

IS EDUCATIONAL RIGHT OF CHILDREN WITH DISABILITIES IN MALAYSIA PROTECTED?

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ABSTRACT

Education is very important to someone's life including children with disabilities since it will enable them to involve in making decisions and participate in society. Minister of Education, Dr Maszlee Malik in assuring the educational right of children with disabilities is protected announced the implementation of 'Zero Reject Policy' in stages starting 2019. Furthermore, the Malaysian Federal Constitution also provides educational right towards the citizens on an equal basis due to the importance of education in someone's life. However, there are situations in which the educational right of children with disabilities has been denied because of their disabilities. Moreover, the guidelines that have been provided by the Ministry of Education regarding students with special needs are not quite effective since its coverage is limited. Hence, it will affect the government's effort to provide equal educational rights towards the citizens and also protect the educational right of children with disabilities in Malaysia. This paper discusses on the educational right of children with disabilities in Malaysia through current laws relating to persons with disabilities (PwDs) namely Federal Constitution, Persons with Disabilities Act 2008, Education Act 1996, Education (Special Education) Regulations 1997 and Education (Special Education) Regulations 2013. Besides, certain government policies such as the Malaysian Plan of Action for Persons with Disabilities has been reviewed to provide an understanding of the educational right of children with disabilities in Malaysia in-depth. This paper also suggests improvements that can be taken by the government to provide effective protection against the educational right of children with disabilities in Malaysia.

Key words: Children with disabilities, educational right, Special Education,

INTRODUCTION

The Ministry of Education is the largest recipient of 2020 Budget compared to other ministries with a total amount of RM64.1 billion as announced by Finance Minister, Lim Guang Eng during 2020 Budget announcement.¹ With this allocation of budget, education has been proved as the most important sector in Malaysia. Education is important in people's life since it makes them better citizens, brings confidence, ensures a bright future and help them in character building.² Furthermore, education also plays a significant role in seeking job and important in human's intellectual and personal quality development.³

Children with disabilities have been defined as children with developmental problems such as visual impairment, hearing impairment, autism spectrum conditions, behavioural disorders and learning difficulties.⁴ According to Section 2 of Persons with Disabilities Act 2008, that persons with disabilities (PwDs) includes those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society.⁵ Section 28 of the same Act also provides PwDs shall not be excluded from general education system based on 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.⁶

The reason why PwDs should not be excluded from education is because it is important to them since education will enable them to read and write and involve in making decisions together with their family members.⁷ Besides, education is also important towards PwDs to ensure their full participation in the society since it plays a very significant role in job seeking requirement and

¹ Zulkifli, Z. (2019). Education Ministry Largest 2020 Budget Recipient with RM64.1b. Retrieved December 18, 2019 from <https://www.nst.com.my/news/government-public-policy/2019/10/528981/education-ministry-largest-2020-budget-recipient-rm641b>

² Bhardwaj, A. (2016). Importance of Education in Human Life: A Holistic Approach. *International Journal of Science and Consciousness*, 2(2), 23-28.

³ Abdul Nasir, M. N., & Erman Efendi, A. N. A. (2016). Special Education for Children with Disabilities in Malaysia: Progress and Obstacles. *Malaysian Journal of Society and Space*, 12(10), 78-87.

⁴ Maciver, D., Rutherford, M., Arakelyan, S., Kramer, J. M., Richmond, J., Todorova, L., et al. (2019). Participation of Children with Disabilities in School: A Realist Systematic Review of Psychosocial and Environmental Factors. *PLoS One*, 14(1).

⁵ Persons with Disabilities Act 2008

⁶ Persons with Disabilities Act 2008

⁷ Abdul Nasir, M. N., & Erman Efendi, A. N. A. (2016). Special Education for Children with Disabilities in Malaysia: Progress and Obstacles. *Malaysian Journal of Society and Space*, 12(10), 78-87.

therefore constitutes as one of the major needs in individual development and national building.⁸ Due to the importance of education to PwDs especially children with disabilities, Education Minister, Dr Maszlee Malik announced the Education Ministry will implement the Zero Reject Policy in stages to provide education to all children in Malaysia including children with disabilities and undocumented children.⁹ This policy has been fully supported by the Malaysian government through its 2020 Budget announcement where RM23 million will be allocated to provide disabled-friendly facilities in national schools.¹⁰

To cater the needs of PwDs including children with disabilities, Malaysian government in recent years had introduced several policies regarding them such as Malaysian National Policy for Persons with Disabilities and National Plan of Action for Persons with Disabilities.¹¹ The implementation of these policies proves the commitment of the Malaysian government to protect the rights of PwDs as provided under the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD).

Despite policies that have been introduced by the government to protect the rights of PwDs, their educational rights still unclear whether it is protected or not since our Federal Constitution, Persons With Disabilities Act 2008, Education Act 1996 and Education (Special Education) Regulations 1997 only provide some general provisions regarding this matter.¹² The term 'on equal basis with persons or children without disabilities' under Section 28 of Persons with Disabilities Act 2008 is missing since there is no special law to govern the educational rights of children with disabilities to equal education system with other normal children and therefore it will lead to a more serious situation in future since the number of children with disabilities is increasing from time to time. Thus, it is significant to formulate a legal framework to regulate special education for children with disabilities in Malaysia to preserve their rights and help them to participate in society.

This paper will discuss the education for children with disabilities in Malaysia through programmes conducted by the Ministry of Education and will examine the limitation of the programmes. Besides, current laws and policies will be discussed whether these laws and policies are sufficient or not and lastly this paper will provide suggestions that can be taken to improve the educational right of children with disabilities in Malaysia.

EDUCATION FOR CHILDREN WITH DISABILITIES IN MALAYSIA

The British Schooling system is used in the current formal education system in Malaysia, where every child received 11 years of basic education. This includes 6 years of primary education and 5 years of secondary education.¹³ The Malaysian Education Blueprint 2013-2025 provides students with special education needs includes students with visual impairment, hearing impairment, speech difficulties, physical difficulties, multiple disabilities and learning disabilities such as autism, Down's Syndrome, attention deficit hyperactivity disorder and dyslexia.¹⁴ Ministry of Education provides several special education programmes for children with disabilities namely Special Education Programme, Special Education Integration Programme and Inclusive Education Programme.¹⁵

SPECIAL EDUCATION PROGRAMME

Special education is an education system which does not only provide education to children with disabilities but also for gifted children or other marginalized children.¹⁶ In Malaysia, there are four stages in special education progress which are before and during the early colonial period (before 1900), pre-independence (1900-1957), post-independence (1957-1990) and modern Malaysia (1990 to the present).¹⁷ Only *Sekolah Pondok* (shed school) accepts students with disabilities during the first stage of special education progress while no opportunities for them to enrol their study on other types of school.¹⁸ In 1948-1950, the Princess Elizabeth Special School in Johor Bahru was built to accommodate students with vision impairment and in 1956, Federal School for Deaf Children in Penang has been established to accommodate students with hearing impairment. The curricula for Braille and sign language derived from western models were adopted during this second stage.¹⁹

⁸ Abdul Nasir, M. N., & Erman Efendi, A. N. A. (2016). Special Education for Children with Disabilities in Malaysia: Progress and Obstacles. *Malaysian Journal of Society and Space*, 12(10), 78-87.

⁹ Abdul Rashid, H.R. (2018). *Zero Reject Policy to be Implemented Next Year: Maszlee*. Retrieved December 18, 2019 from <https://www.nst.com.my/news/nation/2018/10/426683/zero-reject-policy-be-implemented-next-year-maszlee>

¹⁰ Zulkifli, Z. (2019). *Education Ministry Largest 2020 Budget Recipient with RM64.1b*. Retrieved December 18, 2019 from <https://www.nst.com.my/news/government-public-policy/2019/10/528981/education-ministry-largest-2020-budget-recipient-rm641b>

¹¹ Abdul Rahim, A., Abd Samad, N. A., Said, I., & W Seman, W. M. A. (2017). Malaysian Plan of Action for People with Disabilities 2016-2022: Way Forward. *UIA 2017 Seoul World Architects Congress*, 2.

¹² Baqatuyan, S. M., Shamsul Khalil, S. A., Baharum, N. A., & Abu Hassan, N. (2016). Special Education for Children with Disabilities: A Review of the Current Policy and Practice in Malaysia. *Journal of Advanced Review on Scientific Research*, 25 (1), 1-10.

¹³ Abdul Wahid, N. A., Abdul Hamid, H., Low, S., & Mohd Ashhari, Z. (2011). Malaysian Education System Reform: Educationists Perspectives. *Proceeding of the International Scientific Conference on Social Science, Economics and Art 2011*, 107-111.

¹⁴ Ministry of Education (MOE). (2013b). *National Education Blueprint (2013-2025)*. Putrajaya: Malaysian Ministry of Education.

¹⁵ Human Rights Commission of Malaysia. (2015). *The Right to Education for Children with Learning Disabilities: Focusing on Primary Education*. Kuala Lumpur: Human Rights Commission of Malaysia.

¹⁶ Abdul Nasir, M. N., & Erman Efendi, A. N. A. (2016). Special Education for Children with Disabilities in Malaysia: Progress and Obstacles. *Malaysian Journal of Society and Space*, 12(10), 78-87.

¹⁷ Lee, L. W., & Low, H. M. (2014). The Evolution of Special Education in Malaysia. *British Journal of Special Education*, 41(1), 42-58.

¹⁸ Lee, L. W., & Low, H. M. (2014). The Evolution of Special Education in Malaysia. *British Journal of Special Education*, 41(1), 42-58.

¹⁹ Lee, L. W., & Low, H. M. (2014). The Evolution of Special Education in Malaysia. *British Journal of Special Education*, 41(1), 42-58.

During the third stage of special education, there was a separation of responsibilities between the Ministry of Education and Ministry of Women, Family and Community Development. Ministry of Education has been tasked to cater for children with visual, hearing and mild mental impairment whereas Ministry of Women, Family and Community Development on the hand has been tasked to cater for children with physical and moderate to severe degree of mental impairment.²⁰ All states in Malaysia are required to provide integration programmes by the Ministry of Education in 1987 and between 1980 to 1990 teacher training through in-service professional courses and overseas research degrees has been conducted.²¹

A rapid growth on special education in Malaysia can be seen after 1990 through the development of segregated teacher preparation programmes for mainstream and special educators in Malaysia, establishment of the Special Education Department in 1995 (currently known as Special Education Division), insertion of the definition of the term 'special education' and 'special school' in Education Act 1996, introduction of Education Rules (Special Education) in 1997, introduction of Persons with Disabilities Act 2008, implementation of the new Education (Special Education) Regulations 2013 and the inclusion of special education in the Preliminary Report of the National Education Blueprint (2013-2025).²² Even though special education in Malaysia started more than 100 years ago, but there are limitations in implementing special education in term of facilities, resources, lack of appropriate teaching materials and readiness, hence causing special education in Malaysia less effective.

SPECIAL EDUCATION INTEGRATION PROGRAMME

Special Education Integration Programme is a programme where students with special needs are to be placed in special classes in mainstream schools.²³ This programme is introduced to allow the students with special needs to learn in the least restrictive environment. Besides, they can develop their social and communication skills effectively under this programme since students with special needs received their education in a normal learning environment. Besides, this programme will enhance the social integration between students with special needs and normal students since they participate together in as many school's activities as possible.²⁴ In Malaysia, Special Education Integration Programme is implemented throughout the country and is a major contributor to the enrolment of students with special needs. This programme has been implemented at the pre-school, primary and secondary education.²⁵ However, there are critics on this programme where students on different competency level are grouped together into one special class.²⁶ Hence it will cause difficulties towards the students with special needs and the teachers themselves.

INCLUSIVE EDUCATION PROGRAMME

Inclusive Education is a process of providing the various needs of all students by minimizing the barriers and within the learning environment. The idea of Inclusive Education is 'about enabling schools to serve all children'.²⁷ Besides, Inclusive Education also is 'about transforming educational systems to accommodate the needs of students with special needs' and therefore allows them to be included in the classes with normal students and been provided with the general education curriculum.²⁸ In Malaysia, Inclusive Education is introduced to provide maximum interaction between students with special needs with their non-disabled peers.²⁹ For students with special needs to enrol into this programme, they are required to meet certain uneasy criteria set by Education Ministry's Checklist for Inclusion Readiness (SSKI) and therefore contrary to the essence of Inclusive Education in which all children will learn alongside the normal students.

Inclusive Education Programme has been guided by *Garis Panduan Program Pendidikan Inklusif Murid Berkeperluan Khas (Edisi Percubaan)* which consists of students' criteria, students' placement, teacher, teaching and learning and assessment.³⁰ Nevertheless, this guideline is not effective to accommodate students with special needs because of its coverage is limited for

²⁰ Abdul Nasir, M. N., & Erman Efendi, A. N. A. (2016). Special Education for Children with Disabilities in Malaysia: Progress and Obstacles. *Malaysian Journal of Society and Space*, 12(10), 78-87.

²¹ Lee, L. W., & Low, H. M. (2014). The Evolution of Special Education in Malaysia. *British Journal of Special Education*, 41(1), 42-58.

²² Abdul Nasir, M. N., & Erman Efendi, A. N. A. (2016). Special Education for Children with Disabilities in Malaysia: Progress and Obstacles. *Malaysian Journal of Society and Space*, 12(10), 78-87.

²³ Mottan, K. (2015). A Pilot Study into an Integrated Special Needs Programme using the CIPP Model (M2015). *International Journal of Assessment and Evaluation in Education*, 5, 57-66.

²⁴ Mohamad Taib, M. N. *The Role of Special Classes, Resource Rooms and Other Arrangements in Regular Schools – Meeting Individual Educational Needs while Forming a Cohesive Society*. Retrieved January 3, 2020 from http://www.nise.go.jp/kenshuka/josa/kankobutsu/pub_d/d-279/d-279_15.pdf

²⁵ Omar, S. R., & Sulaiman, A. Z. (2018). Implementation of Inclusive Education Programme for Special Education Need Students with Learning Disabilities in Malaysia. *International Journal of Civilizational Studies and Human Sciences*, 1(4), 85-95.

²⁶ Rajaendram, R. (2014). *Special needs learners face obstacles*. Retrieved January 3, 2020 from <https://www.thestar.com.my/news/education/2014/08/24/special-needs-learners-face-obstacles>

²⁷ Teng, K. Y. (2016). *Contributions of Inclusive Education Programme, Teachers' Attitudes and Efficacy on Social Skills Among Students with Autism Spectrum Disorder*. Unpublished doctoral dissertation, Universiti Teknologi Malaysia, Malaysia.

²⁸ Teng, K. Y. (2016). *Contributions of Inclusive Education Programme, Teachers' Attitudes and Efficacy on Social Skills Among Students with Autism Spectrum Disorder*. Unpublished doctoral dissertation, Universiti Teknologi Malaysia, Malaysia.

²⁹ Teng, K. Y. (2016). *Contributions of Inclusive Education Programme, Teachers' Attitudes and Efficacy on Social Skills Among Students with Autism Spectrum Disorder*. Unpublished doctoral dissertation, Universiti Teknologi Malaysia, Malaysia.

³⁰ Ministry of Education (MOE). (2013a). *Garis Panduan Program Pendidikan Inklusif Murid Berkeperluan Khas (Edisi Percubaan)*. Bahagian Pendidikan Khas, Putrajaya: Malaysian Ministry of Education.

example in term of 'assessment'. The same assessment and evaluation will be given to the students with special needs and normal students and as a consequence, it contributes to poor examination results among students with special needs.³¹

Even though many efforts have been taken by the Malaysian government to provide Inclusive Education for children with disabilities but it is still not been fully practised since there are two systems of education in Malaysia which are regular system for normal students and students with mild disabilities and special education system for students with moderate, severe and profound disabilities.³² Therefore, it shows that Inclusive Education cannot be fully implemented due to the dual system that has been practised in Malaysia.

CURRENT LAWS AND POLICIES REGARDING EDUCATION FOR CHILDREN WITH DISABILITIES IN MALAYSIA

FEDERAL CONSTITUTION

The Federal Constitution of Malaysia is the highest law of the land. This supremacy concept has been laid down in its Article 4 in which any law which has been made by Parliament which is inconsistent with the Federal Constitution will be considered as void.³³ For children with disabilities, Article 8 and Article 12 are related to their educational right. Article 8 provides that "all persons are equal before the law and entitled to the equal protection of the law".³⁴ Article 8 further provides that "there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under public authority or in the administration of any law relating to acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment".³⁵ According to Baqatuyan, even though Article 8 of the Federal Constitution provides for equality before the law but there is no constitutional provision on discrimination of PwDs.

Article 12 of the Federal Constitution provides the citizen's right in respect of education. Article 12 read as follows: "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".³⁶ However, this article does not specifically mention a prohibition against discrimination regarding the admission of children with disabilities to educational institutions.³⁷ Besides, if the children with disabilities fail to meet the criteria set by Ministry of Education, they can be denied to be admitted into Special Education Programme, therefore it shows that the educational right of children with disabilities is still not been fully protected by the Federal Constitution.

PERSONS WITH DISABILITIES ACT 2008

The Persons with Disabilities Act was enacted by the Parliament in 2007 and come into force in 2008. This Act has been enacted to implement the United Nations Convention on the Rights of Persons with Disabilities in which Malaysia is a state party. Section 28 of this 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 equal basis with persons or children without disabilities, including vocational training and lifelong learning".³⁸

Based on Section 28, children with disabilities should be given education on an equal basis with normal students and they should not be excluded from general education because of their status as disabled persons. However, since the guideline that has been provided by Ministry of Education for the children with disabilities to admitted into Special Education Programme, the term 'on the equal basis' as provided by Section 28 is missing. Furthermore, according to Malaysian Bar, Persons with Disabilities Act 2008 is not effective since it lacks provisions that prohibit discrimination against the disabled person and there are no provisions that provide a penalty for parties who contravene this Act.³⁹ Besides, The Harapan OKU Law Reform Group describes this Act as "toothless tiger" due to lack of enforcement provisions and punitive action for non-compliance of this Act and therefore should be amended to make it more effective.⁴⁰ Hence, the educational right of children with disabilities is not fully protected by the Persons With Disabilities Act 2008.

³¹ Teng, K. Y., Yeo, K. J., & Jaffri, H. (2014). Implementation of Inclusive Education Programme in Malaysia. *1st International Education Postgraduate Seminar (IEPS)*, 1-8.

³² Teng, K. Y., Yeo, K. J., & Jaffri, H. (2014). Implementation of Inclusive Education Programme in Malaysia. *1st International Education Postgraduate Seminar (IEPS)*, 1-8.

³³ Federal Constitution.

³⁴ Baqatuyan, S. M., Shamsul Khalil, S. A., Baharum, N. A., & Abu Hassan, N. (2016). Special Education for Children with Disabilities: A Review of the Current Policy and Practice in Malaysia. *Journal of Advanced Review on Scientific Research*, 25 (1), 1-10.

³⁵ Federal Constitution.

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³⁸ Persons with Disabilities Act 2008.

³⁹ Abdul Gafoor, A. F. (2019). *Persons with Disabilities Act needs review*. Retrieved January 3, 2020 from <https://www.thestar.com.my/opinion/letters/2019/09/20/persons-with-disabilities-act-needs-review>

⁴⁰ Amend 'toothless' act for the person with disabilities, urges group. Retrieved January 3, 2020 from <https://www.freemalaysiatoday.com/category/nation/2019/10/02/amend-toothless-act-for-persons-with-disabilities-urges-group/>

EDUCATION ACT 1996 AND REGULATIONS

Section 40 of the Education Act 1996 is related to the educational right of children with disabilities. This Section provides "The Minister shall provide special education in special schools established under paragraph 34(1)(b) or in such primary or secondary schools as the Minister deems expedient".⁴¹ It requires the Minister to provide special education for children with disabilities in special schools or designated primary and secondary schools in which he thinks convenient. However, the Education (Special Education) Regulations 1997 restricted the children with disabilities to be enrolled into those special schools or designated primary and secondary schools by providing only children with disabilities who are "educable" and are able "to manage themselves without help" can be admitted into those schools.⁴²

In 2013, the Education (Special Education) Regulations 1997 has been replaced by the Education (Special Education) Regulations 2013 due to its controversial requirements. The 2013 Regulation requires a 3 months probationary period for children with disabilities before they can be admitted into the Special Education Programme. However, this requirement is seen to have the same effect as previous controversial 1997 Regulations in which only children with disabilities who are "educable" are eligible to enrol into Special Education Programme.⁴³ Therefore, their educational right still not be fully protected under the Education Act 1996 and its Regulations.

MALAYSIAN PLAN OF ACTION FOR PERSONS WITH DISABILITIES

The Malaysian Plan of Action for Persons with Disabilities is in line with "Incheon Strategy" time and also in line with the 11th Malaysian Plan (RMK-11).⁴⁴ This National Plan sets out the strategies to implement the provisions of the Persons With Disabilities Act 2008 and includes strategies for persons with disabilities to advocacy, access to education, health services and others. Nevertheless, this National Plan is lacking full commitment from the parties involved since no timelines were given for the implementation of this policy and no clear ministries and departments should be responsible for each of the outcomes of this policy.⁴⁵ So, this policy is not easy to be executed due to these reasons and therefore, the educational right of children with disabilities cannot be protected effectively.

CONCLUSION

To conclude, the Malaysian government had shown its commitment to protecting PwDs through the laws enacted and the implementation of policies regarding PwDs. In term of educational right especially towards children with disabilities, it is not fully protected by the laws that have been enacted due to the reasons mentioned above. There are a lot of improvements that can be taken by the government to protect their educational right effectively. For Special Education Programme for children with disabilities, the government must provide a clear framework to manage this programme and increase the allocation so that better facilities can be provided to cater children with disabilities, more resources can be allocated and appropriate teaching materials can be prepared.

The government should amend Article 8 and Article 12 of the Federal Constitution to include the prohibition against discrimination on the ground of disability. Therefore, by having this constitutional protection, the right of PwDs can be protected efficiently. Besides, the Persons with Disabilities Act 2008 should also be amended to include provisions relating to prohibition on discrimination against the disabled person and punitive action for contravention of this Act. Besides, the Education Act 1996 and its Regulations can be revised to ease the enrollment of children with disabilities into Special Education Programme and to include parents and qualified medical officers as members of the Panel that endorse whether children with disabilities fit to be admitted into that programme. Furthermore, it is significant to formulate a legal framework to regulate special education for children with disabilities in Malaysia to preserve their educational rights since the current laws are not sufficient to protect their educational right.

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⁴¹ Education Act 1996.

⁴² Human Rights Commission of Malaysia. (2015). *The Right to Education for Children with Learning Disabilities: Focusing on Primary Education*. Kuala Lumpur: Human Rights Commission of Malaysia.

⁴³ Human Rights Commission of Malaysia. (2015). *The Right to Education for Children with Learning Disabilities: Focusing on Primary Education*. Kuala Lumpur: Human Rights Commission of Malaysia.

⁴⁴ Abdul Rahim, A., Abd Samad, N. A., Said, I., & W Seman, W. M. A. (2017). Malaysian Plan of Action for People with Disabilities 2016-2022: Way Forward. *UIA 2017 Seoul World Architects Congress*, 2.

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