

2013- THE BEST INTEREST OF THE CHILD PRINCIPLE IN JUVENILE JUSTICE SYSTEM: COMPARATIVE STUDY BETWEEN BRUNEI DARUSSALAM AND MALAYSIA

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ABSTRACT

Many children are in a vulnerable position if their interests are threatened since they are powerless to modify their circumstances and avoid disadvantage. Hence, the best interest of a child principle is the core principle that is used to guide any decisions and actions regarding the care of all children, including children in conflict with the law. UNCRC has set forth a punitive measure of using the detention center for a child shall be used only as a measure of last resort and for the shortest period of time. However, there is still a lack of execution of the principle of the best interest of the child, such as the usage of closed facilities for children. This paper highlights the background study of the “Best Interest of a Child” Principle. Consequently, using a qualitative comparative approach, this essay intends to look into the international laws, regional laws, and domestic laws in Brunei Darussalam and Malaysia in relation to children in conflict with laws. In conclusion, there is still room for Brunei Darussalam and Malaysia to enhance and protect the interests of the children in conflict with the laws. For instance, diverting children in conflict with laws from the formal justice process may also reduce the utilization of closed facilities.

Keywords: Children, Best Interest, Juvenile Justice, UNCRC

INTRODUCTION

The introduction of the child rights-based approach brought about by the UNCRC revolutionized the juvenile justice system in many different countries. Additionally, as a parent instrument, UNCRC has established globally recognized guidelines for juvenile justice that all state parties must follow. In order to make sure that nations streamline their juvenile justice systems to meet the requirements established by the convention, the standing of the CRC as a legally binding international instrument is crucial. The ratification of the CRC has not only altered the juvenile justice system in Brunei and Malaysia, but it has also hopefully cleared the path for improvement.

Besides UNCRC, there are four UN standards and norms generally mentioned when speaking about juvenile justice, namely the United Nations Rules for the Protection of Juveniles Deprived of the Liberty known as Havana Rules, The United Nations Standard Minimum Rules for the Protection of Juvenile Justice known as the Beijing Rules, The United Nations Guidelines for the Administration of Juvenile Delinquency known as the Riyadh

Guidelines, and United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

The principles and norms encapsulated in these instruments are regarded as important to reinforce the interpretation and implementation of CRC's legally binding standards on the administration of child justice.

CRC emphasizes that locking up the children in detention should always be the last resort. However, for some countries this is too often not the case, in some countries other than committed crimes, children can be detained for disobeying their parents, or children who use drugs are often detained for medical treatment and rehabilitation purposes. In addition, some countries believe that this punitive punishment is in the best interest of the children's discipline.

It is the states' obligation once they ratify the CRC to ensure their juvenile justice is to conform to international standards and for the purpose of this research states should ensure that children are held in humane conditions along with access to other essential services and facilities. Brunei Darussalam and Malaysia have already ratified and adopted some of the international standards in their existing domestic legislation for their juvenile justice, including the implementation of detention centers that serve as deprivation quarters for children in conflict with the laws. The article will discuss both national laws pertaining to the juvenile justice system and examine the respective advancements of Malaysia and Brunei Darussalam.

In conclusion, the governments of Brunei Darussalam and Malaysia can yet do better as the major decision-makers when it comes to advancing children's rights and putting their best interests first.

METHODOLOGY

The researcher is employing a qualitative comparative study, where the researcher studies a particular topic or phenomenon for the purpose of this research the the best interest of the child principle in the juvenile justice system in Brunei Darussalam and Malaysia. Generally, the person who carries out comparative studies is interested in identifying the similarities and differences among macrosocial units resulting in understanding, explaining, and interpreting diverse historical outcomes and processes and their significance for current institutional arrangements. (Ragin, 2014)

In the modern period of multiculturalism, comparative cultural studies play a vital role, experts in France view comparative law as an instrument for developing domestic law and legal doctrine. (Van Hoecke, 2015)

The source of the research data comes from textual data from written documents of past research, books, journals, and law reports pertaining to this subject matter that can be found at libraries and reliable websites.

LITERATURE REVIEW

Article 3(1) of UNCRC has been said to be more than an umbrella provision as it is an aid to construction, a mediating principle that can aid in resolving conflicts between rights, and an evaluative principle (Alston and Gilmour-Walsh, 1996).

As highlighted by Mustaffa in his research, although UNCRC is silent on the exact minimum age of responsibility, it was recommended by the drafter that the age of the criminal responsibility shall not be fixed too low, taking into consideration the children's interest, for instance, their emotional, mental and intellectual maturity and stage of growth. (Mustaffa Aminuddin, 2017)

There are some parties who point out the opinion that enforcing corporal punishment is for the best interest of the child. However, this is not the case because UNCRC itself is the guideline that highlights disciplining a child amounts to corporal punishment, this would be considered as a violation of the rights within the CRC and accordingly not in the child's best interests. (Wolf, 2012)

UNICEF, the United Nations Children's Fund, has reported that more than 1 million children around the world are behind bars. Many are held in decrepit, violent and degrading circumstances such as the absence of education, access to meaningful activities and daily communication. Also, too frequently, children imprisoned for acts of delinquency are put in institutions that lack the appropriate facilities and infrastructure. (Bochenek, Michael Garcia Bochenek, 2016)

THE EVOLUTION OF THE BEST INTEREST OF A CHILD PRINCIPLE

Initially, the idea of a "Best Interest" emerged when society gradually became more interested in children's future. Janusz Korczak once wrote: 'To reform the world means to reform the methods of bringing up children. (Thomas Hammarberg, 2008) In addition, he stresses that the children deserve respect for the interest of the children, not as charity or a favor, but as a right. (Janusz Korczak, 2009)

Even though there are several arguments and theories concerning the child as the right holder, the reality these days is that the child does have a right. It took us decades to come to the fact that the child does have rights despite their capacities has been questioned.

Since 1813, the principle of the 'Best Interest' has been the guiding principle in Pennsylvania's family law, where advancing the child's best interest is always supposed to be the court's goal. Before World War I, there were no sets of rules and laws to protect children, for instance, it was common for them to work with adults in unsafe and unhealthy conditions. A year after World War I, the League of Nations was established and one of its primary areas of focus was the juvenile justice system. For instance, the Child Welfare Committee was formed with the goal of investigating children's rights and determining what steps states

ought to take in relation to child trafficking, child labour, street children, slavery, and juvenile prostitution. (Joutsen Matti, 2017)

“Save the Children” Founder, Eglantyne Jebb and her sister started a humanitarian movement for special protection for children, both sisters believed that children’s well-being is crucial, and they believe every child deserves a future. Later in 1924, Eglantyne Jebb drafted the important landmark legislation for children, namely the Geneva Declaration on the Rights of the Child. According to the Declaration, everyone owes children the right to economic independence, protection from exploitation, means for their growth, special assistance in times of need, and an upbringing that fosters social responsibility.

A year after World War II ended, The United Nations General Assembly established the International Children’s Emergency Fund, UNICEF. Initially, UNICEF was a follow-up program for the relief of the victims of war, where they provided temporary relief to children and mothers who were suffering during the aftermath of World War II. Next, after UNICEF was established as a permanent UN agency, ever since that it broadened its purpose to include providing humanitarian and developmental aid to children around the world. (Ursu, 2023)

After World War II ended, the 1948 Universal Declaration of Human Rights was the first legal document that embraced individual freedom and rights to foster peace and the conditions for a better society. Universal Declaration of Human Rights 1948 has two important articles referring to children, namely article 25, which mentions that mother and child including children born in or out of wedlock are entitled to special care and assistance. Article 26 emphasizes the importance of education for everyone and mentions that parents have prior rights to provide education and choose a kind of education to their children.

Long-awaited efforts in implementing legal protection for children became a reality when the United Nations Social Commission 1950 prepared a draft permeable and principles of the Declaration of Child Rights. Along with other principles concerning the child were incorporated into the Child's Rights Declaration the General Assembly introduced the Declaration of the Rights of the Child in 1959. With the recognition that children need special care and protection, the world leaders came up with another declaration, this time, a specific declaration on their rights. Although the declaration is a non-binding instrument, it cannot be denied that this declaration's existence shows the strength of recognizing child rights that bring us closer to legally binding treaties.

The 1959 Declaration of the Rights of the Child had in fact already evoked the principle, stating that ‘the best interests of the child shall be the paramount consideration’ in the enactment of laws relating to children, as well as ‘the guiding principle of those responsible for (the child’s) education and guidance’.

The Convention on the Rights of the Child extends the principle to cover all decisions affecting the child. This is a radical departure. The best interests of the child shall now be a primary consideration in all actions concerning children – not just actions taken by the state authorities, parliamentary assemblies, and judicial bodies but also those taken by relevant private institutions.

The drafters of the Convention not only expanded the scope of the principle, but they also made it one of the 'umbrella' provisions, making it crucial to the Convention's overall framework. The UN Committee on the Rights of the Child has taken the principle one step further, defining the child's best interests as a 'general principle' guiding the interpretation of the entire Convention.

JUVENILE JUSTICE SYSTEM

An adult is processed through the formal justice system when they come in contact with crime. Before a better understanding of children's interests, youthful offenders generally underwent the same justice system and punishments as adults. There are differences in process between adults and children, hence starting in 1889, American states and the federal government started to process juveniles in their own justice systems.

As stated throughout the UNICRI's Guidance for Legislative Reform on Juvenile Justice, juvenile justice (or children justice, as it is sometimes referred to) is a general term used to describe the policies, strategies, laws, procedures, and practices applied to children over the minimum age of criminal responsibility who have come into conflict with the law.

Despite lacking a widely acknowledged meaning, the term "juvenile" is frequently employed to refer to a minor who has surpassed the minimum age of criminal responsibility and is suspected, found guilty, or facing charges of a criminal act.

Through this juvenile justice system, children in conflict with the laws will undergo different justice systems, instead of getting the same punishment as the adults and being held in risky custodial centers they will be separated from adults. However, in some countries, these children and young persons are held in extremely poor and dangerous juvenile facilities for intensive periods of time.

INTERNATIONAL LAWS

The International Principal Act governing the handling of children in conflict with the laws is the UNCRC. The Convention on the Rights of the Child or UNCRC constitutes a comprehensive listing of the member states' obligations to the convention towards all children, and this obligation does not exclude any child that is deprived of their liberty just because they are in the criminal justice system.

The issue of corporal punishment is a controversial issue. A reading of Articles 19(1) Article 37 and Article 28(2) shows that the CRC prohibits corporal punishment:

Art. 19(1): States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child....

Art. 37: States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age....

Art. 28(2): States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

In addition, Corporal punishment or physical punishment has been defined by the Committee as:

“... any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light...In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child (United Nations Committee on the Rights of the Child, 2006).

Neither member state should allow a child to be held in any kind of detention without proper legal procedure, as stated in Article 37. State Parties must ensure that no child is stripped of his or her liberty in an unjust or illegal manner. The detention of a child must be illegal and used as a very last resort and for the shortest amount of time. Therefore, if this happens the general guiding principle concerning any child has been mentioned at the beginning of the convention in Article 3 and later in Article 20 (1) of UNCRC where the child's best interest shall be the primary consideration, including children in detention centres.

Other than UNCRC, there are four UN standards and norms generally mentioned when speaking about juvenile justice. First, the United Nations Rules for the Protection of Juveniles Deprived of the Liberty known as Havana Rules outlined in their first and second rule that decisions made by the authority must take into account children's interests and set that deprivation of the liberty of a juvenile should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The rules also highlight the establishment of open detention facilities with no or minimal security measures in order to ensure the best interest of children is upheld. In addition, the guidelines were developed to encourage the use of alternative to imprisonment, and to ensure that juveniles in the custody have their basic rights protected. (Joutsen Matti. 2017)

The Havana Rules define a juvenile as every person under the age of 18 years, and defines deprivation of liberty as any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority (Rule 11).

Second, the Beijing Rules are the guideline for the states to protect children's rights and welfare development while they are in the criminal justice system. The Beijing Rules also stress that any detention should be temporary under Rule 17(b) and state that this should occur under Rule 17(c) only where the child has committed "a serious act involving violence." In addition, the Beijing Rules stress the particular needs of young offenders in an

environment that requires careful attention to their individual needs and concerns without any discrimination.

Third, the United Nations Guidelines for the Prevention of Juvenile Delinquency or the Riyadh Guideline was introduced by Professor Allison Morris and the guidelines were circulated among experts in juvenile justice. (Joutsen Matti. 2017)

The Riyadh Guidelines cover early preventive and protective intervention modalities and actively encourage positive roles from a range of social institutions, including the family, the educational system, the mass media, and the community, as well as the children and young person themselves.

Lastly, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty are not only applicable to juvenile justice institutions but apply to deprivations of liberty on the basis of the children's welfare and health. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty establishes minimum standards in all forms, consistent with human rights and fundamental freedoms, and with a view to counteract the harmful effects of all types of detention and to foster integration in society.

JUVENILE JUSTICE IN BRUNEI DARUSSALAM

Brunei Darussalam uses a dualist approach in its application of international laws. When Brunei becomes a member of an international convention or commitment and decides to join a treaty, the municipal law does not automatically incorporate international law. Incorporation entails enacting implementation legislation and appending the relevant treaty to the text of the Act or its corresponding schedule. After incorporation, a higher status than domestic law is given to international treaties, overridden only by the Constitution. (Ololade O.Shyllon, 2009).

Currently, Brunei Darussalam already ratified three conventions: the United Nations Convention on the Rights of the Child and its two optional protocols. Also, the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the United Nations on the Rights of Persons with Disabilities. Brunei has signed, but not yet ratified, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT). In May 2019, Sultan Hassanal Bolkiah, in his speech, announced that Brunei Darussalam would ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (Anon. 2019.)

After Brunei expressed its willingness by signing the treaty earlier in September 2015. There are several UN treaties that Brunei Darussalam has yet been ratified. For instance, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the International Convention to Protect the Rights of All Migrant Workers and Members of Their Families (ICMRW).

Brunei has progressed towards strengthening laws protecting children in order to comply with international norms since ratifying the UNCRC. In 2006, after a long time, Brunei came

up with specific legislation named the Children and Young Persons Act, which covers specific protection for children in court, detentions, victims, and perpetrators.

In Article 1 of the UNCRC, a child is described as a person under the age of 18. Meanwhile, in Brunei, a child is someone under the age of 14 and a young person is someone who has reached the age of 14 but has not yet reached the age of 18. The meanings of child and young person were also identified in Chapter 219 of the Children and Young Person Act.

Chapter 219 of the Children and Young Persons Act is the key legislation in Brunei Darussalam governing children's affairs, including children in conflict with the law. A Juvenile, according to the section 2 of CYPA, is anyone who has passed the age of seven but is under the age of 18. Also, according to section 10 of CYPA the establishment of the Juvenile Court is responsible for this Act.

Under Brunei legislative framework, the criminal responsibility and accountability to a criminal act are 7-12 years old, far below the standard number in line with the international framework. (UN Committee, 2015)

Brunei Penal Code provided section 82 that nothing is an offence for a child under seven years old. Meanwhile, under the same legislation of section 83, nothing is an offence for a child above the age of 7 years old and below 12 years old who has not attained sufficient maturity to understand the judge of nature and consequence of his/her conduct.

There is significant conceptual overlap about a child's definition between the CRC and Islamic Law in Brunei. Although CRC defined a child as a person below the age of 18, in Islamic law, once the child has attained puberty or *Baligh*, the child is no longer a child but an adult even though the child's age is below 15 years old. Generally, under the Shariah law, the determination for the physical sign of puberty or *Baligh* for a male is an ejaculation of sperm and for a female is the first menses she experienced. A person's puberty can be determined according to his or her age in the absence of these signs. When deciding the appropriate age, Muslim scholars have different views. Imam Shafie and Imam Ahmad agreed a child reaches puberty when he or she reaches 15 years. Next, Imam Abu Hanifah views female children as reaching puberty at the age of 17, and male children become adults at the age of 18. Lastly, Imam Malik sets the age 18 years for both boys and girls. (Yusof, W. B., & Rahim, A. A. 2014).

Article 37 of the CRC has further highlighted the children's best interest that the government should ensure that children should not be housed with adult inmates. Under the Prison Act, under section 46, young prisoners under the age of 18 are held separate from adults and confined in the same detention institution's separate building. Furthermore, Section 40 of the Children and Young Persons Order 2006 prohibits a young person who is not related to an adult from being held in a police station while being transported to or from court or while waiting before or after attending any court.

The Juvenile Court is presided by the Juvenile Court Magistrate. According to the State Judiciary Department of Brunei Darussalam in 2020, before deciding on the approach to dealing with juvenile offenders, the magistrate engages in consultations with a group of advisers consisting of the Probation Unit officers and Welfare officers about the best interests

of the boy. For offenses under the High Court jurisdiction, the Public Prosecutor may apply to the Juvenile Court instead for the young offender to be charged unless the juvenile is charged jointly with an adult. Sections 262 and 263 of the Brunei Criminal Procedure Code deal with the punishment of a young person who is found guilty of a crime.

However, in practice, not all children under the age of 18 years old who have committed any offenses under the laws of Brunei Darussalam have been tried in Juvenile Court. In one of the cases shared, where a young adult aged below 18 raped his own sister, he was charged and brought up to the court as an adult. (Nehaluddin Ahmad, 2022).

The young offender can face a fine, imprisonment, or both. However, instead of sentencing the juvenile to a fine or imprisonment of any kind, the Juvenile Court may deal with the juvenile as provided by the CYPA and the Offenders (Probation or Community Service) Order 2006, respectively. In section 51, CYPA list the Juvenile Court's power to prove an offence committed by the offender and other orders, including probation order, community service order, and bound of good behavior.

When a child is brought before a juvenile court, one or more of the following choices can be considered:

- i. Release the case conditionally or unconditionally.
- ii. Place a bond on the parent/guardian to ensure proper care and supervision of the juvenile.
- iii. Place the juvenile under the care of an appointed person.
- iv. Place him/her on the community service order.
- v. Place the juvenile on probation for a period ranging from 6 months to 3 years with or without conditions.
- vi. Place the juvenile in an Approved School and provide them with rehabilitation programs for a period between 24 to 36 months.

Together, the Juvenile Court and the Ministry of Culture, Youth, and Sports established a Welfare Home Complex for children and young persons. The Department of Community Development of the Ministry of Culture, Youth, and Sports manages this home and there are several branches of welfare home that give protection to the children. In 2021, Brunei Darussalam built a new shelter for children and women that were placed under protection. The minister at that time YB Dato Hj Aminuddin said in conjunction with Universal Children's Day, the minister said, "We must ensure they have a good home environment where they are not confined and can still be with their mother." (Hj Abu Bakar Rashidah, 2020)

In relation to children in contact with drugs, their rehabilitation will be held at Pusat Al-Islah. It is not suitable for the children to be placed at Pusat Al-Islah because Pusat Al-Islah does not have separate rehabilitation programmes for children, so children below the age of 18 still undergo the same rehabilitation programmes designed for adults.

JUVENILE JUSTICE IN MALAYSIA

In 1995, the Malaysian government ratified the CRC. Like Brunei Darussalam, the CRC is not immediately incorporated into Malaysian law. Instead, it is the responsibility of the

Malaysian government to fully comply with the convention by ensuring that all current laws are reviewed and new ones are formulated in order to incorporate the CRC into domestic law. Examining domestic legislation in light of the CRC's requirements is a challenging endeavor. (Mustaffa, A. & Kamaliah, S. 2010).

The ratification of the CRC activated a new phase of progressive development of the Malaysian juvenile justice system. Among remarkable developments in the Malaysian Juvenile justice system after the ratification of CRC was the introduction of the Child Act 2001. It took a long process before the Child Act 2001 finally came into existence. The Child Act of 2001's primary objective is to bring Malaysia's juvenile justice system into compliance with the CRC's provisions as well as international norms and practices. For instance, the establishment of a special court for children known as the Child Court.

Under Malaysian Penal Code law, the MACR is ten years old. Therefore, as far as criminal liability is concerned, children below the age of ten are conclusively exonerated from criminal liability. The Child Act 2001, the governing statute for children, does not mention the alternative sanctions that may be imposed on children below ten years old who commit criminal offenses.

However, Section 66 prevents children below the age of ten from being sent to a probation hostel, an approved school, or imprisonment. In practice, children will be discharged unconditionally without having to face any alternative measures in any form of education, reconciliation, or others. (Abdul Rahim, A. (2012).

As a general principle, Article 37(b) of the CRC stresses that the detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time. In this respect, the Committee recommended that state parties ensure that cases involving pre-trial detention of children should not exceed thirty days at the latest. (Committee on the Rights of the Child, 2007)

However, in practice, the amounts of children who are unnecessarily detained in detention centers or prisons, especially during the pre-trial phase, continue to exist despite the efforts of different legal systems to incorporate policies preventing this kind of child imprisonment into their respective legislation. (Mustaffa Aminuddin, 2017)

Further, Parents who have trouble managing their children may also request the court for the child to be considered out of control and sent to an Approved School (Sekolah Tunas Bakti) for three years. (Ministry of Women, Family and Community Developments & UNICEF. 2013). Children who are "beyond control" are not technically considered "offenders," but they are subject to the same detention facilities as child offenders, which they consider as punishment. (Shelly Casey, 2015)

Also, according to the best interests of the child principle and article 31(c) UNCRC, young offenders should not be in the same facility as adults. In addition, section 85 of the Child Act 2001 stated a special provision that the child detained at any stage of the criminal proceeding shall not be detained or allowed to associate with the adult suspect or the accused. However, concerning the custodial sentences, the Court for Child may if the Court finds that circumstances to extend beyond the date child attains the age of eighteen years. Since

Sekolah Henry Gurney and Sekolah Integriti's inmates are children and young persons between the ages of fourteen and twenty-one years old. (Rabiatul Haziqah, 2021)

In addition, the issue of lack of facilities limits the effectiveness of this provision since the current design of the police stations and some institutions do not include separate cells for children which may completely prevent them from having direct or indirect contact with adult suspects or accused. (Mustaffa Aminuddin, 2017)

In Malaysia, several custodial institutions aimed at the rehabilitation of children in conflict with the law have been established, including both low-security facilities such as Approved Schools or Sekolah Tunas Bakti (STB) under the Jabatan Kebajikan Masyarakat (JKM) Welfare Department and high-security rehabilitation schools such as the Henry Gurney School and Juvenile Correction Schools. Children on remand in both STBs and Probation Hostels are held in a different dorm from those who have already received a final court order, and they are not able to move around freely inside the compound. The approach to rehabilitation is primarily based on a systematic system of discipline, religious instruction and vocational training in both JKM and Prison Department facilities. (Ministry of Women, Family and Community Developments & UNICEF. 2013)

Ministry of Women, Family and Community Developments & UNICEF. 2013. *The Malaysian Juvenile Justice System: A Study of Mechanisms for Handling Children in Conflict with the Law*. Malaysia: Ministry of Women, Family and Community Developments & UNICEF.P9

At present, the implementation of lifelong learning programs provided for the child and young people who are detained in closed institutions in Malaysia is based on the rehabilitation program known as the "Putra Module" which adopts the school programs approach. The program's significant principle is to emphasize the holistic rehabilitation program through a range of educational programs that will help the young offender reintegrate into society upon release. For example, young offenders have the privilege to further their education with the consent of the authorities such as by taking the official examination "*Sijil Pelajaran Malaysia*" or SPM (Malaysia School Certificate) in the detention centers. (Abd Wahab, 2006)

Sekolah Tunas Bakti is one of the juvenile institutions or approved schools for academic, vocational, and place of detention for children in conflict with the law that has been set under section 65 of the Child Act 2001. (Jabatan Kebajikan Masyarakat, 2020) Like Henry Gurney School, the Tunas Bakti School aims to provide beneficial programs for children in conflict with the law's rehabilitation and educate children to develop a positive mindset, create strong personalities, and prepare for their reintegration into society.

FINDINGS AND RECOMMENDATIONS

Convention on the rights of children is the most widely ratified international human rights treaty yet most of the countries fail to enforce them into their domestic laws comprehensively. The best interest of the children shall be the primary consideration in all matters concerning children including in protecting their rights and wellbeing even though they are in contact with laws.

First, the MACR legal framework in both countries is inconsistent due to the CRC's silence on the precise minimum age of criminal responsibility. However, 7 and 10 years old as the MACR without a doubt is too low for Brunei Darussalam and Malaysia. The researcher would like to recommend both Brunei Darussalam and Malaysia increase the MACR, so it will reduce the number of children undergoing the formal criminal justice system tremendously. Notably, the overcrowding factor in detention centers in Malaysia is also becoming the main challenge for the government of Malaysia in providing adequate facilities.

Second, UNCRC emphasizes that the use of detention as a last resort, and their best interest should be the paramount consideration for decision-makers. However, Brunei Darussalam and Malaysia in practice still place children in contact with the laws in low-high security detention facilities. Thus, for the sake of the children's interest, reducing the large capacity of children in the detention centres is needed by introducing diversion programs for the children involved in criminal justice and removing the provisions that allow the children to be detained because of beyond parental control.

Third, although the convention approved to use of detention for the shortest appropriate period, in practice Brunei Darussalam and Malaysia still place children in contact with the laws in detention facilities within 24 months to 36 months. The impact of detention on children might be traumatizing because they are vulnerable and it may cause additional problems for children's development.

CONCLUSION

In conclusion, the researcher advocates both countries minimize their current punitive measure of using detention centers in dealing with children and instead move forward to emphasize family and community empowerment. This is because the impact of detention on children is never in the best interests of the child. The researcher also believes that there is still room for improvement for the governments of Malaysia and Brunei Darussalam as the decision-makers to advance children's rights in line with the best interest of the children as the primary consideration.

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