



Juvenile Justice Criminal Law Policy Between Indonesia and Malaysia: A Comparison

Farhan Taufiqurahman¹ Handar Subhandi Bakhtiar²

Universitas Pembangunan Nasional Veteran Jakarta

Corresponding email: farhantaufik67@gmail.com

Abstract: This paper aims to compare the criminal law policies of juvenile justice in Indonesia and Malaysia. Child protection is an essential aspect of social development and community welfare. In this context, a comparison between the two countries offers valuable insights into the approaches, policies, and implementations of child protection. The results of the study show that both countries have made serious efforts to protect children's rights. However, there are differences in the legal approach and implementation of child protection policies. In Indonesia, regulations governing child protection exist, such as Law Number 23 of 2002 concerning Child Protection. In Malaysia, the Children's Law of 2001 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 settlement approaches. This study employs a normative juridical method, incorporating a statutory and comparative legal approach. The results of the study indicate that Indonesia has progressive regulations in place through the SPPA Law, but still faces challenges in their implementation. Meanwhile, Malaysia still applies a relatively conservative and institutional approach.

Keywords: Indonesia Juvenile Justice, Malaysia Juvenile Justice, Restorative Justice

A. Introduction

Children are valuable assets in the development of a nation. Therefore, the state must protect children during their growth and development. In line with the principles outlined in The Beijing Rules¹, children are a vital part of the national development of

¹Part 1, Article 1 paragraph 6, United Nations standard minimum rules for the administrations of junior justice (The Beijing Rules).

every country, including Indonesia.² In the opening of Law Number 35 of 2014 concerning Child Protection, it is stated that children are the shoots of the nation, the young generation, and the successors of the nation's future. Therefore, children have the right to receive protection and the broadest possible opportunity to grow and develop optimally, both physically and mentally, to achieve child welfare and guarantee their rights.³ The safety of children in conflict with the law is part of the state's responsibility to ensure that children's human rights are guaranteed. Children as perpetrators of criminal acts should not be treated the same as adults, considering the different characteristics of their psychological and social development. Therefore, the juvenile criminal justice system must be explicitly designed and humane.

Indonesia and Malaysia, two countries with cultural and historical proximity, have different juvenile justice systems. This study examines the differences and similarities between the two systems, with a focus on their legal foundations, justice approaches, and field implementation. This study aims to assess the effectiveness of the legal protection system for children in both countries.

In the context of Indonesian law, a child is defined as a person who is not yet 18 years old, including a child who is still in the womb. This definition is stated in Article 1, paragraph (1) of Law Number 35 of 2014. Likewise, in Malaysia, the Children Act 2001 (Act 611) states that a child is an individual under the age of 18. Nowadays, deviant behaviour committed by children is often highlighted in the media, including television and newspapers. Criminal acts committed by children frequently resemble criminal acts committed by adults, such as rape, abuse, theft, and murder. Environmental factors, technological developments, and other social factors generally influence this phenomenon.

In Indonesia, child protection begins from the moment of conception until the age of 18. The primary focus of this protection effort is prevention, before the child becomes involved in legal problems. Although Indonesia has a reasonably comprehensive legal framework for child protection, significant challenges still exist in its implementation in the field. On the other hand, Malaysia also has child protection regulations through the Children's Act 2001. However, the differences in the implementation of child protection policies in the two countries are an essential aspect of this study.

In terms of criminal liability, both Indonesia and Malaysia have set a minimum age limit as a legal basis for determining when a child can be held accountable for his/her actions. In Indonesia, the age is set between 12 and 18 years.⁴ This determination refers to Constitutional Court Decision Number 1/PUU-VII/2010, which emphasises the need

²Bunadi Hidayat, *Criminalization of Minors*, (Bandung; PT. Alumni, 2014), p. 3

³ Law No. 35 of 2014 on Child Protection.

⁴Constitutional Court Decision Number 1/PUU-VII/2010

for an age limit to protect children's constitutional rights, including the right to proper protection and development.

To ensure the protection of children's rights, awareness is needed of the environment in which the child lives, including the family, school, and society. Not only awareness, but a rule is also necessary to protect children's rights. The party responsible for making the rule is the State. The state must have an institution in place for the formation and implementation of regulations, so that what is desired can be implemented correctly and under control.⁵

Unlike Malaysia, which is the closest country to Indonesia and adheres to the Common Law system (English Law), this is a direct result of British colonisation in Malaya, Sarawak, and North Kalimantan from the early nineteenth century until the 1960s. Malaysian Criminal Law originated from the Indian Penal Code (1860), which was enacted by the Straits Settlements Legislative Council starting September 16, 1872, under the name Straits Settlements Penal Code.⁶

B. Method

This study employs a normative legal approach, utilising a comparative legal analysis method. Data were obtained through literature studies that covered legislation, legal journals, academic books, and international documents, such as the Convention on the Rights of the Child.

C. Results & 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 the restoration of relationships between the offender, the victim, and the community. Diversion and rehabilitation are key to this approach.

The Child Protection Law stipulates that, with the existence of acts of violence, there are legal provisions so that no one commits acts of violence, as stated in Law No. 23 of 2002 in Article 76C, which explains that anyone is prohibited from placing, ignoring, carrying out, ordering, or participating in acts of violence against children.⁷ Lawmakers have created a special regulation that functions to protect children from violence they experience, whether it is physical violence or psychological violence, which is regulated by Law No. 35 of 2014, which is an amendment to Law No. 23 of 2002 concerning Child

⁵Resti Hedi Juwanti. (2017) "Child Protection Patterns in Muslim Countries" Journal of Social & Sharia Culture, Faculty of Law, Syarif Hidayatullah State Islamic University, Jakarta, page 78

⁶Ahmad Bahiej in Adi Suciadi, 2019, Criminal Liability of Children in Malaysian Criminal Law with Indonesian Criminal Law, Thesis, Sunan Kalijaga State Islamic University Yogyakarta, p. 8.

⁷JDIH Law Number 23 of 2002 Article 76c concerning Child Protection

Protection, in which criminal sanctions (punishments) against perpetrators are made more severe so that acts of violence against children do not occur.⁸

Issues related to children's rights in Malaysia have been regulated in the Children's Act 2001 (Act 611), which is a law that combines several legal provisions related to the protection, preservation, and rehabilitation of children, and regulates various legal aspects concerning children. According to the law, a child is defined as an individual under the age of 18.⁹ Meanwhile, the 1947 Juvenile Court Law also stipulates that children are those under the age of 18. At that time, the term "teenager" was categorised into two groups: "children" for those under the age of 14, and "youth" for those aged 14 to 18.

The Child Protection Act of 1991 (Act 468) also defines a child as an individual under the age of 18. However, in the Law on the Protection of Women and Girls, legal protection is extended to include women up to the age of 21. However, in the latest provisions of the Child Law of 2001, women between the ages of 18 and 21 continue to receive protection through criminal law.

From these provisions, it can be concluded that the age limit of children in Malaysia generally ranges from 14 to 18 years. Children under the age of 7 are categorised as "little men", not included in the classification of children or adolescents.

Meanwhile, in Indonesia, the definition and age limit of a child have been clearly explained in Article 1, number 1 of Law Number 23 of 2002 concerning Child Protection, which states: "A child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb." This definition encompasses two key aspects: first, a child is an individual who has not yet reached the age of 18. Thus, anyone who is 18 years of age or older, including those with mental disabilities, is legally no longer categorised as a child, but as an adult, regardless of marital status. Second, this law also protects children who are still in the womb, making the scope of protection extremely broad.

In this context, the age limit is not set to absolutely differentiate between children and adults, but rather as a basis for providing legal protection for children. Therefore, although socially a woman who marries at the age of 16 is considered an adult because she is married, legally she is still categorised as a child if she has not reached the age of 18.

When compared, several similarities exist between the legal systems of children in Malaysia and Indonesia. The most prominent difference lies in the age limit of adulthood. In Malaysia, according to the Adulthood Act of 1971, a person is considered an adult when he/she is 18 years old and are legally permitted to marry. Meanwhile, in Indonesia,

⁸Law No. 35 of 2014 Amendment to Law No. 23 of 2002 concerning Child Protection

1. ⁹ Legal Research Board, Children Act 2001 (Act 611), (Kuala Lumpur: International Law Book Services, 2002)

Law Number 1 of 1974 concerning Marriage stipulates that women can marry at a minimum age of 16 years and men at a minimum age of 19 years. However, in the age range of 16 to 19 years, as long as a person is not married, they are still considered a child and continue to receive legal protection as such, including all their rights.

1. Child Criminal Law Policy In Indonesia

a. Legal basis

The fundamental principles in child protection law are regulated in Article 2 of Law Number 23 of 2002 concerning Child Protection. The formulation of this principle also emphasises the objectives of implementing child protection, which refer to the mandate of the 1945 Constitution of the Republic of Indonesia. Several principles form the basis of child protection, including the right to life, the right to grow and develop, and respect for children's opinions and views. In this regard, the state is obligated to ensure that children have the opportunity to express their views in every legal process, both criminal and administrative, that has a direct or indirect impact on the fulfilment of their rights.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA) is the primary foundation of the juvenile justice system in Indonesia. It has also identified the differences in terms of criminal procedural law, spanning from the investigation process to the sentencing process. The application of criminal sanctions for children is inappropriate for a child, and will later become a stigma for children as prisoners¹⁰; therefore, this Law requires the implementation of diversion (transferring the settlement of cases outside the formal judicial process) at every stage of the legal process, and prioritises the principle of restorative justice.¹¹ In addition, Indonesia has also ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990, which strengthens the state's commitment to guaranteeing children's rights internationally. Children's rights are explicitly stated in Articles 4 to 19 of Law Number 23 of 2002. These articles stipulate various children's rights and obligations, including:¹²

- 1) The right to survival, growth and development, protection and fair participation (Article 4).
- 2) The right to identity and citizenship (Article 5) is the fundamental and first right that every child must have. However, to date, birth registration in Indonesia remains relatively low. In fact, in some areas, birth certificates are still used as a source of local revenue.

¹⁰Sudarto, Law and Criminal Law, (Bandung, PT Alumni, 1997), p. 32.

¹¹Muliani S, Adil Kasim et al., Reformulation of the Conditions for Implementing Diversion in the Juvenile Criminal Justice System in Indonesia, (Journal of Indonesian Legal Development). p. 366

¹²Article 4 to Article 19 of Law Number 23 of 2002

- 3) The right to practice one's religion, to think and express opinions (Article 6).
- 4) The right to know who his parents are, as well as the right to be raised and nurtured by them (Article 7 paragraph (1)).
- 5) The right to be cared for by adoptive parents if necessary (Article 7, paragraph (2)). Provisions regarding the care and adoption of children are explained in more detail in Chapter VIII, namely Articles 37 to 41 of Law Number 23 of 2002.

Additionally, there are numerous laws that explicitly regulate children's rights, as outlined in Law No. 23 of 2002.

b. Age of Criminal Responsibility

The minimum age for criminal responsibility in Indonesia is 12 years. Children under this age cannot be prosecuted and must receive special treatment through social and psychological approaches.¹³

c. Diversion and Restorative Justice

Diversion can be used for children who commit crimes under the age of seven, provided the offences are not serious. The diversion process is carried out at the police, prosecutor's office, and court levels by involving the perpetrator, victim, family, and social workers.¹⁴

d. Institutions and Their Implementation

Agencies involved in juvenile justice include the Police (PPA Unit), the Prosecutor's Office, the Juvenile Court, and the Special Child Development Institution (LPKA). The implementation of juvenile criminal justice still faces challenges in terms of human resources and infrastructure.

2. Juvenile Criminal Justice System In Malaysia

a. Legal basis

Child Protection In Malaysia. In Malaysia, children who are protected based on the 2001 Law consist of:¹⁵

- 1) children in need of care and protection,
- 2) children who need protection and rehabilitation,
- 3) child and refugee trafficking,
- 4) children who commit crimes,
- 5) unsupervised children.

¹³M. Hendri Agustawan, Pujiyono, Umi Rozah, (Age of Criminal Responsibility for Children in the Neurolaw Perspective), Journal of Law Enforcement and Justice, Vol 4 No 2. p. 156

¹⁴ <https://www.hukumonline.com/berita/a/mengenal-diversi-dalam-sistem-peradilan-pidana-anak-di-indonesia-lt67052662848bb/>

¹⁵ Legal Research Board, Children Act 2001 (Act 611), (Kuala Lumpur: International Law Book Services, 2002)

Children who need protection and rehabilitation. Children who need protection and rehabilitation. Section 38 (1) of the Act 2001 defines this group as those who are driven to engage in sexual acts, or are in an environment that leads to such acts, live or are frequently present in places of prostitution and are usually present or under the control of the managers of such places.¹⁶ In addition to these groups, Article 42 of the 2001 Act places children who are brought to be taken into or out of Malaysia for prostitution as children who also need protection and rehabilitation.

Of course, children need protection. Section 43 (1) of the Act of 2001 also introduces offences relating to such children, particularly those relating to prostitution. A new offence has been introduced in the paragraph, which makes it an offence for any person to subscribe or employ, for valuable consideration, a child to provide services for the sexual gratification of that person.¹⁷

Section 41 also mentions a child who needs immediate protection when in a situation as referred to in Subsection (2), including when the child is pregnant out of wedlock. This provision was included to enable a child conceived 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 one is guilty for the rest of their life and cannot be forgiven. However, the inclusion of this provision is not intended to encourage this situation to continue, but rather 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 living. The following explains the sub-subtitle.

Child trafficking and runaways. Section 48 of the 2001 Act designates children involved in sales transactions, both within and outside Malaysia, as protected parties. This situation also includes children who run away from one of their parents or guardians who do not have legal custody, both inside and outside Malaysia.¹⁸

For the rights of children to be protected and fulfilled, cooperation is necessary among parents or families, society, and, of course, the State. This is also regulated in the 2001 Children's Act.

- 1) Responsibility of the mother, father, or guardian and the family. When social problems among teenagers are worsening, many believe that the disharmony within family institutions contributes to this symptom. In addition to defining "family members" as including parents, guardians, or extended family members who are members of the household for children, this 2001 Law also defines "extended family" as people who have a kinship relationship through blood, bond, or adoption with the said person. The 2001 Law also recognises the concept of

¹⁶ Children Act 2001 section 38 (1).

¹⁷ Section 2 (1) 2001

¹⁸ Section 52 of the 2001 Act

fostering with Section 2, paragraph (1), which defines "adoptive parents" as a person who is not the mother or father or a relative of the child and can accept the child in fostering. Section 30 (1) (e) or Section 35 or 37 of the Act of 2001. This situation will provide the court with a broader scope for making decisions related to children. If there is no mother, father, guardian, or relative, it can be placed under the care of the pet's mother or father if that is the best option for them.¹⁹

- 2) The Role of Professors in the 2001 Act also introduces educational institutions as a resource for helping children in trouble. The Court allows parents or guardians of children to consult with educational institutions once a month. The Court must ensure that the deliberation runs according to the rules that aim to help children. Additionally, inform parents or guardians about the child's achievements and any problems they are facing, and provide advice on how to solve these issues. This deliberation must be carried out seriously, not just as a formality.²⁰
- 3) In Malaysia, the role of the media is limited. The court for children is closed, and to ensure this, news and media broadcasts about children are not allowed. This rule was included in the 2001 Act to protect the rights of children.²¹
- 4) Social Welfare Officer, i.e. A person who works in a social welfare institution, is referred to as a moral officer (Section 10 Act 2001). He is responsible for providing behaviour reports when necessary and also supervises children (Sections 1 and 2 of the 2001 Act). In the case of child supervision, the moral officer must visit, advise and act like a friend to the children (Section 47 (1) (a) (b) Act 2001. The role requires a long period of time to recognise and gain the trust of the children under his supervision.²²

D. Conclusion

When viewed comprehensively, the child protection legal systems in Indonesia and Malaysia exhibit several substantive similarities. Both countries include child protection regulations within the framework of family law, and specifically in Indonesia, these regulations are also addressed through marriage law. The responsibilities and obligations of various stakeholders, including the state, government, society, family, and parents, are also integral to these regulations. Essential aspects such as the status of children, guardianship, adoption, religious affiliation, neglect, and special protection for children are also summarised in the Malaysian

¹⁹ Zulazhar Takir, *Reviewing the Issue of Child Abuse from the Perspective of the Children's Act 2001*, (Kuala Lumpur: University Malaya Publishers, 2002), p. 85

²⁰ Siti Zaharah Jamaluddin, *Children Act*, (Kuala Lumpur: University Malaya, 2002), p. 66.

²¹ Noor Aziah Mohd Awal, *Child Act 2001 How Far Does it Conform to the UNCRC?*, (Kuala Lumpur: Universiti Malaya Publishers, 2002), p. 107

²² Norchaya Talib, *Law Series from the Children Act 2001*, p. 168.

Children Act 2001 (Act 611).

This Act regulates in detail the supervision, rehabilitation, care and protection of children from economic and sexual exploitation, including access to education, and protection from violence, disability and acts of torture. This Act is a comprehensive codification of child protection laws in Malaysia.

In contrast, in Indonesia, the implementation of child protection laws remains fragmented. Although there have been several normative regulations, such as the Child Protection Law and Presidential Decree Number 77 of 2003, which concern the establishment of the Indonesian Child Protection Commission (KPAI), their implementation has not been fully realised in practice. The absence of implementing regulations—whether in the form of government regulations, presidential decrees, ministerial regulations, or regional regulations—impedes the realisation of legal norms in the field. This causes Indonesia to lag in terms of the effectiveness of implementing child protection when compared to the system implemented in Malaysia.

On the other hand, the approach to dealing with children in conflict with the law shows significant differences between the two countries. Indonesia tends to be more progressive by prioritising the principle of *restorative justice* (restorative justice) and approaches differently in every stage of the legal process. This approach provides a more humane guarantee of legal protection for children normatively. Malaysia, on the other hand, still predominantly uses a repressive approach by placing children in closed institutions as a form of guidance.

To strengthen the legal protection framework for children, here are some strategic proposals that can be considered:

1. Malaysia is advised to adopt a restorative justice approach, both normatively and in practical implementation, to balance the legal and psychosocial interests of children.
2. Indonesia needs to increase the capacity, professionalism, and distribution of law enforcement officers and child support officers who handle child cases.
3. There is a need to strengthen bilateral cooperation between Indonesia and Malaysia in the form of exchanging experiences and best practices related to the juvenile justice system.
4. Active participation of the community and family must be the primary foundation in every process of resolving children's cases, ensuring a holistic and inclusive approach.

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Author Biography

Farhan Taufiqurahman was born in Jakarta and studied at the Faculty of Law, State Islamic University of Jakarta in 2019. He is currently pursuing a Master of Laws at Veteran National Development University, Jakarta, in 2024.

Handar Subhandi Bakhtiar was born in Parepare on April 28, 1993. Bachelor of Law Education, Faculty of Law, Muslim University of Indonesia, 2011-2015. Master of Laws, Faculty of Law, Hasanuddin University, Makassar, in 2015-2017. Master of Applied Health Administration, Polytechnic STIA LAN Makassar in 2020-2022. Doctor of Law, Faculty of Law, Hasanuddin University, Makassar, from 2017 to 2020. Since 2021, he has been a lecturer at the Veteran National Development University in Jakarta, where he has studied the fields of Criminal Law, Criminal Procedure Law, Forensic Law, and Health Law.