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Legal Literacy in Accessing Justice for Child Sexual Abuse

Mazlifah Mansoor[1*], Habibah Omar[2], Iqbal Felisiano[3], Mazlina Mohamad Mangsor[4]

[1]Faculty of Law, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia.
Email: mazlifah414@uitm.edu.my
[2]Faculty of Law, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia.
Email: habib597@uitm.edu.my
[3]Faculty of Law, Airlangga University, Jl. Dharmawangsa Dalam Selatan, Airlangga, Gubeng, Surabaya City, East Java province, 60286 Indonesia.
Email: iqbalfelisiano@fh.unair.ac.id
[4]Faculty of Law, Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia.
Email: mazli774@uitm.edu.my

CORRESPONDING AUTHOR (*):
Mazlifah Mansoor
(mazlifah414@uitm.edu.my)

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ABSTRACT

The sustainable development goals (SDG) set peace, justice, and strong institutions with targeted access to justice for all by 2030. Goal 16 of the SDG sets the number of reports made by victims of violence to the authorities to benchmark access to justice. The study argues that there is a correlation between legal literacy and reporting of crimes. Legal literacy means awareness of a society of the legal rights and obligations and their ability to use the legal avenue to get redress. The methodology of this study is by using content and doctrinal approach. Interviews are conducted with the legal aid and human rights representatives on the society and law enforcement awareness and understanding of the legal process in CSA cases. The study shows adequate law addressing access to justice in CSA cases. The Sexual Offences Against Children Act 2017 and the Legal Aid (Amendment) Act 2017 enhanced the legal process to seek justice. However, inadequate legal literacy among the authority handling CSA is among the hindrance to justice. The absence of support from family members in lodging a police report is another issue found in the study. They were less likely to have the perceptual powers of the mind to report crimes. This study contributes to the literature on prioritising and improving access to justice in CSA.

Contribution/Originality: This study contributes to the legal framework on legal literacy for child sexual abuse (CSA). The existing laws acknowledge the legal right of CSA but do not implement access to justice according to the vulnerable state of CSA. The legal aid services from pre-trial until completion of a trial should be the benchmark in determining access to justice to CSA in the report for sustainable development goals (SDG).

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1. Introduction

In criminal cases, the initiation of a legal process is when the authority receives information about a crime. Lodging a police report starts an investigation of a criminal case, as decided in Fook et al. (2010). However, the SDG Assessment Report 2019 shows a poor level of police reports lodged by victims of crimes. The failure to lodge a police report does not per se mean that access to justice is not given to them. Hence, this study examines what is the hindrance in the legal process involving child victims. The research objective is to identify the barrier to accessing justice in the law and the legal process. The research contributes to legal knowledge on legal redress to CSA.

2. Literature Review

There is a rising trend in analysing legal literacy in Malaysia. The awareness level and understanding of legal literacy among university lecturers (Abdul Hamid et al., 2018), the scope of consumer rights and protection (Norhafifah et al., 2018) and enforcement of environmental laws in Malaysia (Khairil et al., 2017) are among the scope of analysis on legal literacy. The existing literature guides future research on the domain and instrument for measuring legal literacy in Malaysia.

One of the common barriers to criminal justice is the limited scope of legal aid. A study suggests that the legal framework does not provide a process and institution to prioritise and implement access to justice through legal aid assistance in the case of migrant workers (Wahyudi et al., 2016). A similar study was conducted on the justice and legal aid barriers to the vulnerable non-citizens in Malaysia to study this aspect of the law (Abdul Wahab, 2020). The study highlights four key barriers hindering the provision of legal aid to vulnerable non-citizens. They are: (i) limited scope of legal aid's coverage; (ii) financial constraint; (iii) limitation in private lawyers' participation in legal aid schemes; and (iv) the lack of awareness among the non-citizen. The finding of this paper is relevant in the context of a non-citizen in accessing justice. But it is also applicable to the vulnerable person such as children in seeking justice.

Child sexual abuse (CSA) is expansively discussed in the literature. Sexual harassment in school involving youth: extent of legal protection concerned about the availability of the law to protect the children of crime (Mohamed, 2008). Mohamed (2008) discussed the importance of legal literacy among children, especially in giving testimony in court. Simiarly, Abidah (2011) examined the special measures' applications for victims and vulnerable and intimidated witnesses in Malaysia. Her focus on the Evidence of Child Witness Act 2017 provides a fair trial to a vulnerable person. Administration of criminal justice pays less attention to victims and witnesses' rights and interests (Abidah, 2011). She based her opinion on the lack of legal protection for the victims and witnesses of crime during criminal trials. Vulnerable witnesses or victims are disabled people, children, sexual assault and domestic violence cases.

Mooi et al. (2017) discuss the impact of the Sexual Offences against Children Act 2017 on police investigation and prosecution in Malaysia. The literature examines the provision under the new Act in protecting children from child pornography, sexual grooming and other forms of sexual abuse. These articles focus on the post-investigation stage when the investigation is already completed. However, Mohamed (2008) addressed the pre-trial measures in acknowledging that there are instances of underreporting sexual

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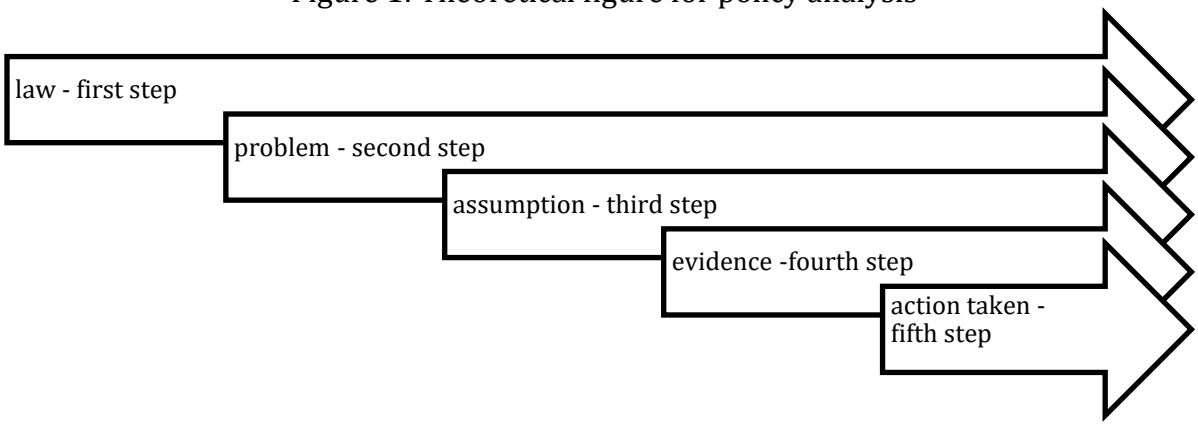
harassment. Hence, this study intended to expand the issue of underreporting of criminal cases involving children and hindrance to seek criminal justice by analysing the level of legal literacy of the parties involved in the administration of criminal justice.

3. Methodology

The methodology of this study is by using the framework of What's the Problem Represented (WPR) by Bacchi (2012). The first step of WPR is identifying the existing law and policy on the subject. The second step is identifying any problem in the current law and policy. The third step is linking the problem with certain underlying assumptions to suggest it as a problem. The fourth step is how this problem is addressed and solved.

Bacchi's (2012) framework on policy analysis is expanded in this study by adding evidence to validate reporting the issue as a problem. Figure 1 suggests that presenting the actual or likely evidence in the policy and legal analysis can provide an extensive analysis process and outcome. By adopting the WPR approach, content and doctrinal analysis answer the legal issues relating to legal literacy in criminal cases. Interviews are conducted with the legal aid and human rights representatives in implementing the legal process involving child victims.

Figure 1: Theoretical figure for policy analysis



4. Result

4.1. The law

The law states that each state must provide support and care in a child's best interest. The protective measures consist of all forms of protection, including identification, reporting, referral, investigation, treatment (United Nations (UN) Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power 1985; Article 3 of the United Nations Declaration of Human Rights 1948)

CSA is given the rights and protections under the Child Act 2000. Child victims in criminal cases are given the rights and protections under the Child Act 2000. Section 17 (1) (a) and (b) illustrates a child in need of care and protection when his family sexually abuses the child. It empowered the protector to take temporary custody of the child. The medical officer's duty, child's family, and childcare are to report sexual abuse to a Protector. Failure to do so will warrant them liable for a criminal offence by carrying the punishment of a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding two years or both (sections 27,28 and 29 of the Child Act). However, there is no duty imposed on any member of the society to report on a suspicious case of CSA.

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The enactment of the Evidence of Child Witness Act 2007 and Sexual Offences Against Children Act 2017 provides a better legal process for the child by giving special measures to investigate and prosecute criminal cases. Section 19 of the Sexual Offence against Children Act 2017 criminalised the failure to provide information to the police on the commission of the criminal offence.

The Legal Aid (Amendment) Act 2017 provides a legal companion to child victims of crime. But the implementation of the law requires a police report to be lodged for this service to be activated. There are instances of police reports not being lodged or withdrawn due to pressure from society or family members.

4.2. The problem

The law requires a police report for protection to be given or the legal process to be activated under the Legal Aid (Amendment) Act 2017. There are instances of police reports not being made or withdrawn by CSA. SDG Roadmap for Malaysia (Phase 1: 2016-2020, p 60) identifies cases' under-reporting hindering a safe environment for the society. The same report identified a lack of awareness about rights and protection and limited access to information. Legal literacy starts with the understanding that everyone can become a victim and deserves protection under the law. It requires understanding society and law enforcement not to pre-judge a CSA without a proper investigation.

The finding of the above report also shows a lack of knowledge and skills in the administration of criminal justice, which is a challenge in achieving Goal 16 of the SDG. It can become a barrier to preventing the disadvantaged from accessing the legal system and seeking protection. The interviews with the legal aid and human rights representatives confirm the finding of the SDG Report on a weak understanding of the law by the person involved in the administration of criminal justice.

4.3. The underlying theory

CSA falls under a vulnerable group that requires special measures in criminal justice administration (Wismayanti et al., 2021). Legal empowerment is by having a literate society informed about criminal justice, its process, and remedies for CSA.

5. Discussion

5.1. The evidence

The interviews with the legal aid and human rights representatives show the low level of legal literacy on CSA cases.

Case 1: child victim of rape is not investigated as victims, but arrested, detained and charged under Syariah law for pregnant without marriage.

Case 2: "promise marriage" as a ground to avoid prosecution of rape cases.

Case 3: the offender's release on bail pending investigation and trial has caused fear to the victim. The victim of the crime stayed in the same house with her assailant, the child's father.

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Case 4: withdrawal of report due to pressure by her village folk. It is a case involving her family member as the sexual assailant.

Case 5: delay in an investigation involving child victim for two years.

The finding of the interviews shows that there is a flawed support system involving CSA. The backlash by the society and family in reporting own family member as an assailant in CSA is apparent in few cases. There is also a barrier to legal justice: a weak understanding of the law by the person involved in the administration of criminal justice. The result of the interviews shows that child victim of rape is not investigated as victims, but arrested, detained and charged under Syariah law for pregnant without marriage. They're also still rampant cases of promise to marriage as a ground to avoid prosecution of rape cases. In other instances, the offender's release into society pending investigation and trial cause fear to the victims of crime, especially if the offender is a family member. The victim of the crimes stayed in the same house with her assailant, be it the father and uncle of the child.

5.2. How it was addressed

Amendment of the law is the action taken by the government to address CSA cases. The Legal Aid (Amendment) Act 2017 provides legal counsel as the legal companion to CSA. But the implementation of the law requires a police report to be lodged for this service to be activated. There are instances of police report not being lodged or withdrawal due to pressure by society. This scheme is also voluntary because the state will not assist CSA who seek this Legal Aid Centre service.

The government is proposing a guideline for managing cases of sexual offences against children, implementation of childcare needs and child protection unit (CCNCPU), to develop the working with children check mechanism (early stages) and piloting family-based care.

6. Conclusion

Access to justice in criminal matters is available to CSA by them making a report of the crime. However, society and family members' awareness and understanding of the law and the legal process is crucial for CSA cases. It is pertinent for the environment surrounding a child to be supportive of this process. Education must start within the society on the fundamental understanding of who is the victim of crime and who can become the victim of crime.

A particular guideline for managing CSA as proposed by the government is timely to provide a robust framework in managing cases. The law enforcement specialising in child protection should be centralised. Currently, three agencies are handling CSA; the police are investigating crime, the protector in providing safety and care and the legal companion for a legal proceeding. A merger of these tasks with a special unit of CSA will give better workflow on providing awareness to society and law enforcement, training to law enforcement and protection pre- and post-investigation to the CSA victims.

The study recommends amendment of the law to make it mandatory that the legal aid services are given to CSA from pre-investigation until the appeal stage. The court should deny bail in cases of CSA by making it a non-bailable offence unless there is an exceptional

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circumstance that warrants the release. In providing access to justice, efforts must be made to provide security and safety to the child victims to come forward to lodge reports and participate in criminal justice.

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Conflict of Interests

The authors reported no conflicts of interest for this work and declare that there is no potential conflict of interest with respect to the research, authorship, or publication of this article.

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