

JUVENILE DELINQUENCY IN MALAYSIA: CURRENT ISSUES AND PROMISING APPROACHES

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Abstract

Malaysia has long been overwhelmed with the issue concerning juvenile delinquency. Although much has been said and debated regarding issue in the country for many years, sadly the issue has not received due attention by the relevant authorities. The issue concerning crimes committed especially among the juveniles in the country is reported to be on the rise from time to time. Early 2014, the nation was shocked with the statistics released by the Malaysia Ministry of Home Affairs (MOHA) which showed an increase number of juvenile delinquency cases involving children between the age of 8 until 15 years. As such, this paper will explores in details the issue pertaining to juvenile delinquency in the country by aiming the following objectives namely (1) the extent of the problem in the country; (2) the causative factors for the problem; (3) the existing legal provisions dealing with the issue; and (4) possible legal reforms as well as other possible solutions to deal with the matter in question.

Keywords: Juvenile delinquency, legal reforms, community based solutions

1. INTRODUCTION

Juvenile delinquency, also known as “juvenile offending”, is participation in illegal behavior by any minors (individuals younger than the statutory age of majority or simple known as juvenile) (Hollin, 1990, pp. 1 – 24). The study of juvenile delinquency will be made easier if three elements of the definition are clarified. Juvenile delinquency refers to any number of (1) behaviors (2) performed by young people (3) that are violations of laws applicable to young people’s behavior (Kaplan, 1984, p. 13). As stated earlier, Malaysia has been plagued with the issue of juvenile delinquency for many years. In fact with the introduction of the new medium of social communication technology in internet like twitter, instagram, facebook and others, the number involving juvenile delinquency has increased very dramatically in the country over the years. Although much has been said and debated about the issue by various concern groups in the country, sadly the issue has not received due attention especially by the relevant authorities. The issue of crimes committed among the juveniles in the country is reported to be on the rise from year to year. Recently, the nation was shocked with the statistics released by the Malaysia Ministry of Home Affairs (MOHA) which registered an increase number of 5,305 juvenile delinquency cases where it went up from 3,399 cases in 2012 to 8,704 cases in 2013 (Please refer to table 1 below). According to the statistics, three categories of violent crime cases like rape, causing injury and arm gang robbery without firearm committed by juveniles seen a very sharp increased within a year mostly committed by adolescence between the age of 8 until 15 years. However, the actual number of cases is estimated to be much higher than that being reported. It is also interesting to note that nearly all offenders were male. However, having said so, it does not mean female offenders are excluded from the statistic. There have been many reported cases involving juvenile female delinquency as well (Chesney – Lind and Sheldon, 2004, 132 – 149). The issue pertaining to juvenile delinquencies has dominates many discussions within the country and raises concern amongst the public at large especially by parents, the country legislators, law enforcement agencies, as well as from both side of relevant government department like the country Ministry of Education and various non – governmental organizations (NGOs).

Table 1: Statistic on the reported juvenile delinquency cases in Malaysia
(Source: Ministry of Home Affairs, Malaysia)

Violence crime cases	Number of reported cases (2012)	Number of reported cases (2013)
Murder	33	74
Rape	386	824
Arm gang robbery with weapon	24	101
Arm gang robbery without weapon	238	685
Arm robbery	2	8
Robbery	39	116
Causing injury	325	745
Property crime cases	Number of reported cases (2012)	Number of reported cases (2013)
Stealing	295	836
Car theft	41	150
Motorcycle theft	1,244	3,173
Heavy vehicle theft	11	32
Snatch theft	19	87
Others	446	985
Street crimes	296	888
TOTAL	3,399	8,704

2. POSSIBLE CAUSES OF JUVENILE DELINQUENCY

Since gaining its independence in 31ST August 1957, the Malaysian government has come a long way and managed to put the country at a well – established position economically, socially and politically that any Malaysians can be proud of. Sadly the development which the country had enjoyed for many years had also give rise to number of social problems which include amongst other the issue pertaining to juvenile delinquency. This is not the only problem being face by the developing country like Malaysia, as it also happens in many developing as well as fully developed countries around the world. However, the rise in the juvenile delinquency cases is an issue that must not be neglected by anyone, as this will affect the sustenance of the future generation whom will replaced the current generation and lead the country in the future. It is widely believed that social deviance behaviors among juveniles begin at school age. At the initial stage such deviance behavior can occur in the form of violating of school rules such as truancy, smoking even vandalism. The absence of effective measures to curb and overcome this problem is a catalyst for more serious criminal misconduct such as bullying, injury to others, rape, theft and even murder. As in other countries, the issue pertaining to juvenile delinquency in Malaysia is largely an urban phenomenon brought about mainly by the process of national development and, more specifically, by the increasing pace of industrialization and urbanization. Poverty, in itself, is not a cause, but combined with other circumstances may induce such deviance behaviors. Other possible causes which can be further be explained below.

2.1 Individual factors

Individual psychological or behavioral risk factors (Regoli and Hewitt, 2003, pp. 131 – 151) that may make offending more likely to happen amongst the juvenile include low intelligence, impulsiveness or the inability to delay gratification, aggression, lack of empathy, restlessness, and others (Quinsey, Skilling, Lalumiere, Craig, 2004, pp. 33 – 55). Other risk factors that may be evident during childhood and adolescence include, aggressive or troublesome behavior, language delays or impairments, lack of emotional control (learning to control one's

anger), as well as cruelty to things or animals (Grisco, Vincent and Seagrave 2005, pp. 22 – 44). Children with low intelligence are said to be more likely to do badly in school. This may increase the chances of offending behavior due to low educational attainment, a low attachment to school, and low educational aspirations are all said to be the risk factors for offending in themselves (Del Carmen and Trulson, 2006, p. 40). Children who perform poorly at school are also said more likely to be truant, and the status offense of truancy is linked to further offending (Henggeler, 1989, p. 53).

2.2 Family environment and peer influence

Family factors that may have an influence on offending include the level of parental supervision, the way parents discipline a child, particularly harsh punishment, parental conflict or separation, criminal parents or siblings, parental abuse or neglect, and the quality of the parent-child relationship (Rutter and Giller, 1984, p. 101 – 118) (Trojanowicz, Morash & Schram, 2001, at p. 165). It has even been said that children brought up by lone parents are more likely to start offending than those who live with two natural parents. It is also more likely that children of single parents may live in poverty, which is strongly associated with juvenile delinquency (Drowns and Hess, 2000, p. 97).

If a child has low parental supervision they are much more likely to offend. Many studies have found a strong correlation between a lack of supervision and the issue of offending, and it appears to be the most important family influence on offending. When parents commonly do not know where their children are, what their activities are, or who their friends are, children are more likely to truant from school and involve themselves with delinquent friends, each of which are linked to offending (Anwarul Yaqin, 1996, at pp. 255 – 267). A lack of supervision is also connected to poor relationships between children and their parents. Children who are often in conflict with their parents may be less willing to discuss their activities with them (Siegal and Senna, 2000, at p. 273).

Adolescents with criminal siblings are only more likely to be influenced by their siblings, and also become delinquent, if the sibling is older, of the same sex or gender, and warm (Barlow and Ferdinand, 1992, pp. 129 – 132). Cases where a younger criminal sibling influences an older one are reported to be rare. An aggressive, non-loving or warm sibling is less likely to influence a younger sibling in the direction of delinquency, if anything, the more strained the relationship between the siblings, the less they will want to be like, and/or influence each other. (Yablonsky, 2000, at p. 265). Peer rejection in childhood is also a large predictor for juvenile delinquency (Siegal, 2002, pp. 185 – 187) (Thornton, Voigt, and Doerner, 1982, at p. 110).

3. AN OVERVIEW OVER THE JUVENILE JUSTICE SYSTEM PROCESSES IN MALAYSIA

The principal Act governing the handling of children including the juvenile in conflict with the law in Malaysia is the Child Act 2001 (Act 611), which came into force in August 2002. This Act consolidated from three former Acts which was being used before the introduction of the current Act 611. There were namely the Juvenile Courts Act 1947 (Act 90), the Women and Girls' Protection Act 1973 (Act 106), and the Child Protection Act 1991 (Act 468). The current Child Act 2001 governs four main categories of children namely 1) children in need of care and protection; 2) children in need of protection and rehabilitation; 3) children "beyond control"; and 4) children in conflict with the law. The Malaysian Child Act 2001 outlines the main structure, processes and procedures for responding to children who commit criminal offences. Part X of the Act stipulates special procedures for arrest, bail or remand, trial, and sentencing of children, as well as defines the roles and responsibilities of police, probation officers, the Court for Children, and various institutions handling child offenders. Pursuant to section 83(1) of the Act, a child who is arrested, detained and tried for any offence (subject to certain specified limitations) must be handled in accordance with the provisions of the Child Act, rather than the normal procedures applicable to adults. The special procedures under the Child Act modify and take precedent over any written laws relating to procedures for arrest, detention and trial. However, where the Child Act does not address a specific issue, then reference may be made to the standard procedures under the Malaysian Criminal Procedure Code (Act 593). Section 11(6) of the Child Act 2001 clearly states that "Except as

modified or extended by this Part, the Criminal Procedure Code shall apply to Courts for Children as if Courts for Children were Magistrates' Courts".

4. POSSIBLE LEGAL REFORMS AND OTHER POSSIBLE SOLUTIONS TO THE PROBLEM

Though the country being equip with special law dealing with juvenile, but with the increasing number of reported cases involving juvenile delinquency in the country, the time has come for us review the current legislations as well as taken any possible steps in order to deal with the issue effectively. Below are several possible solutions that can be taken into consideration to deal with the concern matter.

4.1 Abolished the rebuttable presumption that a child can be of *doli incapax* (Between 10 until 12)

The definition section under the Malaysian Child Act 2001(Act 611) states that a "child" means a person under the age of eighteen years and, in relation to criminal proceedings, means a person who has attained the age of criminal responsibility as prescribed in section 82 of the Malaysian Penal Code (Cheang, 1990, at p. 86). The Malaysian Penal Code states that children under the age of 10 years are not criminally responsible for their actions. It also includes a *doli incapax* provision, which states that any act of a child who is above 10 and less than 12 years of age is not an offence if the child has insufficient maturity to understand and judge the nature and consequences of his/her conduct (Cheong, Meng, Ramraj, 2005, at p. 328). Where the Court for Children is in doubt as to the age of the child, an opinion should be sought from a medical officer. Under the English common law the defense of infancy was expressed as a set of presumptions. A child under the age of 10 was presumed incapable of committing a crime. The presumption was conclusive, prohibiting the prosecution from offering evidence that the child had the capacity to appreciate the nature and wrongfulness of what he had done (Smith, 2002, at p. 308). Children aged 10 to 14 were presumed incapable of committing a crime but the presumption was rebuttable. The prosecution could overcome the presumption by proving that the child understood what he was doing and that it was wrong. Children fourteen and older were presumed capable of committing a crime. However, the child could rebut this presumption by establishing that because of his immaturity he was incapable of understanding what he had done or the wrongfulness of his conduct. However, the position has been changed with the introduction of the Crime and Disorder Act 1998 (c.37) The Act was published on 2ND December 1997 and received Royal Assent in July 1998. The Act through its section 34 has abolished the rebuttable presumption that a child is *doli incapax* (the presumption that a person between ten and fourteen years of age is incapable of committing an offence) (Herring, 2012, at p. 701).

The question has arise now whether Malaysia should retain this special defence provision under section 83, while England has long abolished the special protection? Are Malaysian children's have different level of maturity with children in other countries? Through the statistic release by the Ministry of Home Affairs recently, it has indicate a very sharp increased of juvenile delinquency in the country. This problem has been steadily growing, and one day it will certainly bring negative impact to the future of the country. Legislator in the country shouldn't take this matter easy. The legislature should also take into account the development of the legal system of England and other countries in dealing with issue and come out with a stronger legal framework to solve the problem of juvenile delinquency in the country. This is because the law itself has been regarded as one of social tool that been used to control the behavior and actions of every human beings including under age children. The review needed towards the special protection under section 83 is one of the measures that can be use to solve the problem of juveniles delinquency in our country. As long as the reviewed does not goes contrary to the public policy and the policy set forth under international conventions signed by Malaysia, then, it is appropriate to be applied.

4.2 Amending the Child Act 2001 in order to introduce diversion programmes as an alternative to formal processing for children who commit non-violent offences

Internationally, one of the main trends in juvenile justice reform has been the introduction of diversion, or the use

of alternative processes for dealing with minor offences in an informal way, outside of the formal justice system (Liu, 2011, pp. 62 – 68). “Diversion” refers literally to diverting or sending a child away from the formal justice system to an alternative, community-based process for resolving the crime. Children who admit to a crime may have the offence dealt with immediately through police cautioning, mediation, or referral to a diversion or counselling programme, rather than being subjected to formal arrest and trial (Jackson & Knepper, 2003, p. 341) (Krisberg and Austin, 1993, at p. 176). The United Nations Convention on the Rights of Child 1989 (Hereinafter shall be known as CRC) requires States parties to promote the establishment of measures for dealing with children in conflict with the law without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected. (Article 40(3)(b)).

The Malaysian Child Act 2001 currently does not include any specific provisions with respect to pre-trial diversion of children. However, pursuant to the Malaysian Federal Constitution, the public prosecutor has the power, exercisable at his/ her discretion, to institute or discontinue criminal proceedings, (Article 145(3)) which could be used as the basis for diversion. While Malaysia does not have a formal diversion process, both the police and prosecutors currently use their discretion to dispose of minor child offences without initiating formal criminal proceedings. However, this discretion is understandably being used quite sparingly, since there is no legislative or policy directive to encourage diversion of children. There are currently a significant number of children’s cases being processed through the formal court system that could be handled more effectively and cost-efficiently through diversion. It is recommended that Malaysia introduce diversion programmes as an alternative to formal processing for children who commit non-violent offences. This can be done by building on existing interactive workshop activities and community service programmes, potentially in partnership with Child Welfare Committees, NGOs, and community groups. This should include the identification of suitable community service work opportunities for children, as well as the gradual development of inter-active, adolescent-specific, competency development programmes addressing skills such as decision-making, anger management, peer influence resistance, and the parent / child relationship (Feld, 1999, pp. 46 – 79).

4.3 Strictly enforce the privacy provisions of the Child Act 2001, sanctioning media outlets that violate children’s rights

The CRC require that children’s right to privacy be respected at all stages of the criminal proceedings in order to avoid harm being caused to them through publicity or by the process of labelling (Katkin, Hyman and Kramer, 1976, p. 57). In principle, no information that may lead to the identification of a child should be published. The Malaysian Child Act 2001 includes a number of provisions designed to protect the privacy of children in conflict with the law, starting from the point of arrest. The Act states that appropriate arrangements must be made to protect the child’s privacy and prevent him/her from being filmed or photographed by the media while at the police station, when being transported to and from the Court and while waiting at the courthouse. (Section 85). Proceedings of the Court for Children are closed to everyone except members and officers of the Court, children and their parents, guardians, advocates, witnesses, and other persons directly concerned with the case. The Act also includes comprehensive provisions restricting the publication of the picture of a child in conflict with the law, or the name, address or any information that may lead to the identification of the child. Contravention of this provision is punishable by a fine of up to RM10,000, imprisonment for up to five years, or both. (Section 15). The Act does not include any specific provisions with respect to access to records relating to children in conflict with the law. However, it does state that words “conviction” and “sentence” shall not be used in relation to a child dealt with by the Court for Children. Instead, the words “found guilty”, “finding of guilt”, and “order made upon a finding of guilt” should be used. In addition, a finding of guilt recorded against a child must be disregarded for the purposes of any disqualification or disability that may be imposed on a convicted person. (Section 91(2)) Notably, this protection applies only to children who are dealt with by the Court for Children, not children who are adjudicated by the High Court. Malaysia has relatively comprehensive provisions in place to protect the privacy of children in conflict with the law and to limit the use of criminal records of children who are dealt with by the Court for Children. However, the latter protection does not apply to children who are tried before the regular Magistrates Court or the High Court. This potentially results in stigmatisation, making it more difficult for children to reintegrate into the community. As such, this need to change. In order to further protect the privacy of children in conflict with the law and prevent labelling or stigmatisation, it is recommended that the country to provide

training and sensitisation to the media on child justice issues as well as strictly enforce the privacy provisions of the Child Act 2001, sanctioning media outlets that violate children's rights.

4.4 Strengthening the technical and vocational education system in the country

Malaysia has made substantial investments in health, education and sports to nurture the energy, creativity and talents of its young people to contribute to nation-building. However, it also has been said that lack of life-skills based education place Malaysian adolescents at greater risk of substance abuse, juvenile delinquency, bullying, teenage pregnancy as well as HIV infection. There have been many reports lately where fewer male students entering public universities compared with female students for this year university intake. It has even been reported by the Ministry of Education that the number of male applicants to public universities had declined over the past two years and in the last two academic years (2013/2014 and 2014/2015), while the number of female applicants had doubled, compared with male applicants. It has been reported that for the 2013/2014 academic year, 46,481 females applied for a place at university compared with 22,221 males. While for the year 2014/2015 academic year, 51,000 females applied compared with only 23,000 males. Due to this, has resulted many male teenagers get involve with criminal activities as they assume themselves for having not hope in future/life as they are unable to pursue their study in the university.

However, it is interesting for us to note that there are a number of factors which contribute to the declining numbers of male's application to the public universities, one of it including the fact that males tended to be more adventurous and wanted to start earning money immediately after finish school. Few experts have also said, male students prefer skills – based education with practical lessons as compare to female students which are more receptive to cognitive learning as provided under the conventional academic education which being offered by many of our public universities. Due to this reasons, many of male students prefer to pursue their study through technical education and vocational training which suit their adventurous character, interest and goal. Sadly, many still view this education system as second class – class education in the country and offer no positive future income stability due to wrong perception given towards it. As such many parents are reluctant to send their children to pursue their study at technical or vocational school. Some parents even are not so supportive over the children interest to continue their study in such schools. It is worth for us to know that as the labor marketing in Malaysia becomes more specialized and our economy demand higher levels of skills amongst workers in effort to become developed nation by 2020, governments and businesses in the country are increasingly investing in the future of technical education and vocational training through publicly funded training organizations and subsidized apprenticeship or traineeship initiatives for businesses. Technical education and vocational training shouldn't be depicted as second – class education in Malaysia anymore. Technical education and vocational training has diversified over the 21TH century and now exists in industries such as retail, tourism, automotive industry, information technology (IT), cosmetics, as well as in the traditional crafts and cottage industries. Currently, there are numerous vocational education centres here including vocational schools (high schools to train skilled students), technical schools (high schools to train future engineers) and vocational colleges all of them under the Ministry of Education. Then, there are over 30 plus polytechnics and nearly 90 community colleges, several MARA Advanced Skills Colleges, MARA Skills Institutes, hundreds of GIATMARAs under Majlis Amanah Rakyat (MARA) and 15 National Youth Skills Institutes under Ministry of Youth and Sports in the country. Our Deputy Prime Minister and Minister of Education, YAB Tan Sri Muhyiddin Yassin also has showed his support over matter where last June, 2014 he stated that our Education Act 1996 (Act 550) would be amended in order to make technical and vocational schools and colleges an important part of the country's education system. By changing the perception over technical education and vocational training system as well as by giving our continuous support over these education pathways, it may encourage the adolescent regardless of their gender especially those who are at risk of dropping out and those who had show no interest for current conventional academic education to join in and develop their skills in order to fulfill the increased demand for skilled workers in the country thus moving their path away from any potential risk to commit crime (Stumphauzer, 1986, pp. 161 – 171).

4.5 Others possible solutions

Besides what being highlighted above, there also have been few suggestions that being proposed to deal with

the issue of juvenile delinquency in the country which includes amongst other by strictly enforce the school caning punishment. This type of corporal punishment is lawful in schools but only for boys, and is regulated by the Malaysian Education Regulations (Student Discipline) 2006. However, there are also many reported cases suggesting the caning of schoolgirls, on their palms, is a common practice especially in primary school. While serious infringements such as theft, smoking, gangsterism and bullying are among offences punishable by caning, minor transgressions such as incomplete homework have also been dealt with by physical punishment. The Malaysian government guidelines on school caning are as follows, caning is permitted for boys only, in most circumstances the caning can only be conducted by the school headmaster, a teacher can only cane when the headmaster delegates this power to him in writing, and he must be a permanent teacher of the school, the student can only be caned on the buttocks (over clothing) or the palm. He cannot be caned on the bare buttocks, the caning is to be conducted in a confined area, the student's parents will be informed and invited to witness their son's punishment, and caning must only be for a repeated or very serious offence. Public caning is banned in schools after the Education Regulations (Student Discipline) 2006 came into force. The Malaysian government does not encourage caning for primary school students, but caning is allowed in secondary schools, and may only be administered by the principal or a person to whom he delegates the power to. Though the country provides this kind of punishment, many schools are reluctant to implement it due to fear of legal suit by the parent and media manipulation over the matter.

Since many cases involving juvenile delinquency occur due to bad influence received through social network, there also has been suggestion to give more power to the government to control or having the censorship of the internet. There have been many called to amend the current Malaysian Communications and Multimedia Act 1998 (Act 588) in particular section 3 (3) which clearly indicate the prevention on the part government role from controlling the internet as it states "nothing in this Act shall be construed as permitting the censorship of the Internet". There also a suggestion to introduce special "Islamic Juvenile Law" in the country to specifically dealt with issue of juvenile delinquency as Malaysia implemented "dual system of law" namely common law and Islamic law as provided under the Federal Constitution of Malaysia. However, looking at the Malaysian legal system as a whole, the Islamic law plays a relatively small role in defining the laws on the country. It only applies to Muslims. With regards to Islamic civil law, the Syariah courts has jurisdiction in personal law matters, for example marriage, inheritance, and apostasy. In some states there are Islamic criminal laws. Their jurisdiction is however limited to imposing fines for an amount not more than RM 5000, imprisonment to not more than 3 years, and whipping in excess of six lashes, or any combination thereof (Wu Min Aun, 1990, at pp. 41 – 44) (Ahmad Ibrahim Ahilemah Joned, 1987, at p. 331).

5. CONCLUSION

There is no single best solution to the issue concerning juvenile delinquency not only in Malaysia but in all countries all over the world and the problem is complicated enough that communities and societies looking to eliminate it usually need to take several approaches at once especially through legal means. As stated earlier, the problem is not one that affects just one particular society, either; delinquent youth can be found around the globe, and as such, the approach usually needs to be specific to the region and the culture. On a more universal level, beside having legal reforms some of the most common steps being undertaken include establishing activities and programs for the children in the after-school hours and educating local leaders about ways to integrate young people into broader and healthy community activities. Some research also shows that a stable and supportive home life is essential to preventing delinquency, and on this theory educating parents and caregivers can be a big part of the solution. In many countries, having rehabilitation and correctional programs can be an effective way of reducing the number of repeat offenders, too. Many theories hold that a key element in solving juvenile delinquency is for community members to take an interest in the problem. Adults may be able to play a vital role by displaying positive and concerned attitudes towards youth in their communities, and by getting involved in youth activities. If politicians, corporate leaders, school administrators, as well as concern group and individuals are all on more or less the same page when it comes to encouraging appropriate engagement between youth and the larger society, children often will stay out of trouble.

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