THE POSITION OF CHILD TESTIMONY IN SEXUAL OFFENCES IN SHARIAH AND CIVIL LEGISLATION IN MALAYSIA

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Abstract
The common issue of child testimony was that a child is presumed not to be a good or reliable witness because they find it difficult after a lapse of time to distinguish between the result of observation and the result of imagination. The objective of this article is to examine previous studies related to child testimony involved in sexual offences in courts. The method employed would be on the provisions of laws relating to evidence given by a child; and the procedures applicable in Malaysia in the three existing courts i.e. Shariah Courts, Courts for Children and Courts for Sexual Offences Against Children which is to explore relevant issues on its admissibility for further review and reform. The outcome from this paper will ascertain whether the current laws are adequate to protect the rights of child during trial.

Research Highlights
Firstly, it has been found that there is a different age limit for a “child” to testify in court trial which is highlighted under Section 2 of Evidence of Child Witness Act 2007 (Act 676) and Section 2 of Child Act 2001 (Revised 2016) (Act 611); i.e. 16 years old (under Act 676) defined only for a “child witness” and 18 years old (under Act 611) is defined for a “child” in general. Hence, it is submitted that such definition under Act 676 only covers for a child to testify as a witness and not covering others i.e. a child suspect or offender where no fair trial and rights are protected. Secondly in Shariah legislation, it is mentioned that a child must attained a “baligh” age and no specific age is stated in the Shariah Evidence Act of the states in Malaysia. The determination of a “baligh” age would be the child has the intellectual capacity and a trustworthy although the child is still at a very young and tender age (Section 3(1) of the Shariah Court Evidence (Federal Territories) Act 1997), yet the testimony would be admissible as bayyinah instead of syahadah. Thirdly, the types of evidence by a child in both legislation are still vague: (1) “hearsay testimony” is only accepted if a child present and testify in court during cross-examination although the child is unfit due to certain limitation or reason; (2) “pre-recorded testimony”, a child is still required to present at cross-examination stage to answer queries from the opposing party or the recorded testimony is insufficient, which would more confuse as well as possibly to get the child more traumatized.

Research Objectives
The objective of this article is to examine and scrutinize the position and admissibility of the child testimony in three existing courts in Malaysia, i.e. Court for Children, Courts for Sexual Offences Against Children and Shariah Court who are involved in sexual offences. There has been a criticism over the credibility of a child in giving testimony been raised due to their tender age and trustworthiness. Thus, the reliability and credibility to have a child to testify would affect the court proceeding and justice as well as the child’s right and protection as

**Methodology**

A qualitative study is employed with reference to provision of laws relating to evidence and procedures given by a child in the context of criminal proceeding. The outcome of this study shall assist to further provide some suggestions to be considered in respect of certain imprecision of laws as highlighted herein. The governing law and provisions that will be examined to identify the position of child testimony are Evidence Act (1950) (Act 56), Evidence of Child Witness Act 2007 (Act 676), Shariah Evidence Act of the states in Malaysia, Child Act 2001 (Revised 2016) (Act 611) and Sexual Offences Against Children Act (Act 792).

**Results**

A recommendation for both legislation to do:

Firstly, an amendment in the laws to have a standard definition of “child” and “child witness” and setting a similar age limit for Child Act 2001 (Revised 2016) (Act 611) and Evidence of Child Witness Act 2007 (Act 676). In the Shariah Court Evidence Act of the states also must set an age limit apart from “baligh” as a determinant factor for the child’s mental capacity so their testimony to be deemed admissible.

Secondly, hearsay evidence to be recognised and accepted in dire situation where the child is unfit to provide evidence directly as this would also cater the current needs. A flexibility in admitting this evidence is crucial when it is the only way or strong evidence that is available at that time.

Thirdly, to accept video recording in three stages of criminal proceeding (examination-in-chief, cross-examination, re-examination). Apart from this, the guidelines on the procedure in recording the child's evidence must be improved and updated with the latest developments of law of giving evidence.

**References**

Evidence Act 1950 (Act 56).
Sexual Offences Against Children Act (Act 792).
Syariah Court Evidence (Federal Territories) Act 1997
Author’s Biography

Asmida Ahmad is a lecturer at the Faculty of Law, Multimedia Universiti Malaysia (MMU) in Melaka. She is currently pursuing her PhD at UKM. Her research interests are in the area of child law, criminal law, syariah evidence, human rights and comparative law.

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