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**PARADIGM SHIFT IN THE CHILD'S WELFARE PROTECTION
IN MALAYSIA**

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Abstract

The child's welfare should become the first and foremost consideration in making decisions concerning children. Even though the concept is not new, the introduction of the National Council for Children (NCC) and the Child Registry by virtue of the Child (Amendment) Act 2016 (A1511) becomes a paradigm shift in the child's welfare protection in Malaysia. Based on the concept of the "family based care" introduced by the Ministry of Women, Family and Community Development, due emphasis is given to the importance of living in a family environment as a way to protect the child's welfare. As this article does not necessarily involve statistical techniques and mechanics of the quantitative methods, it employs the qualitative and library based research. The article seeks to highlight the statutory functions of the NCC as compared to its former counterpart, the Coordinating Council for the Protection of Children (CCPC). Besides, the discussion about the Child Registry, as another important mechanism for child's welfare protection, is also made. This article concludes that the amendment made to the Child Act 2001 (Act 611) by extending the NCC's functions, inclusion of new provisions and establishment of the Child Registry show the commitment of the government of Malaysia in preserving the child's welfare and shifting it to a new paradigm.

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1. Introduction

It is almost 21 years of Malaysia's ratification to the United Nations Convention on the Rights of the Child (UNCRC) since 1995. This participation at the international level indicates its commitment to protect the children and their welfare. At the regional level, a strong commitment is shown by Malaysia with other ASEAN countries to prevent and combat all forms of violence against children. Continuous improvement of policy framework, legislation, institutional framework and programmes are among the necessary actions taken to protect the rights and wellbeing of children (Department of Social Welfare, 2015). Currently, there are two main policies concerning children, namely the National Policy on Children and the National Child Protection Policy. The former involves the rights of children to survival, protection, participation and conducive surrounding for their development, while the latter concerns more on ensuring children are protected from all kinds of neglect, abuse, violence and negligence. Besides, in term of qualification of the teachers and those who deal with children at the early age, the government has planned to enforce the regulation that they need to have at least the diploma qualification. This regulation will be made compulsory in the coming years for childcare and pre-school centres under the government and private agencies in order to make sure teaching professionalism is upheld as an early education is very important for being a part of a child's welfare and development. According to the United Nations High Commissioner for Refugees ("UNHCR") Guidelines on Determining the Best Interests of the Child, the best interest of the child is the process formally done for any decision affecting the child, which requires a strict procedural safeguard that may involve various expert decision makers and many relevant factors for the best option. Since then, the similar commitment has been shown at the national level when many statutes have been promulgated, actions have been done and efforts have been taken towards upholding the principle enshrined in the UNCRC, that is the child's welfare should become the first and foremost consideration given by a decision maker in making decisions concerning children.

The increase of cases involving child abuse and parental negligence in Malaysia has made the government to take immediate action by amending the provisions of the Child Act 2001 (Act 611) ([https:// www.kpwkm.gov.my/](https://www.kpwkm.gov.my/), 2015). This is done to accommodate the provisions of law with new issues affecting children. Besides, the emergence of social issues relating to children such as the child grooming, paedophilia, child pornography, child trafficking and child marriage show the urgency for all parties particularly the government to look at the issues more seriously. The statistics revealed that children who need care and protection in 2014 were 4,295 comprising of 2,716 girls and 1,579 boys increased to 4,453 in 2015. The increment of 3.7% involved 54 girls and 104 boys. (Department of Social Welfare, 2015). This alarming threat shows that the child's welfare is at stake if no precaution is instantaneously taken. Allowing this happens would mean that the child is exposed to many possibilities that would affect his or her life as welfare of a child involves many things. With reference to the welfare principle, it is suggested that the child should own three interests, namely the basic, developmental and autonomy interest (Eekelaar, 1986). The basic or the first interest, which is vital for the nurturing of the child, is consistent with the welfare principle. These interests include needs for food, safety, shelter, clothing and medical treatment. Article 6 of the UNCRC regards this as the child's inherent right to life.

Similarly, the developmental interest that is the second, is important for the child to examine and develop his or her potential as a person, thus, forming an essential component for the child's welfare.

These include inter alia the needs for healthy and stable environment, good schools and colleges for academic pursuing, different skills for life and socialisation with friends and colleagues. Following that, the autonomy interest is essential for a child to choose a course of action for him or herself. The third category can also be brought in line with the welfare approach if the child is allowed to learn from his or her mistakes. On the other hand, this kind of interest may conflict with the other two interests if it is not properly controlled. Thus, the autonomy interest is to be put subordinate to the basic and developmental interests. To give effect to all these, the government establishes the National Council for Children (NCC) together with the Child Protection Team (CPT) and the Child Welfare Team (CWT). Both teams have the role to coordinate locally with the NCC to provide services to families and children in need of protection. It is pertinent to note that the NCC and the two teams are established in line with a newly introduced concept of family based care via the Child (Amendment) Act 2016 (A1511). All in all, the government is now emphasising the care of children in a family environment or by individuals who are known to the children and have relation to them before deciding to send them to any centre or institution. In other words, the roles of parents, family and relatives in taking care of children and protecting them are now given emphasis in the sense that their failure may make them be liable under the law. Significantly, the introduction of the Child Registry by government to monitor offenders who have committed child-related offences from getting close to children is also a way forward to protect the children.

2. Problem Statement

It is a settled law that in every decision making which may affect children; their welfare should be given first and paramount consideration. However, in term of application of the principle, there is still a room for improvement. As the principle invokes discretionary power of a judge or decision maker, its interpretation and application may vary from one case to another. Even though various efforts have been taken to preserve it through the establishment of the Co-ordinating Council for the Protection of Children (CCPC), there is still increment in cases of children who need care and protection. Significantly, it indicates that something needs to be done to break the gap between the law and practice of this principle.

3. Research Questions

This article seeks to answer the following research questions:

1. Whether the interpretation of the child's welfare should be enhanced to consider new issues concerning children?
2. How do the newly established NCC and the Child Registry play their roles in preserving the child's welfare?
3. Whether the national's aspiration in preserving the child's welfare can be upheld efficiently through the establishment of these new entities?

4. Purpose of the Study

This article aims to highlight the following:

1. The interpretation of the child's welfare.

2. The functions of the National Council for Children (NCC) in replacing the Co-ordinating Council for the Protection of Children (CCPC) and the Child Registry under a new amended law.
3. The challenges that are possibly faced by the NCC and the Child Registry.

5. Research Methods

This article employs a qualitative legal research as it does not necessarily involve statistical techniques and mechanics of the quantitative methods like the survey research (Silverman, 2010). Instead, it may have some bearing on law; study of legal rules, principles, concepts, decided case, legal institutions and questions (Yaqin, 2007). In order to obtain the primary data, the authors refer to some statutes such as the Child Act 2001 (Act 611) and the Child (Amendment) Act 2016 (A1511). For this writing, the authors refer to hardcopy and online books, periodical articles, published and unpublished works, newspapers, reports and official statistics.

6. Findings

In Malaysia, even though the principle of the child's welfare is not new since its establishment in 1888, its meaning is still vague and indefinite. This can be illustrated by the case of *Re Sinyak Rayoon* [(1888) 4 Ky 329 at 332] where Pellereau J perceived that because of the elasticity of the concept, it allows the Judge particularly in matters of guardianship to consider, in the interests of the infants, the varied circumstances of them. Courts in many cases held that the child's welfare should become the first and paramount consideration in every decision making involving children.

6.1. Child's welfare principle in Malaysia

In Malaysia, this principle is upheld by both civil and Syariah courts. The concept of child's interest particularly in the custody of a child can be seen in various provisions for example section 88(2) (a) and (b) of the Law Reform (Marriage and Divorce) Act 1976 (Act 164) (LRA), section 86(2)(a) and (b) of the Islamic Family Law (Federal Territories) Act 1984 (Act 303)(IFLA), section 30(5) of the Child Act 2001 and section 11 of the GIA. It signifies that the welfare of the child will take priority over the other things including the parents' rights, their claims and wishes. The principle of the child's welfare is applicable not only in custody and guardianship of a child, but to other aspects that may affect children such as health and safety, division of property, education and even in sentencing the children for the wrong that they have committed.

6.2. Protecting the child's welfare: analysis on the functions of the National Council for Children

The establishment of the council for children at national level now becomes a practice in many countries. The examples are the Republic of Philippines Council for the Welfare of Children, National Council on Child Welfare of Sudan, Delhi Council for Child Welfare and the California Child Welfare Council. In Malaysia, the establishment of the NCC is made by virtue of section 4 of the Child (Amendment) Act 2016 (A1511), which substitutes the provision of section 3 of the Child Act 2001 (Act

611). The new provision establishes the NCC in replacing the Coordinating Council for the Protection of Children (CCPC). The functions of the CCPC were relatively limited as compared to this newly established NCC. In upholding the government's aspiration in safeguarding the child's welfare and preventing cases of negligence of parents in caring for their children, the functions of the NCC as stated in the Child (Amendment) Act 2016 (Act A1511) are extended (House of Senate Debates, 2016). By looking at the name of the Council itself, i.e. the National Council for Children, it is comprehensible that the function is now intended to be performed by the NCC as the main agent with full authority and discretion. It is now not merely to co-ordinate its functions with other resources, to be an assistant or be side by side with other enforcement agencies. Notably, the public is not fully aware of the existence of the CCPC and its functions due to insufficient information supplied or inefficient roles played. Therefore, the establishment of the NCC is hoped to improve any shortcomings from the CCPC. The extended scope and the improvements made can be seen in the very function of the NCC in advising the government and making recommendations. The new law widens the scope of advices to include all issues and aspects relating to the child's care, protection, rehabilitation, development and participation at national, regional and international levels. Previously, the law provided for the CCPC to advise the Minister on aspects of child protection only.

The same goes for the extended power of the NCC to co-ordinate the various resources from all parties, being public or private sector, non-governmental bodies or organisations, which involve in providing services for the care, protection, rehabilitation and development of children. It is not limited to various resources among government departments only. For instance, in the case of Tahfiz school arson which killed 23 individuals, whom the majority of them were children, the NCC can co-ordinate the various resources to come out with a comprehensive and workable requirements, good practice, guidelines and other necessities to prevent the tragedy from re-occurring. In addition, the enhanced power is seen when the NCC can develop programmes to educate society not only to prevent child abuse and neglect but also to prevent the child's involvement in immoral or criminal acts. The NCC is not just to design the management system incorporating information channels for reporting cases of children in need of protection but it can design the system for children in need of protection by itself. This means that the function is not just to gather and integrate the information but also to project the system by its own. Significantly, the NCC may have the power to perform anything, which it deems fit and incidental to properly carry out its functions at national, regional and international levels. This is a very wide and unrestricted sort of power given to the NCC for using its wisdom and discretion for the best result of its decision. As compared to the previous provision, the CCPC may perform such other functions as may be prescribed by regulations made under the Child Act 2001 (Act 611) only. In other words, the functions must be within the scope prescribed by the regulations only. Notably, in the new law the government is required to allocate with adequate funds annually to enable the NCC to perform its functions well. It is very significant to have such provision as to trigger the functions of the NCC, which is none in the former law. Such provision on financial responsibilities by the state or allocation of sufficient budget to fund the activities for the welfare of the child and matters incidental thereto is a good practice of many countries like Norway, Netherlands, United Kingdom and Egypt.

Furthermore, the recognition of the NCC's importance is seen through its functions to educate society and raise awareness on the rights and dignity of a child. It shall be responsible to develop relevant programmes and strategies, warrant the standard of services provided by all parties involved in caring, protecting and rehabilitating the children so that they meet the children's needs. On top of that, the NCC is also accountable to co-ordinate and monitor the implementation of the national policy and national plan of action relating to children. These include facilitating, undertaking and promoting the research on child's protection, care, rehabilitation, development and participation. In relation thereto, the Attorney General of Malaysia, Tan Sri Mohamed Apandi Ali, is reported to have said that the children would be given more chances to voice out and participate in the decision-making process affecting them through the establishment of the NCC (<http://www.sinarharian.com.my/>, 2016). This function is assigned to the NCC through its members from the department responsible for welfare services to promote the children's participation and assist them in the process. In fact, this provision reflects the provision of Article 12 of the UNCRC that fundamentally gives children a privilege to be heard in any matters that influence their lives.

Apart from that, the NCC is furnished with monitoring power over the activities and performance of two teams concerning children, namely the Child Protection Team (CPT) and the Child Welfare Team (CWT). In other words, the teams are answerable to the NCC for their activities and functions. Very significantly, the wide scope of its functions is further traced when a special provision is newly inserted to empower the NCC to do all things necessary or expedient for or in connection with the performance of its functions. Understandably, this empowering provision is a key for a wide power of the NCC without many restrictions. By looking at these extended functions, one can safely say that the government is serious and committed to protect the child's welfare and well-being especially when many issues are inflicted by negligence in caring for the children. Instead of focusing merely on government departments or agencies as the service provider for the child's care, protection, development and rehabilitation, various parties including the private sectors and non-governmental bodies or organisations now become the concern of government. By having a specific National Council for a particular purpose like the NCC, more focused protection and designated function to cater the issues surrounding that particular group could be taken more seriously and extensively (Md Salleh, 2016). Significantly, it is hoped that the involvement of various parties as its members, could strengthen the output and diminish finger pointing to one particular agency when any problem arises.

6.3. Protecting the child's welfare: analysis on the functions of the Child Registry

Child Registry is another important mechanism of child protection which has been introduced by the Child (Amendment) Act 2016 (A1511). Sections 72 and 73 of the Act mandate the establishment of the Child Registry as a database of perpetrators who have been convicted for the crimes against children. Other jurisdictions that have already introduced such Child Registry are City of Ottawa Child Care Registry, Georgia Child Abuse Registry, Child Abuse and Neglect Central Registry of Michigan and Child Registry of Manitoba. Basically, the Child Registry contains the names of felons and their offences. In Malaysia, the data sourced from the Malaysian judiciary and Royal Malaysian Police. This Child Registry is to be maintained by the Ministry of Women, Family and Community Development and

accessible by the request to the Director-General of the Social Welfare Department (House of Senate Debates, 2016). Unsurprisingly, the trust to maintain the registry is held by the Ministry as it is the apex agency for administration, empowerment and protection of children in Malaysia. The Registry will chiefly equip authorities with ready essential information concerning the identifiers.

The Child Registry is designed to enhance the supervision of criminals who may take jobs that will bring them into contact with children. It will function to screen individuals who handle or deal with children as a vulnerable group (House of Senate Debates, 2016). Policy Division Secretary of the Women, Family and Community Development Ministry, Dr Waitchalla V Suppiah disclosed the idea behind the introduction of the Registry which is that the employers in child-related businesses can involve in inhibiting child abusers, rapists and paedophiles from approaching children (Carvalho, 2016). This covers the applicants for the positions in schools, preschool and child nurseries. Notably, the Registry is capable to protect the children by screening felons and sexual predators and limiting their access to children. It potentially heightens monitoring of criminals and impedes their chances to victimise others, thereby augmenting the safety of children.

The Child Registry is anticipated to address the possible gaps and loopholes which exist under available Registries of Offenders in Malaysia. It fundamentally broadens the scope of extant registry of children who are in need of protection. The later has merely the record of victims and wrongdoers of child abuse and neglect which is utilised by the Ministry of Women, Family and Community for child protection interventions. Further, the Child Registry supplements the existing list of criminals held by the police force in pursuant to the Registration of Criminals and Undesirable Persons Act 1969. It has been argued that the criminal database is incomplete and not updated (Aziz, 2016). The Child Registry is hence intended to consist of current data and records of offenders who victimised children in communicable form (<https://www.kpwkm.gov.my/>, 2016). The Child Registry is also more specific and limited in sphere than the police record, considering that it will be applied only for convicted criminal conducts against children.

Despite the rationales of the Child Registry as highlighted by the government, it has sparked an intense debate in Malaysia. Many including civil right lawyers and activists are sceptical of the legitimacy or the efficacy of Child Registry. The completion of the Registry has even been inevitably delayed subsequent to the concern of Attorney-General's Chambers about the issue of violation of offenders' privacy and equal protection (Malaymail, 2017). Moreover, some commentators have argued that the accessible registry of convicted offenders denotes an expansion of criminal sanction. By contrast, the major premise of public opinion is that the Child Registry is desirable and beneficial for children. The Registry is predicated, in part, on the belief in deterrence. The proponents contend that the Registry serves as a preventive tool to retrain would-be-offenders and to curtail chances of culprit reoffending. This is given the increased probability of detection, detention and punishment particularly in the case of recidivism. This may lead to the avoidance of future child victimisation.

However, not much is known about the actual implications and effectiveness of such Registry on both individual predators and communities. It is vital to note that there is scant empirical evidence relating to the outcomes of the registrations including the magnitude of recidivism for registrants. The results of growing international research suggest a range of problems with offender registries including

difficulty of offender reintegration into the communities, employment problem, housing disruption, social stigmatisation, harassments and psychosocial stress (Matson & Roxanne, 1996; Tewksbury, 2005; Lees & Tewksbury, 2006). Adding to this is the emotional problems that are experienced by the families of offenders (Tewksbury & Levenson, 2009; Frenzel et al, 2014).

Despite doubtfulness on whether the Child Registry should be implemented, arguably it has the high ability to supervise the behaviours of convicts in the communities and to trace their movement. The security concerns of children may outweigh the civil liberties claims of the convicted persons. It is significant for the criminal behaviours against children to be dealt with solemnity. But, all areas of concerns and problems as found by previous international research must not be overlooked. They should be considered for refining and applying a more functional and efficient structure and process of Child Registry in Malaysia. Attention must be provided to conduct risk evaluations and research concerning risk classifications of offenders, systems of registration (such as the extent of information required and lengths of time for registration) and different degrees of public notification for divergent categories of offenders. This should be coupled by techniques for maintaining the infrastructure of the system including trained workforce, logistics and adequate funding. Additionally, the government must implement effective measures to realise the efficiency of registration process and accuracy of information.

7. Conclusion

Having considered the above, it is found that Malaysia is moving forwards in protecting the welfare of the child in the sense that many efforts have been continuously taken to break the gap between the law and practice. Evidently, old provisions and practices relating to child welfare protection, which are inefficient and impracticable, are duly amended and substituted. New laws concerning children have been introduced and some have been working out. For example, a newly introduced the Sexual Offences against Children Act 2017 (Act 792) and the Court for Sexual Crimes against Children are among the developments of child protection in Malaysia. Similarly, the law in providing legal escort services to victims and families of child sexual crimes, which is still in the process of it, implies that Malaysia is serious in safeguarding children. More importantly, like other national councils which are established for a specific purpose, for instance the National Council of Women's Organisations ("NCWO"), the National Council for Islamic Religious Affairs Malaysia ("NCIRAM"), the National Council for Persons with Disabilities ("NCPD"), the National Council for the Blind Malaysia ("NCBM"), the National Council of Welfare and Social Development Malaysia ("NCWSDM") and the Malaysian Council for Rehabilitation ("MCR"), the purpose of establishing the NCC is to enable the deliberation and focus can be given to the targeted groups more efficiently and far-reaching. The extended functions of the council and the provision on allocation of sufficient budgets to fund activities are among paradigm shifts in the child's welfare protection. Though, the actual implications and effectiveness of the NCC and the Child Registry are yet proven, but the spirit and efforts taken by Malaysian government to prioritise the child's welfare protection should be applauded.

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