Governance of Rural Tourism: Legal and Policy Framework of Selected Countries

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Abstract

There is increasing number of tourists exploring fragile rural destinations. This has led to increased environmental concerns, socio-cultural disintegration and economic inequality leading to rural destination becoming unsustainable and no longer desirable. Existing literature emphasised that careful attention to balance between the volume and type of rural tourist activity and the sensitivities of carrying capacities of the resources being developed is very important. Tourism projects may not only environmentally harmful but also economically and socio-culturally self-destructing in the absence of comprehensive discussion on the issue of governance in rural tourism. Hence, the discussion in this paper is to fill the gap. Using a qualitative comparative approach, from the experience of developed countries such as US and Canada, and developing countries such as Malaysia, this paper suggests that proper monitoring of rural tourism can only be effective with clear legal and policy framework which governs the conceptual, registration, standards and quality of operation, specification of premise and structure, planning permission and operators’ limitation of liability.

Keywords: rural tourism, governance, legal and policy framework of tourism, environmental tourism, monitoring tourism activity

Introduction

Rural tourism was introduced as a new form of tourism by the Malaysian Government during the Seventh Malaysia Plan period (1996-2000). It is still actively emphasized as a part of the national rural development agenda to create employment opportunities, increase income levels and reduce poverty among the rural people, who comprise 37 per cent of the total population. Rural tourism products in Malaysia include homestays, eco or nature-based tourism, agro tourism, cultural and heritage based tourism. This diversity indicates that rural tourism has the potential to play a major role in enhancing tourism yield and boosting the tourism industry’s contribution under the Government Transformation Programme (GTP).

It is crucial for the public to expect for a close attention to balance between the volume and type of rural tourist activity and the sensitivities of carrying capacities of the resources (Nair and Hussain, 2013). In some cases, the rural tourism projects had caused environmentally harmful and also destruction. Minimal past studies have been conducted to review the issue related to rural tourism. Hence, it is timely to have a review of rural tourism from multiple perspectives, the experience of developed countries such as US and Canada, and developing countries such as Malaysia, This paper provides an overview of the background of the rural tourism, governance aspects of rural tourism based on US and Canada and a recommendation to improve the service quality.
Regulated scope of types of rural tourism

Every country has its own scope of rural tourism. It is important to have a clear scope of rural tourism as this would assist in forming the right governance over the operation of rural tourism. The official definition for rural tourism in the Malaysian context is contained in the Malaysian Rural Tourism Master Plan which was formulated in 2001. The Plan defines rural tourism as:

“...tourism that provides opportunities to visitors to visit rural areas and rural attractions, and to experience the culture and heritage of Malaysia, thereby providing socio-economic benefits for local communities... the proximity of many of these rural areas to the hinterland and rainforest also offers visitors an opportunity to extend their holiday and enjoy those unique natural resources.”

One of the rural tourism in Malaysia, i.e. the homestay program is specifically designed to accommodate tourist in a village with a local family, thus enabling tourists to learn about local lifestyle, culture and nature (Hjulmand et al, 2003). The official definition of the homestay program according to the Ministry of Tourism Art and Culture (MOTAC) is where the tourist stays with the host family and experience the everyday way of life of the family in both direct and indirect manner.

In Arkansas, U.S., the state agritourism statute prescribes agribusiness operation as an agricultural, horticultural, viticultural, forestry, dairy, livestock, poultry, bee, or any other farm, ranch, plantation, or range business operation. Whereas, agritourism activity means an interactive or passive activity carried out with or without payment to an agritourism activity operator on a farm, ranch, or agribusiness operation related to agriculture, food production, historic traditions, or nature-watching conducted by an agritourism activity operator for the education, entertainment, or recreation of participants. On the other hand, agritourism activity includes without limitation: farming or ranching activity; the viewing of historic, cultural, or natural attractions; a harvest-your-own activity; nature-watching; and an activity involving an animal exhibition at an agricultural fair.

In Colorado, the state agritourism statute prescribes agritourism as the practice of engaging in activities, events, and services that have been provided to consumers for recreational, entertainment, or educational purposes at a farm, ranch, or other agricultural, horticultural, or agribusiness operation in order to allow consumers to experience, learn about, and participate in various facets of agricultural industry, culinary pursuits, natural resources, and heritage.

Registration of rural tourism operators

Registration would enable the authority concerned with development of rural tourism to monitor the practices of the homestay operators. Evolution of homestay programme by homestay operators led to the exploitation of the homestay programme. Many homestay operators adopt business model where such attempt swayed from the noble aim of homestay programme and more and more operators are operating without registration. Many operators tend to offer accommodation and food, i.e. similar to the operation of accommodation providers (for example, hotels and resorts) and do not offer activities as part of the package, deviating from the unique feature of homestay programme. However, legal actions are not taken against these unregistered operators as Ministry of Tourism and the local authorities denied having jurisdiction in such instances. (Chua, N. & Said, J., 2014)

In US, most registered agritourism operators would be given the benefit of the limitation of liability only if they are being registered. (For example, State of Dakota Agritourism Statute, § 53-13-04) In some states in US, the government is only duty bound to advertise and promote agritourism activities which are registered as the registration provides verification as to the activities offered and
sanitary conditions being met. Hence, in these states registration of agritourism is not compulsory and registration is also free.

The Kansas Agritourism Promotion Act asserts that its purpose is to promote rural tourism and rural economic development through owners and operators of farms, ranches, and rural attractions conducting agritourism activities. The statute requires the Secretary of Commerce to maintain a list of registered agritourism activities, locations, and operators, which is the Secretary’s duty to promote and publicize. Registration is not mandatory, but it is free and lasts for five years before operators must renew. This type of state promotion and documentation of the operations provides a recognizable and trustworthy resource for potential visitors, as long as some verification method is established to ensure farmers operate the agritourism, the advertised activities are actually being provided, and health and sanitary codes are being met. Similar position is found in the state of Colorado.

Regulated standards and quality of agritourism activities

Some form of local approval or a county zoning regulation to retain the landscape and cultural heritage through traditional structures would be advisable for agritourism legislation. In Louisiana, US, a suggested provision would require all agritourism facilities to be housed in a renovated, pre-existing farm building or to replicate a predominant local, rural edifice, such as a traditional barn, chicken coop, or hog house. Agritourism is meant to foster consumer appreciation and knowledge of rural communities and rural residents' pride in their heritage, not to fuel the homogenizing bulldozer of development. The statute gives authority to the Commissioner of Agriculture and Forestry to set the rules and regulations defining agritourism activities. The agritourism activity also must be submitted in a plan of operation to the Director of the Louisiana Cooperative Extension Service of Louisiana State University’s Agricultural Center for approval. Hence, this kind of established framework which ensures an agritourism’s quality is very necessary to create a sustainable state wide agritourism industry.

To ensure the quality of agricultural tourism in British Columbia, Canada, Section 3(1) of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation 2002 provides that a maximum of four bedrooms for bed and breakfast accommodation use on a parcel in the Agricultural Land Reserve (ALR). Alternatively, the Regulation provides for this use with the maximum number of bedrooms permitted in a local government bylaw for the area in which the parcel is located. In other words, the local government bylaw requirement for the maximum number of bed and breakfast bedrooms applies, and may allow a fewer or greater number of bedrooms, where a bylaw is in place for land in the ALR. The bylaw may further define ‘short term’ and additional local government requirements must also be met.

For bed and breakfast use in the ALR (unlike agritourism accommodation), there is no requirement that the parcel has ‘farm’ classification. The bed and breakfast use is accessory to the residential use of the parcel. The bedrooms may be located in a dwelling or an accessory building to a dwelling, including a garage. The bed and breakfast use is for short term (for a period of not more than 30 consecutive days) tourist accommodation for paying guests.

In Louisiana, US, the Department of Agriculture has included a very interesting administrative regulation under the Marketing and Product Promotion chapter. It provides for a ‘temporary agritourism site’ application and approval for ‘a seasonal, agricultural-related tourism activity held on a working farm’. This would cover activities such as summer farm festivals, barn dances, or on-farm concerts. There are specific requirements for farms to be approved, but owners and operators...
of temporary agritourism sites must have and provide proof of a general liability insurance policy that provides coverage for the temporary agritourism event. This is important to note because many farming insurance policies only cover claims from activities relating to farm operations, not supplemental, alternative activities even though they occurred on the farm. It is especially significant to Kentucky’s agritourism farmers because the state does not offer limited liability protection in its statute. Thus, general insurance policies, endorsements to an existing comprehensive liability policy for farming activities, and express consent waivers signed by participants are necessary means for owners and operators to protect themselves from liability.

In order to regulate the homestay program, the Ministry of Tourism and Culture (MOTAC) has come out with the Guidelines on Registration of Homestay Malaysia and the Malaysian Homestay Guidelines (hereinafter referred to as the Guidelines). Unlike many states in US, the Guidelines only address the following criteria i.e. requirement for certificate in order to operate homestay, easy access to homestay from the main road, adequate facilities for guests such as a separate bedroom and proper toilet, absence of criminal record on the part of the applicant and the applicant is not suffering from communicable diseases and possess a high standard of hygiene. Unfortunately, the Guidelines are mere guidelines which are not backed up with any legal sanction and it will give no effect upon the non-compliance of the Guidelines by the operators.

**Specification of premise and structure**

Some states have specification of premise and structure to ensure the comfort of the guests. The County Council in the Delaware State Agritourism Statute, U.S. may, in accordance with the conditions and procedure specified in the law, regulate the location, height, bulk and size of buildings and other structures, the percentage of lot which may be occupied, the size of yards, courts and other open spaces. Such regulation can specify the density and distribution of population, the location and uses of buildings and structures for trade, industry, residence, recreation, public activities or other purposes and the uses of land for trade, industry, residence, recreation, public activities, water supply conservation, soil conservation or other similar purposes (Title 9, § 2601). As for agritourism, the products which are grown or produced on a local regional farm, and such farm market or roadside stand shall comply with the specific provisions. Among others, all buildings, structures and associated canopies shall comply with the building height setback requirements established by the local jurisdiction within its zoning ordinances. All construction shall conform to applicable building codes and building permit requirements as enacted by the local jurisdiction.

It is also interesting to note that there is a requirement in the Delaware State Agritourism Statute that off street customer parking shall be provided in accordance with the provisions of the zoning ordinance of the local jurisdiction provided. Hence, at least 1 parking space shall be provided for each 100 square feet of floor area of the establishment. The area of 1 parking space shall be equivalent to a standard parking stall of 9’ x 18’. Signage shall comply with signage provisions and permitting requirements established by the local jurisdiction within its zoning ordinances.

All buildings, structures and associated canopies used for agritourism activity under the Delaware State Agritourism Statute shall comply with the building height setback requirements established by the local jurisdiction within its zoning ordinances. The construction of buildings or structures to be used by the participants of any agritourism activity shall conform to applicable building codes and building permit requirements enacted by the local jurisdiction.

Under the North Carolina State Agritourism Statute, agritourism facility has to be opened for business at least four days a week, 10 months of the year in order to qualify for signs to be installed.
by the Department. These promotional provisions are vital for states to build their industries upon qualified agritourism that meet specific standards and to use their marketing resources prudently. North Carolina also has a proactive statutory approach to reclaiming and preserving farmland that compliments and benefits from agritourism operation. The state has created a trust fund to purchase agricultural conservation easements, [fund] programs that promote the development and sustainability of farming and assist in the transition of existing farms to new farm families. One of the specific funding aims for the Commissioner is to assist farmers in developing and implementing plans for diversifying into agritourism with public and private programs that promote profitable and sustainable family farms. This organized approach to rural development and farmland preservation should be complimented by management, marketing, and financial planning resources so that a farm’s agritourism activity is implemented as part of a coherent business plan.

**Operators’ limitation of liability**

North Carolina State Agritourism Statute and majority states in U.S. provides the limited liability protection through an affirmative defense, provided the operator posts adequate signage and does not act or fail to act in a way that proximately causes injury, damage, or death. The statute also addresses consumer awareness through the mandate that Department of Agriculture and Consumer Services shall provide directional signs on major highways, leading to an agricultural facility that promotes tourism by providing tours and on-site sales and samples of North Carolina agricultural products to area tourists. [94. LA. REv. STAT. ANN. § 9:2795.5(A)(2)] The same legal position is available in most of the State Agritourism Statutes in U.S.

**Planning permission for rural development**

The execution of planning process in all countries is complex, legalistic, bureaucratic and contains major overlaps in function and responsibilities among various agencies within the planning structure. (Ibrahim, M. et. al., 1993) Hence, the question is whether exceptions are made to the planning process in relation to the development of rural tourism projects.

Although British developments for agricultural purposes were made exempt from the standard control measures by the Town and Country Planning Act 1947, farmers seeking to change the use of buildings or land from agriculture to some other purpose (for example, industrial, residential or recreational) were still required to obtain planning permission (Walford, N., 2001). In 1987 a Department of the Environment (DoE) Circular (Department of the Environment, 1987) emphasized that the re-use of redundant farm buildings could be acceptable, and urged local planning authorities to consider the ‘removal of planning obstacles’ and to attach only ‘reasonable conditions’ to planning permission if these were deemed necessary. Further relaxation, removing the test that farm buildings should be proven to be redundant before allowing conversion, was proposed in 1989 but not implemented until 1997 (Department of the Environment, 1997). Clearly not all farm building conversions are intended for tourist accommodation; nevertheless, this does represent one of the more common forms of diversification (Ilbery & Stiell, 1991; Bateman & Ray, 1994) in order to facilitate the agricultural operators.

In Malaysia, section 19(2) of the Town and Country Planning Act 1976 sets out situations when planning is not necessary. Among others which are relevant to rural tourism is para (c) which provides that excavation of any kind including that for wells made in the ordinary course of agricultural operations in areas zones for agriculture would not require planning permission. Under section (g), the State Authority appears to have sole discretion in determining what material change
is and carrying out such material change in the use of land without having to wait for planning permission (Isa, S.M., 1998).

There are only three types of development of agritourism in Malaysia which require environmental impact assessment (EIA) i.e. when it involves the development of forest land of 500 hectares or more into agricultural production; resettlement of 100 families or more due to agricultural programmes; and development of agricultural schemes of 500 hectares or more involving changes in types of agricultural use [Environmental Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987]. It would appear that smaller types of development of agritourism do not require any assessment be made although such development would still have impact on the environment as a whole.

**Regulated consultation between stakeholders**

In Florida State Agritourism Statute, local governments and agricultural representatives is obliged to meet for the purpose of discussing the benefits of agritourism to local economies and opportunities for cooperation, conflict resolution, regulatory streamlining, and incentives. (§ 570.962) Unlike Florida, such practice remains as a policy which is best practices recommended in many countries including Malaysia.

**Statutory continuing rural development education**

Continuing education classes for agritourism farmers are highly recommended to increase professionalism, hospitality, management and marketing strategy, and technical expertise. States could include a statutory provision requiring agritourism operators to complete a certain number of continuing education hours at local extension offices, non-profit organization workshops, demonstrations, meetings, or conferences. Employee training could require less off-farm educational hours, but documented on-farm instruction, manuals, and demonstrations should be necessary to satisfy the proper training requirement and attach limited liability. McIntosh et.al reported the findings of in-depth interviews conducted with commercial homestay hosts in New Zealand. Findings allude to the tyranny of the homestay hosts in their tourism hosting role, their oppressive social need, self-marginalization, and distinctive identity – one that is notably defiant of other commercial hospitality and tourism business norms (McIntosh et.al, 2011).

**Conclusion**

State laws should promote registration of rural tourism activities, standards and quality of operation, specification of premise and structure, planning permission and operators’ limitation of liability to firmly institutionalize agritourism. Based on the perspectives of US and Canada experiences, Malaysia needs to be more proactive in the development of the rural tourism legal and policy framework. The setting of a positive policy environment of rural tourism will be translated into an effective institutional framework that will coordinate the various strategies and resolves potential conflicts. This will ensure comprehensive and consistent guidelines for the development of the rural tourism programs, performance criteria, investment strategies, infrastructure support and certification. More investment and effort need to be committed for the enhancement of professionalism, hospitality, management and marketing strategy, and technical expertise for rural tourism.
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References


