

The Role of the Private Sector in Providing Foster Care Service for Children without Parental Care in Malaysia

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[Introduction]

- Children are vulnerable human beings who always require care and protection from adults, especially the parents.
- It is the duty of the parents or the guardians to raise their children (feeding, clothing, educating).
- Parents are also responsible to ensure that their children are brought up in a safe environment so that their wellbeing is always secured

- However, there are children who live without parental care or protection from their families, (orphaned, neglected, abused and abandoned children).
- In these situations, a country's child protection system becomes vital to help provide substitute or alternative care for the children.
- In this system, the government and the private sector often play significant roles in providing suitable alternative care options to protect the children's wellbeing.

[Foster Care as an Alternative Care Option]

- Substitute care refers to a service that is designed for a replacement of natural parental care by either partly or wholly.
- United Nations Convention on the Rights of the Child 1989 (UNCRC) provides that alternative care may include adoption, foster placement, kafalah and residential care. (article 20(3))

- Foster care refers to “the formal and informal custodial care of children whose parents are outside their own biological family home when their parents are unable, unwilling, or prohibited from caring for them.” Encyclopedia of Children and Childhood: In History and Society (2004)
- Two kinds of foster care:
 - Informal: an arrangement between birth parents and relatives to care for the child and usually unregistered.
 - Formal : legally authorised and arranged by a recognised authority

- Foster parents are recruited through assessments and training.
- Foster parents are also paid a certain amount of money in return for their job in caring for foster children for a certain period (a few days, weeks, months or years)
- Children in foster care usually still have at least one living parent who may or may not visit them.
- The birth parents generally retain their rights over the children.
- Foster care is often perceived as temporary care for the child, so the main goal is to find a permanent placement for the child, such as, by reintegrating the child into their birth family, adoption or permanent foster care.

[Foster Care: From an Islamic Perspective]

- Islamic law does not recognise the notion of legal adoption that permanently terminates the parent-child relationship. (al-Qur'an 33:4-5)
- Islam recognises a form of care in which a man takes an orphan or a foundling into the family for the purpose of rearing, educating, and treating him or her as his own child. He has to protect, feed, clothe, teach and love the child as his own without attributing the child to him and allowing him or her to inherit his property.
- Kafalah literally refers to sponsorship, which derives from the root word that means “to feed”. The most precise translation of kafalah is “foster parenting” or “legal fostering”. (Imad ad Deen, 1999)

- Legal implications of kafalah:
 - the foster child cannot assume the foster family's name, and retains the name of his or her biological family
 - they do not entitle to inherit from the foster parents however, they can benefit from the foster parents' property through a will, gift or waqf
 - the foster children will be affected by Islamic constraints in intermixing with his or her foster family members of a different gender since he or she is considered as non-mahram to them.

[The Role of Private Sector in Providing Foster Care Service]

- In Malaysia, there are many privately-run organisations that provide institutional care for children in need of care and protection (many of them are not registered with the SWD).
- They are usually funded by the government, individuals, corporate sector as well as charity and religious bodies.
- With regard to foster care, it seems that some institutions provide foster care service and may have their own procedures and requirement.
- However, since it involves children in need of care and protection, they might be subjected to the SWD's approval with regard to any arrangement of family-based care of these children.

- Currently, OrphanCare, an NGO in Malaysia, works closely with the SWD in placing children in need in a suitable substitute family.
- OrphanCare has a memorandum of understanding with the SWD that allows them to provide alternative care service for unwanted babies who are given up personally by their birth parents, babies left at OrphanCare Baby Hatch or children in the care of the SWD.
- OrphanCare believes that 'every child needs a family' and recognises that children should not stay in institutions or orphanages permanently. It also seeks to reduce the number of children in orphanages.
- The SWD and OrphanCare also make a joint effort to place institutionalised children in family-based care through the deinstitutionalisation process (finding alternative ways to support children without parental care, such as rehoming them with the birth families, or with new families through foster care).

- For instance, Rumah Solehah is one of the few family-based care centres in Malaysia that are attempting to 'deinstitutionalise' children in its care. It was the first HIV/AIDS institution in the country that provides shelters for HIV positive and HIV-affected young people aged between seven and twenty.
- The centre receives an abandoned HIV/AIDS baby and will make efforts to trace living relatives with the government's help. The centre also tries to arrange family-based care for children in its care despite the difficulties due to the discrimination and misconceptions associated with people affected by HIV/AIDS (they managed to re-home 55 children).

[The Shortcomings of Foster Care Service in the Malaysian Private Sector]

- Currently, there is no law or regulations that govern the private sector in providing foster care service. Accordingly, it is necessary to refer to the SWD when making such an arrangement.
- The first step in the deinstitutionalisation process is generally to raise awareness on a national scale. However, many social workers worry that they will eventually lose their job since they think that 'deinstitutionalisation' signifies the immediate shutting down of institutions. Some orphanage owners also fear that children in their care could not survive when they leave the institutions.

- In addition, many privately-run orphanages refuse to release children in their care for family-based care arrangements because some of these orphanages receive a large donation in the form of money or gifts. This has also led to a money-making organisation.
- It is no easy task to convince orphanage owners to cooperate with OrphanCare and the SWD to release children in their care so that they could be placed in family-based care such as foster care.
- Thus, more efforts are needed to raise awareness regarding the negative impacts of institutional care on children and their rights to live in a family setting.

- It seems that OrphanCare is the only NGO that actively work to persuade other institutions in the private sector to make the transition from institutional care to family-based care. Hopefully, many more institutions in private sector would participate in the deinstitutionalisation process and work together towards family-based care.
- It is also important to thoroughly select qualified foster parents to care for the children to avoid them from being abused.
- Thus, formal policies, circulars or regulations on foster care need to be provided for the private sector so that they can help contribute to the betterment of foster care service in Malaysia.

[Conclusion]

- Foster care is considered as one of the family-based care options available for children without parental care in Malaysia.
- Islam also encourages Muslims to take care of vulnerable children. Foster care and kafalah do not terminate the legal parent-child relationship permanently and they preserve the biological parentage of the children.
- Currently, the SWD and OrphanCare, play a vital role in ensuring children without parental care have the opportunity to live and grow up in a family setting.

- They work together closely in the deinstitutionalisation process and in promoting family-based care to other institutions, shelters or orphanages in Malaysia, especially in the private sector.
- Although this transition takes time, the joint effort is a big step in making a significant transformation in the child protection system in Malaysia by preferring family-based care.

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- Thank you.