



Scientific Journal of Child Criminal Law (Juvenile Justice Criminal Law Policy in Indonesia and Malaysia: A Comparison)

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Abstract. This paper aims to compare juvenile justice criminal law policies in Indonesia and Malaysia. Child protection is an important aspect of social development and community welfare. In this context, a comparison between these two countries offers valuable insights into child protection approaches, policies, and implementation. According to the research results, it appears that both countries have made serious efforts to protect children's rights. However, there are differences in legal approaches and the implementation of child protection policies. In Indonesia, regulations governing child protection, such as Law Number 23 of 2002 concerning Child Protection, while in Malaysia, there is the 2001 Children's Act, which regulates children's rights. Both countries have their own characteristics in dealing with children in conflict with the law, both in terms of legal basis, institutions, and approaches to resolution. This research uses a normative juridical method with a statutory and comparative legal approach. The results of the study show that Indonesia has progressive regulations through the SPPA Law, but still faces challenges in implementation. Meanwhile, Malaysia still applies a relatively conservative and institutional approach.

Keywords: juvenile criminal law, restorative justice, SPPA Law, 2001 Children's Act

A. Introduction

Children are an asset in nation-building. With this, there needs to be protection for children during their growth and development period. By the mandate of the Beijing Rules, children are an integral part of the national development process of each nation. Especially the Indonesian people.¹ As stated in the preamble to Law Number 35 of 2014 concerning Child Protection, in the weighing section, children are mentioned as shoots, youth, and successors of the nation. Therefore, children need to receive protection and have the widest possible opportunities for optimal growth and development, both physically and mentally, to realise children's welfare and provide guarantees for their rights.

Protection of children in conflict with the law is part of the state's responsibility to guarantee children's human rights. Children as perpetrators of criminal acts should not

¹ B Nugroho, *Juvenile Criminal Justice System in Indonesia*. (Jakarta: Prenadamedia Group, 2020).

be treated the same as adults, considering their different psychological and social development characteristics. Therefore, the juvenile criminal justice system must be designed specifically and humanistically.²

Indonesia and Malaysia, as countries that are historically and culturally close, implement different juvenile justice systems. This research discusses the differences and similarities between the two systems in terms of legal basis, justice approach, and implementation in the field. This study is important for evaluating the effectiveness of legal protection for children in both countries.

Generally, Indonesia means that "a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb". This is stated in Article 1, paragraph (1) of Law Number 35 of 2014 concerning Child Protection. Likewise, in Malaysia, according to the Malaysian Law, the 2001 Children's Act (deed 611) states that a child (children) is someone under the age of 18 (eighteen) years. Nowadays, deviations in children's behaviour are often broadcast on television or reported in various newspapers and mass media. The criminal acts committed by a child are almost the same as those of an adult, as is the case, rape, abuse, theft, murder and so on. The increase in the number of deviations committed by a child is due to environmental factors, technological factors, and others.³

Child protection in Indonesia starts when they are still foetuses until they are 18 years old. Efforts to protect children are very important, and the focus is on prevention before legal problems occur. The child protection system in Indonesia still faces major challenges in ensuring the rights and welfare of children. The country has developed a legal framework for child protection, but implementation is still weak. Meanwhile, for child protection in Malaysia, there is the 2001 Children's Act, which regulates children's rights. However, the implementation of child protection policies between Malaysia and Indonesia is also an important focus in this research.

And to find out the criminal responsibility of children, Malaysia and Indonesia have determined the minimum age limit for criminal responsibility for children, as a benchmark in formulating when children can be held accountable for their actions. This has been stated in the regulatory policies of each country. The age of criminal responsibility for children in Indonesia is 12-18 years old. The determination of 12 years of criminal responsibility for children is based on the Constitutional Court decision No. 1/PUU-VII/2010, which in its consideration states that it is necessary to set an age limit

² Madim Gultom, *Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia* (Bandung: PT Refika Aditama, 2014).

³ N. Abdullah, "Juvenile Justice in Malaysia: An Overview of Legal Framework," *Malaysian Journal of Law and Society* 1, no. 2 (2017).

for children to protect children's constitutional rights, especially the right to protection and the right to growth and development.

In contrast to Malaysia, which is the closest country to Indonesia, but adheres to a Common Law system (English Law), this is a direct result of British colonisation of Malaya, Sarawak, and North Borneo from the early nineteenth century until the 1960s. The Malaysian Criminal Law originates from the Indian Criminal Code (1860), which was enforced by the Straits State Legislative Council starting 16 September 1872, under the name of the Straits Settlement Penal Code.

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Protection of children in conflict with the law is part of the state's responsibility to guarantee children's human rights. Children as perpetrators of criminal acts should not be treated the same as adults, considering their different psychological and social development characteristics. Therefore, the juvenile criminal justice system must be designed specifically and humanistically.

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the number of deviations committed by a child is due to environmental factors, technological factors, and others.⁴

Child protection in Indonesia starts when they are still fetuses until they are 18 years old. Efforts to protect children are very important, and the focus is on prevention before legal problems occur. The child protection system in Indonesia still faces major challenges in ensuring the rights and welfare of children. The country has developed a legal framework for child protection, but implementation is still weak. Meanwhile, for child protection in Malaysia, there is the 2001 Children's Act, which regulates children's rights. However, the implementation of child protection policies between Malaysia and Indonesia is also an important focus in this research.

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B. Method

This research uses a normative legal approach with a comparative legal analysis method. Data was obtained through a literature study, which includes statutory regulations, legal journals, academic books, and international documents such as the Convention on the Rights of the Child.

C. Result & Discussion

The juvenile justice system is based on the principles of child protection, restorative justice, and the best interests of the child. Restorative justice emphasises restoring relationships between perpetrators, victims, and society. Diversion and

⁴ Andi Hamzah, *Perbandingan Hukum Pidana Beberapa Negara* (Jakarta: Sinar Grafika, 2008).

rehabilitation are key to this approach. Children are an asset in nation-building. With this, there needs to be protection for children during their growth and development period. By the mandate of the Beijing Rules, children are an integral part of the national development process of each nation. Especially the Indonesian people.⁵

The problem of children's rights in Malaysia has been regulated by the Children's Act 2001 (Act 611), which is an act to unify several laws related to the preservation, protection and rehabilitation of children and to provide for matters related to children. Seen from the age limit of children according to the Children's Act 2000 (Act 611) states that a child is someone under the age of 18 (eighteen) years. In the Juvenile Court Act 1947, a child is someone who is less than 18 (eighteen) years old. At that time, a Juvenile was divided into two, namely a "child" under 14 years of age, and between 14 and less than 18 years of age was called a "youth".⁶ The Child Protection Act 1991 (Act 468) states that a child is someone under the age of 18 (eighteen) years. Whereas the Women and Girls Protection Act covers the age of 21 (twenty-one) years. However, with the 2001 Children's Act, women between the ages of 18 and 21 need to be protected under the penal code. Thus, the age limit for children in Malaysia is between 14 and 18 years, and those under 7 are called boys, not children and not young people.

For Indonesia, the definition and age limit for children are explicit. Article 1 point 1 of Law Number 23 of 2002 concerning Child Protection is as follows: "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." The definition and limitations of children as formulated in Article 1, point 1 of Law Number 23 of 2002 include 2 (two) important issues, which are elements in the definition of children, namely, first, someone who is not yet 18 (eighteen) years old. Thus, every person who has passed the age limit of 18 years, including mentally incompetent people, is qualified as a non-child, namely an adult. In this case, it does not matter whether the status is married or not. Second, children who are still in the womb. So, Law Number 23 of 2002 is to protect children, which extends to include children in the womb. Thus, the definition and age limits for children in the Child Protection Law are not intended to determine who is an adult and who is still a child, so that the legal consequence is that a woman who is married even though she is not yet 18 years old, for example still 16 years old, is legally qualified as an adult.⁷

⁵ Andi Hamzah and A Suangelipu, *Pidana Mati Di Indonesia Di Masa Lalu Kini Dan Di Masa Depan* (Jakarta: Ghalian Indonesia, 1985).

⁶ A.W.E Hastomo, "Upaya Diversi Terhadap Anak Pelaku Tindak Pidana Yang Diancam Pidana Penjara 7 Tahun Atau Lebih (Tinjauan Pada Pasal 7 Ayat (2) Undang-Undang No. 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak)," *Badamai Law Journal* 3, no. 1 (2020).

⁷ Yulianto, "Standar Operasional Prosedur (SOP) Pelaksanaan Diversi Oleh Penuntut Umum Anak Dalam Sistem Peradilan Pidana Anak," *UNDIP Electronic Journal System (UEJS)* 10, no. 1 (2020): 109-25.

Comparing the laws between Malaysia and Indonesia, there are indeed many similarities, while the only difference is the issue of adult limits. For Malaysia, if you are 18 years old, according to the 1971 Adult Act, you are considered an adult and have received consent to marry. Meanwhile, in Indonesia, according to Law Number 1 of 1974 concerning Marriage, it is stated that women who are 16 years old and men who are 19 years old can enter into marriage. However, within that age limit (16 to 19 years, if you are not married, you are still considered a child who is still under legal protection for all children's rights.

1. Child Criminal Law Policy in Indonesia

Regarding the basic principles in child protection law, they are formulated in Article 2 of Law Number 23 of 2002 concerning Child Protection, which, simultaneously with the formulation of the principles and objectives of implementing child protection, confirms the 1945 Constitution. Survival and development, 4) respect for children's opinions. In line with this, the state is obliged to ensure that children are allowed to express their opinions in any judicial or administrative process that affects children's rights, either directly or indirectly.⁸ UU No. 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) is the main basis for the juvenile justice system in Indonesia. This law requires the implementation of diversion at every stage of the judicial process and prioritises the principles of restorative justice. Indonesia has also ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990. In Law Number 23 of 2002 concerning Child Protection, it can be stated that the rights of children as formulated in Article 4 of Law Number 23 of 2002 concerning Child Protection originate from primary laws. In Articles 4 to 19 of Law Number 23 of 2002 concerning Child Protection, children's rights and obligations are formulated as follows:

- a. Children's rights to life, growth and development, protection and reasonable participation (Article 4 of Law Number 23 of 2002 concerning Child Protection). The right to a name as personal identity and citizenship status (Article 5). Further regulations are regulated in Article 17 and Article 28.
- b. The right to identity is the first right that children must obtain. Currently, Indonesia still does very little in registering children's births (birth registration). Some district governments make birth certificates a source of regional income.
- c. The right to worship according to one's religion, think and express (Article 6)
- d. The right to know one's parents, to be raised and cared for by one's parents (Article 7, paragraph (1)).

⁸ MSC Yong Ohoitumur, *Teori Etika Tentang Hukuman Legal* (Jakarta: PT Gramedia Pustaka Utama, 2019).

- e. The right to be cared for or adopted by foster parents or adoptive parents (Article 7, paragraph (2). Regarding the care and adoption of children is regulated more fully in Chapter VIII, Articles 37 to 41 of Law Number 23 of 2002 concerning Child Protection.
- f. The right to obtain health services (Article 8)
- g. The right to obtain social security (Article 8). Children's social security is the responsibility of the Government. Until now, there is no social security program for children, except for social security in the form of employment insurance for workers (labourers) through the law on Labour Social Security, and health insurance through Askes. However, its scope and audience are still very limited.
- h. The right to obtain education and teaching (Article 9, paragraph 1).
- i. The right to obtain exceptional education for disabled children (Article 8, paragraph (2))
- j. The right to obtain special education for children who have advantages (Article 8, paragraph (2))
- k. The right to express and have one's opinion heard (Article 10).
- l. The right to receive, seek and provide information (Article 10).
- m. The right to rest and use free time to socialise with peers, play, relax and be creative (Article 11).
- n. Children who have disabilities have the right to (a) receive rehabilitation, (b) social assistance, and (c) maintain the level of social welfare (Article 12).
- o. Children who are in care status have the right to be protected from (a) discrimination, (b) exploitation (economic and sexual), (c) neglect, (d) cruelty, violence and abuse, (e) injustice, (f) mistreatment (see Article 13 paragraph (1)).
- p. The right to be cared for by one's parents (Article 14)
- q. The right to obtain protection from: (a) abuse in political activities, (b) involvement in armed conflict, (c) involvement in social unrest, (d) involvement in events containing elements of violence, (e) involvement in war (Article 15).
- r. The right to obtain protection from: (a) persecution, (b) torture, (c) inhumane punishment (Article 16, paragraph 1).
- s. Children whose liberty is deprived have the right to: (a) receive humane treatment, (b) be placed separately from adults, (c) obtain legal assistance, (d) obtain other assistance, (e) defend themselves and obtain justice in an objective, impartial court and in a trial closed to the public.
- t. Child victims or perpetrators of sexual violence or children in conflict with the law have the right to have their identities kept secret (Article 17, paragraph 2).
- u. The right to obtain legal aid and other assistance, whether victims or perpetrators of criminal acts (Article 18)

- v. Children's obligations (Article 19): (a) respect parents, guardians and teachers, (b) love family, community and friends, (c) love the homeland, nation and state, (c) foster worship following the teachings of their religion, (d) carry out noble ethics and morals.

Age of Criminal Responsibility

The minimum age limit for criminal responsibility in Indonesia is 12 years. Children under this age cannot be criminally processed and must receive special treatment through social and psychological approaches.

Diversion and Restorative Justice

Diversion is mandatory for children who commit crimes under the age of and are not serious crimes. The diversion process is carried out at the police, prosecutor's office and court levels involving the perpetrator, victim, family and social workers.

Institutions and Implementation

Institutions that play a role in juvenile justice include the Police (PPA Unit), the Prosecutor's Office, the Juvenile Court, and the Special Child Development Institute (LPKA). The implementation of juvenile criminal justice still faces challenges in terms of human resources and infrastructure.

2. Juvenile Criminal Justice System in Malaysia

Child Protection in Malaysia. In Malaysia, children protected under the 2001 Act consist of:

- a. children in need of care and protection;
- b. children in need of protection and rehabilitation;
- c. child trafficking and runaways;
- d. children who commit criminal offences;
- e. unsupervised children.

Children in need of protection and rehabilitation. Children in need of protection and rehabilitation Section 38 (1) Act 2001 defines this group as those who are driven to commit any sexual act or are in an environment that leads to that act, live or frequent a place of prostitution and they are usually with or under the control of the operator of a place of prostitution. In addition to this group, Section 42 of the 2001 Act places children who are brought to be brought into or out of Malaysia for prostitution, as children who also need protection and rehabilitation.⁹

Surely, children need protection. Section 43 (1) of the 2001 Act also places offences related to these children, especially those related to prostitution. A new offence has been

⁹ Gultom, Legal Protection of Children in the Juvenile Criminal Justice System in Indonesia; Firly Ajurni and Novilia Wulan Sari, "Comparison of the Legal Systems of Indonesia and Malaysia Regarding Child Protection," *Innovative Law: Journal of Social Law and Humanities* 1, no. 3 (2024).

introduced in the paragraph, which makes it an offence for any person to subscribe to or hire, for any valuable consideration, a child to provide services to satisfy that person's sexual desires. Section 41 also mentions children who need immediate protection if they are in the circumstances specified in Subsection (2), including if the child is pregnant out of wedlock. This provision was included to allow a child who is pregnant out of wedlock to have a support group and shelter while waiting for the child to be born. Making a mistake once does not mean that for the rest of his life he is guilty and unforgivable. However, the inclusion of this provision is not intended to encourage this situation to continue, but as a means that can be used if such a situation occurs. Both, namely the child and the child she is carrying, need help to continue their lives. Here is an explanation for the Sub-Subtitle.

Place children involved in sales transactions either inside or outside Malaysia, as those who are protected. This situation also includes children who have run away with one of the parents or guardians of children who do not have legal custody either inside or outside Malaysia (Section 52 Act 2001). This new provision was made to overcome the problem of children running away with their mothers or fathers when their marriage ends in divorce. This situation is even more noticeable when it involves mothers or fathers who come from two different countries. Both parties want the child, and when one of the parties is granted custody following the laws of a country, then the other party brings the child back to their country in the hope that a custody decision that is more favourable to them will be reached.¹⁰

Responsibilities of mothers or fathers or guardians and families Responsibilities of mothers or fathers or guardians and families When social problems among teenagers are getting worse, many think that this symptom is caused by the disharmony of family institutions. In addition to defining "family members" as including parents, guardians or a member of the extended family, who is a member of the household for the child, this 2001 Act also defines "extended family" as people who have a kinship relationship through blood, cementation or adoption with that person. The 2001 Act also recognises the concept of fosterage with Section 2 (1) defining "foster parent" as a person who is not the mother or father or relative of a child who can accept the child in foster care. Section 30 (1) (e) or Section 35 or 37 of the 2001 Act. This situation will give greater space to the court in making an order related to the child. If there is no mother or father or guardian, or relative, he can be placed under the care of a pet mother or father if that is the best option for him.

¹⁰ Pane.M.D, "Kebijakan Hukuman Mati Ditinjau Dari Perspektif Hukum Positif Dan Hak Asasi Manusia," *Rel Nullius Law Journal* 1, no. 1 (2019).

Age of Criminal Responsibility

Malaysia sets the minimum age of criminal responsibility at 10 years. However, there is a "doli incapax" doctrine which states that children aged 10–12 years are considered not to have criminal capacity unless it can be proven otherwise.¹¹

The Role of Juvenile Courts and Welfare Officers

The Juvenile Court handles juvenile criminal cases using special procedures. Community welfare officers play an important role in compiling social reports and recommending actions for children.

D. Conclusion

The legal system of child protection in the country of Indonesia and in the country of Malaysia, when compared there shows many similarities. Among other things, it is regulated in family law as well as in Indonesia, it is regulated marriage law in. Then the obligations and responsibilities of the state, government, society, family and parents, the position of the child, guardianship, guardianship, childcare and adoption, child religion, abandoned children and special protection, all these things are regulated in the Children's Act 2001 (Act 611). Such as supervision, rehabilitation, childcare, child protection, examination and care of children or exploitation, economic, sexual, education or school and special protection from abuse, disability, and child maltreatment. The Child Protection Law in Malaysia has been consolidated in the Children's Act 2001 (Act 611).

Meanwhile, Indonesia is still separated from the Child Protection Law. Then, even in Indonesia, there has been no real action to implement all child laws into the reality of society, because there are no implementing regulations such as government regulations, presidential decrees, ministerial decrees, or regional regulations. Even though there are already existing on, such as Presidential Decree Number 77 of 2003 concerning the Indonesian Child Protection Commission. However, all this is still far from being desired in fulfilling children's rights, even in Indonesia, where there are still many shortcomings when compared to the existing legal system in Malaysia. Indonesia and Malaysia, however, have different approaches to handling juvenile criminal cases. Indonesia is more progressive in implementing restorative justice and diversion, which normatively provides greater protection for children. In contrast, Malaysia still tends to use a coaching approach through closed institutions.

To strengthen child protection, here are some suggestions:

1. Malaysia needs to consider adopting the concept of restorative justice normatively and practically.

¹¹ Abdullah, "Juvenile Justice in Malaysia: An Overview of Legal Framework."

2. Indonesia needs to improve the quality and quantity of officers handling children's cases.
3. Both countries need to increase bilateral cooperation in exchanging juvenile justice best practices.
4. The need for active community and family involvement in the juvenile justice process.

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