

## **The Position Of Pupils As Children And The Responsibility Of Teachers In A Legal Context**

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### **Abstract**

The Education Act 1996 (Malaysia) (Malay: Akta Pendidikan 1996) uses the term “pupil” to describe a person who receives education or training in an educational institution in Malaysia. In this context, a pupil is a general term that can be used for anyone regardless of age. However, among pupils in educational institutions, there are categories of pupils that requires more consideration and attention by educational institutions. Among those categories are children as pupils. This being said, there are specific policies and laws, that provide additional protection and assistance to children. Therefore, an understanding of the law relating to children as pupils is of utmost importance, so that any action taken is in line with existing laws. This paper aims to explain the definition of a child according to Malaysian law. In addition, this paper further explains the important principles that revolve around children, that needs to be the main consideration of educational institutions in handling matters involving children. In order to achieve the outlined objectives, this paper uses a qualitative method with a purely legalistic approach, by focusing on content analysis techniques. Thus, this paper indicates that a child is someone under the age of 18 according to the Child Act 2001, which is in line with the Convention on Children at the international level. This paper also specifies that educational institutions have an obligation to ensure that the welfare of children as pupils is always preserved. For this purpose, any actions or decisions made by educational institutions, including educators, must be in the best interests of children as pupils. Therefore, this paper suggests that knowledge about child laws should be given to educational institutions, especially teachers who are directly involved in handling pupils who have the status of children.

**Keywords:** pupils, children, teacher, law, educational institutions, Malaysia

## **1. Introduction**

The term “pupil” used in the Education Act 1996 describes a person who receives education or training in an educational institution in Malaysia. Although the term “pupil” is used in general to anyone who receives education regardless of age, there is a category of pupils that needs to be given more attention by educational institutions where one of the intended categories is children as pupils. Therefore, the child as a pupil is always given extra care and protection by all concerned parties.

According to the 2020 Malaysian Child Statistics Report, the percentage of children is 28.3 percent of the 32.7 million Malaysian population, which is the total child population recorded at 9.24 people in 2020 (*Berita Sinar Harian*. 2021). These statistics show that children make up one-third of the total population of Malaysia, where they are part of the community that is the backbone of the country’s future (Norazla Abdul Wahab & Mohd Farok Mat Nor. 2018). Therefore, the Malaysian government is always sensitive and considerate of the interests and welfare of children.

Therefore, on 17 February 1995, Malaysia ratified the Convention on the Rights of the Child or Convention on the Rights of the Child (CRC) which focuses on the welfare of children in various aspects, namely, life, protection, development and participation so that children are always protected (Norhuda Salleh & Dzurizah Ibrahim. 2015). This is said because Malaysia always ensures that children’s rights are preserved and protected so that they can form a good generation in the future. Malaysia incorporated the main principles of the UNCRC namely non-discrimination, best interest of the child, the right to life, survival and development and participation, in its 2001 Child Act (Anita Abdul Rahim, Tengku Noor Azira Tengku Zainudin & Ramalingam Rajamanickam, 2015).

In relation to that, the aspect of necessities are the most important aspect that is considered in the welfare of children to preserve their rights. The provision of basic needs such as adequate food, drink, clothing, shelter, nurture and care is very important and necessary to ensure the well-being and prosperity of the child. In addition, children’s health care is also very important in their survival. In general, every patient has the right to decide what he or she wants to do to his or her body (Mohd Zamre Mohd Zahir et al., 2019a). Problems related to health are an important issue (Mohd Zamre Mohd Zahir et al., 2019b). Every individual has the right to medical care and health treatment (Mohd Zamre Mohd Zahir et al., 2021). Health problems are also very important in the life of a society (Tengku Noor Azira Tengku Zainudin et al., 2021). Thus, it is so important to protect the mental and physical health of individuals. Next, the protection aspect is to ensure that the safety of children is always maintained so that no persecution such as violence and exploitation against them occurs. The reasons why children are considered as a group that is very easily influenced by fraud is due to their immaturity and naivete, and are often easily deceived by the words of others. This is what causes their protection and safety to be easily compromised (Voice of Academia. 2011).

In addition, any new development aspect in education is very significant in terms of children’s education. This can ensure that children will receive a quality education to achieve their dreams and ambitions in the future. In this new era of globalization, education among children plays a very important role in ensuring development in their lives. Furthermore, the aspect of participation is to ensure that children’s views are always considered and taken seriously by the community, especially in matters related to children’s welfare. Children are also encouraged to participate in various activities organized in educational institutions or other Non-Governmental Organization bodies (Voice of Academia. 2011).

Children are a group that needs to be prioritized in society because they need more attention, so that children's rights are always safeguarded and protected. Hence, the government enacted various laws to ensure the welfare and interests of children are protected. The enactment of this law for children has given awareness to the community so that children's rights are always preserved and maintained.

## **2. Methodology**

This article adopted a qualitative approach. Qualitative approach is a suitable methodology for this article to explain the concept of children as pupils and the responsibility of teachers in ensure the best interest of the children are protected. Data for the article is collected through primary and secondary sources, especially statutes and cases. Data from the relevant sources are analyzed by using method of critical analysis (Ramalinggam Rajamanickam et al., 2015; Ahmad Azam Mohd Shariff et al., 2019; Ramalinggam Rajamanickam et al., 2019). This method is suitable to analyse the meaning of a child according to law and to what extent pupils can be considered as children. This method is also relevant to explain the responsibilities of teacher against the pupils by analysing relevant cases.

### **3. Definition Of Child**

The definition of a child varies according to legal provisions and public opinion. According to the *Kamus Dewan Edisi Keempat* (2005), a child means a young boy or girl who is usually not more than seven or eight years old. However, the government enforced the Child Act 2001 on 1 August 2002 to create a uniform law throughout the country related to child's affairs by combining three acts, namely, the Child Protection Act 1991, the Women and Girls Protection Act 1973 and the Juvenile Courts Act 1947. All three acts have been repealed pursuant to section 130 of the Child Act 2001 (Voice of Academia. 2011).

Section 2 of the Child Act 2001 (Act 611) defines a child as a person under the age of eighteen years. The Child Act 2001 maintains the definition of children stated in the previous Acts but amendments are only made so that there is no longer a specific age limit difference between children and young people (Sarirah Che Rose & Zuryati Mohamed Yusoff. 2014). In relation to that, Article 1 of the Convention on the Rights of the Child also defines a child as stated in the Child Act 2001, which is a person under the age of eighteen.

Additionally, in the case of *Public Prosecutor v Thevesh a/l Sashikumar and Another* [2020] 12 MLJ 603, the court applied the definition of child provided in section 2 of the Child Act 2001 and stated that the first respondent who is less than 18 years of age is a child for the purposes of the Child Act 2001. In addition, in the case of *Zuraimi Bachok v Public Prosecutor* [2013] 8 MLJ 512, the court applied the definition of section 2 of the Child Act 2001 and stated that children can be influenced easily, taught, and nurtured to testify because they cannot distinguish between reality and fantasy.

Although there were differences of opinion on the definition of children among the public before the enforcement of the Child Act 2001, now the dispute can be resolved. With the legal provisions protected in the Child Act 2001, as well as the Convention on the Rights of the Child, this can help the authorities make consistent and accurate decisions related to children in terms of interests, protection, welfare and children's rights.

### **4. Teachers' Responsibility To Pupils From The Perspective Of Child Law**

Children are one of the categories of pupils that have been stated in the Education Act 1996. Therefore, due protection and attention should be given to them, as children are very

susceptible to any injuries and accidents, which can be expected, or which happens by accident. The responsibility and duty to provide protection and regulation rests on the shoulders of the teachers at the educational institution attended by the child.

Teachers are among those who are close to children. As such, the law has placed a great responsibility on teachers to ensure that the welfare and well-being of children as pupils at school is always maintained.

In Malaysia, the main law that regulates the education system in the country is the Federal Constitution and is followed by other acts that have been enacted and approved by Parliament. The right to education for all citizens has been guaranteed under Article 12 of the Federal Constitution. According to the Article, no citizen can be excluded from getting any form of education either in public or private institutions. Accordingly, all children in Malaysia have the right to be given a proper education.

A teacher has a duty of care towards his pupils. According to the Common Law, the teacher must fulfill that responsibility by ensuring that the safety of the pupils is always in a satisfactory condition at all times (*Ricketts v Frith Borough Council* [1943] 2 All ER 629). This special relationship between teacher and pupils allows a teacher to always supervise his pupils from any risk of injury as long as they are under his / her control and care (*Government of Malaysia & Ors v Jumat bin Mahmud & Anor* [1977] 2 MLJ 103). The level of supervision that teachers need to provide to pupils was discussed by the judge in the case of *Richards v State of Victoria* [1969] VR 136 who stated that:

The duty of care owed by (the teacher) required only that he should take such measures as in all the circumstances were reasonable to prevent physical injury to (the pupil). This duty not being one to insure against injury, but to take reasonable care to prevent it, required no more than the taking of reasonable steps to protect the plaintiff against risks of injury which ex hypothesi (the teacher) should reasonably have foreseen.

This means that a teacher needs to carry out his / her responsibility and duty of care to his/ her pupils no matter where they are as long as they are under his care. He must also take reasonable steps to prevent any injury from happening to the pupils. In the case of *Mohamed Raihan bin Ibrahim & Anor v Government of Malaysia & Ors* [1982] CLJ 150, the Federal Court explained the supervision that teachers must provide by stating as follows:

It is settled law that a school teacher is under a duty to exercise supervision over his pupils when they are in the school premises, either in the classroom or the playground.

By referring to the judgment, it is clear that teachers have a duty of care that is not limited to the classroom. The task must be carried out all the time including when doing activities on the playground in the school area.

This principle was referred to again by Judge Wan Ahmad Farid in the case of *Kamaruddin bin Mat Nasir v Sahar Bannu bt Mohamad & Ors* [2020] MLJU 2559. In this case, the deceased, a 14-year-old pupil and child, died as a result of being hit by a handball goal post that had been damaged while playing football on his school field under the supervision of the first defendant who is a Physical and Health Education (PJK) teacher. The court found that there was a breach of duty of care on the part of the defendants for not disposing of the damaged goal post and failing to ensure that the school grounds were in a safe condition and free of any dangerous sports equipment. The court also determined that all the defendants are 100% responsible for the accident that befell the deceased leading to his death.

Judge Zainal Azman has also emphasized the principle of duty of care by a teacher towards his pupils in the case of *Ahmad Ikhwan bin Ahmad Fauzi (claiming through his father and friend representative Ahmad Fauzi bin Abdullah) v. Ahmad Safwan Hanim bin Mohd Fahimi and others* [2021] 7 MLJ 1. According to this case, the court has decided that all the defendants, including the warden on duty on the night of the incident, the Senior Student Affairs Assistant (PK HEM), the principal and the school chairman are responsible for the injuries of the plaintiff who is a ~~second standard~~ 14 years old (form 2) pupil at Sekolah Menengah Sains Sultan Mahmud, Kuala Terengganu who was bullied by his friends. The court also stated that they had failed to exercise their duty of care toward the plaintiff so that the bullying incident could happen.

The Child Act 2001 was enacted to ensure that the rights of children in Malaysia continue to be guaranteed (Tengku F. M. et al, 2012). According to the Act, children must be protected from any neglect, abuse, violence and exploitation (Department of Social Welfare, 2016). The Child Act 2001 does not provide a specific definition of 'child abuse' but section 17(1) of the Act has listed the circumstances that allow a child to be given care and protection. According to the section, among those conditions are:

- (a) There is a possibility that the child will be physically, emotionally and sexually harmed by the mother, father, guardian or family member.
- (b) The child begins to engage in unhealthy relationships as a result of neglect and lack of supervision by the parent or guardian.
- (c) The child's mother or father or guardian has failed to provide adequate food, clothing and shelter to the child.
- (d) The child experiences emotional stress as a result of a conflict with his or her mother or father or guardian resulting in a serious family relationship conflict.

The law places teachers as guardians and substitutes for the parents of their students while they are in educational institutions. This concept called 'loco parentis', requires teachers to always give priority to the safety and physical and emotional well-being of the pupils under their guidance (Joan F. G., 2021). As such, any form of neglect, abuse, violence and exploitation prohibited by law, especially those listed in the Child Act 2001 should be completely avoided.

A teacher has a great responsibility towards his/her pupils in the eyes of the law. Therefore, breach of this responsibility will cause the teacher to be punished according to the relevant acts. In the case of *Muhammad Adib Sufyan bin Azman v Public Prosecutor* [2019] 10 MLJ 475, the appellant who is a *tahfiz* teacher was sentenced to 15 years imprisonment and six whipping for the offense of having intercourse against the law of nature under section 377A of the Penal Code against the victim who also his pupil, a 13-year-old child at the time of the incident. The same example has been found in the case of *Public Prosecutor v Kamarul Azamin bin Mohamad* [2021] 8 MLJ 502. According to the facts of this case, the accused has been found guilty of the offense of inciting children to commit indecent acts under section 377E of the Penal Code. The accused, who was the teacher of the victim who was 11 years old at the time of the incident, put his hand on the victim's genitals and told the victim to hold his genitals. In the case of *Fadzil bin Sulaiman v. Public Prosecutor and another appeal* [2020] 12 MLJ 486, the court sentenced him to prison for 18 years and 11 whippings along with an order for counseling and police supervision for two years for sexual crimes under section 14( a) The Sexual Offenses Against Children Act 2017 read together with section 16(1) of the same Act as well as section 354 of the Penal Code. The accused, who is a teacher, sexually harassed six of his 12-year-old pupils at the school where he taught.

These cases clearly show that an teacher must always perform the duty of care towards their pupils by prioritizing safety and taking appropriate measures to prevent any unwanted accidents from happening. Further, these pupils must also be protected from any crime especially involving physical, emotional and sexual in line with the provisions of the law, as these pupils are a group of children that must be looked after and close attention to.

## **5. Conclusion**

All in all, we can conclude that a child's rights to education must be given more consideration and attention when it relates to their wellbeing. The enforcement of the Child Act 2001 is very beneficial and appropriate to avoid duplication in existing laws regarding children's affairs. In addition, the Convention on the Rights of the Child also emphasizes aspects such as the life, protection, development and participation of children to preserve the interests, welfare and rights of the children so that they are always protected.

Thus, in order to ensure that the welfare of children as pupils is always preserved, educational institutions must play a significant role in knowing and applying existing laws. In addition, educational institutions need to take into account, and consider the welfare of children as pupils in taking any decision or action so that there is no mistreatment or injustice against the child. Therefore, this paper suggests that educational institutions, especially teachers who guide and educate pupils, need to understand and comprehend child's law to benefit the children as such pupils.

## **Acknowledgement**

The author would like to express his appreciation to the Ministry of Higher Education (KPT) who provided research funds with the code FRGS/1/2020/SSIO/UKM/02/6 which helped in the production of this paper.

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