

Does Equal Education Opportunity Apply to Undocumented Children in Sabah?

An Assessment of the National Education Policy

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Abstract

Education is for all regardless of one's race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Deprivation of education is the deprivation of basic human rights. The goal of this study is to examine the National Education Policy regarding the opportunity for education for undocumented children in Sabah. And secondly to understand the constraining factors in providing education to undocumented children. This study employs an exploratory qualitative, case study bound approach and uses semi-structured interviews in the data collection process. And uses non-probability purposive sampling in the sampling selection. Eleven respondents participate in the data collection process. The findings reveal that the undocumented children had no opportunity to access mainstream education, yet they had access to education through the ALCs which are operated by the NGOs. And laws, politics, and finances are the three main factors that constrain the provision of education to undocumented children. "Education for All" is the future hope of education in Malaysia. Political will and commitment are crucially important to fully rectify and uphold the international human rights treaties. Education is not a choice; it is a must. Therefore, the government must heighten its commitment to inclusive education and execute actions that may forward toward the achievement of "Education for All".

Keywords: *Undocumented Children; Access to Education; National Education Policy; Mainstream Education; Alternative Learning Centre; Sabah; Malaysia*

INTRODUCTION

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Education is a basic human right. Regardless of one's "race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". As the statement speaks, it illustrates how important education is until it is elevated as a basic human right. Deprivation of education is the deprivation of basic human rights. The United Nations during the General Assembly held in Paris, in 1948, proclaimed The Universal Declaration of Human Rights (UDHR) (United Nations, 1948). It is a document that transcribed 30 fundamental human rights of which to be protected universally by all people throughout the world. Malaysia is a signer of this declaration. Education is bare out in Article 26 of the declarations. Education is contemplated from three angles of which, the right to access education, education as a catalyst for the growth and development of human beings, and the right to choose the content of education. Education is substantially beneficial as it served as a compelling

tool for personal empowerment. Knowledge, wisdom, and understanding are so essential that makeup education a human right as it helps to heighten human decency. In another dimension, education also makes up a social right, economic right, and cultural right. Social rights in terms of promoting the development of human personality in the community. Economic rights in terms of facilitating self-sufficiency in the economy through self-employment or employment. And cultural rights in terms of building a universally accepted human rights culture (Claude, 2005).

Succinctly, education is the most basic and essential for an individual human being. The education received by an individual determines his functionality, survival, and contribution to society. Among the major importance of education is for personal empowerment, social inclusion, economic development, and building a national identity. Education breeds knowledge, wisdom, and understanding which helps to empower a person and magnify human decency. The integration of the migrants with the local community can be better achieved through the understanding of local culture and substantially honouring the host country's laws which strengthen peace and stability. A knowledgeable employee will have a better understanding of the tasks he is responsible for, be able to make more informed decisions about the resources allotted, will be driven to launch an innovation, and will be able to communicate effectively. Education may also determine the size of pay one receives. With higher pay, it will increase one's consumption thus increasing production and consumption which gauge economic development. Values are transmitted and fostered through education which influences and shapes one's attitudes, reactions, and behaviour towards becoming a responsible citizen. Education being administered is substantial and compelling in that it causes a dominant impact on one's ability to capture opportunities in life in becoming a citizen with an exceptional identity and quality.

Undocumented Children and Access to Education

Migration has become rapid as much as globalization emerges. The migration of people is motivated by diverse push and pull factors within and of a country. Poverty, employment, political oppression, protection, ethical conflict, and knowledge is some of the many known factors (Hamzah et al., 2020). Malaysia is no exception to migration. According to Hamzah et al. (2020), Malaysia has been the centre of attraction for foreign migrants since the industry of tin and rubber was developed in Malaysia. The pull factors of foreign migrants to Malaysia is due to its stability and peace, economic development,

policy on privatization, foreign worker dependency, wage rates, demand from the various sector in the industries, and facilitation of entry into Malaysia.

Countries around the world had ratified the international treaties, the Universal Declarations of Human Rights, the Conventions of the Rights of the Child, and the declarations of Education for All. But the ratification of one's country towards these international treaties does not guarantee basic human rights, especially education for the migrants, specifically the undocumented migrants. Why? Because the implementation varies throughout countries, coupled with domestic legislation which is in contradicts the ratification. As a signor of the Conventions on the Rights of the Child, Malaysia presented its first report in 2007 to the Committee. Acting on Malaysia's reports, the committee has expressed its concerns about Malaysia's commitment towards the acceding of the conventions particularly in the access to formal education for refugee children and asylum seekers, which is lacking. In addition to that is Malaysia's effort in ensuring these children had the access to primary and secondary or other forms of education, and also that these children had the access to officials exams if they were enrolled in informal education (SUHAKAM, 2013). The Child Rights Coalition Malaysia in presenting its Status Report on Child Rights in Malaysia 2018 highlighted those undocumented children in Malaysia had no access to mainstream and free education while the stateless children only had access to Alternative Learning Centres (Childs Rights Coalition Malaysia, 2018).

According to Saibeh (2018), the granting of the rights to education or the implementation of education in a country depends heavily on the legislation of that particular country. In Malaysia, the implementation of education is based on the National Education Act 1996 which emphasized of the right to education is only for citizens who possess valid documentation. Whereas for non-citizens, there is no guarantee that they may enjoy or have the access to national education in the country. In 2009, there were 43,973 children in Malaysia between the age of 7 to 17 who does not go to school due to documentations problem, mainly the lack of a birth certificate which is compulsory for school registrations. A child who is born in Malaysia will not be guaranteed or automatically grants Malaysian citizenship (Che Soh et al., 2019). Nortajuddin (2020) further added that without the entitlement for citizenship the number of Stateless Children or of whom may also be referred to as undocumented children in Malaysia grows tremendously. And it is estimated that they are around 290,000 stateless children in Malaysia in 2016, but given the nature of the problem, the number of stateless individuals cannot be defined exactly. These stateless people are believed to be foreigners, illegal

migrants, or refugees, but many of these stateless individuals have been born in Malaysia and most of their life been living in the country.

Malaysia signed and ratify the Conventions of the Rights of the Child (CRC) on the 17th of February 1995, with five reservations (UPEN, 2015). Article 28 (1) (a) caters specifically to “Education for All” which states that state parties shall “make primary education compulsory and available free to all”. Malaysia has a reservation in this article. Malaysia in commending Article 28 (1) (a), declared that “With respect to article 28 paragraph 1 (a) of the Convention, the Government of Malaysia wishes to declare that with the amendment to the Education Act 1996 in the year 2002, primary education in Malaysia is made compulsory. In addition, the Government of Malaysia provides monetary aid and other forms of assistance to those who are eligible.” (UPEN, 2015). The amendment of Article 29 (A) of the Education Act 1996 in 2002 made primary education compulsory, and parents who fail to send their children to school faced fines of not exceeding RM5,000 and imprisonment of not exceeding 6 months or both (Education Act 1996, 2012). This compulsory primary education is meant for Malaysian citizens only. Therefore, based on the premise that undocumented children in Sabah do not all have access to education, this study intends to examine the National Education Policy regarding the opportunity for education for undocumented children in Sabah. And secondly to understand the constraining factors in providing education to undocumented children. This study aims to answer the following questions: (1) how can undocumented children get access to education in Sabah? And (2) what are the constraining factors in providing education to undocumented children?.

METHODS

This study employs a qualitative research design with case study bound approaches. Qualitative research helps the researcher to explore the situation that matters to the researcher and helps the researcher to better understand the situation by involving the participants and listening to their experiences and side of the story (Creswell, 2013). A case study is a “qualitative approach in which the investigator explores a real-life, contemporary bounded system (a case) or multiple bounded systems (cases) over time, through detailed, in-depth data collection involving multiple sources of information (e.g., observations, interviews, audio-visual material, and documents and reports), and reports a case description and case themes”. Case study approaches may be used in multiple

disciplines, which include political theory, sociology, education, social anthropology, psychoanalysis, and history (Willig, 2008). Whereas for a study that the focus is to find the answer to “how” and “why” then case study approaches should be considered (Yin, 2003). Based on the feature of this study which is explanatory, and case study bound approaches, the researcher studied specifically the Ministry of Education Malaysia, the Department of Education Sabah, schools and other relevant government agencies, and also the NGO. This study engaged a non-probability purposive sampling. It is the selection of participants deliberately based on the qualities that the participant possesses (Etikan et al., 2016). Of which category of people, the researcher thinks are willing to contribute to the study and had all the knowledge and experience. Eleven respondents participate in the data collection processes comprised of policy-maker, policy implementers, academicians, and activists. Data collection was conducted through semi-structured interviews, face-to-face and online. The researcher also received written answers from two respondents. All interviews were recorded digitally, except for one respondent who refused to be recorded. A semi-structured interview allows the researcher to explore in-depth the informant’s feelings, thoughts, and reasoning (Denscombe, 2010). The researcher had a specific list of questions that address the issues at hand but yet still will be able to be flexible in considering the topics to enable the informants to speak more freely and develop more ideas on the issues being raised. The findings were analysed using Thematic Data Analysis. It is a method for “identifying, analysing, and reporting patterns or themes within data”. It helps to arrange and characterizes the data, and in the end helps to interpret various parts of the research topic (Braun & Clarke, 2006).

FINDING AND DISCUSSION

Research question 1: How can undocumented children get access to education in Sabah? The findings reveal that undocumented children had no opportunity to access mainstream education, yet they had access to education through the Alternative Learning Centre (ALC) which is operated by the NGOs. Education in Malaysia is based on the National Education Policy and is meant for students who are citizens, and non-citizens only for those who possess valid documentation from the authority. The eligibility of non-citizens students without valid documentation to enrol in mainstream education is none. They are five categories of non-citizen children that are provided the access to mainstream education, (1) children of foreign embassy staff; (2) a child whose parents are also non-citizens, working in government service or agency, statutory body, or any other place with

a valid work permit; (3) a child whose parents are permanent residents of Malaysia; (4) a child selected by the Government of the child to further his / her education in Malaysia per any Memorandum of Understanding or Agreement between the Government of Malaysia and the Government of the child; and (5) a child who has been adopted by a Malaysian citizen and possesses valid documents of Adoption Certificate from National Registration Department or Court order as to custody of the child or Child Care Declaration Letter from the Department of Social Welfare. There is also one special category of non-citizen students that are allowed to be in the mainstream education, whose parents are citizens, and can provide proof of documentation for citizenship such as MyKad. After the admission, the children's documentation must be settled within two years, or they will be expelled from the school. The ALCs operated by the NGOs offered a basic 3M curriculum which is *membaca, menulis, dan mengira*. Coupled with religious education for moral and personality development. Realizing that the basic curriculum is not sufficient, the NGOs come up with a curriculum that gives added value and elevates the children's employability soon after they finished school in the ALC.

Research question 2: What are the constraining factors in providing education to undocumented children? The findings also reveal that laws, politics, and finances are the three main factors that constrain the provision of education to undocumented children. Malaysia's 1996 Education Act reserved mainstream education for the citizens only. Although Malaysia is the signor and ratified the international treaties, which are the Universal Declarations of Human Rights, Conventions of the Right of the Child, and Declarations of Education for All. Yet, still, Malaysia had a reservation about the ratification. Malaysia's Immigration Act also prohibits the settlement of migrants without valid documentation in the country. For the non-citizen to be enrolled in mainstream education, they are also obliged to get a Student Pass from the department. Documentation is the main challenge faced by the migrants in Sabah especially the undocumented migrants in getting access to education. A sovereign country had its very right to safeguard its border to ensure national security. Stability and security are important for the country's prosperity. Illegal immigrants are undoubtedly not allowed to be in a country as it violates and disrespects the laws. But in terms of Sabah, who had a long history of undocumented people's problems, added with the existence of family ties between the neighbouring countries that prolonged generation to generation, this issue needs to be tackled and settled wisely. Notwithstanding the importance of politics and its influences, political interference and lack of political commitment contribute to the difficulties in providing education to undocumented non-citizen children. Strong political will and

determined commitment are needed to enforce the children's right to education. The undocumented migrants jointly contribute to the societies they lived in. It facilitates them in engaging with the economic and the society's political aspects. Dispensing education to them is a long-term investment that utilizes the taxpayer money more efficiently as it creates a social justice society and promotes the practice of democracy in a country. Overall, it alleviates the economic, social, and politics of a society, thus, the decision to allow or not the access to education for undocumented migrants must be made conscientiously in light of social equity, justice, and equality, rather than driven by the "waves of political clout and gain". Funding which is used for building maintenance, electricity and water bill, school facilities, learning aids, programs, activities, and also teacher's salaries or allowances is the main challenge faced by the NGOs in their quest to provide education for undocumented children. Their funding solely comes from the contributions of large corporations, individuals, and outside the country. Financially incapacitated, the parents find difficulty in enrolling their children in school, resulting in opting out of school.

CONCLUSION

"Education for All" is the future hope of education in Malaysia. Not just a slogan, but to be materialized, notwithstanding the status of documents or nationality of a child. The issue of undocumented children and how it may daunt national security in the future is a burning issue that must be resolved immediately, and now. Education is the only way out. They need to be taught and educate to assimilate with the local communities and respect the laws. Resources that are lacking on the government side in terms of providing education, can be complemented by the NGOs. The NGOs had been proven to be the government's best friend in contending various issues, especially social concerns. Thus, the government must walk hand-in-hand with the NGOs, and the politicians must play the "right" game than just for political gain. Political will and commitment are crucially important to fully rectify and uphold the International Human Rights treaties. Bound lawfully with the international treaties is not enough without the political will and commitment to fully rectify and uphold the treaties. For a policy to be a success, political will and commitment are crucially important, as policy-making starts from political advocacy. The policy-maker as in the politicians must have a clear distinction between the issue of the documentation involving migrants and the provision of education as the rights of human beings regardless of one's "race, color, sex, language, religion, political

or other opinion, national, ethnic or social origin, property, disability, birth or other status”. Indeed, migrants who illegally entered our national border are unacceptable and disrespect our laws which are sovereign countries. Nevertheless, the management of illegal migrants must be restructured and strengthened with the coordination of various agencies and with the involvement of NGOs. EDUCATION IS NOT A CHOICE; IT IS A MUST. Therefore, the government must heighten its commitment to inclusive education and execute actions that may forward toward the achievement of “Education for All”.

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