



**DIVERSION OF CHILD OFFENDERS FROM THE
CRIMINAL JUSTICE SYSTEM IN MALAYSIA AND
REFORMS OF THE CHILD ACT 2001: LESSONS FROM
NEW ZEALAND**

BY

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**A dissertation submitted in fulfilment of requirement for the
degree of Doctor of Philosophy in Law**

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FEBRUARY 2017

ABSTRACT

The juvenile justice system in Malaysia is governed by *Part X* of the Child Act 2001 (Act 611) that outlines the trial procedures in the Court for Children. According to this Act, a child is defined as a person under the age of eighteen (18) years and in relation to criminal proceedings, a child means a person who has attained the age of criminal responsibility, set at ten (10) years of age. Thus, a child whose age is below ten (10) years old cannot be made criminally responsible. Currently, there are inadequate provisions that govern the juvenile justice system in Malaysia, particularly, at the pre-trial process. Hence, although *Part X* of the Child Act governs the laws pertaining to criminal procedures in the Court for Children, reliance on the Criminal Procedure Code (Act 593) has to be made in the absence of any specific provisions relating to offences tried under the Penal Code (Act 574). The present situation also recognised the lacuna in the laws because there are no provisions in the Child Act that statutorily recognize the implementation of diversionary measures when dealing with child offenders who come into contact with the criminal justice system in Malaysia. As a consequence, most child offenders came into contact with the system and suffer from its adverse effects, beginning from the pre-trial process up to the trial process, and continuing until the post-trial process. Hence, in order to prevent these detrimental effects such as labeling and stigmatization on child offenders, diversion can be seen as a viable alternative to the current juvenile justice system in Malaysia. In addressing the research questions in this study, mixed methods were adopted as a form of research methodology in order to examine in greater detail the views of the child offenders and the stakeholders. The findings of the quantitative study addressed the research questions and provided cogent evidence for the reforms of the Child Act in order to better protect the legal rights of the child offenders. Further, the findings also indicate the inadequacy of the Child Act in protecting child offenders who come into contact with the formal justice system in Malaysia. These findings are affirmed by the views expressed by the stakeholders in the qualitative study who had expressed support for the implementation of the diversionary measures as a viable alternative from the formal justice system and called for the reforms of the Child Act, to strengthen the legal protection afforded to the child offenders. This thesis concluded with the recommendations to improve every stage of the juvenile justice system beginning from the arrest process and continuing until the child offenders are serving sentence in the institutions. To prevent the child offenders from the detrimental effects of the criminal justice system and to channel them away from this formal system, a new diversion model is proposed that takes into account the current national legal framework and local settings and advanced proposals to reform the laws. The thesis concludes with an assertion that every child offender deserves a second chance, and implementing diversionary measures serves as a first step in providing an alternative system that gives children the opportunity to become responsible and accountable members of the society.

ملخص البحث

يخضع نظام قضاء الأحداث في ماليزيا للجزء العاشر لقانون الطفل (القانون ٦١١) عام ٢٠٠١ الذي يحدد إجراءات المحاكمة في المحكمة للأطفال. ووفقا لهذا القانون، يعرف الطفل بأنه الشخص تحت سن (١٨) ثمانية عشر عامًا، وفيما يتعلق بالإجراءات الجنائية، بالنسبة للطفل فهو الشخص الذي بلغ سن المسؤولية الجنائية، المحددة بعشر (١٠) سنوات من العمر. ومن هنا فإن الطفل الذي تحت السن العاشر (١٠) من عمره لا يمكن أن يعد جنائيًا. وحاليًا، هناك أحكام غير كافية تحكم نظام قضاء الأحداث في ماليزيا، وخاصة في عملية ما قبل المحاكمة. ومن ثم، فعلى الرغم من أن "الجزء العاشر" من "قانون الطفل" تنظم القوانين المتصلة بالإجراءات الجنائية في المحكمة من أجل الأطفال، والاعتماد على "قانون الإجراءات الجنائية" (قانون ٥٩٣) في عدم وجود أية أحكام محددة تتعلق بالجرائم التي حوكم بموجب القانون الجنائي (قانون ٥٧٤). فإن الوضع الحالي اعترف أيضا بالثغرة في القوانين لأنه لا توجد أحكام في "قانون الطفل" تعترف قانونا بتنفيذ تدابير صرف الأنظار عند التعامل مع الأطفال الجانحين الذين يتصلون بنظام العدالة الجنائية في ماليزيا. ونتيجة لذلك، فإن معظم الأطفال الذين وقعوا في الاجرام، وجدوا النظام، وهونفسه الذي يتضررون منه. ولذا لكي يتم توجيهها بعيدًا عن نظام قضاء الأحداث، وتتصل بالنظام ويعاني معظم الأطفال الجانحين من آثارها السلبية، بدءًا من عملية قبل المحاكمة حتى عملية المحاكمة، ويستمر حتى بعد انتهاء المحاكمة. وفي التصدي لمسائل البحث في هذه الدراسة، اعتمدت الأساليب المختلطة نموذجًا لمنهجية البحث بغية النظر بمزيد من التفصيل لآراء الأطفال الجانحين وأصحاب المصلحة. تناولت نتائج الدراسة مسائل البحث الكمية، وتقدم أدلة مقنعة للإصلاحات في "قانون الطفل" بغية توفير حماية أفضل للحقوق القانونية للأطفال الجانحين. علاوة على ذلك، تشير النتائج أيضا إلى عدم كفاية "قانون الطفل" في حماية الأطفال الجانحين الذين يتصلون بالنظام القضائي الرسمي في ماليزيا. هذه النتائج هي التي أكدتها الآراء التي أعرب عنها أصحاب المصلحة في الدراسة النوعية، والذي أعرب عن تأييدها لتنفيذ تدابير تفضيلية بديلاً قابلاً للتطبيق من النظام القضائي الرسمي، ودعا إلى إجراء الإصلاحات "قانون الطفل"، وتعزيز الحماية القانونية الممنوحة للأطفال الجانحين. واختتمت هذه الدراسة مع توصيات لتحسين كل مرحلة من نظام قضاء الأحداث بدءًا من عملية الاعتقال والمستمرة حتى الأطفال الجانحين الذين يقضون العقوبة في المؤسسات. لحماية الأطفال الجانحين من الآثار الضارة لنظام العدالة الجنائية وتوجيهها بعيدًا عن هذا النظام الرسمي، ويقترح نموذجًا جديدًا لتحويل الذي يأخذ في الاعتبار الإطار القانوني الوطني الحالي، والإعدادات المحلية، ومقترحات متقدمة لإصلاح القوانين. وتخلص الدراسة إلى تأكيد أن كل الأطفال الجناة يستحقون فرصة ثانية، وتنفيذ تدابير تحويلية بمثابة خطوة أولى في توفير نظام بديل يُعطي الأطفال فرصة ليتحمل مسؤوليته في المجتمع.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Nadzriah Binti Ahmad

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This dissertation is dedicated to my beloved parents

ACKNOWLEDGEMENTS

In the name of Allah, the Most Gracious and the Most Merciful.

First and foremost, I am thankful and grateful to the Almighty Allah SWT, the Creator and Sustainer of the universe, the Most Beneficent for the *hidayah, istiqamah*, patience, strength, health and endless blessings that He has bestowed upon me in giving me the opportunity towards completing this thesis successfully.

I feel extremely blessed to be surrounded by so many people who had provided me with sincere help in my journey of completing this thesis. Even though numerous people have provided their assistance and to whom I feel deeply indebted, it is only possible for me to make particular mention of some who have graciously supported me throughout my journey here.

My special appreciation and deepest gratitude goes to both my supervisors, Assistant Professor Dr Baharuddin Harun and Professor Abdul Ghafur Hamid for their continuous support, motivation, guidance and valuable advice in the area of criminal justice and public international law respectively. No words can also describe how thankful I am to my other co-supervisor, Professor Saodah Wok from Kulliyah of Islamic Revealed Knowledge and Human Sciences for her meticulous supervision and invaluable advice in the field of research methodology. The voluminous work of undertaking mixed methods seems very much lighter with her continuous guidance, encouragement and motivation.

The journey of completing my PhD will also not be possible without the scholarship provided by the Ministry of Higher Education and MARA University of Technology. The study leave that was given provided me with valuable time to immerse myself in the research journey. I am also deeply indebted to the Ministry of Higher Education that provided me with the opportunity to be part of an excellent research team headed by Associate Professor Dr Zaiton Hamin. Under her supervision and guidance, I am able to undertake my PhD thesis to another level because of the valuable exposure I received while doing research work under the Fundamental Research Grant Scheme (FRGS) grant. I also feel extremely blessed to have the co-operation from two legal research assistants, Ms. Hafatin Natrah Md. Noh@ Safar and Ms. Nadiah Ismail who were working along with me for the abovementioned grant. Special mention also goes to Associate Professor Zahrah Elias who had shared with me her passion in editing the Phd thesis and had graciously added linguistical beauty to a thesis that is otherwise heavy with legal jargons and legal analysis.

In undertaking the fieldwork for mixed methods methodology, I was given the opportunity to meet many officers who had contributed their time and shared with me their valuable knowledge in the field of juvenile justice system in Malaysia. Hence, I would like to thank all the officers from the following various sectors who had lend me their kind assistance; policy makers, detaining institutions, government sectors, Courts' officers, legal practitioners, enforcement officers, religious authorities, international organisation and non-governmental organisation.

My deepest appreciation also goes to all my family members for their endless *dua* and support for me. Their spiritual support had given me the strength to complete my Phd journey, particularly with the voluminous work involved in undertaking mixed methods methodology. Words cannot describe how grateful I am to my parents, Tuan Haji Ahmad Berek Al Harraz and my mother, Puan Aishah Muda for their endless *du'a*, support, encouragement and motivation. I hope this thesis is a manifestation of my father's motto in life, that is, "Do it Right the First Time, Do it Right Every Time, Do It Right All the Time and With Least Cost". My fullest appreciation also goes to my siblings, uncles, aunties, and all my family members who have all supported me in their own special ways. Words cannot describe how blessed I truly feel to be surrounded by such a loving and close knit family. *Alhamdulillah*.

And finally, to everyone that I have failed to mention here but have rendered me their valuable assistance, I am fully indebted to all your kind help. *Jazakallahu Khayran Khatira*. Last but not least, to all the child offenders who are serving sentence in the institutions, I hope this thesis will contribute in paving way to reforms in the law and will provide child offenders with the opportunities to turn into a new leaf. May Allah SWT guides and grants all of you *hidayah* in your journey towards adulthood. This thesis is dedicated to all of you.

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