

# HALALSPHERE

International Islamic University Malaysia - INHART



## Shari'ah Compliance Safety for Malaysia Homestay Muslim Travellers

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### Abstract

Muslim travellers are gradually showing interest in travelling to Muslim-friendly countries, specifically Malaysia. Malaysia is one of the few Islamic-viewing countries offering unique accommodation via the local homestay experience. However, the regulations set by the local authority are loosely enforced, especially regarding homestay guests' safety. Interpretations of safety are largely contributed only by each registered local homestay, with only minor guidelines provided by the local authority. It is also unclear whether the safety measures of homestays in Malaysia comply with Shari'ah principles. For example, under the official guidelines, insurance is to be adopted by homestays for the safety of the guest. However, Muslim travellers do not have a choice between Shari'ah and non-Shari'ah policies. When it comes to insurance policies, it is up to the homestay owner to provide Shari'ah-compliant or non-compliant coverage. Therefore, the article aims to explore whether the safety measures of homestays in Malaysia comply with Shari'ah principles and suggests ways to address these issues. Findings indicate that homestays' current level of safety and security in Malaysia is not standard since MOTAC's guidelines are too general and not curated for each homestay. Suggestions in the form of flow chart were put forward to address concerns about safety and security and to ensure compliance with Shari'ah principles.

### 1. Introduction

Muslim-friendly travel destinations are gradually emerging in Malaysia due to increased demand from tourists, particularly Muslims, to satisfy their religious needs while in the country (Mohamed Battour, 2019; CrescentRating, 2019). Muslim-friendly standards include Halal food, Shari'ah compliance for ethical behaviour, family-friendly places, and a safe environment, among other things. (CrescentRating, 2019). Currently, Muslims spent USD 2.02 trillion (RM 8.38 trillion) in 2019 on food, medications, cosmetics, modest fashion, media, and travel, according to the State of the Global Islamic Economy (SGIE) Report 2020/21. While the spending represents a 3.2% year-on-year increase, Muslim spending is decreasing in 2020 due to the pandemic's impact (Global Islamic Economy Report, 2021). However, spending on non-travel items rebounded by the end of 2021 and is expected to reach USD 3.3 trillion (RM 13.7 trillion) by 2024, growing at a cumulative annual rate of 3.1 per cent (Global Islamic Economy Report, 2021). Nevertheless, Muslim travellers are given a sense of security when their Islamic practises can be observed, especially in terms of their safety during their stay. Muslim travellers prioritise everything Halal, from food to accommodations and services, including Shari'ah-based safety applications, throughout their stay, reflecting Islamic practices.

One of the Shari'ah-based safety measures includes the option of Takaful Insurance, which objects to any unlawful transactions. Islam abhors any transactions that involve gambling (*maysir*), interests (*riba*), and excessive uncertainty (*gharar kubra*) as mentioned in the *Qur'an* (*Al-Baqarah*: 275):

*"Those who consume interest cannot stand (on the Day of Resurrection) except as one stands whom Satan is beating into insanity. That is because they say, 'Trade is (just) like interest.' However, Allah has permitted trade and has forbidden interest. So, whoever has received an admonition from his Lord and desists may have what is past, and his affair rests with Allah. However, whoever returns to (dealing in interest or usury) – those are the companions of the Fire; they will abide eternally therein."*

Takaful means that the insurance the insurer provides observes the religious recommendations and removes any elements that coincide with Islamic practices. Prohibitions of elements such as *Gharar*, *Maysir*, and *Riba* are a requirement in the policy of Takaful Insurance for it to be permissible to be adopted by Muslims. As Muslim travellers, religious practice observes food and their safety. One safety measure that the Ministry of Tourism (MOTAC) rules out is for all homestay

guests to adopt insurance. Insurance is a legally binding contract where the policyholder must pay a single premium upfront or a regular premium over time to the policy owner when the insured person is injured, lost limbs, warded, or even dies (Birds, J., 2019). *Takaful* Insurance promotes the same concept but with the elimination of non-permissible elements which may coincide with *Islamic* practices. Currently, there are no required guidelines by MOTAC to promote *Takaful*-based insurance to homestay owners for guests, not even *Muslims*.

During a guest's stay at a homestay, various measures are taken to ensure their safety, such as the food provided and the condition of the surrounding areas. Activities that promote social interaction and unity are also included as part of the homestay experience. Homestays are primarily located in rural areas, and the registered homestay is to observe the sets of activities for the guests, including local '*kampung*' activities such *kayak*, boat riding, local food-making activities, and so on (MOTAC, 2019). Activities such as *kayak*, boat riding, and food preparations need some form of safety measures where insurance is necessary. *Muslim* guests can adopt a form of insurance that complies with the *Shari'ah* requirements as an option. So that they have a piece of mind knowing they are protected and able to observe *Islamic* practices throughout their stay and activities involvement.

A survey was done by Meimand (2013) on the expectations and experiences of Japanese tourists regarding various aspects - including safety, when visiting one of the homestays in Malaysia. His study demonstrates that safety ranks as the most concerning criterion for Japanese tourists. Concerns arising from guests on the safety and security aspects of homestay's overall systems, where the homeowner acting as guests' guardian for tourists should consider setting up (1) cupboard locks, (2) room locks, (3) proper parking spots, (4) appropriate room lighting, and (5) fix local's anxiety towards tourists (Meimand, 2013). In other parts of the world, Australia tackles the homestay safety aspects by getting police clearance of the area before the homestay can start operations (Ariff, 2015).

The safety and security aspect are considered one of the main themes highlighted in the *Qur'an*. *Islam* promotes the principle of human safety above everything else. *Muslim* Scholars agreed collectively on the relevance of *Maqasid Shari'ah*. *Shari'ah* can be exemplified as the road to watering-place, which signifies that water is vital for every living thing created by *Allah* to survive and improve the current state of society (Jasser Auda, 2014; Kamali, 1989). *Allah* mentions in *Surah An-Nur*, Verse 55:

*"Allah hath promised such of you as believe and do good work that He will surely make them succeed in the earth even as He caused those who were before them to succeed; and that He will surely establish for them their religion which He hath approved for them, and will give them in exchange safety after their fear. They see Me. They ascribe no thing as partner unto Me. Those who disbelieve henceforth are the miscreants."*

## 2. Literature review

The homestay programme offers a one-of-a-kind experience of local activities to tourists and a means of generating GDP revenue for rural areas (Bavani *et al.*, 2015). Malaysia's homestay program offers local cultural activities for tourists.

Activities by homestays are approved beforehand by the Ministry of Tourism and Cultural Affairs (MOTAC) (Jabar *et al.*, 2015; MOTAC, 2019).

The primary concept for homestay is to provide the tourist with a place to stay while shielding them from direct sunlight above and any other external elements, protecting the inhabitants (Districts and Guide, 2009). MOTAC's approach to registering the homestays are a mean to standardise the required facilities and activities in the homestays. Authorised homestay is a guaranteed place for Guests to enjoy the whole experience of what homestays should be with added security. Malaysian homestays are preferably located in a rural area, as suggested by MOTAC, to enhance the local's experience further. However, unregistered homestays are also still looming around and disguised as 'homestays', although they are not (Campbell, 2018).

The homestay placement requires a proper type of village, a small settlement, characterised agricultural areas, and a natural resources region (MOTAC, 2019). The village area may comprise different kinds of villages, a small settlements living in groups, parallel and scattered like a traditional village, FELDA village, FELCRA village, native villages, farm-like settlements and new villages. Communal activities that emphasise social cohesion are included as part of homestay activities. These activities involve cleaning the village, catching catfish, harvesting *paddy* fields, mock weddings, and others suited to specific homestay locations (Mapjabil *et al.*, 2017). Also, the homestay provides added benefits of hands-on experience of local activities close to Malaysian diverse cultures for all guests where it involves vast historical values and cultures intertwined with *Islamic* traditions since hundreds of years (MOTAC, 2019). Activities held however require some form of safety from homestay owners. Different sets of activities require certain safety measures, which are stated in the Guidelines (MOTAC, 2019). Current MOTAC guidelines only briefly mentions on safety guidelines. The scarcity of safety information left the owners to interpret their own safety standards from the Guidelines and posed an uncertain state of safety and security measures for the guest (MOTAC, 2019).

Most homestay operators are mainly *Muslim*, and local activities are knotted with *Islam*, emphasising the concept of *Halalan-Toyyiban* in daily life (Fatin Mazelan, 2019; Jabar, 2018; Rosie, 2014). This is where *Shari'ah* comes in to see whether the current safety implementations by MOTAC and homestay owners reflect as *Islam* requires or otherwise. The context of this study was to investigate the current safety standard for *Muslim*-friendly homestays in Malaysia.

Figure 1 shows the guest's current safety standard by MOTAC and the homestay owner. This study explores the application of safety in *Muslim*-friendly Homestays involving *Maqasid Shari'ah* of good practice (*Toyyib*) in the industry. The application of safety via the element of *Islam* in *Muslim*-friendly Homestays is one way to improve the current level of safety or otherwise.

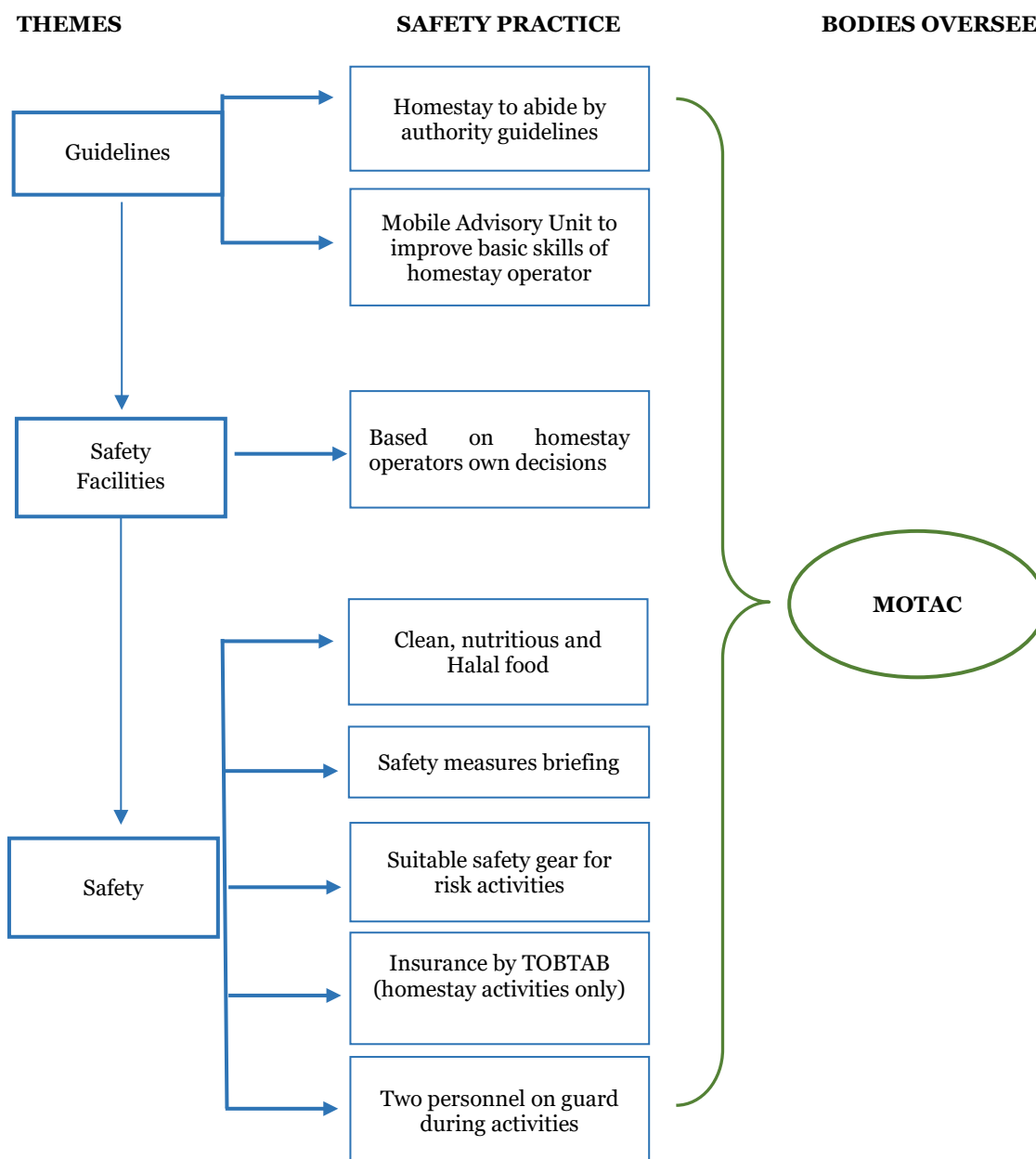


Figure 1: Current MOTAC'S safety standards

### 3. Methods

This study explores whether the safety measures of homestays in Malaysia comply with *Shari'ah*. The study employed a variety of data, including both primary and secondary sources. These included guidelines for homestay agreements, academic journals, books and reports, as well as interviews with relevant stakeholders. The study interviewed a representative from the Ministry of Tourism, Arts, and Culture (MOTAC) and *Shari'ah* experts. The data collection was conducted in stages. First, the study analysed various sources such as MOTAC's guidelines, ASEAN homestay standards, and homestay agreements to understand the current safety measures provided and their compliance with

*Shari'ah*. The study then explored the authority's (one representative from MOTAC's) view on *Islamic* values of safety and investigated the effectiveness of the Mobile Advisory Unit (MAU) in improving homestay management skills on safety. A list of *Shari'ah* assumptions on homestay safety issues was then formulated based on the interview, homestay agreement, past studies, and guidelines. *Qur'an* and *hadith* were also referred to formulate the assumptions.

It should be noted that despite the efforts to gather a diverse homestay agreement sample, the study was limited because only two homestay contract agreements were obtained even after approaching hundreds of potential homestays. The list of *Shari'ah* assumptions is attached (Attachment 1). Finally,

the study verified its assumptions on homestay safety issues with *Shari'ah* experts to ensure they align with *Maqasid Shari'ah*. *Shari'ah* experts were given a list of assumptions containing 10 critical points about safety via a Google Form. This allows them to prepare and formulate the answers. The experts were then interviewed via phone calls. *Shari'ah* experts are only among the IIUM lecturers due to the global COVID-19 pandemic, which was spreading at the time of the interviews. Five experts are involved in this stage: two are from *Shari'ah* Law, two are from Qur'an and *Sunnah* Studies, and the last is from *Shari'ah* Humanisation.

#### 4. Results and discussion

The results and discussion focus on the interview with MOTAC's Officer and the verification of assumptions on current safety practices to ensure they are in line or comply with *Shari'ah*.

##### 4.1 Interview with MOTAC's officer

The interview first focused on the implementations of staying under one roof, the establishment of Village Development and Security Committees, or in Malay, *Jawatankuasa Kemajuan Keselamatan Kampung (JKKK)*, and whether ten houses nearby homestays are good safety measures in general. The importance of living together with the host is a safety measure in and of itself. For example, homestay Haji Dorani provides the option of living under the same roof or not (Fatin Mazelan, 2019; Rosie, 2014).

According to MOTAC, the safety and security of the guests are critical; the Guidelines state the need for insurance management by homestay operators for individuals. Group-based, it is handled by the Tour Operating Business and Travel Agency Business (TOBTAB) Agency. Establishing *JKKK* is essential to enhance the safety of the guests further. MOTAC's officer replied that insurance had been provided to ensure the safety of the guests. *JKKK* is also vital in ensuring safety and security measures are under control and curbing cases of fatal incidents.

MOTAC's officer states that they have provided guidelines for homestay implementation. Thus, it is up to individual homestays to determine how to implement such rules based on their locations, activities, and surrounding geography. In the author's opinion, homestay communities do not know how to implement the training they received before setting up the homestay. This is the primary reason MOTAC established MAU (Mobile Advisory Unit): to assist locals in effectively implementing what they learned during their training (Malaysia, 2017). Therefore, while the steps taken by MOTAC are considered good practice, they must be adequately documented in the guidelines to be mandatory.

However, MOTAC's officer did not answer the question about what would happen if *Maqasid Shari'ah* was combined with safety measures. A question was also raised regarding the formation of the MAU. MAU is a positive and beneficial solution developed by MOTAC to alleviate anxiety and skill disorientation in local homestay communities. Results from an interview with MOTAC on homestay safety measures align with previous studies (Jabar, 2018; Kasuma *et al.*, 2016; V. H. R. Kunjuraman, 2013; Malaysia, 2017; Meimand *et al.*, 2013; Tourism *et al.*, 2010)

##### 4.2 Verification of assumptions

*Shari'ah* experts' views on the issues of locals' anxiety towards tourists were consulted (Table 1). According to this study, such practices violate *Shari'ah* because the following *Qur'an* verse in 49:13 emphasises the importance of equality in *Islamic* culture. Additionally, the Prophet's sermon mentions that all humans are descended from Adam. Thus, emphasise the equality of the needs of all humans. This study concluded the subject at hand, which concerned the locals' anxiety (local homestays emit a negative vibe in the presence of outside tourists). The tourists felt emotionally unsafe, contributing to negative perceptions of Malaysian homestays. All experts agree with the study's assumptions, and the majority make no additional contributions other than expressing the study's viewpoints.

Table 1: Local anxiety towards tourist

Local anxiety towards tourist	Shari'ah compliance		Non-Shari'ah compliance	
	Count	Percentage	Count	Percentage
Expert 1			✓	
Expert 2			✓	
Expert 3			✓	
Expert 4			✓	
Expert 5			✓	
<b>Total and percentage</b>	<b>0</b>	<b>0%</b>	<b>5</b>	<b>100%</b>

Experts were consulted on the issues of safety features in guest rooms (Table 2). This study's assumptions are based on current standards, which do not specifically mention safety features in homestays per MOTAC's Guidelines. According to this study, this is not *Shari'ah* compliance simply because the guidelines are too broad. Furthermore, the broadness of the guidelines reflects the element of *gharar*, which *Islam* forbids. The concerning aspect is that it is up to homestays to implement the safety features, which vary in how they are implemented. According to an interview with a MOTAC officer, *JKKK* was formed to bolster safety measures to avert unwanted crimes such as house robbery, fighting, violence, noise pollution, and a rare case of sexual assault (Awani, 2019; Bernama, 2020b).

Further, Experts 1 and 5 corroborate this study's assumptions. Additionally, this study's assumptions specified the importance of having proper guidelines, which experts 2 and 3 concurred with, with the former stating, "Guidelines are necessary to ensure that homestays adhere to the same set of rules" and the latter adding, "Specific safety measures must be established, avoiding future confusions." Expert 4, however, concurs with this study's assumptions and adds, "... budget constraints may cause it." That is why there are insufficient security features".

Table 2: Safety features in guest’s room

Safety features in guest’s room	Shari’ah compliance		Non-Shari’ah compliance	
Expert 1			✓	
Expert 2			✓	
Expert 3			✓	
Expert 4			✓	
Expert 5			✓	
<b>Total and percentage</b>	<b>0</b>	<b>0%</b>	<b>5</b>	<b>100%</b>

On Question 3, experts were consulted. This study and experts agreed that MOTAC’s Guidelines are adequate. However, expert four concurs with this study but adds that this is not always the case, as expert four has previously encountered uncleanliness in one homestay. Additionally, expert five states,

“Islam contains guidelines on which foods we may or may not consume, and even the source of the food was mentioned, as it is critical to ensure the food’s hygiene.”

Table 3: Food safety and security

Food Safety and Security	Shari’ah compliance		Non-Shari’ah compliance	
Expert 1			✓	
Expert 2			✓	
Expert 3			✓	
Expert 4			✓	
Expert 5			✓	
<b>Total and percentage</b>	<b>0</b>	<b>0%</b>	<b>5</b>	<b>100%</b>

Experts were consulted on safety features for activity facilities. This study concurred that MOTAC’s guidelines are comprehensive. Experts 1–3 agrees with this study that the released guidelines are general. Experts 4 and 5 emphasise the importance of curated guidelines for each homestay.

“We are exposed to the public when we are outside.” “It is critical to feeling safe while participating in outdoor activities.”

Table 4: Safety features for activity facilities

Safety features for activity facilities	Shari’ah compliance		Non-Shari’ah compliance	
Expert 1			✓	
Expert 2			✓	
Expert 3			✓	
Expert 4			✓	
Expert 5			✓	
<b>Total and percentage</b>	<b>0</b>	<b>0%</b>	<b>5</b>	<b>100%</b>

Experts were consulted on safety and security before homestay activities (Table 5). This study agreed that the guidelines provided by MOTAC are sufficient. Expert Four further elaborates that “being safe is critical for providing a sense of security.” Also, expert five adds “so that the guest is aware of their actions and is accountable for them.”

Table 5: Safety and security before homestay activity

Safety and security before homestay activity	Shari’ah compliance		Non-Shari’ah compliance	
Expert 1			✓	
Expert 2			✓	
Expert 3			✓	
Expert 4			✓	
Expert 5			✓	
<b>Total and percentage</b>	<b>5</b>	<b>100%</b>	<b>0</b>	<b>0%</b>

Experts were consulted on safety and security during homestay activities (Table 6). This study agreed that MOTAC’s emphasis on having insurance is sufficient. Insurance is clearly stated in the MOTAC’s official guidelines. Management handles individual insurance, while TOBTAB manages group-based insurance. According to the assumptions of this study, it is Shari’ah compliance and a good practice adopted by MOTAC. All of the experts echo this study’s assumptions. Expert 3 asserts that “opting for insurance is a good safety measure.”

Expert 5 also agrees but with conditions “need to have an agreement from both parties. Accident happens. This is to make sure both are responsible for anything that might happen”. “expert five” means that insurance should be included in the agreement or arranged separately if both parties agree. Expert 2 asserts, “Insurance is a form of protection in and of itself. As a result, adhere to the rules of safety measures.” However, expert two adds that, while life insurance is a safety measure, responsible parties must ensure that insurance policies are Shari’ah compliant.

Table 6: Safety and security during homestay activity

Safety and security during homestay activity	Shari’ah compliance		Non-Shari’ah compliance	
Expert 1			✓	
Expert 2			✓	
Expert 3			✓	
Expert 4			✓	
Expert 5			✓	
<b>Total and percentage</b>	<b>5</b>	<b>100%</b>	<b>0</b>	<b>0%</b>

Experts were consulted on homestay’s Standard of Operating Procedure (SOP) during the pandemic. The findings of this study are that the SOP for homestays during the Covid-19 pandemic is on point and considered Shari’ah compliance

because it follows per teachings by Prophet Muhammad in a *Hadith* stating people should avoid visiting a place of plague and quarantining themselves (*Sahih Bukhari* – Volume 7, Book 71, Number 625-626). Expert 2 further adds that it is a must for MOTAC to release Guidelines for all homestays to abide by Government’s SOP since homestays provide accommodations and hands-on experience with locals.

This study agreed that MOTAC’s emphasis on having insurance is sufficient. Experts 4 and 3 also agree it is *Shari’ah* compliance because the former asserts that Government’s regulations complied with what has been practised during Prophet Muhammad’s time. Further, the needs of SOP by restricting activities between guests and locals help reduce the

“escalation of the pandemic cases. Preventative measures should be implemented.” (Expert 5).

Table 7: Homestay’s SOP during the pandemic

Homestay’s SOP during the Pandemic	Shari’ah compliance		Non-Shari’ah compliance	
Expert 1	✓			
Expert 2	✓			
Expert 3	✓			
Expert 4	✓			
Expert 5	✓			
<b>Total and percentage</b>	<b>5</b>	<b>100%</b>	<b>0</b>	<b>0%</b>

When asked about separate safety and security guidelines for each homestay (Table 8), the study discovered that SOPs for homestay activities that adhered to the current MOTAC Guidelines for safety and security could not be implemented at all 206 registered homestays in Malaysia. The issue argues that since each homestay offers a unique set of activities and experiences owing to its rural setting, MOTAC’s guidelines should be curated accordingly. According to this study, the currently published guidelines on this subject are not *Shari’ah*-compliant due to the existence of *gharar*.

Experts one and two agree with this study and add that “...the risks and situations that the guest will face are different...” The latter asserts that “different locations correspond to varying degrees of safety precautions.” However, it is subject to further discussions and determined on a case-by-case basis (Expert 3). Finally, this study suggests that MOTAC emphasise the nature of each homestay’s activity in detail. “...It is necessary to establish separate guidelines.”(Expert 2).

Experts were interviewed on safety and security responsibilities (Table 9). According to this study, safety responsibilities are non-*Shari’ah* compliant because the agreement’s element outweighs homestay owners more than guests. The guests’ rights were violated, and they were oppressed. Protecting human rights and justice in *Islam* is mandatory, and no one shall be oppressed. All experts, however, disagreed with the study’s assumptions and maintained that the issue is *Shari’ah* compliance. In their argument, before signing the agreement, homestay operators ensure that guests are adequately informed and aware of their circumstances (Experts 1, 2, and 3). Additionally, Expert 4 asserts that a shared understanding is deemed sufficient. Finally, the practice in this homestay is good,

and Expert 5 encourages other hosts to emulate it and be more aware of this issue. As a result, safety and security responsibilities were deemed *Shari’ah*-compliant.

Table 7: Separate safety and security guidelines for each homestay

Separate safety and security Guidelines for each homestay	Shari’ah compliance		Non-Shari’ah compliance	
	Expert 1			✓
Expert 2				✓
Expert 3				✓
Expert 4				✓
Expert 5				✓
<b>Total and percentage</b>	<b>0</b>	<b>0%</b>	<b>5</b>	<b>100%</b>

Table 8: Safety and security responsibilities

Safety and Security responsibilities	Shari’ah compliance		Non-Shari’ah compliance	
Expert 1	✓			
Expert 2	✓			
Expert 3	✓			
Expert 4	✓			
Expert 5	✓			
<b>Total and percentage</b>	<b>0</b>	<b>0%</b>	<b>5</b>	<b>100%</b>

This study’s findings regarding agreement changes (Table 9) without notifying guests are inconsistent with *Shari’ah* and do not constitute good practice (*Toyyib*). This study made these assumptions based on *gharar* terms and requires no new mutual consent in the event of recent changes from the homestay’s side. Experts 2, 3, 4, and 5 agree with this study’s assumptions but disagree that no changes can be made. All four experts agreed that amending the agreement is permissible but that new mutual consent is required (experts 2, 3, 4, and 5). Homestay can assert its rights under the agreement, but only with mutual consent and in a fair manner to both parties (Experts 3 and 4). However, only Expert 1 disagreed with this study’s assumptions and maintained that changes made without informing others are valid. A new mutual consent is not required if both parties agree on the initial contract.

Although Expert 1 comes from an *Islamic* background, his agreement lacks a strong point, particularly in comparison to the views of Expert 2, a *Shari’ah* law specialist. Expert 2’s opinion can supersede Expert 1’s argument. According to Expert 2, amending the agreement is permissible based on the *Shari’ah* legal maxim *Al-Mashaqqah Taljub Al-Taysir* (hardship begets facility). According to the *Shari’ah* legal maxim, if the host’s agreement changes, it can prevent a greater harm from occurring. Further, Expert 2 concludes that changes of agreement without prior notice if they only affect minor changes are allowed. As a result, if the changes are significant, a new mutual agreement must be established

(Expert 2).

Locals' anxiety was not addressed in the guidelines, but both the authority and homestay hosts understand that it is up to the homestay hosts to educate and send their staff for proper training. Anxiety portrayed by the current locale towards foreign guests sparks uneasiness and lowers their expectations for future visits to Malaysia. Equality towards all humankind is stressed in the *Qur'an*, chapter 49:13, which states:

*“O people, we created you from the same male and female and rendered you distinct peoples and tribes that you may recognise one another. The best among you in the sight of GOD is the most righteous. GOD is Omniscient, Cognizant.”*

According to the verse, all humans are descended from Adam and are thus brothers. Therefore, the current guest's (foreign) safety from the locals' anxiety is currently non-*Shari'ah*. Training and exposure for homestay staff are therefore required.

Table 9: Changes in agreement

Changes of Agreement	Shari'ah compliance		Non-Shari'ah compliance	
	Count	Percentage	Count	Percentage
Expert 1	1	100%	0	0%
Expert 2	0	0%	1	100%
Expert 3	0	0%	1	100%
Expert 4	0	0%	1	100%
Expert 5	0	0%	1	100%
Total and percentage	1	20%	4	80%

Safety and security features are not included in the current guidelines, and consequently, it is not *Shari'ah*-compliant. However, it is up to Homestay's initiative to provide those features for guests.

In terms of food safety and security, the guidelines provided by MOTAC are detailed and thorough in ensuring that the safety of food prepared for the guest is up to *Toyyib* standards. Therefore, it is *Shari'ah* compliance, and *Islam* emphasises the importance of consuming *Toyyib* food (*Qur'an* 2:168).

Regarding safety features for activity facilities and differences in implementations for each homestay. Due to geography, location, and cultural differences, the current guidelines are still general and cannot be implemented in all registered homestays in Malaysia. Therefore, according to experts, it is considered non-*Shari'ah* compliant and requires detailed guidelines to be explicitly released for each homestay. On the other hand, the aspects of safety and security before homestay activity, safety and security during homestay activity, and Standard Operating Procedure of homestay activity during the pandemic are *Shari'ah* compliance because they detail all requirements and what needs to be done to be safe and secure.

One of the initiatives is to provide insurance for the guests, which covers the damages inflicted upon them if anything unintended were to occur to them. However, it is worth noting

here that only *Takaful* Insurance (cooperative) is considered in line with *Maqasid Shari'ah* on the protection of life. However, if a homestay adopts conventional insurance, it is non-*Shari'ah* because it involves *riba'* (interest), *gharar* (uncertainty on your life), and *maysir* (gambling). Therefore, removing the three aforementioned non-*Shari'ah* elements from current insurance for homestay guests will bring it into line with *Shari'ah*. The guidelines did not specify whether *Islamic* or conventional insurance would be used. Table 9 and 10 involve a contract agreement between the homestay host and the guest.

As indicated in table 9, the safety and security responsibilities in the agreement are regarded as complying with *Shari'ah* requirements as they mention everything for which the party would be responsible. Also, mutual consent was met, and it needs to be a valid agreement for a *Muslim*-friendly homestay. The practice of mutual consent mentioned by *Allah* in surah *An-Nisa* [4:29] “devour not the properties of one another unlawfully but let there be lawful trade by mutual consent”.

Changes to the contract without prior notification are considered non-*Shari'ah* compliance. Part of the agreement that stated, “Homestay has rights to change this Contract Agreement from time to time without prior notice,” is invalid. This part of the agreement removes the rights of another contracting party to agree or disagree with the changes in terms. In other words, the current homestay agreement removes the right to mutual consent. Thus, the host makes unilateral changes to the agreement. The changes, according to four out of five experts, are not *Shari'ah* compliant because they eliminate the right to mutual agreement. The current practice also contradicts the *Qur'an* surah *An-Nisa* [4:29]. Also, experts' opinions correspond to the *Hadith* of the Prophet, in which he said: “Transactions may only be done by mutual consent” [Sahih: Sunan Ibn Majah 2185]. Another *Hadith* also stipulated the prohibition of compulsion, in which the Prophet was reported to have said: “My people are forgiven for that which they have done through mistake, forgetfulness, and under coercion” [Sahih: Sunan Ibu Majah 2045]. Changes in the contract term are permitted and were practised by the Prophet's Companions.

*‘Umar b. al-Khattab adjudicated a case known as Hajariyyah, in which the deceased, a woman, was survived by her husband, mother, two consanguine, and two uterine brothers. ‘Umar b. al-Khattab entitled all the brothers to a share in one-third of the estate. However, was told by one of the parties that the preceding year, ‘Umar had not entitled all the brothers to share the portion of one-third. The Caliph replied, ‘That was my decision then, but today I have decided it differently.’ (Ibn al-Qayyim, I‘lam, I, 177; Kassab, Adwa‘, p. 108; Badran, Usul, p. 485., in Hisham Kamali, 1989)*

Although the majority of the experts agree that new mutual consent is needed, they also gave their opinion that a unilateral agreement can also be *Shari'ah* compliant, subject to the discussions and situations at the time. Experts provided an example of how a unilateral agreement must be supported by evidence if the results are superior to a mutual agreement, which may result otherwise. *Shari'ah* experts' opinions align with M.H. Kamali, who states that a unilateral agreement is permissible if valid conditions and professional assumptions

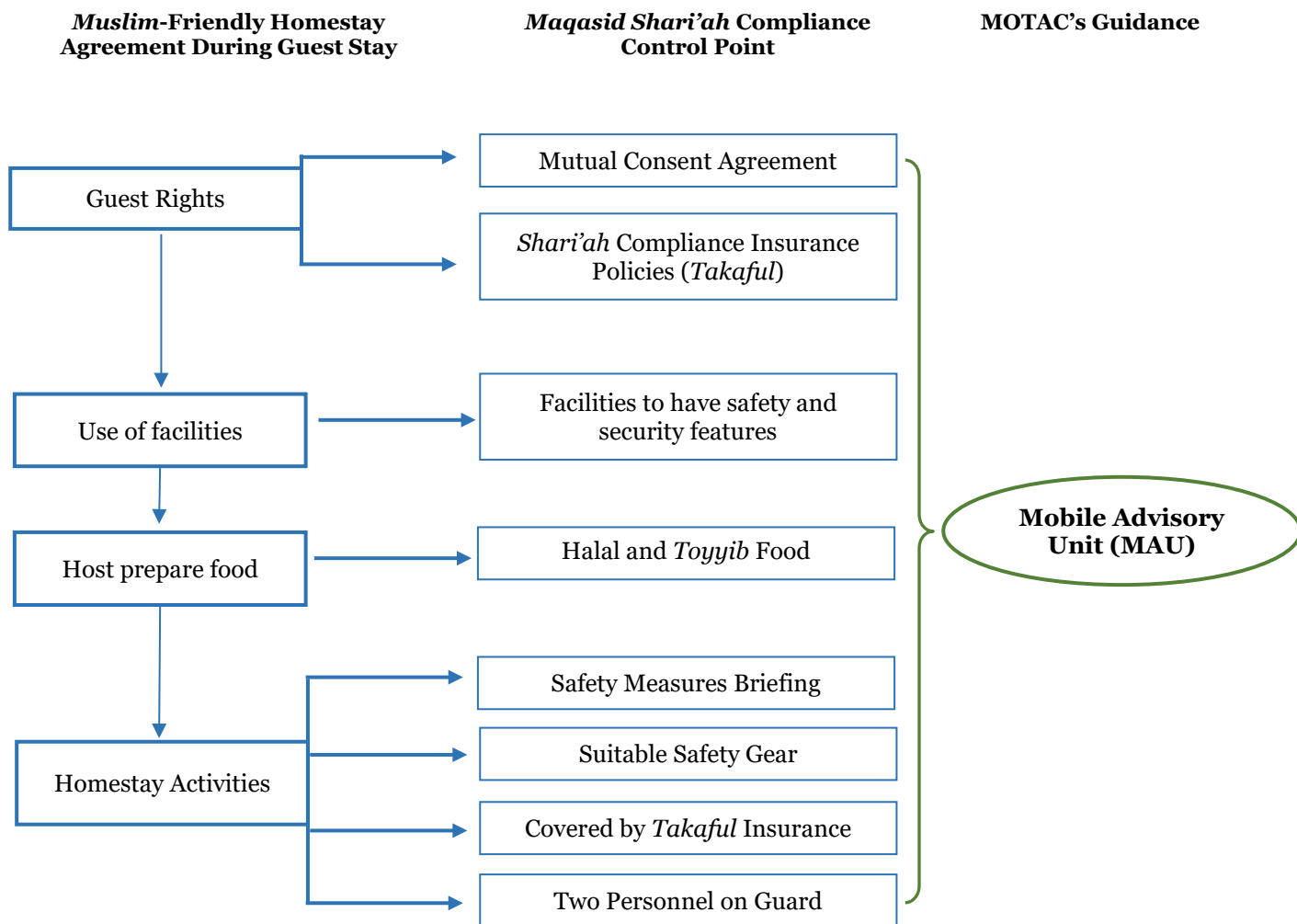


Figure 2: Safety and security of homestay according to *Shari'ah* and good practice (*Toyyib*)

have been exercised (Kamali, 1989). However, the permissibility does not supersede the established requirement of mutual consent; instead, it only allows the necessity for that specific time and situation (Mansour Z. Al-Mutairi, 1997).

### 4.3 Suggestion

Based on the research results, the author has proposed a safety and security process flow chart, as depicted in Figure 2. This flow chart is divided into three sections: *Muslim-Friendly Homestay Agreement During Guest Stay*, *Maqasid Shari'ah Compliance*, and *MOTAC's Guidance*. The middle section of the flow chart highlights the specific *Shari'ah* elements that must be implemented during the stay, making it a crucial section for ensuring *Maqasid Shari'ah* compliance. To ensure the efficient implementation of these *Shari'ah* elements, it is suggested that a MAU (Monitoring and Auditing Unit) be deployed. The role of the MAU would be to oversee the implementation of all safety and security-related procedures for every registered homestay. This approach is efficient as it encourages local homestay operators to address any issues related to safety and security. Furthermore, the deployment of the MAU ensures that all homestays comply with the *Maqasid Shari'ah* and meet the guidelines set by MOTAC.

### 5. Conclusions

In conclusion, this study found that homestays' current level of safety and security in Malaysia is not up to standard since the MOTAC's guidelines are too general and not curated for each homestay. Each homestay has its unique selling point, and one of its advantages is the kind of activity it offers. Not all homestays offer the same activities, food, and culture based on geography and location. Improvements, especially in these aspects, need to be made. In addition, the deployment of the MAU unit is an excellent effort by MOTAC to improve homestay further. However, MAU must also include the importance of safety and security on par with other flaws for each homestay. Homestay provides accommodation first, but their objective is highlighted in activities (MOTAC's officer). Therefore, safety and security measures during a guest's stay from the beginning until the end are not to be overlooked. This research has created a process flow for what it will be like to have a *Shari'ah*-compliant agreement. The agreement shall include the need to have *Shari'ah*-compliant insurance policies for guests during activities, rights, and a more detailed agreement to be added. Homestays differ from other types of accommodations, such as hotels, in that the former is typically located in rural areas and was designed to allow guests to learn more about local culture and language. The main attraction of a Malaysian homestay is that the guest gets to experience



firsthand the locale's way of life under the same roof.

### 5.1 Limitations and recommendations

This study is constrained by time and resources. It is, therefore, necessary to highlight the following limitations of this study where things should be evaluated under these boundaries:

- i. The scope of this research is limited to the safety and security of current *Muslim-Friendly* homestays in Malaysia.
- ii. The findings of this study are not the final and conclusive answers for a *Muslim-friendly* contract agreement for all homestays here in Malaysia.
- iii. Further research and in-depth study on this or part of the topic are much needed.
- iv. Some sources used were the primary sources from the *Qur'an* and *hadith*, which require excellent knowledge to better present the points made.
- v. This study does not have the resources or time to go to each homestay and ask for their agreement for comparison.
- vi. This study only obtained one homestay contract agreement sample after approaching hundreds of homestays. Most of them do not reply due to Malaysia's current pandemic situation.
- vii. Lastly, this study did not gather any extra material since the pandemic occurred.

Recommendations for future research include:

- i. An in-depth study on necessity limits the permissibility to change the contract agreement terms unilaterally.
- ii. Further study on *Shari'ah* safety and security compliance via other means, such as for each homestay other than what studies have pursued through MOTAC's Guidelines.
- iii. Lastly, different and in-depth study type of life insurance involves homestays in the light of *Maqasid Shari'ah* for homestays to become 'true' *Muslim-friendly* homestays.

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