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Educational Right for Children with Special Needs: A comparison between Malaysia and Thailand

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Abstract

Even though Section 28 of the Persons with Disabilities Act 2008 provides the educational right for persons with disabilities, especially children with special needs, their educational right is not protected effectively since the laws and regulations governing the educational right of children with special needs in Malaysia are scattered. This paper aims to compare the practice of laws relating to special education between Malaysia and Thailand. The authors conduct a doctrinal analysis to complete this paper where textbooks and journal articles related to special education for children with special needs in Malaysia and Thailand are analysed.

Keywords: Educational Right; Special Education; Children with Special Needs; Persons with Disabilities

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1.0 Introduction

Education is important to everyone, especially disabled persons. Persons with disabilities (PwDs) are among the most being neglected and are considered the most vulnerable group in Malaysia (Tan et al., 2019). According to Section 2 of Persons with Disabilities, PwDs are those with "long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full participation in society. Due to their disabilities, their needs are often less prioritised by society. Hence, education can help them from being neglected by society since it will allow them to read, write, make their own decisions, and even help them seek jobs (Abdul Nasir & Erman Efendi, 2016). The United Nations in recognising the importance of education to everyone, a few instruments and declarations have been made such as the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, the Jomtien World Declaration on Education for All 1990, the Dakar Framework for Action, the Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, UNESCO Salamanca Statement and Framework for Action on Special Needs Education and the Universal Periodic Review on Malaysia. (Malaysian Human Rights Commission, 2015). Therefore, these instruments and declarations show that education is important to everyone, especially PwDs and children with special needs. Children with special needs are defined in the Malaysian Education Blueprint 2013-2025 as "children with visual impairment, hearing impairment, speech difficulties, physical disabilities and learning disabilities such as autism, down's syndrome, attention deficit hyperactivity disorder,

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and dyslexia". PwDs, especially children with special needs, must be given the educational right to improve and secure their quality of life.

The Malaysian government in 1995 ratified the Convention on the Rights of the Child and ratified the Convention on the Rights of Persons with Disabilities in 2010 to support the educational right of PwDs and children with disabilities provided by the United Nations. Besides, the UNESCO Salamanca Statement and Framework for Action on Special Needs Education was adopted in 1994. In Malaysia, there are around 4.8 million PwDs as of December 2021, but only 587,608 were registered with the Department of Social Welfare (Arifin, 2021). The Malaysian government realised that the educational right of PwDs and children with special needs must be preserved due to the high numbers of disabled persons in Malaysia and the importance of education to them. Hence, the National Policy and Action Plan of Persons with Disabilities and the Zero Reject Policy have been implemented to include PwDs as its sustainable development's main agenda and provide education to all children in Malaysia. Nonetheless, the educational right of PwDs, especially children with special needs, is still not protected effectively due to the uncertainty of laws in Malaysia.

The objective of this paper is to compare the laws and regulations governing the educational right of children with special needs in Malaysia and Thailand to see which country has a better law in protecting the educational right of children with special needs effectively. Besides, the special education system practised in Malaysia and Thailand is assessed to identify the differences between these two countries. At the end of this paper, the researchers provide a few suggestions that can be taken into consideration by the Malaysian government to effectively protect the educational right of children with special needs in Malaysia.

2.0 Educational Right for Children with Special Needs in Malaysia

2.1 Education System for Children with Special Needs

In Malaysia, children with special needs have three schooling options according to Malaysian Education Blueprint 2013-2025; Special Education School, Special Education Integration Programme, and Inclusive Education Programme. As of October 2021, there are 97 220 students under Special Education Programme in Malaysia. Based on *Buku Data Pendidikan Khas 2021*, Special Education Integration Programme has the highest number of students, 78,030 students, compared to the Inclusive Education Programme (16,504 students) and Special Education School (2,686 students). These three programmes are distinct from each other.

Special Education School only focuses on delivering learning and education for children with one type of disability, such as hearing problems, vision problems, and learning problems (Kurniati & Widyastono, 2021). There are 34 Special Education Schools in Malaysia, where 28 Special Education Schools are for primary schools and 6 Special Education Schools for secondary schools (*Buku Data Pendidikan Khas*, 2021). Children with visual problems such as limited vision or inability to see directly are placed under Special Education for Visual Impairments. To suit their education needs, their teaching and learning methods are customised, for example, using a braille system to improve their academic achievement (Othman & Rahmat, 2020). Children with hearing problems who are deaf and half deaf students are placed under Special Education for Hearing Impairments. According to Omar and Sulaiman (2018), modes of communication such as sign language, speech, acting, and visual language are different and depend on students' capabilities and needs. Children with learning disabilities, namely autism, down's syndrome, slow learner, attention deficit hyperactivity disorder, mental retarded and dyslexia, are placed under Special Education for Learning Disabilities. Special Education Curriculum and Alternative Curriculum are used under this special education programme where special curriculum, skill training curriculum, basic reading and writing, manipulation skills and others are used to educate students with learning disabilities (Othman & Rahmat 2020).

Next, according to Mottan (2015), children with special needs under Special Education Integration Programme are placed in special classes in mainstream schools. Special Education Integration Programme, according to Education (Special Education) Regulations 2013, is an educational programme for a pupil with special educational needs which is only attended by pupils with special needs in a special class in a government school or government-aided school. Therefore, the students received education in the least restrictive environment compared to Special Education Schools since they participated in most school activities with other normal students (Othman & Rahmat, 2020).

Lastly, the Inclusive Education Programme, as defined by the Education (Special Education) Regulations 2013, is "an educational programme for a pupil with special educational needs which is attended by a pupil with special educational needs together with other pupils in the same class in a government school or government-aided school". Under this programme, children with special needs study the mainstream curriculum in the same class as their normal peers (Omar & Sulaiman, 2018). The Checklist for Inclusion Readiness is used for students' admission in the Inclusive Education Programme.

2.2 Laws Governing Educational Right for Children with Special Needs

There are a few laws and policies that govern the educational right of children with special needs in Malaysia. Firstly, Article 8 and Article 12 of the Federal Constitution of Malaysia. Article 8 provides "all persons are equal before the law and entitled to the equal protection of the law" while Article 12 provides "without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only of religion, race, descent, or place of birth in the administration of any educational institution maintained by a public authority, and in particular, the admission of pupils or students or the payment of fees". Therefore, the Federal Constitution gave all citizens in Malaysia the educational right, including children with special needs. Therefore, they are entitled to education as equal to other normal children since Article 8 and Article 12 provide equality among citizens and the right to education.

Besides, the Persons with Disabilities Act 2008 provides certain rights toward PwDs and children with special needs. To fulfil the requirement of the Convention on the Right of Persons with Disabilities, the Malaysian government enacted the Persons with Disabilities Act in 2007, which came into force in 2008 (Md. Tah & Mokhtar, 2017). Section 28 of the Persons with Disabilities Act 2008 specifically

mentioned that children with special needs must be given education equally. They must not be excluded from the general education system because of their disability (Othman & Rahmat, 2020). It shows that children with special needs in Malaysia are given educational right, consistent with Article 8 and Article 12 of the Federal Constitution.

Next, Section 40 and Section 41 of the Education Act 1996 mentioned special education for children with special needs. Section 40 states, "The Minister shall provide special schools established under paragraph 34(1)(b) or in such primary or secondary schools as the Minister deems expedient". It means that the education for children with special needs is to be provided by the Minister of Education either in special education schools or special classes in mainstream schools. Section 41, on the other hand, provides the power to prescribe the duration of special education for children with special needs and the curriculum to be used by them to the Minister. Moreover, based on the power prescribed to him by the Education Act 1996, the Education (Special Education) Regulations 2013 was regulated. The 2013 Regulations is the fundamental basis for children with special needs in Malaysia and consists of the requirement to attend probationary period for admission into special education, code of practice and the implementation of Special Education Programme, the requirement to attend co-curricular activities and the duration of the special education.

3.0 Educational Right for Children with Special Needs in Thailand

3.1 Education System for Children with Special Needs

In Thailand, education for children with special needs is handled by the Bureau of Special Education Administration, Office of Basic Education Commission. There are nine categories of disabilities for children with special needs in Thailand: visual impairments, hearing impairments, intellectual disabilities, physical disabilities and health impairments, learning disabilities, language and communication disorders, behaviour disorders, autism, and multiple disabilities (Hill & Sukbunpant, 2013). Two schooling options offer special education for children with special needs in Thailand: special schools and regular schools.

Special schools in Thailand only accepts children with special needs and more focus on children with severe disabilities. These special schools are categorised into Special Schools for visual impairments, Special Schools for hearing impairments, Special Schools for physical impairments and Special Schools for intellectual disabilities (Hill & Sukbunpant, 2013). As of January 2022, there are 48 special schools across Thailand and 77 provincial special education centres that focus on providing pre-school level for children with special needs and family assistance (Special Education Bureau, 2022).

For regular schools, at least one public school in every province in Thailand has offered the mainstream class for children with special needs since 1995 (She & Amponstira, 2020). Currently, there are 415,739 children with special needs enrolled in regular schools from kindergarten level to higher vocational certificates (Special Education Bureau, 2022). Under regular schools, there are three education settings for children with special needs. Firstly, part-time co-learning integration refers to children with special needs studying in special classes in regular schools. They are taught academic skills such as the Thai language and mathematics but only in non-essential topics. In addition, they will participate with other normal students in certain activities such as physical education and agriculture. The mainstream arrangement in the form of a full-time joint study, on the other hand, is an arrangement in which children with special needs attend class activities with other normal students in a regular school for the duration of the year because all children in school must use the same teaching and learning process. Children with special needs that choose this education setting must be prepared in terms of learning, interaction, self-help, and they must have the capacity to study with other normal students at the same level. They are also required to get extra services for each individual's education, such as tutoring in specific courses, occupational therapy practice, physical therapy training, speech therapy, etc. (Vibulpatanavong, 2018).

Inclusive Education is an educational setting where children with special needs attend schools together with other normal students supported by mainstream and special education teachers. The Special Education centres will assist the Inclusive Education in Thailand by training teachers providing teaching materials and management systems. Inclusive Education in Thailand is quite similar to the mainstream arrangement in the form of full-time joint study; however, children with special needs applied to study in Inclusive Education from the beginning of their study. However, for the mainstream arrangement in the form of the full-time joint study, the students will only be moved to that education setting once they are ready based on the requirement mentioned before.

3.2 Laws Governing Educational Right for Children with Special Needs

Thailand has several laws relating to special education for children with special needs. Firstly, the National Education Act 1999 has been enacted to provide free basic education for those with disabilities, acquiring facilities, resources services, and other educational aid (Hill & Sukbunpant, 2013). Section 10 of the Act provides "Persons with physical, mental, intellectual, emotional, social, communication, and learning deficiencies; those with physical disabilities; or the cripples; or those unable to support themselves; or those destitute or disadvantaged; shall have the rights and opportunities to receive basic education specially provided". It shows that children with special needs in Thailand are given educational right as other normal children.

The Compulsory Education Act 2002 made it compulsory for all children aged between 7-16 years old in Thailand to enrol in school. All children here include children with special needs. Section 12 of the Act mentioned that children with special needs should be provided with compulsory education through special education in appropriate forms and methods by the ministry, the Committee of the Educational Area, the local administrative organisation and schools. Besides, the Empowerment of Persons with Disabilities Act 2007 gives rights to PwDs to rehabilitation, which includes improving or maintaining their abilities and capacities through education, medical, religious, and social. This Act provides protection and promotion of rights of PwDs for independent living, human dignity and equality. Section 20 of the Act mentioned that PwDs have the right to access and utilise public facilities for the purpose of education. The public facilities include welfare services and other support from the government.

The Education Provision for Persons with Disabilities 2008 was enacted to provide the educational right for PwDs in Thailand. Under Section 5 of this Act, PwDs are given the right to receive education for free at birth or upon discovery of the disability until the end of their life, choose educational service and style of education, and receive up-to-standard quality-assured education. Furthermore, Section 6 provides additional remuneration to the special education instructors to enhance their knowledge and skill in education provision for PwDs. Furthermore, subsidies and special assistance from the government are given to the institutional education that provides education specifically for PwDs, as mentioned by Section 7 of the Act. In addition, Section 8 requires institutional education to establish an individual education plan for PwDs. Finally, under section 9 of the Act, the instructors are to be provided with the necessary information, understanding, skill, and competence through the research, knowledge growth, and teachers' development supported by the government subsidies to administer the education PwDs. Hence, this Act proves that the Thailand government is very serious about providing education for PwDs and children with special needs through the rights and allocation provided under this Act.

4.0 Methodology

The researchers adopt a doctrinal analysis and comparative legal research in this paper. For doctrinal analysis, the researchers analyse journal articles, textbooks, statutes and case laws related to special education for children with special needs in Malaysia and Thailand. According to Kharel (2018), a doctrinal analysis is an "enquiry in legal concepts, values, principles and existing legal text such as case laws, statutes etc.". Under comparative legal research, the researchers analyse the legislative texts, jurisprudence, and legal doctrines from Malaysia and Thailand to compare the laws and practices of special education for children with special needs between these two countries. Then, based on the analysis, the researchers conclude which country provides a better educational right for children with special needs.

5.0 Findings and Discussion

Even though there are a few laws and policies relating to special education for children with special needs that have been enacted and made by the Malaysian government, it is still insufficient to protect their educational right. All laws and policies made are too general since only a few sections of the laws tackle their educational right (Shadiya et al., 2016). Article 8 of the Federal Constitution does not specifically mention discrimination against PwDs, while Article 12 do not prohibit any form of discrimination towards them in term of enrolment into Special Education Programme (Baqutayan et al., 2016). If the children with special needs fail to meet the criteria set by the Ministry of Education, their enrolment into the Special Education Programme can be denied (Othman & Rahmat, 2020). There are critiques on the Persons with Disabilities Act 2008 due to its lack of enforcement and punishment provisions, and hence this Act was called "toothless tiger". The term on "an equal basis" under Section 28 of the Act also is questionable since the Ministry of Education imposed guidelines for the children with special needs to enrol into Special Education Programme (Othman & Rahmat, 2020). The Education Act 1996 mentions special education in too general ways, which only touches on the power of the Minister to provide Special Education and his power to prescribe the duration of the special education for children with special needs. The Education (Special Education) Regulations 2013 violates their educational rights when the children are required to undergo a three-month probationary period before they can enrol into Special Education Programme (Malaysian Human Rights Commission, 2015).

On the other hand, Thailand clearly provides the educational right of children with special needs in their laws and regulations. For example, The National Education Act 1999 specifically provides children with disabilities the right to access facilities, media services and educational aid for their education. The Act also provides free education for children with disabilities. Furthermore, children with special needs are given the educational right through the Compulsory Education Act 2002, where they are required to receive compulsory education through appropriate methods, programmes, assistance and services (Vibulpatanavong, 2018). The most significant law that protects the educational right of children with special needs in Thailand is the Education Provision for Persons with Disabilities. This Act was enacted specifically to tackle their educational right. A few rights in terms of education were given to the children with special needs under Section 5 of the Act. Besides, the government gives additional remuneration to the special education instructors, and subsidies and assistance from the government will be given to the educational institution that provides special education. The government also provides subsidies to enhance the instructors' knowledge, skills, and competency to deliver lessons to children with special needs. Hence, the enactment of this law proves that the educational right of children with disabilities in Thailand are well managed and protected by their government. Due to the absence of the specific Act that regulates the educational right of children with disabilities in Malaysia, and too many laws that are too general relating to their educational right, it causes uncertainty in the jurisdictions, authority involved and enforcement of the laws on this matter. Hence, the current laws and policies are not efficient to protect the educational right of children with special needs in Malaysia. The law that specifically regulates special education for children with special needs is important to protect their educational right since it will provide certainty in the jurisdiction involved and administration of the special education for children with special needs in Malaysia.

6.0 Conclusion and Recommendations

Even though some laws and regulations regulate the educational right of children with special needs in Malaysia, the protection of their educational right is still ineffective. The Malaysian government must enact a specific act that governs the educational right of children with special needs, which protects their educational right and the administration of special education. We can learn from the Thailand government that by having a specific Act relating to the educational right of PwDs, their right can be protected efficiently. The educational

opportunities for children with special needs in Thailand have developed due to the government's support through legislation enacted in very specific ways. Hence, it is time for the Malaysian government to formulate a legal framework for special education for children with special needs to effectively and efficiently protect their educational right.

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Paper Contribution to Related Field of Study

The authors believe this paper will benefit the Malaysian government and policymakers in promoting a better educational opportunity specifically for children with special needs. Besides, the children with special needs, their parents and society will be benefited from this paper due to the opportunity for the children with special needs to access an equal education as other normal children in Malaysia.

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