

Children with Disabilities in Malaysia and Their Educational Rights

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Abstract

Education is essential to everyone, including children with disabilities, since it makes them better citizens and ensures a bright future. The United Nations has recognised the right to education through a number of declarations and treaties. However, in Malaysia, even though children with disabilities are promised to be given educational rights on an equal basis as other normal children, it is still in the grey area due to the non-existence of specific Act relating to special education for children with disabilities. Not to mention, children with disabilities are considered as burden to their families and always being neglected due to their disabilities. These problems can be reduced if their educational rights are protected effectively. Hence, a legal framework of special education for children with disabilities is needed to protect their educational rights. This research adopts a doctrinal or library-based research methodology by examining legal statutes for example the Federal Constitution of Malaysia, the Persons with Disabilities Act 2008, the Education Act 1996 and its regulations, textbooks and journal articles relating to special education for children with disabilities in Malaysia. The purpose is to investigate whether the laws that we have in Malaysia are sufficient to protect the educational rights of children with disabilities. It is found that the educational rights of children with disabilities in Malaysia are not fully protected due to uncertainty in laws, lack of human capital and lack of facilities in the Special Education sector. The current laws that are relating to special education for children with disabilities in Malaysia are too general and lack of punishment provisions which allow someone to violates the laws. Hence, children with disabilities cannot enjoy their educational rights on an equal basis as other normal children. This paper will be beneficial to the Malaysian government, specifically the Ministry of Education and the Ministry of Women, Family and Community Development, in enhancing the protection of the educational rights of children with disabilities in Malaysia. Besides, the children with disabilities themselves, their parents, and society will benefit from this research through the recommendations given to protect children with disabilities' educational rights effectively. It is proposed for future research to compare the law and

practice relating to special education in other jurisdictions to see the differences in the implementation in the Special Education sector.

Keywords: Children with Disabilities, Educational Rights, Special Education

Introduction

Article 26 of the Universal Declaration of Human Rights (UDHR) provides educational rights to everyone. This is because education plays essential roles in people's lives, such as bringing confidence, ensuring a bright future, and becoming better citizens (Bhardwaj, 2016). Besides, education also is an influential factor in developing human intellectual and seeking jobs (Nasir & Efendi, 2016). Hence, education is essential to everyone, including for children with disabilities. However, according to United Nations High Commissioner for Refugees (2014), children with disabilities are viewed as a burden to their families, always been neglected by society and are at higher risk of abuse and exploitation. Therefore, by providing educational rights to them, these problems can be mitigated.

The Persons with Disabilities Act 2008 defines persons with disabilities (PwDs) as “those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their participation in society. Children with disabilities are “children with developmental problems such as visual impairment, hearing impairment, autism spectrum conditions, behavioural disorders and learning difficulties” (Maciver et al., 2019).

The right to education has been recognised globally. The United Nations, through several instruments and declarations, provides educational rights to everyone, including children with disabilities, such as the Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, and the Universal Declaration of Human Rights. In Malaysia, every citizen's right to education has been provided under Article 12 of the Federal Constitution. For PwDs, their educational rights have been specifically provided under Section 28 of the Persons with Disabilities Act 2008, which states that PwDs and children with disabilities should not be excluded from the general education system due to their disabilities.

Due to the importance of education to people's lives, including children with disabilities, many efforts have been taken by the government to provide educational rights to them, such as introducing the 'Zero Reject Policy', providing disabled-friendly facilities in schools, making more inclusive schools available and offering more special education teachers. However, these efforts are not sufficient to protect their educational rights. Besides, there is a lack of research conducted by academicians on the educational rights of children with disabilities in Malaysia. Hence, this paper aims to examine and analyse the educational rights of children with disabilities in Malaysia are protected or not by the Malaysian government.

Literature Review

In Malaysia, several researchers discussed the rights of PwDs (Abdullah et al., 2017; Tahir et al., 2020). These researches focus more on the rights of PwDs in Malaysia and not focus on the educational rights conferred on them. Besides, numerous writers venture into the area of special education for children with disabilities (Nasir & Efendi, 2016; Othman & Rahmat, 2020). Most of the research concentrated on the rights of PwDs provided under the Persons

with Disabilities Act 2008 but did not discuss in depth the issue of educational rights of PwDs, especially children with disabilities and equal access to education provided by the law.

In their study, Abdullah et al (2017) explained the enactment of the Persons with Disabilities Act 2008 by the government. They also discussed the establishment of the National Councils for Persons with Disabilities and Registrar General under the Act. The council will conduct meeting three times a year and has been tasked to make recommendations, review and monitor policies and national plans which are related to PwDs in Malaysia. Besides, their study discussed the gaps in the Persons with Disabilities Act 2008, such as non-remedial in nature, lack of comprehensive monitoring mechanism and lack of specific anti-discrimination provisions against PwDs. However, they did not address the issue of the educational rights of PwDs, especially children with disabilities in Malaysia.

Another study on the rights of PwDs has been discussed by Tahir et al (2020), where a few rights have been provided under Part IV of the Persons with Disabilities Act 2008. The rights include rights to access all facilities and services provided in Malaysia, rights to get training and access health care facilities, rights to lifelong protection and assistance and protection during humanitarian emergencies. Nevertheless, the study conducted by Tahir et al. did not mention the issue of educational rights of PwDs and children with disabilities.

Othman and Rahmat (2020) have discussed the issue of the educational rights of children with disabilities. They had discussed the model of disabilities, which consist of the Medical and Social Model of Disability. Besides, the writers also mentioned the laws which are related to special education for children with disabilities in Malaysia, such as Article 8 and Article 12 of the federal Constitution, Section 28 of the Persons with Disabilities Act 2008, and the Education Act 1996 and its regulations. The paper is written by them clearly explained that the protection given by the government towards the educational rights of children with disabilities is not sufficient. However, the study conducted by Othman and Rahmat (2020) did not address the issue of lack of human capital and lack of facilities in the special education sector but more focused on the inadequacy of the laws in protecting the educational rights of children with disabilities in Malaysia.

In their study, Nasir and Efendi (2016) discussed the issue of Special Education in Malaysia. Generally, there are three types of Special Education Programme: Special Education School, Special Education Integration Programme and Inclusive Education Programme. They have mentioned that there are a few challenges faced by these programmes, such as lack of facilities, readiness, resources and teaching materials. Hence, it will affect children with disabilities to access equal education opportunities as other normal children. Nonetheless, the study conducted by them did not focus on types of Special Education Programme but only discussed the Special Education Programme in general. Besides, they only focused on the international instruments on the educational rights of children with disabilities rather than addressing the local legislations. Thus, this paper will analyse and examine the laws relating to special education for children with disabilities, the issue of human capital, and the issue of facilities in the special education sector to contribute to the body of knowledge on the educational rights of children with disabilities in Malaysia.

Method and Study Area

The researchers in this paper conducted a doctrinal or library-based research methodology. The doctrinal or library-based analysis is "an enquiry in legal concepts, principles, and existing legal texts such as statutes, case laws, etc." (Kharel, 2018, p. 2). This method allows the researchers to identify the problems regarding the educational rights of children with disabilities in Malaysia and provides a more profound understanding to the researchers on doctrinal content, especially laws and regulations, enforcement and administration of special education in Malaysia. Under the doctrinal or library-based research, the researchers analysed the Federal Constitution of Malaysia, the Persons with Disabilities Act 2008, the Education Act 1996 and its regulations, textbooks, and journal articles.

Results and Discussion

The Concept of Disabilities

According to Tah and Mokhtar (2016) disability is a chronic illness that causes functional limitation to the person suffered. As a result, his ability to do something like a normal person will be restricted. Therefore, models of disability can be evaluated to understand more on disability. Two popular models of disability have been evaluated, namely the Medical Model and the Social Model of Disability. The Medical Model of Disability is referred to as the 'personal tragedy' model since this model views disability as "a personal tragedy for both the individual and their family, something to be prevented and, if possible, cured" (Retief & Letšosa, 2018, p. 3). This model suggested that disabled persons should be cured and treated to fix their disability through medical treatment to make them normal (Alias, 2016). Besides, disabled persons under this model are considered as having problems making their own independent decisions since they rely on the charity-based programme or income support to live (Tah, 2018). However, even though the Medical Model of Disability plays a vital role in understanding disabled persons, many researchers have criticised this model due to its negative definition of disabled persons. Firstly, it disregards the capacity of PwDs as a person because they are helpless and depend on other persons to survive (Tah & Mokhtar, 2016). Secondly, this model fails to consider the human qualities of PwDs since the Medical Model of Disability omits their persons' social gradients (Wong, 2019).

Another model of disability is the Social Model of Disability. Compared to the previous model, this model views disability as socially constructed disadvantages to PwDs, which means how the society treated them due to their disability status, hence restricting the life of PwDs in many ways such as to participate in the society (Tah, 2018). The Social Model of Disability emphasises disabling the social and environmental barriers that restrict the life of PwDs to allow them to live a normal life as opposed to the Medical Model, which seeks to cure the disability within the PwDs to become normal (Barnes & Mercer, 2004). The PwDs have been given rights under the Model of Disability to empower them as citizens. Therefore, the key to providing a normal life to PwDs lies in society's attitude towards them. However, there are also critics of this model of disability, such as it relies too much on the barriers built by the society that restrict PwDs to live a normal life and fails to consider the 'identity' of an individual dealing with the 'environment' that caused their disability (Tah, 2018).

Since both models of disability play important roles in the development of the disability study, and both models have their own strengths and complement each other, we need to integrate the Medical Model and the Social Model of Disability to protect the

educational rights of PwDs, especially children with disabilities in Malaysia. The integrated model will not only treat the disability within PwDs but also remove the social barriers which restrict their participation in society. Thus, their rights, especially educational rights, will be effectively protected under this integrated model.

Special Education Programmes

Special education for children with disabilities has been provided under the Malaysian Education Blueprint 2013-2025 under the special education needs. The Education Blueprint provides students with special education needs to include those with visual impairment, hearing impairment, physical difficulties, speech difficulties, multiple disabilities and learning disabilities. There are three types of special education for children with disabilities under the Special Education Programme, namely Special Education School, Special Education Integration Programme, and Inclusive Education Programme. All these three programmes are managed by the Ministry of Education. As of October 2021, there are 97,220 students enrolled on the Special Education Programme (Ministry of Education, 2021).

Special Education School is an education system that caters the education to children with disabilities, gifted children and other marginalised children. Currently, there are 34 Special Education Schools across the country which provides education to 2686 students with special needs. There are a few types of Special Education Schools which are schools for visually impaired students, schools for hearing impaired students and schools for students with learning disabilities. Schools for visually impaired students provide education for students with visual problems in which they have limited vision or cannot see anything directly. In order to improve their academic achievement, the methods of teaching and learning are customised accordingly, such as the use of the braille system (Omar & Sulaiman, 2018). Schools for hearing impaired students cater the education for students with problems such as deaf and hearing impaired. Communication modes that suit the needs and capabilities of the students are used as the method of teaching and learning in schools for hearing impaired students, such as Malay Language Code, lip reading, body language, facial expression and hand-code (Omar & Sulaiman, 2018).

Last but not least, schools for students with learning disabilities accommodate the students with learning disabilities such as students with Down Syndrome, Autism, Attention Deficit Hyperactivity Disorder, Dyslexia, Slow Learner and Mental Retarded. The Special Education Curriculum and Alternative Curriculum are used as teaching and learning methods in this type of school (Omar & Sulaiman, 2018). The Special Education Curriculum includes a special curriculum and skill training curriculum as modified by the Registrar General of Educational Institutions and Teachers; meanwhile, the Alternative Curriculum includes basic reading and writing, manipulative skills, calculation skills, and arts (Human Rights Commission of Malaysia, 2015).

Special Education Integration Programme is a system of education where students with special needs are placed in special classes in mainstream schools (Mottan, 2015). This programme is introduced to enable students with special needs to learn in the least restrictive environment and allow them to develop their social and communication skills effectively (Mohamad Taib, n.d.). Currently, 2586 schools offer Special Education Integration Programme that caters to 78,030 students (Ministry of Education, 2021). Under this programme, students with special needs will learn in the special classes in a mainstream school. Hence, they will

experience a normal learning environment since they can participate in most school activities along with their normal peers (Othman & Rahmat, 2020).

On the other hand, the Inclusive Education Programme is a programme whereby students with special needs learn in the same class as normal students. They also learn the general education curriculum or mainstream curriculum (Teng, 2018). Currently, there are 3774 schools that offer Inclusive Education programmes nationwide, which cater for the education of 16,504 students (Ministry of Education, 2021). Inclusive education aims to enable students with special needs to maximise their interaction with their normal peers. This programme is governed by *Garis Panduan Program Pendidikan Inklusif Murid Berkeperluan Khas (Edisi Percubaan)* and also Checklist for Inclusion Readiness which the Ministry of Education has issued. These guidelines govern the admission of students with special needs.

However, even though education for children with disabilities has been provided under Malaysian Education Blueprint 2013-2025 and a few special education programmes are available for them, there are a few issues regarding Special Education Programme. Due to the lack of resources, teaching materials and facilities, the implementation of teaching and learning is limited and restricted in the Special Education School (Abdul Nasir & Erman Efendi, 2016). For Special Education Integration Programme, the number of schools that offer this programme is limited. Hence it causes logistical issues for students with special needs to commute from their house to the nearest schools that offer Special Education Integration Programme. Besides, the facilities of the schools that offer this programme are not upgraded to cater for the increased number of students with special needs each year (Abdullah et al., 2018).

In addition, another problem under Special Education Integration Programme is that the students face difficulties with studying since they are grouped together in the same special class even though the students possess different competency levels. Hence, the teachers find it is challenging to teach the students, and the students are not able to study efficiently (Rajaendram, 2014). Meanwhile, the main problem that has always been raised in the Inclusive Education Programme is the admission requirement issued by the Ministry of Education. The students need to meet the strict requirements set by the Ministry before they can be accepted for this programme. Besides, the negative attitudes and teachers' and schools' effectiveness lead to problems under the Inclusive Education Programme (Omar & Sulaiman, 2018). In terms of assessments, the students with special needs are given the same assessment as other normal children. Hence it leads to unsatisfactory results among students with special needs (Teng et al., 2014).

Laws relating to the educational rights of children with disabilities in Malaysia

Generally, the right to education for every citizen has been provided under Article 12 of the Federal Constitution. Article 12 (1)(a) provides, "Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent or place of birth in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees." Article 8(1) of the Federal Constitution provides, "All persons are equal before the law and entitled to the equal protection of the law". Article 8(2) of the Federal Constitution provides, "Except expressly authorised by this Constitution, there shall be no discrimination

against citizens on the ground only of religion, race, descent, place of birth or gender in any law...". Hence, all citizens of Malaysia, including PwDs and children with disabilities, have been given the right to education by Article 12 and Article 8 of the Federal Constitution. Children with disabilities shall not be discriminated against to get an education and shall be treated equally as other normal children based on Article 12 and Article 8 of the Federal Constitution. Since the Constitution itself provides educational rights to children with disabilities, therefore they are able to access education equally without any discrimination or obstacle imposed by the schools or anyone.

Furthermore, Section 40 of the Education Act 1996 deals with the educational rights of children with disabilities. Section 40 provides "The Minister shall provide special schools established under paragraph 34(1)(b) or in such primary or secondary schools as the minister deems expedient". Hence, the Minister has taken care of their education through Special Education Programme, for example, Special Education School, Special Education Integration Programme and Inclusive Education Programme. In addition, the Minister of Education made some regulations to deal with special education for children with disabilities based on the power given to him under Section 41 of the Education Act 1996. The regulations made by the Minister are called the Education (Special Education) Regulations 2013.

The Education (Special Education) Regulations 2013 have been made to deal with special education for children with disabilities in Malaysia. The matters that have been regulated in the 2013 regulations include the duration of primary and secondary of the students with special needs, the curriculum to be used by them, the implementation of the special education and co-curricular activities that they need to attend. Besides, the 2013 regulations also define students with special needs as students who are certified by a medical practitioner, an optometrist, an audiologist or a psychologist as students who have a visual disability, hearing disability, speech disability, physical disability, learning difficulties or any combination of the disabilities or disabilities and difficulties.

In 2008, the government enacted the Persons With Disabilities Act 2008 to commit to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) (Tah & Mokhtar, 2017). This Act serves as the social protection service to PwDs and provides better accessibility of PwDs in public facilities, and enhances their quality of life. Section 28 of the Persons With Disabilities Act 2008 specifically touch on the right to education for PwDs. Section 28 of the Act provides "Persons with disabilities shall not be excluded from the general education system on the basis of disabilities and children with disabilities shall not be excluded from pre-school, primary, secondary and higher education, on an equal basis with persons or children without disabilities, including vocational training and lifelong learning". Hence, PwDs in Malaysia, including children with disabilities, should be able to access education. Furthermore, by virtue of Section 28 of the Act, children with disabilities should also be given equal educational rights as other normal children.

However, even though there are a few laws that provide opportunities and rights for children with disabilities to access education, but their educational rights are not fully protected. This is because these laws are scattered and not specific; hence it creates some problems. Firstly, Article 12 and Article 8 of the Federal Constitution do not directly prevent discrimination against PwDs (Baqutayan et al., 2016). Therefore, the laws which discriminate

against their educational rights still can be made (United Nations International Children's Emergency Fund Malaysia, 2014). According to Malaysian Human Rights Commission (2015), when children with disabilities fail to meet the criteria set by the Ministry of Education, some of them are denied being admitted into Special Education Programme. Secondly, Section 40 and Section 41 of the Education Act 1996 that provides special education for children with disabilities are too general. These sections only touch on the power of the Minister to provide special education in schools which he deems fit and the power of the Minister to prescribe duration and curriculum on special education. Therefore, their educational rights cannot be protected efficiently by Section 40 and Section 41 of the Education Act 1996.

Thirdly, Education (Special Education) Regulations 2013 that deal with special education for children with disabilities also provide very general provisions on special education. The 2013 Regulations only provides some provisions on the definitions, the duration for a probation period, code of practice, implementation of the special education, the requirement to attend co-curricular activities and duration of education for students with special needs. Plus, there is an issue with the probationary period imposed in the 2013 Regulations. Regulation 4 requires children with disabilities to undergo a three-month probationary period before attending the Special Education Programme. So, this requirement is seen as a restriction for children with disabilities to access fair and equal education opportunities. According to Malaysian Human Rights Commission (2015), Regulation 4 of the Education (Special Education) Regulations 2013 is similar to the previous controversial requirement under the Education (Special Education) Regulations 1997 where only children with disabilities who are "educable" can only be admitted into Special Education Programme. Therefore, their educational rights still not be protected efficiently under the Education (Special Education) Regulations 2013.

According to the Harapan OKU Law Reform Group (2021), even though Section 28 of the Persons with Disabilities Act 2008 provides educational rights to PwDs and children with disabilities, the Act itself is called "toothless tiger" since it lacks penalties against any violation of the Act and lacks provisions that prevent it PwDs from being discriminated against. Therefore, no one can be punished for violating any of the provisions under the Persons with Disabilities Act 2008. Hence, the educational rights of children with disabilities provided under Section 28 of the Act are restricted and limited, and children with disabilities still cannot access education on an equal basis as other normal children.

Due to these scattered and very general laws that relate to special education for children with disabilities in Malaysia, there is uncertainty in the jurisdictions, authorities involved, and enforcement of the laws. Hence, it will lead to the ineffectiveness of protection towards the educational rights of children with disabilities. The government's intention to provide education to children with disabilities on an equal basis as other normal children as stipulated by some provisions such as Article 12 of the Federal Constitution and Section 28 of the Persons With Disabilities cannot be realised without the proper execution due to these scattered laws.

The Human Capital and Facilities in Special Education Sector

In 2019, the government, through the Ministry of Education, introduced the Zero Reject Policy. The Zero Reject Policy was implemented to ensure all children, including children with

disabilities and undocumented children are able to access education (Rashid, 2018). Besides, the government, through the Ministry of Women, Family and Community Development, introduced six subcategories of Learning Disabilities under the new cards for PwDs starting from March 2019. By introducing these six subcategories under the cards for PwDs, the teachers can quickly identify their students' problems and plan the teaching methods accordingly. The six subcategories are Attention Deficit Hyperactivity Disorder, Syndrome Down, Global Development Delay, Autism, Intellectual and Specific Learning Disabilities (Ministry of Education, 2019).

Since implementing the Zero Reject Policy and introducing six subcategories under the new cards for PwDs, the Ministry of Education stated that the numbers of children with disabilities that enrolled on the Special Education Programme had increased. The Ministry of Education planned to provide more disabled-friendly facilities in schools, offer more special education teachers in schools, and make more inclusive schools available (The Star, 2019). However, the plans that the Ministry has informed are yet to be executed, but the number of students with special needs keeps increasing. Hence, it will slow the learning process towards students with special needs and sometimes can deny their educational rights due to lack of human capital and facilities in the special education sector.

Firstly, the human capital issue in the special education sector. According to the Malaysian Education Blueprint 2013-2025, our country faces a severe shortage of qualified teachers in the special education sector. This problem was confirmed by the director of Special Education when he stated that our education system lacks special education teachers. To be worse, some states in Malaysia do not have sufficient special education teachers (Annuar, 2019). It will be a burden to teachers and students with special needs since they cannot focus entirely on the learning process due to the lack of teachers in the special education sector. In addition, some of the teachers that teach the Special Education Programme do not possess special education background, but they are mainstream teachers that have been given a short course relating to special education (Ghani et al., 2013). Due to this problem, both students with special needs and teachers faced difficulties in the learning process.

Secondly, there is an issue of lack of facilities in the special education sector. Students with special needs require special facilities, assistive devices and technology such as hearing aids, cognitive aids, and computer software in schools to help them study. However, according to Malaysian Education Blueprint 2013-2025, our schools lack disabled-friendly facilities such as lifts, handicapped toilets railings and ramps. The finding of the Education Blueprint has been supported by Nasir and Efendi (2016), who found that schools in Malaysia still lack facilities, devices and technology to support the learning process for students with special needs. So, due to the lack of facilities in schools, the process of learning will be complicated for the students with special needs since they rely on that facility to study and allow them to move around easily. Therefore, it is contrary to the requirement by the UNCRPD under Article 5(3), where it requires the State Parties to provide 'reasonable accommodation' for students with special needs.

Due to our special education sector's lack of human capital and facilities, children with disabilities are not able to access education on an equal basis as other normal children.

Therefore, they cannot exercise their educational rights absolutely since there are restrictions on certain matters.

Conclusion

Based on the discussion above, it can be confirmed that children with disabilities in Malaysia have been given educational rights through certain provisions of the law such as Article 8 and Article 12 of the Federal Constitution, Section 40 and Section 41 of the Education Act 1996 and Section 28 of the Persons with Disabilities Act. Besides, the Ministry of Education provides special education for children with disabilities through Special Education Programme. However, due to the scattered laws, some issues occurred, such as uncertainty in the jurisdictions, authorities involved, and enforcement of the laws.

Therefore, making these laws is insufficient to protect their educational rights. In addition, the issues in the Special Education Programme and lack of human capital and facilities in the Special Education sector lead to the problem among children with disabilities to enjoy and access fair and equal educational opportunities as other normal children. Hence, the government must formulate a legal framework of special education for children with disabilities and enact a specific law that provides special education for children with disabilities in Malaysia based on the integration of the Medical and the Social Model of Disabilities. Consequently, not only educational rights of children with disabilities are better protected, but their welfare can be managed wisely. This effort by the government will allow the children to participate in society and survive in this challenging era.

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