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CHILD CYBER BULLYING: AN OVERVIEW OF THE LEGAL PROTECTION IN MALAYSIA

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Abstract

Children nowadays are exposed to criminal activities and maltreatment, through the use of internet. The speedy and easy access to internet using smart phones becomes the contributing factors of many criminal activities including cyber bullying. Cyber bullying is a cybercrime that happened among children in Malaysia. Based on 2017 statistic, survey conducted by DIGI Cyber Safe found out that 90% of the children are at risk of being cyberbullied. The Malay Mail dated 27 Oct 2018 reported that Malaysia ranked 6th place in a global cyberbullying survey conducted among 28 countries, and 2nd place among the Asia countries in cyberbullying. Therefore, this study is conducted to examine the scenario of children cyber bullying in Malaysia and to identify the related legal provisions in force. This study employs library research method for data collection. The study analyse statutes, books, journals, reports, conference proceedings, and other periodicals. This study found out that Malaysia is still lacking on the provisions of protection of child in cyberbullying.

Keywords: Cyberbullying, children, legal provision.

1. Introduction

Child is defined by Section 2 of Child Act 2001 as any person under 18 years old, and who's attained 10 years old and above have a criminal responsibility as prescribed in Section 82 of the Penal Code. This definition is in line with the definition provided by the United Nation.

Malaysia has over 20.1 million active internet users, with 16.8 million active on social media (Bernama, 2015). The increase numbers of internet usage and easily accessible of it had open to the problem among children. One of the problem is cyber bullying. Cyber bullying is a type of cyber harassment which refers to cybercrime that annoy, distract or intrude other person. It can be refers as communication and information using technology devices to communicate with another with an aim to harass or humiliate. Other than that, it can be defined as willful and frequent harm imposed through the medium of electronic messages (Hinduja & Patchin, 2008) and it also known as electronic bullying or online social cruelty (Kowalski et al., 2008). As stated by Mason (2008) cyber bullying is a kind of repetition of harassment by sending or posting cruel text, graphic using technological method.

Cyber bullying is one of classification under cyber harassment. Cyber harassment in Malaysia is further divided into cyber bullying, cyber stalking, racial, religious and sexual insults. Malaysia Computer Emergency Response Team (MyCERT) (n.d.) had classified cybercrimes into 9 types, namely, Content Related, Cyber Harassment, Denial of Service, Cyber Fraud, Intrusion, Intrusion Attempt, Malicious Code, Spam and Vulnerabilities Report. Cyber bullying could extend to other countries, which is beyond the Malaysian jurisdiction. It involves illegal activities committed in 'cyber space' whereby the technology device such as smartphone is used as a tool to commit a crime.

The form of cyber bullying is very difficult to detect as the offender is anonymous. Based on Cyber Security Malaysia, cyber bullying may occur in various forms; 1) Being called names in hurtful means 2) Offensive or nasty messages sent to other person 3) Being left out or ignored 4) Private information being online without consent 5) Someone hacks (enter without permission) into online accounts. 6) Lies and rumours spread about other person. 7) Being threatened or forced to do things and 8) Posting photos or video to embarrass other person. Cyber bullying can encompass the use of an electronic medium to sexually harass (Hinduja & Patchin, 2008; Shariff & Johnny, 2007), including distributing unsolicited text or photos of a sexual nature or requesting sexual acts either online or offline (Schrock & Boyd, 2008).

2. The Governing Legal Provisions in Malaysia

Generally, Malaysian children are governed by the Child Act 2001. Its preamble acknowledging that a child, by reason of his physical, mental and emotional immaturity, is in need of special safeguards, care and assistant. The recent amendment of Child Act in 2016 had open the eyes of publics of the protection of child. The new amendments contain 4 main major changes which included Child registry, Community Service Order, Family based care, Heavier Penalty. Although its involved major amendments provisions regarding the protection and safety of child, therefore the safety of child in cyberspace is not focused. However, Child Act recognize in general, that every child is entitled to protection and assistance as inline also within the Section 17 of Child Act 2001 which states ' a child is need of care and protection if child

will be physically or emotionally injured. Therefore this provision does not cover of cyber bullying protection against child.

Malaysian Parliament has enacted a number of specific legislations on protection of technology related activities such as Digital Signature Act 1997, Computer Crimes Act 1997, Telemedicine Act 1997, Copyright Act 1987, Communications and Multimedia Act 1998, Malaysian Communications and Multimedia Commission Act 1998, Electronic Commerce Act 2006 and Personal Data Protection Act 2010. However, all of this provisions silent on the protection, specifically for children in cyber world. The main constraint is the laws stated above are not drafted fully coverage of protection of technology and in most cases are not sufficiently embrace the technology and internet related activities.

Malaysia have related government agencies which are responsible to combat cybercrime. They are the Ministry of Science, Technology and Innovation (MOSTI), the Cyber Security Malaysia, and Malaysian Communications and Multimedia Commissions (MCMC). MOSTI had formed specific team called Malaysian Computer Emergency Response Team (MY CERT). This team addresses the issue of information security and cyber harassment. National Cyber Security Policy (NCSP) also being designed by MOSTI to address and cater issues on online security.

NCSP been designed to focus on threat to the Critical National Information Infrastructure (CNII) where consists of the networked information systems. The policy thrusts under NCSP which include revising and improving Malaysia's cyber laws. The related bodies especially Cyber Security had taken actions on the initiatives to safeguard the children in cyber world example like introducing Cyber SAFE, 24-hours Cyber999 Help Centre, and parental guidelines for children in cyberspace. Even though, Malaysia have a specific regulated body govern to educate and enhance public awareness on technology issues, but still lacking on legal provisions in this matter. Thus, the government should revise, amend, and deeply look into our current provisions that must contains betterment protection of children in cyberspace for our future generations.

3.   Problem Statement

Children nowadays been exposed to any criminal activities and cyber abuse. By the evolution of the technology and the internet, its become a way of life and necessity to every person, and include children. Children can now easily access the internet using mobile devices. The rapid advancement of internet access is a contributing factor of cyber abuse among children. Children can be seen less interactive physically because of too attach with the mobile devices. In instead, children constantly interacting via social networking such as Facebook, Twitter, Instagram, playing online games, watching movies and surfing internet whether home or elsewhere.

Children are seen to be more valiant and self-confident when they are online. They are bold to make any comments, post photos or videos. This boldness and confidence are sometimes seeming and some are done anonymously. Because its can be done anonymously and they know that their identity is concealed, its expands their boldness (Cyber Security Malaysia, 2014). Cyber world had open for unlimited resources and exposed any illegal activities. Children had exposed to a cyber abuse like cyber bullying, cyber defamation, cyber stalking, and cyber harassment. Children are progressively more exposed to the harmful risks of the technological revolution in mobile phone and internet technologies.

Reported by Cyber Security Malaysia, based on statistic by helpline cyber 999 there are 1737 number of cyber harassment cases reported from 2012 until 2017. Based on the statistics by My CERT, there are 560 cases on 2017, and 356 number of cases on 2018. Cyber harassment are included cyber bullying, cyber stalking, racial, religious and sexual insults. Based on Cyber Security report, the most commonly used mechanism are harassing via social media such as Facebook, Instagram and Twitter. Social media network now enables the medium of easy content and information, creation and sharing among the users. Its provides the openness and transparency to the contents of social web. Without the parental control and without sufficient knowledge and awareness, this can cause a problem of children commit cyber bullying.

The problems that exists with the advancement of social media technology is that anyone can gain access to any information posted online, despite user preferences and despite user awareness. The issues of safety and privacy become very important. Researches on social media have highlighted the ways in which criminal behaviour is influenced by online.

Issues concerning child care and child abuse are very critical today considering the many incidents of abuse and violence against children nowadays (The Star, 2016), the children can easily access the internet through social networks such as Facebook, We Chat and Instagram. According the statistic on 2017, survey conducted by DIGI Cyber Safe finding out 86% at risk of being sexually harassed, and 90% at risk of being cyberbullied. This survey gathered the information among 96 undergraduate students, range age between 18 years old and 20 years old. According to statistic, Malaysia had ranked 6th place among 28 countries, and 2nd place in Asia countries in cyberbullying (Rosli, 2018). A survey by DIGI Telecommunications Sdn Bhd and Telenor Group had revealed that one in four students admitted they had experienced cyberbullying (Thye, 2017)

A global study published in the "2016 Norton Cyber Security Insights Report: Family Edition" reveals that only 10% of Malaysian parents reported that their child was cyberbullied. However, 40% of them believed their children are more likely to be bullied online than on a playground (Thye, 2017)

According to the research conducted by Malaysian Communication and Multimedia Commission (MCMC) in 2017 out of 32 million of Malaysian population, 24.5 million users (76.9%) have an access to Internet. This showed huge number of people accessing the Internet in Malaysia. Besides that, according to MCMC, smartphone is the main medium used for accessing internet by the Malaysians. Compared to laptops and computers, the smartphones are used by 21.9 million (89.4%) Malaysians. Among all the internet users, most of them use internet for communications purpose such as Whatsapp, Facebook, Instagram, Twitter, and WeChat. Its's about (96.3%) or 23.59 million user's usage internet for that purpose (Ahmad, 2018). On 2014, Cyber Security Malaysia under Cyber SAFE had conducted National Survey Report among primary schools and secondary schools. There are 13,945 respondents involved in this survey. Based on the result of total respondents, more than a quarter of respondents or 3,600 of them indicated that they have been bullied. Besides that, respondents mentioned that they have been bullied frequently (3%), while (12%) of them have been bullied a few times. Another 11% have been bullied once, and half of the respondents (52%) indicated that they have never been bullied. More than (23%) were uncertain about whether they have been bullied at all.

Based on the result of children had been bullied which is more than a quarter or 3,600 of them the resulted found out that (4%) of children above 18 have been bullied, 43% of those aged 13 to 15 have been bullied. The percentages for bullied children aged 16 to 18 and below 13 is (26%) and (28%) respectively.

Based on the survey it's also found out that children doesn't aware that they had been bullied. 8% of them said that cyberbullying is just big and fancy word and not a big deal. Whereby, 18% said that cyber bullying is no big deal and its only happens online and not in real world.

Based on the problems stated earlier, the advancement of internet leaves lacuna in some of existing provisions. Penal Code as the main provision of criminal in Malaysia are not precisely provide internet related crimes. Meanwhile, Computer Crimes Act 1997 also not cover many areas of technology related activities. The main constraint is that these provisions were not drafted with technology in mind and in most cases are not adequately inclusive to include the various types of technology-related activities.

4. Research Questions

1. What are the scenario of child cyber bullying in Malaysia?
2. What are the legal provisions that applied to child cyber bullying in Malaysia?

5. Purpose of the Study

The purpose of this study to analyse the scenario of child cyber bullying in Malaysia and to examine the existing legal provisions that governed child cyber bullying in Malaysia.

6. Research Methods

In preparation of this study, the researcher gathered data from statutory provision, cases reports, reference book and journals, and statistic report form related government agencies.

7. Findings

The study had shown being a victim of cyber bullying can negatively impact physical, social and cognitive functioning, development and wellbeing of the children. It can also cause psychological, emotional and academic problems. A number of studies have found an association between cyber victims, cyber bullies and depression and suicidal ideation (Hinduja & Patchin, 2010) and externalizing behaviours (Perren & Gutzwiller-Helfenfinger, 2012; Ybarra et al., 2007)

8. Conclusion

The constant improvement of the law on children redirects a well situation to further safeguard, care and protect the children. Apart from legal provision that we have in our country, society is needed of social improvements to a better preclude act of cyber abusing of children based on the principle prevention is better than cure. Publics and family members play important role in order to curb cyber abuse against children. The awareness and attention from them is vital and its can assist this things from happened. The

definition and understanding of children cyber abuse should be made public responsive especially regarding on the terms specifically in Child Act 2001, and its new amendment 2016.

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