

Children In The Malaysian Entertainment Industry And Their Right To Education

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ABSTRACT

Regardless of the reasons and factors that encourage or force children to work, due to their age, physical development and vulnerability, unsuitable work and its condition can have adverse affect on children. There is concern that their right to education can be affected as their working hours operates within the same time children go to school. This study intends to look at the working condition of children in the show business in Malaysia and how has their right to education is affected and then being realised. Its objective is to describe and discuss the environment of the entertainment industry where children are working in the country generally, and to identify the basic legal principles governing minors and their involvement in the industry. The next focus is to identify significant problems in the protection of minors rights to education especially issues pertaining to their welfare. Using qualitative study based on library research, this study shows that law and policy reform; and legal enforcement is needed to fully protect children from any risk and harm. It also show that parents' role as a guardian of children's right is sometimes questionable. This study also indicates that in ensuring children's enjoyment of their basic right to education, the correct way forward is to adopt the rights based approach.

Key Words:working children; child protection; right to education.

INTRODUCTION

The development of a society depends largely on education. It allows individual to acquire various basic knowledge such as literacy and numeracy in order to function effectively in a society. For children, education is a fundamental right that promotes and allows the exercise and enjoyment of various other human rights such as the right to life, survival and development, non- discrimination, making the best interests of the child as primary concern and the right to participate. In today's world, children education can be disrupted and affected due to poverty, geographical factors, disability, and economics and social reasons. Working children in particular are at risk of being disadvantaged in education. Deprivation and disruption of education will impede children's acquisition of knowledge and skills that are vital for their development and true potential.

This study focuses on the side effect of working in entertainment industry on the realization of the right to education. It first explains the right to education and describes the working condition of children in the show business and to show the effect of their work on the realisation of their right to education. The other focus of this study is the principles governing minors and their involvement in the industry and to identify significant problems in the protection of minors rights to education. Based on library research, this study shows that law and policy reform; and legal enforcement is needed to fully protect children from any risk and harm.

THE RIGHT TO EDUCATION

The right to education is guaranteed in Islam and various international documents as well as the Malaysian legislation. The first revelation to the Prophet Muhammad pbuh is verses 1-5 from surah al-'Alaq underlines reading as a fundamental need in education. It shows that the key to knowledge is reading. Allah says to the effect in surah al-Tahrim verse 6.

'O you who believe, protect yourself and your family from the hell fire'

In one hadith narrated by IbnHubban:

'Allah will question every person who holds responsibility either he uphold or destroy it'

In another verse of surah al-Mujadalah, Allah promises higher rank for person with knowledge and education. There are also numbers of hadith emphasized on the importance of knowledge as the following;

In Sahih Muslim narrated from Abu Hurairah. a. the Prophet Muhammad pbuh said that whoever is in the process of searching knowledge, Allah will facilitate a way for him to heaven. From IbuMajah narrated by Anas bin Malik r.a., the Prophet Muhammad pbuh said that learning is obligatory for every Muslim. From the above verses from al-Quran and al-Hadith, it clearly shows the significance and advantages of knowledge in Islam.

Abdullah NasihUlwan in his book 'Children Education in Islam' has comprehensively underlined seven responsibilities of parents in children education. i) responsibility on iman education, ii) responsibility on moral education, iii) responsibility on physical education, iv) responsibility on intellectual education, v) responsibility on spiritual education, vi) responsibility on social education and vii) responsibility on sex education. Thus, it can be understood that the children deserve rights to education since birth and it is indeed responsibility of parents to provide such educational values to their children. Fundamental characteristics of an educator that consists of sincerity, piety, knowledgeable, forgiving and uphold responsibility is significant in ensuring the optimum result of the children education.

In international law, several instruments provides for the protection of the right to education. Article 26 of the Universal Declaration of Human Rights 1949 proclaimed that every human being has the right to education. It also declares that at the minimum, education shall be made free at the elementary and fundamental stages and that elementary education is compulsory.

The International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) in Article 13 provides the right of everyone to education. The realization of this right requires primary education to be made compulsory and available free to all. Other forms and level of education shall be made available and accessible. However, parents retain the liberty to choose school other than schools established by states for their children provided that the school meet the educational standard set out by states.

Further, the United Nation Convention on the Rights of the Child (UNCRC) adopted in 1989 in Article 28 spells out children's right to education. Member nations in declaring their recognition of the right of a child to education also acknowledge their responsibility to make primary education compulsory and free and parents have the right to choose the kind of education that shall be given to their children.

Note that the UDHR, ICESCR, and UNCRC all made it an obligation for the state to provide free and compulsory primary or elementary education. The rationale of making provision on compulsory education can be explained from the purpose and objective of education set out in the instruments.

Other treaties that reaffirmed the right to education includes Convention relating to the Status of Refugees (1951); UNESCO Convention against Discrimination in Education (1960); International Covenant on the Elimination of All Forms of Racial Discrimination (1965), Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention on the Protection of the Rights of All Migrant Workers and Members of their families (1990); and the Convention on the Rights of Persons with Disabilities (2006).

It is clearly stated in the UDHR that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. Education shall also promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further support the activities of the United Nations for the maintenance of peace. Founder of the ICESCR stated that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 29 of the UNCRC stated that States Parties agree that the education of the child shall be directed to:

“(a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.”

The ultimate objective of education is the full development and preparation of individual including his cognitive, emotional and affective domain and full realization of his true potential to enable a person to contribute to the society and be functional so that a civil society having full awareness, appreciation and

respect for the human rights of all members of the society; and the importance of peace and protection of the environment can be created and sustained. This can only be achieved if everyone is able to exercise and enjoy his right to education while states comply to the requirement in state obligation to provide the legal, administrative and institutional framework of education for the people as elucidated in the international treaties.

PROTECTION OF CHILDREN'S RIGHT TO EDUCATION IN MALAYSIA

Two main statutes govern the education system in Malaysia i.e. the Federal Constitution and the Education Act 1996. The Federal Constitution guarantees the right to education in Article 12 by providing protection against discrimination in the admission of students to public schools and the payment of fees. The Child Act 2001 however, went below expectation when it made no provision whatsoever to protect children's education despite claims that it was drafted with the spirit of the UNCRC. Under the Education Act 1996, the primary education is made compulsory in Malaysia, and has been provided for free since 2012. Before 2012 students are required to pay a minimal fee upon enrolment in primary and secondary school but free education is only available for the citizens.

Section 29A (2) of the Education Act 1996 requires a child who has attained the age of six years on the first day of January of the current school year to be enrolled as a pupil in a primary school and remains in a primary school for the duration of the compulsory education which is 6 years. It is the legal duty of the parents to enroll their children and keep them enrolled throughout the 5-7 years period. Violation of the provision can be punished with a fine of not more than five thousands ringgit or to an imprisonment of not more than six months or to both. In Malaysia, all public schools begin at 7.30 in the morning and end at 1.00 pm. Many schools run in two sessions, so in the evening school commence at 1.10 pm to 6.30 pm. Private schools however may have slightly different schooling time but all schools run during the day from Monday to Friday.

If children are working during the day, there is high possibility that they will miss school. If they do heavy job instead of light work even during weekends, it can affect their functionality during school hours or even for the day.

The next discussion will focus on how work and the entertainment industry can have negative effect on children's education.

CHILDREN IN ENTERTAINMENT INDUSTRY

From the experience of those who involved in this industry, to be a child actor in particular the children had to sacrifice more of their childhood life. This is because they will have a daily routine which is quite different from a normal child, for example if the child involves in filming she had to go through a long period of rehearsals for the scenes being filmed the next day. Other than that, during the film shooting day she had attend the scene earlier for costume fitting and adjustments as well as hours of tutoring from a on set teacher. Moreover, time is needed to do the hair and make up before she could be on the camera. All of these routines will be done repeatedly and very time consuming and of course it will be done not only during the weekend but also weekdays as film producer will have specific time limit to finish the film shoot. Sometimes they would have to live at the sets if the scene be done in a remote place. Besides, the child actor must also involve in publicity works such as magazine shoots, interviews, photo shoots and etc which will also be their regular activities as a child entertainer. As a result, the children health will get affected and for sure they will miss their schooling days.

The entertainment industry now has a tremendous influence on children in Malaysia. Previously, the musicians, movie stars, singers and other types of celebrity merely become an idol for children; nowadays they themselves excitingly want to be involved in the entertainment industry. Undoubtedly, the emergences of numerous reality-TV-shows have allured children to be part of the industry. While this promised lucrative return, it also exposes the children to different world, which is very challenging and need more sacrifice.

Normally, entertainment is a form of activity that holds the attention and interest of an audience, or gives pleasure and delight. It is a fun activity for those who have interest in it, but it may have negative effect to children if it becomes a routine work or task that requires full commitment from the children. This may extend to the health problem, privacy life, depriving their right to a proper education as well as their safety. It is emphasized that although entertainment industry represent many kinds of entertainment issues, particular focus is given to the local entertainment in TV shows, music and film industry that require prolong involvement of children, rather than ad-hoc participation in kids TV or one-off performance.

Recently in the Malaysian entertainment industry, the growing numbers of the children entertainer are apparent. The glamorous life and being well known to the public are among factors that have enticed them to join this industry. At some levels, they acquire even higher income as celebrity as compared to their parents' or guardian. As a result, they become too excited with the earnings and tend to neglect their education, which is more important for their future. Obviously,

whether they realize or not, they have been exploited by the adults, either by the industrial player or their guardian. Indeed, this scenario has infringed their basic rights as a child.

According to one of Malaysian leading actor and film producer, Aziz M Osman, from his experience as a child actor, the entertainment industry had disturbed his academic and education achievement. Fortunately, as he has passion in this industry, he was awarded several recognition awards since his childhood and finally became a successful actor and film producer. Realizing that the industry is very challenging, he warned parents not to take advantage over the children's interest and gift towards the industry and must always prioritize their children's welfare and best interest. The awareness and concern of Aziz over the child exploitation in this industry has prompted him to stop the kids TV series that he produced only for two seasons. He said that he was not able to continue the series because he felt sorry and guilty, because many children have started absent from school and abandoned their education to join his program.

The view of Aziz is very much commendable. He is giving advice based on his experience and he know very well the entertainment industry which is always unexpected, unstable and sometimes full of fantasy especially for children. It is also noted that at times, children can still do well and excel in their education even when they are actively engaged in entertainment work. Crystal Lee is a good example. She is only 11 years old and she is a successful actress with numerous achievement under her belt, including Best Actress at the Shanghai International Film Festival. Her good grade in academic also won her a scholarship. However, Crystal Lee is an exceptional case.

Although it is not wrong to allow the child to join the entertainment industry if he or she has interest in it, the parents and guardian must ensure that their right to education is not deprived. If the child received an offer as a film actor for example, parents and guardian must be selective on the terms of offer particularly, the play-role proposed-whether it involve act of violence etc. which may cause mentally and physically distress to the child, schedule of shooting-to consider whether it affect the child schooling period and time for the child to rest, payment- to ensure he or she is not under-paid and so on so forth.

Now, discussion continues with the legal framework governing children working in the entertainment industry.

LEGAL FRAMEWORK

In line with the Syariah perspective and the guiding principles of the UNCRC, the examination of the existing laws for the purpose of proposing key provision for the guidelines on protection of the educational interest of working

children in entertainment industry is significant. A proper and conclusive law is to be perceived so that working children in the entertainment industry would not be mistreated or exploited.

The term 'entertainment' under Section 1A of the Children and Young Persons (Employment) Act 1966 (Principal Act) that is to include any exhibition or performance, and a person is deemed to take part in an entertainment when such person is employed in or connected with such entertainment whether as a performer, stage hand or musician. It further defines 'public entertainment' as 'entertainment to which the public or any section of the public is admitted or in connection with which any charge, whether for admission or not, is made or at which any collection with which any charge, or subscription is received and includes performances for the making of films for public exhibition other than news films but does not include any entertainment given by the pupils of any school registered under the Education Act 1961 at or under the auspices of such school, or any entertainment promoted by a voluntary, social or welfare body which has been approved by the Director General.'

The Act imposed strict guidelines on the maximum number of days that a child or a young person is allowed to work, which is not more than six days in a period of seven consecutive days. The also Act prohibits a child from working between 8pm – 7am. A child is also required to have a rest of 30 minutes for every three consecutive hours with a maximum of six hours per day. A child is prohibited from working for more than seven hours, inclusive of the hours at school. However it is stated that this restriction does not apply to any child engaged in employment in any public entertainment. From our observation, the law gives more flexible working hours for children and young person working in entertainment industry. Hence, the children educational progression in school either public or private school would be so much affected. Without proper monitoring either from parents or school, it is doubtful whether the children have appropriately gained the required skills offered in the Malaysian main stream of educational system.

Section 7 of the Act provides that before an employer employed a child or a young person for the purpose of working in the entertainment business, the employer must first procure a license (with the prescribed restrictions and conditions) from the Director-General of Labour. Regulation 5 of the Third Schedule, provides that the said license must contain among others :

- (a) the maximum number of performances to be given in any one day or week;
- (b) the maximum number of performances to be given consecutively;
- (c) the hours of the day between which a child or young person shall not take part in a public performance;
- (d) that no performance shall exceed four hours in duration;

- (e) that a child or young person shall not take part in any performance which is dangerous to life, limb, health, safety or morals;
- (f) that a child or young person shall report in person or in writing to an Assistant State Director of Labour or a State Director of Labour when leaving the service of the present employer;
- (g) that a child or young person shall report to an Assistant State Director of Labour or a State Director of Labour in writing or in person when leaving the District or State and give the destination;
- (h) that a child or young person shall report arrival in any District to the nearest Labour Office in writing or in person; and
- (i) any other conditions or remarks.

The Director General may refuse to issue such license if he is in the opinion that the employment is dangerous to the life, limb, health, safety and morale of the child. Additional conditions may be imposed from time to time as he deems fit. Parents may appeal to that decision within 14 days from the date of the decision.

The law protects this working children to ensure that the employment is not dangerous to the life, limb or health, safety and morality of the child, the Minister may by order declare such employment to be an employment in which the child may be permitted to work. However the law fails to cite some examples or definitions as to what can be regarded as 'dangerous to the life, limb or health, safety and morality of the child'. From our observation, the Director General needs to be rightly advised and guided by a proper standard set of rules/ guidelines to assist him in imposing additional conditions he deems fit from time to time as prescribed under the Third Schedule. Any risks to health and morale of the child may indirectly affect their educational welfare and progress.

Hence there are serious justifications to persuade the Malaysian authority to better regulate children's involvement in the show business by adopting some practices from other jurisdictions especially regulation on educational rights and interest of these children.

Question remains on whether these obligations under Third Schedule have been complied with by the entertainment industry. No officer has been appointed by the authority to ensure periodical supervision and monitoring in ensuring that these children are not been mistreated or exploited in his or her education progression. It is very unlikely that there exist a standard monitoring body that monitors agents or employers in the show business. On the positive note, the legislator raised the amount of fine and penalty in case of any breach of the Act.

PRACTICE OF OTHER JURISDICTIONS

Children working in Queensland, Australia are governed by the Child Employment Act 2006 and Child Employment Regulation 2006. It emphasizes that the legislation protects children from being required to perform work that may be harmful to their health or safety, physical, mental, moral and social development of the child. It is highlighted that the law seeks to protect the education of the children and ensures that the work does not interfere with children's schooling. The law imposed for the industry player to obtain parents' consent and comply with the required number of hours for the child to be present at school.

Even though working children in entertainment industry are exempted by a number of the general provisions applicable to children working in other industries from those of working in the entertainment industry, the conditions imposed to the working children in the entertainment industry formed part of the legislations. Some of interesting provisions includes although no minimum age applies to children working in show business, the Child Employment Regulations 2006 stipulates on a greater supervisory conditions. It prescribed some restricted hours for school-aged or young children working in the entertainment industry where the hours are divided into permitted hours in recorded and in live entertainment. Further the law provides maximum working hours per day and maximum working days per week for a number of age groupings. Specific employer obligations are also part of the strict conditions of an employer to ensure the welfare of the children are not jeopardize including collection and travel arrangements, duty to take care of accommodation, food and drink, and amenities. Enforcement of these provisions shall be carried out by inspectors whose duty is to monitor, ensure compliance and investigate for any such contravention of the law.

In the United Kingdom, the law that governs children in employment includes Part II of the Children and Young Persons Act 1933 and Children and Young Persons Act 1963, Children (Performances) Regulations 1968, Children (Protection at Works) Regulations 1998 and Children (Performances) (Amendment) Regulations 2000. Some of the significant provisions that the law requires, among others, licence holder (person responsible for the production that a child is taking part) must provide an approved registered matron/chaperone to take care of the child's welfare at all times, including accommodation, travelling, food and drink, premise and other necessary arrangements during the course of employment. It highlighted that such licence shall not be granted if the local authority feel that the education of the child (as advised by the headmaster of the school) may suffer and of no proper supervision is provided by the licence holder as required under the law. If a longer period is required for the duration of employment (silent on the number of days), the licence holder must also provide a competent private tutor to teach the child for at least three hours on each day as would normally requires to attend school.

The existing Act is silent whether rehearsal time to be counted inclusive working hours. Furthermore, parents or matrons are not required to be presence with their child at all times on location. The law also does not lay down rules regarding the requirements of having a studio teacher or tutor if the authority feels it is important for the child's education learning process. Nor does the law require any report on the academic records and attendance of the child in question from the school as conditions in applying licenses.

CONCLUSION

The protection and realisation of the right to education requires all stakeholders to work hand in hand in concerted efforts, not in isolation. The authorities, parents, teachers, NGOs as well as the industry players must make education for children in entertainment industry as their top agenda. Parents most importantly, shall act as a knight in the shining armour to defend their children from any risk that may jeopardise their education. This however, will depend on the eco-system provided by the authority. If no regulation is in place to force industry player and parents to make the best interests of the child as their paramount consideration, children education will remain unprotected. There must be a specific mechanism to regulate and to govern children working in the entertainment industry so that everyone can be guided in their conduct especially when it comes to children welfare and education.

It is clear that the government should enact and impose comprehensive guidelines to protect the interest and welfare of working children in the entertainment industry by adopting practice of other jurisdictions and at the same time inculcating Syariah perspective on rights to education to formulate a balance in educational rights and interest of working children in the entertainment industry. For the purpose of strengthening the law, enforcement officer should be appointed by the authority whose duty is to supervise and monitor these children so that abuse, mistreatment and exploitation can be avoided.

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