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www.msocialsciences.com**Child Welfare and Social Work: The Legal, Political and Social Contexts of Malaysia****Habibie Bte Hj Ibrahim<sup>1</sup>, Norhamidah Jarimal<sup>1</sup>**<sup>1</sup>Faculty of Psychology and Education, Universiti Malaysia Sabah (UMS)

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**Abstract**

This paper is based on literature review on the legal, political and social context of Malaysia regarding child welfare and social work. Children are an asset and younger generations will become the leaders of the country in future. In the Malaysian context, a variety of factors impact on how children are defined. These include the Islamic perspective, local cultural practices, approaches based on biological growth and relevant legislation. Such varying definitions can cause confusion in the application of law and could result in injustice. When talking regarding the social problems concerning children in Malaysia, there include abuse, neglect, abandonment of babies, street children, children beyond parental control, children involved with crime, underage marriage, prostitution and child trafficking. However, the shortage of professional social workers who can effectively manage abuse and child neglect cases is a serious problem.

**Key words:** child welfare, social work, social problems, political and social context

**Introduction**

Malaysia is a developing country and the national economy is still of a moderate size. Hence, the distribution of national income for the purpose of the people's welfare is still low. The government cannot meet all the need for welfare expenditure. For example, equality of education still cannot be obtained for all children and groups in every state, even though this is among the government's manifesto commitments. School dropout among children, especially in rural areas, is also inevitable. Poverty and unemployment of parents, as well as the extreme difficulties of life, are believed to be the influencing factors in children's malformed characters (Anisah Che Ngah, 2002).

In 2008, the government of Malaysia allocated RM494,738,700 to the Malaysia Social Welfare Department (Annual Report 08, Malaysia Social Welfare Department). This amount was allocated for current, forthcoming and one-off programmes and policies. Additionally, in the same year, the Malaysia Social Welfare Department reached 104.6% in its performance and expenditure. This means that the Malaysia Social Welfare Department showed a good performance in its annual budget.

The government of Malaysia realises that children are an important part of society. Children are an asset and younger generations will become the leaders of the country in future. In 2014, there were 15,567.7 million children in this country out of a total population of 30,097.9 million in Malaysia (Department of Statistics Malaysia, 2014). Hence, the government of Malaysia is concerned with its children's well-being. Malaysia ratified the Convention on the Rights of the Child on 17th September

1995. This convention focuses on children's safety, welfare, survival, protection, development and participation. As part of its commitment to the Convention on the Rights of the Child, Malaysia is committed to executing its responsibility in ensuring the safety and well-being of children. Furthermore, the government has also approved the importance of children in its Vision 2020,<sup>1</sup> in which children and family institutions are among the priorities in its effort to achieve a modern and developed country.

## Definitions of Children

In the Malaysian context, a variety of factors impact on how children are defined. These include the Islamic perspective, local cultural practices, approaches based on biological growth and relevant legislation (Nazrisyam Abu Bakar, 2003; Anisah Che Ngah, 2002). From the Islamic perspective, children are categorised as those who have not reached puberty, usually ranging from the age of 9 for girls to 12 years for boys. Puberty is seen as the time when an individual changes from his/her childish self into a mature adult (Nazrisyam Abu Bakar, 2003). Islamic theologians agree that puberty is the reason why a person becomes responsible as a 'mukalaf' for carrying out God's orders. A 'mukalaf' is seen as being able to reason, while children under the age of 9 years for girls and 12 years for boys are regarded as immature and vulnerable to being misled by others.

Generally, in the context of Malaysian society, children are defined as those 15 years and below (Nazrisyam Abu Bakar, 2003). This means that people in this age category still behave like children, are immature and lack a full understanding of life. According to Kamus Dewan (2005), however, children can be defined as those who are younger, normally below seven years.

Malaysia's Juvenile Courts Act 1947, revised in 1976, Section 2, states that "Children are people aged below 18. Juveniles are people who have reached the age of 17 years, while youngsters are those who have reached 14 years old". In addition, Section 2, Part 1 of the Children and Young Persons Act 1947 states that children are those aged 14 years or younger (in Jal Zabdi Mohamad Yusuf, 2008). Meanwhile, the Adult Age Act 1971 (Section 2) states that "According to Section 4, the age of boys and girls is limited to 18 years and everyone who has reached that age is considered as an adult in Malaysia".

Penal Code 1987 (Section 83) accords conditional protection to children aged over 10 years but under 12 years who are not yet able to think and understand their own actions and their effects. The Adoption Act 1952, on the other hand, says that children are below 21 years; thus, someone aged 21 years or over cannot be registered as an adopted child.

Such varying definitions can cause confusion in the application of law and could result in injustice. In view of this weakness, the Child Act 2001 broadens the definition of a child to "one who is under the age of 18 years". However, in practice, working definitions of a child may still depend on social workers' own values and perceptions. Nevertheless, it must be stated that Malaysia lacks documented resources that can be used as secure reference points for the present research. At this stage, the discussion is based on observations and informal interviews between me and the participating social workers. In Malaysia, according to the Child Protection Act 2001, adult age is set at 18 years in order to ensure that a child's benefits and personal safety are guaranteed.

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<sup>1</sup> **Vision 2020** is a vision introduced by the **fourth** prime minister of Malaysia, Dr **Mahathir Bin Mohamad**, during the tabling of the **Sixth Malaysia Plan in 1991**. According to this vision, by the year 2020, Malaysian society must be fully developed economically, politically, socially, spiritually, psychologically and culturally.

## Social and Cultural Context

Social problems concerning children in Malaysia include abuse, neglect, abandonment of babies, street children, children beyond parental control, children involved with crime, underage marriage, prostitution, child trafficking, and so on. According to the Malaysia Social Welfare Department (2008), there were 1,307 cases of children requiring protection and rehabilitation between the years 2006 and 2008. The state of Johor recorded the highest number of cases (222) during this period. Furthermore, Selangor recorded 160 cases, while Kuala Lumpur and Sabah reported 42 and 35 cases respectively. However, these were only the cases that were reported to the Malaysia Social Welfare Department. Other, undocumented cases, were only reported to nearby hospitals and police stations. 2,780 cases of children who required protection and rehabilitation were recorded in the year 2008 (Malaysia Social Welfare Department, 2008). Of the total number of cases, Selangor recorded the highest (i.e. 989 cases), followed by Kuala Lumpur (i.e. 595 cases). Meanwhile, the state of Sabah recorded a total of eight cases. However, these eight cases in Sabah were only the reported ones. It is believed that there were many unreported cases unknown to the public.

Dropout children are another problem in Malaysia, especially in the case of children in remote areas. Parental attitudes that do not place enough emphasis on formal education are still very evident in this country. One example is that parents still believe that a girl needs to complete only primary school education. This is further compounded by families' poverty levels. The eldest child normally bears the responsibility of helping with domestic duties, such as taking care of the younger siblings, doing household chores, and so on. The eldest son, on the other hand, is expected to help the father to find extra income for the family. According to the law, this is clear evidence of neglect since the children involved are still at an age when they are supposed to be in formal education.

In Malay society, custom plays an important role in educating children. However, in a traditional Malay community in particular, the process of children's education runs without planning. The most important basics provided for children are food, clothing and emotional affection. These necessities are only equipped until they become adults. This happens because the parents themselves do not have the consciousness to develop their children's talents and potential. This especially happens in traditional villages. Additionally, their circumstances are worsened by poverty and illiteracy, which further push them behind others in many aspects of life.

In child abuse cases, it has been reported that the abuser's marital status is a major factor (Anisah Che Ngah, 2002). Much abuse happens when the victim's parents are in the process of divorce: inflicting abusive acts on the children is a strategy for them to release their anger and disappointment. In addition, judges generally order that abused children should be separated from their family and sent to a substitute family or a social welfare home. However, this action can cause psychological problems in the children, who have lost the opportunity to express and experience feelings of affection for themselves, their siblings and parents. Subsequently, social workers frequently ask the following question: would it be better if the abuser, rather than the abused child, is removed to undergo treatment and is separated from the family, so that the abused child can be left with the non-abusing parent? Thus, they suggest that the child abuser should be placed in a special sanctuary or in jail where he or she can receive counselling or psychotherapy. Needless to say, this is one of the issues that is discussed during decision-making processes.

Another issue is that of abandonment of babies, reported as being carried out by unmarried couples and those below 18 years of age (Malaysia Social Welfare Department, 2008). Even though they are still categorised as children, they have committed serious crimes. The crime is a consequence of having an illegal relationship that results in conception and birth. Sexual relationships in Malaysia (this is not only emphasised by Islam, but also by Christianity and Hinduism) can only be experienced in the context of a legal husband-wife relationship. In addition, according to the local societal context, sexual relationships are only accepted among married couples, and some cases – adults and not children. In the process of deciding whether the wrongdoer (the child) should be put in a rehabilitation centre, many social workers express feelings of anger, disgust and equivalence because the child has

committed grave offences (i.e. adultery and abandonment of a baby). This demonstrates the role of religion and morality in the Malaysian context according to society's expectations.

Another issue that involves children, especially in the remote areas of Sabah and the villages in Peninsular Malaysia, is the issue of underage marriage. This mostly happens due to poverty in families. When marrying off the daughter at an early age, the parents hope that the husband will look after the well-being and safety of their daughter. Marriage is seen from the perspective of the particular community. Because of poverty, also, the children do not receive formal education. This case of underage marriage is an example of the conflict between the family's rights, the religious context, and the legal act in protecting the welfare of the children. In this case, social workers are unsure whether the children need protection or not. For instance, Siti Nur Zubaidah, a 10-year-old child, was forced by her father to marry a 41-year-old man at a mosque in Machang, Kelantan. It is said that the man was a friend of Siti Nur Zubaidah's father, who was in the same religious group. After the wedding, Siti Nur Zubaidah was said to have been abducted by her husband to Batu Caves, Selangor. However, the wedding was legal according to Islamic law (Detik Daily, 17th March 2010).

A girl who has reached puberty and maturity in thinking is ready to get married. What is more important is that all the conditions for the marriage comply with Islamic and civil laws. However, what worries social workers is when the girl is unable to carry out the tasks and responsibilities of a wife, either physically or spiritually. This religious approach for the marriage context was used during the time of Prophet Muhammad s.a.w. and among the Arab race. Physically, Arab children are bigger and stronger than the Malay children in Malaysia.

Section 8 of the Islamic Family Law Act (Federal Territory) clearly states that no marriage will take place if the boy is below 18 years or if the girl is below 16 years, except in certain circumstances with written consent from the kadi syariah. The same allocation is also mentioned in the Islamic Family Law Enactment 2002, Kelantan, Section 8, Part II. However, the Child Protection Act 2001 (Act 611) states that it is pointless to interfere in a marriage if both children have agreed to be married even though they are below 18 years. This mostly occurs in families that practise extreme Islamic teachings and also those afflicted by poverty.

### **Shortage of Professional Social Workers**

The shortage of professional social workers who can effectively manage abuse and child neglect cases is a serious problem. Social workers handle too many abuse cases to the point that they cannot manage the cases adequately. To add to the problem, the number of child abuse and neglect cases has increased drastically, causing the ratio between social workers and the clients for child abuse cases to be 1:20 (Malaysia Social Welfare Department, 2008). This has caused stress among social workers because of the heavy workload. The issue of protection and care involves various kinds of cases, such as abuse, neglect, adoption and care. The Malaysia Social Welfare Department allocates three to eight appointed social workers (i.e. child protectors and/or child rehabilitation officers) to handle cases related to children, depending on the size of the area, namely, the district and administrative divisions. The gazetted social workers also carry out various tasks and hold different responsibilities in the department; some even hold administrative posts. These responsibilities do at times affect their main tasks of taking care of the children who are in need of protection.

On the other hand, there are cases where social workers suggest that children must be moved to a safer place far from the locality of their parents. However, the court usually decides that parents are eligible caretakers who are in charge of the children. It is the job of a social worker to prepare psychosocial reports for the children and families. Social workers also accompany children to court. When the court's decision contradicts the welfare officer's suggestion, it will affect their emotions to a certain extent – for example, causing them to feel disappointed, angry and unappreciated. Moreover, social workers also mention that there are certain times and/or circumstances when judges do not involve social workers in decision-making. This consequently gives them a negative experience and may have a bad effect on them when they are handling cases that involve decision-making in the future. In

addition, social workers think that if abuse victims do not have behavioural problems, they should be placed at home with their mother or other family members. Besides, they also perceive that emotional improvement between parents and children is the most effective goal because this will ensure the children's normal development and growth, especially in terms of their behaviour. Therefore, it is better if the doctors, lawyers and others who are involved in the children's protection team do not remove children from their families. This is because these social workers believe that the alienation this creates in children will result in more serious psychological problems.

The gaps between policy and practical realities result in court orders that separate the child from the family and send them to a substitute family or placement in a welfare home. The underlying implications of this action can cause psychological problems to the children. By separating them from the siblings and parents, they lose a place in which to express their feelings of affection. Thus, the real issue is *who actually needs treatment and who needs to be separated from the family?* Indeed, the reality is that the treatment is essentially needed by the abuser and not the victim. The abuser is the one who should be sent to a special sanctuary or put behind bars, where he/she can get counselling and psychotherapy, or serve a jail sentence for his/her deed.

## Conclusion

The government of Malaysia realises that children are an important part of society. Children are an asset and younger generations will become the leaders of the country in future. In the Malaysian context, a variety of factors impact on how children are defined. These include the Islamic perspective, local cultural practices, approaches based on biological growth and relevant legislation. Such varying definitions can cause confusion in the application of law and could result in injustice. Social problems concerning children in Malaysia include abuse, neglect, abandonment of babies, street children, children beyond parental control, children involved with crime, underage marriage, prostitution, child trafficking, and so on. The shortage of professional social workers who can effectively manage abuse and child neglect cases is a serious problem.

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