



Children in Malaysia

Selected
Contemporary
Legal Issues

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Editors

Siti Zaharah Jamaluddin • Jal Zabdi Mohd Yusoff
Sridevi Thambapillay • Nur Ezaitie Nabihah Md Eusoff

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PREFACE

Children are an asset to a country but they can become a liability if we fail to address their issues. Whether we like it or not, issues pertaining to children will never cease and few of them need serious attention from all parties. Cases involving children are reported daily in mainstream media. For example, *The Star* reported on 6 February 2018 "Uncle claims trial to 253 counts of raping another niece",¹ while on 7 February 2018, "Cops arrest 61-year-old man for allegedly molesting 9-year-old girl".² On 8 February 2018, there was a report entitled "Remand extended for couple who allegedly abused daughter".³ Amongst the recent serious issues involving children that captured the attention of the public are child pornography on the Internet, children being groomed for sexual abuse, child marriage and stateless children. These issues are not new in our society but keep growing and become more serious. We have to acknowledge that Information and Communication Technology (ICT) is very important in our daily lives nowadays. However, it may be one of the factors which has triggered these problems. Children nowadays are easily connected to the wired world.

In line with the development of ICT, everything becomes easy including crimes as it may occur online. As a result, children who are innocent are abused mentally, physically and also sexually. In addition,

1 "Uncle claims trial to 253 counts of raping another niece" *The Star Online*, 6 Feb. 2018, 8 Feb. 2018 <<https://www.thestar.com.my/news/nation/2018/02/06/uncle-claims-trial-to-253-counts-of-raping-another-niece/#XoVdRZMmZw0DuzdK.99>>.

2 Allison Lai, "Cops arrest 61-year-old man for allegedly molesting 9-year-old girl", *The Star Online*, 7 Feb. 2018, 8 Feb. 2018 <<https://www.thestar.com.my/news/nation/2018/02/07/cops-arrest-61-year-old-man-for-allegedly-molesting-9-year-old-girl/#DcX6v63L40Vr97UP.99>>.

3 Singh, Sarban, "Remand extended for couple who allegedly abused daughter", *The Star Online*, 8 Feb. 2018, 8 Feb. 2018 <<https://www.thestar.com.my/news/nation/2018/02/08/remand-extended-for-couple-who-allegedly-abused-daughter/#j1xZy60pIkFTpCj.99>>.

the fact that a child lacks capability makes them an easy target. What is important to note is that the victimization of the children is done by strangers as well as their parents, family and friends. Thus, the 2016 amendment to the Child Act 2001 and the enactment of the Sexual Offences against Children Act 2017 are very much welcomed and seen as a proactive and important step that has been taken by the Government to enhance the protection of children. However, in dealing with child related issues, we have to admit that children are not only the victims *per se*. There are times where children can also become the offenders. However, no matter whether the child is a victim or an offender, he should be treated with care and provided protection.

Thus, this book will focus on the emerging issues relating to children with the hope that it will pave ways to create more awareness among the public, especially among parents and guardians. In Chapter 1, a brief introduction of the legal issues pertaining to children will be discussed. The authors also highlight the examples of emerging issues involving children.

Chapter 2 entitled "Child Marriage under the International and Malaysian Laws" discusses the position of child marriage under international and Malaysian laws. The authors also discuss the position not only from the civil law aspect but also from the Syariah law perspective. Chapter 3 entitled "Children's Voices in Custody Cases: A Roar or Whimper?" discusses children's participation in custody cases when their parents divorce. In custody cases, the child's wishes should also be given prominence in addition to the parents' wishes. Thus, the authors highlight the pertinent points to address this issue. Chapter 4 entitled "The Jurisdiction of Court For Children Relating to Children Beyond Control in Malaysia: A Historical Development" traces the development of issues pertaining to children beyond control in Malaysia. This is very important as the issue of children beyond control, if not handled with good care, will lead the children to progress to the next stage i.e. involvement in criminal activities. Chapter 5 entitled "Behind the Scene: Understanding A Child Offender through the Probation Report" discusses the importance of the probation report in assisting the Court For Children where a child offender is brought before and how the probation report assists the Magistrate in deciding the suitable order for the child offender. The chapter also discusses the problems faced by the Probation Officers in producing the probation report.

Next, Chapter 6 entitled "Stateless Children in Malaysia: Suffering the Consequences of Adults' Negligence, Indifference or Insensitivity?" discusses the reasons children become stateless and their position under Malaysian law. Chapter 7 entitled "Child Pornography on the Internet: Then & Now" discusses child pornography on the Internet. It focuses on the development of child pornography from time immemorial until

Preface

present and how child pornography spread quickly and widely with the advancement of technology.

Chapter 8 entitled "Protecting Our Children through Anti-Grooming Laws in Malaysia: A Discussion" discusses the concept of anti-grooming and the relevant laws that can protect a child from being targeted by sexual perpetrators. This is an issue where parents have to be vigilant and close to their children. Meanwhile, Chapter 9 entitled "'Forum Shopping' in Custody Cases: A Fair Trial or An Advantage?" discusses the concept of forum shopping and the most advantageous venue in seeking the custody of children. This issue becomes pertinent especially in battling custody cases among divorced parents in different jurisdictions. Lastly, Chapter 10 summarizes all the selected legal issues discussed in the book and proposes the way forward in dealing with child related issues focusing on their safety, security and well-being.

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Editors

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* The law discussed in this book is as of March 2018.



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Children and Young Persons Act 1969
Criminal Justice Act 2003
Digital Economy Act 2017
Family Proceedings Rules 1991
Serious Crimes Act 2015
Sexual Offences Act 2003

United States of America

Parental Kidnaping Prevention Act of 1980
Uniformed Services Former Spouses' Protection Act 1982



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INTRODUCTION: CHILD LEGAL ISSUES

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INTRODUCTION

The fast changing world has a significant effect on everyone. Though development and advanced technologies are the way forward, we must at all-times be vigilant to make sure we are able to balance its impact on us and people around us. This is because the development and advancement of technologies affects the whole society, including children. Therefore, protecting a child nowadays is not an easy task as the parents, especially, have to deal with the social problems that occur every day as are reported in the media.¹

Children are not under their parent's physical control all day long. They have to go to school, attend extra curricular activities or hang out with their friends. Parents have to go to work and there are those who have to work from morning till late night to maintain their families. The fact that children are the most vulnerable persons and can easily be exposed to social threats makes it difficult to protect them. Gone are the days where children were only involved in minor issues such as stealing coconuts or rambutans. Children nowadays are capable of committing offences which were once committed only by adults. The number of such crimes

¹ This involves violent crimes and property crimes such as murder, rape, gang robbery without firearms, theft of cars, motorcycles, snatch-thefts and house break-ins. See Audrey Vijandren, "Rising wave of juvenile crime", New Straits Times, 14 Dec. 2014, 3 Jan. 2018 <<https://www.nst.com.my/news/2015/09/rising-wave-juvenile-crime>>.

Issues pertaining to children have never failed to attract society's attention. Thus, this book intends to discuss a wide range of children's legal issues, especially in Malaysia. Through eight chapters, this book covers areas pertaining to children and family, children and vulnerable group and children and emerging issues. It contains a compilation of chapters authored by a panel of contributors, comprising senior and young scholars, that discuss the various selected contemporary children legal issues.

Covering the selected legal issues faced by the children such as children's voices in custody cases, children beyond control, stateless children, child pornography on the internet, child grooming and forum shopping in custody cases, this book intends to create an awareness among all the parties about children legal issues as it becomes more critical. The discussions do not only focus on the problems faced by the children but also provide legal solutions and suggestions for a better future for the children in Malaysia.



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