the way for growing shariah-compliant medical tourism industry in Malaysia. Halal food and products are considered a high priority for Muslims. The halal standards that are currently implemented need to be improved to be all-inclusive to comply with the requirements of the Shariah. Shariah Advisory Council needs to be established to oversee the management of healthcare providers in adhering to the requirements provided by the halal standards. MOH and Ministry of Tourism, Arts and Culture (MOTAC) must work hand in hand with the Department of Islamic Development (JAKIM) to promote shariah-compliant medical tourism and take advantage of Malaysian status as the globally renowned country in the area of medical tourism.

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