



SEXUAL OFFENCES AGAINST CHILDREN ACT 2017 (ACT 792) – A BOOST TO POLICE INVESTIGATION AND PROSECUTION



Tan Geok Mooi¹
Noor Aziah Mohd
Awal²⁺

¹ *Royal Malaysia Police College Kuala Lumpur, Malaysia.*
² *Faculty of Law, National University of Malaysia, Malaysia.*
Email: naha@ukm.edu.my



(+ Corresponding author)

ABSTRACT

Article History

Received: 20 February 2020

Revised: 26 March 2020

Accepted: 30 April 2020

Published: 9 June 2020

Keywords

Child sexual abuse
Child grooming
Police investigation
Prosecution
Special court for child sexual
Crime.

Sexual Offences against Children Act 2017 (Act 792) which came into force on 10 July 2017 has a significant impact on police investigation and prosecution. Hitherto the police relied on the Penal Code (Act) to investigate all children sexual abuse cases since there were no specific laws against the perpetration of child pornography, sexual grooming and other sexual abuses against children. Apparently not only does Act 792 confer extra powers upon the police to conduct investigation, it also simplifies the investigation and prosecution works of the police and Deputy Public Prosecutors respectively. This paper aims to examine Act 792 in relation to police investigation and prosecution since its implementation about two years ago. Its effectiveness is evaluated by comparing the overall cases investigated, charged in courts and convicted under this new statute. In addition, an analysis on the type of social media used to entice child victims in rape cases and age of the child victims are also conducted. This is a library-based qualitative research plus a face-to-face interview with a judge who presides over child sexual abuse cases. For conclusion, this paper makes some suggestions to improve the investigation, prosecution and also the Special Court for Child Sexual Crime which was launched on 22 June 2017 at the Palace of Justice, Putrajaya.

Contribution/ Originality: This study contributes towards a better understanding of the impact of the Sexual Offences against Children Act 2017 on police investigation and prosecution in Malaysia. The new Act is recently introduced to protect children from child pornography, sexual grooming and other forms of sexual abuses.

1. INTRODUCTION

Malaysia is the third country in the world to have a specific statute on sexual offences against children after the United Kingdom which has the Sexual Offence Act 2003¹ and India, the Protection of Children from Sexual Offence Act 2012². The Sexual Offences against Children Act 2017 (Act 792) (hereafter referred as Act 792) came into force on 10 July 2017. This Act defines certain sexual offences against children and specifies their punishments. It complements other existing laws such as the Penal Code and Child Act 2001. It also provides for the administration

¹ legislation.gov.uk <https://www.legislation.gov.uk/ukpga/2003/42/contents>

² <https://childlineindia.org.in/pdf/POCSO-ACT-Gazette.pdf>

of justice for children and related matters. This Act consists of six parts, 28 sections and a Schedule with the list of various sexual offences against children in other statutes.

2. PROBLEM STATEMENT

The purpose of implementing Act 792 and establishing the Special Court for Child Sexual Crime (hereafter referred as Special Court) about two years ago was to curb sexual crimes against children which had been on the increase at an alarming rate for the past few years. This paper examines the effectiveness of the Act by looking at the number of perpetrators charged in courts and convicted as compared to the total number of cases investigated. Before the introduction of Act 792, statistics from the Royal Malaysia Police (RMP) and the Head Registrar, Palace of Justice indicated there were 1262 reported child abuse cases from 2010 to 2014. However the number of cases prosecuted in courts for the same period was only 413. On average, only 32.72% of the cases were brought to court (Tan & Noor, 2018). It was hoped that the new law would enable the police to investigate and the DPPs to prosecute such cases more efficiently and thereby increase the probability for the heinous crime to be curbed decisively.

3. RESEARCH METHODOLOGY

The methodology used in this paper is library-based qualitative research plus a face-to-face interview with a judge who presides over child sexual abuse cases and a police investigating officer who is attached to the Sexual and Child Investigation Division (D11) in the Klang Valley.

4. APPLICATION

Similar to the Child Act 2001, Act 792 shall apply to children under the age of eighteen years³. A new and powerful feature that has been introduced under this new statute is the extra-territorial applicability of the law. Section 3 the Act stipulates that the authorities may take actions against any Malaysian citizens who commit sexual offences against any child even if the offences were committed outside Malaysia. The perpetrators may be arrested, prosecuted and convicted for offences committed extra-territorially as if such offences were committed at any place within Malaysia. Obviously this is an effective legislation against child sexual perpetrators who might think they can escape punishments by doing the despicable acts in other countries. With the new law, they might have to face justice when they come back from abroad.

In the year 2015, 23-year-old Malaysian Nor Nordin, a government sponsored student who was studying at the Imperial College London, was found in possession of more than 30,000 child pornographic images and videos. He was charged in the British Court and sentenced to jail for five years. A total of 13 charges were proffered against him for having in his possession indecent images and videos of minors, and with "intent to distribute the materials" (Rodzi, 2015).

In 2016, Malaysians were shocked to learn of the offences committed by a 30-year-old British citizen, Richard Huckle who had picked on more than 200 Malaysian babies and children, groomed and later sexually abused them. More despicably, the horrific images of his sexual exploit were shared by him on the dark web. He was in fact a photographer in Ashford, Kent. To gain the confidence of his potential victims, he had disguised as an English teacher and donated generously for charity cause in poor Christian neighbourhoods in Kuala Lumpur. He pleaded guilty to a total of 71 offences - which was unprecedented - including raping minors as young as six months to 12 years old between 2006 and 2014. Some of the children were abused for years. One of them was abused from the age of three to ten. Investigation revealed that more children could have possibly been abused by him (Boo, 2016).

³Section 2 of Act 792.

These two cases prove that it is timely to introduce the extra-territorial applicability of the child sexual offences law. In this globalised world with internet connectivity, child pornography are found mostly online and paedophiles may execute their plan from anywhere in the world with no regard to national boundaries and jurisdictions. Previously there were no proper legislations to deal with Malaysian citizens committing such offences outside the Malaysia soil. We might foresee more of such crimes being reported in the future. We may even consider them as transnational crimes.³

5. OFFENCES UNDER ACT 792

Act 792 has widened the scope of sexual offences against children that are punishable by law. Hitherto the relevant punishable offences were found in the Penal Code which include rape [S. 376], incest [S.376A & B], intercourse against the order of nature [S. 377] and outraging of modesty [S.354]. Part II, III and IV of Act 792 introduce new sexual offences against children into the Malaysian criminal law, i.e. offences relating to child pornography, child grooming and sexual assault.

5.1. Offences Relating to Child Pornography

Under S. 4 of Act 792, child pornography refers to any representation in whole or in part of a child engaged in sexually explicit conduct. "Representation" in this context may be in any form including visual, audio or written or any combination of the forms; and by any means including but not limited to electronic, mechanical, digital, optical or magnetic means or any combination of any means. The pornographic images of a child may be either realistic or graphic. The definition also extends to the engagement of a person appearing to be a child in sexually explicit conduct, even if that person might not be a child actually. Hence it covers all types of child pornographic materials including those found in computers, CDs and hand phones; even a cartoon or written article on sexually explicit conduct by a child, or by a person who looks like a child but is not a child⁴.

The definition of sexual explicit conduct under S. 4(b) is also very wide. It encompasses sexual intercourse; lewd acts; bestiality; masturbation; sadistic or masochistic abuse; display of genital, buttock, breast, pubic area or anus; and use of any object or instrument for lewd acts. Lewd acts include physical contact involving genital to genital, oral to genital, anal to genital, or oral to anal; and it may be done between persons of the same or opposite sex⁵.

Under S. 5, any person who participates, engages or in any manner produces child pornography, such as making or directing, is also liable to be punished⁶. Previously such offences are stated under Section 292 of the Penal Code⁷ and Section 5 of the Film Censorship Act 2002⁸. The punishment provided under Act 792 is much heavier, which is a maximum 30-year custodial sentence plus a minimum six-stroke whipping.

S. 6 extends the scope of offences to cases where the acts defined under S. 5 have not been completed but preparation has been made to commit any of those acts. An offence under S. 6 attracts the penalty of maximum ten-year jail term plus mandatory whipping⁹. Anyone who uses a child or causes a child to be used in the of production of any child pornography upon conviction may be imprisoned up to twenty years and be whipped for a minimum of

⁴ Section 4(a)(i)-(iv)

⁵ Section 4(b)(i)-(iv).

⁶ Section 5

⁷ Section 292 of the Penal Code – sale, etc., of obscene book, etc. An offence which carries a maximum three years imprisonment, or with fine, or with both.

⁸ Section 5 of the Film Censorship Act 2002.

⁹ Section 6.

five strokes¹⁰. However this provision does not apply if the “child” concerned is actually a person above eighteen years old.

The Act also criminalises all business transactions carried out for profit in relation to child pornography, such as publication, import, export and transmitting¹¹. For instance, a transportation service business dealing in the distribution of child pornography publications falls under the purview of this section.

Child pornographic offences extend to the acts of making available any child pornography to a child¹², as well as accessing and possessing any such obscene materials¹³. Accessing in this context means viewing by himself or transmitting to someone else. Although the Film Censorship Act¹⁴ provides punishment for possession of pornographic materials, it refers to all types of pornography in general, and there are no specific provisions for child pornography.

In the decision of the Indonesia District Court of Rengat No 178 / Pid.B / 2013 / PN, the Panel of Judges stated that the behaviour of a perpetrator who manipulated child victim’s pornographic images and extorted the victim has committed criminal acts with no excuses for forgiveness and justification. Thus, severe punishment was imposed by the court to prevent the accused persons from repeating their actions and other people from committing the same crimes, especially pornographic crime against children (Sulistyo & Manap, 2018).

The courts, in meting out commensurate sentence for an offender, would normally take into consideration other evidence such as how he had acquired the lewd materials, what he had been doing with them, how long he had been keeping them and whether he had had a sense of achievement in acquiring them. In other words, the seriousness of an offence of possession goes beyond the mere quantity and variety of obscene images found (Taylor & Quayle, 2003).

With the latest technologies, some child predators have been able to radicalise the modus operandi of child grooming. It is no longer just enticing victims for a date to satisfy their evil desire. Innocent children are now coaxed to send their own naked pictures to the offenders or to perform sexually explicit acts in front of the webcam that would enable the offenders to video record the act (Gillespie, 2006). The pictures and recordings would later be used to blackmail or threaten the victims. These unfortunate victims suffer more miserably as some of the lewd materials are shared in the cyberspace which would be impossible to be recovered¹⁵, causing the victims to live with the consequences of exploitation for a protracted period of time (Palmer, 2005).

5.2. Offences Relating to Child Grooming

Child grooming means the act of communicating with a child with the intention to commit or to facilitate the commission of child pornography or sexual offences on a child [S. 12(a)]. Child grooming is very rampant nowadays as most of the children have their own mobile phones, have access to internet and use the telecommunication tool almost all the time. A wide definition has been given to child grooming under this Act. It covers the act of sexually communicating with a child by any means such as video call, sending an image through Messenger, email, WhatsApp, WeChat and so on. Sexual communication occurs if the communication or any part of it is sexual in nature. In this regard, the prosecution needs not specify or prove the commission of the intended child pornography or sexual offences.

¹⁰ Section 7.

¹¹ Section 8 – maximum 15 years of imprisonment plus minimum three strokes of whipping.

¹² Section 9 – maximum 15 years of imprisonment plus minimum five strokes of whipping.

¹³ Section 10 – maximum five years of imprisonment or fine not exceeding ten thousand ringgit or both.

¹⁴ Ibid, 13.

¹⁵ Ibid, 21.

Whoever after communicating with a child by any means, proceeds to meet him or her with the intent of committing any child pornography or sexual offences is deemed to have committed an offence under S.13. The maximum penalty for this offence is a ten-year jail term and mandatory whipping.

The increasingly serious problem of online grooming has attracted the attention of more and more countries to enact laws against the scourge. Australia, Canada, New Zealand, Norway and Sweden for instance have made specific provisions to punish those who make financial gain through child grooming for sexual exploitation. Grooming is made easy by the increasing availability of internet which is widely used by unscrupulous predators to seek out their targets, either online or offline (Eneman, 2010). It is definitely a latest issue that poses a legal challenge to governments (Gillespie, 2008).

Child grooming laws empower the police to take pre-emptive actions against offenders before they even have the chance to sexually abuse their victims. As long as an indication of the offender's intent to sexually abuse appears, the police may proceed to bring him into custody. However, "grooming" takes many forms, it is obvious that a general offence of "child grooming" is insufficient to effectively tackle this complex behaviour. A series of offences need to be created to cover different manners in which grooming is carried out. For example in England and Wales, separate provisions are made for the offences of meeting a child, inciting a child and engaging a child in child pornography¹⁶.

5.3. Offences Relating to Sexual Assault

Two types of sexual assault may be committed on a child namely physical assault and non-physical assault. Physical assault occurs when there is a physical contact without sexual intercourse. It includes the touching of a child's body by the perpetrator, making the child touch his/her own body or any other person's body. The punishment provided for these acts under S. 14 is imprisonment of not more than twenty years plus whipping.

Non-physical assault occurs when any person with sexual purposes¹⁷ utters any word, makes any sound, gesture or exhibits any object or his body to a child¹⁸; makes a child exhibit the child's body in order to be seen by such person or any other person¹⁹; or repeatedly or constantly follows or watches or contacts a child by any means [S. 15]²⁰. Threatening a child with a representation such as video recording or picture of the child engaging in sexual activity is also an act punishable under this section²¹. So are the acts of performing any sexual activity in the presence of a child, or causes a child to watch any sexual activity or pornographic materials, or makes a child to take part in sexual activity. Offenders of non-physical assault maybe sent to jail for up to ten years or be fined for a maximum of twenty thousand ringgit or both.

5.4. Reported Cases of Communication for Sexual Assault

It is pertinent to note that cases of sexual grooming and non-physical assault on children by means of communication have been reported to the police even before the introduction of Act 792. In most of the cases, the social media provide a common platform for perpetrators to befriend innocent children who have access to computers and mobile phones.

¹⁶ Ibid, 22.

¹⁷ The court would determine what constitutes sexual purposes under Section 15(a) of the Act by examining the words uttered, the nature and extent of the gestures and all other circumstances surrounding the conduct.

¹⁸ Section 15(a)(i) – maximum ten years of imprisonment or maximum fine of twenty thousand ringgit or both.

¹⁹ Section 15(a)(ii) – same sentences as the preceding sub-section.

²⁰ Section 15(a)(iii) – same sentences as the preceding sub-section.

²¹ Section 15(b) – same sentences as the preceding sub-section.

Statistics provided by the Royal Malaysia Police Headquarters Bukit Aman show that child rape victims were enticed by perpetrators through social media such as Facebook, WeChat, WhatsApp, Beetalk, Instagram and Tinder. The most commonly used media are Facebook, WeChat, and WhatsApp. Figure 1 shows that in 2017, a total of 255 cases of enticing child rape victims via social media were detected. Whereas in 2018, the number of such cases was 170. WeChat was the most popular media with 201 and 107 cases registered in 2017 and 2018 respectively, followed by WhatsApp with 21 cases in 2017 and 34 cases in 2018. Facebook was used in 22 cases in 2017 and 18 cases in the following year.

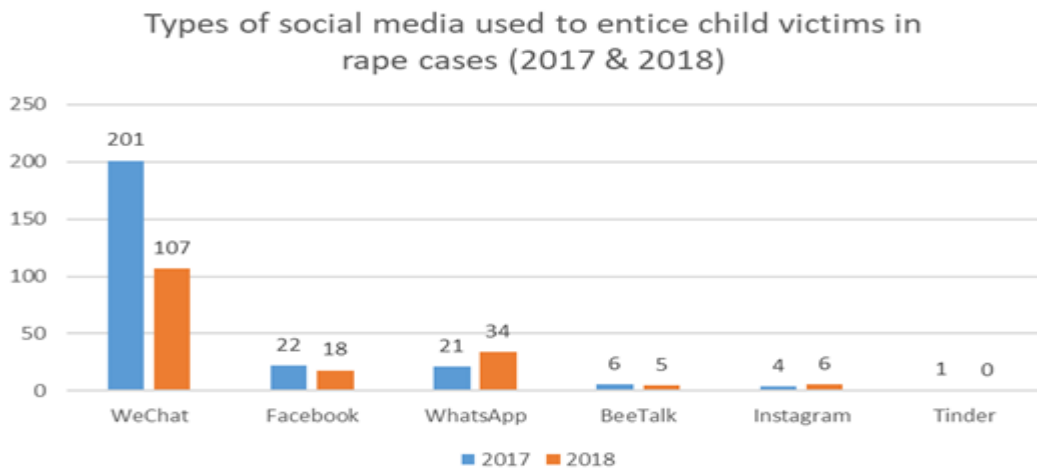


Figure-1. Type of social media used to entice child victims in rape cases.

Source: Royal Malaysia Police Headquarter, Bukit Aman

6. PERSON IN RELATIONSHIP OF TRUST

Part V (S. 16) of the Act is a specific provision for cases where any person who is in a relationship of trust with a child commits any offence listed in the Schedule against the child. The Schedule lists down various sexual offences against children under the Penal Code, Anti-Trafficking and Anti-Smuggling of Migrants Act 2007, Child Act 2001, Communication and Multimedia Act 1998 and Film Censorship Act 2002. Besides the punishment for such offences, the convicted perpetrator shall also be punished with additional jail term of not more than five years plus a minimum of two strokes of whipping²².

A relationship of trust is said to exist if a child is under the care, supervision or authority of the person concerned. There is a broad definition given by the law pertaining to such relationship. Obviously it includes a parent, guardian and any person who is related to the child through marriage or adoption²³. It also includes a babysitter, teacher, lecturer or warden²⁴, as well as any person who provides healthcare services²⁵. Besides, it also encompasses a coach and a public servant who deals with a child in his course of duty²⁶.

The more prolific groomers seek to target parents instead of child victims so as to gain their trust and then secure the access to the victims for sexual exploitation. In addition there is also situational grooming where the offender creates a physical environment that allows him to secretly abuse his child victim. However the most common but serious form of grooming is one where the enticed victim is made to believe that the offender loves him/her and thus it is natural for them to engage in consensual sexual acts (Craven, Brown, & Gilchrist, 2006).

²² Section 16(1)

²³ Section 16(2)(a)&(b)

²⁴ Section 16(2)(c)

²⁵ Section 16(2)(d).

²⁶ Section 16(2)(e)&(f)

With mounting workload, it is incumbent upon investigators to categorise reported cases according to their urgency and assign priorities to be investigated. A useful benchmark is the UK-developed priority scale whereby cases committed by known paedophiles and those with access to children, e.g. teachers and social workers are assigned top priority. Next are cases involving people with powers, such as the police and magistrate, and the third are cases involving ordinary people who have no direct access to children (Krone, 2004).

7. CAPACITY EVIDENCE OF A CHILD WITNESS

Act 792 presumes all child victims to be competent witnesses so long as the court does not have a different opinion. In addition, the evidence of a child victim needs not be corroborated in order to secure a conviction against the accused person, whether such evidence is given upon oath or otherwise²⁷. Although this provision only applies to the offences under Act 792, it is definitely a boost to the prosecution in bringing child abusers to justice.

Prior to the introduction of Act 792, corroboration for such evidence was necessary in cases where the court thinks that the child witness does not have the maturity to understand the nature of the oath²⁸. This particular section under the Evidence Act 1950 was often cited by Non-governmental Organisations (NGOs) and civil societies as being obviously biased against child witnesses. Now the courts are allowed to convict any person on the basis of uncorroborated evidence of a child provided the accused is charged under Act 792. However, some child abuse offenders are charged under other legislations instead of Act 792. As such, the same provision should be extended to the Evidence Act 1950 so that all courts may convict all child abuse offenders even if the child witnesses' statements are uncorroborated.

Apparently the prosecutors were more likely to bring a case to court if it has the child victim's positive statement corroborated by other witness, an admission by the accused person or other complaints filed against him. When cases were lacking strong evidence – confession, physical evidence, eyewitness – the offenders were twice unlikely to be prosecuted in court (Walsh, Jones, Cross, & Lippert, 2010).

8. MISCELLANEOUS

In addition to the above, there are ten other crucial and powerful provisions under Part VII of Act 792. These provisions, which have not been specifically stated in any other statutes in Malaysia, would certainly increase the efficiency of police investigation in child sexual abuse cases and provide extra protection to children as compared to the existing laws.

8.1. Failure to Give Information

S. 19 makes it compulsory for any person with information of the commission of offences under the Act to report it to the police. Failure to do so will subject the person to a punishment of fine not exceeding five thousand ringgit²⁹. So far no one has been charged under this offence since its implementation.

8.2. Presumption of Age of a Child

Under S. 20, an accused is not allowed to use the defence of mistake of fact in judging how old the child victim is, where he claims to believe that the child is of the age of or older than the legally protected age as specified in the respective laws while committing the offence unless the accused is able to prove that he has exhausted all his

²⁷ Section 17 & 18 of Act 792

²⁸ Section 133A of the Evidence Act 1950.

²⁹ Section 19 of ACT 792

avenues to ascertain the age of the child victim³⁰. Obviously this provision has made the investigation and prosecutions works much easier. The burden of proof is on to the accused person rather than the prosecution.

It can be seen that S. 20 is enacted to give better protection for children who look more matured than their actual age. While it is not readily known how many such cases of wrong presumption of victim's age have occurred, Royal Malaysia Police statistics show there were more and more child victims in the younger age groups from the year 2017 to 2018. Child victims under the age of six registered an increase of 12.9% (9 cases) from 2017 to 2018, those in the age group of 7 – 12 increased by 56.9% (174 cases) and age group of 13 – 15 increased by 31.8% (57 cases) as shown in Figure 2. Whereas a decrease of 45.7% (69 cases) was registered for victims between 16 and 17 years old. These figures indicate that children between 7 and 15 years old are at a higher risk of falling prey to sexual abuse.

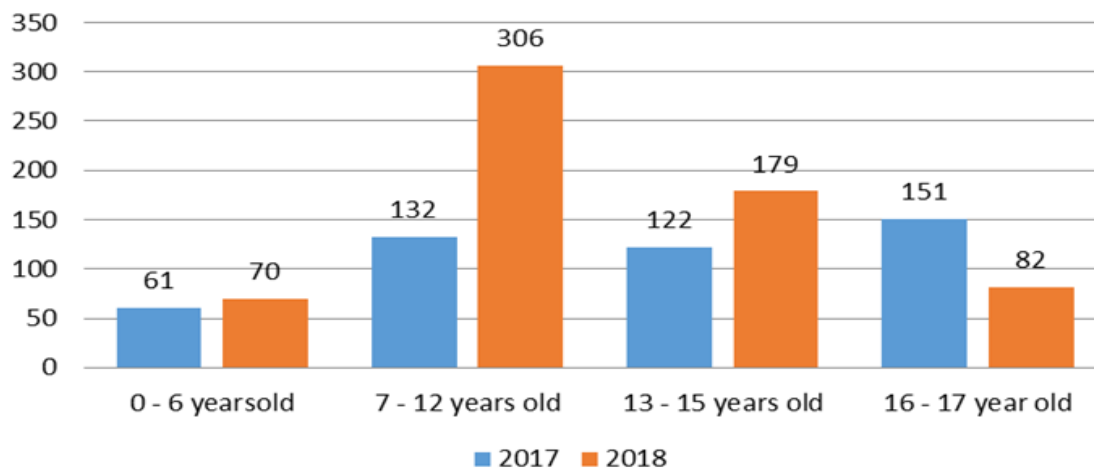


Figure-2. Distribution of child victims under the Sexual Offences Against Children Act according to age groups (2017-2018).
Source: Royal Malaysia Police Headquarter, Bukit Aman.

8.3. Abetment

Abettors of offences under Act 792 are equally guilty as the perpetrators if the crime is committed as a result of the abetment. Hence the same penalty awaits the abettors as the perpetrators³¹.

8.4. Evidence of Agent Provocateur Admissible

It is interesting to note that Act 792 allows the use of agent provocateurs to nab offenders. The RMP who is familiar with the service of agent provocateurs in the investigation of drug trafficking certainly welcomes the expansion of this provision to child sexual offences. Under S. 22 of Act 792, an agent provocateur is presumed to be a credible witness if the main purpose of his service is to help build up a case against an offender who commits any scheduled offence against a child victim³². In addition, an agent provocateur's evidence needs no corroboration. A conviction cannot be overturned simply because of the court's failure to warn itself that it is not safe to convict the accused person basing on the uncorroborated testimony of agent provocateur³³.

An interesting topic with regard to enforcement strategies against child grooming is whether law enforcers should be given the leeway to take pre-emptive actions or act proactively (Suzanne, 2010) in the sense that a police officer is allowed to masquerade as a child in order to nab the potential child abuser (Gillespie 2008). By such impersonation, the officer is able to respond to the perpetrator's attempt and record the whole transcript of

³⁰ Section 20

³¹ Section 21

³² Section 22(1)

³³ Section 22(3) of the Sexual Offences Against Children Act 2017 (Act 792).

communication. The offender's identity will then be able to be established when he appears in front of the webcam to persuade the 'child' to meet offline or to perform sexual act. With such evidence, an offence of attempt to commit grooming, inciting or abuse may be established, and the police may proceed to arrest the offender. Of course, such strategies are not without criticism for they may be perceived to be creating crime instead of detecting crime. A question of ethics indeed. Notwithstanding, the strategies are widely supported for its efficiency in preventing child sexual abuse and protecting children against child groomers³⁴.

8.5. Offence by Body Corporate

In the case where the prohibited act is perpetrated by a body corporate instead of an individual person, all its employees such as directors, managers, secretaries etc. shall be guilty of that offence unless they can prove that they did not know what was happening or had done their best to try to stop the transgression [S. 23].

8.6. Non-Applicability of Certain Provisions of the Criminal Procedure Code

If a youthful offender of the age 18 or above is convicted for an offence under this Act, he shall not be given a discharge either conditionally or unconditionally, bond of good behaviour or other treatments as provided for under Sections 173A, 293 and 294 of the Criminal Procedure Code (CPC)³⁵.

8.7. Whipping

Contrary to the provision of Section 289(c) of the CPC, the new statute allows a male offender who is above fifty years old to be whipped³⁶.

9. POLICE INVESTIGATION

Obviously Act 792 is an effective law for investigation as compared to other statutes. RMP statistics show that since the implementation of Act 792, charging rates of sexual offences against children achieved 51.6% and 42.5% respectively in 2017 and 2018. Prior to that, the average charging rate for all child abuse cases was only 32.72% (Mooi & Awal, 2018).

Table-1. Statistics of cases investigated under the sexual offence against children Act (2017-2018).

YEAR	2017		2018	
	No. of cases	%	No. of cases	%
Charged in courts	194	51.6%	327	42.5%
No further action	140	37.2%	158	20.5%
Under investigation	42	11.2%	285	37.0%
Total cases	376	100.0%	770	100.0%

Source: Royal Malaysia Police Headquarter, Bukit Aman.

Online sexual offences such as child pornography have become increasingly complex and are posing a great challenge to the police. More often than not, the whole perpetration or part of it is done outside the jurisdiction area of the police station where the case is reported or investigated. In some cases, multiple offenders are found to be

³⁴ Ibid.

³⁵ Section 24

³⁶ Section 289(c) CPC –male persons above fifty years old shall not be punished with whipping, except those convicted under section 376, 377C, 377CA, 377E of the Penal Code.

working together using different tactics to hide their identities. On top of that, it is also not easy to prove that an individual offender has misused a computer to commit the crime³⁷.

10. SPECIAL COURT FOR CHILD SEXUAL CRIME

The first Special Court for Child Sexual Crime was launched by the former Prime Minister of Malaysia, Dato' Sri Mohd Najib bin Tun Abdul Razak on 22 June 2017 at the Palace of Justice, Putrajaya. The aim of setting up this special court was to clear the back log of cases of child sexual offences and to speed up the prosecution process of new cases. A female Sessions Court Judge with expertise in child laws and other matters related to child sexual abuse presides over the special court (Office of the Chief Registrar Federal Court of Malaysia, 2017). On 18 April 2018, the second Special Court was set up in Kuching, Sarawak (Bernama, 2018). The Special Courts provide an environment which is suitable and friendly for child witnesses.

The performance of the prosecution in the Special Court has been encouraging since its inception where a significant number of cases have been disposed of with guilty plea by accused persons. Statistics provided by the Palace of Justice show the rates of accused persons pleading guilty were 85.9% and 38% for years 2017 and 2018 respectively as shown in Figure 3. This achievement may be attributed to the provisions in Act 792 which are more favourable to the prosecution as compared to other legislations as explained above.

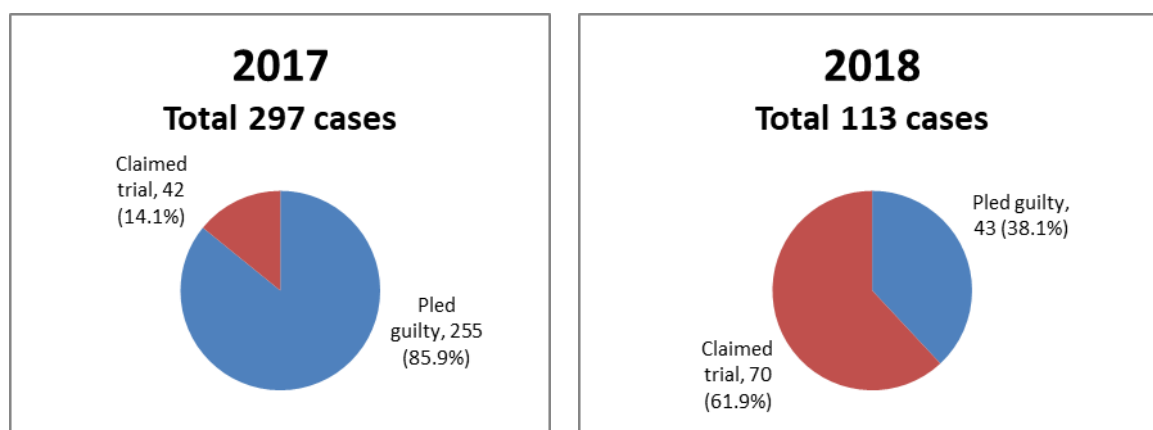


Figure-3. Percentage of accused persons pleading guilty in the special court for child sexual crime (2017 – 2018).

Source: The Palace of Justice, Putrajaya.

Statistics provided by the Chief Registrar of Federal Court Malaysia reveal that from July 2017 to February 2019, a total of 173 child sexual offenders were convicted by the two Special Courts as shown in Table 2. Besides, of the total of 841 cases registered in both the Special Courts, about 48.15% (405 cases) ended up with convictions of the perpetrators (Meikeng, 2019).

Table-2. Percentage of total child sexual abuse perpetrators convicted in the special courts for child sexual crime (July 2017 – February 2019).

Location of Special Court	Number of child sexual offenders convicted	Percentage (%)
Putrajaya	111	64.2%
Kuching	62	35.8%
Total	173	100.0%

Source: Chief Registrar of Federal Court Malaysia.

Compared to other states without the Special Court, child sexual cases are heard in the ordinary criminal session courts. Between July 2017 and February 2019, these criminal session courts throughout Malaysia registered a total of 2,466 cases of child sexual offences with 369 cases or 14.96% ended in convictions. It can clearly be seen

³⁷ Ibid, 42.

that there is a stark difference of 33.19% in conviction rates between the Special Courts for Child Sexual Crime and the ordinary criminal session courts during the period³⁸.

11. RECOMMENDATIONS

With the coming into force of Act 792 and the setting up of the special court, the police and the prosecution are given a shot in the arm to deal with the scourge of child sexual abuse. Investigation process is made easier and prosecution cases may be disposed of more swiftly in courts. Indirectly, the enhanced legal provisions and simplified court processes manage to further reduce the trauma and predicament of child witnesses and victims. Nevertheless, it is submitted there is still room for improvement for both the Act 792 and the Special Court. The following are some recommendations put forward for the enhancement of the system.

11.1. *More Special Courts for Child Sexual Crime*

Currently the Special Court for Child Sexual Crime is only available in Putrajaya and Kuching, Sarawak. Given its efficacy, it should be extended to all states in Malaysia as soon as possible. The Special Court in Putrajaya only hears child sexual cases occurred in the Federal Territory of Kuala Lumpur and Putrajaya, Shah Alam and Petaling Jaya districts. Obviously, the workload of this court is overwhelming with cases from these three major districts. As for the Special Court in Kuching, it only receives child sexual abuse cases from the district itself. Accordingly, all other districts in Malaysia have to send their child sexual abuse cases to be tried in their own ordinary session courts. Already overloaded with multitude of cases and without dedicated and specially trained judges, the ordinary session courts cannot give full attention to cases of child sexual abuse in order to deliver justice speedily.

Whilst the Court for Children which was created under the Child Act 2001 has its definition, constitution, jurisdiction, powers, roles and functions etc clearly spelt out in the 2001 Act, Act 792 makes no mention of any provision for the Special Court for Child Sexual Crime. Accordingly it can be said that it is not mandatory to have the Special Court in every state, unlike the Court for Children. In order for Act 792 to function more effectively, it is suggested that similar provisions like those in the Child Act 2001 should be inserted into it. Such provisions would avert the uncertainty whether a perpetrator should be prosecuted in the Special Court or Court for Children.

11.2. *Witness Support Service*

As all victims and many witnesses of cases under Act 792 are children who most likely would be labouring under mental distress, Witness Support Service (WSS) should ideally be given to them prior to or during the trial. Officers from the Social Welfare Department (SWD) could provide such service to the children in order to make them feel comfortable with the court environment and court proceedings. Besides, WSS would help to calm down the emotion of the child witnesses while they are testifying in court. However in reality, WSS is not given or rarely given to the child witnesses due to the shortage of the social welfare officers in the department. In most of the cases, the judges, interpreters or police officers would render moral support to the child witnesses and try to provide a conducive environment to them³⁹. As such, SWD should look into this problem to ensure all sexual child victims are given WSS.

11.3. *Legal Companion Service*

The Legal Aid (Amendment) Act 2017 which came into force on 17 October 2017 has created the service of legal companions whose duties is to help sexual abuse victims make police reports, guide them through court proceedings, explain legal processes and jargons in layman terms, and keep them accompanied throughout the trial

³⁸ Ibid, 54.

³⁹ As revealed by the Judge whom I interviewed on 22 April 2019.

process. The legal companions are lawyers from the Legal Aid Department who will not hold watching briefs or provide legal counsel (Ariff, 2017). Nevertheless, this service has yet to be implemented in the Special Courts for Child Sexual Crime. It is high time that the government make a serious consideration to make it a reality.

11.4. Facilities in Court

As stated earlier in para 11.1, currently there are only two Special Courts for Child Sexual Crime in Malaysia. These two courts are equipped with all the necessary facilities such as video link, witness room, special lane and so on. However, most of the Session Courts which hear child sexual offences do not have such facilities. Section 4 of the Evidence of Child Witness Act 2007 mandates that a child witness shall be made to stay out of the sight of the accused person in court. To fulfil this requirement and in the absence of the necessary facilities, a piece of cloth, white board or partition is normally used to separate them. In more pathetic situations where such make-shift materials are also unavailable, the poor child witness has to give evidence in the full view of the accused (Mooi & Awal, 2018). Hence it is strongly recommended that in all districts, at least one court room is allocated to child sexual offences and be equipped with necessary facilities.

11.5. Well-Trained Judges and Deputy Public Prosecutors

In line with the Sexual Offences against Children Act 2017, proposals have been made to set up the Special Court for Child Sexual Crime, to ensure judges and prosecutors are well-versed in child sexual crime, and to resolve child sexual abuse cases within a year to ensure such cases are handled with utmost urgency. As such, in year 2017, the Attorney General's Chamber set up the Child Sexual Unit which is assigned with selected and trained Deputy Public Prosecutors. These DPPs are supposed to go to court, train more DPPs in every state and assist in high profile child sexual cases all over the country. Unfortunately many of these DPPs have been transferred to other units or been given other tasks which defeat the ultimate purpose of setting up the unit⁴⁰. The Child Sexual Unit should be maintained and enhanced to train more expert judges and DPPs for the Special Courts in all states in the country.

12. CONCLUSION

In preventing child sexual crime, cooperation between many parties like parents, guardians, teachers and the community is needed to implement the necessary measures. Thus, everybody is legally bound to give information under the new law⁴¹. In addition, Act 792 has many specific provisions to facilitate the investigation and prosecution works. The percentage of accused persons who pleaded guilty shot up tremendously to 85.9% in 2017 compared to only about 6% conviction rate for such crime before the Act was enacted Table 1. Although there are many positive effects of the law since its implementation, there are also some weaknesses in term of management and enforcement (Lee, 2016).



Efforts to combat child sexual crime is a long journey, as such RMP has set up the Malaysia Internet Crime against Children Investigation Unit (Micac) on 9 February 2018 to enhance the detection of child pornography on the Internet and the unusual number of Internet addresses transmitting child sexual abuse materials. The main objectives of Micac is to curb child sexual exploitation especially within the online space. Micac is under the charge of Sexual and Child Investigation Division (D11). However, preventing internet crime against children is not the responsibility of law enforcement agencies alone. Other parties, including the Internet Service Providers (ISPs), parents and the society at large must also contribute to help address this problem (Cohen-Almagor, 2013).

⁴⁰ As revealed by the Judge whom I interviewed on 22 April 2019.

⁴¹ Section 19

In conclusion, in order to curb child sexual crime effectively, all agencies like the Attorney General’s Chamber, Courts, hospitals, Social Welfare Department, Royal Malaysia Police, Non-governmental Organisations (NGOs) and the community not only have to work closely but also share information among themselves.

Table-3. Setup and facilities of the special court for child sexual crime, the palace of justice, Putrajaya.

Types of Rooms	Waiting Room	Playing Room	Witness Room
Purpose	child witness to wait and rest	Child witness to play	child witness to testify through video link
Physical Spec	A room with sofa, table and bed	A room with toys and books	TV set, video link facilities, camera, table and chair
Sample of Image			

Source: The Palace of Justice, Putrajaya.

Funding: This study received no specific financial support.

Competing Interests: The authors declare that they have no competing interests.

Acknowledgement: Both authors contributed equally to the conception and design of the study.

REFERENCES

- Ariff, S. U. (2017). Legal companions available under legal aid act amendments. Retrieved from <https://www.nst.com.my/news/nation/2017/07/259107/legal-companions-available-under-legal-aid-act-amendments>.
- Bernama. (2018). Special court on sexual crimes against children set to dispose off cases within six months. New straits times online. Retrieved from <https://www.nst.com.my/news/crime-courts/2018/04/358906/special-court-sexual-crimes-against-children-set-dispose-cases>.
- Boo, S.-L. (2016). British paedophile met victims at community of Praise church, source says. Malay Mail Online. Retrieved from <https://www.malaymail.com/news/malaysia/2016/06/03/british-paedophile-met-victims-at-community-of-praise-church-source-says/1133555>.
- Cohen-Almagor, R. (2013). Online child sex offenders: Challenges and counter-measures. *The Howard Journal of Criminal Justice*, 52(2), 190-215. Available at: <https://doi.org/10.1111/hojo.12006>.
- Craven, S., Brown, S., & Gilchrist, E. (2006). Sexual grooming of children: Review of literature and theoretical considerations. *Journal of Sexual Aggression*, 12(3), 287-299. Available at: <https://doi.org/10.1080/13552600601069414>.
- Eneman, M. (2010). *Technology and sexual abuse: A critical review of an internet grooming case*. Paper presented at the Proceedings of the International Conference on Information Systems.
- Gillespie, A. (2006). Indecent images, grooming and the law. *Criminal Law Review*, May, 412-421.
- Gillespie, A. (2008). *Child exploitation and communication technologies*. Dorset: Russell House Publishing.

- Gillespie., A. A. (2008). Cyber-stings: Policing sex offences on the Internet. *The Police Journal*, 81(3), 196-208. Available at: <https://doi.org/10.1350/pojo.2008.81.3.415>.
- Krone, T. (2004). A typology of online child pornography offending. *Trends & Issues in Crime & Criminal Justice*, July(279), 1-6.
- Lee, L. T. (2016). Address weaknesses to protect our children new straits times online. Retrieved from <https://www.nst.com.my/news/2016/11/189322/address-weaknesses-protect-our-children>.
- Meikeng, Y. (2019). 173 abusers put behind bars. Retrieved from <https://www.thestar.com.my/news/nation/2019/04/29/173-abusers-put-behind-bars/>.
- Mooi, T. G., & Awal, N. A. M. (2018). Interviewing child witnesses of child sexual abuse cases. *International Journal of Asian Social Science*, 8(7), 354-366. Available at: <https://doi.org/10.18488/journal.1.2018.87.354.366>.
- Office of the Chief Registrar Federal Court of Malaysia. (2017). Sexual crime court against children. Retrieved from <http://www.kehakiman.gov.my/en/sexual-crime-court-against-children>.
- Palmer, T. (2005). *Behind the screen: Children who are the subjects of abusive images*. In. Quayle, E. & Taylor, M. (Eds.), *Viewing Child Pornography on the Internet*. Lyme Regis: Russell House Publishing.
- Rodzi, N. H. (2015). Dep IGP: Student in child porn case a free man after serving sentence. Star Online. Retrieved from <https://www.thestar.com.my/news/nation/2015/05/07/crime-child-porn-free-man/>.
- Sulistyo, F., & Manap, N. A. (2018). Pornography and sexual crimes towards children in Indonesia: A judicial approach. *Brawijaya Law Journal*, 5(2), 261-270.
- Suzanne, O. (2010). Child pornography and sexual grooming: Legal and societal responses. *British Journal of Criminology*, 50(3), 582-586.
- Tan, G. M., & Noor, A. M. A. (2018). A case study of police investigation of child abuse cases. *Malayan Law Journal*, 3(1), 1-8.
- Taylor, M., & Quayle, E. (2003). *Child pornography: An internet crime*. Hove: Brunner/Routledge.
- Walsh, W. A., Jones, L. M., Cross, T. P., & Lippert, T. (2010). Prosecuting child sexual abuse: The importance of evidence type. *Crime & Delinquency*, 56(3), 436-454. Available at: <https://doi.org/10.1177/0011128708320484>.

Views and opinions expressed in this article are the views and opinions of the author(s), International Journal of Asian Social Science shall not be responsible or answerable for any loss, damage or liability etc. caused in relation to/arising out of the use of the content.