

UNIVERSITI TEKNOLOGI MARA

**EXAMINING THE SOCIO-LEGAL
AND ETHICAL FRAMEWORK IN
PROTECTING CHILDREN WHEN
PARENTS AND DOCTORS
DISAGREE ON MEDICAL
TREATMENT IN MALAYSIA**

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ABSTRACT

Dealing with disagreement between parents and doctors on medical treatment for a child can be an ethically challenging moment in paediatric health care. Ethical and legal issues arise when the decisions made by parents or legal guardians are not in the best interest of a child. Although the definition of a child's best interest is broad, and there is no objective measure of what is best in many medical situations, it can be difficult to define or get agreement from all parties about what would be the most beneficial for a child. Nevertheless, the well-being of a child must be preserved at all times. At the moment, there is no definite law on the medical decision on behalf of the children, whom the treatment is being denied, particularly in life-saving treatment. This study analyses the underlying factors that contribute to the disagreement of the parents and the ethical aspect of parental autonomy in deciding on behalf of the children. The fundamental part of this research examines and compares the current Malaysian legal framework that relates to the decision-making process when parents and doctors disagree with the child's medical treatment with other countries, including England and Wales, Australia and Singapore. This study also looks into the law and policy that governed and protects the children from ill-treatment from either party. To answer the two-tier research questions, this research utilises the library-research method. Data were collected from primary legal sources and secondary resources to obtain the answers. This research concluded that there are no definite guidelines except in England and Wales when a disagreement between parents and doctors on a child's medical treatment is done. Finally, this study proposes a guideline on the decision-making process when such a situation occurs, specifically in Malaysia. The proposed guideline is developed based on the legal, ethical, and social analysis obtained from the findings.

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CHAPTER ONE

INTRODUCTION

1.1 Research Background

1.1.1 Decision-Making in Children

Decision-making respects the right to the autonomy of an individual. The heart of autonomy is to be able to plan how to wade through our lives. It gives the privilege to an individual in the self-determination of deciding what is best for them. In other words, the respect for autonomy is to accept a person, who has the right to hold views, make choices, and react based on personal values and beliefs (Entwistle et al., 2010). To value the principle of autonomy in medical means, we value the patient's rights by obtaining their consent before giving the treatment. Lord Keith, in the English case, *Airedale NHS Trust v Bland (1993) A. C. 857* had stated that:

“It is unlawful, so as to constitute both a tort and the crime of battery, to administer medical treatment to an adult who is conscious and of sound mind, without his consent.” ((1993) A.C. 857)

Several pertinent components under ethical guidelines were outlined by the Malaysian Medical Council (MMC) for medical practitioners to follow. The guideline of ‘Consent for Treatment of Patients by Registered Medical Practitioners’ explained precisely on consent. As such, article 8 listed eight criteria that need to be fulfilled for consent to be legally valid. One of the criteria stated that consent must be from a competent patient (Malaysia Medical Council, 2017). Meanwhile, the Mental Capacity Act (2005), under England and Wales jurisdiction, defined a competent patient as someone capable of making a decision for himself, understanding and maintaining the information related to the decision and being able to consider the information and communicate their decision.