
**COMPARISON OF INDONESIAN AND MALAYSIAN CRIMINAL LAWS IN REGULATING ACTS OF ABUSE
AGAINST MINORS**

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ABSTRACT

This article is about criminal law related to child abuse. The research used is a comparative approach, ie comparing the criminal laws of the two countries based on normative legal concepts. Here is an analysis of the concept order formulation for abusive behavior against minors. In Indonesia, the Child Protection Act No. 35 of 2014 applies and in Malaysia, the Children's Act of 2001 applies. The purpose of this study is to clarify the differences and similarities between the two countries' views on child abuse regulation. The results of the two countries' basic thinking on crime and sanctions formulation are similar. In other words, it has been less than 18 years since both countries ratified their child age limit regulations, ie human rights treaties. There are some differences, such as criminal sanctions against children, punishment systems, child protection authorities, and provisions for establishing criminal offenses for child abuse. The conclusion of this article is that important to study this issue on both countries through a comparative approach that takes into account differences. Moreover, many ideas can be used to formulate abusive behavior towards minors in Indonesia.

Keywords: Formulation, Comparison, and Child Abuse.

INTRODUCTION

Definition of child under Age is the most important thing in building human civilization as a complete human being. As the nation's successors, children have the right to receive fair protection because children are still vulnerable. According to RA Koesnoen: "Children who are still young at heart have a young-at-heart life journey that has a positive impact on the situation around them"(1). The state has an obligation to provide rights in the form of protection to minors as mandated in the 1945 Constitution Article 28B paragraph (2) that "Every child has the right to survival, growth and development and the right to protection from violence and discrimination"(2). This means that the state is obliged to give every child the right to freedom in order to grow and develop better in terms of mental health, spirituality, and inner and outer. Children's rights in the form of protection are optimally guaranteed by the state without any differences from others(3). The problem of child protection from a legal perspective is not only seen from a juridical approach, but must be supplemented with a broader approach in the form of economic, social and cultural approaches to optimize protection for children.(4).

The dynamics of life in this era have progressed very rapidly in various fields of life such as technology, science and art. Not all advances in time have a good impact on human life. Increasingly advanced times also result in children's social and emotional development becoming increasingly complex. This development triggers the weakness of children in a "toxic" environment so that some individuals take advantage of the situation and circumstances to become evil targets for children. Crimes such as sexual exploitation, economic exploitation, child abuse, and other rights violations sector public, such as the streets, in prisons, public places, at school, and at home(5).

In Indonesia, acts of abuse against minors greatly influence children's behavior. Based on case data from the Indonesian Child Protection Commission, in 2020 there were 8,373 cases of child abuse, in 2021 there were 8,445, and in 2022 there were 11,012. KPAI complaint data information is obtained from various sources ranging from direct complaints, reporting in electronic print media, direct supervision in

the field to the National Police and its staff.(6).

In Malaysia there are cases of abuse of minors with statistical data quoted by Sinar Harian in the Child Abuse Cases section starting from 2020-2022, the Department of Community Benevolence recorded that in 2020 there were 2,911, in 2021 there were 3,241, and in 2022 there were 3,791. The peaks of childhood abuse vary greatly. There are those who blame economic growth for this increasing trend, there are also those who attribute it to the economic situation which is instead caused by increasing unemployment rather than economic emergencies as a factor.(7).

The reasons why Malaysia is used as material for a comparative study are: first, geographically, Malaysia borders Indonesia as a country cognate. Second, There are 2 legal aspects, namely (a) principles of criminal law, namely the fundamental principles in awarding punishment for actions. In Malaysia, the principles of criminal law are the same as Indonesia, namely that every person is punished according to the law and the charges brought by each person cannot be filed twice in the same case and the decision is inkracht.(8),(b) the legal system that Indonesia uses the Civil Law system and Malaysia uses the Common Law system. The two countries have different historical histories(9,10).The flow of globalization of separation in this era is not very extreme because there is a flow of communication that is moving rapidly to make world life limitless so that the law continues to operate.(11).Third, Indonesia and Malaysia, namely countries, have ratified the Convention on the Rights of the Child to provide health, education, social security and child protection services. The two countries have very different concepts for regulating juvenile crimes in Indonesia and Malaysia(12).

The formulation of acts of child abuse in Indonesian law does not explain the elements of the offense. Meanwhile, Malaysian law explains the elements of criminal offenses(13).To achieve the aim of writing the article, the author found similarities and differences in the formulation of regulations for abuse of minors between Indonesian and Malaysian criminal laws.

RESEARCH METHODS

The article research uses normative juridical methods which lead to positive law in the form of legislation(14).This research was studied using secondary data and literature study. The research uses a comparative approach by comparing the laws of one country with those of other countries. Normative legal research is used to analyze the cases studied in the article(15).

RESULTS AND DISCUSSION

Formulation of Regulations for Maltreatment of Minors Between the Indonesian and Malaysian Criminal Laws

The results of the research presentation show that there is legal substance, namely legal substance which contains the formulation of the regulations contained in existing regulations originating from substantive or material criminal law in the form of forms of abuse and criminal sanctions for acts of abuse of minors.(16,17).

The results of this research found similarities and similarities regarding the formulation of regulations regarding minors between Indonesia and Malaysia. Differences and similarities can be viewed from several aspects, namely:

First,ratification process of the Convention on the Rights of the Child, Indonesia including part of one of the countries that have participated in signing the Convention on the Rights of the Child.Previously, in 1979 the Indonesian government enacted Law Number 4 of 1979 concerning Child Welfare. In 1997 Indonesia enacted Law Number 3 of 1997 concerning Children's Courts(18). President Soeharto legitimized the Convention on the Rights of the Child as positive law, which was ratified on September 5 1990 with Presidential Decree No. 36 of 1990 to fulfill children's rights and determine the age requirements for children under 18 years(18,19).Malaysia also ratified the Convention on the Rights of

the Child. In January 2007, the results of the report on the Malaysian implementation of the convention on the Rights of the child, first country report stated that Jabatan Kebajikan Masyarakat is a child protection agency responsible for the convention on the rights of the child which is applied to all applicable administrative processes for handling cases and protecting children.(20). Apart from Jabatan Kebajikan Masyarakat, there are other bodies that participate in implementing the child rights convention, namely Suruhanjaya Hak Asasi Human or Human Rights Commission, Malaysian Regional Government, Malaysian Prisons Department, State Judiciary, and Malaysian Department of Education. The Malaysian government ratified the Convention on the Rights of the Child on December 28 1994 and stipulated the age of children under 18 years(21).

Second, regulation of acts of abuse of minors between Indonesia and Malaysia. In Indonesia there are several laws regulating child protection as follows: Law Number 35 of 2014 concerning Child Protection, Law Number 11 of 2012 concerning the Child Criminal Justice System, Law Number 3 of 1997 concerning Children's Courts, Law Law Number 4 of 1979 concerning Child Welfare, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 5 of 1998 concerning the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Malaysia has several laws regulating child protection, including: Deed 468 Protection of Children 1991, Deed Pindaan 2016 A1511, Deed 792 Sexual Offenses Against Children 2017, Deed 90 Juvana Court 1947, Deed 521 Domestic Violence 1994, Deed 106 Protection of Women and Girls Act 1973, and the Children Act 2001(9.22). So it can be concluded that in Malaysia there is more progressiveness regarding the regulation of child protection, child crime, and child problems. Moreover, in Malaysia, they started issuing laws in 1947 and then ratified the Convention on the Rights of the Child in 1994. Meanwhile in Indonesia, they started issuing laws in 1979 and then ratified the Convention on the Rights of the Child in 1990.(23).

Third, child protection agency. Indonesia has a special agency for child protection, namely the Indonesian Child Protection Commission which was founded in 2002. Meanwhile, Malaysia does not have a special agency for child protection and handling of children, but Jabatan Kebajikan Masyarakat or Department of Social Welfare, Human Rights Commission or Human Rights Commission Human, Regional Government of Malaysia, Department of Prisons of Malaysia, State Judiciary, and Department of Education of Malaysia are the bodies that participate in monitoring child protection so they have no influence in implementing child protection(12,20).

Fourth, formulation of the offense of regulating acts of abuse against minors. Indonesia formulates the Children's Law as contained in Article 76A, Article 76B, Article 76C, Article 76D, Article 76E and Article 76I of Law Number 35 of 2014 concerning Child Protection. Article 76A whoever commits discrimination, Article 76B whoever commits wrongful treatment and neglect, Article 76C whoever commits violence, Article 76D whoever deliberately carries out sexual intercourse with another person, as well as Article 76E obscene acts will be punished, but there is no formulation of the elements The elements of the article's offense specifically relate to forms of abuse against minors. Article 76I relates to exploitation, where exploitation is only limited to economic exploitation and sexual exploitation. Economic exploitation is an act of abuse against children who are victims of exploitation by evil individuals involved in order to obtain material gain. Sexual exploitation is an act of using other body organs, such as selling the genitals of children involved in all prostitution activities(24). Meanwhile, Malaysia formulates in Part V Children Who Require Care and Protection Chapter 1. Seksyen 17 (2)(a), Seksyen 17 (2)(b), and Seksyen 17 (2)(c) of the 2001 Children's Act Number 611 (A1511). The formulation of the offense of abuse can be clearly seen in detail in Section 17 (2)(a) of physical injury, which states that the formulation of the offense of physical harm is when a part of a child's body is cut due to deliberate whipping. Section 17 (2)(b) being emotionally injured means that the formulation of the offense of emotional harm refers to the context of prostitution. Section 17 (2)(c) for sexual injury states that the formulation of the offense of sexual harassment is explained in detail, covering three aspects, namely sexual harassment which is carried out by direct physical touch and sexual harassment which is not carried out by indirect physical touch.(25).

Fifth, formulation of criminal sanctions relating to the Child Protection Law. Indonesia uses a

retributive theory, namely a criminal system of punishment as an absolute demand for retribution (vergeiding) against every person who commits a crime.(26).The formulation of actions subject to criminal threats uses a system of maximum and minimum criminal threats. The formulation of the act in the aspect of criminal perpetrators is explained "every person who violates the provisions" meaning that every person comes from a family or non-family in accordance with the Domestic Violence Law that the child is in a household environment which is included in the scope of the family who commits a criminal act will be punished with a criminal offense.(27). The aspect of the act means that each criminal act corresponds to the weight of the quality of the threat of punishment by adjusting the consequences and juridical qualifications. It needs to be underlinedIf the perpetrator is a parent, guardian, child caretaker and educational staff, the criminal threat is increased by 1/3 (one third)(12).

The formulation of provisions for criminal sanctions for abuse of minors in Indonesia uses Law Number 35 of 2014 concerning Child Protection as follows:(28)

Chapter	Actions	Criminal
76A	Discrimination	Article 77 A maximum prison sentence of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). Note: special maximum with alternative-cumulative "and/or".
76B	Misdeeds and neglect	Article 77B A maximum prison sentence of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). Note: special maximum with alternative-cumulative "and/or".
76C	Violence	Article 80 1. A maximum prison sentence of 3 (three) years and 6 (six) months and/or a maximum fine of Rp. 72,000,000.00 (seventy-two million rupiah). 2. Serious injury: imprisonment for a maximum of 5 (five) years and/or a fine of a maximum of IDR 100,000,000.00 (one hundred million rupiah). 3. Death: imprisonment for a maximum of 15 (fifteen) years and/or a fine of a maximum of IDR 3,000,000,000 (three billion rupiah). 4. Parental perpetrators with a maximum sentence of 1/3 added. Note: special maximum system with cumulative alternatives "and/or".
76D	Intercourse with other people	Article 81 1. The minimum prison sentence is 5 (five) years and the maximum 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah). 2. If the perpetrator is a parent, guardian, child caretaker, educator or educational staff, the penalty will be increased by 1/3 (one third). Ket: special minimum system with cumulative "and".
76E	Obscene acts	Article 82 (special minimum) 1. Imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah). 2. Parents, guardians, child caretakers, educators or educational staff, the penalty is increased by 1/3 (one third) Ket: special minimum system with cumulative "and".

761	Economic and sexual exploitation	Article 80 A maximum prison sentence of 10 (ten) years and/or a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). Note: special maximum system with alternative cumulative "and/or".
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Meanwhile, Malaysia adheres to the Verenigings (combined) theory, namely the retributive theory (retaliation/vergeldings) and the relative theory (purpose/doel) in the criminal criminal system.(26). The formulation of the action in the perpetrator aspect in section 29 is "any child" who violates to comply with subsection, section 31 is "any person" who fails a child. This means that every person referred to is in the household sphere such as father, mother, or guardian and/or members outside the family(25).

The formulation of the provisions for criminal sanctions for abuse of minors in Malaysia uses the Childhood Act of 2001 Number 611 (A115) as follows:(29)

Sexy	Actions	Criminal
17 2 (a) 17 2 (b) 17 2 (c)	Physically injured Emotionally hurt Injured in terms of sex	Section 29 (2) A child care worker who violates subsection (1) commits a crime and, if convicted, shall be liable to a fine not exceeding 5,000 ringgit or imprisonment for a term not exceeding two years, or both.
		Section 31 (1) Anyone who has cared for a child — (a) <i>Anyone who abuses, neglects, disposes of, or abandons a child in a manner likely to cause physical or psychological harm or in a manner likely to cause such abuse, neglect, abandonment, exposure or</i> (b) <i>Anyone who sexually abuses a child or causes such abuse commits a crime and, if sick, is liable to a fine of up to 20,000 ringgit or imprisonment for up to 10 years or both.</i> (2) Court — (a) <i>In addition to the penalties referred to in subsection (1), a person charged with an offense under this subsection must be ordered to complete the bill with a bond of good conduct for as long as the court deems appropriate, and</i> (b) <i>Subject to condition (a), may include such conditions in the Amendment Bill as the Court deems appropriate.</i> (3) <i>If a person who is required to conduct a conduct check under subsection (2) fails to comply with any of the conditions of the bill, such person shall be fined no more than 10,000 ringgit or imprisoned for a maximum of five years may be punished, or both.</i>

CONCLUSION AND SUGGESTION

Conclusion

1. The differences between Indonesia and Malaysia in the formulation of regulations for criminal acts of abuse of minors are:
 - a. Provisions for criminal sanctions. Indonesia formulates criminal sanctions using Law Number. 35 of 2014 is clear that every criminal act carries a threat of punishment according to weighty qualifications, however the formulation of criminal acts is not yet specifically clear. Malaysia formulates criminal sanctions using the 2001 Children's Act, there is no clear adjustment to juridical qualifications and criminal threatssystemminimum maximum so that the threat of

- punishment is still light because there is no difference in criminal sanctions for acts of abuse of children, whether physical, psychological and sexual injuries, which are not connected between the act article and the criminal sanctions article, but the formulation of the criminal act is clearly specific.
- b. Criminal criminal system. Indonesia uses the retributive theory (retaliation/vergelding). Malaysia adheres to the Verenigings (combined) theory, namely the retributive theory (retaliation/vergerdings) and the relative theory (goal/doel).
 - c. Agency that handles child cases and child protection. Indonesia has a special body, namely the Indonesian Child Protection Commission, which was founded in 2002. Malaysia does not have a special body, but the institution has its duty, namely Jabatan Kebajikan.Public,Commission on Rights-Human Rights or the Human Rights Commission, Malaysian Regional Government, Malaysian Prison Department, State Judiciary, and Malaysian Education Department which are involved in child protection.
 - d. Formulation of the offense of regulating criminal acts. Indonesia formulated Article 76A, Article 76B, Article 76C, Article 76D, Article 76E, and Article 761 of Law Number 35 of 2014 concerning Child Protection looks general and not detailed. Malaysia formulated Part V Children Who Require Care and Protection Chapter 1. Section 17 (2)(a), Section 17 (2)(b), and Section 17 (2)(c) of the 2001 Children's Act Number 611 (A1511) formulation of action looks more detailed.
2. Similarities between Indonesia and Malaysia in formulating regulations for abuse of minors, namely according to the Convention on the Rights of the Child which has been ratified by both countries, the age limit for children is less than 18 years.

Suggestion

1. For the Malaysian government, the Special Agency for Problematic Children's Cases should not be a single function of the Department of Social Welfare, but should be a special agency so that all problematic cases of children are monitored and targeted.
2. The Indonesian and Malaysian governments regarding articles on child abuse should use articles in drafting their system preparation of Single Attract namely, the formulation of acts of abuse in the criminal sanctions provisions is stated as one article with criminal sanctions having to be adjusted between the juridical qualifications and the consequences.

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