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Malaysian Special Education Law: Integrating the Medical and Social Models of Disability

Nur Ezan Rahmat^{1*}, Muhammad Fikri Othman², Norazlina Abdul Aziz³, Sasipin Sukbunpant⁴

* Corresponding Author

¹ Faculty of Law, Universiti Teknologi MARA (UiTM), Selangor, Malaysia

² Department of Law, Universiti Teknologi MARA (UiTM) Cawangan Sarawak, Malaysia,

³ Faculty of Law, Universiti Teknologi MARA (UiTM), Selangor, Malaysia,

⁴ Department of Special Education, Chiangmai Rajabhat University, Chiangmai, Thailand

nurezan@uitm.edu.my, muhammad300@uitm.edu.my, noraz397@uitm.edu.my, ohsasipin@hotmail.com
Tel: 019-3317559

Abstract

The educational rights of children with disabilities in Malaysia are not sufficiently and effectively protected. There should be a specific law relating to special education for children with disabilities that integrates the Medical and Social Models of Disability to cover their educational rights better. This paper examines the effectiveness of law relating to special education in Malaysia. It proposes integrating the Medical and Social Model of Disabilities in formulating a special education law for children with disabilities in Malaysia. This research employs a library-based approach by analysing the related laws through legislation, journal articles and textbooks.

Keywords: Special Education Law; Educational Rights; Children with Disabilities; Models of Disability

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1.0 Introduction

Section 2 of the Persons with Disabilities Act 2008 defines Persons with Disabilities (PwDs) as those with "long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full participation in society". Maciver et al. (2019) define children with disabilities as "children with developmental problems such as visual impairment, hearing impairment, autism spectrum conditions, behavioural disorders and learning difficulties". In Malaysia, PwDs, especially children with disabilities, are the most vulnerable group. Their families and society constantly neglect them since children with disabilities are considered a burden (Tan et al., 2019). Therefore, to prevent them from being ignored and regarded as a burden to their families and society, education is essential for PwDs.

Education is vital to children with disabilities as it will enhance their confidence and ensure their future. Education plays an important role in preparing children with disabilities to read, write and make decisions (Abdul Nasir et al., 2016). United Nations Educational, Scientific and Cultural Organisation (UNESCO) stressed that education is a fundamental human right. Hence, there are many human rights instruments and declarations such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention

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on the Rights of Persons with Disabilities, the Jomtien World Declaration on Education for All and the Dakar Framework for Action recognise the importance of education in people's life.

In realising the importance of education, the Malaysian government also put much effort into providing educational rights to children with disabilities. According to Othman et al. (2022), the Malaysian government introduced the Zero Reject Policy in stages starting in 2019 to protect the educational rights of children with disabilities. Besides, more disabled-friendly facilities in schools are provided, and more special education teachers are offered to accommodate the needs of children with disabilities. Education for children with disabilities in Malaysia is provided under the Malaysian Education Blueprint 2013-2025. Under the Education Blueprint, children with disabilities are categorised as students with special education needs. The students with special education needs are further defined as "students with visual impairment, hearing impairment, learning disabilities, speech difficulties, multiple disabilities, Down's Syndrome, dyslexia and attention deficit hyperactivity disorder.

Even though the Malaysian government makes many efforts to provide educational rights for children with disabilities in Malaysia, many issues concerning special education affect their educational rights. The current laws related to special education for children with disabilities are scattered, hence many obstacles faced by the children to access equal educational opportunities as other normal children in Malaysia (Gan, 2019). Thus, although children with disabilities in Malaysia have been given educational rights, their educational rights are not fully protected.

The objectives of this paper are to examine the effectiveness of law relating to special education in Malaysia and to analyse the practice of the special education system in Malaysia. In addition, the objective of this paper is to identify the Models of Disability to understand the needs of children with disabilities better in order to propose the integration of the Medical and Social Models of Disability in formulating special education law for children with disabilities in Malaysia. The researchers give some recommendations to be considered by the Malaysian government to fully protect the educational rights of children with disabilities in Malaysia at the end of this paper.

2.0 Literature Review

2.1 Laws Relating to Special Education for Children with Disabilities in Malaysia

Baqutayan et al. (2016) explained that there are several laws which are relating to special education for children with disabilities in Malaysia, which are Article 8 and Article 12 of the Federal Constitution, Section 28 of the Persons with Disabilities Act 2008, Section 40 and Section 41 of the Education Act 1996 and the Education (Special Education) Regulations 2013. The right to education for every citizen in Malaysia 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) further provides "Except as 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...". Therefore, it shows that all citizens, including children with disabilities, have been provided educational rights by the Federal Constitution and should be able to access equal educational opportunities as other normal children.

Expressly, the educational rights of children with disabilities are provided under Section 28 of the Persons with Disabilities Act 2008. Section 28 states, "Persons with disabilities shall not be excluded from the 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...". It means that PwDs and children with disabilities have been given educational rights on an equal basis as other normal persons. Section 28 of the Persons with Disabilities Act 2008 is consistent with Article 12 and Article 8 of the Federal Constitution, which provides the right to education for everyone in Malaysia.

The Minister of Education is responsible for providing special education for children with disabilities in Malaysia. It can be found under Section 40 of the Education Act 1996, which 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". Section 41 of the Education Act 1996 further provides the power of the Minister to impose the duration and the curriculum of special education. Thus, special education in Malaysia is under the responsibility of the Minister of Education.

Based on the power given to the Minister of Education through Section 40 and Section 41 of the Education Act 1996, the Minister regulates the Education (Special Education) Regulations 2013. The Education (Special Education) Regulations 2013 consist of the requirement of students to attend a three-month probationary period under Regulation 4, suitability of the students to participate in special education, appeal, code of practise of special education, implementation of special education, the requirement of co-curricular activities and the duration of special education.

2.2 Special Education System in Malaysia

According to Othman and Rahmat (2020), the Ministry of Education manages special education in Malaysia. Three Special Education Programmes are offered to children with disabilities; Special Education School, Special Education Integration Programme, and Inclusive Education Programme. As of December 2021, the number of students enrolled in these programmes is 97,220 (Othman et al., 2022). Kurniati and Widayastono (2021) explained Special Education School is a programme which provides education for only children with one type of disability, such as learning disabilities, visual impairment and hearing impairment. For example, children with hearing impairment are placed in Special Education Schools for Hearing Impairments, children with visual impairment are placed in Special Education Schools

for Visual Impairments and children with learning disabilities are placed in Special Education Schools for Learning Disabilities. Currently, there are 28 primary Special Education Schools and six secondary Special Education Schools across the country (Buku Data Pendidikan Khas, 2021). The teaching and learning process for children with disabilities in Special Education Schools is based on Special Education Curriculum and Alternative Curricula such as essential reading and writing, unique and skill training curriculum, manipulation skills and others (Othman et al., 2022).

Based on Regulation 3 of Education (Special Education) Regulations 2013, Special Education Integration Programme is "An educational programme for a pupil with special educational needs which pupils only attend with special needs in a special class in a government school or government-aided school". It means that children with disabilities will study in a particular class in mainstream schools (Mottan, 2015). Children with disabilities in this programme will study in the least restrictive environment compared to the previous programme. They participated in most school activities with their normal peers (Othman et al., 2022).

Regulation 3 of Education (Special Education) Regulations 2013 also defines the Inclusive Education Programme as "An educational programme for a pupil with special educational needs which is attended by a pupil with special educational needs and other pupils in the same class in a government school or government-aided school". It means that children with disabilities and their normal peers will study in the same class as the mainstream curriculum. In this programme, children with disabilities can maximise the interaction between them and their other normal peers. For students' admission to the Inclusive Education Programme, the Ministry of Education rely on the Checklist for Inclusion Readiness and *Garis Panduan Program Pendidikan Inklusif Murid Berkeperluan Khas (Edisi Percubaan)* (Othman et al., 2022).

2.3 Models of Disability

In order to define and describe disability, the models of disability must be referred to, according to Md. Tah (2018), models of disability are a "framework of ideas used to make sense of phenomena and experience in the social worlds". Various perspectives of disability are considered to understand disability through the models of disability. The views of disability can change over time based on the cultural and social context (Francis, 2016). There are two famous models of disability used widely worldwide to conceptualise disability; the Medical Model and the Social Model of Disability.

The oldest model of disability is the Medical Model of Disability, also known as the Psycho-Medical Model. This model of disability was accepted widely in the late 19th century by western industrialised societies. It focuses on bodily abnormality, which causes disability or functional limitation in people. Hence, due to their disability, they must be treated to become normal by medical and psychological experts (Alias, 2016). PwDs must be isolated and treated to fix their disability due to their disability is caused by specified medical characteristics. Under the Medical Model of Disability, a disability is regarded as a disadvantage to someone and only by treating the disability can the disadvantage be eliminated. That is why this model of disability is sometimes called as 'individual personal tragedy' (Othman et al., 2022).

PwDs cannot make decisions under the Medical Model of Disability because they are regarded as someone who relies on financial support or charity-based programme. Besides, since this model of disability is widely accepted by many societies, most legislation and policies are based on the Medical Model of Disability (Md. Tah, 2018). Disability under this model is negatively defined and described because of the failure of their part of the body to function normally. So, the failure of the body part must be corrected by medical doctors or psychologists to make them normal (Retief & Letsosa, 2018).

As opposed to the previous model, according to Retief and Letsosa (2018), the Social Model of Disability defines disability as "a socially constructed disadvantage to PwDs, and these social conditions must be eliminated". Due to the critics of the Medical Model of Disability, the Social Model of Disability has been established and accepted by the British government, disability states and voluntary organisations (Barnes, 2011). Contrary to the previous model, which focuses on the failure of the body part of PwDs, the Social Model of Disability focuses on the social oppression they suffered. In other words, disability is the segregation through the treatment of society which restricts the life and social participation of PwDs (Md. Tah, 2018).

Hence, the main focus of the Social Model of Disability is to examine the barriers, including attitudinal, political, social, and economic barriers, which prevent PwDs from participating in society (Othman et al., 2022). Besides, the term 'impairment' and 'disability' have been differentiated under this model. Impairment is defined as "non-standard of the body which lacks part of or all limb, or having a defective limb, organ or mechanism of the body", while disability is defined as "disadvantage or restriction of activity caused by a contemporary social organisation which takes no or little account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities" (Goering, 2015). So, the impairment is only considered as nothing less than a description of someone's physical and should not be isolated and corrected. The main focus under the Social Model of Disability is society's attitude towards PwDs, which prevent them from fully participating in a community that considers the real meaning of disability.

3.0 Methodology

The researchers have adopted library-based and descriptive legal research. It is "an enquiry into legal concepts, values, principles and existing legal texts such as statutes, case laws etc." (Kharel, 2018). Through descriptive legal research, the information from journal articles, textbooks and encyclopedias related to special education for children with disabilities in Malaysia have been extracted to understand better the issues discussed in this paper. The researchers also evaluated the current laws related to special education for

children with disabilities in Malaysia to know the educational rights of the children. The content analysis has been carried out to get the findings for this paper.

4.0 Discussion and Findings

Even though there are several laws relating to special education for children with disabilities in Malaysia, the laws are insufficient and inefficient in protecting their educational rights. According to Baqutayan et al. (2016) and Othman et al. (2022), the rules relating to special education in Malaysia for children with disabilities are too general and scattered. Article 8 and Article 12 of the Federal Constitution does not directly prohibit discrimination towards disability; hence the regulations that violate the educational rights of children with disabilities can still be implemented (Baqutayan et al., 2016). For example, the requirement of children with disabilities to undergo a three-month probationary period for the student's enrolment into the Special Education Programme as provided by Regulation 4 of the Education (Special Education) Regulations 2013 is still being relied upon by the Ministry of Education even though it is a violation towards children with disabilities (Malaysian Human Rights Commission, 2015). In addition, the Persons with Disabilities 2008 does not effectively protect the rights of children with disabilities due to the lack of enforcement and punishment provisions. So, Section 28 of the Act, which requires children with disabilities to be given equal educational opportunities as other normal children, is not enforceable (Othman et al., 2022). Hence, the spirit of Section 28 of the Act cannot be fully implemented due to the nature of the Act, which lacks enforcement and punishment provisions.

Due to the laws related to special education for children with disabilities being too general and scattered, there are many issues concerning the special education system in Malaysia. The facilities provided to cater to the needs of children with disabilities in schools are disappointing. Not all schools have the required facilities, such as ramps, handrails and accessible toilets (Chin, 2020). Furthermore, special education in Malaysia lacks facilities and human resources. Children with disabilities with different competency levels are put in the same class under the Special Education Integration Programme due to these problems. Hence, it will affect the teaching and learning process because the teachers have issues delivering the lesson to them (Othman & Rahmat, 2020).

The Medical Model of Disability has been criticised for its negative definition and description of a disability. They are considered helpless and rely on a charity-based programme or financial support (Md. Tah & Mokhtar 2017). Besides, the person's social gradients of PwDs have been omitted by this model due to its failure to consider their human qualities (Othman et al., 2022). Due to the suggestion made by the Medical Model of Disability, the society expressed their unwelcome reception toward PwDs due to their disability status. Hence, PwDs feel that they are unwanted and excluded by society.

Not to mention, too much reliance on the Social Model of Disability towards barriers built by society, making this model always condemned by many researchers. Due to its focus on the social barriers, the Social Model of Disability fails to consider the 'identity' of an individual dealing with the 'environment' that caused their disability (Md. Tah, 2018). Both Medical and Social Models of Disability must be considered to provide a better understanding towards PwDs and children with disabilities. This is because both models have their strengths and weaknesses; therefore, integrating both models of disability will enhance their quality of life, especially their educational rights. PwDs and children with disabilities must not only be cured for them to become normal but the social barriers that restrict their full participation in society must be removed (Othman et al., 2022).

5.0 Conclusion and Recommendations

The current law in Malaysia either emphasises the Social Model or the Medical Model, which makes them insufficient and ineffective in protecting the PwDs in terms of education. Too much reliance on the Social Model of Disability towards barriers built by society makes this model always condemned by many researchers. Due to its focus on the social walls, the Social Model of Disability fails to consider the 'identity' of an individual dealing with the 'environment' that caused their disability (Md. Tah, 2018). Both Medical and Social Models of Disability should be considered to provide a better understanding towards PwDs and children with disabilities. Both models have their strengths and weaknesses; therefore, integrating both models of disability will enhance the quality of life, especially their educational rights. PwDs and children with disabilities must not only be cured for them to become normal but the social barriers that restrict their full participation in society must be removed (Othman et al., 2022). It is recommended that the findings of this research will open ways to improve the law, which focuses on special education by integrating the scattered laws and upholding the integration of both models of disability. Besides, the government must legislate a law that specifically protects the educational rights of children with disabilities in Malaysia.

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Paper Contribution to Related Field of Study

The findings of this research will help the Malaysian government and policymakers to enact a specific law which protects the educational rights of children with disabilities and promotes equal educational opportunity among Malaysian citizens. In addition, the researchers

believe that children with disabilities, their families and society will benefit from this research as they are no longer being left behind due to their disability status.

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