Child Protection Systems in Indonesia and Malaysia: Between Theories and Practices

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Abstract
Child protection is one of the most important things in life, because basically a child cannot protect himself. Starting from actions or treatments that can result in psychological, physical and social losses, so that one of the steps in overcoming this is to ensure protection. The government’s effort in tackling this problem is to create a statutory regulation regarding the protection and needs of children’s rights which becomes a reference for the effectiveness of efforts in child protection issues. Because the law discusses how we should treat children so that they are prosperous and protected and their needs and rights are fulfilled. In an effort to understand it further, this journal was created to
compare the concept or basis of child protection from Indonesia and Malaysia. The method in making this journal is to collect other research journals and also normative legal comparisons, which can be sourced from the Convention on the Rights of the Child and the Law on Child Protection in Indonesia and Malaysia.

KEYWORDS
Child Protection • Child Welfare • Legal Protection • Human Rights

Abstrak
Perlindungan anak merupakan salah satu hal terpenting dalam kehidupan, karena pada dasarnya seorang anak tidak dapat melindungi dirinya sendiri. Mulai dari tindakan atau pengobatan yang dapat mengakibatkan kerugian psikis, fisik dan sosial, sehingga salah satu langkah untuk mengatasinya adalah dengan memberikan perlindungan. Upaya pemerintah dalam menanggulangi masalah ini adalah dengan membuat peraturan perundang-undangan tentang perlindungan dan kebutuhan hak-hak anak yang menjadi acuan efektifitas upaya dalam masalah perlindungan anak. Karena undang-undang tersebut membahas bagaimana seharusnya kita memperlakukan anak agar mereka sejahtera dan terlindungi serta terpenuhi kebutuhan dan haknya. Dalam upaya memahami lebih jauh, jurnal ini dibuat untuk membandingkan konsep atau dasar perlindungan anak dari Indonesia dan Malaysia. Metode dalam pembuatan jurnal ini adalah dengan mengumpulkan jurnal penelitian lain dan juga perbandingan hukum normatif, yang dapat bersumber dari Konvensi Hak Anak dan Undang-Undang Perlindungan Anak di Indonesia dan Malaysia.

Kata Kunci: Perlindungan Anak, Kesejahteraan Anak, Perlindungan Hukum, Hak Asasi Manusia

KATA KUNCI
Perlindungan Anak • Kesejahteraan Anak • Perlindungan Hukum • Hak Asasi Manusia
A. Introduction

Children are the younger generation as one of the human resources who have ideal potential as the successor of the nation’s struggle that has a strategic role, has a developing and special nature, and requires guidance and protection to fulfill it. Physical, mental and social growth and development are harmonious, integrated, and balanced. The development and protection of children requires support from a more stable and more appropriate institutional and legal perspective.

The ability of a child to develop so that later he will be able to protect his own best interests, because children are basically unable to protect themselves from various behaviors that cause emotional, physical and social damage in various areas of life and social. Children must be protected from things that tend to interfere, because efforts to remove these barriers can only be done by achieving guaranteed child protection interests.

To ensure integrity in an effort to protect children or protect children, it is necessary to have an awareness in the community, be it from the family, social, school, or environment in which they live. In this case, the State becomes the main reference, so that later the State will make the regulation in question, such as creating a special institution to carry out what the State wants in an effort to build it.

The right to protect children has a universal aspect in each generation, especially the legal aspect. Making it a reference that children's rights from a legal perspective have a vision that essentially humans live to build others by holding what they believe in, but must comply with moral rules, such as religious teachings that teach goodness. So that a child will grow well in accordance with the laws that apply to a place or region. As in the words of Hasan Wadong who explained that "a Muslim must be obedient in upholding children’s rights by adhering to positive national laws".

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1 Maulana Hasan Wadong, Pengantar Advokasi Dan Hukum Perlindungan Anak (Jakarta: Grasindo, 2000).
If the seeds of the younger generation in the association of a society are good, then it is certain that the community will be good too, further examined that Islam explains that children are seeds that will grow to form society in the future. There are regulations that explain the issue of legal protection for children, namely Law Number 23 of 2002 concerning Child Protection, the regulation of which is in Articles 4 to 71. It is understood that these regulations explain the issue of legal protection of children. Furthermore, it is also regulated in Law Number 1 of 1974 concerning Marriage which explicitly states that it is a series of marriage laws in Indonesia, but the regulation does not explain in detail about child care.

In Law Number 1 of 1974 concerning Marriage, it is explained that parents are obliged to maintain and educate their children who have not reached the age of 18 in the best possible way until the child is married or can be independent. This statutory obligation will continue even if there are problems with divorce or death.

Malaysian family law is motivated by diversity, race, ethnicity and religion that influence the creation of Malaysian cultural pluralism. Islam is the official state religion, but Malaysia has freedom of religion. Different ethnic groups lead to the formation of different cultures. For non-Muslims, the Christian Marriage Ordinance of 1952 was replaced by the Marriage and Divorce Act of 1976. In Malaysia, for example, the number of laws and regulations has been simplified. For Muslims, the legal provisions are generally the same (Mazhab asy-Syafi‘i Marriage Law), but "because this matter is under the authority of the state government with state power", it is still common in various state laws. Unification efforts are underway in Islamic family law and Sharia courts.

Malaysia’s dual family law (especially marriage) can always be the first point of reference when discussing questions of legal group marriage. The same applies to annulments such as marriages and marriages. With the passing of various provisions of the Marriage Law and the Amendment of Islamic Marriage Law (UU Marriage and Divorce) in 1976, Malaysia has different forms

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and pathways for divorce. The Marriage and Divorce Act of 1976 stipulates the reasons for divorce in Articles 47-62. The provision that prohibits marriage between Muslims and other religions stipulates that one of the reasons for divorce in the 1976 Divorce Law is that the parties convert to Islam. This provision is a new standard in Malaysia and there was no such provision in the old law 3.

If the parties to a family dispute, family law is used to support it, and if the couple is in dispute over divorce or child custody, the rules and regulations of family law, and thus child care, apply 4. Protection is a guarantee of security, tranquility, happiness and peace now, in the future and in the future, and the essence of legal protection for children lies not only in legal documents, but also in other means such as society. Environment, culture and guarantee a bright future. From various definitions of child protection, the author defines child protection as the protection of children who are free from physical and mental violence, all forms of abuse and exploitation.

In its simplest form, child protection aims to ensure that the rights of all children are not violated. Child protection complements other rights ensuring that children have what they need to survive, grow and thrive. Child protection is an important issue, and is considered very important to pay attention to what is developing in people's lives, such as prostitution, which is closely related to economic problems. Another problem that children often face is violence at home and in schools related to poverty, social values, religion and customs. Another aspect of the development of technological progress is that children are often trafficked by children, trafficked by children, and child pornography.

Protect your child as necessary so as not to appear excessive, or protect your child with consideration of the environment and its impact on the child himself, and protect the child wisely. A responsible and useful method that is effective and efficient. Child protection is also interpreted as an effort to prevent, rehabilitate, and empower children to be free from violence,  


exploitation and neglect of children. These various efforts only ensure the survival of the child so that he can live and develop physically, mentally and socially. According to Arif Gosita, child protection is an effort to protect children from fulfilling their rights and obligations.

Based on the description above, the problem in this paper is the comparison of the basic principles in child protection law between Indonesia and Malaysia. The method used in this paper is an analytical method from various references that are relevant to the problems discussed, namely the child protection system in Indonesia and Malaysia, and also a comparative study of the legal comparison of child protection systems between Indonesia and Malaysia.

B. Literature Review

This research paper will be associated with several previous research journal titles, which have the theme of child protection, which are as follows:

The first is a study conducted by Iman Jauhari (2013) with the title Comparison of the Legal System for Child Protection between Indonesia and Malaysia. This study aims to compare the family law system (marriage) between Indonesia and Malaysia, the definition and age limit of children, and also to compare the basic principles of child protection law in Indonesia and its comparison with existing law in Malaysia. Where in this study also tries to analyze the similarities and differences in the law of child protection both from the obligations and responsibilities of the state, society, family and parents, the position of the child, custody, guardianship, parenting, religion of the child, the rights of abandoned children and special protection, such as care and recovery, child care, child protection, child examination and care, exploitation of

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6 Arif Gosita, Masalah Perlindungan Anak (Jakarta: Akademi Pressindo, 2004).
children, economics, sexuality, education and special protection from violence, disability, and child abuse.\textsuperscript{7}

Furthermore, there is scientific research compiled by Jouna Mailentin Sinaga (2018). The title of the research is Violence Against Children: Comparison of Indonesian Criminal Law and Malaysian Criminal Law which examines and describes the criminal law that regulates acts of violence against children. This study shows that the criminal law regulations for acts of violence against children in Indonesia are regulated in Law Number 35 of 2014 concerning Child Protection and in Malaysia it is regulated in the Childhood Act 2001. By examining the main problems of criminal law, namely criminal acts and sanctions that will be related with the formulation of acts of child abuse. The purpose of the comparison in this study is to find out the differences and similarities, weaknesses and strengths and problems that occur regarding child protection law in Indonesia and also in Malaysia.\textsuperscript{8}

Then there is also research from Adi Suciadi (2019) entitled Comparison of Criminal Liability of Children in Malaysian Criminal Law and Indonesian Criminal Law. The form of this research is almost the same as previous research, namely trying to describe and compare the criminal law that regulates violence against children in Malaysia with Indonesia, but in this study it is more directed to the perspective of accountability for criminal acts of violence against children.\textsuperscript{9}

Comparison is a method of study or investigation by making comparisons between two or more study objects to increase and deepen knowledge about the object being studied. So in this comparison there are objects to be compared that have been known previously, but this knowledge is not yet firm and clear.\textsuperscript{10} From a legal point of view, comparison is something different from other sciences. In the law of the notion of comparison there is no

\textsuperscript{8} Jouna Mailentin Sinaga, “Kekerasan Terhadap Anak: Perbandingan Hukum Pidana Indonesia Dan Hukum Pidana Malaysia” (Universitas Muhammadiyah Surakarta, 2018).
\textsuperscript{9} Adi Suciadi, “Perbandingan Pertanggungjawaban Pidana Anak Dalam Hukum Pidana Malaysia Dan Hukum Pidana Indonesia” (UII Sunan Kalijaga Yogyakarta, 2019).
\textsuperscript{10} Sjachran Basah, Hukum Tata Negara Perbandingan (Jakarta: Bina Aksara, 1994).
special definition in terms of legislation, literature or the opinions of scholars, but the comparison is only a method, so it can be taken from other social sciences. However, there are two notions of comparative law, namely that some consider it a mere research method and some consider it as an independent field of legal science 11.

The system is a set of real or abstract "objects" (a set of things) consisting of parts or components that are interrelated, related, dependent, mutually supportive, which as a whole unite in unity to achieve certain goals efficiently and effective 12. Then the law is a set of regulations made by the authorities with the aim of regulating the order of people’s lives. The characteristics of the law are ordering, prohibiting, and coercing by imposing legal sanctions that are binding on anyone who violates it 13. Law is a rule that connects humans in social life. Law aims to regulate human behavior and association and aims to achieve peace 14.

Children are shoots, potential, and the next generation of the nation’s ideals. Children have a strategic role in ensuring the existence of the nation and state in the future. In order for them to be able to assume that responsibility, they need to get the widest possible opportunity to grow and develop optimally, physically, mentally, and spiritually. They need to get their rights, need to be protected, and prospered. Therefore, all forms of violence against children need to be prevented and overcome 15. Based on Article 1 paragraph 2 of Law no. 23 of 2002 jo. UU no. 35 of 2014, Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection, and receive protection from violence and discrimination.

14 L. J. Van Apeldoorn, Pengantar Ilmu Hukum (Jakarta: Pradnya Paramita/Balai Pustaka, 2019).
15 Abu Huraerah, Kekerasan Terhadap Anak (Bandung: Nuansa Cendekia, 2018).
C. Result and Discussion
1. A Comparison of Child Protection Systems in Indonesia and Malaysia

In this study, we use several indicators regarding child protection both in Indonesia and the child protection system in Malaysia. Some of these indicators will be analyzed and compared to find similarities and differences between the two child protection systems in each country and describe the strengths and weaknesses of the two, some of these indicators are:

a. Legal arrangements regarding child protection

In Indonesia, awareness regarding the protection and concern for the welfare of children legally by the state has been carried out in 1974 which was marked by the issuance of Law no. 4 of 1979 concerning Child Welfare. The purpose of the establishment of this Welfare Law is because of the awareness of the potential of the child as the successor to the ideals of the nation whose foundations have been laid by the previous generation and to be able to assume responsibility as the nation’s successor, the widest possible opportunity is needed to grow and develop with reasonable spiritually, physically and socially. This law was also formed on the awareness that there are also children who experience obstacles in their spiritual, physical, social and economic welfare in the community and the maintenance of children’s welfare cannot be carried out by the children themselves. So that opportunities, maintenance and efforts to eliminate these obstacles can only be implemented and obtained if child welfare efforts are guaranteed, and then to achieve this purpose, a law that regulates child welfare is drawn up.

Then based on the mandate of the Convention on the Rights of the Child made by the United Nations, Indonesia began to ratify the convention in 1990 based on Presidential Decree No. 36/1990 on Ratification of the Convention on the Rights of the Child. With this, Indonesia has an obligation to implement the provisions contained in the Convention on the Rights of the Child, in particular to fulfill children’s rights in general, including providing protection and respect
for children to avoid violence and neglect in the social or community environment. In Law Number 39 of 1999 concerning Human Rights, it has also been stated regarding the rights of children, the implementation of the obligations and responsibilities of parents, families, communities, and the government. In 2002, the Indonesian government issued another type of law, namely Law No. 23 of 2002 concerning Child Protection. The ratification of this law is an effort by the state to further strengthen the law for child protection because previously despite having ratified the convention on children’s rights, cases involving violence against children were still developing, one of the most famous cases at that time was the big robot case in 1995-1996, which seems to give the impression of how minimal the state’s efforts in protecting the rights of children in Indonesia are. Then in 2014, the Child Protection Act slightly changed with the issuance of Law no. 35 of 2014 which several changes are in the form of reaffirmation and additional sanctions for perpetrators of sexual crimes against children.

In Malaysia, the State has expressed its awareness of children’s rights since the 1947s. The government at that time issued starting from the Deed of Children and Young People and also the Deed of Makhamah Juvana 1947 which regulates the protection rights that children must obtain. The Malaysian government at that time also ratified the Deed of Protection of the Mandate Giver of 1946, which was then based on the mandate the Department of Community Virtue was formed below. The aim is to protect and provide protection to those in need, based on five main objectives, namely protection, recovery, prevention, development and integration. This deed still does not specifically regulate the rights of child protection because the deed is a deed that provides a legal basis for the protection of the people who need it in general, problems, the poor or indigent and victims of disasters. However, this step is a step by the Malaysian government in its efforts to address issues

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including problems with children, especially regarding protection from violence.

Another reason is that at that time the environment of children contributed quite a lot to the increase in the number of acts of violence in Malaysia. Although it is not a specific rule for child protection, the government also issued the 1973 Women and Girls Protection Act which also contains child protection points. Then Malaysia began to ratify the UN Covenant on the Rights of the Child in 1994 as did other UN member countries such as Indonesia. Then in 1991, the Malaysian Government issued a Child Protection Deed which was none other than a regulation regarding the care and protection of children which then in 2001 realized the need to change the direction of the concept of child protection and also realized the need for legal reform in accordance with current developments. With this, a special and comprehensive law on children was promulgated and ratified, namely the 2001 Childhood Deed. In 2016, the 2001 Childhood Deed was changed to become the 2016 Loaned Childhood Deed which slightly changed the old provisions and provided a legal basis for firmer than before. Due to the fact that some laws against child abuse are classified as mild according to the child certificate, in April 2017 the Sexual Offenses Against Children Bill was passed in April 2017.

b. Special agency or institution for child protection

In Indonesia, since 1998 a special agency or institution has been established with the aim of providing protection and handling children's problems, namely the National Commission for Child Protection. National Commission for Child Protection (KNPA). Then after the issuance of Law no. 23 of 2002, the agency changed to the Indonesian Child Protection Commission (KPAI) which still exists today. KPAI (Indonesian Child Protection Commission) which is an independent state institution tasked with protecting the nation's children from all actions that harm them. This effort is related to the existence of oppression that is sometimes carried out by adults or their friends and even by their parents intentionally violating children, both children
who are being cared for by their parents, especially children who are neglected, causing the child to be tormented, hurt, and seriously injured 17.

Malaysia does not / does not yet have a national body or institution that is really special or focused on dealing with children's problems. This is because in child protection in Malaysia, every institution that exists such as the Department of Social Welfare (JKM) or the Department of Social Welfare, Suruhanjaya HAM or Human Rights Commission (SUHAKAM), the Malaysian Ministry of Education, the Malaysian Department of Prisons, Local Government and the judiciary states are the institutions involved in the protection of children 18.

c. Definition or criteria for children

According to the Convention on the Right of the Child which is the legal basis for international children's rights which was later ratified by various countries in the world including Indonesia and Malaysia, it states that what is meant by a child is every human being under the age of 18 years, except according to applicable laws. In children, maturity is reached earlier.

In Indonesia, there are differences in the arrangement or classification and criteria of children in their development.
1) According to Law no. 4 of 1979 concerning Child Welfare, as stated in article 1 point 2, a child is someone who has not reached the age of 21 (twenty one) years and has never been married.
2) UU no. 3 of 1997 concerning the Juvenile Court defines a child as a person who in a naughty case is eight years old, but has not yet reached 18 years of age and has never been married.
3) According to Law no. 39 of 1999 concerning Human Rights states that a child is someone who is not yet 18 years old and has never been married.
4) In article 45 of the Criminal Code, what is called a child who is not yet an adult is if he is not yet 16 years old.

5) In article 330 of the Civil Code, a person who is considered an adult is if he is 21 years old or has (ever) been married (if using the Argumentum A Contrio principle, then a child is someone who is not yet 21 years old or not married).

6) UU no. 1 of 1974 concerning Marriage, requires a marriage age of 16 years for women and 19 years for men.

7) According to Law no. 23 of 2002 in conjunction with Law no. 35 of 2014 concerning Child Protection Article 1 number 1 of Law no. 23 of 2002, a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.

There are several differences regarding the categorization of children within the age limit, however, from the various provisions, some state that a child is someone who is still around 18 years of age and under and is not married. Hadi Supeno once said that after the birth of the Child Protection Law, which in the legal strata was categorized as a lex specialist, all other provisions regarding the definition of a child had to be adjusted, including policies that were born and related to the fulfillment of children’s rights.

For in Malaysia, according to section 2 of the 2001 Childhood Act, a child is a person who is not yet eighteen years old and in connection with the criminal process, a child is a person who has reached the age of criminal responsibility as stipulated in article 82 of the Criminal Code Prior to the enactment of the 2001 Child Law, with a child defined as someone under 14 years of age. This is because according to article 2 of the 1947 Juvenile Court Law which has been revoked, there are three age categories for someone under the age of eighteen, namely children, juvana, and young people.

If we look at the specific and latest legislation regarding children, it can be concluded that in Indonesia, a child is someone who is not yet 18 years old (According to Law No. 35 of 2014) also includes those who are still in the womb. Then the limit for a child who can be sentenced is under 16 years (KUHP in

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Indonesia). Then if in Malaysia, the child is someone who is not yet 18 years old (Akta 2001 jo. Deed 2016) and for the application of a crime against a child under 12 years old.

d. **Forms and principles of child protection efforts**

In Indonesia, forms of violence against children based on Law no. 35 of 2014 namely:

1) Discrimination, this action means an act that causes material (physical or physical) and moral (psychological or spiritual) harm. In addition, this form of discrimination based on victims (children) is divided into two, namely: discrimination against children with disabilities and discrimination against children without disabilities.

2) Abandonment, this action means the omission of the child, placing and even being ordered to be in a situation of mistreatment or inappropriate treatment of the child's rights that should be obtained.

3) Sexual violence, this act means committing by threats, coercion, or by deceit to children to have sexual intercourse and obscene acts.

4) Exploitation, this action means using and empowering children arbitrarily and excessively which is not what children should do. Then this form of exploitation is divided into two, namely: economic exploitation and sexual exploitation.

Meanwhile in Malaysia, based on the 2001 Childhood Deed, the forms of violence against children are:

1) Physical violence, which is an act committed against a child so that it is marked by a substantial visible wound on the child’s body.

2) Emotional or psychological violence is an action taken against children so that children have mental function disorders that can be seen and are characterized by child behavior such as excessive feelings of anxiety, depression, agitation or slow development of the child.

3) Sexual violence is a form of violence committed against children related to abuse or obscenity. This form of sexual violence is divided into two, namely: sexual abuse that is carried out physically on children directly, meaning that
the child as a victim gets treatment from the perpetrator directly with physical contact such as touching, squeezing, touching, and inserting the genitals into the vagina or anus. Then there is sexual harassment that is carried out indirectly, which can be through the exploitation of pornography, saying obscene words towards children or displaying genitals that should not be shown or watched by children and showing sexual activity to children with photos, videos and other media. which has not become a proper spectacle for children.

Furthermore, from the aspect of perpetrators of acts of violence against children. In Indonesia, based on Law no. 35 of 2014, perpetrators of acts of violence against children apply to "everyone" which means that perpetrators of acts of violence against children can be within the family itself or not within the family. However, when it comes to violence in the family sphere, Indonesia has special regulations regarding it, namely the arrangements contained in the Domestic Violence Law, where children are people who are and are part of the household.

Meanwhile in Malaysia, perpetrators of acts of violence against children based on the 2001 Childhood Certificate are more centered on people who are in the household sphere, namely the mother or father or guardian/guardian or a member of the extended family. It is felt that this legal arrangement in Malaysia emphasizes the obligation for people in the household to protect their children. This weakness in the Malaysian legal system is actually because acts of violence against children outside the family scope are classified as crimes with different arrangements, this also creates criminal differences because of the different objects of punishment.

In Indonesia, several articles relating to acts of violence against children do not explain the formulation of the offense clearly (Rubber/cryptic) as contained in Article 76E of the Child Protection Law which does not provide a detailed formulation of the offense related to obscene acts, threats and acts of coercion. Then in Article 76C of the Child Protection Law, acts of violence against children are still formulated in a broad sense and do not explain its elements more specifically. In article 76I, the meaning of exploitation in the
context of this article is either limited to sexual exploitation and economic exploitation or expanded to economic and sexual contexts which can be from various aspects. Especially on sexual exploitation, there is a clear formulation of the offense so that it is not equated with acts of sexual violence. Article 76 B. The situation of mistreatment and neglect of children does not formulate the elements of the offense in more detail 21.

Meanwhile in Malaysia, the formulation of the offense is quite clear and specific compared to Indonesia, such as the act of physical violence in Section 17(2)(a) which was explained regarding his actions and the consequences of physical violence. This clarity is also the same in Section 17 (2) (b) and Section 17 (2) (c) which are described more specifically.

Article 76A concerning acts of discrimination and Article 76I concerning acts of sexual and economic exploitation are included in ongoing offenses or offenses which have the characteristic that the situation must continue in order to be considered a criminal act 22. For the formulation of criminal offenses or violations that acts of violence against children, namely physical, psychological, and sexual violence, are classified as criminal offenses because based on the quality or nature of the act it is very despicable, causing severe consequences. It is included in the relative complaint offense because the child is not yet perfect in his development, meaning that he has not been able to act and make decisions 23. Article 76B, Article 76C, Article 76E, and Article 76I are included in the Commissionis offense (a offense in the form of a violation of the prohibition) with acts of "abandonment" and "omission". The formulation of acts of violence against children in Indonesia and Malaysia, theoretically as well as its adjustment to the ratification of the Convention on the Rights of the Child contains things that are still not considered appropriate, such as the classification of forms of violence against children in physical violence, psychological violence, sexual violence and violence. sexual. This is because the elements in a single article are not explained clearly, firmly, and in detail.

21 Sinaga, “Kekerasan Terhadap Anak: Perbandingan Hukum Pidana Indonesia Dan Hukum Pidana Malaysia.”
22 Sinaga.
23 Sinaga.
e. Accountability and punishment for the treatment of children

The formulation of criminal acts of violence against children in Indonesia is in Law Number 35 of 2014 concerning Child Protection Article 77, Article 77B, Article 80, Article 81, Article 82, and Article 88. In Law No. 35 of 2014, which in the formulation of criminal acts is not yet specific and clear, but in the formulation of criminal sanctions, each crime is formulated with the weight of the quality of the criminal threat. the severity of criminal sanctions, Law no. 35 of 2014 for a minimum fine of Rp. 72,000,000.00 and a maximum of Rp. 5,000,000,000.00, for a minimum imprisonment of 3 years 6 months and a maximum of 15 years. aspects of actors in Law no. 35 of 2014 is divided into people in general and parents (father and mother), guardians, child caretakers, educators, or education staff. The criminal system, in Law no. 35 of 2014 adopts two systems, namely a special minimum and a special maximum, this is adjusted to the severity of each formulation of the offense of violence against children.

Meanwhile in Malaysia, it is formulated in the 2001 Malaysian Childhood Deeds section 29. (1) and (2), section 31. (1), (2), (3), (4), (5). From the formulation of criminal acts of violence against children between Indonesia (Law No. 35 of 2014 ) and Malaysia (Children Act 2001), several important things can be formulated for this comparison, namely; First, in the 2001 Childhood Deed, the formulation of the elements of a criminal act is explained specifically and clearly but the criminal formulation is not clearly formulated, because there is no connection between the criminal act article and the criminal sanction article, and there is no difference in criminal sanctions in the form of acts of violence against child; physical violence, psychological violence and sexual violence. Whereas there should be an adjustment between the juridical qualifications and the consequences. Meanwhile in Malaysia a fine of 20,000 ringgit or around Rp. 70,000,000.00 and a maximum imprisonment of 10 years. When compared to criminal law no. 35 of 2014, the criminal formulation in the 2001 Childhood Deed is indeed lighter, and this is a problem in the laws and regulations in
Malaysia because the punishment is light and is not in accordance with the crime of violence against children that has been formulated, so that in Malaysia in April 2017, the Sexual Offenses Against Children Bill 2017 was passed, so that sexual violations against children are subject to this provision. What is meant by sexual offenses here is inserting other objects (other than the penis) into the vagina. In the 2001 Childhood Deeds, namely people in general and parents (father and mother) and caregivers. The 2001 Childhood Deed applies a special maximum system with an alternative system.

2. An advantage and disadvantage in the legal system of child protection in Indonesia and Malaysia

From some of the analyzes above, data can be drawn that compares the strengths and weaknesses of the legal systems in the two countries, Malaysia and Indonesia regarding child protection.

From a legal perspective, both Indonesia and Malaysia have realized the importance of children as the nation’s successors. As the next generation of the nation, which is arguably currently one of the weakest among the others in the community. However, these two countries have proven their awareness and made positive steps by issuing various laws and regulations that legally guarantee and protect children from various types of violence. In addition, these two countries have participated in and ratified the Covenant on the Rights of the Child which is the source of international law created by the United Nations as an effort to protect children in the world.

In terms of legal entities that protect children’s rights, Indonesia has a special independent legal entity or institution that focuses and specifically deals with and fights for children's rights, namely the Indonesian Child Protection Commission (KPAI). Then if in Malaysia, there is no special agency that independently carries out the protection and guarantees the rights of children. In Malaysia, the agency in charge of this is still the agency that deals with several welfare issues, one of which is child protection, namely the Public Benefit Office (JKM). Maybe in practice it is not a good problem because even though Indonesia already has an independent body it does not make the
safeguarding of children’s rights work better, and also even though child protection in Malaysia is managed by an agency that generally deals with social problems, but In this body a representative has also been formed which will continue to take care of children’s rights. These two countries have advantages because they have realized or implemented existing laws and regulations with concrete actions, namely forming institutions that manage and protect children’s rights.

In terms of child categorization, if viewed from the special and latest legislation regarding children, it can be concluded that in Indonesia, a child is included as a person who is not yet 18 years old (According to Law No. 35 of 2014) then for the limit of a child can sentenced to under 16 years (KUHP in Indonesia). Then if in Malaysia, the child is someone who is not yet 18 years old (Akta 2001 jo. Deed 2016) and for the application of a crime against a child under 12 years old. In the scope of categorizing children, the two countries have something in common, namely by categorizing children as people who are not yet 18 years old (also in accordance with the UN Convention on the Rights of the Child). What makes the difference is that in Indonesia, through the new laws and regulations, someone who is still in the womb is also a child and has rights. Then what distinguishes him is the limit on which a child can be convicted, namely Indonesia under 16 years of age and Malaysia under 12 years of age. This has advantages and disadvantages. Indonesia by stipulating that the punishment for children under the age of 16 can be considered as truly protecting children’s rights when they are still before adulthood, so that punishment will be more in the form of reminders and advice so as not to repeat their mistakes, as we know that sometimes children are still unable to act and think by deciding what to do including right and wrong.

In Malaysia, with criminal restrictions on children under the age of 12, this illustrates that Malaysia is quite strict in punishing the perpetrator even though he is still a 12-year-old child. This can indirectly mature children so as to raise awareness of children at a young age. But other than that, the determination of punishment for children is only 12 years old because in Malaysia the classification of children’s stages is divided into anak, juvana, and
young people. The weakness in convicting children in Malaysia is that the age limit is quite low, although the criminal punishment to be given to children will be quite light, but such an age limit is still considered quite young, and these children still need to be directed with directives that are change his mind without physical treatment from the law but rather directed.

In terms of forms of violence against children, in Indonesia it is classified into discrimination, sexual violence, neglect, and exploitation. The classification of acts of violence against children in Indonesia is directly stated in the form of specific actions. Then in Malaysia it is more generally classified, namely sexual violence, physical violence, and psychological violence. The advantages of the system of forms of child abuse in Indonesia are clearer classifications than Malaysia, but the weakness is that other forms of violence other than the above are not included, for example other forms of action that cause mental health problems. In the Malaysian legal system, the classification of acts of violence against children is made more general, this covers a wider scope of actions that interfere with children’s rights than in Indonesia. The weakness in the Malaysian legal system is that because it is quite general in nature, it can risk being punished for forms of action that do not actually intend to commit violence against children, but because the elements that are fulfilled can be punished, for example parents who have the aim of educating their children in their own way.

In terms of the perpetrators of the crime, in Indonesia based on Law no. 35 of 2014, perpetrators of acts of violence against children generally apply, meaning that it applies to everyone or anyone, which means that perpetrators of acts of violence against children can be within the family itself or not within the family. However, when it comes to violence in the family sphere, Indonesia has special regulations regarding it, namely the arrangements contained in the Domestic Violence Law, where children are people who are and are part of the household. Meanwhile in Malaysia, perpetrators of acts of violence against children based on the 2001 Childhood Certificate are more centered on people who are in the household scope, namely the mother or father or guardian/guardian or a member of the extended family.
From this legal regulation, in Indonesia the determination of perpetrators of acts of child violence is broader in nature, so this really provides protection for anywhere, whether it is in the family environment or not, while in Malaysia the regulation regarding child violence is only in a broader scope. narrow, namely in the household environment, even if it is felt, this legal arrangement in Malaysia emphasizes the obligation for people in the household to protect their children. This weakness in the Malaysian legal system is actually because acts of violence against children outside the family scope are classified as crimes with different arrangements, this also creates criminal differences because of the different objects of punishment.

In terms of legal certainty, there are several articles of Indonesian law that are less firm and certain, for example in the classification of obscene acts referred to as threats or coercion which is not detailed in more detail, then determining several actions such as economic exploitation which are classified as ongoing offenses. continues to pose a risk of exploitation in a short period of time. This is different from Malaysia, which explains more clearly and specifically, for example the actions that are included in physical violence in Section 17 (2) (a) which are explained in terms of their actions and the consequences of physical violence. This clarity is also the same in Section 17 (2) (b) and Section 17 (2) (c) which are described more specifically.

In terms of legal accountability, in Indonesia in Law no. 35 of 2014, which in the formulation of criminal acts is not yet specific and clear, but in the formulation of criminal sanctions, each crime is formulated with the weight of the quality of the criminal threat. the severity of criminal sanctions, Law no. 35 of 2014 for a minimum fine of Rp. 72,000,000.00 and a maximum of Rp. 5,000,000,000.00, for a minimum imprisonment of 3 years 6 months and a maximum of 15 years. This is adjusted to the severity of each formulation of the offense of violence against children. Meanwhile in Malaysia, it is formulated in the 2001 Malaysian Childhood Deeds section 29. (1) and (2), section 31. (1), (2), (3), (4), (5). From the formulation of criminal acts of violence against children between Indonesia (Law No. 35 of 2014 ) and Malaysia (Kanak-anak Act 2001) several important things can be formulated for this comparison, namely in the
2001 Childhood Act, the formulation of the elements of a criminal act is explained specifically and clear but the criminal formulation is not clearly formulated, because there is no connection between the criminal act article and the criminal sanction article, and there is no difference in criminal sanctions in the form of acts of violence against children; physical violence, psychological violence and sexual violence. Whereas there should be an adjustment between the juridical qualifications and the consequences. Meanwhile in Malaysia a fine of 20,000 ringgit or around Rp. 70,000,000.00 and a maximum imprisonment of 10 years. When compared to criminal law no. 35 of 2014, the criminal formulation in the 2001 Childhood Deed is indeed lighter, and this is a problem in the laws and regulations in Malaysia because the punishment is light and is not in accordance with the crime of violence against children that has been formulated, so that in Malaysia in April 2017, the Sexual Offenses Against Children Bill 2017 was passed, so that sexual violations against children are subject to this provision.

In terms of the development of the effectiveness of the law, Statistics from the Malaysian Welfare Department released by the New Starits Times, show an increase in reported cases of violence against children in Malaysia. If in 2010 there were 3257 cases, then in 2015 it increased to 4453 cases (One 2017). Meanwhile, in Indonesia, based on data from the Ministry of Women’s Empowerment and Child Protection, there were at least 4,116 cases of violence against children in the period January 1 to July 31, 2020, which also occurred during the Covid-19 pandemic. Indeed, different comparisons this year are not effective, this is due to lack of resources. However, what we can draw is that although there are legal guarantees for the protection of children, in practice this does not work as intended to truly protect children’s rights, it can be seen in the case data which is still relatively high. This proves that there is still a need for a new positive step to stop violence and protect children’s rights more effectively, not only in jurisprudence but in practice as well.
D. Conclusion

Child protection needs to get more attention, considering that there are still many cases of violations of children's rights, such as child labor, neglected children, commercial sexual activity by children, and the number of street children. Child protection is not only the responsibility of parents, but a shared responsibility. From the comparison between the legal protection systems for children in Malaysia and Indonesia, there are some similarities, differences, advantages, and also weaknesses. These two countries have the same awareness to provide legal guarantees for children's rights by designing and issuing various laws and regulations to protect and guarantee children's rights legally. In addition, even though the time is different, both countries have now equally ratified the international covenant on the right to children. The difference between the two is the system created in the legal regulations for child protection, starting from the age limit, special legal entities, classifying acts of violence and perpetrators, punishing children to forms of accountability for crimes against children. The advantages that can be taken from the legal system of child protection in Indonesia are the age limit for punishing children which is more suitable because it has led to the stages of becoming adults, the classification of forms of child crimes that are more specific, the classification of perpetrators of violence that is more broadly classified against everyone. so as to better protect children’s rights against child crimes anywhere, a form of accountability for perpetrators of child crimes that is more assertive and can be adjusted according to the form of the crime. However, the weakness in the Indonesian legal system is that several articles do not provide legal certainty, because the formulation is too general and less specific, the determination of the forms of criminal acts of child crime also does not cover several other types of crimes, such as crimes of a psychological nature, etc. Then the advantages in the Malaysian legal system are the wider classification of forms of child crime so that it is more effective, legal certainty with clearer and more specific laws and regulations, and the provision of responsibility for the family is quite fundamental. only includes the family environment and close people, besides
that criminal responsibility for violence against children in Malaysia is also uniform and not dynamic so that whether it is a serious or minor crime, the punishment for that is the same. If you look at the comparison above, both Indonesia and Malaysia, have their own strengths and weaknesses in their legal system to protect children’s rights, until now also seen from the effectiveness of these two country’s legal systems that are still not able to withstand violence against children and provide life guarantees for children to live with peace and security. It is hoped that with the progress of thinking from each country, it is possible to create a more effective and fair legal system to fight for children’s rights.

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H. References


Azalli, Mohamad Azizi Bin. “Studi Perbandingan Undang-Undang Nomor 11
“History will judge us by the difference we make in the everyday lives of children.”

Nelson Mandela
Anti-apartheid revolutionary and political leader