

THE NECESSITY OF CHILD CARE SERVICE AGREEMENTS IN MALAYSIA: A LEGAL ANALYSIS

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ABSTRACT

The Child Care Centre Act 1984 (Act 308) and The Child Care Centre Regulations 2012 are the primary regulative measures to protect children in childcare facilities in Malaysia. The aim of Act 308 is to oversee the registration, control, and inspection of the childcare centre and other related matters connected therewith. Although regulatory measures were established in Malaysia, child maltreatment in childcare centres remains alarming. The childcare regulations in Malaysia provide the guidelines for operating childcare, such as the documentation needed while running off the services, the scope of protection towards the children, offences, and penalties towards any maltreatment of the children, yet, the enhancement of the protection should be extended to mitigate childcare offences in a holistic perspective. In other countries, such as the United States of America (USA), specifically in Texas and California, the childcare agreement has become another protection mechanism practised to regulate childcare services. Therefore, the purpose of this

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paper is threefold: firstly, to provide insight into Malaysia's childcare regulations and practices; secondly, to analyse the comparative country childcare regulations, agreements, and conventions; thirdly, to conduct an analysis of the needs for childcare services contracts in Malaysia being practices by using content analysis and comparative approach. As a result, the government could opt for another legal mechanism to mitigate child abuse and neglect in childcare centres to ensure the comprehensiveness of the childcare regulations in Malaysia.

Keywords: Childcare Law, Childcare Services Contracts, Comparative Childcare Regulations, Mitigate Childcare Offence.

KEPERLUAN PERJANJIAN PERKHIDMATAN PENJAGAAN KANAK-KANAK DI MALAYSIA: SUATU ANALISIS UNDANG-UNDANG

ABSTRAK

Akta Taman Asuhan Kanak-Kanak 1984 (Akta 308) bersama dengan Peraturan-Peraturan Taman Asuhan Kanak-Kanak 2012 berfungsi sebagai peraturan utama di Malaysia dalam memastikan keselamatan kanak-kanak semasa berada di bawah jagaan pengasuh. Tujuan utama Akta 308 adalah untuk menyediakan garis panduan berkaitan pendaftaran, pemantauan, dan pemeriksaan pusat jagaan kanak-kanak serta aspek lain yang berkaitan. Walaupun langkah kawal selia diwujudkan di Malaysia, penganiayaan kanak-kanak di pusat jagaan kanak-kanak terus membimbangkan. Sememangnya boleh dikatakan bahawa peraturan penjagaan kanak-kanak di Malaysia menyediakan garis panduan untuk mengendalikan penjagaan kanak-kanak, seperti dokumentasi yang diperlukan semasa menghentikan perkhidmatan, skop perlindungan terhadap kanak-kanak, kesalahan, dan penalti terhadap sebarang penganiayaan terhadap kanak-kanak, namun, peningkatan perlindungan harus diperluaskan untuk mengurangkan kesalahan penjagaan kanak-kanak dalam perspektif yang lebih holistik. Di negara lain seperti Amerika Syarikat (AS), khususnya di negeri Texas dan California, perjanjian penjagaan kanak-kanak telah menjadi satu lagi mekanisme perlindungan yang diamalkan dalam mengawal selia perkhidmatan penjagaan kanak-kanak. Oleh itu, kertas penyelidikan ini bertujuan pertamanya, untuk membincangkan peraturan serta amalan penjagaan kanak-kanak di Malaysia; kedua, untuk menganalisis peraturan, perjanjian dan konvensyen mengenai penjagaan kanak-kanak di negara-negara yang dibuat perbandingan; ketiga, menjalankan analisis tentang keperluan kontrak perkhidmatan penjagaan kanak-kanak di Malaysia yang menjadi amalan dengan menggunakan pendekatan

analisis kandungan dan perbandingan. Secara konklusifnya, bagi memastikan kesyumulan peraturan penjagaan kanak-kanak di Malaysia, satu lagi mekanisme undang-undang boleh dipilih oleh kerajaan untuk mengurangkan penderaan dan pengabaian kanak-kanak di pusat jagaan kanak-kanak.

Kata Kunci: Undang-Undang Penjagaan Kanak-Kanak, Kontrak Perkhidmatan Penjagaan Kanak-Kanak, Perbandingan Peraturan Penjagaan Kanak-Kanak, Mengurangkan Kesalahan Penjagaan Kanak-Kanak.

INTRODUCTION

The increasing trend of the working mom phenomenon has urged the government to provide the initiative and appropriate childcare placement, laws, and policies. The rise of working mothers in Malaysia has prompted the government to intervene in improving childcare facilities, policy, and law. In 2023, the Malaysian government announced its intention to set up affordable childcare facilities and an RM10 million allocation to register unregistered childcare facilities. The interventions will boost the women's labour force participation rate from 55.5% to 60%, as it tries to break down obstacles like unpaid care work, gender discrimination, and a lack of family support to allow mothers to go back to work.¹ Hence, it has resulted in various childcare institutions being established to cater to such demands in centre-based or home-based childcare services. Centre-based childcare typically involves larger groups of children with multiple child caregivers, whereas home-based childcare usually accommodates fewer children with a single childcare giver.

Regardless, all childcare providers (or childcare givers) must comply with the Child Care Centre Act 1984 (Act 308) and the Child Care Centre Regulations (2012) while operating their services. An additional significant legal reference concerning childcare centres in Malaysia is a guideline issued by local authorities titled "Garis Panduan Penubuhan Taska dan Tadika" (GP027), released in 2012 and updated

¹Ministry of Finance Malaysia. "Gov't Moves to Get More Women into the Labour Force." Ministry of Finance Malaysia, 2023, <https://www.mof.gov.my/portal/en/news/press-citations/gov-t-moves-to-get-more-women-into-the-labour-force>.

in 2017. This guideline takes into account the stipulations of various technical agencies, including local councils, the Social Welfare Department (SWD), the Malaysian Fire and Rescue Department (JBPM), the Malaysian Ministry of Health (KKM), and the State Education Department (JPN).² As mentioned above, reflecting on these rules shows that the Malaysian government is dedicated to creating a safe and appropriate environment for young children. The rules seek to improve the quality, safety, and effectiveness of childcare services.

The Child Act 2001 and the Sexual Offences Against Children Act 2017 (Act 792) are among the key laws that will safeguard children under the care of childcare providers. The management, parents, and childcare providers should constantly be aware of their responsibilities to ensure children's safety and protection by averting accidents and injuries.³ Although there are specific laws regulating childcare in Malaysia, there are a number of child abuse cases caused by the giver which have raised concerns as to whether the current laws are sufficient to protect the well-being of children. The occurrence of child abuse cases involving child care providers raises serious concerns about the effectiveness of these legal measures in protecting the well-being of children under their care.

Despite the existence of these legal frameworks, several weaknesses persist. These include limited enforcement of regulatory standards, insufficient background checks and training for child care providers, and vague definitions of abuse and neglect in the law. Moreover, the lack of mandatory reporting mechanisms and inconsistent licensing requirements further contribute to the vulnerability of children in care. Offences that require mitigation include physical abuse, emotional abuse, sexual abuse, and neglect, especially those committed by unqualified, unregistered, or unsupervised caregivers. As highlighted in the conclusion part of the

²Abdul Mutalib, Mashitah, Rahimah Saimin, Intan Nadia Ghulam Khan, Abidah Abdul Ghafar, and Nik Salida Nik Saleh. "Legal Requirements of Home-Based Childcare Centres in Malaysia; Are Childcare Providers Aware?" *Malaysian Journal of Syariah and Law* 12, no. 2 (2024): 311–23. <https://doi.org/10.33102/mjssl.vol12no2.517>.

³Abashah, Aidanazima, and Che Azlan Taib. "Optimising Malaysian Childcare Safety Performance, in Light of Management, and Babysitting Practices." *South African Journal of Childhood Education* 14, no. 1 (2021). <https://doi.org/10.4102/sajce.v14i1.1529>.

Pendakwa Raya v Lee Seet Yeng [2016], MLJU 1295, which states that, *however, because child abuse cases are increasing in numbers nowadays, it is a social issue that should be dealt with high importance...*⁴ The word mitigates the risk of the children being placed with an unqualified childcare provider should be emphasised first. One way to reduce the offence is to make the preventive and precautionary theory the pillar of childcare laws and regulations. The court stated that, because child abuse cases are increasing, it is a social issue that must be considered as high importance.

Thus, the enhancement of the existing child care laws would be necessary to mitigate such offences. From the above case, the court specifically remarked that child abuse cases were on the rise and emphasised that such cases must be dealt with utmost seriousness due to their severe ramifications for society as a whole. This acknowledgment provides an important jurisprudential foundation for the evolution of Malaysia's child care law regime. The legal recognition of child abuse as a serious social issue underscores the need for the clarification of legal standards and responsibilities of care in the provision of child care services.

In another country, such as the United States of America (specifically in Texas and California), another element is highlighted in its childcare regulations and practices, such as developing an agreement for childcare services between parents and caregivers. Implementing such an agreement enables the parties to follow the rules and regulations of such matters and provide equivalent damages as agreed. Other elements highlighted in such child care regulations and practices include developing an agreement for child care services between parents and child care providers,⁵ which is seen as a distinctive approach used to regulate the childcare services. Implementing the said agreement enables the parties to follow the rules and regulations of such matters and provide equivalent damages as agreed.⁶ Here, the childcare providers should have clear written policies in the form of an

⁴*Pendakwa Raya v Lee Seet Yeng [2016] MLJU 1295*

⁵Karageorge, Kate, and Rachel Kendall. *The Role of Professional Child Care Providers in Preventing and Responding to Child Abuse and Neglect*. U.S. Department of Health and Human Services, 2008, www.childwelfare.gov/pubpdfs/child%20care.pdf.

⁶Karageorge and Kendall, *The Role of Professional Child Care Providers*.

agreement to share with parents when the childcaregiver undertakes to provide such service.⁷

A brief agreement outlining the programme's rules should be signed by the parent and the daycare provider. Both the caregivers' and the parents' interests will be safeguarded by this.⁸ This paper aims to do three things: first, it will give an overview of Malaysia's childcare laws and practices; second, it will examine the childcare laws, agreements, and conventions of the comparative countries (California State of America the states of California and Texas); and third, it will analyse the requirements need for childcare service agreement in Malaysia using a comparative and judicial approach. Therefore, this paper has been divided into three sections: firstly, a study on the regulative measures of childcare in Malaysia; secondly, a critical analysis of the legal childcare practices in Texas and California USA; and thirdly on a discussion on the analysis of the needs of childcare services contracts in Malaysia. Finally, various research ideas will need further investigation in future research.

RESEARCH METHODOLOGY

This research adopted the pure legal research approach, using qualitative analysis to study the childcare law in Malaysia. With content analysis, this research investigated the problems related to childcare services but mainly focused on Malaysia's legal framework. This research analyses both primary and secondary data. Content analysis can be defined as a reproducible, systematic way of reducing large volumes of text words into smaller content categories based on explicit coding rules.⁹ The research also utilises the comparative legal research technique to extend this study further. The comparative legal research technique analyses legislative text, jurisprudence, and legal doctrines, particularly foreign law.¹⁰ This strategy will make the study

⁷Karageorge and Kendall, *The Role of Professional Child Care Providers*.

⁸*Pendakwa Raya v Lee Seet Yeng* [2016] MLJU 1295

⁹Abdullah, N. C. (2018). *Legal Research Methodology*. Subang Jaya, Selangor: Sweet & Maxwell.

¹⁰Majeed, N., and A. Hilal. "Approaches and Methodologies in Comparative Legal Studies: An Abstract Framework as Methodology". Pakistan

more sensitive to the social and cultural character of the law and provide a unique perspective on how law develops and operates in different cultures. Comparative legal research will benefit this research, especially in legal development, where the law must be altered, amended, and transformed.

THE REGULATIVE MEASURES OF CHILDCARE IN MALAYSIA

As mentioned earlier, several legal provisions have been enacted in Malaysia, such as the Childcare Centre Act 1984 (Act 308), (2) Centre Regulation 2012, (3) Child Act 2001 (Act 611), and (4) Sexual Offences Against Children Act 2017 (Act 792). Therefore, in this subsection, the researcher will thoroughly discuss the critical points of these laws as provided below.

The Child Care Center Centre Act (Act 308)

Historically, in 1983, Malaysia recognised the need for at least a minimal standard in governing childcare services when the report on a survey on childcare by the Social Welfare Services Department was concluded.¹¹ In order to supervise childcare operations, childcare registration under the SWD, and inspection of childcare institutions, the government passed the Child Care Centre Act (Act 308) 1984. In Malaysia, there are four categories of childcare facilities, which are; (1) home childcare centre, (2) workplace childcare center is a workplace center that accommodates ten or more children, (3) community-based childcare centre and (4) institution-based childcare centre.¹² The classification of childcare service facilities is essential in

Languages and Humanities Review, vol. 6, no. 3, Sept. 2022, pp. 474-88, doi:10.47205/plhr.2022(6-III)41.

¹¹Rahmatullah, Bahbib. "Overview of Early Childhood Care and Education in Malaysia." *Hungarian Educational Research Journal* 11, no. 4 (2021): 396–412. <https://doi.org/https://doi.org/10.1556/063.2021.00074>.

¹²Abdul Mutalib, M., R. Saimin, I. N. Ghulam Khan, A. Abdul Ghafar, and N. S. S. Nik Saleh. "Legal Requirements of Home-Based Childcare Centres in Malaysia; Are Childcare Providers Aware of These?" *Malaysian Journal of Syariah and Law* 12, no. 2 (2024): 311–23. <https://doi.org/10.33102/mjssl.vol12no2.517>.

Malaysia's early childhood care framework, providing various options that meet the different needs of families and communities.

Hence, parents need to be aware of childcare categorisation to enable a good option when choosing a childcare centre for their children. The childcare centre serves as a primary setting for fostering an environment where children can learn various physical and academic abilities, while also being nurtured in positive behaviours, social skills, and resolving conflicts.¹³ A well-founded childcare centre will help the children develop their cognitive and emotional skills. Research conducted by Richter et al. indicates that early childhood development (ECD) includes the resources required to influence the lives of children from birth to age 8, enabling them to survive, flourish, and establish a strong foundation.¹⁴

ECD consists of five essential elements: proper health, sufficient nutrition, attentive caregiving, safety and security, and chances for early learning.¹⁵ Today's perspective of child care services is viewed as an essential start-up for young children. The childcare services are no longer focusing solely on babysitting the children. Still, the focus has been diversified into providing an environment that can encourage the positive development of the children, such as stimulating sensory play through gross motor and refined skills.¹⁶ Another essential element that needs to be considered by the parents in choosing an ideal childcare centre for their children is the registration of the childcare centre under the SWD. The registration of childcare centres is essential, and it is evident that registered centres are complying with the

¹³Stevens, Sonya. "A Mixed Method Program Evaluation of Annual Inspections Conducted in Childcare Programs in Washington State." *Journal of Regulatory Science* 8 (2020): 1–11. <https://doi.org/10.21423/jrs-v08stevens>.

¹⁴Jolley, Emma, Stevens, Bechange, Mika Mankhwazi, Jenipher Mbukwa Ngwira, Rachel Murphy, Elena Schmidt, and Paul Lynch. "Measuring the Impact of a Training Intervention for Early Childhood Centre Staff on Child Development Outcomes: Findings from a Cluster Randomized Control Field Trial in Rural Malawi." *Child Care Health Dev.* 48, no. 5 (2022): 736–43. <https://doi.org/10.1111/cch.12981>.

¹⁵Jolley et al., "*Measuring the Impact of a Training Intervention*," 737.

¹⁶Sutapa, P.; Pratama, K.W.; Rosly, M.M.; Ali, S.K.S.; Karakauki, M. Improving Motor Skills in Early Childhood through Goal-Oriented Play Activity. *Children* 2021, 8, 994. <https://doi.org/10.3390/children8110994>

standards and regulations outlined in Act 308 and the Child Care Centre Regulation 2012 (CCCR 2012).

Registration matters are another essential aspect to be highlighted when operating the childcare centre. Every childcare centre shall be registered under Act 308 (specifically Section 4). Therefore, the childcare giver who operates the childcare services in the centre-based or home-based setting is obliged to register themselves with the Director-General of DSW in the prescribed form,¹⁷ except for home-based childcare centres with less than four children.¹⁸ It is deemed an offense if a childcare centre has not yet registered itself according to Section 6 (1) and (2) of Act 308. While Act 308 serves as Malaysia's primary regulation for overseeing childcare centres comprehensively, there is an exception regarding the authority to regulate specific types of childcare¹⁹ (involving the acceptance of a child by a family member)²⁰. This is because the Director-General of SWD of Malaysia is responsible for healthcare facilities, care centres, and childcare service institutions, while excluding kindergartens or nursery schools that have registered under the Education Act 1996, and childcare centres or children's homes established or run by the Federal or a State Government.

The registration of the childcare centre is vital to comply with all childcare care since it is a benchmark to ensure their services are according to the specific laws governing childcare matters in Malaysia.²¹ It has been stated in Section 8 of Act 308 that the Director-General of DSW will consider the following elements for application registrations of the childcare centre in Malaysia, which are;

- a) Limiting the number of children who may be received in the particular childcare centre;

¹⁷Section 7(1) of the Child Care Centre Act 1984.

¹⁸Rahmatullah, Bahbib. "Overview of Early Childhood Care and Education in Malaysia." *Hungarian Educational Research Journal* 11, no. 4 (2021): 396–412. <https://doi.org/https://doi.org/10.1556/063.2021.00074>.

¹⁹Section 3(1) of the Child Care Centre Act 1984

²⁰Section 3(2) of the Child Care Centre Act 1984

²¹Abdul Mutalib, M., et al. "Legal Requirements of Home-Based Childcare Centres in Malaysia: Are Childcare Providers Aware of These?" *Malaysian Journal of Syariah and Law*, vol. 12, no. 2, 2024, pp. 311-323. <https://doi.org/10.33102/mjssl.vol12no2.517>.

- b) Ensuring the applicant or any other person being employed at the childcare centre is fit to be served in the childcare centre;
- c) Ensuring the adequate number of staff as well as the qualifications and experiences related to childcare matters;
- d) Ensuring the childcare centre is adequately equipped with suitable equipment and well-maintained;
- e) Ensuring a suitable arrangement of children's basic needs such as feeding, resting, and recreation if the children are placed more than 4 hours per day in the centre;
- f) Complying with the safety, health, and sanitation of the childcare centre; and
- g) The General Director thinks that any other conditions should be implemented in the childcare centre.

According to the explanation provided above, registering childcare centres with the Department of Social Welfare (JKM) is required by section 8 of the Child Care Centres Act 1984 (Act 308) to ensure child safety and adherence to Malaysian government childcare regulations. In *Public Prosecutor v Zainuhar Che Kar [2022] 1 SMC 145* *Public Prosecutor v Zainuhar Che Kar [2022] 1 SMC*, the case covers allegations of carelessness and running an unlicensed childcare centre, as well as the legal repercussions of noncompliance with Malaysian childcare regulatory procedures. Failure to register may result in penalties under Section 31 (1) (a) of the Children Act 2001 (up to RM50,000 fine, 20 years imprisonment, or both) and Section 6 (1) of the Child Care Centre Act 1984 (Act).

Despite the fact that Act 308 is the fundamental legislation governing childcare in Malaysia, the Child Care Centre Regulation 2012, Child Act 2001, and Sexual Offences Against Children Act 2017 (Act 792) also serve as supplements to childcare regulations. Despite the fact that registration is thought to maintain quality care, there is still a serious vacuum in the control of private childcare centres' DSW registrations.

Child Care Centre Regulation 2012 (CCCR 2012)

This regulation has been established by Section 23 of Act 308 to carry out the purpose of such Act.²² Section 23 stated that the Ministry could make any other regulations to give effect to Act 308 without prejudice to the generality of the preceding laws that govern the childcare centre. This can be referred to Section 23(2) of Act 308, which has listed the childcare matters which will be further explained in other regulations than Act 308, such as; (1) operation and management of the childcare centre,²³ (2) duties and responsibilities of the person registered in a childcare centre,²⁴ (3) health and nutrition care²⁵ and (4) prescribing the minimum equipment.²⁶ Thus, the CCCR 2012 is another regulation that will fortify the reign of Act 308 in regulating matters related to childcare in Malaysia. Thus, the Child Care Centre Regulations 2012 serve as a supplementary regulation that strengthens the enforcement and operationalisation of Act 308 in governing matters related to child care in Malaysia.

The CCCR 2012 mainly explains childcare matters such as registration of childcare centre operators, managers, premises and equipment, fire safety and prevention, records maintenance, childcare activities, and health. The other vital issue associated with being addressed in the CCCR 2012 is the adult-to-child ratio. The CCCR 2012 clearly states that the childcare ratio for children guides the childcare giver. Here, the ratio for the childcare giver to the children aged from birth until one year old is that one childcare provider looks after three children.²⁷ For children aged one year and above, the ratio is one caregiver to care for five children, while for three years old until four years old, the ratio is one caregiver to look after ten children.²⁸ While having the ratio guidance stated in the CCCR 2012, it is believed that the children receive quality services during the care of the childcare giver, since they can be fully observed and attend to the needs of the children.

²²Section 23(1) of the Child Care Centre Act 1984

²³Section 23(1)(a) of the Child Care Centre Act 1984

²⁴Section 23(1)(b) of the Child Care Centre Act 1984

²⁵Section 23(1)(d) of the Child Care Centre Act 1984

²⁶Section 23(1)(h) of the Child Care Centre Act 1984

²⁷Section 23(1)(h) of the Child Care Centre Act 1984

²⁸Section 23(1)(h) of the Child Care Centre Act 1984

Child Act 2001 (Act 611)

The Child Act 2001 (Act 611) was enacted to safeguard children's care, protection, and rehabilitation in Malaysia.

In 2016, Act 611 was amended to include the child registry, Community Service Orders (CSO), family-based care, and a harsher penalty.²⁹ The amendment of Act 611 on the child registry was on the records of convicts who committed crimes against children to allow screenings on individuals working with children as an added safety measure.³⁰ Hence, it is vital to place the children in a registered childcare centre where the General Director of the DSW will approve those people with relevant qualifications and experience who are fit to serve the centre. It is to ensure the safety and solace well-being of the children while being placed with the respective childcare giver.

As illustrated in the case of *Pendakwa Raya v Noor Aqilah bt Abdul Rahman [2020]*, 9 MLJ 766, the respondent was charged with two offences at the Selayang Sessions Court under Section 31(1)(a) of the Child Act 2001 for injuring the victim's head and Section 201 of the Penal Code for disposing of the victim's body with the intent to conceal the victim's death. The respondent pleaded guilty unconditionally to both offences. The trial judge accepted the respondent's plea, found them guilty, and convicted them on both charges. The Court imposed a sentence under Section 31(2) of the Child Act 2001 that included imprisonment, a fine, a good behaviour bond, and community service for the first charge.

Under section 201 of the Penal Code, the respondent was sentenced to 18 months imprisonment from the date of conviction and a fine of RM5,000 in lieu of six months imprisonment on the second charge. The imprisonment sentence for both charges was to run consecutively. However, relying on the punishment as a point to reduce the child abuse by the child care providers alone is enough? Thus, this research paper seeks to examine the need to develop another mechanism to strengthen the child care legislation in Malaysia, which

²⁹Bernama. "Child Act (Amendment) 2016 Gazetted." New Straits Times, 26 July 2016, <https://www.nst.com.my/news/2016/07/160655/child-act-amendment-2016-gazetted>. Accessed 12 Oct. 2024.

³⁰Bernama, "Child Act (Amendment) 2016 Gazetted."

is developing a child care service agreement between parents and child care providers.

In 2017, Malaysia enacted the Sexual Offences Against Children Act (Act 792) to specifically address and punish sexual crimes against children and address offenses such as child pornography, grooming, and sexual assault, and also includes provisions for child witnesses and individuals in positions of trust.³¹ This Act supplements existing laws concerning such offenses and aims to improve the administration of justice for child-related cases.³² The impetus for this legislation arose partly from the case of Richard Huckle, a British pedophile convicted of 71 sexual offenses against Malaysian children.³³ Huckle's arrest in 2014 revealed a collection of child pornography and evidence of sexual abuse, leading to his life imprisonment for exploiting vulnerable families in Malaysia.³⁴ The Act provides a legal framework for prosecuting offenders and protecting child victims.

Based on the above explanation related to the childcare regulations in Malaysia, it can be seen that there is a well-developed legal mechanism for governing childcare matters, from the early start-up procedure to the operation and management of the childcare centre up to the interrelated offences and its punishment that merely happened among the children while being placed in the respective childcare centre. Nonetheless, concerns regarding the safety and development of children in the hands of childcare providers continue to elicit public concern and require further improvement. For example, the number of

³¹Abdul Jumaat, Mahmud. "Swot Analysis on Child Sexual Abuse Framework in Malaysia". *INSAF /The Journal of the Malaysian Bar* 40 (1), (2024): 11-27.

<https://insaf.malaysianbar.org.my/ojs/index.php/jmr/article/view/62>.

³²Abdul Jumaat, "Swot Analysis on Child Sexual Abuse Framework in Malaysia" 26.

³³Syahirah Abdul Shukor, Hendun Abd Rahman Shah, and Nurul Musa, "Regulating Children's Safety on the Internet: A Malaysian Perspective" 1 (2017): 152-155, https://www.researchgate.net/publication/341626373_REGULATING_CHILDREN'S_SAFETY_ON_THE_INTERNET_A_MALAYSIAN_PERSPECTIVE.

³⁴S. N. F. Abd Hamid, Y. Ahmad, and N. S. Tahir, "Title of the Article (if available)," *International Journal for Studies on Children, Women, Elderly and Disabled* 9 (2020): https://www.ijcwed.com/wp-content/uploads/2020/04/PICCWED9_23.pdf.

cases of negligence and maltreatment that result in some degree of death for the children is increasing.³⁵ In 2021, the statistics reported for child abuse in the child care centre is 217.³⁶ Whilst in 2022, the SWD documented a total of 336 cases of child maltreatment across different categories involving registered and unregistered daycare centres, nurseries, and kindergartens was reported.³⁷

Based on this statement, it can be inferred that cases of child maltreatment in childcare settings including both licensed and unlicensed daycare centres, nurseries, and kindergartens have seen a notable increase over the past year, rising from 217 reported cases in 2021 to 336 in 2022. Nonetheless, in 2023, the percentage of child abuse cases by child care givers or babysitters increased by 2.68%, bringing the total number of cases to 345.³⁸ This rising number of child abuse cases by the child care providers underscores growing concerns about the safety and well-being of children in these facilities, emphasising the urgent need to strengthen regulations for both registered and unregistered childcare providers in Malaysia. Thus, enhancing the current childcare legal framework is considered significant in establishing a stronger legislative foundation for childcare facilities in Malaysia, particularly by improving existing laws from the standpoint of childcare.

³⁵Abdul Mutalib, Mashitah, Nik Salida Suhaila Nik Saleh, and Arasy Masut @ Masod. "Quality Enhancement of Centers in Malaysia: An Analysis on Laws and Regulations." *Journal of Education and Social Sciences* 9, no. 1 (2018): 23–28. https://www.jesoc.com/wp-content/uploads/2018/03/KC9_203.pdf.

³⁶Abdullah, Siti Mastura. 217 Abuse Cases Recorded at Childcare Centres Nationwide Last Year. *New Straits Times*, 27 Jan. 2022, <https://www.nst.com.my/news/nation/2022/01/767417/217-abuse-cases-recorded-childcare-centres-nationwide-last-year>.

³⁷Rahim, Nur Rasyidah Abd, et al. "Integrity and Child Maltreatment at Child Care Centers: A Conceptual Paper." *Advances in Social Sciences Research Journal*, vol. 11, no. 4, 2024, pp. 41–53. <https://doi.org/10.14738/assrj.114.16096>.

³⁸Pfordten, D. Multimedia: Child Neglect and Abuse on the Rise in Malaysia. *The Star*, 26 Aug. 2024, <https://www.thestar.com.my/news/nation/2024/08/26/multimedia-child-neglect-and-abuse-on-the-rise-in-malaysia>.

LEGAL ANALYSIS OF THE UNITED STATES OF AMERICA'S CHILDCARE LAW

This research undertakes a comparative legal analysis of childcare regulations, with particular emphasis on the legislative frameworks of the United States, focusing on the states of Texas and California. The reason for choosing these two USA. states for benchmarking is due to their transactional regulation which is based upon the modern contract law theory. Additionally, California's child care regulations also address the child care admission agreement between parents and child care providers as outlined in the California Code of Regulations. Transactional regulation between parents and child care providers can also be modelled after Texas's child care regulations, specifically the Minimum Standards for Child-Care Centres and Minimum Standards for Child-Care Homes. Similarly, California's child care regulations also address the child care admission agreement between parents and child care providers as outlined in the California Code of Regulations.

Comparing statutes and sample cases related to the agreement in the form of a childcare perspective is needed because different countries practice different childcare ideologies and philosophies. However, it can be suited to the current situation of the respective country, yet alteration is still needed to pursuance such an act. Here, a brief introduction to the USA's regions takes place since the USA consists of 50 states, and all of these states have different licensing policies on childcare services. However, this paper narrows its scope by focusing specifically on Texas and California as benchmark models to strengthen Malaysia's existing childcare regulatory measures, particularly in relation to childcare service agreements. The childcare regulations in the USA are adopting the licensing mechanism to regulate their childcare services, where each state is liable to oversee the childcare operations respectively. In other words, the US federal government delegated the power to the states to regulate their childcare givers or providers. This section will thoroughly discuss the selected benchmark states in the USA that have practised the childcare service agreement as part of regulating childcare, both home-based and centre-based.

Childcare Law in Texas

The Texas Health and Human Services Department regulates the childcare services in the state of Texas. As mentioned earlier, the regulations about childcare services in the USA is under the state government. The Federal government will only supervise and plan for any financial aid (such as grants) to be executed by the state government. Hence, in Texas, childcare regulations have been codified under the state statute, namely the Human Resource Code. In this Code, the subdivision of childcare statutes and regulations has been stipulated in Subtitle D, which provides explicit information related to family and child welfare and protective services.

Under Subtitle D, the childcare statutes have been extensively discussed in Chapter 42 (Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services)³⁹ and Chapter 43 (Regulation of Child-Care and Child-Placing Agency Administrators) of the Human Resource Code. There are several childcare regulations including (1) Child Care Licensing Rules, (2) Minimum Standards for Shelter Care, (3) Minimum Standards for School-Age and Before or After-School Programs, (4) Minimum Standards for Child-Care Centers, (5) Minimum Standards for Child-Care Homes, (6) Minimum Standards for General Residential Operations, (7) Minimum Standards for Child-Placing Agencies, and (8) Minimum Standards for Independent Foster Homes have been enacted by the Texas government as stated in Table 2 below.

However, this study only emphasises the content of the childcare agreement, which is obliged to be formed between parents and childcare providers. This excludes other types of childcare centres, such as foster care, family care, hospitalisation (or treatment) care, and government-funded childcare services.

³⁹Chapter 42 of the Human Resource Code, "Regulation of Certain Facilities, Homes, and Agencies that Provide Child-Care Services," aims to safeguard the health, safety, and well-being of state children residing in child-care facilities by establishing minimum standards for their safety and protection throughout the state and by regulating the facilities through a licensing program. The Human Resource Code's Chapter 43 (Regulation of Child-Care and Child-Placing Agency Administrators) outlined the licensing program, including the requirements for the licensee and the licensing exam for daycare.

Table 1. The Specific Section that stated childcare service Agreements in Texas

Childcare Regulations	Purpose and Scope of the Childcare Regulations	Childcare Agreement
Minimum Standards for Child-Care Centers	Under §746.101, Subchapter A (Division 1) of the Minimum Standards for Child Care Centers, this standard aims to set forth the minimum standards that apply to child-care centres. The Minimum Standards for Child Care Centers shall be complied with by either registered or unregistered childcare centers. ⁴⁰	Based on the Minimum Standards for Child Care Centres, the agreement on childcare services has been stipulated under Subchapter B (Division 4), explicitly explaining childcare center operational policies. The agreement of the childcare services can be found under §746.503 ⁴¹ , and §746.505 ⁴² of the

⁴⁰§746.113, Subchapter A (Division 2) of the Minimum Standards for Child Care Centres

⁴¹According to §746.503, Subchapter B (Division 4) of the Minimum Standards for Child Care Centres, it is mandatory to give parents a copy of the childcare center's operational policies. Additionally, parents must sign a child-care enrolment agreement or other comparable documents on or before the date of admission, which must contain at least the operational policies mentioned in this division. This signed paper, or at least one for each family if siblings are enrolled at the same time, must be kept in the child's file by the creche facility.

⁴²The Minimum Standards for Child Care Centres' §746.505, Subchapter B (Division 4) stipulates that any modifications to an operational policy or a clause in the child-care enrolment agreement must be reported. Here, any changes must be communicated in writing to parents and staff by the childcare center's operator. Additionally, each family must sign and date a copy of the child-care enrolment agreement or revised operational procedures, which must be retained in the child's file.

		same subchapter and division.
Minimum Standards for Child-Care Homes	The aim of the Minimum Standards for Child-Care Homes, outlined in §747.101 Subchapter A (Division 1), is to establish the basic standards applicable to child-care homes. Consequently, these Minimum Standards for Child-Care Homes are relevant to (1) registered child-care homes, (2) licensed child-care homes, and (3) child-care homes as specified under §747.117 Subchapter A (Division 2).	<p>According to §747.503, Subchapter B (Division 4) of the Minimum Standards for Child-Care Homes, prior to a child's admission, parents are required to sign a child-care enrollment agreement or a similar document, which must encompass at least the operational policies stipulated in this division. The childcare center must retain this signed document in the child's records or, if multiple siblings are enrolled at the same time, at least one for each family.</p> <p>Additionally, §747.505 of the same subchapter and division specifies that any changes to an operational policy or an aspect of the child-care enrollment agreement must be</p>

		<p>communicated in writing to both employees and parents by the childcare center's operator. Furthermore, an updated copy of the operational policies or child-care enrollment agreement must be signed and dated for each family and kept in the child's records.</p>
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Table 2 shows that childcare providers are obliged to form a childcare service agreement with the parents. Specifically for the childcare centre, the content of the childcare agreement shall include provision §746.501 (a) of Subchapter B (Division 4) of the Minimum Standards for Child-Care Centres. In contrast, the childcare operational policies for home-based childcare can be found in §747.501 Subchapter B (Division 4) of the Minimum Standards for Child-Care Homes. Hence, it shall also be included in the childcare agreement for home-based childcare services. From the above childcare policies, it can be deduced that the childcare centres' operational policies are more comprehensive than the childcare homes' services. Along with the procedures for avoiding and dealing with child abuse and neglect, the provision of inclusive services for children with special care needs is a crucial operational policy that distinguishes centre-based childcare services from home-based ones.

Childcare Law in California

The primary childcare law in California is regulated by the California Child Day Care Act, codified under Division 2, Chapter 3.4 of the Health and Safety Code of California. The California Child Day Care Act has become the general provision for both child daycare centres and family daycare centres in California. In accordance with Chapter 3.4, Section 1596.803.a (1) of the Health and Safety Code, the department will charge the licensee according to the number of children in the childcare facilities each year for the administration of the family nursery and the childcare centre, specifically on a fee basis. For example, the Family Day Care who have one to eight children in their childcare premises will need to pay the annual fee to the department, amounting to \$73, whilst the Day Care Centres will pay the annual fee to the department for one to thirty children in the childcare centre is \$242.⁴³

Hence, it can be concluded that the California Child Day Care Act acted as the main childcare law in California, where the content of the Act covered both types of childcare services. Besides the California Child Day Care Act, the California childcare legislature has enacted a specific and separate childcare provision for both child daycare centres and family daycare centres. The specific provision that governs child daycare is known as Day Care Centres, where the related sections in the provision start from section 1596.90 to 1597.21 of Division 2, Chapter 3.4 of the Health and Safety Code of California. The specific provision for the family daycare centres was called Family Day Care Homes from section 1597.30 to 1597.622 Division 2, Chapter 3.6 of California's Health and Safety Code.

However, this study only focuses on discussing the relevant sections about the childcare service agreement. According to Chapter 1 of the California Code of Regulation, Title 22 Section 101219a, it is mentioned in the admission agreement of the children into the childcare centre that *“the licensee and the child's authorized representative shall jointly complete a current individual written admission agreement for the child. This documentation shall be maintained at the child care centre and shall be available for review.”* This statement refers to the that—This statement refers to the parents or any authorised

⁴³Chapter 3.4, Section 1596.803.a (1) of the Health and Safety Code

representative of the children enrolled in the childcare centres must enter into childcare admission agreements with the licensees (or, in other words, licensed childcare providers). Other important matters about the childcare admission agreement have also been stipulated in the California Code of Regulation, Title 22 Section 101219c to g, such as the time frame for the child's admission agreement, which needs to be signed by parents and childcare providers⁴⁴, modifications to the original child's admission agreement,⁴⁵ keep the original copy of the admission agreement,⁴⁶ terms and conditions of the child's admission agreement,⁴⁷ and termination of the child's admission agreement.⁴⁸

However, the California Code of Regulation does not mention that the child's admission agreement or childcare service agreement needs to be formed between the family daycare providers and parents. The provision of the family daycare was emphasised only on the licensing matters, the conditions that allowed the family daycare to be exempted from being licensed by the licensing agency, and criminal background checking of the childcare givers (as well as childcare providers). From the perspective of California's childcare laws and provisions, the researcher could conclude that the point of matters being emphasised in California's childcare regulations is the licensing of childcare providers (both centre-based and home-based childcare

⁴⁴Title 22 Section 101219c of the California Code of Regulation, Division 12 states that the licensee, his/her designee, and the child's authorized representative shall sign and date the child's admission agreement no later than seven calendar days following admission.

⁴⁵Title 22 Section 101219d of the California Code of Regulation, Division 12 stated that modifications to the original admission agreement shall be made whenever circumstances covered in the agreement change and shall be dated and signed by the persons specified in (c) above.

⁴⁶Title 22 Section 101219e of the California Code of Regulation, Division 12 stated that the licensee should keep the original copy of the admission agreement and give a photocopy to the child's authorized representative.

⁴⁷Title 22 Section 101219f of the California Code of Regulation, Division 12 stated that the licensee shall comply with all terms and conditions outlined in the admission agreement.

⁴⁸Title 22 Section 101219g of the California Code of Regulation, Division 12 stated that the death of the child shall automatically terminate the child's admission agreement. No liability or debt shall accrue after the date of death.

services). The licensing of the childcare centre could be seen as an obligation for both types of childcare providers to obtain their licenses from the respective California childcare agency.

DISCUSSION

In this section, the discussion will highlight the critical point deduced from past studies and how future studies can address this research loophole. As mentioned above, the method used for this paper is a comparative and judicial approach. Rationally, those approaches are mainly used to identify the research's critical themes and conceptual understanding in linking the child care services agreement between parents and child care providers to justify the need to form a child care service agreement between parents and child care providers. The judicial approach adopted in this study is supported by the analysis of relevant court decisions that demonstrate how disputes between parents and child care providers have been adjudicated in Malaysia. Although reported cases on child care agreements in Malaysia are relatively scarce due to the informal nature of such arrangements, several decisions have indirectly highlighted the legal ambiguities surrounding child care responsibilities and liabilities.

For instance, in *PP v. Noor Aqilah bt Abdul Rahman [2020] 9 MLJ 766*, the Court charged the accused with two offences: one under section 31(1)(a) of the Children Act 2001 for causing injury and the other under section 201 of the Penal Code for disposing of a dead body to destroy the deceased's remains.⁴⁹ This tragic incident highlights the severe consequences of inadequate supervision and the failure of child care providers to adhere to proper child care giving provisions (refer to Act 308 and CCCR 2012). Other than that, in *PP v Nur Fatin Nabila bt Azmi [2023] MLJU 534.*, the accused was charged under Section 31(1)(a) of the Child Act of 2001, which criminalises child abuse and neglect. This clause imposes a punishment of up to RM50,000 in

⁴⁹ Mutalib, M. A., et al. "Penambahbaikan Kualiti Pengasuhan Di Rumah Dari Perspektif Undang-Undang." *International Journal of Law, Government and Communication*, vol. 7, no. 30, 2022, pp. 22–32. DOI: 10.35631/IJLGC.730003.

penalties, 20 years in jail, or both.⁵⁰ As the facts of the case indicate, the accused failed to carry out her fundamental responsibility of trust, and abuse against children must not be condoned. The above cases highlighted a significant weakness in Malaysia's childcare regulatory system, including deficiencies in legislative requirements, inadequate oversight of childcare providers, and the need for more robust legal frameworks to protect children from both neglect and intentional harm.

As mentioned earlier, the Malaysian childcare legal framework primarily consists of the Child Care Centre Act 1984 (Act 308) and the Child Care Centre Regulations 2012 (CCCR 2012). Specifically, Act 308 mainly focuses on registration and physical safety requirements of child care centres. Whilst the CCCR 2012 deals with other matters such as; (1) operation and management of the child care centre,⁵¹ (2) duties and responsibilities of the person registered in a child care centre,⁵² (3) health and nutrition care⁵³ and (4) prescribing the minimum equipment.⁵⁴ Thus, the Child Care Centre Regulations 2012 serve as a supplementary regulation that strengthens the enforcement and operationalisation of Act 308 in governing matters related to child care in Malaysia. Supporting the above legal measure, Malaysia also refers to the other regulations for charging some of the offences related to the abuse (such as physical and sexual assault) or death of the children while in the hands of the child care giver. The supporting regulations consist of the Child Act 2001, the Penal Code, and the Sexual Offences Against Children Act 2017, which address punishments not specified in the Child Care Centre Act 1984 and the Child Care Centre Regulation 2012.

A comparative analysis with jurisdictions with Texas and California reveals that, in addition to regulations on licensing and the safety of childcare premises, formal childcare contracts are also mandatory. These contracts typically include clear stipulations regarding fees, hours of care, responsibilities, and liability clauses. The absence of such requirements in Malaysia's current childcare legal framework creates loopholes that undermine the protection of children in the care of childcare providers. Supporting this point, California's

⁵⁰PP v Nur Fatin Nabila Azmi [2024] CLJU 230

⁵¹Section 23(1)(a) of the Child Care Centre Act 1984

⁵²Section 23(1)(b) of the Child Care Centre Act 1984

⁵³Section 23(1)(d) of the Child Care Centre Act 1984

⁵⁴Section 23(1)(h) of the Child Care Centre Act 1984

approach to childcare service agreements is illustrated in *Gavin W. v. YMCA of Metropolitan Los Angeles*, 106 Cal. App. 4th 662. In this case, a family sued a childcare provider after their child was inappropriately touched by another child in the provider's care. The family alleged that the provider was aware of the other child's behaviour and failed to take preventive measures. Although the family had signed a release waiving their right to sue, the court held that such releases are invalid in cases involving negligence in childcare services, which are deemed essential for working families. The appellate court reversed the earlier judgment and allowed the family's claims for negligence and breach of contract to proceed.⁵⁵

On the case of *Gavin W. v. YMCA of Metropolitan Los Angeles* underscores the critical importance of legal accountability in childcare services and highlights the limitations of liability waivers in protecting providers from claims of negligence. The appellate court's decision reflects a broader public policy stance that prioritises the welfare and safety of children over contractual disclaimers. This approach reinforces the notion that childcare providers must uphold a high standard of care, especially when their services are essential to working families. It can be argued that Malaysia's childcare laws should include similar protections to make sure that the rights of children and parents are fully protected.

In relation to childcare service agreements between parents and childcare providers, it can be concluded that both Texas and California have formally implemented and codified such agreements within their respective childcare regulations. However, several other U.S. states have yet to include childcare agreements as part of their statutory provisions or regulations. For benchmarking purposes, Texas and California have been selected due to the differences in the terms and conditions incorporated in their respective childcare service agreements. In Texas, the childcare agreement is addressed under Section §746.503, Subchapter B (Division 4) of the *Minimum Standards for Child Care Centres*, where the agreement is explicitly referred to as a "child care agreement." Texas adopts a comprehensive

⁵⁵*Gavin W. v. YMCA of Metropolitan Los Angeles*, 106 Cal. App. 4th 662, 131 Cal. Rptr. 2d 168, 2003 Cal. App. LEXIS 279, 2003 Daily Journal DAR 2157, 2003 Cal. Daily Op. Service 1693 (Cal. Ct. App., 2nd Dist., 2 Feb. 2003).

and holistic approach, requiring providers—whether centre-based or home-based—to enter into formal agreements with parents. These agreements vary based on the type of childcare service and include specific terms and conditions tailored to the service model.

California, on the other hand, refers to the childcare agreement as an “admission agreement,” governed by Chapter 1 of the *California Code of Regulations*, Title 22, Section 101219(a). This provision mandates that the licensee and the child’s authorised representative jointly complete a current, individual written admission agreement. According to Section 101219(b)(1) – (7), the agreement must include key elements such as:

- a) services to be provided,
- b) operational hours,
- c) childcare service fees, and
- d) terms regarding any modifications to the agreement.

However, California’s admission agreement requirement applies exclusively to child daycare centers and does not extend to other types of childcare services. Moreover, the state’s regulatory framework focuses more on licensing and operational standards than on the establishment of formal childcare service agreements. Nevertheless, California’s regulations require childcare providers to consistently maintain satisfactory standards in both facilities and operations.

This discussion highlights the legal significance of childcare service agreements and underscores the need for comprehensive arrangements between parents and providers. To enhance the legal framework in Malaysia, it is recommended that amendments be made to the *Child Care Centre Act 1984 (Act 308)* and the *Child Care Centre Regulations 2012 (CCCR 2012)*. Specifically, a clause concerning childcare service agreements should be formally introduced, with existing regulations expanded to include provisions that encourage and require such agreements between parents and providers. This would help establish clear expectations and protections for all parties involved in the childcare sector.

Recommendation to Enhance the Child Care Centre Act 1984 (Act 308)

The Child Care Centre Act 1984 prescribes the general outline and legislative requirements of running child care centres. It gives the enforceability elements, standards, and overall responsibilities to be fulfilled by parents and child care providers. The provisions related to the Child Care Services Agreement between parents and child care providers has been stipulated in Table 2 below:

Table 2 Suggested Draft Related to the Child Care Services Agreement Between Parents and Child Care Providers in Act 308

Child Care Services Agreement

Part X – Child care Services Agreement

(i) Purpose and Scope

(ii) Child care Services Agreement:

(a) Definition of Child care Services Agreement

(b) Mandatory Elements: The key mandatory elements such as the basic structure of the agreement, including the details of the child, provider, scope of services, and fees, can be mandated by the Act as overarching requirements.

(iii) Responsibilities of Child care Providers

(a) Provision of Care: The Act should define the responsibilities of child care providers in ensuring the quality of care and services.

(b) Monitoring and Reporting: Providers are obligated to keep records and report incidents, which fall under the broader regulatory responsibilities of child care centers under the Act.

(c) Compliance with Regulations: This section falls directly under the jurisdiction of the Act as it deals with compliance with national laws and general provisions.

(iv) Dispute Resolution

- (a) Mediation: The Act should establish the legal framework for handling disputes, including the requirement to attempt mediation before pursuing legal action.*
- (v) Enforcement*
 - (a) Non-Compliance: This is an enforcement-related section, making it appropriate for the Act.*
 - (b) Penalties: It details penalties and enforcement measures, such as suspension or termination of enrollment, as well as penalties for non-compliance by child care providers.*

The Child Care Center Regulation 2012 provides detailed rules and criteria for child care centers, laying down procedures and steps of operation, and specific measures of safety. The Regulation will contain the following provisions:

Table 3 Suggested Draft for a New Part related to Child care Services Agreement between Child care Providers and Parents under the Child Care Center Regulation 2012

Child Care Services Agreement

Part X – Child care Services Agreement

- (i) Mandatory Elements: Specific details about the content of the agreement (e.g., hours of operation, health and safety protocols, refund policies) could be further expanded upon in the Regulation, providing clear standards for what must be included in every child care services agreement.*
- (ii) Health and Safety Protocols: The regulation can expand on the health and safety aspects, ensuring compliance with detailed standards such as sanitation practices, emergency procedures, and any specific health requirements.*
- (iii) Fees and Payment Terms: Regulations can include specific fee structures, payment timelines, and terms that child care centers must follow in providing clear financial agreements with parents.*

- (iv) Responsibilities of Child care Providers (under the Regulation)***
- (v) Provision of Care and Compliance: Detailed guidelines on how providers should deliver services in practice, including minimum standards for supervision, educational programming, safety measures, and staffing.***
- (vi) Monitoring and Reporting: Regulations should specify the process for record-keeping, required forms, and how the reporting to parents should occur, including incident reports or changes in the child's well-being.***
- (vii) Responsibilities of Parents or Guardians: The Regulation should clarify the obligations of parents, including providing necessary information about their child (medical history, allergies, etc.), cooperating with providers, and adhering to the agreement's terms (e.g., paying fees on time).***
- (xi) Non-discriminatory Practices: The child care provider must make reasonable adjustments to enable the full participation of children with disabilities in all activities and services, and they cannot be excluded from any of these activities because of their impairment. (If applicable)***

The components of a childcare agreement should be tailored to reflect the differences between home-based and centre-based childcare services. Home-based childcare, due to its limited space, facilities, and staffing, may not be able to offer certain services—such as specialised equipment for children with special needs, dedicated breastfeeding rooms, field trips, or water-based activities. Despite these limitations, essential elements that ensure inclusive protection for children can still be incorporated into the agreement. In contrast, centre-based childcare services, with greater space, more extensive facilities, and a larger workforce, should include more comprehensive terms in their agreements. To reinforce this practice, a specific clause in the regulations should mandate that parents and childcare providers enter into a formal childcare agreement at the time of the child's enrolment.

In conclusion, the scope of childcare law should be broadened to not only prioritise the protection, safety, and health of children but also

to consider the rights of parents and childcare providers. One potential solution is the introduction of a legally binding agreement between parents and childcare providers. Such a contract would clearly define key elements of the childcare arrangement, including fees, the responsibilities of both parties, and any prohibited actions. These terms should be established and agreed upon before and during the child's enrollment in either home-based or center based childcare facilities.

CONCLUSION

In conclusion, to stimulate the check and balance of childcare law in Malaysia, the collective point of view of the protection, safety, and health of the parties involved in childcare services must be considered (including the protection of the childcare givers and parents). Indeed, children are the most vulnerable group who need the most protection from the laws, parents, and childcare givers. However, the other childcare service stakeholders also need protection, as they possess the right to be protected. In this paper, the researcher found that the new loophole required further study in the future to uphold the rights and protection of the other parties involved directly in such services. The mechanism that could be approached in this issue was a legally binding agreement that should be formed between parents and childcare givers as the researcher has benchmarked with the other country that implies this method, referring to the United States of America (specifically in California and Texas).

In accordance with Title 22 Section 101219 of Chapter 1 of the California Code of Regulation, the licensee and the child's authorised representative must work together to complete a current individual written admission agreement for the child before the child can be enrolled in the childcare facility. Instead of protecting the children in terms of the facilities and providing a qualified childcare giver, another step has been taken by these two states: they are protecting the parents and childcare givers in terms of the do's and dont's while receiving the respective childcare centre. Any agreement breach leads to termination or other relevant punishment based on the agreement made between the parties.

Therefore, the childcare service agreement is one of the mechanisms (other than obliging the childcare provider to get registered under the Social Welfare Department, qualification of the childcare givers, and excellent childcare premises) that should be explored more in the future to ensure that holistic childcare regulations and systems in Malaysia can be achieved.

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