

STATELESS CHILDREN'S ACCESS TO TERTIARY EDUCATION

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Abstract

Stateless children have become a major concern in Malaysia for quite some years. The government is continuously making efforts to solve the matter and provide the best they can for these children. In 2018, the then Deputy Prime Minister had instructed government schools to accept stateless children as their students to show relevant documents as proof of citizenship application. However, the education journey of these children is incomplete as they can only finish secondary school but has almost no access to tertiary education, especially in public institutions. This research aimed to examine the right of education for stateless children with the primary objective to identify their access to tertiary education in Malaysia. The method used in the study will be primarily based on the qualitative research methodology, which comprises of the doctrinal analysis and empirical study approach. It was found that their fight for tertiary education is rarely being reported, and the only means for them to further their study is to be noticed by the government or private institutions through media. Sadly, failure in such means that they would either need to pay the tuition fees in private institutions on their own or forget their dreams to pursue higher education.

Keywords: stateless children, right to education, tertiary education

INTRODUCTION

The most precious gift that a parent can pass on to their children is education, as it is a powerful means to change one's life and status. The children's right to education is guaranteed by the United Nations Convention on the Right of Children (CRC) under Article 28. Though children's education has been constantly emphasized worldwide, some children are still being denied their rights. Among others are stateless children, and this includes the one in Malaysia.

Stateless children refer to children without nationality of any country. Despite being born in Malaysia, these children are eliminated from the opportunity to enjoy basic standards of living, particularly concerning education and health care. In most cases, these children and their families are often enveloped in poverty and would grow up being marginalized and discriminated against.

Malaysia is not a signatory to most major stateless conventions, and we are starting to provide certain rights to these stateless children as part of humanitarian initiatives. In 2018, the government decided to allow stateless children in government schools (Ibrahim, 2018). There are also alternatives to education for these children by the government, non-profit organizations, companies, and individuals to support them with primary education. However, the government has yet to create any policy on alternative education (Selvakumaran et al., 2020).

Despite the current education opportunity they are currently receiving, they are still facing challenges when obtaining their bachelor's degree. They are only allowed to receive education up until secondary level. Unlike their friends of the same age who get the opportunity to further their study in higher institutions, they will need to wait for a miracle to work if they wish to do the same. Just imagine these children went to school, obtained good results, and suddenly learned that they cannot further their studies because they are not citizens of any country. That would result in unfairness and inequality where the children would later lose hope for their future. The younger ones might feel demotivated after seeing the stateless children who managed to get good results but cannot do anything with it. This cycle of struggles among these stateless children will continue to the next generation, leaving them with no option. This paper examines the right to education for stateless children in Malaysia with a later objective to identify the tertiary education opportunity for stateless children in Malaysia.

LITERATURE REVIEW

Stateless Children in Malaysia

Nationality may not be a significant issue for most children in Malaysia since they were born by parents with Malaysian citizenship hence automatically registered as Malaysian. However, there is still a worrying number of children who are denied citizenship and remain stateless. By

definition, a stateless person is referred to as “individuals who are not considered citizens or nationals under the operation of the laws of any country” (The United Nations High Commissioner for Refugees, 1954). As of 2016, approximately 290 437 children were reported as stateless by the former Deputy Prime Minister Dato’ Seri Dr. Zahid Hamidi (Huiyee, 2017a). On that same note, another 15 000 children still had their nationality denied despite being born in Malaysia to Malaysian fathers. Around 2 500 are still not going to school due to the lack of proper documentation (Azizan, 2018). Dato’ Seri Dr. Zahid Hamidi further reported in the following year that the number of underage and stateless children grew to 30 000 (Azizan, 2018). This is a significant number of growing individuals who still live without proper documentation and privileges of being a citizen. Nevertheless, it is worth mentioning that these numbers are not the final count as these stateless children are often undocumented, which makes them difficult to trace as years go by.

Several factors are involved when it comes to the matters of stateless children in our country. It may be caused by the failure to legally register marriage, not registering the birth of a child, abandonment of children, refugees and migrants who are undocumented, and the adoption of children. These stateless children in Malaysia could then be born stateless either because their parents themselves are stateless or of undetermined nationality through all these situations. Besides that, these children may also be stateless if they were born to an unmarried couple of a citizen father and a foreign mother. Therefore their citizenship follows that of the mother.

Adoption is a way to give rights and privileges to these children, but it is still not an easy journey. The adoption of children still ironically contributes to the statelessness of children in Malaysia. Some of these children are adopted by adoptive Malaysian parents who then had to sacrifice a lot in fighting for their children’s right to nationality and education. The first one is the Adoption Act 1952, which provides adoption law for non-Muslims, while the second one is the Registration of Adoptions Act 1952, which is only applicable to Muslims. Due to these two parallelly existing adoption governances in Malaysia, things could turn out further complicated to some extent. The National Registration Department denies many adopted children their citizenship due to the differences in the governance and application of the adoption law in Malaysia, particularly the Adoption Act 1952 and the Registration of Adoptions Act 1952.

The prevalent lack of access to birth registration, which then leads to poor or lack of documentation, contributes to statelessness cases. This situation turns worse if the statelessness is being inherited from their already stateless parents. Such cases are shared among the Bajau Laut tribes in Sabah, who are traditionally migratory people (Razali, 2017). These people usually have no way of proving their nationality as Malaysians since they would not have any documents or legal evidence. Once they give birth to their children, such statelessness is inherited, categorizing them as a 'stateless person' (as defined by the Convention on the Status of Stateless Persons in 1954). These stateless children will come across many hurdles in their life, and one of the concerning problems will be related to them being excluded from education.

Education as Universal Human Rights

To date, International laws have provided protection of human rights which specifically addresses the rights to education. The Right to Education (RTE) is known as the universal right for all children, as postulated in the United Nations Convention on the Rights of Children (CRC) (UNHCR, 1989). In that convention, Article 28 has provided explicitly that every child has the right to an education. Primary education should be free to all children, whereas secondary and higher education should be made available and accessible to them. It is undeniable that children should be encouraged to pursue the highest education possible (Makhtar et al., 2015). With this article stipulated in the convention, this shall allow no discrimination towards any stateless children, especially in pursuing education.

Although our country has acceded to Article 28 of the CRC, many stateless children in Malaysia are denied access to pursuing education. Due to the many challenges faced in providing relevant documents for enrollment in government schools or even tertiary education institutions, they face trouble getting any education. This is due to Malaysia's reservation on Article 28 of CRC, which turns out to be in contrast with Article 12 of the Federal Constitution. As stated in Article 12, the provision has specified that the right to education is guaranteed to Malaysian citizens only. With this statement, such rights to education do not apply to any non-citizens of Malaysia, which includes the stateless people.

This situation shows that even the existence of international laws and treaties could not promise absolute protection of human rights towards these stateless children who are most likely to be discriminated against and oppressed for the fact that they are stateless

(Selvakumaran et al., 2020). Such denial to accessing education would eventually lead to a distressing effect on these stateless children who are already trapped in perpetual marginalization across many generations.

Malaysian Initiative in Providing Education to Stateless Children

Having acceded to Article 28 of the United Nation's (1948) Declaration of Human Rights of the CRC, Malaysia has reserved that particular provision concerned with access to education as it clashes with Article 12 of the Federal Constitution. This has led to limited access to education, where non-citizen children cannot receive the compulsory free primary education. While the non-citizen children can still enjoy their access to education, albeit limited, this situation is not reflected for the stateless children who have no access to formal education in government schools. This is due to the lack of related laws or policies for these stateless children and the non-existence of any formal alternative learning programs (Selvakumaran et al., 2020).

Nevertheless, these stateless children and their non-access to education are never entirely put aside. Many non-government entities (foundations, madrasahs, churches) have provided alternative platforms for these children to access education via alternative learning centers (Khan & Fathil, 2020). These stakeholders play a significant role in giving support and aid to these undocumented, stateless children. With such compassion for providing primary education to all children, stateless children will pursue education.

Looking at the rising number of stateless children in Malaysia, many changes have been seen regarding permitting education to them. Before the year 2018, most stateless children are turned down from attending government schools. Even if they can, it is up to the school headmaster's discretion whether to allow these stateless children to attend school or not. Moving forward to 2018, the former Deputy Prime Minister, Datuk Seri Dr. Zahid Hamidi, has directed that all stateless children can be accepted to attend schools if they have submitted their citizenship application (Shahar, January 2018). This was a response to reports of the then seven-year-old Darshana, who was denied enrolment to a government school in Seremban for she was an adopted child with no proper documents. School Management Division Deputy Director Pesol Md Saad said this was part of the Education Ministry's move to simplify the registration process for children without citizenship into government schools (Ibrahim, 2018).

This effort can be counted to fulfill the first part of Article 28 of CRC, where primary and secondary education is accessible to all children in Malaysia despite them being stateless. However, the main concern in fulfilling Article 28 of CRC now is the access to higher education for these stateless children in their nearest future.

METHODOLOGY

The method used in the study will be primarily based on the qualitative research methodology, which comprises the doctrinal analysis. This is the most common methodology in legal research where it is used to analyze the legal doctrine and its development and application (Ali et al., 2017). The doctrinal legal research involves a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation (Gawas, 2017). This research will look into relevant provisions relating to children's education rights, particularly stateless children in International law and Malaysian law. Besides, the research will also focus on reported news associating with stateless children's access to tertiary education.

This study analyses the rights to education stated in the United Nations Convention on the Rights of the Child (CRC) and the Federal Constitution of Malaysia. There are differences between the two laws regarding the Right to Education for stateless people in their respective countries. A focus is made on Article 28 of CRC, which preserved the education rights to all children regardless of their citizenship status. A comparison is made with the related article in the Federal Constitution of Malaysia. In Article 12, it is clearly stated that this provision specifies that the right to education is guaranteed only to Malaysian citizens; hence it does not cover non-citizens and stateless people. These two articles are analyzed and reviewed to examine the roots of difficulties leading to the inability of these stateless children to access education.

There are five cases in total that were analyzed. These cases were chosen as they were the ones that get the attention of the Malaysian community in which stakeholders and people of interest have paid attention to them in ensuring that these stateless people get the same education opportunities as other Malaysian citizens. The first case in 2017 was the case of an individual named Roisah Abdullah, who was once reported in Malaysia Kini (Huiyee, 2017a) as an excellent student of Sijil Tinggi Pengajian Malaysia (STPM) in her school but cannot

continue her studies at a public institute of higher learning due to having no valid citizenship status. In the same year, the second case involving a child name A-Qing was reported.

The third case chosen involves two stateless individuals, namely G. Saradha Devi and Nurul Shuhada Abdullah, reported in 2020 by Buletin Mutiara. These two individuals face similar difficulty in furthering their studies at public and private institutions of higher learning as local students due to unregistered citizenship status, forcing them to register as international students. The last case is concerned with an excellent student named Wong Man Ling, who scored 10 A's in Sijil Pelajaran Malaysia (SPM), but since she was born to unmarried parents which the mother is a Cambodian, the process of continuing his studies as a citizen is not accepted and hence needs to register as an international student.

RESULT AND DISCUSSION

Future of Stateless Children in Higher Education

Although there are countless numbers of stateless children in Malaysia, the fight for tertiary education is rarely being reported. Many of them have completed their secondary education and even passed Sijil Pelajaran Malaysia with flying colours, but their future is uncertain. They could not pursue their higher education because they do not have an Identification Card. The news about a stateless child named Roisah Abdullah was being publicized (Huiyee, 2017a). Roisah was the best student for Sijil Tinggi Pelajaran Malaysia (STPM) in her school. Despite her achievement, she does not receive any offer to further her study due to her status as stateless. She was born in Klang to a foreigner's mother and an unknown father and later adopted by a couple. Her adopted parents have fought for her Malaysian citizenship since she was born but to no avail. However, Roisah was lucky enough to receive a scholarship from Universiti Tun Abdul Razak and was promised a place in Universiti Utara Malaysia by the former Higher Institution Minister, Datuk Seri Idris Jusoh (Azizan, 2018). She even got a place at the University of Reading, Malaysia, after the management encounter her story (Today Online, 2018). Roisah, who is now pursuing Bachelor in Accounting in Universiti Tun Abdul Razak, received an approval letter for her citizenship application from Housing and Local Government Minister Zuraida Kamaruddin (Lim, 2019).

Another child named A-Qing said she had to postpone furthering her studies pending her citizenship application (Huiyee, 2017a). Her father is a Malaysian citizen, and her mother is an Indonesian citizen. If she wants to further her studies, she has to apply for university as an Indonesian citizen. She will have to pay more fees for an international student visa, along with higher tuition and resource fees.

In 2019, The Star reported the struggle of a girl named Wong Man Ling, born out of wedlock by a Malaysian father and Cambodian mother who had since gone missing. She managed to get 10 As for her SPM. However, her citizenship status did not allow her to apply for her passion course that is dentistry in Universiti Malaya (The Star, 2019). Her parents could not afford to send her to a private university, and she is left with no choice except to wait for a miracle to happen.

Recently, two parents in Pulau Pinang express their concerns over their children's future (Buletin Mutiara, 2020). Both the children have completed their secondary school but could not further their studies. G. Saradha Devi was born to a Philippian mother and Malaysian father. However, her parents only registered their marriage after she was born. Her father has made many appeals to National Registration Department but still failed to obtain Malaysian citizenship. Another stateless child, Nurul Shuhada Abdullah, went through the same predicament for not able to pursue higher studies. A Malaysian father and Indonesian mother adopted her while her biological mother is an Indonesian. Her adopted father urged the government to help them solve their daughter's citizenship so that she will allow them to pursue their dreams.

The above cases show the struggle that stateless children need to face because of their status. They might get good results in Sijil Pelajaran Malaysia, but sadly they cannot use that result to get a place in higher institutions. Not all of them are lucky enough to get a scholarship offer like Roisah, so something needs to be done to help them secure their future just like any other children. Some private institutions may want to accept the children as their students; however, this would be difficult as they have to pay foreign student fees, and that is higher. It will also be challenging to receive a National Higher Education Fund Corporation loan or a PTPTN loan.

CONCLUSION

The best way to provide complete education to these stateless children is by giving them nationality so that they will be able to enjoy the same right as other children of their age. This right will not be limited to education. It is best if our legislature can do some amendments or enact new laws regarding the citizenship of these stateless children (Soh et al., 2017). However, that maybe require some major changes in our current law and national policy in granting nationality. Hence this paper suggests the government open special access for them to higher institutions. The government may allow them to enter public universities to provide certain documents like adoption papers and certificates. This has been done when Roisah's case got attention from the media (The Star, 2018).

This paper believes that the government can continue to allow more of these children into universities. Besides that, private universities should provide places for them in the institution by providing more scholarships. They can also allow these children to study in their universities at a local rate. Universities as the provider of education should show concerns about the future of our young generations. When Rosiah's case was widely reported in the media, universities like Universiti Tun Abdul Razak and the University of Reading, Malaysia, have shown their concerns. The Managing Director of the University of Reading said that they could not let the future of these children come to a standstill because of bureaucracy problems (Azizan, 2018). It is hoped that more universities could express the same concerns. This will ensure the children will receive the same kind of rights as other children and will not be left behind in terms of education. If an opportunity is given to them, these stateless children will help build the nation together with citizens as Malaysia has always been their home.

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