

UNIVERSITI TEKNOLOGI MARA

**PROPOSING A COMPREHENSIVE
LEGAL FRAMEWORK OF SPECIAL
EDUCATION FOR CHILDREN WITH
DISABILITIES IN MALAYSIA**

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ABSTRACT

Education is essential to everyone, including children with disabilities. Education plays a vital role in their life since it will ensure their future, enable them to make decisions and allow them to fully participate in society. Even though the government has provided the right to education to every citizen, however, the educational rights of children with disabilities are not fully protected. There are problems with the current laws and regulations regarding the special education of children with disabilities in Malaysia, such as scattered and loopholes in the laws. For example, there are a few provisions that are very general in nature which are relating to special education law namely 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 objectives of this research are to examine the factors that contribute to the insufficiency of the laws relating to special education for children with disabilities in Malaysia, to analyse the practice of the laws relating to special education for children with disabilities in the United Kingdom, Singapore and Thailand, and to propose a comprehensive legal framework of special education for children with disabilities in Malaysia. This research is based on doctrinal analysis or library-based research through primary and secondary sources of law such as the Federal Constitution of Malaysia, the Persons with Disabilities Act 2008, the Education Act 1996, the Education (Special Education) Regulations 2013, case law, textbooks, and journals. Besides, this research is based on the data from semi-structured interviews conducted with selected special education teachers, welfare department officers from the Ministry of Women, Family and Community Development, relevant officers from the Ministry of Education, university experts in disability study and human rights, and parents of children with disabilities. In addition, observation has been conducted on four schools in Klang Valley to examine the teaching activities, diagnostic procedures, and school facilities. The research suggested that the current laws and regulations relating to special education for children with disabilities are insufficient in protecting their educational rights, hence directly affecting the special education sector in Malaysia. Besides, the research also suggested that there is a need for the government to enact a specific Act relating to special education for children with disabilities in Malaysia to fully protect their educational rights. It is hoped that the research can contribute to the improvement in protecting the educational rights of children with disabilities through the proposed comprehensive legal framework of special education for children with disabilities in Malaysia.

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CHAPTER ONE

INTRODUCTION

1.1 Background to the Research

Children with disabilities have always been neglected by society and regarded as a burden to their families. They are at higher risk of abuse, abandonment, and exploitation due to the social, economic, and cultural barriers often deny their rights to access equal services and participation in society.¹ A few cases in Malaysia proved that children with disabilities have been abused and abandoned. Firstly, the case of Firdaus Dullah, which has been reported by The Straits Times, regarding a disabled child found by immigration officials in the state severely malnourished and emaciated during their raid on illegal immigrants. The case that shocked the country on 21 June 2014 exposed that he was left alone by his mother without any food and found living in squalor, which caused him emotional pain and injury.² Secondly, the case of Bella, which has been reported by The Star regarding Rumah Bonda founder who abused and abandoned a Down Syndrome teenager named Bella between February and June 2021.³ Thirdly, the case which has been reported by the New Sarawak Tribune regarding a disabled child aged six years old was beaten to death by her mother's boyfriend in Sarawak in December 2022. Her body was then thrown into the bushes to hide her death.⁴ These cases showed that their capacities and abilities are underestimated by society while their needs are given low priority due to their disability status.⁵ Hence, to solve these problems, children with disabilities must be treated equally as other normal children. Their rights, especially educational rights, must be protected by the government to

¹ United Nations High Commissioner for Refugees, *Child Protection Issue Brief: Children with Disabilities* (2015) <<https://www.refworld.org/pdfid/55cc4a564.pdf>> accessed 28 April 2021.

² "Malaysian Teen Who was Found Severely Malnourished Now in Good Health", *The Straits Times* (Seremban, 25 July 2014) <<https://www.straitstimes.com/asia/se-asia/malaysian-teen-who-was-found-severely-malnourished-now-in-good-health>> accessed 24 October 2023.

³ Nurbaiti Hamdan, "Bella Case: Siti Bainun Gets 12 Years' Jail for Abusing Down Syndrome Teen", *The Star* (Kuala Lumpur, 3 May 2023) <<https://www.thestar.com.my/news/nation/2023/05/03/bella-case-siti-bainun-gets-12-years039-jail-for-abusing-down-syndrome-teen>> accessed 25 June 2023.

⁴ Lydia Aman, "Man Charged with Murder of 6-year-old Disabled Girl", *New Sarawak Tribune* (Kuching, 20 January 2023) <<https://www.newsarawaktribune.com.my/man-charged-with-murder-of-6-year-old-disabled-girl/>> accessed 25 June 2023.

⁵ United Nations International Children's Emergency Fund, *Promoting the Rights of Children with Disabilities* (2007), Innocenti Digest No. 13, p 17.