

REGULATING CHILDREN'S SAFETY ON THE INTERNET: A MALAYSIAN PERSPECTIVE.

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ABSTRACT

The recent case of pedophile, Richard Huckle has shocked the Malaysian nation on how fragile and dangerous when the Internet is being used to save abusive pictures and videos of children. Richard Huckle, a British citizen was charged in England for life sentence due to the charge for abusing Malaysian children during his visit to Malaysia. The shocking news became the front page of most local newspaper such as the Star and the New Straits Times that have been actively reported on the danger of sexual pedophile based on their investigation. Hence, majority of the society feel, it is crucial to address new laws such as the sexual grooming laws to protect the vulnerable children on the Internet. In some countries, such as Australia, United Kingdom and the United States of America, the issue of child protection on the Internet have been addressing since the inception of the Internet in these countries. This paper aims to review the existing laws such as the Communications and Multimedia Act 1998 [Act 588], the Penal Code and the Action Plan for Child Protection of Children on the Internet (2015) issued by the Malaysian government to examine the loopholes in the law. Secondly, it explores good governance on the Internet by the state government in curbing child abuse on the Internet. This is because at the end of the day, it takes the whole community to raise and protect children, and it should not be seen as the state responsibility alone. This paper suggests how should the Malaysian Government responsible to safety of the Internet even though it is in cyberspace.

Keywords: Pedophile, Anti-grooming law, Sexual Offender Registration

Introduction

For the past few years, there were reported cases which shocked the nation, it reflects how fragile is the relationship between children and the Internet. The case of Nur Fitri Azmeer Nordin, 23, who was found guilty of possessing child pornographic materials and sentenced to five years' jail in the United Kingdom was considered as a wakeup call to Malaysian as regards to this dangerous and horrendous activities. He was caught in possession of child pornography comprising 601 images and videos classified as Category A, which is abuse involving penetrative sexual activity with children, as well as hundreds listed under Categories B and C. Due to this offence, Fitri was terminated from his studies in Imperial College University, London (Ryan Barrell, 2015). Although this was not the first case involving Malaysian being caught with pornography, such case forced us to think whether the current law do protect the public especially women and children from sexual offender?

There have been calls to register sexual offenders in Malaysia due to increasing numbers of children being sexually abused. It has been argued that the current law does not adequately protect women and children in the Malaysian society. After the tragic case of the eight-year-old girl, Nurin Jazlin in 2007, who was found death, the former Prime Minister, Abdullah Ahmad Badawi about the possibility of publicising the list of convicted child sex offenders. The nature of her brutal torture and eventual death at the hands of an unknown assailant, suspected to be a psychopathic killer (Teh Wei, 2016) sparked outrage throughout the country, Malaysian media and Internet blogs have been filled with anger and disbelief in reaction to the case, and the murder is widely considered as the most horrifying crime. After nine years of this tragic case, finally, the Minister of Women, Family and Community Development, Datuk Seri Rohani Abdul Karim announced that a child sex offenders list will be set up by the end of this year. The registry is part of the proposed amendments to the Child Act 2001, which has been tabled in the Dewan Rakyat March this year, allowing the registry to come into effect (The Malay Mail, 2016).

In an interview with the Malaysian Digest, the former Inspector General of Police (IGP) Tan Sri Musa Hassan told that the setting up of a sex offenders' registry is a good move. He pointed out that the Sexual Offenders' Registration Bill was mooted nine years ago considering the rising number of rape and murder cases in the country. Musa was instrumental in making the

initial proposal for a sex offenders' registry while he was still serving as the IGP (The Malay Mail, 2016). However, more research is needed to ensure that the suggested system will not, at the same time, jeopardise the right of the offender. Hence, it is crucial that the paper will not only analyse the existing laws, but also the legal approaches taken by other countries in tackling the issue of safety of children on the Internet. It will examine whether registration of sexual offender should be the way forward in curbing sexual abuse of children on the Internet?

This paper will first review the existing laws pertaining to protection of children particularly on the Internet, it will also discuss the existing policies, national agenda and guideline provided by the Malaysian government in handling issues of child protection on the Internet. Finally, it is suggested that protecting children on the Internet is a delicate issue, which need attention from all, state responsibility and parental responsibility.

Child-Related laws In Malaysia

Child Act 2001 (Act 611) was introduced in substitute of the Juvenile Courts Act 1947 [Act 90], the Women and Girls Protection Act 1973 [Act 106] and the Child Protection Act 1991 [Act 468] which were later repealed. The Child Act 2001 (Act 611) is the country's legislation for the protection, care and rehabilitation of children. This Act incorporates the core principles of non-discrimination, best interests of the child, and the right to life, survival and development as well as respect for the views of the child. (UNICEF: 2001). Besides Act 611, other laws which are related to children are the Adoption Act 1952 [Act 257], the Anti-Trafficking in Persons Act 2007 [Act 670], the Child Care Centres Act 1984 [Act 308], the Children and Young Persons (Employment) Act 1966 [Act 350], the Domestic Violence Act 1994 [Act 521], the Education Act 1996 [Act 550], the Islamic Family Law (Federal Territory) Act 1984 ("IFLA") [Act 303] and the Penal Code. Malaysia acceded to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in April 2012.

Issues related to child abuse have shocked the Malaysian nation, Afridah Abas (2008), for instance, have discussed what the relevant laws in Malaysia, which protect children from being victimized. There have been legislative reforms related to children and the laws (Rojanah Kahar & Najibah Mohd Zin, 2011). In fact, the latest development early this year, is the amendments to the existing Child Act 2001, which have been gazetted by the Parliament on 25th July 2016. This is the continuation of the Action Plan to Protect Children on the Internet, which was launched by the government of Malaysia in 2015. The Action Plan is an extension of the National Agenda on Child Protection. The Action Plan to Protect Children on the Internet promotes advocacy, prevention, intervention and support system to create awareness among children, parents and school teachers (The Star, 2016).

There have been movement to propose anti-grooming laws in Malaysia, an initiative done by R.AGE, which consist of young journalists from the local newspaper Star, collaborate with the United Nations Children's Fund (UNICEF). UNICEF called for more strategic collaboration and partnerships to achieve effective child online protection last year due to the growing threat of online abuse and violence. UNICEF has made partnership with The Star's R.AGE, Digi Telecommunications and the Non-Governments Organization (NGO). (UNICEF: 2016). The Royal Malaysian Police (PDRM) is urging the Government to introduce laws to fight child grooming to identify sexual predators who are preying on the young via the Internet and through the different online chat apps. Inspector-General of Police (IGP) Tan Sri Khalid Abu Bakar said the anti-grooming law was important for the police to act against these predators to stop them from exploiting and targeting underaged children. In another news, Malaysia police confirmed today, that it ranks third highest among Southeast Asian nations for the ownership and distribution of child pornography. The Malaysian Police's Head of Sexual Investigation Unit Deputy Superintendent Tan Gee Soon said child pornography had proliferated as the country lacked specific laws to prosecute those in possession of the explicit content. (Ida Lim, 2016).

In UK, sex offences are crimes that are covered by the Sexual Offences Act 2003. The Act covers sexual offences involving the Internet and 'grooming' which prohibits adults from engaging in inappropriate behaviour such as sexual conversations with children online. Australia has introduced legislative amendments to counter the online grooming or luring of children for sexual purposes. Most jurisdictions within Australian have legislation in place that criminalises online child grooming for the purposes of sexual contact, and prosecutions have already taken place under this legislation (Australian Institute of Criminology, 2008). This is the law that Malaysia needs to enact in order to make sure the sexual predators can be charged in the court for online grooming.

Despite that Malaysia has pornography-related offences, it is submitted that the existing laws are not sufficient to curb sexual offences by medium of the Internet. Section 31 of the Child Act 2001, where sexual abuse of children is punishable by a maximum RM20,000 fine or a maximum 10-year jail term or more. Sexual abuse covers situations where a child has taken part in activities of a sexual nature for pornographic materials or sexual exploitation. Under Section 5 of the Film Censorship Act 2002, anyone who possesses, distributes, sells or produces obscene or indecent material is liable to a fine of between RM10,000 to RM50,000, or a maximum five-year jail term, or both. Among other things, Section 292 of the Penal Code covers the selling, distribution and possession of obscene material, which is punishable by a maximum three-year jail term, or a fine, or both. Hence, there is a need to have a specific law, which specifically provide provisions on sexual grooming via the Internet and sexual abuse by way of the Internet.

Children's Safety On The Internet

The debate on children's safety is not new among the academia and Non-Government Organizations policymakers. The World Bank together with the International Centre for Missing Children and Exploited Children (2015) has issued a report entitled

Protecting Children from Cybercrime: A Legislative Responses in Asia to Fight Child Pornography, Online Grooming and Cyberbullying' which discussed in length on the possible legal solution to curb danger of the Internet to children in Asian countries. Sonia Livingstone and others have started to investigate and study the risk and safety issues related to Internet and children. In her article entitled 'Risk and Safety on the Internet: An European Perspective' provides some insights as regard to children's interaction with the Internet. Children being online, in using the Internet, they are exposed to online abuse as discussed by Jo Bryce (2010). In another book entitled *Minding Minors Wandering the Web: Regulating Online Child Safety*, provides the debates on the perennial content, conduct and contact risks that face children in the digital environment. It is not simply a matter of harmful and illegal content, but how can we ensure that safety of children as the Internet users are protected.

There have been suggestion the usage of Internet Hotline as a medium to report mechanisms that allow users to anonymously report content they may come across which they suspect to be illegal. Keeping children safe online has been the subject of intensive policy debate ever since the mid - 1990s when the internet first became an important public communications medium. The European Union has been to the fore in promoting internet safety and through its Safer Internet Programme has supported multi -stakeholder initiatives with industry, law enforcement, education and civil society to create a safer internet environment. Now, with a new emphasis on not just a safer but also a better internet, policy makers have signalled a new phase in strategies to protect children online. The EU Kids Online network was funded by the European Commission's (EC) Safer Internet programme since 2006 as a 'knowledge enhancement' project 'to make a better internet for children'. (Sonia Livingstone, 2013). Based on an impressive in-depth survey of 25,000 children carried out by the EU Kids Online network, research by Sonia Livingstone provides a wholly new finding that extends previous research and counter both the optimistic and the pessimistic type.

Besides extensive research at the level of European Union, there is also organization which works closely with the Internet industry, police and the government. For instance, the Internet Watch Foundation, which is the United Kingdom (UK) Hotline for reporting criminal online content Child sexual abuse content hosted anywhere in the world, criminally obscene adult content hosted in the UK, Non-photographic child sexual abuse images hosted in the UK. (see Internet Watch Foundation, 2016). Hence, collaborative and continuous support not only from the academic research but also from the non-governmental organization (NGO) may assist the authorities in tackling the misuse of the Internet to abuse children.

The Malaysian Communication and Multimedia Commission (MCMC) has launched the campaign on Child Safety Online which aims to help parents make cyberspace safe for their children. UNICEF supports this initiative organised in conjunction with World Telecommunication and Information Society Day 2009. Back in 2006, the author herself has conducted interview with the relevant authorities to seek information pertaining to the issues of children and the Internet, especially in terms of victimization of children using the Internet as a medium. However, at that time, the issues of children on the Internet in Malaysia are not critical as compared to today's scenario. Although there has been campaign on the "Positive Use of the Internet" (PUIP) by National ICT Security & Emergency Response Centre -NISER (now known as Cybersecurity), it seems that the campaign was in a small scale at that time (Abdul Shukor, 2009). Nowadays, the increasing numbers of Internet users has caused a serious threat to the society particularly to the children. Subsequently, the Ministry of Educations, CyberSecurity Malaysia, and the Malaysian Communications and Multimedia Commission (MCMC), Digi has gone to 1,700 schools over the last six years to educate children on cyber safety. (Malay Mail: 2016). As children of all ages now use the Internet on a daily basis, thus the suggestion to remove children online is unrealistic and out dated. Instead, parents, schools, society as well as the government in today's Internet and high technology world, should be prepared to educate children about online safety. In addition to that efforts, according to MCMC Outreach and Engagement Division Head Eneng Faridah Iskandar, the children should be empowered to protect themselves and their peers, while expressing their views on how to mitigate risks. They should be taught on how to be responsible and use the Internet in a positive way.

Regulating Safety Of Children On The Internet

Despite the practice of sexual offenders are well embraced in countries such as the USA and the United Kingdom, there have been argued that the practice is a waste of taxpayers' money as the mechanism involved to register seems very expensive. To maintain a system which accommodate the registration of sexual offenders are also seen as against the right of offenders who might change to a new leaf one day. There are many models of how the implementation of registration of sexual offenders in other countries. As early as 1990s, sex offender registration was widely implemented in the USA as a means of enhancing community on the existence of sex offender. In the USA, the death of a little girl who was found died due to sexually abused has forced the passing of law namely, Megan Law (Welchans, 2005). Sex offender laws gained recognition in the United States with the creation of the 1994 Jacob Wetterling Act. The act called for each state to create a registry of convicted sex offenders. This act was later amended under Megan's Law to include community notification of sex offenders that move into a neighborhood. (Welchans, 2005).

In Malaysia, the Registration of Criminal and Undesirable Act 1969 [Act 207], which provide for registry of people convicted crimes in Malaysia and Singapore. Offenders who are charged under the offences include rape, buggery with animals and carnal intercourse against nature, or Sections 376, 377, 377A and 377B of the Penal Code are subject to this Act. The right of the public to be notified that there is a sexual offender live in the neighborhood is seen as critical for public safety especially for the vulnerable parties such as children and women. With the advance of information and communication technology (ICT), the registration of sexual offenders might expedite and monitored closely by the police enforcement. Putting the safety of the public first, rather than individuals should always been the way forward in. In addition, efforts protecting vulnerable group such as children from being victimized should be paramount in the national agenda in any country.

Datuk Geethan Ram Vincent, the Malaysian criminal lawyers said studies have shown that most sex offenders, especially those who prey on children, have a tendency to reoffend (The Malay Mail, 2015) Human rights lawyer Honey Tan also said Malaysia should have a sex offenders registry to list the convicted offenders and called for it to be made public, but urged caution in the implementation of the database. (The Malay Mail, 2015). It is not merely listing sexual offenders but it also may assist in determining whether a person is qualified or not to work with children. Those offenders who have the history of sexual offences, might not be suitable to work with children.

Besides the sexual offender registration, according to Tan Sri Lee Lam Thye, Senior Vice-President, the Malaysian Crime Prevention Foundation, Malaysia is in need to have anti grooming laws. According to Tan Sri Lee Lam Thye, since 2010, the police reported that there were 400 reports of Internet-related rape cases, which 339 cases involving minor. The new law, if it is accepted, it will clearly define all sexual crimes. In addition, CyberSAFE 2015 survey revealed that 90 percent of school children in Malaysia use the Internet and 83 percent are susceptible to online dangers due to poor supervision (Lee Lam Thye, 2016). Child pornography is a serious human rights violation and it is our duty to protect each and every child, not only in Malaysia but also globally, from any abuse and exploitation, be it physical, emotional or sexual. (The Malay Mail Online, 2016). Thus, it is crucial that apart from having the sexual register, there is also important to have legal mechanism to curb this serious crime by having anti grooming laws.

Children's Safety On The Internet: State Responsibility And Parental Responsibility.

It is not an easy task to draw the line between parental and state responsibility towards children. There have been studies conducted on the possibility to regulate the usage of the Internet among children at home. Despite that there are numbers of books provided as a guideline to parents in regulating children usage on the Internet, such as supervision and monitoring might not easy to enforce. Undeniably, children have been using the Internet at their personal place such as bedroom and in some circumstances, it is not easy for parents to impose regulation on children especially teenagers. Sonia Livingstone and Magdelene Barber (2005) in their book entitled *Regulating the Internet at Home: Contrasting the Perspective of Children and Parents*. In another research, Sonia Livingstone found that levels of usage of the Internet by the children are increasing especially with their school grade. Most of the time, the Internet is used by children for playing games online, watching videos, instant message and also there is non-practiced activities in-line such as participate to forums or social networks, buying on sites and also managing a personal web page or blog. Basically, these children obtained trust from their parents (Sonia Livingstone, 2007). The American Academy of Paedtrics (AAP) has come out with the suggestion of time screen rules for children in using the available gadgets and the Internet. However, Mathiesen (2013) argued that parents who closely supervised their children emails, chatting might against children's rights. Children should be given the right to explore in seeking information on the Internet. In addition, children also should learn that life is full of risk and thus, they also should gain some experience of what is allowed and not allowed in life.

The right of the child to obtain and search any information through Internet and what is the liability and responsibility hold by the Internet Service Provider (ISP). Furthermore, Article 10 of the Malaysian Federal Constitution provides freedom of speech and press. The consequences from that freedom, many speeches are outlawed in Malaysia. Hence, there is no law that governs the protection towards a child from any illegal or harmful information. (Azlina Abdul Aziz and Irini Ibrahim, 2010).

It is difficult to draw what would be the state responsibility and parental responsibility when it comes to children's usage on the Internet. In a recent research by Sonia Livingstone, John Carr and Jasmina Bryne (2015) they found that there is an absence of Internet governance in government's policies related to child safety on the Internet. Hence, safety is not limited to the real space, but there is also a need to address children's safety in using the media such as the Internet.

Conclusion

Since the existing law is not sufficient to give full protection to the children, all parties must take part to ensure that children can't easily been manipulated or abused on the Internet. It is argued that risk associated to the Internet is a fact that needs to be addressed not only by children, but all those who are engaged with the Internet. Thus, parents, school teachers, educators and the public (especially the netizens) should be aware with the danger online. However, the level of exposure today to the myriad of gadgets that opens the door to the cyber realm has limited the parental capacity to protect their children. Thus, consistent programs on educating media literacy are needed not only in school programs but also from the relevant agencies and authorities. Training and educating the authorities are also needed to trace the hidden danger of the Internet. Violence against children remains hidden, especially in cases of children and the Internet. It is hoped that the Child Act (Amendment 2016) that yet to be enforced will improve the current issues on safety of child on the Internet. Other aspect of laws that deals with the children and the Internet such as law against grooming, cyber bullying, cyber suicide, cyber sexting and others, must also be improved.

Acknowledgements

The authors would like to thank the Ministry of Higher Learning and Universiti Sains Islam Malaysia for their support in conducting this research. (Research Code: USIM/RACE/FSU/35/50313 and USIM/FRGS/FSU/32/51015).

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