



## INTEGRATING MODELS OF DISABILITY IN SPECIAL EDUCATION LAW FOR CHILDREN WITH DISABILITIES IN MALAYSIA

1803

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### ABSTRACT:

Article 26 of the Universal Declaration of Human Rights (UDHR) provides everyone has the right to education. The term 'everyone' includes children with disabilities, and the government has a legal responsibility to provide equal educational opportunities to all children. There are two popular models of disability in the Disability Studies: The Social Model and Medical Model of Disabilities. Both models are distinct from each other. In Malaysia, the Malaysian Education Blueprint 2013-2025 provides education for children with disabilities through special education needs. However, since there are inconsistencies in the definition of persons with disabilities, no specific law for special education for children with disabilities, and non-integrated data by relevant agencies in Malaysia, children with disabilities' educational rights are not protected. Therefore, to protect their educational rights, both models of disability will be analysed to suggest whether the rights can be efficiently protected by integrating the Social Model and Medical Model of Disabilities in special education law for children with disabilities in Malaysia. This paper aims to explore the current laws related to special education for children with disabilities in Malaysia and examine the Social Model and Medical Model of Disabilities' inadequacy in protecting their educational rights. Besides, this paper aims to suggest the integration between the Social Model and Medical Model of Disabilities to efficiently protect the educational rights of children with disabilities in Malaysia. A doctrinal analysis is adopted in this paper where textbooks, journal articles, and encyclopedias related to special education for children with disabilities are analysed.

**.KEYWORDS:** *Special Education, Children with Disabilities, Models of Disability, Medical Model of Disability, Social Model of Disability.*

DOI Number: 10.14704/NQ.2022.20.12.NQ77158

NeuroQuantology2022;20(12): 1803-1813



## 1.0 INTRODUCTION

Education is important to everyone since it ensures a bright future and improves an individual's life [1]. Due to the importance of education, Article 26 of the Universal Declaration of Human Rights (UDHR) provides the educational rights to everyone. Article 26 read as follows "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available, and higher education shall be equally accessible to all on the basis of merit". These educational rights have been fully supported by the World Declaration on Education for All.

The educational rights that the UDHR has provided include persons with disabilities (PwDs), especially children with disabilities. Section 2 of the Persons with Disabilities Act 2008 defines PwDs as "those who have long-term physical, mental, intellectual, or sensory impairments, which in interaction with various barriers may hinder their full and effective participation in society". Abdul Nasir & Erman Efendi [2] stated that education is essential to PwDs because education allows them to participate in decision-making together with their family, read and write, and find a job.

In Malaysia, the Malaysian Education Blueprint 2013-2025 provides education for children with disabilities through special education needs. Under the Malaysian Education

Blueprint 2013-2025, students with special education needs are students with visual impairment, speech difficulties, hearing impairment, learning disabilities, multiple disabilities, attention deficit hyperactivity disorder, dyslexia and Down's Syndrome. The Malaysian government in 2018 through the Ministry of Education implemented the Zero Reject Policy to enable children with disabilities to access education equally.

Even though the Malaysian government provides special education for children with disabilities, they face many obstacles to access an equal education opportunity. This problem occurs due to no specific law regarding special education for children with disabilities, lack of a plan to execute the policies and existence of a tiered system in special education [3].

Besides, the exact number of PwDs in Malaysia cannot be determined. There are only 549,554 registered PwDs in Malaysia as of December 2018. Muzamir [4] argued that the numbers of registration with the Department of Social Welfare are low compared to the 15 per cents of the population projected by the World Health Organization (WHO). The factor led to this low registration because in Malaysia, the registration of disabled persons is not compulsory, and it is only voluntary. Therefore, due to this reason. Abdul Razak [5] stated only a small number of PwDs gained



education from the total number of registered PwDs in 2018. Besides, the definition of PwDs is not consistent since different act provides a different definition of PwDs [6]. Hence, it will cause the problem to them in many aspects.

This paper aims to explore the current laws related to special education for

## **2.0 CURRENT LAWS AND POLICIES RELATING TO SPECIAL EDUCATION FOR CHILDREN WITH DISABILITIES IN MALAYSIA**

In Malaysia, there is no specific law regarding special education for children with disabilities, but there are a few laws related to special education for children with disabilities in Malaysia [6]. The related laws are the

### **2.1 The Federal Constitution of Malaysia**

In Malaysia, the highest law of the land is the Federal Constitution. This can be seen under Article 4 of the Federal Constitution which provides "This Constitution is the supreme law of the Federation, and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void". Hence, under this supremacy concept, all laws passed in Malaysia must conform to the Federal Constitution. Article 8 and Article 12 of the Constitution deal with education for all children including children with disabilities. Article 8 provides "All persons are equal before the law and entitled to the equal protection of the law". Article 8 further provides "there shall be no discrimination against citizens on the

children with disabilities in Malaysia and examine the Social Model and Medical Model of Disabilities' inadequacy in protecting their educational rights. Besides, this paper aims to suggest the integration between the Social Model and Medical Model of Disabilities to efficiently protect the educational rights of children with disabilities in Malaysia.

Federal Constitution of Malaysia, the Persons with Disabilities Act 2008, the Education Act 1996 and its regulations, and the Malaysian Plan of Action for Persons with Disabilities.

ground only of religion, race, descent, place of birth or gender in any law..." It means that all persons must be treated equally in Malaysia and it includes PwDs. They must be given equal rights as other citizens.

Article 12 of the Constitution provides "Without prejudice to the generality of Article 8, there shall be no discrimination against any citizen on the grounds only religion, race, descent, or place of birth in the administration of any educational institution maintained by a public authority, and in particular, the admission of pupils or students or the payment of fees". It means that all persons must be given an equal education opportunity, including PwDs, especially children with



disabilities. However, Baqutayan et al. [6] argued that laws that violate educational rights of children with disabilities still can be passed due to the omission on the prohibition of discrimination of disabled person under Article 8 and Article 12. According to Harapan OKU Law Reform

Group [7], the omission of discrimination against disabled persons under Article 8 can lead to a disabled person's isolation in society. Hence, Article 8 and Article 12 of the Constitution could not effectively protect children with disabilities' educational rights.

## 2.2 The Persons with Disabilities Act 2008

In order to show its commitment to the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD), the Malaysian government had enacted the Persons with Disabilities Act 2008. The purposes of this Act are to enhance the quality of life of PwDs and provide social protection services to them. Section 28 of the Act provides "Persons with disabilities shall not be excluded from the general education system on the basis of disabilities, and children with disabilities shall not be excluded from pre-school, primary, secondary and higher education, on an equal basis with persons or children without disabilities, including vocational training and lifelong learning".

Under this section, PwDs especially children with disabilities, are given equal educational rights. They can access education on an equal basis as normal children since Section 28

provides an equal educational opportunity. However, even though Section 28 provides for education for children with disabilities on an equal basis with normal children, the term 'on an equal basis' is not adhered to. This is because the Ministry of Education provides a guideline for children with disabilities to be enrolled in designated schools. A report by the Malaysian National Family Support Groups in 2018 disclosed that there are instances where children with disabilities have been denied enrolling in school due to their disabilities [8]. Besides, the Act itself is considered as 'toothless tiger' by many due to lack of enforcement provisions., Plus, the rights of PwDs still can be violated since no punishment will be imposed for someone who violates any provisions of this Act.

## 2.3 The Education Act 1996 and its Regulations

The Education Act has been passed by the parliament and comes into force in 1996. Under this Act, the term 'special education' and 'special school' were inserted to provide education for children with disabilities in Malaysia

[9]. Section 40 of the Act provides "The Minister shall provide special education in special schools established under paragraph 34(1)(b) or in such primary or secondary schools as the Minister deems



expedient". This section stipulates that the Minister of Education can provide special education in special schools or public schools.

Besides, under the Education (Special Education) Regulations 2013 enacted in 2013 to replace previous controversial 1997 Regulations, children with disabilities require a three-month probationary period to enrol in special needs education. However, this requirement is claimed

by many to have the same effect as previous controversial regulations which require children with disabilities to be 'educable' to be enrolled in special needs education. Hence, it violates the children's right to access an equal education opportunity as a normal student with the imposition of such a requirement [10]. So, children with disabilities' educational rights are not well protected under the Education Act 1996 and its regulations.

## 2.4 The Malaysian Plan of Action for Persons with Disabilities

In ensuring the development and needs of PwDs, the Malaysian government in 2016 launched the Action Plan for Persons with Disabilities 2016-2022. The Action plan was launched by the Ministry of Women, Family and Community Development after a few consultation and workshop involving National Council for Persons Disabilities, non-governmental organisations, relevant government agencies and the ministry itself [11]. The Malaysian Plan of Action for Persons with Disabilities is the continuation of the existing Malaysian Policy for Persons with

Disabilities and in line with the 'Incheon Strategy' timeline and the 11<sup>th</sup> Malaysian Plan (RMK-11). Ten strategic cores have been outlined under this Action Plan, including increase accessibility of PwDs, increase PwDs access for education, enhance the economics of PwDs and increase PwDs access for healthcare [12]. However, according to Baqutayan et al. [6], this Action Plan is not practical because it lacks full commitment from parties involved. No clear ministries and departments are responsible for each outcome of the plan and no timeline for executing this plan.

## 3.0 MODELS OF DISABILITY

In order to recognise the needs of children with disabilities, the meaning of disability must be understood. There are two prominent models of disability in disability studies: the Medical Model and Social Model of Disabilities. A model is a '*framework of ideas used to make sense of*

*phenomena and experience in the social worlds*'. It serves as a fundamental knowledge to understand disability from various perspectives [13].



### 3.1 The Medical Model of Disability

The Medical Model of Disability, also known as Psycho-Medical Model and sometimes referred to as 'individual personal tragedy' and it is the oldest model of disability. This model views PwDs as 'patients', and the non-disabled person must cure them to become normal based on the evidence suggested by the medical and psychological experts [14]. Under the Medical Model of Disability, PwDs need to be isolated since their disability is caused by fixed medical characteristic. Hence, they must be treated to fix their disability. Due to PwDs being seen as persons who rely on a charity-based program or income support, they face problems making their own independent decisions. Most of the policies regarding PwDs are based on the Medical Model of Disability since it is supported by many researches within disability studies [13].

### 3.2 The Social Model of Disability

The Social Model of Disability, also known as 'minority model', is established due to the critics and opposition towards the Medical Model of Disability. Disability is seen as socially constructed disadvantages to PwDs, and these social conditions must be eliminated [15]. The Union of the Physically Impaired against Segregation's (UPIAS) 1976 is the fundamental principle to this model of disability where PwDs are isolated and segregated from the society because of the barriers that have been created

Besides, PwDs are seen as 'object of pity' under this model of disability due to their disability status. Their disability can be eliminated through medical doctors and psychologists' treatment because their disability is caused by disease or damage [14]. Disability also is a medical problem which is a defect or failure of someone's bodily system to function normally. Hence, disability is defined negatively under the Medical Model of Disability due to the failure of any part of the human body to function normally [15].

However, there are many critics of this model of disability since it disregards the capacity of PwDs as a person. They are considered helpless and not independent. They must rely on other people to decide their lives. The Medical Model is seen as 'social state' or 'social welfare model' where they relied on a charity-basis program [13].

by the society itself and not due to their disability status. Hence, PwDs are seen as disabled persons and how society treats them through segregation that restricts their life and social participation [13].

The Social Model of Disability's primary focus is to look into the barriers that prevent PwDs from participating in society, including attitudinal, social, economic and political barriers. As opposed to the previous model, which require the



disability to be cured, the Social Model, on the other hand, stresses that the society and culture should be changed to embrace disability [14]. Hence, the attitude of society towards PwDs is the key to treat disabled persons. The society must treat PwDs as equal as normal persons and support them.

However, there are critics of the Social

#### **4.0 METHODOLOGY**

The design of this research is a descriptive legal research where information was extracted from journals, textbooks and encyclopedias related to disability and special education in a systematic manner. Cases and laws were also extracted to evaluate current implementations in Malaysia. Research in law is usually where the investigator looks at the reasons behind an enactment or context connected to legal

#### **5.0 FINDINGS**

##### **5.1 Special Education model**

Acknowledging the core of medical model argument where the PwDs is categorised as a group of people that requires permanent welfare support due to their physical and mental restriction, the upcoming model needs to embrace and accept that the PwDs indeed is special and need extra care. However, they are human and has protected rights to the enjoyment of life that includes education. The rights provided under Article 5 of the Federal Constitution on the rights to life, includes rights to the enjoyment of life,

Model of Disability, where this model relies much on corrective justice in which the barriers are built by society. The Social Model focuses more on the civil and political right than combining them with social, economic, and social rights. Lastly, this model fails to look into the 'identity' of an individual dealing with the 'environment' that caused their disability [13].

mechanisms [16]. A doctrinal analysis is used in this paper. According to A. Kharel [17], a doctrinal analysis is an "enquiry in legal concepts, values, principles and existing legal text such as statutes, case laws etc.". Journals articles, textbooks, and encyclopedias related to disability and special education have been analysed to understand and summarise the models of disability and law relating to special education for children with disabilities.

and this right includes rights to be educated. Restricting or failing to provide the adequate need that denies them their rights to have a good life might breach this constitutional guarantee. The medical model assumes that a comprehensive diagnosis of physical, neurological, or biological disorders should precede intervention in educational settings [18]. The criticisms of the medical model tend to discount the role of biological and environmental influences on learning. This is a mistake



since there is a great body of evidence supporting the view that biological and environmental factors play some part in many learning problems.

This study would like to propose the looking into medical sphere related to PwDs to be diverted from narrowing to highlighting the medically defined limitation of this group to the medical method and treatment that may best uncover their potential that can later be benefited by them and those providing financial support. Study uncovers one of the effective ways of educating the PwDs is to create a module that allows the PwDs to interact with nature. Elisa Munos-Blanco et al. [19] in researching a suitable education model for PwDs, suggested aquatic therapy as a proven method that awakens PwDs sensory, cognitive, and emotional functions. This therapy has also improved the performance of subsequent tasks

requiring more advanced thinking processes, such as reading and writing, mathematical processes, or participatory activities and contexts with classroom materials.

On the other hand, the gist of a social model that has been criticised for having generalised similar needs across all categories of PwDs brings us to the idea that in considering the best special education model, it must be based on the actual needs of each category of PwDs including medically based limitation. Rejecting the 'labelling the child environment' can be seen as denying that the PwDs do have restriction according to the medically diagnosed evaluation. Thus, the overall evaluation of the actual need would be defective. Perhaps the spirit of labelling the disabled child should be retained but reform to a PwDs friendly categorising.

TABLE 1: Comparison between the medical and social model for special education framework

MODEL/ ATTRIBUTES	MEDICAL	SOCIAL
GROUND	1. Medically defined inability. The measurement of the inability is purely based on the medical conditions of the PwDs.  2. Known as 'Psycho-Medical Model' or 'individual personal tragedy'.  3. Based on evaluation of Medical practitioner and psychologist.	1. Social attitudes of society. The measurement of the inability of PwDs is based on society's Perception.  2. Disability is seen as socially constructed disadvantages to PwDs.
LIMITATIONS	1. Abandon biological and environmental factor that may	1. Refuse to the 'labelling the Child' environment.





	<p>contribute to a holistic evaluation output.</p> <p>2. Utilise the 'Labelling the disable child' environment.</p> <p>3. Disregard capacity of PwDs as a human.</p>	<p>2. Focuses more on civil and political right than combining them with social, economic, and social rights.</p>
HYPOTHESES	<p>1. In preparing the education tools, facilities and environment suited to PwDs, the focus should be purely on their disabilities.</p> <p>2. Until and when the PwDs has been cured, they should receive education in separate environment with the non-disabled person.</p> <p>3. PwDs has no personal capacity thus highly dependent on people surrounding them.</p>	<p>1. In preparing an effective educational environment for PwDs, the focus should be on changing the people's attitude that involves directly or indirectly throughout the process.</p> <p>2. Based on attitudinal, social, economic and political limitations described by the society, the PwDs should have isolated and segregated education space.</p>

## 5.2 Statutory reform on 'educable requirement'

The amendment made to the 1997 Education Act and its regulation is a commendable effort of the government in recognising the rights of disabled children in Malaysia. However, it is natural for a human-made law to still have loopholes calling for corrective actions. As contended by some effected stakeholders, the requirement that the PwDs to pass the test of 'educable' before being accepted as a student under the current education system is another violation towards the PwDs. In integrating the crux of both model, medical and social model, the

assessment to classify a PwDs as educable or non-educable must be acknowledged that PwDs have room to be fully and partially cured following the medical model. For this, they shall be temporarily educated in a lower-level special education environment before they can be enrolled in the mainstream special education system. The assessment model should also integrate the social model gist. The policymakers' political and social attitude, authorities, and players of the special education framework should unanimously accept the temporary education phase.

## 6.0 CONCLUSION



In conclusion, even though the government provides the educational rights of children with disabilities in Malaysia, but the rights are not fully protected. The current laws and policies made still have loopholes since these laws and policies are based on the Medical Model or the Social Model per se. Therefore, to provide better educational rights for children

with disabilities in Malaysia, both Medical and Social Models of Disability must be integrated since both models have their strengths and limitations and complement each other. Hence, not only the educational rights of the children can be protected, but also their health condition can be well managed if both models of disability are to be integrated.

## ACKNOWLEDGMENTS

This research has been carried out under the IIUM-UUMP-UiTM Sustainable Research Collaboration Grant 2020 provided by Universiti Teknologi MARA, International Islamic University Malaysia and Universiti Malaysia Pahang.

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