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THE APPLICATION OF THE CONSUMER PROTECTION ACT 1999 IN MALAYSIA AND ITS CHALLENGES

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Abstract:

This research adopts a doctrinal qualitative approach to analyse the applications and limitations of the Consumer Protection Act 1999 (CPA 1999) in Malaysia. It highlights specific provisions namely Sections 2(2)(c), 2(2)(e), 2(2)(f), 2(4), and 5. These sections either restrict the application of the Act or lead to inconsistent legal interpretations, which in turn diminish the CPA 1999's effectiveness as the principal legislation for consumer protection. The study involves a detailed examination of statutory provisions and case law to explore how these legal rules have developed, their reasoning, and the challenges in their application. Furthermore, a comparative and historical analysis is conducted to assess how other jurisdictions have broadened consumer protection laws to protect their consumers. The findings suggest that the CPA 1999 is often viewed as supplementary to other laws, resulting in a fragmented and less effective consumer protection framework. To address these shortcomings, the study recommends legislative reforms aimed at strengthening the clarity and application of the Act. Overall, this research contributes to a better understanding of the doctrinal gaps in Malaysian consumer law and proposes steps towards a more comprehensive legal framework.

Keywords:

Application of Consumer Protection Act 1999, Consumer Protection, Consumer Protection Act 1999, Section 2, Section 5.

Introduction

The development of consumer protection is a global phenomenon, including in Malaysia. Historically, during the era of the Industrial Revolution, the distribution of wealth improved significantly, enabling consumers to spend more freely. Items that were once considered

luxuries became accessible to the general public. At that time, the market was dominated by a small number of traders who shared common values and moral standards. Their limited numbers encouraged mutual reliance and cooperation. Moreover, these traders had similar levels of knowledge and bargaining power. As a result, deceptive practices aimed at exploiting uninformed consumers were uncommon. Market transactions typically occurred between parties with relatively equal power and understanding (Goldring et al., 1998). This balance of power justified the acceptance of the ideology of market individualism, which is rooted in the principles of freedom of contract and sanctity of contract (Aronstam, 1979). Freedom of contract allows parties to choose whom they contract with and the terms involved, while sanctity of contract limits judicial interference, recognising the parties as masters of their agreement. Although consumers were empowered to make their own contractual decisions, market individualism assumes that the market operates competitively (Adam & Brownsword, 2004). In reality, contracts are often subject to fraud, coercion, and mistakes, highlighting the need for consumer protection. Accordingly, consumers must:

- Take responsibility for the safety of their transactions;
- Be fully aware of their legal position and the terms involved;
- Ensure that transactions are governed by appropriate legal regulations.

This approach places the burden of protection solely on consumers, as market individualism promotes complete freedom in marketplace dealings.

Nowdays, the rapid advancement of the global market has led to the mass production of increasingly complex goods (Sutton, 1971). As a result, consumers often find themselves overwhelmed and confused. This shift in trade patterns has also contributed to growing greed among traders, who are primarily driven by the goal of maximizing profits through high-volume sales. Such practices have widened the information gap between consumers and traders, particularly in terms of product quality (Zakuan et al., 2022). Unlike in earlier market systems, consumers no longer possess information equal to that of traders. Traders, being the more informed party, often exploit this imbalance by, for instance, offering lower-quality products to uninformed consumers (Trebilcock, 1971). This growing disparity places consumers in an increasingly vulnerable and disadvantaged position. Owing to this, Malaysia has enacted a specific law to protect the consumers which is called Consumer Protection Act 1999 (CPA 1999). However, the Act is not without its flaws, which have, in turn, restricted the effectiveness of its application.

Literature Review

The Consumer Protection Act 1999 (CPA 1999) is Malaysia's key legislation for safeguarding consumers. While intended to provide broad protections, specific provisions particularly Sections 2(2)(c), 2(2)(e), 2(2)(f), 2(4), and 5. The sections restrict the Act's scope and yield varying interpretations, which reduces its effectiveness and consistency in delivering consumer justice. Academic commentary highlights that these restrictive provisions create significant "doctrinal gaps." The exclusion of key sectors means the CPA 1999 fails to offer comprehensive consumer protection, particularly in areas with high public importance such as healthcare, land, and professional services. Furthermore, the lack of clear statutory definitions especially for "professionals regulated by written law" which leads to judicial uncertainty and inconsistent application, undermining consumer confidence and producing fragmented legal remedies. Whilst the CPA 1999 forms the foundation of Malaysian consumer law, the

identified sections limit its overall scope and effectiveness, leading to inconsistent interpretation and reduced consumer protection. Legislative reform is widely recommended to address doctrinal gaps and strengthen the Act's application. Table 1 below presents past studies related to the issues in the application of the CPA 1999.

Table 1: Past Studies on the Issues in the Application of the Consumer Protection Act 1999.

Author & Year	Title	Focus	Findings
Tan Pei Meng, 2019	The Legal saga of Exclusion Clause in Malaysia.	Exclusion clause	Exclusion clause leaves significant consumer areas unprotected.
Elistina Abu Bakar & Naemah Amin, 2011	Consumer Protection in the Service Industry under the Consumer Protection Act 1999.	Section 2(2)(f) CPA 1999	Healthcare providers exploit exclusion clause which reduces consumer protection.
Mohammed Ibrahim Al Rezan, et. al., 2025	User Acceptance of Terms & Conditions and Privacy Policy: A Legal Analysis of the Position of Food Delivery Mobile Apps in the Malaysia Context.	Section 2 CPA 1999	Problems for digital and e-commerce.
Junaidah Zeno, 2022	Information in Consumer Contracts: Reforming Consumer Protection Law in Malaysia.	Section 2 & Section 5 of CPA 1999	Inadequate regulations of e-commerce.
Azwina Wati Abdull Manaf & Norazuan Amiruddin, 2018	Comparative Study on Law of Unfair Terms of Contract in Malaysia.	Section 2 CPA 1999, Unfair terms	Limitation of application of unfair terms provision.

Methodology

This study employs doctrinal qualitative research, which is essential to achieving its objective of identifying specific provisions under the Consumer Protection Act 1999 which are problematic in their application. This requires a doctrinal analysis by examining existing

primary and secondary materials, mainly statutory provisions and case law. (Myneni, 2006). Doctrinal research deals with the law on a particular issue where the legal doctrine is analysed as to its development and applications (Abdullah, 2020). It comprises a comprehensive study of the legal doctrine with its development process and legal reasoning (Neuman, 1991). This type of method is selected because the basic aims of this research are to discover, explain, examine, analyse and present in a systematic form, facts, principles, provisions, concepts, theories, or the working of certain laws (Yaqin, 2007). The method is also selected because it allows for a comparative and historical inquiries to describe the earlier point in time of contrasting legal principles (Hutchinson & Duncan, 2012).

This research adopts the doctrinal legal research method as its primary approach to examining the Consumer Protection Act 1999 (CPA 1999) in Malaysia. Doctrinal legal research is characterized by a comprehensive study of legal doctrines, focusing on their development, underlying principles, and legal reasoning (Majeed et al., 2018). According to Hutchinson & Duncan (2012), this method also facilitates comparative and historical inquiries, allowing researchers to trace the evolution of contrasting legal principles over time. Additionally, Myneni (2006) emphasizes that doctrinal research involves analysing statutory provisions and case law through rigorous legal reasoning. The choice of this methodology is driven by the need to thoroughly assess the history, core principles, characteristics, and current application of the CPA 1999. It is particularly significant for evaluating whether the Act effectively protects consumers in Malaysia. To achieve these objectives, the research employs three key approaches within the doctrinal framework: historical, exploratory, and comparative.

First is historical approach. As described by Bali (2024), the historical approach helps untangle legal issues rooted in the past and provides insights into how laws and legal institutions have evolved. This perspective is crucial for understanding the origins and foundational principles of the CPA 1999. Second is exploratory approach. Yin (2014) highlights the importance of the exploratory approach for gaining a comprehensive understanding of social phenomena and building theoretical frameworks. In this study, it is used to gather information on consumer protection laws from other countries and to map out the current legal landscape in Malaysia. Third is comparative approach. According to Eberle (2009), the comparative approach involves examining, comparing, and contrasting two or more legal ideas or systems. This method is essential for identifying similarities and differences between the CPA 1999 and consumer protection laws elsewhere, as well as for highlighting areas where the Malaysian Act may benefit from reform.

Primary data is obtained from original, authoritative sources of law such as statute and caselaw. Statute is law enacted by legislature, whereas caselaw is decided cases the judicial rulings handed down by courts. This study interprets statute such as Consumer Protection Act 1999 and also This decided cases are the one that is related to consumer protection in Malaysia and other jurisdiction.

As for secondary data, it can be found in online legal databases such as LexisNexis, Westlaw, HeinOnline, and JSTOR, which provide access to journal articles, case commentaries, law reviews, and academic papers on the Consumer Protection Act 1999 (CPA 1999) in Malaysia. Additionally, university library catalogs and repositories like the UiTM Institutional Repository and Malaysian Digital Library which offer valuable resources. These databases offer diverse perspectives and critical evaluations that complement primary sources, enabling

a thorough analysis of the application of CPA 1999. The research process is illustrated in Figure 1.

The doctrinal qualitative research method is particularly well-suited for this study's aim of identifying problematic provisions within the CPA 1999. By systematically analyzing primary sources (such as statutes and case law) and secondary materials (including legal commentaries and academic writings), this approach enables a detailed and structured examination of legal issues (Myneni, 2006; Abdullah, 2020; Neuman, 1991). Yaqin (2007) further notes that doctrinal research is ideal for discovering, explaining, examining, analyzing, and systematically presenting facts, principles, concepts, and the workings of specific laws. It ensures a thorough and systematic analysis, enabling the identification of existing challenges and offering well-founded recommendations for legal reform to better protect consumers in Malaysia.

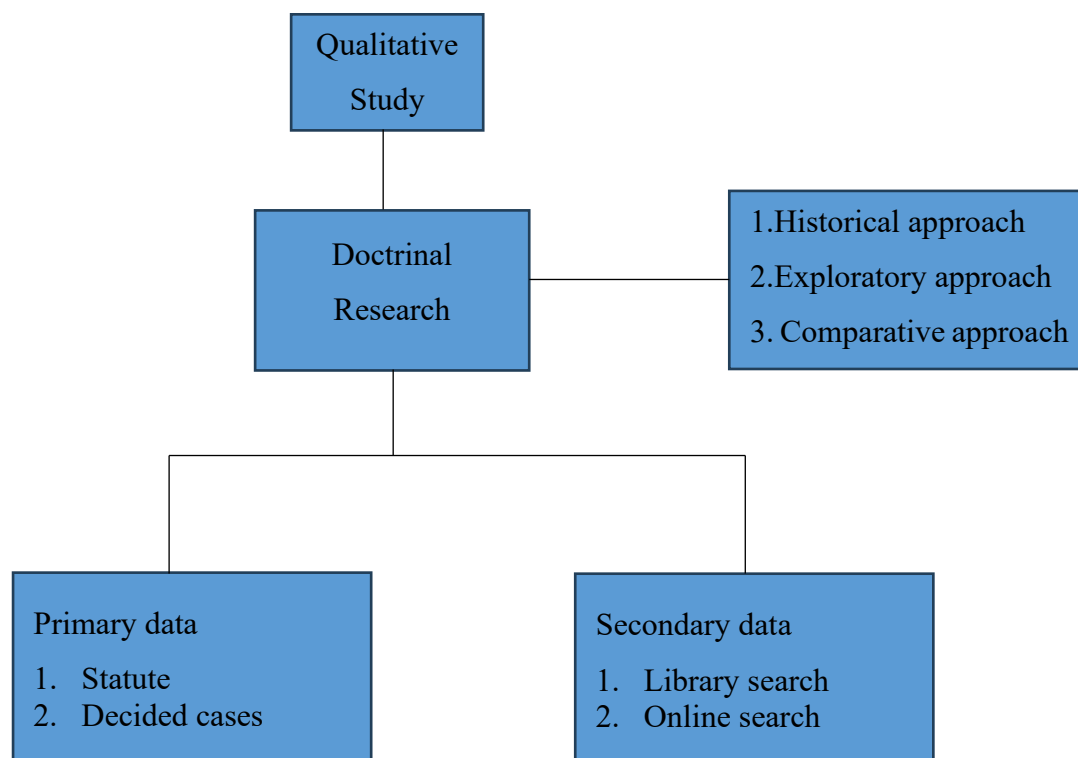


Figure 1: Research Process

The issue of doctrinal gap refers to the shortcomings within the CPA 1999, where certain provisions are problematic or insufficiently effective in practice. Doctrinal qualitative research systematically analyses statutory provisions and case law to uncover these gaps, focusing on legal principles, development, and reasoning. By employing historical, exploratory, and comparative approaches, the study identifies the flaws in the Act compared to other jurisdictions. These gaps highlight areas where the CPA 1999 fails to fully protect consumers, signalling the need for reform and improved legal clarity to address unresolved legal issues and enhance consumer protection in Malaysia.

Findings

Consumer Protection Act 1999: Application and Challenges

The Consumer Protection Act 1999 (CPA 1999) is the only act in Malaysia enacted to provide specific protection to consumers. This act was tabled by the Ministry of Domestic Trade and Consumer Affairs after waiting almost 20 years to establish a consumer-oriented protection act (Laporan Tahunan KPDNHEP, 1999). It was first tabled in Parliament on 27 July 1999 and gazetted on 9 September 1999. Although this Act appears attractive on the outside, there are flaws in its provisions. The problematic application and interpretation of CPA 1999 are provided under section 2 and section 5 of the Act. The sections will be interpreted literally by using the literal rule to determine the true meaning of the provision. If the meaning is unclear, the golden rule method will be used for clarity.

Section 2 Consumer Protection Act 1999

Section 2(1) provides for the application of this Act, stating that it applies to all goods and services offered or supplied to one or more consumers in the course of trade. However, section 2(2) provides that this Act does not apply to matters provided for under section 2(2) (a)-(f). The discussion on the application of CPA 1999 requires a comparative approach, focusing on problematic provisions under section 2(2)(c), section 2(2)(e), section 2(2)(f), and section 2(2)(4).

Section 2(2)(c) Consumer Protection Act 1999

Section 2(2)(c) provides that "CPA 1999 does not apply to contracts made before the date on which this Act comes into operation". The provision shows that the Act applies prospective effect. The application of an Act is explained in *Waddington v Miah alias Ullah* [1974] 1 WLR 683:

The general rule is that all statutes, other than those which are merely declaratory, or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature.

Since the provision clearly provides for the prospective effect of the CPA 1999, there is argument that it should be retrospective effect. Retrospective effect is important to the public as it encourages caution in conduct. Lord Diplock in *Inland Revenue Commissions v Joiner* [1975] 1 WLR 1701 explained:

Rather, it serves to confirm that the reason for the presumption is that in a civilized society which acknowledges the rule of law, individual members of that society are entitled to know when they embark upon a course of conduct what the legal consequences of their doing so will be, so that they may regulate their conduct accordingly.

Retrospective application of the CPA 1999 would benefit Malaysian consumers, allowing claims for violations before 1999. However, as section 2(2)(c) clearly states, CPA 1999 does not have retrospective effect, thus, making it less suitable for consumers. In order to overcome this problem, this provision needs to be amended. The new provision should read, "The CPA 1999 shall apply to contracts made before the date the Act comes into force."

Section 2(2)(e) Consumer Protection Act 1999

Section 2(2)(e) states that CPA 1999 does not apply to services provided by professionals who are regulated by any written law, such as legal practitioners, doctors, architects, and engineers. Professional services are not regulated under CPA 1999 because they usually involve large claims and often involve negligence (Haji Sukri bin Haji Mohamed, 1999). This exclusion is seen as a flaw, given the importance of these services to consumers. Internationally, other countries have made professionals liable for their actions. For example, India includes professional services under the Consumer Protection Act 1986. In *D.K. Gandhi v M. Mathias* (Revision Petition No.1392/2006), the National Consumer Dispute Redressal held:

In our view, the reasoning given by the State Commission is totally erroneous. The ambit and scope of section 2(1)(o) of the Consumer Protection Act which defines 'service' is very wide and by this time is well established. It covers all services except rendering of services free of charge or a contract of personal service. Undisputedly, lawyers are rendering service. They are charging fees. It is not a contract of personal service. Therefore, there is no reason to hold that they are not covered by the provision of the Consumer Protection Act 1986.

Undoubtly, Malaysia should follow India by regulating professionals under CPA 1999 in addition to their own professional laws. In order to overcome this problem, section 2(2)(f) should be repealed.

Section 2(2)(f) Consumer Protection Act 1999

Section 2(2)(f) provides that CPA 1999 does not apply to healthcare services provided or to be provided by healthcare professionals or healthcare facilities. In Malaysia, this was clarified in *Marie France Bodyline Sdn. Bhd. v Tribunal Tuntutan Pengguna & Anor* [2009] 1 LNS 1653. The court found that slimming services were not categorized as professional healthcare services under section 2(2)(f), and thus the claim was dismissed.

In other jurisdiction for example in India, professional services are governed under the Consumer Protection Act 1986. In *Indian Medical Association v VP. Shanta* 1995 SCALE 273, medical services were also considered services for the purposes of the Act, including consultation, diagnosis, treatment, medicine, and surgery.

In the United States, action has been taken against doctors under the Kansas Consumer Protection Act (KCPA). Case to illustrate this is *Williamson v Amrani* 2007 WL 419698, whereby, the Kansas Supreme Court held:

A physician is, in the ordinary course of business, a seller or supplier of services. A patient is a consumer of those services for personal, family, or business purposes. The sale of those services is a consumer transaction. Nothing in the KCPA explicitly excludes physicians or other professionals from the scope of its coverage.

Malaysia should follow other jurisdictions in ensuring protection for consumers in obtaining services from healthcare professionals or facilities. In order to overcome this problem, **this** provision should be repealed.

Section 2(4) Consumer Protection Act 1999

Section 2(4) stipulates that this Act is only supplementary and will not affect any other law. It reads: “The application of this Act shall be supplemental in nature and without prejudice to any other law regulating contractual relations.”

This provision clearly states that even though CPA 1999 is the primary Act to protect consumers in Malaysia, other Acts still apply. Thus, confusion arises regarding to its role. Although CPA 1999 was specifically enacted for consumer protection, it is given second class treatment. Section 2(4) explains that the application of this Act is supplementary, Section 5, on the other hand, provides for the primary application of this Act, which can contradict section 2(4).

The supplementary nature of CPA 1999 is explained by Craise et al. (2004):

Supplemental must mean more, or rather less, than simply additional: it must mean something along the lines of required to supplement the provisions of the instrument or of the Act in order to make it work.

Viscount Dilhorne in *Daymond v South West Water Authority [1976] A.C 609* also explained: ‘Supplementary’ means, in my opinion, something added to what is in the Act to fill in details or machinery for which the Act itself does not provide—supplementary in the sense that it is required to implement what was in the Act. This shows that the supplementary nature given to CPA 1999 is merely as a complement to other laws. Since CPA 1999 is the only specific Act for consumer protection, it should not be supplementary. The provision under section 2(4) causes the objectives of CPA 1999 to not be fully achieved. The Act is clearly given second-class treatment. He further opined that ‘supplementary’ means something required to complement something else to make it complete and function well. This opinion also implies that the supplementary nature of CPA 1999 shows that CPA 1999 is an imperfect Act. There are weaknesses in CPA 1999 that cause it to be considered supplementary. These weaknesses can only be overcome by the application of other existing laws. CPA 1999 needs to depend on other laws in order for it to function well.

Besides being supplementary, the application of CPA 1999 is also “without prejudice to any other law governing contractual relationships.” The phrase “without prejudice to any other law governing contractual relationships” was explained by Spenser-Wilkinson J in *Public Prosecutor v Viran [1947] MLJ 62* as follows:

I think the meaning of the expression “without prejudice” in the context is not really open to doubt. One meaning of the expression “to prejudice” is “to impair”, and I read the words “without prejudice to the provisions of any written law in force in any part of the Malayan Union relating to unlawful possession of arms or ammunition” as meaning that what follows is not to impair the force of any of the existing provisions and is therefore not to override or repeal them.

This judgment clearly shows that the phrase “without prejudice to any other law governing contractual relationships” means the application of this law will not affect the provisions of existing laws and therefore will not override or repeal those existing laws. Hence, the Contracts Act 1950 and the Sale of Goods Act 1957, which govern contractual relationships, remain the primary laws regulating contracts involving consumers. The provision under section 2(4) causes the objective of enacting CPA 1999 to not be fully achieved. Consumers expect CPA 1999 to protect them in all consumer-related issues. However, the secondary status given to CPA 1999 causes it to be unable to protect consumers as expected. In order to overcome this

problem, this provision should be amended. This provision should read "This Act shall apply without affecting any other law regulating contractual relationships, and in the event of any conflict between the provisions of this Act and any other Act regulating contractual relationships, the provisions of this Act shall prevail."

Section 5 Consumer Protection Act 1999

The provisions under section 5 also need to be examined when discussing section 2(4). Section 5 provides for exceptions for other related legislation. Section 5 reads:

Nothing in this Act shall remove or restrict the effect of, or restrict reliance on—

- (a) any written law which imposes on the supplier a duty stricter than that imposed under this Act;*
- (b) any written law by which any term not inconsistent with this Act is to be implied in a contract for the supply of any goods or services.*

This Act does not limit the application of other stricter laws. This means that the application of the Sale of Goods Act 1957, which imposes stricter obligations on suppliers, is allowed. Section 5(a) provides an exception for other laws, clarifying that CPA 1999 cannot extinguish or limit any written law imposing stricter obligations on suppliers than CPA 1999. This means that if there are other laws providing more justice to consumers, those laws apply. Consumers are not bound by CPA 1999. The provision under section 5(a) aligns with section 2(4), which clearly states CPA 1999 is supplementary and other stricter laws apply to ensure justice for consumers. However, the provision under section 5(b) contradicts sections 2(4) and 5(a). Problems arise in interpreting section 5(b). Section 5(b) provides that CPA 1999 does not prevent reliance on any written law consistent with the provisions under CPA 1999. Therefore, implicitly, CPA 1999 prevents reliance on any written law inconsistent with its provisions. The implied interpretation of section 5(b) creates confusion because it removes the supplementary nature of CPA 1999 as provided under sections 2(4) and 5(a). This means if CPA 1999's provisions conflict with other Acts, CPA 1999's provisions apply. Conversely, sections 2(4) and 5(a) provide that CPA 1999 is supplementary to other laws. This clearly causes confusion because subsection (b) removes the supplementary nature of CPA 1999 provided under section 2(4). This provision clearly contradicts section 2(4), which states that this Act is only supplementary and will not affect any other law. Since Section 2(4) has been proposed for amendment, Section 5(a) and 5(b) should remain.

Conclusion

The Consumer Protection Act 1999 (CPA 1999) was introduced in Malaysia to address the unfair bargaining power between consumers and traders, especially as markets evolved and became more complex. Initially, market transactions involved equal bargaining power and knowledge between traders and consumers, justifying the ideology of market individualism which emphasized freedom of contract. However, modern trade practices have shifted, with traders often having more information and using it to exploit consumers. This led to the need for specific consumer protection legislation. Although CPA 1999 was enacted to safeguard consumer rights, several issues arise regarding its application. Section 2 of the Act outlines its scope, but subsections (2)(c),(e),(f), and (4) pose limitations. Section 2(2)(c) excludes contracts made before the Act's enforcement, making it non-retrospective and limiting protection for past transactions. Section 2(2)(e) and (f) exclude services by professionals and healthcare providers regulated by other laws, creating significant gaps, especially when compared to countries like India and the United States, where such services are covered under consumer law. Section 2(4) states that the CPA is "supplemental," meaning it does not override other

laws, which undermines its effectiveness as the main consumer protection statute. Section 5 further adds confusion by allowing reliance on stricter laws (5(a)) but suggesting inconsistency is not allowed under 5(b), contradicting its supplemental nature. Overall, despite its intention to protect consumers, the CPA 1999 faces interpretative challenges and legislative inconsistencies. It is often treated as secondary to other laws, which weakens its role. To achieve its purpose, reforms may be necessary to clarify its scope, enhance its authority, and ensure comprehensive consumer protection across all sectors, including services by professionals and healthcare providers. In short, this study has successfully achieved its objective by identifying the flaws in the application of Sections 2 and 5 of the Consumer Protection Act 1999. Recommendations have been proposed for each identified weakness in order to improve its function as the main statute for consumer protection in Malaysia.

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Authors' Contribution

Zeti Zuryani Mohd Zakuan is the main and corresponding author responsible to interpret the law and conclude the study. She is responsible to prepare the manuscript. Anida Mahmood is responsible for reviewing the literature.

Conflict of Interest

The authors reported no conflicts of interest for this work and declare that there is no potential conflict of interest with respect to the research, authorship, or publication of this article.

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