

ENHANCING PHYSICAL ENVIRONMENT OF CHILD CARE CENTRES IN MALAYSIA THROUGH LEGAL ANALYSIS

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ABSTRACT

The issue of low quality of child care centres which lead to numbers of unwanted injuries and death of children while in care need to be addressed through legal mechanism. In regulating child care centres in Malaysia, there are certain legal requirements that need to be fulfilled by child care operators. One of the requirements that often neglected is the physical environment. This paper examines the question on whether the physical environment feature in legislative framework of Malaysian child care need improvements. This research is done through doctrinal research analysing the relevant legislations and related documents of Malaysia and other jurisdictions. The laws and regulations in Malaysia involving Child Care Centre Act 1984 and Child Care Centre Regulation 2012 are analysed according to the relevant sections and regulations. The practices from other jurisdictions including Australia, Singapore and Canada are analysed for Malaysia to take lesson from. Recommendations are then made for Malaysia to improve its laws and regulations on physical environment in care centres.

Keywords: child care centres, physical environment, structural quality, child.

INTRODUCTION

The demand for child care centre in Malaysia has increased due to high numbers of women going out for work (Sulaiman et al., 2022). Evidently, the numbers of registered child care centre have increased by 11.2 per cent in 2019 compared to 2018 as provided by the Department of Statistic Malaysia (Department of Statistics Malaysia, 2020). The number rose by 8.1 per cent to 5302 child care centres in 2020 to accommodate the high demand for childcare (BERNAMA, 2021). Therefore, it is vital for child care centre to provide a quality child care which will enhance children's development (Sulaiman et al., 2017).

The quality of child care providers needs further enhancement as it is reported that from 13, 700 child care providers, 80 per cent from them has not meet the minimum requirement of Kursus Asuhan Permata (KAP) (Haziq et al., 2020). Furthermore, 581 cases of child abuse involving child care providers has been reported from the year 2015 until June 2020 (Ramalingam & Alavi, 2020).

In child care settings, there are quality features which are called as structural features that need to be given attention by child care operators. These structural features are the requirements that often translated into laws and regulations (Hanno et al., 2021). These structural features amongst others are adult to child ratio, child care providers' quality, health and safety, education element, and physical environment (Haziq et al., 2020). This paper is focusing on one of the features which is physical environment.

The physical environment is one of the structural factors in ensuring that child care centres provide sufficient facilities and space for the children. The goal of having a conducive physical environment is to foster children who are more happy, creative and independent (Community Child Care Co-operative, 2013). In addition, in developing the children's cognitive, socio-emotion and physical development, learning environment with good facilities is important (Taha et al., 2020). Child care setting has been reported to be inactive and sedentary with less physical activities for the children (Vanderloo & Tucker, 2018). Thus, the regulations involving physical activity and sedentary behaviour is a beneficial tool in ensuring that children get ample time of physical activities in their daily programme and curriculum. In regulating these physical activities, the physical environment of the child care setting should be upgraded to accommodate the activities planned for the children. Consequently, child care settings need to provide materials and equipment that encourage movement such as mats, soft toys, ribbons, ropes, soft small balls, climbing frames and so on so that children can play and practice movement activities (Yee & Yunus, 2021).

The physical environment includes indoor space, outdoor space, facilities as well as learning and playing equipment. It is suggested that the place should be calm and not overly stimulated so as not to disturb any sleeping child for instance. In addition, there is a need to prepare spaces for the children to explore their abilities at indoor and outdoor activities. Physical environment is also a vital element in ensuring quality in child care settings. Child care centres must ensure that health and safety aspects, and other additional criteria such as space, accessibility of toys and equipment which are suitable to the age of the children are well maintained in the centres (Ceglowski & Bacigalupa, 2002).

Looking at the situation in Malaysia, the increasing of injury cases involving children placed in child care centres is an urge for the need to re-evaluate the present laws and regulations on child care centre especially on the features of safety (Sulaiman et al., 2022). The long hours of children staying in child care centre with low quality of physical environment might cause them to feel uncomfortable and affect their developmental growth (Zulkifli et al., 2016). There is lack of research on the importance of physical environment of child care settings in Malaysia especially involving the laws and regulations. Looking at research on pre-school as a supplement, it is claimed that pre-school physical environment is often overlooked to the extent that quality is compromised for quantity (Shaari et al., 2020). All preschools involved in the research were only rated fair though none were rated as poor. However, no preschool has been rated as good and excellent.

Moreover, it is asserted that the laws and regulations on child care settings in Malaysia put higher focus on cognitive, social and emotional development as compared to physical environment (Azhari et al., 2015). There is a need for Malaysia to review the existing

legislations to accommodate more physical activities to be conducted for in child. The existing regulations are considered as immature to limit injuries amongst children (Hudin et al., 2019). The guidelines moreover do not emphasis on play equipment besides of focusing on physical design (Lamsah et al., 2021). Therefore, this paper aims to discuss the inadequacy of Malaysian child care laws and regulations pertaining to physical environment requirement. These loopholes shall be remedied by benchmarking other countries' practices especially those countries which have just reformed their legislation on child care settings. The improvement suggested for of physical environment feature of child care settings shall be beneficial in the process of enhancing the quality of child care in Malaysia as a whole.

METHODOLOGY

This research is a qualitative study of the doctrinal approach involving research on law and legal concepts (Hutchinson & Duncan, 2012). The primary method used was the doctrinal legal method of analysing legal documents on child care in Malaysia. This method served to show the existing laws and regulations pertaining to physical environment in child care settings mainly the Child Care Centre Act 1984 (CCCA 1984) and Child Care Centre Regulations 2012 (CCCR 2012).

Comparative legal method was also conducted to compare the different developments of child care legislations particularly on physical environment in Australia and Singapore. The laws and regulations in Malaysia were compared to other jurisdictions such as Australia, Singapore and Canada for any lessons to be learnt from these jurisdictions.

Content analysis of secondary sources were also performed. The analysis included searching for information from various sources such as academic journals, conference papers, text books, and newspaper reports. The current development and knowledge on the subject were reviewed by analysing the literature and previous research. Analysis also involved online databases from various websites, namely: government departments; as well as NGOs' and relevant international bodies concerning the rights of children such as United Nations Children's Fund (UNICEF) and The Organisation for Economic Co-operation and Development (OECD).

RESULTS

Quality Standards of Physical Environment

In regulating the physical environment, this includes regulating the indoor and outdoor spaces of an early childhood educational premise. OECD underlines several features in ensuring that early childhood and education centres set quality standards in preparing physical environment for the children. Amongst the features are the location of the premise must be suitable; the premise must be accessible, safe, and flexible. Besides that, features such as scale and visibility of the premise must also be considered (United Nations Children's Fund (UNICEF), 2011).

OECD has conducted a thematic review on several countries on the performance of their early childhood and education sector. Taking Canada as an example, the element of outdoor space has been mentioned where the space is not adequate as compared to other Scandinavian countries such as Finland and Sweden where children could explore outdoor even

in winter seasons (Doherty et al., 2003). Few suggestions were made inter alia on the space allocation, and more interest-captured toys and equipment. This is to encourage the children to get involve in more physical activities.

Meanwhile, looking at Australia, based on the standards highlighted in the Australian regulations on physical environment, there are three main standards that need to be met. These standards can be found in Schedule 1- National Quality Standard in the Australian Education and Care Services National Regulations 2012 (ECSNR 2012). The first standard that is highlighted concerns the design and location of the premises. The premises must be at a suitable location, safe, clean and well maintained and the facilities in the premises are sufficient for every child to benefit from them. Second is a wide-ranging environment feature which encourages beneficial activities such as learning through play. This involves the indoor and outdoor spaces that are prepared for the children as well as materials and equipment which may facilitate the activities of the children. Third is an interesting standard where the settings of the premises must consider environmentally friendly elements.

DISCUSSION AND IMPLICATIONS

Regulating Indoor Space; Requirement of Floor Areas

It is important for the laws and regulations to stipulate the required floor areas of child care centres. This is one of the ways to avoid overcrowding which may harm the children's health and safety. In a study conducted to examine the spaces allocated for the children by child care centre, it was reported that most of the centres are overcrowded (Azhari et al., 2015).

The harm of not separating the children can be seen as in a case that has occurred in Kuala Terengganu. The infant who was just three months old was hospitalised as her face was claimed to be beaten and bitten by another child aged one year plus (Ramlee, 2015). She suffered bruises on her face. Looking at the severe bruises she suffered, it was suspected that the baby was beaten for quite some time and the child care provider has neglected the baby's crying thinking that it was the normal cry of infants. Therefore, in preventing harms especially to infants and younger children who are more vulnerable, the separation of children according to age groups should be done.

On the legislation on requirement of floor areas, it is interesting to note that Malaysia highlighted the requirement of 2.5 square metres for home based child care and 3.5 square metres for centre based child care centres as can be found in Regulation 27 CCCR 2012.

As compared to Singapore, in its First Schedule of the Singapore Child Care Centres Regulation 2012 (SCCCR 2012), there are additional requirements for a bigger space of 5 square metres for children aged 18 months or younger as compared to 3 square metres for each child aged above 18 months. There is also a requirement for additional space to be prepared when there are children who cannot walk.

Looking at other practices in European countries, The European Commission Childcare Network recommendation for outdoor space is six square metres per child (Beach & Friendly, 2005). It would also be helpful to take an example from the City of Vancouver where they have design guidelines in easing the child care operators. There are guidelines on minimum indoor

space according to age groups, according to share facilities, the categorisation of play space according to age group separating the infants from toddlers and so on. It is interesting to further note that most of the provincial or territories in Canada require a certain maximum number of children in one group. For example, in Ontario, Canada, the children are separated in their play room according to their age. A maximum of ten children for those under 18 months, and a bigger number for children between 18 to 30 months with 15 children per room, and 24 children for 24 months to five years. This is also known as group size. This is one aspect where Malaysian laws and regulation is lacking and is in need for further research to add this requirement in the laws and regulations in Malaysia.

Floor area; Any specific purpose?

Malaysia does not specify any regulation for the requirement on conditions and organisational requirements except that the floor area does not include kitchen, store room, office, washroom, and others. Therefore, it is assumed that these floor areas are meant for the children to play and move around. However, in the *Garis Panduan Perancangan dan Penubuhan Tadika dan Taska 2017 (GPP 2017)* by Town Planning Department, there is requirement for operators to prepare play space for the children.

Furthermore, there is no requirement to provide an office and a staff room in Malaysia's regulations apart from specifying floor area, kitchen pantry and washroom. It has been pointed out that in some child care centres that were observed in the study, due to non-existence of specified space for staff, they have to use the children area for any meeting or discussion (Azhari et al., 2015). With regard to kitchen area, kitchen or pantry is required to be located in isolated area separating the area from the areas used for children's activities. In addition, there is no requirement for storage for the children's belongings and play equipment. This requirement is meant to ensure facilities are accessible to the children and that their personal belongings are not mixed up. This is a measure to avoid child care providers from accidentally exchanging the personal belongings of the children such as diapers or feeding apparatus. This is important especially when dealing with infant who is still drinking expressed breast milk.

Therefore, as far as floor area is concerned, in enhancing the quality care for the children, Malaysia should improve its legislations on floor area by considering adding the square metres according to the age of the children as what can be found in Singapore regulations. Furthermore, there is a need to specify various segments of the floor area separating the children's spaces from other areas.

Regulating Outdoor Space

Regulating outdoor space is important in realising the aim to include the education element in child care centres just as experiencing outdoor activities will increase the gross motor skills of the children. Laws and regulations in Malaysia do not address the issue of regulating outdoor space in child care centres.

Looking into Australian regulation, provisions on outdoor spaces can be found in Regulation 108 of the ECSNR 2012. The Regulation states that the approved provider must provide a premise with at least 7 square metres of unencumbered outdoor space.

Thus, the premise must provide at least seven square metres of unencumbered outdoor space. An added value from Australia's regulations is that the space must be environmentally

friendly using natural substances such as trees, plants and sand. This is pointed out in Regulation 113 ECSNR 2012 which states that, ‘The approved provider of a centre-based service must ensure that the outdoor spaces provided at the education and care service premises allow children to explore and experience the natural environment’.

In addition, the outdoor space must provide adequate shade to protect the children from dangerous ultraviolet radiation from the sun as mentioned in Regulation 114 ‘The approved provider of a centre-based service must ensure that outdoor spaces provided at the education and care service premises include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun’.

Meanwhile, as for Singapore, Regulation 28 of SCCCR 2012 states that every child care centre should be provided with outdoor play space or playground as this is vital for the children’s gross motor skills.

In addition, it is worthwhile for Malaysia to take into consideration the option made by Singapore for child care operators to have indoor space with gross motor activities when child care centres do not have enough space to have an outdoor playground. This would be helpful and provides an alternative especially for child care operators who operate their premise above ground floor. This is clearly stated in Regulation 28 (4) of SCCCR 2012 which states that: ‘Every child care centre without access to outdoor play space shall have additional indoor space which shall be equipped with materials for gross motor activity, and which comply with the specifications set out in the First Schedule’.

As an additional comparison, it is worthwhile to take lessons from a comprehensive research done in Canada which specify on regulations on physical environment by comparing the existing regulations in various territories and provinces (Beach & Friendly, 2005). For outdoor space, the requirements underlined in the research focus mainly on minimum space requirement per child, proximity of outdoor space to indoor space, fencing and playground specifics. In Canada, most of the territories require five to seven square metres. It is interesting to note that the regulation in Prince Edward Island where there is a waiver for child care centres which do not have outdoor space to use parks or open spaces near the centres. This may be the alternative to be applied in Malaysia since legislations should also encourage adherence amongst child care operators besides of aiming to ensure high quality services for the children.

Fencing the outdoor playground

Besides that, there is also the requirement on fencing the outdoor playground as can be found in Regulation 28 (2) of SCCCR 2012 which states that the playgrounds within the compounds of a child care centre shall be adequately fenced. Australia meanwhile has specific regulation on fencing as can be found in Regulation 104 ECSNR 2012 of which states that, ‘The approved provider of an education and care service must ensure that any outdoor space used by children at the education and care service premises is enclosed by a fence or barrier that is of a height and design that children of preschool age or under cannot go through, over or under it’.

Enclosed fencing is to ensure the safety of the children from passing through the outdoor space or escaping over or under the fences. Therefore, fencing must be of a suitable height and design for the children.

ECSNR 2012 also highlights the requirement for the playground specifics. This includes the safety of the playground equipment, sufficient space according to the number of children at any one time, availability of areas with grass or sand for gross motor skills, and so

on. Singapore's regulation under Regulation 28 (3) SCCCR 2012 ensures that the outdoor space must not have any harmful objects or broken glass that may injure the children. The playground must also be physically inspected to be safe for the children as mentioned in the regulation: 'Before the children are allowed the use of any playground, a physical inspection shall be made by the staff to ensure that the playground equipment is in a safe working condition and that the playground is free from broken glass, other sharp or harmful objects and standing water'.

Should Child Care Centres be Set Up Only on Ground Floor?

In addition, on the requirement of height and level, there is no requirement in Malaysia for operators to operate their child care centres on the ground floor as can be found in Singapore or several territories in Canada. There was a request made by the Ministry of Women, Family and Community Development (MWFC) to loosen the requirement made by the local authority and the Fire Department for child care centres to be set up only on ground floor or first floor. Commenting on this, Datuk Seri Rohani Abdul Karim said that this flexibility shall invite more operators especially the private work place to open child care centres (Abdullah, 2016). Bigger numbers of child care centres indirectly may attract more women to return to the labour force. She added that the condition is no more practical as many commercial building and offices nowadays are located at higher floors since the lower floors are meant for parking spaces. However, she stressed that the safety of the children would always be the prime concern though there is flexibility on this condition.

According to previous guidelines, child care centre only permitted to be set up until second floor. However, in order to encourage more workplace child care centre, GPP 2017 has allowed for child care centre to be set up from ground floor until fifth floor with the maximum height of 18 metres.

Looking at Singapore, Singapore's child care centres must be set up on the ground floor as mentioned in the First Schedule of SCCCR 2012 which states that, 'Every child care centre shall be housed on the ground floor of a building unless otherwise approved by the Director. The site of the child care centre shall be located away from main roads and other traffic hazards wherever possible'.

Nevertheless, there is proviso for those getting approval not to set up their centres on the ground floor due to merit looking on a case-by-case basis. This regulation is seen as a good one as it leaves the child care operator with the first option to find a ground floor premise first. They will only resort to a first floor or second floor premise when there is no other option. Therefore, this regulation is encouraging for child care operators to try to find the best physical environment for the children. This regulation is not too rigid to cause more child care centres to avoid registering their centres since they cannot comply with this high demand provision. It is therefore a 'tolerance' regulation with the aim to fulfil what is the best for the children.

Thus, for Malaysia, instead of just amending to provide permission for setting up centre on upper floors, it should be provided in the regulations that the setting up of child care centre is preferably on ground floor. The permission to set up on upper floors will only be given with proper justification.

Service Waivers

Australia has a good initiative to include a provision that the child care operator may apply for service waivers from physical requirements spelled in the regulations. The waiver

can be permanent or temporary for a specific time. This is under Regulation 41 of the ECSNR 2012 where it lists down the prescribed elements, they are:

'(a) the standards and elements set out in Quality Areas 3 and 4 of the National Quality Standard; and (b) the following provisions — (i) regulations 104, 107, 108 and 110; and (ii) in the case of a centre-based service, Division 2 of Part 4.3 and regulations 120, 123, 126 and 130 to 134; and (iii) in the case of a family day care service, regulations 117, 124, 127 and 128; and (iv) any provision in Chapter 7 that applies in place of a provision referred to in subparagraph (i), (ii) or (iii).'

Canada too in certain provinces allow certain requirements to be waived upon approval by the Director (Beach & Friendly, 2005). This is one of the ways that Malaysia can take as an example for now many child care operators are complaining that it is not that they do not want to register, but they could not afford in the first place to fulfil all the requirements on the regulations especially when they are in their early years of setting up the centres. It is claimed that one of the reasons of non-registration amongst child care centres is that they are not able to comply with all the legal requirements (Hamdan, 2011). Therefore, this option may ease their burden but at the same time does not leave the physical environment unregulated.

Offences for non-compliance

This brings the discussion to the issues of offences. It appears that, in the Malaysia CCCR 2012, not all requirements of physical environments are considered as an offence in the event of any incompliance. It is an offence when the operators do renovations on the premise and do not inform the authorities about the works that have been made. This can be seen under Regulation 26.

The offence in Malaysia is punishable by fine not exceeding RM1000 or imprisonment not exceeding six months or both. While it can be seen in Australia, under Regulation 103 ECSNR 2012, the penalty is \$2000 for the requirement on safe, clean and good repair of the premises, furniture, and equipment. This provision is more specific to ensure that the premises, furniture and equipment is safe and in good condition not just upon renovations.

CONCLUSION

In conclusion, the existing laws and regulations in Malaysia on physical environment are basically satisfactory in terms of the basic elements of indoor environment especially with the introduction of GPP 2017. Nevertheless, there are certain issues that need to be improved though. Malaysia may take into consideration to improve the laws and regulations on the physical environment especially by amending the requirement of floor areas according to according to their age. Infants should always have special treatment as they are more prone to harms and injuries. The space should also be well planned to designate various segments such as offices for staff, eating area, playing area, diapering area and so on.

Furthermore, the main loophole is with regard to outdoor spaces. Children today are exposed to a lot to screening time through various electronic gadgets, thus they should be given good exposure on physical activities especially on outdoor activities. This may encourage good motor skills. The provision on outdoor is very significant to be immediately considered and to be included in the requirement of the physical environment of the child care centres.

In addition, the examples by Australia and Singapore which offer waiver from certain regulations may be considered, as this will encourage more child care operators to register their centres thus avoiding more illegal child care centres from operating without any monitoring from the authorities. The loosen requirement for child care centre to be set up until fifth floor should also be carefully executed not to jeopardize the safety of the children.

In the nutshell, there are certain parts on physical environment legal requirements that need for further review by Malaysia in order to enhance the quality of child care centres. The interest of the children should always be the priority. However, this should always be balanced with the burdens of fulfilling the requirements faced by the operators. The authorities therefore should play wise role in executing the laws and regulations and at the same time encourage compliance by offering my technical consultations and advice.

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