
MINORS IN THE ENTERTAINMENT INDUSTRY: THE NEED FOR A COMPREHENSIVE GUIDELINE IN MALAYSIA

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ABSTRACT

Child exploitation and manipulation in the entertainment industry are occurring in all parts of the world. Without express legal protection, working children in developed and developing countries alike are at risks of being poorly treated and denied the enjoyment of their basic rights. The purpose of this study is to show that there are serious justifications to persuade the Malaysian authority to better regulate children's involvement in the show business. It also demonstrates that the protection of minors in the entertainment industry should be guided by the principle of the best interest of the child. In line with the guiding principles of the United Nation Convention on the Rights of the Child and the Islamic point of view, this study suggests that a comprehensive guideline should be established. Reference to existing guidelines in other jurisdictions and the proposed key contents of the guidelines are also highlighted in this article.

KEYWORDS: 'working children'; 'child protection'; 'rights of the child'.

INTRODUCTION

Children are suppose to enjoy childhood and the rights that accompany the tender years in enabling them to fully develop and reach their potentials. Their life is considered sacred in Islam in which infanticide¹ and killings² are prohibited and both girls and boys are valued.³ The duty to protect children lies with the parents who are responsible to provide food and clothes,⁴ medical care and education while rejecting inappropriate forms of corporal punishment and all kinds of cruelty and abuse.⁵ From Islamic point of view, children should not be burdened with anything that could affect their growth⁶ and should be treated with mercy.⁷ Psychologically, children are

¹ Al- Quran, Surah Al- Isra', Verse 31.

² For instance when a daughter was born during the Dark Age. Al- Quran, Surah An- Nahl, Verse 57-59.

³ Al- Quran, Surah Asy- Syura , Verses 49- 50.

⁴ Al- Quran, Surah Al- Baqarah, Verse 233.

⁵ Zainah Almihdar. (2008) Human Rights Of Women And Children Under The Islamic Law Of Personal Status And Its Application In Saudi Arabia. *Muslim World Journal Of Human Rights* (5) 1, 8.

⁶ Abdul Aziz Al- Khayyat. (2008) Human Rights and Racial Discrimination in islam (Khalifa Ezzat & Heather Shaw trans). Dar Al Salam. 48.

⁷ Sahih al- Bukhari (8), 18.

entitled to pleasant names and to lead a dignified and secure life. These protections are also provided under the United Nations Convention on the Rights of the Child (CRC).

Despite our idealistic aspiration for children, there are instances where children have to work to help out family business or to gain some income to the extent of providing for families. Working children is a common phenomenon around the world especially third world and developing countries⁸ and Malaysia is no exception. Children are hired in many sectors particularly one that requires low skilled labors such as for domestic work, in the plantation and agriculture, small business, tourism, mining and manufacturing.⁹ In its gravest form, children become hard labors and subject to various form of abuse and degrading treatment.¹⁰ Working children are considered child labours when their work deprives them of childhood, potential and dignity and when the work is harmful to physical and mental development.¹¹

Several factors have influenced or forced children to work including poverty, family solidarity, opportunities, and failure of the education system. Although Malaysia is not listed as having prevalence of child labor by the International Labour Organisation (ILO) but there are reports on the contrary.¹² Here, children are mainly working in plantation, family business, and in entertainment industry. Children working in entertainment industry are the focus of this study. This study aims to show that there are serious justifications to persuade the Malaysian authority to improve the regulation on children's involvement in public entertainment industry. It also shows that the protection of minors in the entertainment industry should be guided by the principle of the best interest of the child. In line with the guiding principles of the United Nation Convention on the Rights of the Child and the Islamic point of view, this study suggests that a comprehensive guideline should be created. Existing guidelines in other jurisdictions ie, Australia and the United Kingdom are also referred to.

CHILDREN IN ENTERTAINMENT INDUSTRY

Entertainment industry is an interesting but challenging sector when it comes to reward, publicity, working hours and emotional hazards. It is commonly known that people working in entertainment industries especially as entertainers are the centre of attention and many of them enjoy certain degree of popularity. It is also known that children working in entertainment industry are exposed to various risks considering their young age and immaturity. Child actor, Mia Sara Nasuha Muhammad Ridghuan, 9 years old, started her acting career at the age of 4 was reported to have been easily influenced by her surroundings from the show business.¹³ Other child actors in Malaysia includes Rykarl Iskandar and Puteri Balqis Azizi, both 9 years old.

⁸ Divina Edralin, Child Labour in the Tourism Industry (2002) 5 (2) Notes on Business Education 1-6, 1.

⁹ ILO. (2013). Child labour: Sector and Topics. Retrieved from <http://www.ilo.org/ipec/areas/lang--en/index.htm>

¹⁰ ILO. Commercial Exploitation of Children. Retrieved from <<http://www.ilo.org/ipec/areas/CSEC/lang--en/index.htm>>

¹¹ ILO. What is Child Labour. Retrieved from <<http://www.ilo.org/ipec/facts/lang--en/index.htm>>

¹² Jason Motlagh. (2013). Palm Oil For The West, Exploitation For The Young Workers In Malaysia. Retrieved from <<http://www.theatlantic.com/international/archive/2013/04/palm-oil-for-the-west-exploitation-for-young-workers-in-malaysia/274769/>>

¹³ Mia Sara Mudah Didampingi. (16/4/2013) Retrieved from <http://www.hmetro.com.my/articles/MiaSaramudahdidampingi/Article>

There is a risk of children being hired illegally or without valid contract and when there is a contract entered into on behalf of the children, they will be forced to honour the contract since they may not know the effect or the consequence of the agreement. It is worse when a contract or agreement was drafted without having the best interests of the child being the paramount consideration.¹⁴

There is also issue related to the child earning. Who is the rightful owner of the earning or can the parents retain the right over the earning and dispose them as they wish? On the basis that parents act as managers for the children and their responsibility to provide for the children, there is no law to stop parents from controlling or spending the earnings.¹⁵

The other risks are exploitation, physical and psychological risks. Children can be easily exploitation since they cannot defend themselves or has no knowledge about the exploitation. This can happen when parties involve do not make the best interests of the child as the basis to guide their work. Sometimes, parents are willing to let their children exploited so long as it serves parent own aspiration or personal gain. In an extreme case of exploitation and psychological risks, a parent who allowed a magazine to use her nude child photo was held to have the right to waive the child privacy.¹⁶

Deprivation of education is another risk. Since children may involved in projects that requires long hours of work or work during odd hours, their education can be affected.¹⁷ The interference with the schooling can occur when the hours of work deprive them of the opportunity to attend school; or consequently making them leave school before the end of the mandatory period; or when they attend school while having to work long or excessive hours. The interference can amount to child labour when coupled with the harmful nature of the work for example when the work is mentally, physically, socially or morally dangerous.¹⁸

ISSUES AND CHALLENGES IN MALAYSIA

Generally, children who wish to be involved directly in the entertainment industry must obtain approval from the Director General of Trade of Ministry of Human Resource. The general application of domestic framework in Malaysia have exempted the entertainment industry from having to comply with the strict law especially with regard to working hours that a child/ young person may be engaged in the course of employment, as prescribed in the Children and Young Persons (Employment) Act 1966 (Principal Act). Even though the Principal Act that governs working children have been amended in April 2011 it does not fully protect the best interest of children in show business. We are guided by the law but our biggest concern is whether implementation of the law reflected on the practice of the industry? We feel that there are

¹⁴ Solk, G. (1980) Legal Rights and Obligations of Minors in the Entertainment Industry: The California Approach. *J. Juv. L.* (4), 78- 95.

¹⁵ Barnett, J. D. & Spradlin, D. K. (1977) Enslavement in the twentieth Century: The Right of Parents to retain their Childrens' Earnings. *Pepp. L. Rev.* (5), 673- 693.

¹⁶ Podlas, K. (2010) Does Exploiting a Child Amount to Employing a Child? The FSLA's Child Labor provisions and Children on reality Television. *UCLA Ent. L. Rev.* (17), 39-73

¹⁷ Martis. R. A. (1988) Children in the Entertainment Industry: Are They Being protected- An Analysis of the California and New York Approaches. *Loy. L. A. Ent. L. Rev.* (8), 25-54.

¹⁸ ILO. What is Child Labour. Retrieved from <<http://www.ilo.org/ipec/facts/lang--en/index.htm>>

serious justifications for the Malaysian authority to re-visit the regulation and enforce the law.¹⁹ The challenges that may be faced by Malaysian authority is whether they have enough manpower to properly enforce the law. This is due to the fact that Malaysia has closer to non-appointed body/ authority to control and monitor the industry player, engaging children to be part of their workforce, to observe strictly the laws and regulations imposed.

DOMESTIC PROTECTION FRAMEWORK

In Malaysia, children may be employed by an employer in various areas including in the entertainment industry. The main statute that protects children in employment in Malaysia is the Children and Young Persons (Employment) Act 1966 (The Principal Act) which was then been amended by the Children and Young Persons (Employment) Act 2010. The Act aims to give protection to children and young persons from any ill-treatment in the course of their employment. The Principal Act defines a child to be a person who has not completed his fifteenth year of age and a 'young person' as a person who, not being a child, has not completed his eighteenth year of age. The Act also provides general guidelines of the types of work that a child or young persons may be involved in. The Act provides that a child may be engaged in the following employments among others in public entertainment (subject to the terms and conditions of licensing granted under the Act.

The word 'entertainment' has been defined under Section 1A of the Act 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 specifically provides that children and young persons are competent to enter a contract of employments as an employee (although not as an employer) and they may sue their employer for any breach of the law or their individual contract. Section 13 allows a child or a young person is competent to enter into a contract of service despite the provision in the Contracts Act 1950. However the law does protect the interest of a child or a young person from improper exploitation where an employer could not recover damages or indemnity from a child or a young person for a breach of any contract or service under this Act.²⁰

Our next main concern is the number of working hours required for children and/ or young persons in the entertainment industry. Generally, the Act imposed a strict guidelines on the maximum number of days that a child or a young person is allowed to work, which is not more

¹⁹ Kanak-kanak Ceburi Bidang Hiburan Perlu Kebenaran Kerajaan. Retrieved from <http://www.utusan.com.my/utusan/info.asp?y=2010&dt=1214&pub=Utusan_Malaysia&sec=Parlimen&pg=pa_06.htm>

²⁰ Section 13 of the Employment Act 1955

than six days in a period of seven consecutive days.²¹ 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 a more flexible working hours for children and young person working in entertainment industry.

Section 7 of the Acts 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. The Director General may also impose additional conditions from time to time as he deems fit. 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. However parents may also appeal to that decision within 14 days from the date of the decision. The said license must contain among others²²:

- (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 Children and Young Persons Employment Regulation 1966 under the Third Schedule of the Act also specifies the responsibility of the employer or agents of the children working in a public entertainment to ensure that the children are examine by government medical officer at the

²¹ Section 4 of Children and Young Person (Employment) Act 1966

²² Regulation 5 of the Third Schedule of the Children and Young Persons (Employment) Act 1966

time applying for the license and not less than once every three month thereafter. The medical officer shall report back to the Director General on the results of such examination.²³

As stated above, 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. We may observe that. Should the employment that is suitable to the child 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 (Murugesu, 2010). However the law fail 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. 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.

Question remains on whether these obligations under Third Schedule have been complied with by the entertainment industry. We are also skeptical on whether there exist enforcement officer appointed by the authority to make periodical supervision and monitoring in ensuring that these children are not been mistreated or exploited. 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.²⁴

PRACTICE OF OTHER JURISDICTIONS

Children working in Queensland, Australia is govern by the Child Employment Act 2006 and Child Employment Regulation 2006. It is 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. The law also ensures that the work does not interfere with children's schooling. Parents' consent form must be obtain which includes details for the employer about the hours where the child is required present at school.

It exempted a number of general provisions that is applicable to children working in other industries from those of working in the entertainment industry. However, 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

²³ Regulation 4 The Children and Young Persons Employment Regulation 1966

²⁴ Section 14 The Children and Young Persons Employment Regulation 1966 shall be punished for one year imprisonment or a fine of RM5,000 or both. In the case of subsequent offence shall be punished for 3 years imprisonment or a fine of not exceeding RM10,000 or both.

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.

KEY PROTECTION PROPOSED

In line with the guiding principles of the United Nation Convention the Rights of the Child and the Islamic approach, we should examine the existing laws and impose a comprehensive guidelines to protect the interest and welfare of working children in entertainment by adopting practice of other jurisdictions. As mentioned earlier, the law must be strengthen by an enforcement officer appointed by the authority whose duty is to supervise and monitor these children are not been mistreated or exploited.

For example, the 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 requires any report on the academic records and attendance of the child in question from the school as conditions in applying licenses.

Other laws applicable to the working children or young persons includes Employment Act 1955, Employees Provident Fund Act 1991 and the Employees Social Security Act 1969 (Aminuddin, 2006). A standard minimum wages and salary for children in entertainment industry must be regulated. In the event where wages paid to children or young persons in any class of work are not reasonable, Minister of Human Resource have the power to appoint the Board of Inquiry to make appropriate recommendations in the event where there is a complaint made to the Ministry of Human Resources He may then specify a minimum wage to be paid to the children after considering the report of the Board.

CONCLUSION

Children in general are at a very vulnerable age where they can be easily exploited since they cannot defend themselves or has no knowledge about the exploitation. This can happen when parties involved do not make the best interests of the child as the basis to guide their work. In Malaysian context, the law focus very much on working children especially in rural agriculture plantation and family business. We may have overlooked the conditions of working children in the entertainment industry. We suggest for Malaysia to re-examine the law governing working children in entertainment industry as there is a need for a comprehensive guideline by adopting some of the practice from existing guidelines in other jurisdictions such as Australia and United Kingdom. This is in line with the Islamic teaching and the guiding principles of the United Nation Convention on the Rights of the Child.

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