

CHAPTER SIX

ENHANCING MALAYSIAN CHILD CARE LAWS AND REGULATIONS

6.1 Conclusion

The abuse and neglect cases in child care centres should be the catalyst for legislation enhancement in child care settings in Malaysia. In 2018, a case involving a five-month-old baby named Adam Rayqal alarmed the whole country when he was found in a green zipper bag inside the freezer in the house of his babysitter (BERNAMA, 2018c). The case of Adam Rayqal has been a wakeup call for Malaysia with the urgent need to improve ECCE sector in Malaysia especially child care settings involving infants and children in their early years. The babysitter was charged under Section 31 (1) (a) of Child Act 2001 for abusing the five-month old infant and Section 201 of Penal Code for concealing the death of Adam by disposing his body in a freezer compartment (Kumar, 2018).

Another recent abuse case involving a child that has taken place in the house of a babysitter, is an eleven-month-old baby named Nur Muarzara Ulfa Muhamad Zainal. The baby was physically and sexually abused by the husband of the babysitter who has inserted his finger in the baby's private parts. He pleaded guilty and was sentenced to 20 years of imprisonment and 12 strokes by the Kajang Sessions Court (Farah Marshitah, 2018).

Furthermore, it has been reported in a medical literature that child care providers are the majority perpetrators causing non-accidental head injuries amongst infants (Thalayasingam, Veerakumarasivam, Kulanthayan, Khairuddin, & Cheah,

2012) where 60 percent of the child care providers have failed to provide any explanation for the head injury. Meanwhile, a study on children's death in home based child care centres in Putrajaya from 2007 until 2009 has reported that from 33 deaths that involve infants, post mortem had been conducted on only 40 percent of the cases. Amongst the causes of deaths are non-accidental head injury, choking and skull bleeding (Cheah & Yuen, 2016).

Correspondingly, from a pathologist's report, the drowning of an eleven month old child in a half filled pail in a toilet has revealed elements of child neglect in child care centres (Faridah & Khairani, 2003) . As the toilet door was not locked at that time, the child crawled and tried to reach a red apple toy in a half filled pail of water in the toilet. She lost her balance, fell into the pail and drowned. There was inadequate supervision from the child care providers at that time; they were downstairs while the child was at the first floor. Based on the fact that she was healthy, the toilet door was damaged and unlocked, there was no gate preventing her from crawling to enter the toilet, and she was left without supervision, it is contended that there is element of neglect and is not an accident. In the report, it is urged that that there should be a review on laws and regulations in handling this type of cases.

Malaysia has been reactive in responding to this issue. The suggestions are to have more work-place based children centres and to provide more protection in child care centres. These suggestions are often quoted reactively once there is an outbreak of similar incidents in Malaysia. In the Eleventh Malaysia Plan for instance, it has been clearly mentioned in Chapter 3, Strategy B4 that more protection will be provided for children who are under child care (Economic Planning Unit, 2015), but the force is not as serious as having a reformed legislative framework (Gallagher et

al., 1999). As this sector involves young children who are a vulnerable population, the vulnerability factors should be the pushing factors for improvement of regulations in this sector of child care (White et al., 2018).

The emphasis on trainings for the child care providers has been highlighted for years before untoward incidents, such as the case that is stated above, have happened but the programme cannot be materialised as there is no legal force as well as the lack of another important factor- the political will. Therefore, pop-up policy is not strong enough to enforce this matter. Serious preventive approaches through legislations need to be done by reviewing the statute as well as the function and weaknesses of the machineries including the agency who is implementing the statute.

Gormley (1999) has described that significant studies and common sense have suggested the importance of the function of regulations in the quality of child care. It is highlighted that regulations may act as a powerful instrument in improving quality of care by correcting any misinformation, lessen detrimental externalities and protect children's health and safety. UNCHR who upholds the right of the child to secure protection from harm, abuses and exploitation and the right to develop to his or her fullest potential should be the guiding principles in setting the provisions of child care for the children. The proper development and outcome of children and the improvements in child care may be materialised through the improvement or reform of laws and regulations (Bertram et al., 2016). Reform can be in the form of improved legal requirements, a holistic legislative framework, and a robust efficient system.

It is claimed that looking at international practices, there are variations in regulating child care within the respective countries or between different countries (United Kingdom Department of Education, 2013). Nevertheless, common intentions

may be deduced where the intentions of regulating child care is to improve the quality through proven impactful researched feature, mainly on training and qualifications of the staff besides the issue on monitoring and enforcement.

Nevertheless, it is better for Malaysia to improve gradually and do not take the rigid form of legislation as the minimum standards in regulating child care settings. This is because the objective of the legislation should always be taken into consideration that is to set the minimum standards and also to encourage more adherences by the stakeholders concerned. Although there is a need to strengthen the safety provisions in child care centres, balance between emphasising safety and letting the children to experience independent skills should always be borne in the mind of lawmakers and policymakers.

It has been realised that initiating huge reviews or revisions at one single time may be challenging as this involves lengthy processes and procedures (Early Childhood National Centers, 2017). To include for instance assessment and rating system through self-assessment as practised by Australia might not be suitable for Malaysia right now. Self-assessment is conducted by the operators themselves in order to identify the practices that need further improvement (Australian Children's Education and Care Quality Authority, 2014). This is proposed as other important features especially on legal requirements or regulatory standards must be given more attention.

Therefore, it is proposed for the review of laws and regulations of child care in Malaysia to focus on the three elements that have been mentioned in this study: having clearer statute's purposes and definitions, effective legal requirements, and a robust efficient enforcement.

The theory on performance-based regulations might be considered, to be implemented in the Malaysian context. There are options offered to the child care operators to meet the requirements of the law as long as they perform the requirements and achieve the goal of the legislations (Coglianese, Nash, & Olmstead, 2010). As one of the root problems in Malaysia's child care settings today is on the part of registration, therefore the laws and regulations should appear to be friendly and understandable to the child care operators. Instead of detailing up all the prescriptions of the legislations, processes and procedures, laws and regulations should set the goals or outcomes that are aimed and to be achieved. Therefore, this theory of performance-based regulations may be adopted by Malaysia by focusing on the goals and objectives of the child care settings. Thus, the objectives and purposes of the statute need to be clearly clarified as to the specific provisions in ensuring the safety of the children, developmental growth, and the continuous improvements of child care quality in Malaysia.

This study proposes six important legal requirements or regulatory standards in improving the laws and regulations of child care centres in Malaysia. The features are on staffing arrangement covering adult to child ratio, group size, qualification and training of staff including the operators and child care providers. Another important feature that needs to be in the legislative framework is the physical environment and health and safety aspect, which addresses the protection of children especially from child abuse. Another crucial and newly developed feature is the educational programme which is an extension of the traditional or common features that mainly cover on custody or care features (Burchinal et al., 2015). The feature of educational programme is pivotal in injecting the element of 'learning' and 'education'.

However, the strategy is not as simple as raising the bar of the regulatory standards. For instance, a country should not merely reduce the adult to child ratio or decrease the size of group size without considering the degree of impact of one feature as compared to other features. There is a need to ascertain the need of the respective country according to its current status of strength of laws and regulations. This is because, in legislating laws and regulations, what is aimed is the compliance and adherence so that eventually the children themselves will obtain the best service and this is in line with the notion for the best interest of the children. Looking at Malaysia's condition, one of the crucial problems is to encourage registration on the part of the child care operators. They refuse as they cannot fulfil the requirements stipulated in the laws and regulations. Therefore, in addressing this gradually, after recognising the important quality features that should be regulated in a country's laws and regulations, there is a need to balance features that should be the focus and the most significant based on the degree of impact they have on the children. This is to strike a balance between raising the bar of regulatory standards in ensuring quality improvements and easing the stakeholders by encouraging adherence to the laws and regulations.

For example, raising the educational level or qualification of the child care providers will result to the raising of cost and may not be a cost effective measure. This measure may not be a favourable option especially amongst the operators. Thus instead of trying to fulfil the requirements, they may eventually not register at all by opting to operate their centres illegally. Consequently, no monitoring system shall be available to check on the quality and the performance of the services which may endanger the health and safety of the children and the developmental growth of the children. There will be no background screening of child care providers which might

result in the operators hiring unskilled employees. The worst is when irresponsible and or unaware operators hire employees with a history of immoral acts or with criminal records. Also, instead of abruptly raising the level of education for a person to be eligible as a registered child care provider, it would be better to focus on continuous professional development through trainings and courses held periodically, and not just once in the pre-service. The educational programme too may be a scaffold in assisting the child care providers to have educational activities which may stimulate their developmental growth appropriately (Slot et al., 2015).

6.2 Proposed Solutions and Recommendations

So, where to start from here? The efforts can never be at a blink of an eye. However, a systematic approach by tackling one issue after another should be the way. For instance, OECD in the effort of improving quality has listed a few policy levers. And the countries involved will choose which lever that they need to deal with first, and which is the most crucial in their situation. For instance, Finland has chosen to improve the qualifications, training and working conditions (Taguma et al., 2013), while Norway chooses to first improve curriculum and learning standards (Taguma et al., 2013).

Correspondingly, the laws and regulations should be reviewed periodically so that it would suit the current time and demand (Gallagher et al., 1999)(Penn, 2009). Thus, a systematic and integrated method should be introduced in improving the child care settings (Penn, 2009).

A report examining early childhood policies and systems in eight countries has pointed out that European countries which score high performance with regard to

their school outcomes have higher number of staff compared to other European countries, staff with higher qualification and training, stricter regulation, and supportive government initiatives in strategies and investment (Pascal, Bertram, & Nelson, 2013). Thus, Malaysia in leading the way towards a quality child care settings should focus on improving its laws and regulations in a systematic approach for it appears that laws and regulations would improve the quality of child care (Pardeck, 2002).

6.2.1 A Reviewed Statute on Child Care in Malaysia

There are certain recommendations which may be deduced from the analysis on Malaysia's child care laws and regulations that need to be improvised gradually to achieve high quality child care. Comparisons with other international practices may be made for Malaysia to learn lessons from foreign jurisdictions. By taking lessons from Australia and Singapore for instance international comparisons may be made, and it is recommendable to choose countries which have recently revised their laws and regulations of child care (Early Childhood National Centers, 2017). Australia has proposed new quality standard of child care in 2012 through the introduction of National Quality Framework (NQF) (Australian Children's Education and Care Quality Authority, 2018). It is a national approach for quality improvement of education and care services embedding the revised national law and national regulations, national quality standard, assessment and quality rating process and national learning frameworks. In addition, in ensuring continuous improvement, there are changes that have been made in 2017 to the NQF. Meanwhile, as far as Singapore is concerned, the recent development of quality improvement of child care in Singapore is the introduction of the Singapore Early Childhood Development Act

2017 which harmonises the legislation for kindergartens and child care centres to be governed under a common framework (Ministry of Social and Family Development, 2017).

Above all, the objective and philosophy behind the Malaysian child care legislation itself should give more attention towards the wellbeing of children especially on the part of health and safety, and education. In Australia for instance, the objectives and guiding principles of the Education and Care Services National Laws are well spelt under Section 3. The special provision given in highlighting the objectives of the statute by having a specific section on this matter should be followed by Malaysia. Section 3 highlights the objective of the statute to establish a national framework which carries various purposes *inter alia* ensuring the safety and health of the children, improving educational and developmental outcomes of children, integrating the national system, improving public knowledge and reducing administrative burden. Hence, the Australian Education and Care Services National Law is different from CCCA 1984 where its preamble highlights on the registration, control and inspection. While our CCCA 1984 is seen as focusing more on administrative issues, the Australian statute shed a new light for us by underlining the safety, welfare and wellbeing of children as the prime aim (Fenech & Sumsion, 2007). This expanded purpose can also be seen in Section 4 of the newly passed Singapore Early Development Centres Act 2017 which is to provide more protection for the safety of the children, to promote quality and encourage continuous improvements. This statute of Singapore also provides specific section in pointing out the purpose of the statute.

Thus, with regard to the purpose of the Act there is a need for Malaysia to broaden its perspectives of child care not just for mere custodian matters but to include the element of learning and education in the Malaysian child care settings. CCCA 1984 and CCCR 2012 which focus more on laying down the terms, conditions and requirements on licensing and inspection, may be expanded to broaden the aim in protecting safety, promoting quality and for continuous improvements as mentioned in the newly passed laws in Singapore's Early Development Centres Act 2017. As practised by Australia and Singapore, Malaysia may take into consideration to insert specific sections, highlighting on objectives and guiding principles of child care and ECCE. This is to ensure that child care is given more recognition for the betterment and outcome of the children and not just merely to assist mothers who have to enter the labour force. The objectives to have a national quality framework may be considered to be drafted as this will encourage continuous efforts on promoting quality.

The definition of child care centres as can be seen in Section 2 of CCCA 1984 may also need to be reviewed. This is because of a current stipulation stating that child care providers who look after less than four children are not required to register with the SWD. Therefore, no monitoring process could be done by SWD and therefore no precautionary steps can be taken to prevent any unwanted incidents. Furthermore, even if the home-based child care provider registered with SWD for those looking after four to nine children, the requirement states that they just need to attend a one-day course on basic physical care of children (Azizan et al., 2016). It is proposed that more knowledge and skills need to be instilled for home-based child care providers.

The safety of the children and the developmental growth of the children may be jeopardised in the hands of those who have a history of immoral acts or crimes. The suggestion is to exemplify the definition that has been adopted by the United Kingdom Childcare Act 2006 which requires any form of care and education that look after even one child to register with the authority. Nevertheless, there should be customised standards and legal requirements that should be fulfilled by these small home-based child care centres which may not be as high as those required for other types of child care centres that look after more than four children.

Furthermore, with regards to the eligibility of the persons responsible to operate, run and deal with the children on a daily basis such as the operators, managers, supervisors and child care providers, the terms and conditions imposed may be strengthened. Apart from listing the requirements on the limitation of the number of children, the operating hours of the child care centres, other requirements which directly touch on the ability, the capacity and proprieties of the operators should be highlighted. There is a need for a stronger term for the operators and employees to bring evidence that they are free from any history of non-compliance and from any criminal convictions in order to ensure that the children are placed in the hands of good responsible people. The financial capacity and management capability too may be considered to be the requirement in determining whether the operator or manager are qualified to apply to open a child care centre and deal with the children. This is important as these persons are the ones who will then choose and appoint child care providers who are entrusted with the care of the children for hours on a daily basis. Therefore, the right and qualified operators and managers shall choose the right and trustworthy qualified child care providers to take care of the children. These matters

are important as they are the hearts of the child care settings where most of the details are related to them.

In the nutshell, with regard to the terms and conditions in granting approval for registration or licence application comparing Malaysia, Singapore and Australia, lessons can be learned by Malaysia from these two countries. Section 8 of CCCA 1984 only lists down eight terms and conditions namely: the limitation of the number of children, the fitness and propriety of the applicant and employee, number and qualification of staff, the adequacy of equipment and maintenance of child care centres, period of operation to exceed four hours daily with adequate schedule and balanced diet, health and safety issues, and general provision stating any other suitable conditions.

Meanwhile, in Singapore, Section 8 (3) of Singapore Early Childhood Development Centres 2017 points out material terms in granting or renewing licence. Apart from the common terms such as the appropriate character and fitness of the applicant which is open for interpretation, the fitness of the premises to be used as an early childhood development centre or in other words a suitable physical environment, health and safety, this provision specifically highlights that the applicant and any key appointment holder of the applicant is free from any conviction of offences under the Act, or offences involving dishonesty in Singapore or elsewhere or conviction of a prescribed offence. Moreover, the applicant must be free from any charges or fees imposed by the Act or the previous repealed Act of the Education Act which relate to the operation of an early childhood development centre. In addition, being cautious in granting application of licence to only qualified applicant, the applicant must also free himself from any history from being refused the grant or renewal of licence, licence

being revoked or shortened, or being under regulatory sanction, or refused or cancelled application under the Education Act. Besides having a clean history of convictions and any imposition of charges and fees, an important economic factor that is worth noting is that the applicant must have the financial capacity to operate the centre. Furthermore, there are also terms on the capacity of the applicant to implement the curriculum, and interestingly matters of public interest are also taken into consideration in granting or renewing the licence for an early childhood development centres in Singapore.

As far as the provision in Australia is concerned, it is interesting to note that Australia stipulates two layers of processes of determination, with seven terms that the regulatory authority 'must have regard' and a few matters that the regulatory authority 'may have regard'. The term on the history of non-compliance with the Act is on the second layer which the authority 'may have regard' which shows a lesser degree of weight as compared to matters that 'must have regard'. Section 47 of Australia Education and Care Services National Law Act 2010, points out that in determining the application the matters that 'must' have been regarded is the National Quality Framework, premise and location, adequacy of policies and procedures, availability of provider approval, consent in writing by a nominated supervisor and any other matter where the regulatory authority thinks fit. Thus, Australia has highlighted the importance of a strong foundation especially in the compliance to the National Quality Framework. Furthermore, the regulatory authority 'may have regard' for other factors such as the financial and management capacity of the applicant, history of compliance with this Act and any Law connecting to other education and care services.

Thus, from the comparison made between Malaysia, Singapore and Australia, lessons on stricter and more organised legal requirements relating to the terms and conditions of registration and application may be learned by Malaysia. By not being general in underlining the terms as to include only ‘fit and proper person’ the provisions should include the requirement of financial and management capability and the clear record of any history of any in compliance of laws.

The ambiguity with regard to the term ‘fit and proper person’ should be clarified with a clearer conditions imposed upon the applicant. He must firstly be a registered child care provider by attending the requirement courses especially PERMATA child care course. Secondly, he must show proof that he is capable financially to manage the child care centres. He must also illustrate to the authority on his management capability in managing child care centres. Thirdly, he must also show clean record from any history of in compliances of the child care laws or any immoral acts especially involving child abuse or maltreatments.

In addition, regard that should be given weight by the applicant is the ability to comply with the policies and procedures, and the philosophy behind the operation of the child care centres as stated in the objectives and purpose of the Act. The objectives and purpose should be stressed that it is not just for child minding purposes but also to look after the welfare, safety, and developmental growth of the children.

6.2.2 Raising the Bar of Standards: Is It Effective?

6.2.2.1 The Need to Strengthen the ‘Iron Triangle’ Features

It appears that Malaysia’s position in stipulating adult to child ratio is satisfactory. As the impact of ratio towards child outcome show mixed results, therefore, there is no need to place a higher benchmark since the lowering of the adult

to child ratio would raise the cost of the operation as more child care providers are needed. Meanwhile, in terms of group size, as there is no provision on this in the Malaysian legislation and considering the importance of group size feature to the children, there is a need to insert this in the laws and regulations of Malaysia. Establishing a good ratio will not produce the optimum impact if the children are gathered and grouped in big numbers which may result in lesser focus and attention being given to each child. Changes and reforms need to be done simultaneously encompassing various relevant structural features (Cryer et al., 1999). For instance, changes in adult to child ratio may enhance the quality, but it is believed that the result would be greater if group size is given the same attention in the quality enhancement process.

Furthermore, with regards to the qualification, education and trainings of the staff which include the operators, managers, supervisors and the child care providers, the recent development to focus more on professional development is proposed here. Though it cannot be denied that having staffs with high level of qualification is a good feature to enhance the quality of child care sectors, nevertheless, stipulating this feature as a requirement in a short time would not be a good step. This is because it will raise the cost of the operations as the wages for highly qualified employees are higher and eventually will encourage more operators to operate their centres illegally as they would feel burdened in fulfilling this requirement. Looking at the culture and localities in Malaysia, many efforts are needed to uplift the profession of child care providers so as not to be considered as merely a custody job, replacing mothers while they have to go to work but rather as a job of a professional person who will nurture the growth and development of the children. Empowering the career of child care provider is needed as productive child care providers may enhance the quality of child

care settings when they perceive this career as not merely a transit job. Perceiving the job of child care provider as merely temporary may result to high staff turnover which may impact the children's cognitive and socio-emotional learning (Foong et al., 2018). There should be long-term planning in listing and implementing strategies to uphold the level of the child care providers to be seen as educators. Therefore, in proposing professional developments the professionalism of the child care providers should be improved gradually and should be carried out in due process, based on a series of trainings and courses that are held periodically.

However, this does not mean that there should not be an ultimate aim to have staff with high qualification. As far as Malaysia is concerned, only 21.6 per cent of the early childhood staff have diploma in early childhood development in 2014 (Lydia et al., 2014). As the government is paving the move to encourage preschool teachers to possess a Diploma in Early Childhood Care and Education by 2020 (BERNAMA, 2016e), this proposal is the catalyst step to upgrade the profession of early childhood workforce.

According to a study conducted in 2018, 84 per cent of the respondents are aware on the requirement to have diploma degree (Foong et al., 2018). Furthermore, 81 per cent of the respondents agree on the importance of having professional qualification and majority of the respondents have intention to pursue studies especially those who are young in age and only have minimal working experience. Therefore, in balancing between the cost of the child care operators to be ready to hire higher paid child care providers, the government should have the initiative to provide funding especially in terms of scholarships and student loans. Besides that, the learning should be facilitated by providing online medium and part-time courses.

The initiative taken by Australia to pair higher qualified staff with the ones who have minimum qualification is seen a good effort as this will encourage knowledge and experience sharing (Ackerman, 2017). In the meantime, those who have minimum qualification should have a career path to upgrade their qualification from time to time. Regulation 126 of Australian Education and Care Services Regulation 2012 highlights that the general qualifications for the educator in centre-based services is that there must be at least 50 per cent of them who possess a diploma level education and care or they are actively working to meet the requirement. Meanwhile, all other educators are qualified to have at least an approved certificate III level education and care qualification.

Therefore, there is a need to plan for systematic professional developments strategies consisting of periodical trainings, field consultations and so on. It is not adequate to just rely on pre-service course which need to be attended only once in the period of service. Online trainings which are widely used in the USA may be a solution for the problems of cost and logistics.

Nonetheless, it is interesting to note that apart from training and education the commitment of child care providers is important. It appears that in Malaysia, there is high turnover of workers in early childhood sector with about 65 per cent of the staff only had averagely two years of working experience (Foong et al., 2018). Providing improved working conditions and better payment for the child care workforce may entice the staff to give higher commitment and thus attract them to regard the job as permanent career.

Apart from the skills and knowledge that should be equipped by the child care providers, the children in child care centres should be taken care of by someone with

love and affection. Good relationships and communication between the child care providers and the employee, colleagues and parents shall affect the commitment of child care providers (Azizan et al., 2016). The sweet moments experienced by child care providers also contribute to their daily commitment in the child care centres.

6.2.2.2 The Need to Improve the Provisions Regarding Physical Environment

The importance of the physical environment should also be given attention. The design of the environment should support learning and facilitate the child care providers and children in experiencing quality activities in the premises (Lippman, 2010). It is claimed that although PERMATA programme has been allocated with a huge budget, the division of budget is not thoroughly distributed to involve the physical environment aspect (Abbas, Othman, & Megat Abdul Rahman, 2010). The emphasis has been always given towards enhancing the non-physical aspects or social environments such as the curriculum and training of the staff (Shaari & Sh Ahmad, 2016).

One of the crucial issues in the physical environment of child care centres is that there is a need for Malaysia to include in the regulations an outdoor space, as learning through play is indeed beneficial for the children. Through play, children learn to make choices and this process nurtures cognitive development (David, Gooch, Powell, & Abbott, 2003).

The provision of an outdoor space can be found both in Regulation 108 of Education and in the Care Services National Regulations 2012 of Australia's and Singapore's First Schedule of Child Care Regulations. Moreover, it is interesting to note that the practise by Australia, Singapore and Canada to allow the operators to apply for temporary or permanent waiver of physical requirements may be a

favourable initiative in encouraging more operators to register their centre and lead towards more compliance of the laws and regulations. Eventually, the welfare and good outcome of the children may be ensured due to compliance with the laws and regulations, this is one of the ways to show that the child care centres are moving towards achieving higher quality in child care. An example may be seen in Singapore which allow for the child care centres to be set up on the first or second floor when the efforts in searching for a premise on the ground floor cannot be materialised.

6.2.2.3 The Need to Emphasis More on Health and Safety Features

Moving on towards health and safety features, it is claimed that one of the effective ways to ensure the health and safety of the children in child care centres is by having stricter laws and regulations (National Child Care Information and Technical Assistance Center & National Association for Regulatory Administration, 2010). The crucial part to be given attention by Malaysia is on the protection of the children. The regulations on guidance on how to handle injuries, illness or trauma suffered by the children should be well-explained in the provisions. The provision on discipline issues may also be revised to insert specific actions such as spanking, striking, shaking and so on. These are important measures in order to prevent abuse and negligent cases from happening and recurring. Therefore, although Malaysia does regulate well on promoting health of the children, healthy eating and feeding, but protection for the children should be given a heavier weight. There must be adequate supervision of the children, a list of the steps protecting children from hazardous items that may be injurious, a list of steps to be taken in managing incidents and emergencies and methods in responding to risk of abuse. The Australian practise that is clearly mentioned in Regulation 84 of the Education and Care Services National Regulations

2012, states that the staffs should be aware of the child protection laws and how they apply to them. This is seen as a good provision to be transplanted in Malaysia.

In addition, Tan Sri Lee Lam Thye, the Chairman of National Institute of Occupational Safety and Health (NIOSH) has made recommendation for schools to introduce occupational safety and health (OSH) school is considered as a workplace governed under Occupational Safety and Health Act 1994 (Thye, 2016b). This suggestion is to ensure safety of the students and healthy working environment of the workers. Thus, it is suggested for child care centres too to introduce OSH in child care centres as through this, the child care operators and child care providers will be more alert with the hazards that may harm the children. The co-operation made by NIOSH in conducting programmes of 'OSH in School' may be extended to include child care centres and pre-schools.

6.2.2.4 Education Programme Legal Requirement; Child Care is No More Mere Babysitting

Finally with regards to legal requirements on education programme this is an expansion of the quality features besides that of professional developments. There is a need to obligate the child care operators and providers to follow the approved curriculum of education programme in order to ensure that the children acquire learning experiences and educational inputs apart from just experiencing their daily routines. However, in implementing this feature there is a need to firstly strengthen other features such as ratio, group size and trainings of the child care providers. The obstacles in having successful implementation of education programme are very much related to other legal requirements or structural quality features of child care. Amongst the matters that should be given weight is the qualification of staffs who are well-

trained and are always motivated to implement the curriculum or educational programme (Bennett, 2005). Besides that the physical environment should be supportive, such as providing ample outdoor space for play and learning session. Learning materials, adequacy of staff in terms of adult to child ratio, monitoring and support system are also pre-requisite in ensuring the successful implementation of an education programme.

Sufficient support given to the child care providers may encourage them to comply and to utilise the curriculum effectively. Therefore, the curriculum should be drafted using language which is understandable to the child care providers. Furthermore, the required outcome and assessment system should be well-elaborated in the regulations.

6.2.3 Robust Laws and Regulations Need Efficient Enforcement

The previous mentioned legal requirements could not be successfully fulfilled by the operators and child care providers if there is no robust efficient enforcement on behalf of the authority especially the SWD. Therefore, another area that needs to be strengthened is the area of enforcement. Protection of children through preventive measure can be materialised by establishing effective monitoring, enforcement, and technical assistance (Early Childhood National Centers, 2017). Through this enforcement forces, risk to safety, health and well-being of the children in child care centres may be reduced.

This study focuses on the preventive approach that needs to be polished by enforcement forces by having more educational and instructive methods before sanctioning the operators for not complying with the laws and regulations. The first layer of enforcement should not be to punish by inflicting sanctions such as fines,

compounds or even seal of the premise. However, the positive strategy in encouraging compliance of laws and regulations should come first from offering more technical assistance, and frequent visits.

Through technical assistance operators and child care providers are provided with useful information especially on the legal requirements to be fulfilled when applying for license. The operators might feel burdened looking at the meticulous process of registration of a child care centre with various requirements to be fulfilled especially in terms of preparing the physical facilities such as suitable furniture, toys and educational equipment, wall mural, and so on. Nevertheless, it is pointed out by Hassan (2008) in his book on setting up a child care centre that through discussion with the SWD officer who came for visits, discussions can be made and normally the requirements are achievable and can be fulfilled by the operators after being given clear guidance on what are the necessities that are needed. It is pointed out that the technical assistance should not be the process in finding any noncompliance of the operators, but to provide extra monitoring especially in the early years of setting up a child care centre (National Association for Regulatory Administration et al., 2017). In addition, enforcement works should be consistent in detecting any deviations or inconsistency and correcting any misunderstanding. It should be well planned throughout the year, through thorough and involved observations as well as interviews with the operators and child care providers.

In a nutshell, there are three main areas that need to be improved in Malaysia's laws and regulations on child care. They are to have a clearer statute, more effective legal requirements and robust efficient enforcement. The statute governing child care centres need to be enhanced in terms of the purpose, objectives and definition of child

care centres in ensuring that early childhood setting is given a good recognition in ensuring good education for the children and not merely as the matter of custody. The legal requirements which are the important structural quality features should be well-regulated in the laws and regulations as these features have been proven by studies and research to give impacts towards having a better outcome of the children and hence better quality of child care settings. The enforcement forces also need to be robust especially in terms of implementing the positive strategies through providing more technical advices and frequent visits.

It is hoped that, a review and amendment of the legislations may be done in the near future. As CCCA 1984 has being legislated for about 35 years with only one amendment which is focused on administrative issues, it is high time for another amendment to be done. A periodic review of the laws and regulations is needed to ensure that the laws are still relevant and up to date according to the present position and circumstances.

6.2.4 An Enhanced Version of CCCA 1984

Having discussed the necessity for Malaysian child care laws and regulations to be enhanced in three essential elements namely clearer statute, effective legal requirements and robust enforcement, this thesis suggests that Malaysia should have amended legislations with regard to CCCA 1984. This thesis recommended for amendment to be made by adding specific section on objective and purposes of the Act. In addition, Section on interpretation of child care centres need to be reviewed to include centres which look after only one child.

Besides that, in granting and renewing application for registration, additional requirements on applicant to be have clean record, financial capability and

management ability is added in the Act. In addition, with regard to Section 8 on ‘terms and conditions to be imposed’, amendments are suggested to include the six important structural features which are adult to child ratio, group size, education and training of staff, physical environment, health and safety and educational elements. Finally, in ensuring a robust enforcement for child care laws and regulations, a specific section is added imposing duties upon the authorities to implement positive enforcement through providing information, advice and assistance should be inserted in Part IV of the Act.

Interpretation

Section 2

“child care centre” means any form of care for a child which is provided for reward by a person who is not a relative or guardian of the children.

Section 3A

Purpose of the Act

4. The purpose of this Act is to regulate the operation of child care centre, so as to-

- (a) ensure the safety, health, wellbeing and welfare of the children at child care centre;
- (b) improve the educational and developmental outcomes for children attending child care centre; and
- (b) promote continuous improvement in the quality, of child care services in child care centre.

Section 7A

Grant or renewal of licence

7A. (1) A person may be granted more than one licence.

(2) In deciding whether a licence should be granted or renewed, the Director General must have regard to, and give such weight as the Director General considers appropriate to, all of the following matters:

(a) whether the applicant has the appropriate character and fitness to operate and maintain an early childhood development centre;

(b) whether the applicant, has been —

(i) convicted of an offence under this Act;

(ii) convicted, whether in Malaysia or elsewhere, of an offence involving dishonesty or the conviction for which involved a finding that the applicant had acted dishonestly; or

(iii) convicted of a prescribed offence, whether the offence was committed before, on or after the date the offence is prescribed;

(c) whether the applicant has, during the prescribed period immediately before the application, failed to pay any charge or fee charged or imposed under this Act in connection with the operation of an early childhood development centre;

(d) whether the applicant has previously —

(i) been refused the grant or renewal of a licence under this Act;

(ii) had any licence revoked or shortened under this Act;

(iii) been the subject of any other regulatory sanction under this Act;

(e) whether the applicant is capable of operating the child care centre having regard to its financial capacity and management capacity.

Section 8

Terms and conditions to be imposed

(a) limiting the number of children who may be received in such child care centre at any one time within the permitted adult to child ratio and group size;

(b) ensuring that the applicant or any other person he employs at the child care centre is a fit and proper person, whether by reason of age or otherwise, to operate, take part in the management of or be employed at the child care centre;

(c) ensuring that such child care centre shall be adequately staffed, both as regards the number and the qualifications or experience of the persons employed therein or taking part in the conduct thereof;

(d) ensuring that such child care centre is fit to be used as such as centre, having regard to location, accommodation and equipment;

(e) ensuring that, where any children are received in any child care centre and remain there for a continuous period exceeding four hours in any one day, there shall be adequate and suitable arrangement for educational programme apart from feedings, resting and recreation for such children and that adequate and balanced diet shall be provided;

(f) complying with any requirement relating to the building structure, fire precautions, health, sanitation and safety;

(g) any other conditions which the Director General deems fit and proper.

Section 14 A

Information, advice and assistance

The Director General and any authorized officer must establish and maintain a service providing information, advice and assistance in accordance with this Act to –

- (a) persons providing childcare or;
- (b) persons who intend to provide childcare or;
- (c) persons who are employed to assist any such persons as are mentioned in paragraph (a) or (b) or persons who intend to obtain such employment.

6.2.5 Integrated Governance of Education Sector in Malaysia: The Awaited Milestones

Furthermore, looking at the Malaysian landscape of legislative framework for child care, though it is important to strengthen the essential elements of child care laws and regulations which involve having clearer statute, effective legal requirements, and a robust enforcement, the next move should be to improve the governance of early education childcare as a whole. Different regulations for different set of children sector have caused difficulties in managing the early childhood sector as a whole. As in Malaysia, child care is under the auspice of the Ministry of Women,

Family and Community Development that caters to children from zero to four years old. Meanwhile, for preschool education, it is under the Ministry of Education involving the education of children from four to six years old. Therefore, it appears that there are different implementing Ministries as well as agencies that are managing early childhood matters in Malaysia. The difficulty of the operators has been highlighted when they have to adhere to separate licence requirements as there is no continuity between child care and preschool laws and regulations (Boon, 2010). It is claimed that in countries with different governance, the staffs in child care are always underpaid and unqualified (Bennett, 2005). Therefore, having single governance managing early childhood matters should be the milestone that need to be achieved by the Malaysian early education in the near future.

More countries are now moving towards having an integrated system making childcare and preschool under the responsibility of one ministry. Singapore for instance previously has the Child Care Centre Act and now has passed a new act covering all early education services. This is in line with the suggestion made by UNITAR research to the SWD to enlarge the utilisation of CCCA 1984 to all types of child care centres in order to have uniformity in terms of administration and management of the child care centres (UNITAR International University, 2017). The integrated system combining child care centres and preschools under one specific agency or authority shall ensure the smooth and continuous flow of the children's education and learning especially with regard to education programme of curriculum. This is to assist in developing the growth of the children as a whole. The practise by other developed countries which have specific agency to manage the early years development centres may be followed by Malaysia. Singapore for instance has The Early Childhood Development Agency while Australia has The Australian Children's

Education and Care Quality Authority as an independent body to manage professionally early year's settings.

From the interview made with the Senior Assistant Director of SWD (ECCE Department), Puan Hartini Abd. Halim, the effort to integrate the child care centres and kindergartens is not as easy as merging the statues into one single Act. The difficulties lie in the administration process as according to her, requirements for child care centres are different to kindergartens. Thus, there is a need for specific body to handle this matter. It is high time for Malaysia to have a specific body managing early childhood issues. The lack of enforcement on behalf of the SWD towards monitoring and investigating illegal child care centres for instance should prompt Malaysia to have a specific agency that manages early childhood matters. The multi-tasking burdened over SWD to govern the issue not just the children in child care centres, but also the orphan, the elderly, the poor and so on may be lightened by having a more efficient agency managing early years' matters. This agency shall involve actively in initiating quality improvements initiative including comprehensive quality strategies, management of accreditation facilities, system of professional development of the child care providers, and assessments of the child care centres (National Child Care Information and Technical Assistance Center & National Association for Regulatory Administration, 2010). The reform to include child care in the Education Act is the much awaited milestone for the education system in Malaysia (Boon, 2010). This will ensure that child care in Malaysia shall include an education element and not merely for child-rearing purposes. The increasing children population in Malaysia should always be borne in mind. It appears that, the increasing progress of children population in Malaysia has increased from 4.7 million in 2000 to 6.2 million in 2010 and to 6.9 million in 2015 (Hassan, 2008). It is therefore assumed that Malaysia will

be a young nation by 2020 having 29.9 percent of Malaysian population to be children under 18 years old (Economic Planning Unit, 2015: 26). Thus, a children agenda including early years' care and education should be at the top of the list of the government and regulatory authorities.

On another note, the dearth of research in Malaysia on early childhood should be taken into consideration. The efforts from countries such as the United States and European countries to have specific research department to provide reports on the research on the early years of children in Malaysia is a need. In the unit there should be one unit that focuses on the legislative framework of childcare analysing the implementation of good regulatory standards stage by stage. Taking Australia for instance, the acceleration of research in this country on child care has been materialised by the inclusion of early higher education institutions into universities (Press & Hayes, 2000). This effort has intensified the research activities regarding child care in Australia. In addition, the annual conference on early childhood known as Australian Research in Early Childhood Education Conference which has been established since 1993 also acts as an avenue for meeting of minds between researchers and policy makers. Despite these efforts in enhancing research on child care in Australia, it is claimed that the scarcity of research in Australian on research concerning child care cannot be avoided and reliance on international sources from the United States and the United Kingdom still need to be made.

The strategies, concepts, reforms and so on will not be fully materialised if the society at large especially the stakeholders including operators, parents, authorities, and employees are not aware of the significance and importance of child care to the society as a whole. It is not just the matter of custody replacing mother's care but it

moves beyond that. The investment made in the early year's sector shall save a lot in investing more in further stages of education and child development. A good healthy root shall grow healthy fruitful trees. Well-developed children may reduce the cost to reduce crimes, public assistances and so on. The cost of remedying the education of older children in primary or even in high school may be reduced when there is solid foundation that has been set from the early years of education. Special education and remedial classes may be reduced (Vandell & Wolfe, 2000). This awareness is the way to educate the society to value the early childhood and education like what can be seen in Finland and South Korea where they have high social belief of the importance of education and its underlying philosophies (UNITAR International University, 2017). Therefore, when there is high awareness in the importance of early education, the efforts in raising the bar of regulatory standards may not be an issue though this will cause the raising of the cost. The growing needs among working parents on child care centres too should be the urging factor in triggering more intense efforts in upgrading quality of child care centres. This is important as child care centres should be regarded as an education medium rather than mere custodian setting in moulding and developing children's cognitive and social skills.

It is hoped that the proposal to improve laws and regulations and to enhance the legal requirements in CCCA 1984 and CCCR 2012 will be useful in the efforts to revise, review and enhance the quality of child care and ECCE in Malaysia. It is hoped this set of enhanced legislative framework of Malaysian child care may boost the efforts in ensuring that children are provided with the best care, education, protection, and learning experience. It appears that child care centres that are governed by stricter laws and regulations demonstrate higher quality care (Gallagher et al., 1999).

In the process of enhancement nonetheless, regards should always be given not just to an increase in regulatory standards but also to encourage compliance amongst child care operators and child care providers, as stated by Gormley (1999) '*Child care quality depends on child care regulation as plants depend on water. An insufficient amount guarantees problems, but an excessive amount may also be problematic*'.

The improvement of laws and regulations in child care settings should be combined with government assistance to balance or offset the costs of having improved regulated child care centres (White et al., 2018). Incentives to providers, subsidised training, grants for physical environment improvements, salary subsidies may be alternatives to offset the cost of having stricter legal requirements of laws and regulations. The authorities and the legislators should always bear in mind the over emphasis of potential increment or additional cost (Blau, 2007) which may affect the supply of child care, the reduction of staff wages (Blau, 2007) should not neglect the potential risks of the inadequacy of the laws and regulations. The bottom line is that the health and safety of the children should always be the paramount consideration. The political reviews on child care regulation which are mostly based on women labour, demand and supply, accessibility and affordability of child care (Philips & Zigler, 1987) should swerve to provide more attention to features of child care quality. Malaysia does not need any more ordeals involving children in child care centres to prompt legislation improvement in this sector. Malaysia should not allow any more sufferings to be inflicted upon children which trigger outbreaks of reactive responses towards such cases. Improving legislative framework through establishing clearer statutes, effective legal requirements and more efficient and robust enforcement should always be given a priority.