



INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



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To Link this Article: <http://dx.doi.org/10.6007/IJARBSS/v12-i12/15515> DOI:10.6007/IJARBSS/v12-i12/15515

Received: 08 October 2022, **Revised:** 10 November 2022, **Accepted:** 26 November 2022

Published Online: 03 December 2022

In-Text Citation: (Roseliza-Murni et al., 2022)

To Cite this Article: Roseliza-Murni, A., Kusrin, Z. M., & Yusuf, W. (2022). Feedback on the Need to Develop a Standard Operating Procedure (SOP) for the Arrest and Detention of Persons with Autism Spectrum Disorders. *International Journal of Academic Research in Business and Social Sciences*, 12(12), 543 – 553.

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Vol. 12, No. 12, 2022, Pg. 543 – 553

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INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



www.hrmars.com

ISSN: 2222-6990

Feedback on the Need to Develop a Standard Operating Procedure (SOP) for the Arrest and Detention of Persons with Autism Spectrum Disorders

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Abstract

Autism spectrum disorder, a subtype of neuro-developmental disorder is characterised by deficits in social interaction skills and the presentation of restricted or repetitive patterns of behaviours. These symptoms in turn, increase the tendency for risky behaviours towards violation of the law. Thus, this situation necessitates a specific Standard Operating Procedure (SOP) for the arrest and detention of persons with autism. In Malaysia, even though reported cases of criminal offences by persons with autism are infrequent, a specific SOP would provide a guideline to enable police authorities the Royal Malaysia Police (RMP) and religious enforcement officers (REO) to perform their duties properly and guarantee persons with autism and those who are disabled their legal rights. The aim of this article is to discuss about high risk behaviours which gravitate towards violation of the law by persons with autism. Next, discussion is focused on the feedback by various parties on the need to develop a specific SOP from the legal perspective, mainly by police authorities, religious enforcement officers and head of religious departments, politicians and special education teachers as well as the agency that support and care for persons with autism. This qualitative research involved document analyses and interviews, round table discussion as well as focused group discussions (FGDs) with informants. Data collected was descriptively analysed and thematically presented. Research results showed that the behaviours of persons with autism that were related to violation of the law include theft, molestation, indecent conduct in public places and setting building on fire (arson). According to research informants it was necessary to develop an SOP for Arrest and Detention of Persons with Autism in order for the police and religious enforcement officers to fulfill their responsibilities based on clear legal provisions. Development of this SOP also showed the concern of authorities to ensure legal justice to persons with autism and those who are disabled, and sharing of information between frontliners and the public, as well as parents in handling them appropriately.

Keywords: Autism Spectrum Disorder, Conduct/Behaviour, Violation of Laws, SOP for Arrest and Detention, Guidelines, Interviews, Focused Group Discussions, Royal Malaysia Police (RMP), Religious Enforcement Officers (REO).

Introduction

Persons with autism have also been identified as contributing to increased in criminal cases in Malaysia although there are no clear statistics on it. It is as if criminal offences by persons with autism are not viewed seriously, as either no action was taken in their cases or they were released without due process of criminal justice. Persons with autism are undeniably categorised as disabled with regard to their intellectual capacity or learning ability. However, the wide range of severity and cognitive impairment renders it necessary to provide clear legal provisions so as to recognise persons with autism and deal with them, especially in criminal cases. It is generally understood that criminal justice procedure begins when it is suspected that a crime towards a victim or even a victimless crime has been committed. Early action by the authorities toward a crime suspect involves some procedures such as arrest and detention based on explicit law.

The purpose of criminal justice procedure is to ensure that the legal rights of the victims and suspects are protected and guaranteed, including persons with autism/disabled. Criminal law procedure to be enforced upon persons with autism/disabled is in reality still a vague area under the legal jurisdiction of the criminal court in Malaysia, whether at the level of Federal law and State law. Likewise, the existing routine Standard Operating Procedure (SOP) relating to arrest and detention is only suitable for typical individuals. Thus, Royal Malaysia Police (RMP) action using the existing SOP for arrest and detention of a person with autism for the offence of molesting a woman in a public place has evoked various negative reactions nation wide. Placing a person with autism under arrest is regarded as inconsistent with the rights of the persons with autism/disabled who should be treated differently from typical individuals under the law. Following up on this, the purpose of this article is to analyse the views of society, representatives of government and private institutions comprising of those involved as law enforcers, special education teachers and religious group, on the need to develop an SOP for the arrest and detention of persons with autism/disabled. This SOP will be implemented by the police authority (Royal Malaysia Police; RMP) as well as religious enforcement officers (REO), toward acknowledging the legal rights of the person with autism/disabled groups.

Persons with autism spectrum disorder experience deficit in social skills, problems in communication, imagination as well as stereotypical repetitive behaviours which can transform into obsessions (American Psychiatric Association: APA, 2013). At the same time, they also face difficulties in understanding a social code of conduct and the do's and don'ts in daily communications tend to confuse them. These deficits expose the persons with autism to committ risky behaviors that may gravitate towards violating the law.

There were some reported offences committed by persons with autism such as sexual act of exhibiting their genitals/intimate parts, stripping off their clothes (indecent exposure/exhibitionism) in public, inappropriate touching of others, stalking due to obsessions and peeping another person getting undressed (a voyeurism act) (Zuraini & Zuliza 2019). According to Bisea (2010) autistic teenagers who undress and expose their private part do so without the intention of indecent behaviour but actually fail to understand that their

conduct is wrong. Ives and Munro (2020) further explained that the action of exhibiting their private parts could be due to their attitudes of not being able to manage themselves and keeping hygiene, including refusing to use toilet facilities. Another study by Ruble and Dalrymple (1993) on 100 caregivers of persons with autism found that 18% of them were reported to commit inappropriate touching of the opposite gender. Under normal circumstances, these risky behaviours were considered as violation to the law (Haskin & Silva, 2006; Kings & Murphy, 2014). However, the boundaries between clear violation of law become ambiguous when these acts were carried out by the persons with autism

There are four factors that possibly cause persons with autism to become aggressive and break the law. First, persons with autism experience deficit in social interaction and communication skills making them vulnerable to manipulation by others (Haskin & Silva, 2006). Second, disruption or changes to daily routine or schedule can make them react with rage and violence. Third, a desire or deep interest in something can turn into obsessions which may lead them to commit an offence in order to achieve what they wish for (Haskin & Silva, 2006). Fourth, according to Wing (1981), a low level of empathy and sympathy makes them prone to breaking the law, as they have difficulties understanding the codes of social conduct. Research results revealed that offenders who have autism spectrum disorder tended to commit offences such as theft, molestation, indecent behaviour in public places, setting building on fire (arson), hacking computer software and collecting dangerous objects such as knives and guns.

Although cases involving persons with autism are isolated in nature, a specific SOP is needed to guarantee their legal rights so that police (RMP) and religious enforcement officers (REO) can apply the procedure as the legal basis to perform their duties. The aim of this article is to discuss the behaviours of persons with autism which are associated with breaking the law. Next, this article will discuss feedback by government agencies and society on the need to develop an SOP from the perspective of the RMP, REO, special education teachers and agencies that directly deal with supporting and caring for persons with autism.

Method

Participants and Measures

This qualitative research recruited 13 informants who were relevant to give feedback on the need to develop SOP for arrest and detention on persons with autism. The informants were five special education teachers, a Deputy to the Head of State Religious Affairs, three Religious Enforcement Officers (REO), three police officers from the Department of Criminal Investigation, RMP and one representative from an agency which provided support and care for persons with autism. Interview protocol, questions in round table discussions and focused group discussions (FGDs) were drafted by researchers who are the expert in autism spectrum disorder and expert in civil and shariah laws. Documents such as national newspaper articles were also referred, analysed and used to support feedback from informants.

Procedures

Prior to conducting this research, the informants were contacted via telephone calls and formal invitation letters to invite them to participate in interviews, round table discussions or FGDs. They were also explained about the aims of this research. All informants consented to participate in this research. Once they agreed to participate in this research, appointments for interviews, round table discussions or FGDs were scheduled. Most of the interviews, round

table discussions and FGDs that were conducted in 2020 and 2021 were conducted online via Google Meet or Zoom platforms, since Malaysia was going through a Movement Control Order (MCO) to curb the spread of COVID-19. The interviews, round table discussions and FGDs conducted in 2022 involved face to face sessions, as Malaysia has moved from pandemic phase to endemic phase, and travelling across states were allowed.

Selection of research informants were based on the criteria of direct involvement in implementing procedures of criminal, civil or shariah law in Malaysia as well as those who were taking care of persons with autism. Data collected was descriptively and thematically presented. The sponsoring body and approval to conduct this research was granted by Malaysia Fundamental Research Grant Scheme and Ministry of Education Malaysia with the following code: FRGS/1/2019/SS06/UKM/02/4.

Results

Findings of this research are presented according to the themes and questions posed during interviews, round table discussions and FGDs. A lot of responses were also referred to Malaysia's first case of person with autism, who was detained and arrested for indecent act. This case received nation wide responses and opinions from experts in the area and the general public.

Findings on misconducts Carried Out by Persons with a Autism which were Considered at Risk of Breaking the Law

Research results demonstrated that some conduct by persons with autism were associated with breaking the law included aggression, theft, molestation, indecent act in public places, and setting buildings on fire. Based on interviews, it was evident that some at risk misconduct point to breaking the law such as in the following quotes:

"Inappropriate act such as groping...hugging... .." (Teacher MT 2021)

"Rubbing ...his genital (in a public places) ..." (Teacher MT 2021)

"He holds, he hugs ..." (Teacher MT 2021)

"He likes to touch another's breasts, when passing by, he not only touches, he would grasp ..." (Teacher SH 2021)

"Stealing... but when he likes something, he will take it home. There was a video camcorder in the bag, we could not imagine he took home a big video..." (Teacher SLN 2021)

"Some like to steal pendrive, suddenly the pendrive goes missing ..." (Teacher SLN 2021)

"... set fire to his grandmother's house because he was furious ..." (Teacher NA 2021)

"He was unhappy, he uncontrollably did something else. I myself have been beaten, he acted unconsciously (beyond...the conscious mind)" (Teacher NA 2021)

"... like to lift someone's skirt, they like to brush against a pretty teacher or if they like her, they will hold, grope, and ... besides that openly masturbate" (Teacher SLN 2021)

Based on the interviews carried out, such behaviour are included as offences under criminal law (Penal Code), intentional tort under civil law and criminal offence under Shariah law. There can be legal prosecution if such offences were committed by a normal individual on another person or when the indecent act is carried out on oneself in public places. However, when these indecent acts were carried out by persons with autism,

Findings on the Need to Develop SOP for the Arrest and Detention of Persons with Autism

(i) persons with autism are categorised as having learning disabilities who deserve appropriate legal treatment different from that of typical people

This is affirmed by informants who worked with persons with autism as in the following quotes:

“...need to differentiate treatment, it is usually accepted that people with autism comprehend matters not in the manner as typical people does ... if they are detained or handled by strangers or people they are unfamiliar with, they typically become fearful or distressed” (Teacher LBW 2020)

In the Islamic aspect, the rights of persons with autism/disabled people must be protected, as stated by the Deputy to Head of State Religious Affairs and Religious Enforcement Officers (REO) as follows:

“ ... Yes, they are unique, they need a specific SOP, because they are not typical, but atypical ...” (SH 2022)

“ ..they are different... so it is unfair if we treat them the same as normal individuals” (MZ 2022)

“ ... According to appropriate rights for the detained party... in order to properly comply with the procedure of arrest by the REO so that all problems present during the process of arrest can be overcome ...” (TS 2020)

Respondents' views clearly showed that persons with autism were categorised as people with different level of learning abilities compared to typical individuals. Thus, their civil rights against discrimination based on disability and to humane treatment under detention and Shariah rights should be different from those for typical people.

(ii) Negative social perception on implementing existing routine Arrest and Detention SOP toward persons with autism

In Malaysia, the case of Ahmad Ziqri, a young man with autism spectrum disorder who was arrested by RMP on September 11th 2018 gave rise to various views by the public, netizens, NGOs and associations. He was arrested and detained for investigation under Section 354 of the Penal Code for the offence of molestation (sexual assault using criminal force with intent to outrage modesty). News of the arrest spread nation wide, causing netizens to criticise police actions and the female victim's parents, who worsened the issue by lodging a police report even after knowing the accused was a person with autism (Nadia, 2018). In addition, the mother of the accused also expressed her anxiety over her son's condition, who had never before been separated from her and was forced into an unfamiliar situation such as being handcuffed, wearing orange jail costume and was placed in a detention cell while waiting for the day of prosecution. Ahmad Ziqri's mother also stated that her son had the mental capacity of a 13 year old even though his chronological age was 22 years old. In order to calm him down so as not to be traumatised, his mother was forced to tell him that he was acting in an episode of the popular Malaysian police drama series, Gerak Khas. Thus in this case, Ahmad Ziqri was aware that he was under detention, but he, nevertheless, co-operated with the police because he believed he was in the shooting set of the film drama, Gerak Khas (Nadia 2018).

This case caught the serious attention of Hannah Yeoh, the then Deputy Minister for Development of Women, Family and Society. She urged society and netizens to stop condemning police action because in this case, there were two victims, namely the female victim who was molested in a public place and the accused young man with autism who was detained using existing routine SOP.

In spite of objections to application for detention under remand, the judge released the accused on bail, so the case continued to be the talk of the public. The application for detention under remand of four days for the accused, Ahmad Ziqri, triggered discontentment among netizens toward police actions and they expressed sympathy for him and his family (Jeevendran, 2018).

Following this case, RMP felt the urgent need to develop a specific SOP for persons with autism in order to allay the issue and guarantee the legal rights for them. This was clarified by the police officers as in the following quotes:

“This matter needs to be taken seriously; even though such cases were isolated, the condemnation from the netizens and society was big compared to other criminal cases like robbery and serial murder. But cases involving children of heaven are highly impactful and evoke the concern of all groups, that is why an SOP is needed.” (RMP1, 2022)

“ ... when there is this SOP , it is a way to fend off condemnation from netizens ...” (RMP2, 2022)

Based on interviews conducted above, it was found that informants support the development of a specific SOP for the arrest and detention of persons with autism/disabled. This is important so that implementing bodies may perform their duties based on legal procedure without trampling on the civil rights of the persons with autism/disabled.

(iii) Proposal from various political parties to develop a specific SOP for persons with autism/disabled

Various parties such as Ahmad Fadhli, PAS Member of Parliament representing Pasir Mas constituency, sent a letter to Malaysia Attorney-General stating that such cases should be better handled by police in the future. He also held the view that the police and the court should have their own appropriate procedure in handling such cases. He did not deny that the police had complied with routine legal procedure, nevertheless there were rooms for improved implementation in the future. Thus, he insisted that a specific SOP for persons with autism/disabled be developed to guide RMP when handling cases involving such persons (<https://berita.pas.org.my/tindakan-tepat-tolak-reman-pemuda-autisme/>).

An interview of the national newspaper, The Star with Madam Hasnah Abdul Rahman, the mother of Ahmad Ziqri, showed that she understood the trauma experienced by the female victim molested by her autistic son, who appeared like a normal youth but in reality had the mental capacity of a 13 year old child. She also did not blame RMP for their actions but hoped that the police would use a different detention and arrest procedure in handling

cases involving persons with autism/disabled in the near future (<https://www.mstar.com.my/lokal/semasa/2018/09/17/anak-autistik-gerak-khas>).

A few days after Ahmad Ziqri's arrest and detention, the public showed on-line support through a petition signed by thousands of people appealing to the authorities for fair treatment of the accused and review of the routine SOP to fulfil the needs of persons with autism/disabled (<https://www.thestar.com.my/news/nation/2019/03/26/new-police-sop-for-autism-cases/>).

This was affirmed by the RMP officers as in the following quotes from interviews

" ... we received very very strong condemnation from netizens all over ... and NGOs were able to collect 50,000 signatures for a petition against our action, from associations, netizens ... they also criticised the Ministry for Development of Women, Family and Society and so on, and at the same time, netizens criticised all." (RMP1, 2022)

The above response clearly showed that society in Malaysia were in support of developing a specific SOP in order to avail civil rights and ensure appropriate legal rights to persons with autism/disabled. Additionally, in this way, enforcement agencies that will implement the specific SOP will be spared condemnation by society and netizens when performing their duties.

(iv) Absence of specific guidelines to implement arrest and detention of persons with autism

RMP and REO hold the view that an SOP for Arrest and Detention of Persons with Autism/Disabled can guide them in implementing their responsibilities according to clear legal provisions and in ensuring the civil rights of such persons. The interview quote which supports the above statement are as follows

"... this SOP needs to be drafted, why was it not done before, it is our legal source and principle. It is our guideline to strengthen investigation and give inspiration so that we will not go astray ..." (RMP2, 2022).

Religious enforcement officers (REO) agree with pro-active action by the RMP as in the following statements:

"... the arrest SOP is important and besides that, we wish to avoid society accusing the religious enforcement officers, especially in handling cases of persons with autism" (ZI, 2020).

"We use more of REO power or discretion, if there is no specific SOP, then the discretionary power is too wide, whereby REO may use discretionary power to release the arrested perolees and the likes" (ZI, 2020).

" ... Religious enforcement officers also need a guideline to handle autistic offenders ..." (MZ, 2022).

The above interview results showed the difficulties faced by implementing bodies such as RMP and REO in performing their duties if there is no specific SOP. For example, they may

need to exercise discretionary power which might cause inconsistency in implementing arrest and detention practice.

(v) SOP for Arrest and Detention of Persons with Autism is useful for RMP/REO/ Frontliners/Members of Public

Absence of guidelines for arrest and detention of persons with autism/disabled makes it essential to be developed. In addition, it is useful not only for the authorities, but also for frontliners, government agencies such as the Ministry of Social Welfare and Religious Enforcement Department when dealing with persons with autism or other disabled people. This is supported by the authorities as in the following quotes:

“We develop this SOP because of fear of making mistakes when something happens” (RMP3, 2022).

“All officers responsible will work on implementing the SOP developed, involving not only the suspect but the victim and witness as well” (RMP2, 2022).

“This SOP cannot just focus on the persons with autism, because when we see a person, we won’t know if he is autistic or mentally sick or something else, so we should cover all those with mental health problems.” (PMFAR, 2020)

(vi) Malaysia cares about Legal Rights of Persons with Autism/Disabled through Friends of Persons with Autism (Rakan Autism), Roadshows by RMP and Establishment of Autism Center (Autism Center) at RMP Academy.

This is evident in the following quotes:

“ ... create Friends of Persons with Autism (Rakan Autisme). In the initial stage, contingent and district RMP units..., in another SOP we don’t see, a bit of privilege. It means during investigation and arrest, the function of Friends of Persons with Autism, list of their names will be monitored by Bukit Aman (Headquater of RMP), and they will assist the officer handling the case. To be involved in the arrest procedure ...” (RMP3, 2022).

“ ... RMP did hold roadshows throughout Malaysia, not another country, but we would like this RMP, all the members of RMP to understand, appreciate and implement this SOP ...” (RMP1, 2022).

Development of SOP for Arrest and Detention for Persons with Autism/Disabled triggered efforts to establish an Autism Centre at RMP, Cheras branch on 25th March 2021. The aim is to give fair treatment to the children with autism of RMP members. This is explained through the following quotes:

“... we built a RMP Autism Institute or Centre. But it is jointly funded with Islamic Religious Council of Federal Territory (MAIWP), the others succeeded in building a centre to place autistic children of RMP members in the Klang Valley ...” (RMP2, 2022).

The founding of RMP Autism Centre gained the attention of Bank Rakyat Foundation (Yayasan Bank Rakyat) which adopted the children with autism in order to look after their

welfare and education. In January 2022, a contribution of MYR100,000 was presented by the Chairman of the Bank Rakyat Foundation, Datuk Megat Zulkarnain Tan Sri Oardin to Inspector-General of Police, Tan Sri Acryl Sani Abdullah Sani for the Education Program Cooperation between the Bank Rakyat Foundation and the RMP Autism Centre (Sabapathy, 2022). This showed the concern and support of the industry for the welfare of children with autism. It is hoped that other industries will come forward to devote assistance to share the burden of funding, financially support the administration and education of the RMP Autism Centre so as to better meet their needs and ensure their welfare.

Discussion and Conclusion

The above findings revealed some of the reported law breaking behaviours that were committed by persons with autism. These behaviours include aggression, theft, molestation, indecent act in public places, and setting buildings on fire. Results also confirmed the need to develop a specific SOP for arrest and detention of persons with autism and disabled so as to ensure their legal rights and they receive proper care when being detained or arrested. The feedback on the development of this specific SOP certainly echoes positive welcomed by all parties. Six themes were extracted from the interviews, round table discussions and FGDs with regard to the need to develop a specific SOP for Arrest and Detention of Persons with Autism. These feedback can be considered as representative views of special education teachers, officers in government agencies, RMP, REO, and private agency who deal directly with supporting and caring for persons with autism. These feedback also act as a prove that the Malaysian government and its community care for the civil and legal rights, as well as welfare of persons with autism and other disabled people. Likewise, the development of this SOP indirectly will silence the public accusations toward RMP whose action was alleged as implementing inappropriate SOP in cases of arrest and detention of persons with autism/disabled. It is suggested that further studies on the feedback to strengthen the views on the need to develop an SOP for Arrest and Detention of Persons with Autism should also include parents and caregivers of persons with autism and those who are disabled.

Acknowledgement

We express our heartfelt appreciation to the Research Group from Center for Research in Shariah, Faculty of Islamic Studies, and Center for Research in Psychology and Human Well-Being, Faculty of Social Sciences and Humanities, Universiti Kebangsaan Malaysia (UKM) for the research topic, "*Pembinaan Prosedur Operasi Standard (SOP) Tangkapan dan Pengendalian Tahanan Individu Autisme oleh Penguat kuasa Agama (Constructing a Standard Operating Procedure (SOP) for Arrest and Handling of Persons with Autism by Religious Enforcement Officers)*" (Research Code- FRGS/1/2019/SS06/UKM/02/4), as well as the Ministry of Education Malaysia for kindly funding the research grant.

Conflict of Interest

We declare no conflict of interest pertaining to this research.

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