

## Legal Framework on Special Education for Children with Disabilities: Position in Malaysia and China

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### ABSTRACT

*Education is crucial for all children, including those with disabilities, since it helps them become better citizens and ensures a prosperous future. Through a variety of declarations and treaties, the United Nations has recognised the right to education. In Malaysia, however, despite the fact that children with disabilities are offered the same educational rights as other children, it is still a grey area because the existing regulations regarding special education for children with disabilities are too vague. Therefore, the purpose of this research is to identify whether the existing laws in Malaysia are sufficient to protect the educational rights of children with disabilities. This research adopts doctrinal analysis, which helped researchers uncover educational rights issues for children with disabilities in Malaysia and comprehend doctrinal substance, including legislation and regulations, enforcement, and administration of special education in Malaysia. Comparative legal research was also adopted to determine which State, Malaysia or China has better laws regarding children with disabilities rights to education. It is found that China is more progressive in terms of its laws regarding special education. This research recommends that by modifying existing legislation and enhancing the school system for children with disabilities, their educational rights can be properly preserved.*

*Keywords: Children with disabilities, Educational rights, Special Education*

### INTRODUCTION

Education is vital for all people, but especially for those with disabilities. Persons with disabilities (PwDs) are among the most neglected and are regarded as Malaysia's most vulnerable population.<sup>1</sup> Section 2 of the Persons with Disabilities Act 2008 defines persons with disabilities as people with “long-term physical, mental, intellectual, or sensory impairments that, in combination with different impediments, may impede their full participation in society.”<sup>2</sup> Their demands are frequently given lower priority by society because of their impairments. Consequently, education can prevent them from being forgotten by society, since it enables them to read, write, make independent decisions, and even seek employment.<sup>3</sup>

In recognition of the importance of education for all, the United Nations has enacted a number of instruments and declarations, including the

Standard Rules on the Equalisation of Opportunities for Persons with Disabilities, the Jomtien World Declaration on Education for All 1990, the Dakar Framework for Action, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Universal Declaration of Human Rights, and the International Covenant on Economic, Social, and Cultural Rights. Consequently, these instruments and pronouncements demonstrate the significance of education for all individuals, including those with disabilities and children with special needs.

The Malaysian government ratified the Convention on the Rights of the Child (CRC) in 1995 and the Convention on the Rights of Persons with Disabilities (CRPD) in 2010 to support the United Nations' provision of the right to education for PwDs and children with disabilities. In addition, the UNESCO Statement and Action

Framework on Special Needs Education was approved in 1994. As of December 2021, there were approximately 4.8 million disabled people in Malaysia, but only 587,608 were registered with the Department of Social Welfare.<sup>4</sup> Due to the significant number of disabled people in Malaysia and the significance of education to them, the Malaysian government recognised the necessity to protect the educational rights of PWDs and children with special needs. Because of the statutory ambiguity in Malaysia, the educational right of PWDs, particularly children with special needs, is still not fully protected.

The purpose of this research is to examine the laws and regulations controlling the educational right of children with special needs in Malaysia and China in order to determine which nation has a law that successfully protects the educational right of children with special needs. In addition, the Malaysian and Chinese special education systems are compared to determine the differences between the two countries. At the conclusion of this study, the researchers offer a few recommendations for the Malaysian government to consider to effectively defend the educational rights of children with special needs in Malaysia.

#### RIGHT OF DISABLED CHILDREN TO EDUCATION UNDER INTERNATIONAL INSTRUMENTS

Education has been acknowledged as a human rights and equality problem since the 1948 adoption of the United Nations Universal Declaration of Human Rights and has been reaffirmed by the following international treaties. The *Convention on The Rights of Persons With Disabilities 2006* defines 'Persons with disabilities includes those who have long-term physical, mental, intellectual or sensory impairments

which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others'.<sup>5</sup> The Universal Declaration of Human Rights 1948 also provides that children with disabilities, like their non-disabled counterparts, have the right to education.<sup>6</sup> It is clearly stated that everyone has a right to free and compulsory education, at least through the elementary level, and that other types of education, including vocational and professional education, as well as merit-based access to higher education, must be generally available. Similarly, Article 13 of the International Covenant on Economic, Social, and Cultural Rights 1996, Article 28 of the Convention on the Rights of the Child 1989 and Articles 7 and 24 of the Convention on the Rights of Persons with Disabilities 2006 express the same principle.

#### METHODOLOGY

In this research, the researchers employ doctrinal analysis and comparative legal research. The researchers examine journal articles, textbooks, statutes, and case laws pertaining to special education for children with special needs in Malaysia and China for their doctrinal analysis. A doctrinal analysis is "an inquiry into legal concepts, values, principles, and current legal language such as case law, legislation, etc."<sup>7</sup> This method enabled researchers to identify issues pertaining to the educational rights of children with disabilities in Malaysia and provides researchers with a deeper understanding of doctrinal content, including laws and regulations, enforcement, and administration of special education in Malaysia. In the context of comparative legal study, the researchers examine the legislative texts, jurisprudence, and legal theories of Malaysia and China to analyse their laws and practices

regarding special education for children with special needs. The researchers then determine, based on their findings, which country provides a superior educational right for children with special needs.

#### SPECIAL EDUCATION IN MALAYSIA

To promote the UN-provided right to education for PwDs and children with disabilities, the Malaysian government ratified the Convention on the Rights of the Child in 1995 and the Convention on the Rights of Persons with Disabilities in 2010. Additionally, in 1994, the UNESCO Salamanca Statement and Framework for Action on Special Needs Education was adopted. Only 587,608 of Malaysia's 4.8 million PwDs were officially registered with the Department of Social Welfare as of December 2021.<sup>8</sup> Since there are so many disabled people in Malaysia and because education is so important to them, the Malaysian government realised that PwDs and children with special needs must be protected in their right to an education.<sup>9</sup> Therefore, the Zero Reject Policy and the National Policy and Action Plan of Persons with Disabilities have been implemented to incorporate PwDs as the key goal for sustainable development and to give education to all children in Malaysia. However, due to the ambiguity of Malaysian law, PwDs' right to an education, particularly that of children with special needs, is still ineffectively guaranteed.

#### BRIEF INTRODUCTION TO SPECIAL EDUCATION IN MALAYSIA

The Ministry of Education is in charge of the development and management of formal education for every child in Malaysia, including those with special

needs. Malaysia has a centralised education system. In the Education Act of 1996, the term "disabled" refers to students who have difficulty learning, hearing, or seeing.

Special education for children with disabilities has been given under the special education needs section of the Malaysian Education Blueprint 2013-2025. Students with vision impairment, hearing impairment, physical challenges, speech issues, various disabilities, and learning disabilities are provided for by the Education Blueprint. Under the Special Education Programme, there are three forms of special education for students with disabilities: Special Education School, Special Education Integration Programme, and Inclusive Education Programme. These three programmes are administered by the Ministry of Education. There are 97,220 children registered in the Special Education Programme as of October 2021. (Ministry of Education, 2021).

According to Kurniati & Widjastono, Special Education School only serves children with a single type of disability, such as hearing, vision, or learning difficulties.<sup>10</sup> According to Buku Data Pendidikan Khas, 2021, Malaysia has 34 Special Education Schools, with 6 Special Education Schools for secondary schools and 28 Special Education Schools for primary schools.<sup>11</sup> Special Education for visual impairments is given to children who have visual impairments like limited vision or direct vision loss. Their education methods are customised to meet their needs, such as using a braille system to boost academic achievement. Students who are half deaf or have hearing impairments are enrolled in Special Education for Hearing Impaired Children. Omar and Sulaiman say that students' abilities and needs determine how they communicate through sign language, speech, acting, and visual

language. Special Education for Learning Disabilities is a program for children who have learning disabilities like autism, Down's syndrome, slow learning, attention deficit hyperactivity disorder, mental retardation, and dyslexia. In this special education program, students with learning disabilities are educated using a special curriculum, skill training curriculum, basic reading and writing, manipulation skills, and other types of curriculums.<sup>12</sup>

Special Education Integration Programme (SEIP) is an educational system in which children with special needs are accommodated in special courses within regular institutions.<sup>13</sup> This programme is designed to help individuals with special needs improve their social and communication skills in the least restricted environment possible.<sup>14</sup> As of 2020, 78,030 children are taught under Special Education Integration Programme in 2586 schools.<sup>15</sup> Under this programme, students with special needs will attend the mainstream school's special classes. Consequently, they will experience a regular learning environment because they can participate in the majority of school activities with their typically developing peers.<sup>16</sup> According to the Education (Special Education) Regulations of 2013, the Special Education Integration Programme is an educational program for students with special needs that are only attended by students with special needs in a special class in a government school or a government-aided school. Because they participated in the majority of school activities with other normal students, the students received education in the least restrictive environment compared to Special Education Schools.<sup>17</sup>

The Inclusive Education Programme (IEP), on the other hand, allows children with special needs to learn alongside typical students. Additionally, they learn the general

education or mainstream curriculum.<sup>18</sup> There are currently 3,774 schools in the United States that provide Inclusive Education programmes for 16,504 pupils.<sup>19</sup> The goal of inclusive education is to maximise students' interactions with their typically developing classmates. This programme is administered by the Ministry of Education's Garis Panduan Program Pendidikan Inklusif Murid Berkeperluan Khas (Edisi Percubaan) and Checklist for Inclusion Readiness. These entrance requirements apply to students with exceptional needs.

#### LAW GOVERNING SPECIAL EDUCATION IN MALAYSIA FEDERAL CONSTITUTION

Articles 8 and 12 of the Federal Constitution are relevant when it comes to the right of disabled children to an education. According to Article 8(1), "All persons are equal before the law and entitled to the equal protection of the law."<sup>20</sup> Additionally, Article 12 states that "without limiting the generality of Article 8, there shall be no discrimination against any citizen on the ground of religion, race, descent, or place of birth in the administration of any educational institution maintained by a public authority, and in particular, the admission of pupils or students or the payment of fees."<sup>21</sup> Based on the literal wording of Article 8 and Article 12, children with disabilities have the same educational rights as regular children under Federal Constitutional, which prohibit discrimination in the entrance to public educational institutions. As a result, all residents are treated equally before the law as mentioned by Article 8.

## PERSONS WITH DISABILITIES ACT 2008

In order to ratify the United Nations Convention on the Rights of Persons with Disabilities in 2010, the Malaysian government passed the Persons with Disabilities Act in 2008. After being approved by the parliament in 2007, this act enters into force in 2008. In accordance with Section 28 of the Persons with Disabilities Act of 2008, “persons with disabilities shall not be excluded from the general education system on the basis of disabilities, and children with disabilities shall not be excluded from preschool, primary, secondary, or higher education, including vocational training and lifelong learning, on an equal basis with persons or children without disabilities.”<sup>22</sup> As a result, children with disabilities shall not be left behind because of their disabilities, in accordance with Section 28 of the Persons with Disabilities Act of 2008. Additionally, by emphasising that children with disabilities have the same access to education as other children, this section supports the right to education guaranteed by Article 12 of the Federal Constitution.

## EDUCATION ACT 1996 AND ITS REGULATIONS

The Education Act of 1996, which includes provisions for Special Education, went into effect in 1996. These rules categorise pupils with exceptional needs into three groups: those who have learning challenges, and those who have hearing or vision impairments.<sup>23</sup> The Minister shall provide special education in special schools created pursuant to paragraph 34(1)(b) or in such primary or secondary schools as the Minister deems expedient, according to section 40 of the Act.<sup>24</sup> According to this

clause, the minister of education must provide special education services for children in order to demonstrate that children with disabilities have an equal right to an education. In addition, the Education (Special Education) Regulations and the Education (Special Education) Regulations 2013 outline additional requirements for children with disabilities who wish to enrol in special schools or designated primary schools as well as secondary schools.

## NATIONAL ACTION PLAN FOR PERSONS WITH DISABILITIES 2016-2022

To defend the rights of PwDs, the Malaysian government created the National Action Plan for Persons with Disabilities 2016–2022. This plan is consistent with the Incheon Strategy, the 11th Malaysian Plan (RMK11), and the Malaysian Persons with Disabilities Policy. This plan has a number of objectives, such as bettering PwDs’ access to healthcare and education, enhancing social services and advocacy, and improving PwDs’ risk disaster management. The Persons with Disabilities Act 2008, which was passed by the Malaysian government in order to ratify the United Nations Convention on the Rights of Persons with Disabilities in 2010, is also being implemented as part of this plan.

## CHILD ACT 2001

This law was passed in 2001, and Malaysia says in a 2006 report to the Committee on the Rights of the Child (CRC) that the Child Act was based on four CRC core principles: non-discrimination, respect for the child’s viewpoints, the right to life, survival, and development, and the child’s best interest. The following is the comprehensive definition of “child”

provided by Section 2 of the Child Act 2001:

- (a) The term “child” refers to a person under the age of eighteen;<sup>25</sup> and
- (b) “a person who has attained the age of criminal responsibility as prescribed in section 82 of the Penal Code [Act 574].”<sup>26</sup>

According to this definition, children with disabilities are eligible for all of the rights and protections granted to children under the Child Act.

#### ISSUES ON SPECIAL EDUCATION IN MALAYSIA

According to the Malaysian Education Blueprint 2013-2025, the special education sector confronts a serious shortage of competent teachers. The director of Special Education confirmed this issue when he claimed that our educational system needs special education teachers. Worse yet, some Malaysian states lack sufficient special education teachers.<sup>27</sup> Due to the shortage of teachers in the special education sector, teachers and students with special needs would be unable to devote their full attention to the learning process. In addition, some of the instructors of the Special Education Programme do not have a background in special education; rather, they are general educators who have taken a brief course on special education.<sup>28</sup> Inadequate availability of teaching materials also presents obstacles. Problems such as the absence of a necessary conceptual understanding of disability in the content of courses for teacher trainees, the heaviness of the curriculum for children with hearing impairment, the lack of training for instructors and the inadequacy of the teachers' resources exist.<sup>29</sup> As a result of this issue, both students with special

needs and teachers experienced difficulty with the learning process.

In addition, there are also problems with inadequate facilities in the special education sector. Special facilities, assistive devices, and technology, such as hearing aids, cognitive aides, and computer software, are required in schools to assist students with special needs study. According to the Malaysian Education Blueprint 2013-2025, our schools lack disabled-friendly amenities such as elevators, accessible bathrooms, handrails, and ramps.<sup>30</sup> It is also observed that schools in Malaysia still lack the infrastructure, instruments, and technology to facilitate the learning process of children with special needs, confirming the Education Blueprint's conclusion.<sup>31</sup> Therefore, due to the lack of facilities in schools, the learning process will be more difficult for children with special needs, as they rely on these facilities to study and move around smoothly. Therefore, it is in violation of Article 5(3) of the UNCRPD, which requires State Parties to offer "reasonable accommodation" for pupils with special needs.

Lastly, Malaysia also lacks structured early intervention programmes. Early intervention preschool programme for special education students is the process of providing the service, support, and education of various stimulation techniques lessons, activities, and training to students with special needs who suffer from physical or mental developmental delay, which will affect their development and learning and prevents them from achieving their full potential.<sup>32</sup> It is also discovered that preschool special education teachers lack the knowledge and competence to implement early intervention programmes.<sup>33</sup> Early intervention strategies are still not commonly implemented in preschool classrooms

with special education students. This condition is connected with a lack of exposure to early intervention procedures, and a lack of knowledge and abilities about early intervention will impair the effectiveness of early intervention programmes.<sup>34</sup>

#### SPECIAL EDUCATION IN CHINA

China has signed and ratified more than twenty international human rights conventions, including seven core UN human rights conventions.<sup>35</sup> As a party to numerous international human rights conventions, China undoubtedly has treaty obligations to apply the conventions. And the implementation at the domestic level of State parties is the key to the implementation of international human rights treaties.<sup>36</sup> The right to education for disabled children in China has never stopped being explored as an important part of our education legislation.

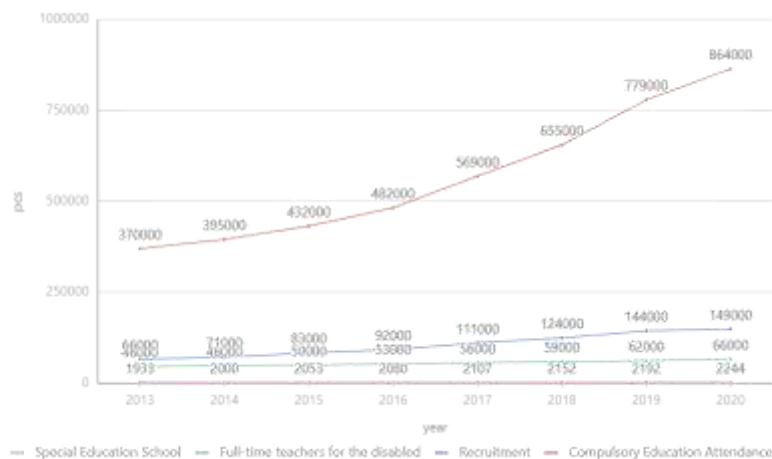
#### BRIEF INTRODUCTION TO SPECIAL EDUCATION IN CHINA

The development of education for disabled children is an important element in advancing educational equity and modernising education, an important initiative to uphold the people-oriented concept and promote the humanitarian spirit, and a task in safeguarding and improving people's livelihood and building a harmonious socialist society.<sup>37</sup> The National Congress of China has also repeatedly given directives on special education. The 18th National Congress proposed "supporting special education", the 19th National Congress proposed "providing good special education", and the 20th National Congress proposed "strengthening special

education" to comprehensively improve the quality of special education and promote the overall healthy and appropriate development of children with special needs.<sup>38</sup> To promote special education and safeguard the right to education of disabled children, China has issued a series of laws, regulations and adjustment initiatives.

Throughout the available series of laws, regulations and initiatives, China is focused on improving the quality of special education and promoting educational equity, mainly focusing on the professional growth of special education teachers, curriculum construction, balanced regional development, integrated education, other issues, and increasing the construction of special education investment, management and other support and guarantee system.<sup>39</sup> Supported by strong policies and regulations, access to education for disabled children continues to expand and universal access to education has increased significantly. Access to education for disabilities has continued to expand, and the level of universal access has increased significantly. Table 1 below shows the progressive development of education for disabilities from 2013 to 2020. The number of students with disabilities enrolled in compulsory education nationwide is increasing year by year, and by the end of 2020, the number of students is 864,000, 2.3 times more than in 2013. In 2020, there were 2,244 special education schools and 66,000 full-time teachers for the disabled, an increase of 16.1% and 43.5% respectively over 2013. Meanwhile, recruitment was 149,000, 2.3 times more than in 2013.

TABLE1. Disability Education Development Monitoring Statistics



Source: The figures come from the statistical monitoring report “China's Child Development Program (2011-2022)” published by the National Bureau of Statistics for the period 2013 to 2021. (<http://www.stats.gov.cn/tjsj/>)

#### LAW GOVERNING SPECIAL EDUCATION IN CHINA

##### FUNDAMENTAL LAW OF THE STATE

In 1982, for the first time, the right to education was written into the Constitution as a fundamental right of all Chinese citizens. The Constitution (Amended 2018), in Article 46, clearly emphasizes that citizens of the People's Republic of China have the duty as well as the right to receive education. This article indicates that all China citizen has the right to education, which means that children with disabilities also enjoy this right equally without any distinction or other restrictions. The Constitution also states that the State and society help arrange the work, livelihood and education of the blind, deaf-mute and other handicapped citizens.<sup>40</sup> This marks in China the first time that the basic rights of citizens with disabilities to work, live, and education are stipulated in the form of a fundamental law, providing a constitutional basis for the protection of their rights.

#### COMPULSORY EDUCATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA (REVISION 2018)

In 1986, China enacted the first special law dedicated to compulsory education, and the latest revision was made in December 2018. Article 2 stipulates that China implements nine-year compulsory education and that it is mandatory for all school-age children. No tuition or miscellaneous fees shall be charged for the provision of compulsory education. For the age of compulsory education, Article 11 stipulates that when children have reached the age of six, their parents or other statutory guardians shall send them to school to receive and complete compulsory education. For children in areas where conditions do not exist for children to do so, the beginning of their schooling may be postponed to the age of seven. Moreover, Article 19 of this law specifies the places where disabled children receive their compulsory education.<sup>41</sup>



## THE EDUCATION LAW OF THE PEOPLE'S REPUBLIC OF CHINA (AMENDED IN 2021)

The Education Law was enacted in 1995. The Education Law of the People's Republic of China (Amended in 2021) reaffirms that all citizens of the People's Republic of China enjoy equal rights to education according to the law. The law further expresses the state's decision to develop education for disabled people and proposes that education and accommodation should be implemented according to the physical and mental characteristics and actual needs of disabled people.<sup>42</sup>

## PROTECTION OF THE DISABLED (AMENDED 2018)

The Protection of the Disabled was enacted in 2008 and was most recently amended in 2018. It is the law that contains the most content on education for the disabled. It contains detailed regulations on the financial support of compulsory education for disabled children, the classification of educational institutions and preschool education of disabled children. Meanwhile, the law focuses on the "Barrier-free Environment", with the whole Chapter seven explaining how to build and improve the accessibility of facilities for the disabled and promote the accessibility of information and communication for the disabled, which includes the national examination papers for the disabled, special parking spaces for the disabled, accessible transportation and assistive equipment, etc.

## THE REGULATIONS ON THE EDUCATION OF PERSONS WITH DISABILITIES (2017)

In 1994, the State Council promulgated the first special regulation on the

development of education for the disabled in China. It affirms in the beginning that the disabled have the equal right to education and prohibits any discrimination in education based on disability.<sup>43</sup> The Regulations on the Education of Persons with Disabilities (2017) stipulate that children and adolescents with disabilities must receive compulsory education in nearby regular schools as a matter of priority, thus providing further legal guarantees of the right of children and adolescents with disabilities to receive compulsory education.<sup>44</sup> In Article 17 of the regulation, it is further stipulated that if a disabled child can attend an ordinary school, he or she shall receive education in the nearest school. If they cannot, they are entered into a special education school or are provided with compulsory education through home teaching, remote teaching or by other suitable methods.<sup>44</sup>

Moving on, Chapter 6 of the Regulation also provides for the training, work and preparation of teachers engaged in the education of disabilities and refers to "teachers engaged in the education of the disabled" as special education teachers. Article 42 also provides specific instructions on how to qualify as a special education teacher.

Article 30 also especially emphasizes the construction of vocational education training bases for disabled people, to enhance their social integration and give them a sense of satisfaction and happiness. Vocational Education Law of the People's Republic of China (2022 Revision) on vocational education for disabilities, more detailed provisions. Emphasis on the construction of a barrier-free learning environment to provide the necessary assistance and convenience for disabled students to study and live. Furthermore, the State adopts measures to support educational agencies, vocational

schools, vocational training agencies for the disabled and other educational agencies in carrying out or jointly carrying out vocational education for the disabled.

#### GOVERNMENT PROGRAMS ON SPECIAL EDUCATION FOR CHILDREN IN CHINA

As the beginning of education for children with disabilities, the preschool stage is an important part of China's preschool education and special education undertakings.<sup>45</sup> Since the 1990s, China has been concerned with the issue of preschool education for disabled children. In 1988, China's Five-Year Program of Work for the Disabled proposed that "vigorous measures should be taken to actively promote the establishment of special education classes in ordinary schools and kindergartens."<sup>46</sup> In 2001, the Outline of the Fifteen-Year Plan for the Cause of Disabled Persons in China pointed out that "preschool education will be actively developed, and a special education system for disabled persons will gradually be formed, with preschool education, compulsory education, senior secondary education and higher education interlinked", and preschool education for disabled children was formally incorporated into the special education system and gradually developed as an extension of special education.<sup>47</sup>

The Several Opinions on the Current Development of Preschool Education for the first time proposes to subsidize disabled children's access to inclusive preschool education, and preschool education for disabled children is included in the overall planning of national public services and preschool education policies in the form of "subsidies."<sup>48</sup> In 2016, the Outline of the 13th Five-Year Plan for Accelerating the Well-being of

Disabilities included "gradually raising the level of universal preschool education for children with disabilities" among the key items of basic public services for people with disabilities, and included the development of "inclusive pre-school education" among the main tasks.<sup>49</sup> The 14th Five-Year Plan of Action for the Development and Upgrading of Special Education promulgated in 2022 encourages "ordinary kindergartens to accept children with disabilities who have the ability to receive general education to attend classes in their vicinity."<sup>50</sup>

In 1986, China's first code of practice for accessibility was drawn up, the Code of Practice for the Design of Accessible Urban Roads and Buildings for Persons with Disabilities, and in 2001 China's first accessible library was built in Shanghai to help persons with disabilities find information.<sup>51</sup> In 2012, the Regulation on the Construction of Barrier-Free Environments stresses the priority of promoting the retrofitting of barrier-free facilities in institutions such as special education, rehabilitation and social welfare.<sup>52</sup> School facilities should be equipped with barrier-free facilities that facilitate the learning and living of disabled children by the Standards for Barrier-Free Design (GB50763-2012). In 2016, the State Council issued a circular on the "13th Five-Year Plan for Accelerating the Process of Prosperity for Persons with Disabilities", which emphasizes strengthening the realization of the right to social security for disabled children in various aspects, including the construction of the underlying protection, the construction of public services, and the construction of protection conditions and services. On 8th July 2021, the State Council issued the Notice on the 14th Five-Year Plan for the Protection and Development of the disabled, which includes the important task of "improving the public

service system of education for persons with disabilities and enhancing the quality of public services in education.

#### FINDINGS AND RECOMMENDATION

Children, including disabled children, have the right to education. Even though the Malaysian government provides an excellent education system for children with disabilities and has passed various laws protecting their educational rights, there are signs that its efforts are not convincing. This is due to the issues regarding special education in Malaysia. The problems include a shortage of competent teachers in special education, inadequate availability of teaching materials, inadequate facilities and disable - friendly amenities and lastly, lack of structured early intervention programs. In addition, it is also reported that students with special needs in SIEP learn in the same class despite having varying levels of ability.<sup>53</sup> Therefore, the learning process will be challenging for them and their teachers. For IEP, the coverage of the applicable guideline is limited. Normal children and pupils with special needs receive the same evaluation, resulting in disappointing outcomes.<sup>54</sup> In addition, the Malaysian system of tiered education for children with impairments has rendered IEP implementation ineffective.<sup>55</sup>

Moving on, it is also argued that the current laws regarding special education for children with special needs that have been enacted by the Malaysian government are insufficient to ensure their education rights. All laws and policies made are scattered and too general since only a few sections of the laws tackle their educational right. Article 8 of the Federal Constitution, which provides equality among the citizen does not specify discrimination against persons

with disabilities, and Article 12, which provides the right to education, does not prohibit any type of discrimination against them in terms of enrollment in the Special Education Program.<sup>56</sup> Children with exceptional needs may be denied enrollment in the Special Education Program if they do not match the requirements established by the Ministry of Education.<sup>57</sup>

Due to the absence of enforcement and punishment mechanisms, the Persons with Disabilities Act of 2008 has been criticised and dubbed “toothless tiger” as a result. The phrase “on an equal basis” in Section 28 of the Act is particularly dubious, given that the Ministry of Education has established requirements for children with special needs to enroll in the Special Education Program.<sup>58</sup> Therefore, this Act fails to guarantee the educational rights of Malaysian children with disabilities. The Education Act of 1996 mentions special education in a manner that is insufficiently specific, addressing only the Minister’s authority to administer Special Education and to determine the duration of exceptional education for children with special needs. The Education (Special Education) Regulations 2013 violate their educational rights by requiring children to complete a three-month probationary term prior to enrolling in the Special Education Program.

On the other hand, China clearly provides for the educational right of children with special needs in their laws and regulations. For example, the Constitution of the People's Republic of China (Amended in 2018), clearly mentioned that the citizens of China have the duty as well as the right to receive education under Article 46, which indicates that children with disabilities also enjoy the right equally without discrimination. Besides, the Constitution also emphasized that the

State and society has the duty to help arrange the work, livelihood and education of disabled citizens.

Next, the Compulsory Education Law of the People's Republic of China (Revision 2018) makes it mandatory for all children from the age of six to obtain education and this includes children with disabilities. To encourage children to learn, the government of China emphasizes that no fees need to be paid by the parents. Article 19 of the Act also specifies the places where disabled children receive their compulsory education. The Education Law of the People's Republic of China (Amended in 2021) further reaffirms that all citizens of the People's Republic of China have equal access to education. According to Article 39 of the law, education and accommodation must be tailored to the physical and mental characteristics and actual needs of disabled people.

China's Protection of the Disabled 2008 Act covers disabled education, unlike Malaysia's Persons With Disabilities Act 2008. It covers disabled children's preschool education, financial support for compulsory education, and educational institution classification. Most importantly, the law stressed on "Barrier-free Environment," with Chapter seven explaining how to build and improve disabled facilities and promote disabled access to information and communication, including national examination papers, special parking spaces, accessible transportation, and assistive equipment. China prioritised the disabled rights, other laws, such as the Code of Practice for the Design of Accessible Urban Roads and Buildings for Persons with Disabilities 1986 and the Regulation on the Construction of Barrier-Free Environments 2012, emphasized the importance of redeveloping barrier-free facilities in

special education, rehabilitation, and social welfare institutions.

China also has a specific statute which governs on matters relating to education for disabled people, which Malaysia lacks. The Regulations on the Education of Persons with Disabilities (2017) require children and adolescents with disabilities to obtain compulsory education in neighbouring regular schools as a priority, ensuring their right to education. According to Article 17 of the rule, disabled children who can attend regular schools must attend the nearest school. If they cannot, they are placed in a special education school or given obligatory education via home teaching, remote instruction, or other methods. Chapter 6 of the Regulation also covers special education teachers' training, work, and preparation. Article 42 specifies special education teacher requirements. Lastly, as compared to Malaysia, Since the 1990s, China has constantly and diligently promoted early preschool education programs for disabled children to ensure that they have access to education from a young age.

The Malaysian government has demonstrated its commitment to protecting the rights of people with disabilities and ensuring that children with disabilities have access to education. However, it might be inferred that the commitment made is insufficient, given that the passed legislation is ineffective for the reasons stated above. Therefore, it is recommended that by modifying existing legislation and enhancing the school system for children with disabilities, their educational rights can be properly preserved. In addition, to effectively protect the rights of children with disabilities in Malaysia, particularly their educational rights, it is time for the Malaysian government to develop a legal framework for special education for children with disabilities

in Malaysia, which will be beneficial for children with disabilities, their parents, and society.

## CONCLUSION

Education is important for everyone as it provides an opportunity for obtaining knowledge and skills that will enable people to develop their full potential and become successful members of society. This equally applies to people with disabilities, especially disabled children. Even though several laws and regulations regulate the educational right of children with special needs in Malaysia, their educational right is not effectively protected. The government of Malaysia must create a law that oversees the educational right of children with special needs and protects their educational rights and the administration of special education.

We may learn from the government of the Republic of China that disabled people's educational rights can be effectively protected by enacting a particular law. China's educational chances for children with special needs have improved as a result of the government's support through extremely specific regulations. Therefore, it is essential for the Malaysian government to create a legal framework for special education for children with special needs in order to guarantee their educational rights effectively and efficiently.

## NOTES

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<sup>2</sup> Section 2 of the Persons with Disabilities Act 2008.

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