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Legal Implication On The Concept Of In Loco Parentis To The Teaching Profession And Students

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Abstract

Nowadays, children spend a lot of time in school. Teachers are the ones who take on the role of taking care of children in school when they become students. The relationship between teacher and student is a special and sacred relationship. In the legal context, the relationship between teacher and student is explained in the concept of *in loco parentis.* Teachers are considered as surrogate parents when children are in school. As surrogate parents, the law places great responsibility on teachers. Therefore, this paper aims to explain the concept of *in loco parentis* from a legal point of view in the context of the relationship between teachers and students. In addition, this paper will analyze the impact of *in loco parentis* relationships on the teaching profession, particularly from the aspect of the role and responsibilities of teachers as surrogate parents. To achieve this objective, the qualitative method is used in this paper. Data collection was done using primary and secondary sources. This paper finds that the concept of *in loco parentis* is indeed recognized in the relationship between teachers and students in Malaysia. This concept emphasizes the responsibility of teachers as surrogate parents who should act and take appropriate measures to look after the welfare of students. Any action or decision that could be detrimental to students can be considered a violation of the concept of *in loco parentis* and can amount to a legal action. Consequently, teachers should be aware of their roles and responsibilities under the concept of *in loco parentis* so that they are not subject to any action under the law. Moreover, dispute resolution using alternative settlement methods can be used to cater to the disputes besides encouraging negotiations among all parties.

Keywords: *in loco parentis*, law, student, teacher, teaching profession

Introduction

In an effort to produce a future generation that is well-balanced in terms of physical, emotional, spiritual, and intellectual temperament, educational institutions have worked

tirelessly based on the direction of the Malaysia Education Development Plan 2013-2025 and Malaysia Education Development Plan 2015-2025 (Higher Education). In addition, the government has introduced the Master Plan for the Development of Teacher Professionalism. Through this plan, the government hopes that the teaching profession can be strengthened and make the teaching career a professional and main career of choice. In regards to this, the government has also developed a program known as Continuing Professional Development (CPD). The goal of CPD is to develop the potential and professional competencies of Education Service Officers (ESO) to be able to perform the role and responsibility of delivering continuous excellent and effective services, to produce holistic human capital in line with the National Education Philosophy (Ministry of Education Malaysia, 2017).

However, educational institutions are often vulnerable to various legal actions, particularly in terms of negligence. Disputes involving educational institutions are a normal occurrence in Malaysia. While common, these disputes involving educational institutions are often brought to court to obtain a decision. In Malaysia, as it stands, disputes involving educational institutions, whether teachers, institutional management, or the Malaysian government, continue to be brought to court, without the need to go through any formal out-of-court discussions. This affects the teachers, the management of the institution, and the Malaysian government, although the courts have not yet made a decision. In civil cases, particularly those involving the concept of *in loco parentis* and negligence, the parties sued are usually ESO; institutional management; ministries, and the Malaysian government.

In civil cases, among the actions that can be imposed on the ESO involved are warnings, fines, deferment of salary increment, salary reduction, demotion, and dismissal. Furthermore, educators' actions aimed at educating such as pinches and light blows are also brought to court as criminal cases. This not only tarnishes the reputation and the dignity of the educators, but it has far-reaching consequences, where even the career of the educators could also be affected if found guilty by the court.

Additionally, civil cases typically involve claims for damages from educational institutions. If an educational institution is found to be liable by the court, then the educational institution has to pay compensation to the winning party. This involves costs to be borne by the educational institutions, including the government. Not only that, but court proceedings can also be time-consuming, as well as costly. If the ESO and/or the management of an institution is being sued, then they have to wait for a relatively long period of time before the case can be decided. During this period, the teaching profession and/or the management of that institution will be disrupted. Sometimes, disciplinary action will be taken first by the party the institution involved against the ESO and/or the management of the institution, even if the court has not yet made any decisions.

The issue that arises is to what extent do the existing laws assist ESO and educational institutions in resolving disputes harmoniously while assisting in the survival of the teaching profession in the country? Nowadays, many disputes involving educational institutions are often reported in the press. This means that ESO and educational institutions are often vulnerable to disputes in the context of education, and these disputes are often taken to court. This has led to the teaching profession in a particular and educational institution, in general, being brought to court to answer disputes that have arisen. Many court decisions are also seen as not in favour of educational institutions and place great responsibility on educational institutions, particularly school institutions.

Methodology

This article adopted a pure legal research methodology by using qualitative analysis on the concept of *in loco parentis.* By using content analysis method, this article analysed the relevant literatures on the concept of *in loco parentis* and its implication. Analysis of content can range from simple word counting to thematic analysis or conceptual analysis. This paper also uses a qualitative method by highlighting the literature from within and outside the country guided by primary and secondary sources that discuss the issue of *in loco parentis*. According to Nirwana and Zulkifley (2016), primary data is original data or raw data obtained from primary sources. The method of critical analysis is also adopted for the purpose of analysis of data in this paper (Ramalinggam Rajamanickam et al., 2015; Ahmad Azam Mohd Shariff et al., 2019; Ramalinggam Rajamanickam et al., 2019).

Concept Of "In Loco Parentis"

The Latin phrase *in loco parentis* means "in the place or position of a parent" (Sweeton, N., & Davis, J., 2006). If viewed in the context of student affairs, this concept is understood as the university or school replaces the parent or guardian of the students (Nuss, 1996). The doctrine of *in loco parentis* can be defined as the duty of a teacher to a pupil by empowering the teacher to act in place of the parents in controlling the pupil's behavior in school (Tie Fatt Hee, 2004). According to Black's Law Dictionary, *in loco parentis* is defined as a person who plays the role of parent to children in the same way as the rights, duties, and responsibilities of a parent towards their children (Tripp, 1967). In addition, the Oxford Learner's Dictionary defines *in loco parentis* as someone who has the same responsibilities towards a child as those borne by a parent. The Cambridge Dictionary states that *in loco parentis* means someone who is responsible for the child while the child's parents are away. According to the Merriam-Webster Dictionary, *in loco parentis* can be defined as someone who replaces the parental role and regulation or supervision by an administrative body acting *in loco parentis*.

According to the Free Dictionary by Farlex, the doctrine of *in loco parentis* means that an individual assumes the rights, duties and responsibilities of parents towards children without going through any formal adoption procedure. In general, the doctrine of *in loco parentis* is a legal term that describes a relationship like a relationship between parent and child. This doctrine refers to an individual who assumes parental status and responsibility for another individual, without accepting the child as an adopted child.

From a historical perspective, there was a modification in the 1960s and 1970s that was seen as a moment of fall of the concept of *in loco parentis* (Nuss, 1996). Although the concept has changed dramatically, the perception that this concept is extinct is untrue and unproven (Sweeton, N. & Davis, J., 2006). Currently, school children and their parents have clear expectations about the role that educators should play that reflect the clear nature of *in loco parentis*. *In loco parentis* is not a trademark of a dysfunctional era, it is a concept that is constantly evolving. For many generations of students in schools, the concept of *in loco parentis* should be considered as a pure effort to educate a positive, good, and intact identity in each of them.

Debates can occur about the level of parental involvement in school affairs, *yet in loco parentis* becomes an element of the practice of pupil-related affairs. The root phrase for *in loco parentis* exists more critically in the education system in the United States. This is because the universities in the United States make their models according to institutions, such as Oxford and Cambridge. At the time, institutions such as Oxford and Cambridge intended to combine

living and learning environments (Edwards & Sweeton, 2000). Residential dormitories implement strict supervision by the faculty to ensure the general well-being of their students. This focus became the starting point in the academic and character development contexts adapted in the newly formed U.S. universities that were considered fundamental to the context *in loco parentis* (Nuss, 1996).

The concept of *in loco parentis* is recognized in the relationship between teachers and students in Malaysia. The application of this concept emphasizes the responsibility of teachers as surrogate parents who should act and take appropriate measures to look after the welfare of students. According to Howe and Strauss (2003), the new millennial generation is characterized as closely related to their parents, positive and progressive in thinking, team-oriented and community-focused, and insisting on a peaceful and controlled environment (Howe and Strauss 2003). The demographic direction of this generation will affect *in loco parentis*. With a stronger parent-child relationship, it is reasonable to conclude that parental participation in a student's university experience will increase. The lifestyle of a normal student who was previously autonomous may turn into a partnership. Furthermore, hopes for a safe and controlled environment can increase parental concern and involvement.

If the goals and mission of the school depend on the skills and ingenuity of the principal, the teacher is central to the realization of those goals. In addition to academic activities, the school should be seen as a second home for students. Teachers play an important role in ensuring that students in school have fun learning. Therefore, the teacher must care, act as an advisor, and moreover, play the role of a parent to the child. Teachers need experience and skills in various fields such as psychology, sociology, and human relations are also supported by various theories of children to function effectively. Otherwise, the doctrine of *in loco parentis* will be too great to use. Since the challenges of the teaching profession are enormous based on the doctrine of *in loco parentis*, then teachers need continuous on-the-job training to cope with and keep abreast of developments on how to handle their students (Hall & Manins, 2001). Indeed, the relationship built between a teacher and a student is a legal relationship based on the concept or doctrine of *in loco parentis*.

Therefore, *in loco parentis* has a huge impact on the teaching profession. This means that the root or foundation of education that educates using the principles of parenting towards the beloved students is very helpful to the education system itself even though it is seen to start in schools. The doctrine of *in loco parentis* still has a strong influence on schools and institutions of higher learning. Parents who are seen to adopt more traditional cultures of the past, maintain a strong influence on the lives of their children and seem to view these educational institutions as a substitute for parents who are at home (Sweeton, N., & Davis, J., 2006).

The nature of parenting toward students has a positive impact not only on students, but also on the school, headmasters, teachers, and staff in the school itself. In fact, parents also feel happy if their children always feel safe while at school. The health aspect is also very important in this regard. Teachers in schools must also ensure that students are always healthy and take care of their health as best as possible. If there are sick students, then medical treatment should be given accordingly. Every human being has the right to seek medical treatment if necessary. Not only that, but it is also important to ensure that one's autonomy when making decisions about medical treatment must be respected (Zahir et al. 2021; Zainudin et al. 2021). In addition, every individual has the right to health care and the right to seek medical treatment according to Zahir et al. (Zahir et al. 2019a; Zahir et al. 2019b). Every individual has a voice to express freedom in relation to their medical treatment (Zahir et al. 2017a; Zahir et al. 2017b; Zahir, 2017c; Zahir et al., 2019a).

Thus, every student and teacher is also entitled to medical treatment and good health care. From the point of view of *in loco parentis*, the nature of parenting that cares for and protects children from danger, including matters related to health and safety should be practiced by teachers while at school. For example, when a student falls while playing football on the school field, the teacher should immediately seek help for the safety and health of the student. If the student is injured, then the student must be treated. The student's parents must be informed about what happened at this school. The student should be sent to a clinic or hospital if needed. However, before a teacher wants to send a student to a clinic or hospital, teachers need to contact the student's parents first to inform their child is ill (Sistem Guru Online, 2019). Teachers can request the parents to take their child to be sent to the clinic. If the student's parents are unable to attend, the teacher must seek permission from the student's parents to take them to the clinic. Verbal or written permission is required (Sistem Guru Online, 2019).

Therefore, it is clear that the concept of *in loco parentis* is a crucial concept that regulate the relationship between teachers and students. This concept is also applicable to all the officers in the education system known as ESO as well as to the educational institutions.

Legal Conflict Under The Concept Of In Loco Parentis: Analysis Of Cases

The relationship between teachers and pupils or students is based on legal principles that place the teacher as "in loco parentis" to the pupils in their care and control. Therefore, teachers are considered parents to students while students are in school. Teachers are the legal guardians of a student while their students are in school. Teachers replace the role of parents while their children are in school. As such, teachers must always be careful and take reasonable and prudent steps to prevent untoward incidences from happening to their students, especially in the classroom. This principle was clearly raised in several court decisions such as *Kerajaan Malaysia v Jumat Bin Mahmud & Anor* [1977] 2 MLJ 103; *Zazlin Zahira Haji Kamarulzaman & Anor v Louis Marie Nuebe Rt Ambrose a/l J Ambrose & Ors* [1994] MLJU 35; [1994] 4 CLJ 637; *Mohamed Raihan bin Ibrahim & Anor v Kerajaan Malaysia & Anor* [1981] 2 MLJ 27; and *Muhammad Muhaimin Yauza & Ors v JK Maizatulniza Mat Jais & Ors* [2016] 8 CLJ 267. All these cases involve lawsuits taken by parents representing students against school institutions whether against teachers, principals/headmasters, district education directors, the Ministry of Education Malaysia, and the Government of Malaysia.

In terms of civil law, legal action is usually taken against teachers/instructors and educational institutions based on negligence. Negligence means a breach of duty of care by one person against another. In the event of failure or negligence in carrying out the duty of care resulting in loss or injury (lost or injury) to the person, then the person with the duty of care is liable to pay compensation to the person who suffered the loss or injury.

Given that the teacher is the legal guardian of the student in the school, then indeed the teacher has a duty of care to ensure the safety of the student in the school. But what is the degree of care that should be there? To determine whether the defendant (teacher) has failed to perform a breach of duty of care on the plaintiff (student), the court must adopt the following tests:

(i) whether the risk of injury to the plaintiff can be foreseeable (foreseeability test)?; and
(ii) whether the defendant (teacher/school) has taken reasonable steps to protect the plaintiff from the risk of such injury?

The landmark case that discusses disputes involving educational institutions is the case of the *Kerajaan Malaysia v Jumat Bin Mahmud & Anor* [1977] 2 ML J 103. In this case, the

Plaintiff (victim) was an 11 years old pupil. The incident happened at Dato Kiana Maamor School, Jalan Range, Seremban, Negeri Sembilan while in class (there were 40 students). The teacher on duty at the time of the incident was Mrs. Kenny. In this case, a classmate of the Plaintiff, namely Azmi bin Manan (perpetrator) had poked a sharp pin into the victim's thigh causing the victim to turn backwards and stab his right eye with the tip of a sharp pencil held by the perpetrator. As a result of the incident, the victim lost his right eye as the eye had to be removed and discarded. Plaintiff, through his father, filed a suit against the Government of Malaysia and sought damages for the injuries suffered by Plaintiff. During the proceedings in the High Court, Plaintiff won the case. The court agreed with Plaintiff's argument that the form teacher (Mrs. Kenny) did not make adequate or reasonable preparations, to result in Plaintiff suffering injuries while in the class. The Malaysian Government, dissatisfied with this decision, appealed to the Federal Court. The case was tried by The Honourable Tun Suffian LP, Federal Court Judge, The Honourable Raja Azlan Shah, and Federal Court judge, The Honourable Wan Suleiman on 14 April 1977. The issue debated in this case is that the court should assess whether the risk of injury that occurred to the plaintiff can be reasonably foreseeable or otherwise before determining the Defendant has committed negligence (by not making adequate supervision at the time of the incident). The Federal Court ruled that the risk of injury suffered by Plaintiff may have been predictable. However, we cannot relate by speculating that the lack of supervision by the teacher has resulted in the injuries suffered by Plaintiff. The Court ruled that Defendant was not liable because the use of pencils was a common tool in learning.

Another case that can be referred to is the case of *Zazlin Zahira Haji Kamarulzaman & Anor v Louis Marie Nuebe Rt Ambrose a/l J Ambrose & Ors* [1994] MLJU 35; [1994] 4 CLJ 637. The incident happened in class 1T, Taman Selayang National School, Selayang, Selangor Darul Ehsan. The First Plaintiff was approximately 7 years old at the time of the incident. The Second Plaintiff was his father who also represented his minor son at the time of the incident. The First Defendant is a class teacher, while the Second Defendant is the Headmaster of the school and the Third Defendant is the Government of Malaysia. On the day of the incident, i.e. March 19, 1985, the First Defendant, a class teacher who also had skills as a music teacher, instructed the Plaintiff and 38 students in class 1T to play a game called "Gerabak Keretapi." All tables and chairs were arranged and instructions were given by the teacher. However, the First Plaintiff got out of line and fell. As a result, his arm was broken. His hand was operated on and there were scars. The Kuala Lumpur High Court Judge, the Honourable Judge Mokhtar Saidin in his judgment explained that the Defendants were found not to be negligent when the incident occurred. This is because the class attended by the First Plaintiff was a music class that was normally implemented based on the KBSR curriculum designed at that time. The music class is a regular class, and the use of equipment consists of cassettes and radios only. No any dangerous or risky equipment was used in the lesson.

In addition, the case of *Mohamed Raihan bin Ibrahim & Anor v Kerajaan Malaysia & Anor* [1981] 2 MLJ 27 is a relevant case to be discussed as this case has ruled that educators and educational institutions are liable. The incident, in this case, took place on 15 March 1971. Plaintiff's claim was for damages for injuries sustained by him during the gardening class and this claim was set aside while in the High Court by the Honourable Judge Ajaib Singh. Plaintiff was not satisfied with the decision of the High Court Judge, and he appealed to the Federal Court. In this case, Plaintiff was a pupil in Form One and attended Port Dickson National School. As a Form One student, he and other classmates are required to learn gardening skills. He had attended the gardening class three times and this unfortunate incident happened during the fourth time this class was held, which was on March 15, 1971. The incident occurred when the students were required to pick up gardening tools in the storage room by their teacher,

namely Ms. Hau Kan Yong. The teacher only instructed the students to take the gardening tools themselves to the gardening storage room without checking the condition of the tools and whether they are still good or safe to use while gardening. They are required to make crop boundaries. The boundaries are divided into two rows, and they are required to make three boundaries per row. They were divided into six groups. A group is required to make only one boundary. The Plaintiff/Appellant used a shovel to raise the boundary first, while his friend next to his boundary, Raja Aminuddin who was doing activities to raise the boundary, used a hoe of five feet long. Suddenly, Raja Aminuddin's hoe head hit the Plaintiff/Appellant's head. Plaintiff had sustained head injuries. At the time of the accident, Ms. Hau Kan Yong was sitting under a tree four yards away and not looking at her students during the gardening activity. The legal issue at stake here is whether a teacher has been alleged to have committed negligence when failing to monitor or supervise pupils' activities and failing to provide a reasonable explanation of the use of gardening tools to his pupils? The court ruled that the Respondents/Defendants had committed negligence due to failure to take precautionary and reasonable measures for the safety of the pupils during the gardening activities carried out. Teachers were also found to fail to check that gardening tools were safe before they could be used during gardening classes.

The case of *Chen Soon Lee v. Chong Voon Pin and Ors* [1966] 2 MLJ 264 can also be referred to when discussing the issue of teacher liability. The incident, in this case, took place over the weekend, i.e. on a Sunday. The Defendants consisted of the Principal of the school and two other teachers. At the request of the students themselves, their teachers accompanied the students on a picnic activity by the beach. While playing ball (watery area) in the sea, some students drowned, and resulted in a female student was drowning. The heirs of the deceased demanded damages against the Defendants and said they had been negligent in carrying out their responsibilities. The Honourable Judge Lee Hun Hoe made the decision based on the facts of the case which proved that the students are the ones who proposed to go for a picnic on the beach and requested that the teachers accompany them once. This action led the court to opine that these students were already wise in making their own decisions. If the teachers refuse the invitation of their students, the students will still go on a picnic on the beach. The activity was held on a Sunday and the Defendants had no obligation to provide adequate supervision to their students. In this case, no one realized that they were picnicking in a dangerous place.

The case of *Kho Kiew Teck & Anor v Haji Mohamad Syariff Affendy Matjeraie & Ors* [2014] 5 LNS 151 involved an incident that occurred on 5 January 2012 against the deceased, Kho Ying Qi, a Form 6 student at SMK Batu Lintang, Kuching, Sarawak. As usual, the deceased drove the car to school, and once at school, he was instructed by the principal to go home due to flooding at the school. On the way home, his car got stuck in a flash flood and the deceased got out of the car and headed toward the bus stop. On the way, he fell into a drain and was only found after 16 days. Plaintiff is the parent of the student and Defendant is the Principal, Ministry of Education Malaysia and Kuching South City Council. In this case, the court ruled that the Defendant was not liable. The deceased who was a Form 6 pupil was able to guard himself against any possible danger (Camkin Bishop [1941] 2 AER 713). The principal has taken reasonable steps to ensure the safety of school pupils and teachers (*Chen Soon Lee v Chong Voon Pin & Ors* [1966] 2 MLJ 264). During the incident, ordering the deceased to return home was the only reasonable measure that existed.

In addition, another case that can be used as an important reference is the case of *Sasitharan Paramaseevan v Lembaga Pengurusan Sekolah & Ors* [2014] 5 LNS 175. This claim was filed by Plaintiff against the Defendants because of an accident that had occurred at the school. Plaintiff's left eye was stabbed by a broken door handle in his classroom on 2 July

2010 at Sekolah Jenis Kebangsaan (Cina) Kay Sin, Perkampungan Machang Bubuk, Bukit Mertajam, Pulau Pinang. At the time of the incident, Plaintiff was eight years old and was a second-year student at the school. As a result of the accident, Plaintiff's left eye has become completely blind. In this case, the court found that the Defendants were liable for the losses suffered by the Plaintiff. The court awarded damages of RM170,070 with costs. This is because a reasonable person can predict that a broken and sharp door handle could result in injury to someone, especially the students. Thus, the actions of the Defendants who did nothing and left only the door holder in danger show that the Defendants were negligent.

Another case that can be referred to is the case of *Muhammad Muhaimin Yauza & Ors v JK Maizatulniza Mat Jais & Ors* [2016] 8 CLJ. The First Plaintiff is a student at Maktab Rendah Sains Mara Muadzam Shah (MRSM Muadzam Shah) and the Second and Third Plaintiffs are the father and mother of the First Plaintiff. On 3 November 2011, the First Plaintiff was given an injection of Anti Tetanus Toxoid (ATT) at the Muadzam Shah Jengka Maternal Health Clinic (health clinic) by the First Defendant, a nurse at the health clinic. As a result of the injection, the First Plaintiff suffered a permanent disability, i.e., the First Plaintiff was paralyzed from chest level down and was only able to move part of his left hand, right hand, and left finger. In this case, the First Defendant is a nurse at the Health Clinic, the Second Defendant is a medical officer at the Health Clinic, the Third Defendant is the Government of Malaysia, and the Fourth Defendant is the Principal of Maktab Rendah Sains Mara Muadzam Shah and the Fifth Defendant is Majlis Amanah Rakyat (employer). In this case, the court ruled that all Defendants were held 100% liable for the circumstances of the First Plaintiff. The First, Second, and Third Defendants were found liable at the rate of 50%. The Fifth Defendant, always, is a statutory body that oversees/manages and has administrative powers over the Fourth Defendant and is a vicarious liability for the misconduct of the Fourth Defendant. Therefore, the Fourth and Fifth Defendants were found liable at the rate of 50%.

Dispute Resolution In Cases Involving The Concept Of In Loco Parentis: A Need For An Alternative Mechanism

When such cases are brought to court for resolution, many negative impacts will be received by the parties, more so by the educational institutions. It is common knowledge that court proceedings will take a long time, as cases filed in court are quite numerous. Furthermore, the lengthy court process will also be time-consuming. In terms of costs, the parties also have to incur high costs, starting with the cost of seeking legal advice on the case, the cost of appointing a lawyer, filing a case, and the cost of proving the case in court. Further disputes in court will end with a decision in favour of one party and against one party. This does not benefit the parties, and the reputation and image of the parties involved in the court will also be affected, as proceedings involving educational institutions are not closed proceedings. This means that when the proceedings are conducted in open court, the public can be present, and the media can cover the case.

Many jurisdictions in the world have turned to alternative dispute resolution, known as alternative dispute resolution (ADR) as a dispute resolution mechanism. Originally, ADR became an alternative mechanism in the world. Nowadays, ADR is considered as a more appropriate mechanism and is used as a major dispute resolution mechanism compared to courts in some jurisdictions in the world (Muhammad Hatta, Tengku Noor Azira Tengku Zainudin and Ramalinggam Rajamanickam, 2018).

In the Malaysian context, there are also cases that are trying to be resolved out of court. In one case, a suit was filed by a teenage boy and his father against a teacher as well as five other parties in connection with negligence allegedly committed by the female teacher resulting

in injury to him. The other five parties are the Malaysian Government, the Minister of Education, the Director General of Education Malaysia, the Director of the Education Department of the Federal Territory of Kuala Lumpur, and the school principal. In this case, the 19-year-old and her father as the plaintiff filed a suit on April 13, 2015, after alleging that the female teacher committed negligence and neglect towards the teenager while conducting co-curricular activities at the school on April 4, 2012. The plaintiff claimed that the teacher poured flammable liquid believed to be turpentine directly into the fire for cooking purposes and part of the flammable liquid splashed on the body and clothes of the teenager who was close to the fire. As a result of the spark, the teenager, who was then a Form 3 student at the school, suffered injuries to his body, including his face, hands, stomach, and thighs. In this case, both parties (Plaintiff and Defendant) agreed to settle the suit out of court and record the settlement of the agreement in court (Bernama, 2017). This means that alternative settlement methods have been used in reaching an agreement between the parties.

Indeed, in issues involving educational institutions in Malaysia, alternative methods of settlement should be first used before taking the dispute to court. Shanka & Thuo suggested that a mechanism be established to resolve the conflict in addition to the intervention process (Engdawork Birhanu Shanka & Mary Thuo, 2017). In addition, Salleh et al. suggested that an effective method of dealing with conflict in schools is by identifying the causes and appropriate measures to deal with it (Salleh, Mohamad Johdi and Adulpakdee, Apitree, 2012). In different contexts, Siew & Jones found that the best approach to resolving conflict in schools is through: negotiation and "coaching" based on relevant practices; taking into account and responding to needs and feelings; and taking a positive and professional attitude approach (Nyet Moi Siew & Scott Jones, 2018). Although previous studies have suggested conflict resolution measures in schools, there are still gaps in terms of legal dispute resolution mechanisms involving educational institutions. As such, this research will fill these gaps by analysing needs and proposing alternative dispute resolution mechanisms in schools.

The article entitled "The Need for a Fairer Final Stage in Special Education Dispute Resolution" suggests that before the hearing process is held to reach a decision, a mediation (mediation) be held between the school and parents before the proceedings. The purpose of mediation is to reach a win-win solution and not for one party to prove that he or she has a stronger case than the other party. Therefore, a solution can be reached based on tolerance and cooperation between the two parties. So, any solution will be more respected and will be achieved in a good way to satisfy the interests of all parties. Based on statistics, mediation shows a more positive effect. Previous studies have shown that mediation conducted in Pennsylvania and California showed that 86% and 93% reached an agreement between the parties involved in the dispute (Cope-Kasten, C., 2013).

In an article titled "Higher Education's Current State of Alternative Dispute Resolution Services for Students," the authors state that the use of ADR is seen as a more appropriate resolution mechanism for problem disputes between universities and students. Settlement through the ADR mechanism provides an opportunity for the parties involved to resolve the problems faced by considering aspects of confidentiality and process, as well as helping the parties find a win-win solution. This article also argues that dispute resolution through ADR would also show that the educational institution is able to use a more appropriate method that can directly protect the image of the stakeholders directly involved with the educational institution (Katz, N., & Kovack, L, 2016).

Due to the many negative impacts of dispute resolution in court, many jurisdictions in the world have turned to alternative dispute resolution (ADR) as a dispute resolution

mechanism. Originally, ADR became an alternative mechanism in the world. In the Malaysian context, although ADR exists, its application in cases involving educational institutions is still limited. ADR should be a key mechanism in resolving disputes involving educational institutions in Malaysia. At present, there is no specific discussion on ADR in cases involving educational institutions in Malaysia. Therefore, there is a huge gap that needs to be filled through this research.

Conclusion

In conclusion, if alternative dispute resolution mechanisms are introduced in resolving disputes involving educational institutions in Malaysia, then the viability and prestige of the education profession and related institutions can be preserved. In addition, out-of-court dispute resolution will encourage better resolution between the parties, as space and opportunity for discussion are given to both parties. This in turn benefits the parties, especially teachers and educational institutions, because they receive the opportunity to provide appropriate explanations to the other party. Good discussions can lead to good solutions. Thus, the costs to be paid by educators and educational institutions in cases involving claims for damages can also be well negotiated. Furthermore, dispute resolution using alternative settlement methods, such as mediation will encourage negotiations that will ultimately lead to a win-win situation.

Therefore, it is humbly suggested that the disputes between teacher (including educational institutions) and students, particularly involving he concept of *in loco parentis* must be settled out-of-court. The alternative disputes resolution mechanism must be actively introduced and used in these kind of cases as the relationship between teachers and students is a long term relationship and never ending.

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