

Juvenile Delinquencies in Malaysia: Legal and Social Perspective

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ABSTRAK

Delinquent behaviour amongst the children becomes one of crucial issues in Malaysia. The delinquent act of a juvenile can either be the act or omission prohibited and punishable by law or act that is deliberate deviation from norm. There are many aspects that involved in this issue and each of them should not be dealt separately. The legal and social aspects must go hand in hand in tackling the issue. This article discusses the legal framework as to the juvenile's criminal liability and the relationship between the social factors and the delinquent behaviours.

INTRODUCTION

Delinquent behaviour amongst the juvenile constitutes one of the important issues faced by our nation in this new millennium. Despite the social awareness, juvenile delinquency is on the rise. It was reported that 5,996 juveniles were arrested throughout 2005 for various types of crimes and surprisingly among those being arrested were four juveniles aged 7 years old.¹ The offences committed by the juveniles include murder, robbery and rape.

The statistics of The Royal Malaysian Police recorded that there were 3,936 cases involving juveniles and of the figure, 3008 cases were offences affecting the human body and offences relating to property.² According to the reports, the prevalent types of offences committed by the juveniles were offences relating to property which includes theft, house breaking, theft of motor vehicle, snatch theft, dealing in stolen property etc.

WHO IS JUVENILE?

The word 'child', 'youthful', 'juvenile', 'infant' and 'minor' are the words that denote a person of young age and these words were used synonymously and interchangeably. According to the Rule 2.2(a) of the Standard Minimum Rules for the Administration of Juvenile Justice [The Beijing Rules], 1985, a juvenile is defined as:

“A child or young person who, under, the respective legal systems, may be dealt with for an offence in a manner which is different from an adult”.

The different between a child and an adult is based upon the age factor. According to Section 2 of the Age of Majority Act 1971,³ a minor is any female or male whose age is under eighteen.⁴ Thus any person whose age is above eighteen, he or she is considered as an adult.

In Malaysia, the law governing the juvenile is Child Act 2001⁵ which consolidates all laws relating to the care and protection of children and young persons. The Child Act 2001 repealed⁶ three other laws governing child prostitution, child abuse and delinquency i.e. Women and Girls Protection Act 1973⁷, The Child Protection Act 1991⁸ and The Juvenile Courts Act 1947.⁹

The Child Act 2001¹⁰ defines a 'child' as:

- (a) A person under the age of eighteen years; and
- (b) A person who has attained the age of criminal responsibility prescribed in section 82 of the Penal Code.¹¹

In Syariah case, the word '*baligh*' or '*mukallaf*' is used to refer to an adult. According to section 2 of Syariah Criminal Offences (Federal Territory) Act 1997,¹² '*baligh*' is a person who has attained the age of puberty according to Islamic law.¹³ A person who yet to attain such age is not an adult but a child. '*Mukalaf*' is defined in Section 2 of Kelantan Syariah Criminal Code (II) Enactment 1993 as a person who has attained the age of eighteen years and of sound mind.

In relation to the age of puberty, it is measured by looking at the physiological condition of the child. According to the majority of the Islamic Jurists, the age of fifteen years is fixed as the age of puberty for male and female. However, for Abu Hanifah, he was of the view that the puberty age for a male is eighteen years and for a female is seventeen years.¹⁴ Besides age, the Islamic Jurists were also of the view that if a child has experienced certain signs for instance discharges of semen for a male or starting of menses and pregnancy for a female, that child is considered as attaining the age of puberty.

CRIMINAL RESPONSIBILITY OF A JUVENILE

As far as Malaysian law is concerned, the laws governing a juvenile offender depend upon the type of crime or offence committed. If the child commits an offence which falls under the jurisdiction of syariah, the matter will be dealt with and tried by the Syariah Courts and likewise in the case of Civil Courts.

A child is criminally liable for the offence committed if he or she is having the full power of understanding. The criminal liability of a juvenile is found in section 82 and 83 of the Penal Code.¹⁵ These sections divided children into two categories according to age namely:

- (a) A child under the age of ten years;
- (b) A child over ten but under twelve years.

A child in the first category is considered as *doli incapax* which means incapable of committing crime. A child of that age is not capable of differentiating between good and evil and therefore is totally exempted from criminal responsibility in all circumstances. By virtue of section 82 a full protection is given to a child in this category which provides an irrebuttable presumption of law that the child of this age is incapable of committing a crime and would not be made liable.

In the case of second category, the child however is not given an absolute protection but conditional. Notwithstanding that a child of this

age is presumed by the law to be *doli incapax*, such presumption of law however is rebuttable. If the child of this age can show that he or she did not attain sufficient maturity of understanding to judge of the nature and consequence of his or her conduct on that occasion, he or she will be exempted from criminal liability. On the other hand, if the said child failed to prove so, he or she will be held liable on criminal ground.¹⁶

Despite the above, such presumption is not applicable in a crime of rape committed by a boy under the age of thirteen. By virtue of section 113 of the Evidence Act 1950, a boy of that age is protected by the irrebuttable presumption of law which provides that such boy is incapable of committing rape.

In a case of crime which falls under the jurisdiction of Syariah Courts, the criminal liability of a child is based on the following *hadiths* of the Prophet which mean:

“Three persons are excused from responsibilities; a child until he attains the age of puberty; a sleeping man until he awakes; and an insane until he becomes sane”.

(Reported by Ali b. Abi Talib & Aishah r.a.)

“Teach your children to perform prayer when they reach the age of seven and beat them up (for failure to perform prayer) by the age of ten”.

(Reported by Abu Dawud)

Based upon these two *hadiths*, a child under the age of seven cannot be made accountable because of inability to distinguish between right and wrong or between good and bad. A child of this age is given an absolute protection and cannot be punished. Section 51 of the Syariah Criminal Offences (Federal Territory) Act 1997, provides that an offence committed by a child who is not ‘*baligh*’ will not be accountable.¹⁷

In a case where a child has attained the age of seven until puberty i.e. fifteen years,¹⁸ the majority of jurists agreed that this child is capable of being liable criminally for the crime committed. A child of this age though is not accountable for a crime of *hadd*¹⁹ or *qisas*²⁰ but he or she is accountable

for a *ta'zir*²¹ punishment. However, once the child has reached the age of puberty i.e. fifteen he or she is fully responsible for whatever crime he or she has committed either *hadd*, *qisas* or *ta'zir*. In *Pendakwa Mahkamah Kadi Perak v Jaffary & Hasliza*²² the girl of the age of fifteen was convicted by the court for committing *zina* as she had already reached the age of puberty at the time the offence was committed.

THE TRIAL OF THE JUVENILE

A child must be arrested,²³ detained or tried in accordance with the procedure laid down by the Child Act 2001²⁴ except in the security cases.²⁵ A child that being detained at the police station, or being conveyed to or from any Court or waiting before or after attendance in any Court is prevented from associating with an adult who is charged with an offence.²⁶ If a child is not released or waiting for a trial, he or she shall be detained in a place of detention as been notified in the *Gazette*.²⁷ The place of detention of the child shall be situated in the same State with the Court by which the child is remanded.²⁸

The court of trial for a child is called Court For Children²⁹ which shall have the jurisdiction to try all offences except for offences punishable with death.³⁰ This special court comprises the First Class Magistrate and two advisors, and one of whom shall be a woman.³¹ The building or room or days for sitting for this Court is different with that of the adult's courts.³² If the Court For Children sits in the same building of the courts for adults, there will be different entrance and exits for the Court For Children from those of the other courts.³³ The purpose is to ensure the child concerned to be brought to and from the Court For Children with privacy. Any particulars relating to the identity of a child cannot be revealed in what so ever manner.³⁴ The proceeding of trial at the Court For Children is similar with the proceeding of trial at the other courts in which Criminal Procedure Code shall apply to it.³⁵

Section 90 provides that a child who has been brought before the Court For Children will be explained by the court in simple language the substance of the alleged offence. The court will then ask the child whether or not he admits the facts constituting the offence. If the child admits the offence, he

shall then be asked to say anything that he desires as mitigation to the penalty. But if no admission, a trial will be held and the court shall then hear the evidence of the witnesses of both sides. A child is entitled to make a statement and to give evidence upon oath.

During the trial, the persons that are allowed to present in the Court For Children are members and officers of the Court For Children, the child, the parents, advocates and witnesses, teachers, close relatives and other person directly concerned in the case.³⁶ The reporters and journalists are strictly excluded. The parents or guardians of the child are compelled to attend the trials and those who fail to attend commit an offence and liable to be fine not exceeding five thousand Ringgit or imprisonment not exceeding two years or both.³⁷ The Court For Children may require the parents or guardian of the child to withdraw from the court if the Court feels that it is necessary in the best interests of the child.³⁸

SENTENCE AGAINST THE JUVENILE

Section 91 of the Act empowers the Court For Children to pronounce penalty when the child is found guilty. However, the word 'conviction' and 'sentence' are not allowed to be used and instead, be construed as a child found guilty, a finding of guilt and an order shall be made respectively. The punishments that can be imposed upon a child are as follows:

1. Admonish and discharge the child
2. Discharge the child with bond of good behaviour with or without sureties
3. Order the parents or guardian of the child to exercise proper care and guardianship
4. Order the child to pay fine, compensation or costs
5. Make a probation order under section 98³⁹

6. Order the child to be sent to approved school⁴⁰ (for a child above ten years old)⁴¹ or Henry Gurney School (for a child above fourteen years old)⁴²
7. Order the child, if a male, to be whipped with not more than ten strokes of a light cane within the Court premises
8. Imprisonment of the child if he or she is fourteen years and above⁴³

The imprisonment of the child of fourteen years and above is only allowed if the offence is punishable with imprisonment. If the child failed to pay fine, compensation or costs, no order of imprisonment can be made against him or her. As imprisonment is the last resort of punishment, the child of this age shall not be ordered to be imprisoned if he can be dealt with in any other way whether by probation or fine or being sent to an approved school.⁴⁴ If the child is sent to imprisonment, he or she shall not be allowed to associate with adult prisoners.

For an offence punishable with death, no death sentence shall be pronounced or recorded against a child.⁴⁵ Instead, the Court shall order the child to be detained in the prison at the pleasure of the Yang Dipertuan Agong or Ruler.⁴⁶ The Board of Visiting Justice may recommend to the Yang Dipertuan Agong or Ruler for the release or further detention of the prisoner upon reviewing the case of the child once a year.⁴⁷

THE RELATIONSHIP BETWEEN SOCIAL AND JUVENILE DELINQUENCIES

The issue of juvenile delinquencies does not only relate to legal aspect but also the social aspect. The aspects like family institution, financial stability, education, mass media are among the important aspects that may directly or indirectly contribute to the rise of the problem. Since juvenile delinquency is a crucial issue, the efforts of resolving it should not come from the parties involved only but also from the entire society.

FAMILY INSTITUTION

The successful socialization and integrity of children and young persons obviously come from a high integrity family and society. A proper personal development of children and young persons is significantly correlated with the proper family process. Many researchers identified that there is a substantial correlation between family process and delinquent behaviour whereby a family which engaged in lawful and useful social activities may develop non criminal attitudes among young persons (Le Flore, 1988; Ranking & Wells, 1990; Smith & Krohn, 1995; Peiser & Heaven, 1996; Regoli & Hewitt, 2000).

In family process, the manner of the child is nurtured is considered as the paramount base and foundation to an individual's success or failure in the future. The nurturing process must consist of everything that the child must endure and experience as a child, until becoming a teenager. The question like how was the child brought up? or who raised the child?, or when did this child grow up? or where did this child spend most of his or her childhood? were commonly asked since the answers to these questions normally contributed to the future of the child and his or her status in society at the present or future.

During the period where children mature into teenagers, they are said to be the easiest to be influenced. Researchers found that children and young persons with strong attachment to parents and who feel loved and identify with their parents are less involved in delinquent behaviour because they could learn everything from their parents like moral values, good character, behaviour and social role (Hirshi, 1969; Smith & Krohn, 1995; Peiser & Heaven, 1996; Sokol-Katz & Rogers, 1997; Regoli & Hewitt, 2000). On the other hand, parents who are not supportive, lack of guidance and love may create an "emotional vacuum," among the children who later may have no feeling for moral values (Regoli & Hewitt, 2000). Jack Straw (1998), found that despite the financial standing, the families with good parenting may lead to law abiding behaviour among the children.

A proper and well communication or interaction between parents and children played a vital role in the development of a child's personality. Researchers found that children who have negative communication with

their parents or who communicate less frequently are more likely to engage in serious form of delinquent behaviour (Bourgeois, 1990; Heaven, 1994; Heaven & Peiser, 1996; Clarke & Shields, 1997).

The instability of family is also related to the behaviour of children. In Malaysia, it was reported that the number of divorce cases amongst the Muslims is on the rise.⁴⁸ A research conducted on divorced and its impact in Kedah and Terengganu revealed that 41 per cent children of a divorced family were having attitude problem such as stress, undisciplined, involved in fighting, truancy, lying, family disobedience etc. as compared to 21 per cent children of non divorced family.⁴⁹

In order to strengthen the family institution in Malaysia, The Ministry of Women, Family and Community Development has launched many activities and services in relation to family stability and development for instance campaigns of 'Masyarakat Penyayang (Mayang)', 'Masyarakat Bermaruah', 'Masyarakat Baru – Utamakan Keluarga' etc. Among the services provided under these campaigns were family and parent's development training, family counseling as well as human reproduction services to individual, family and society.

DISCIPLINE AND EDUCATION

Discipline and education are other important aspects in preventing delinquent behaviour. Every child must be taught the basic values such as developing respect for the child's own cultural, sense of identity to the society, respect diverse views and opinions, as well as cultural and other differences. Educational process conducted by both parents and school should not only about academic or vocational activities but must also involve the aspect of monitoring, controlling and discipline.

Parental control through monitoring and discipline of the children is interrelated part of family process. The parental discipline practices to ensure the safety and obedience of children has been identified as one of the factors that related to likelihood of delinquency (Gray-Ray & Ray, 1990; Seydlitz, 1993; Smith & Krohn, 1995; Peiser & Heaven, 1996; Regoli & Hewitt, 2000; Xiong, 2002). According to Gray-Ray & Ray, parents who provide a

high degree of monitoring and control tend to have conforming children as compared to parents who provide poor monitoring and control over their children.

Nevertheless, a high parental monitoring alone is not enough and it must go hand in hand with a high parental support in preventing delinquent behaviour (Peiser & Heaven, 1996; Regoli & Hewitt, 2000; Xiong, 2002). Parental discipline practices must also be consistent and persistent as well as proper and appropriate according to the age and the condition of the child so that it may adequately internalized into the child's personality. Instead, the parents that are practicing a poor parental discipline practices such as strict or inconsistent discipline may contribute to delinquent behaviour of children (Xiong, 2002). In Malaysia, there have been many programmes formulated by the government as well as non governmental organization like The Ministry of Education, The Royal Malaysian Police, Jabatan Kebajikan Masyarakat, Rotary International, Agensi Anti-Dadah Kebangsaan, to strengthen the standard of disciplines among the youngsters. Amongst the programmes conducted were 'Leadership Quality and Management of Pupil Personality and Discipline', 'Safe School Programme', 'The Crime Prevention Club', 'Rakan Cop PDRM', 'Rakan Muda', 'Program Latihan Khidmat Masyarakat' (PLKN) etc.

MASS MEDIA

As an organ of dissemination of material and information from a diversity of national and international sources, the mass media should be aware of its social role and responsibility to society. The mass media generally, and the television and film media in particular, should minimize displaying or portraying all level of negative values or images such as pornography, drugs, violence and exploitation. A published report, Violence and Youth by American Psychological Association's Commission on Violence and Youth revealed that violence on the screen inspires and expedites some aggression in some children who are already exhibiting aggressive behavior. The report also concluded that there is absolutely no doubt that higher levels of viewing violence on television are correlated with increased acceptance of aggressive attitudes and increased aggressive behavior.

Since the mass media is having the influential power towards the society, it should hand in hand cooperate with the government or non-governmental organization through promoting effective campaign of dangerous drugs awareness, anti-violence as well as campaigns of portraying good and moral values.

CONCLUSION

The issue of juvenile delinquency should be taken seriously by the entire society. This issue cannot be resolved by considering one aspect only but it needs involvement from each and every level of society to concert full efforts in preventing this problem from becoming more serious. The legal as well as social aspects must go hand in hand in reducing the chance of children and young persons from getting involved in delinquent behaviour. The programmes which are empowering and strengthening the family institution especially in a matter concerning the parenting skill, child upbringing and discipline, interaction and communication between parents and children as well as self-esteem improvement must be developed properly and effectively so that they would be able to face the challenges in the future.

As far as legal aspect is concerned, the imposing of punishment under Child Act 2001 on the juvenile offender must also take into account the interest as well as the welfare of the children. Capital punishment should be excluded unless it is proven that the delinquent act committed is serious and of persistence. In the case where the juvenile is sent to Henry Gurney School, such juvenile offender should be permitted to sit for the general examinations such as Sijil Peperiksaan Malaysia (SPM) or Penilaian Menengah Rendah (PMR) at ordinary school instead of at Henry Gurney in order to avoid him or her from being discriminated in the future.

NOTES

¹ see, Utusan Malaysia, 9hb Februari 2006, pg 8.

² *Ibid.*

³ Act 21.

⁴ The (UN) Convention on the Rights of the Child 1989, defines children as all human beings under the age of 18. See also: Section 90 of the Penal Code, Section 10 of the Contract Act 1950, Section 10 of the Marriage and Divorce Act 1976.

⁵ Act 611.

⁶ Section 130.

⁷ Act 106.

⁸ Act 468.

⁹ Act 90.

¹⁰ Section 2.

¹¹ Act 574.

¹² Act 559.

¹³ see also: Kelantan Evidence Enactment of Syariah Court 1991.

¹⁴ Audah, Criminal Law of Islam, 1991.

¹⁵ note 10.

¹⁶ See section 83.

- ¹⁷ The Syariah Criminal Procedure (Federal Territories) Act 1997, interpreted the word 'youthful offender' as a person above the age of ten and below the age of sixteen years.
- ¹⁸ This is the view of the majority jurists.
- ¹⁹ *Hadd* means prevention, restraint or prohibition. In Islamic jurisprudence, the punishment for the crime of *hadd* is limited to punishment mentioned by the Holy Quran or the Sunnah of the Prophet. There are seven categories of crimes fall under *hadd* i.e. theft, adultery, slander, rebellion, apostasy, drinking wine and robbery.
- ²⁰ *Qisas* is a kind of crime affecting social life which consists of offences involving homicide, murder, wounding. The punishment prescribed for these offences is retaliation or blood money.
- ²¹ *Ta'azir* is a crime other than *hadd* and *Qisas* in which no punishment is fixed by the Syariah.
- ²² (1991) 8 JH 99.
- ²³ A child may be detained with or without warrant and upon detention he must be brought before a Court For Children within twenty four hours; see section 84.
- ²⁴ Section 83.
- ²⁵ See Regulation 3 of ESCAR where a person regardless of age whom is accused or charged with security offence shall be dealt with and tried in accordance with the Regulations provided under Essential (Security Cases) Regulation (ESCAR) 1975
- ²⁶ Section 85.
- ²⁷ Section 86.
- ²⁸ Section 58.
- ²⁹ Section 11(1).

³⁰ Section 11(5); the trial will be tried at the High Court.

³¹ Section 11(2),(3).

³² Section 12(1).

³³ Section 12(2).

³⁴ Section 15.

³⁵ Section 11(6).

³⁶ Section 12(2).

³⁷ Section 88.

³⁸ Section 89.

³⁹ Applicable to offences other than grave crime, voluntarily causing grievous hurt, rape, incest or outraging modesty, and offence under section 377B, 377C, 377D or 377E of the Penal Code.

⁴⁰ Approved school is known as Sekolah Tunas Bakti (STB); A child may be sent to approved school even though the offence committed is not serious in nature; see section 67.

⁴¹ There are 8 Approved Schools throughout Malaysia.

⁴² The order of detention at this school is up and not after the age of twenty one years; see section 75(2).

⁴³ Section 96.

⁴⁴ Ibid.

⁴⁵ Section 97(1).

- ⁴⁶ Section 97(2),(3). Court of Appeal in July 2007, ruled that section 97(2) of the Child Act 2001 was unconstitutional and invalid as the power to sentence a child convicted of murder was given to the executive. The court said that this went against the doctrine of separation of powers as enshrined in the Federal Constitution.
- ⁴⁷ Section 97(4).
- ⁴⁸ According to the Statistic of Jabatan Kemajuan Islam Malaysia (JAKIM) recorded from 2000 to 2004, there were about 72616 or 14 percent divorce cases reported among Muslims throughout Malaysia.
- ⁴⁹ Ezaddin Mohamed, Osman Ali, Hashami Bohar and Amin Shariff in "Health and Behaviour Changes among Children of Divorced Parent".

REFERENCES

- Abdul Rahman, Alwi (1999). *Jenayah Kanak-Kanak Menurut Undang-Undang Islam*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Audah, Abdul Qader (1991). *Criminal Law of Islam, Vol 2*, International Islamic Publishers.
- Bourgeois, N. (1999). John Bowlby: His Life & Work on Attachment Theory [on-line], available: http://gamma.15.cu.edu/cross/his_web/bowlby.html
- Cheang, Molly (1990). *Criminal Law of Malaysia and Singapore: Principles of Liability*. Kuala Lumpur: Professional (Law) Books Publishes.
- Clark, R.D. & Shields, G. (1997). *Family Communication & Delinquency, Adolescence* 32, (125).
- Gray-Ray, P. & Ray, M.C. (1990). *Juvenile Delinquency in the Black Community, Youth & Society*, 22.
- Hirshi, T. (1969). *Causes of Delinquency*, Los Angeles University of California Press.

- Hussin, Nasimah (Dr.) (2005). Juvenile Delinquencies in Malaysia: Legal Provisions and Prospects for Reforms, [On-Line] available <http://www.lawright.asn.au/docs/hussin2005.pdf>
- Mohamed, Ezaddin et al., Health and Behaviour Changes among Children of Divorced Parents, [On-Line] available: <http://www.uum.edu.my/psima/VOL8.html>
- Peiser, N.C. & Heaven, P.C.L. (1996). Family Influence on Self-Reported Delinquency Among High School Student, *Journal of Adolescence*, 19.
- Regoli, R.M. & Hewitt, J.D. (2000). Delinquency in Society, (4th Edition), New York: McGraw Hill.
- Seydlitz. R. (1993). Complexity in the Relationship among Direct and Indirect Parental Controls and Delinquency, *Youth & Society*, 24(3).
- Sokol-Katz, J. & Roger, P. (1997). Family Structure versus Parental Attachment in Controlling Adolescence Delinquent Behaviour: A Social Control Model, *Adolescence* 32 (125).
- Straw, J. (1998). Social Exclusion and The Third Way, Speech to the Nexus Conference on the Third Way, Kings College, London, [On-Line] available: <http://www.malcomread.co.uk/JackYoung/crime & social exclusion.html>
- Tee Guan Bee, Institutional Treatment & Management of Organizations for Juvenile Offenders in Malaysia, [On-Line], available: <http://www.unafei.or.jp/english/pdf/PDF-rms/no59/ch12.pdf>
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), [On-Line], available: http://unhchrch/html/menu3/b/h_comp47.html
- Xiong, Shannie (2002). Hmong Family Processes & Their Impact on Hmong Adolescent's Delinquent Behavior: A Correlational Study, [On-Line] available: <http://www.uwstout.edu/lib/thesis/2002/2002xiongs.pdf>

Statutes:

Age of Majority Act 1971 (Act 21)

Child Act 2001 (Act 611)

Criminal Procedure Code (Act 593)

Evidence Act 1950 (Act 56)

Kelantan Syariah Criminal Code (II) Enactment 1993
Penal Code (Act 574)

Syariah Criminal Offences (Federal Territory) Act 1997 (Act 559)

Syariah Criminal Procedures (Federal Territories) Act 1997 (Act 560)

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