

Criminal Justice System for Children Perpetrators of Murder Between Indonesia and Malaysia

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Abstract

This study examines the comparative juvenile justice systems for child offenders of murder between Indonesia and Malaysia. The background of the research stems from the rising cases of children in conflict with the law due to serious crimes such as murder. Both countries adopt different legal approaches: Indonesia applies restorative justice through Law No. 11 of 2012 on the Juvenile Criminal Justice System, while Malaysia relies on the Child Act 2001 influenced by the Doli Incapax doctrine. This research uses a normative juridical method with a comparative approach to analyze the similarities and differences in both legal systems. The findings indicate that Indonesia emphasizes child rehabilitation through diversion mechanisms, whereas Malaysia adopts a more formal approach emphasizing court decisions. The study recommends policy improvements in both countries to enhance the protection of child offenders' rights.

Keywords: Juvenile Justice; Murder; Indonesia; Malaysia; Legal Comparison.

Introduction

Crime cases involving minors are increasingly rampant. This is very concerning considering that childhood is supposed to be a positive phase of growth and development. However, not all children grow up in a good environment, many are affected by socioeconomic conditions, lack of parental supervision, and negative environments that trigger deviant behavior. One form of serious deviation is the involvement of children in criminal acts such as murder, which forces them to face the law directly. This action is a serious crime, so children must face law enforcement officials directly to take responsibility for their actions.¹

This problem does not only occur in Indonesia, but also in other countries,

¹ Gatot Supramono, Procedural Law of the Children's Court, (Jakarta; Djambatan, 2007), p. 1

including Malaysia. These two countries have different systems of juvenile criminal justice in handling cases of children as perpetrators of criminal acts. In Indonesia, the Juvenile Criminal Justice System is regulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which replaces Law Number 3 of 1997 concerning Children's Court.

The purpose of the implementation of the juvenile criminal justice system is not only to provide sanctions to children who commit criminal acts, but is more directed at the responsibility of children to victims, while still prioritizing the welfare of children.² Article 1 Paragraph (3) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that a child in conflict with the law, hereinafter referred to as a child, is a child between the ages of 12 and 18 years old and is suspected of being involved in a criminal act. Previously, Law Number 3 of 1997 concerning Children's Courts tended to focus on giving punishment to children who commit crimes, or known as the Retributive Justice approach .

The absence of a Restorative Justice approach in the old law is considered to have the potential to have a negative impact on children's development due to the punishment applied. On the contrary, Law Number 11 of 2012 emphasizes the importance of resolving juvenile criminal cases through the diversion process, which is based on the principle of Restorative Justice. Diversion aims to ensure protection for children who are in conflict with the law, as well as provide rehabilitation, in the hope of preventing children from committing criminal acts in the future.³ However, the implementation of Law Number 11 of 2012 still faces a number of serious challenges, such as in terms of the implementation of diversion in the field.

Some of the challenges faced in the implementation of the Juvenile Criminal Justice System in Indonesia, among others, are the limitations of the Special Child Development Institution (LPKA) and the Temporary Child Placement Institution (LPAS) in various regions. As a result, children often have to be placed in detention

² Ananda, F. (2018). The application of diversion is an effort to protect the law for children of criminal offenders. *Journal of Legal Sovereignty*,

³ Desiandri, Y. S., Ablisar, M., Marlina, M., & Ikhsan, E. (2015). Diversion of children in conflict with the law at the investigation level (Study at the Medan Police).

centers or adult correctional institutions, which is contrary to the provisions of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This condition can have a bad impact on children's psychology and development. It is important to remember that prison should only be used as a last resort for children.⁴

Although the rules state that child detention should be a last resort, in reality, children are still often detained, especially in serious cases such as murder. Based on the data, the rate of child incarceration remains high, although other alternatives should be preferred.⁵ Legal protection for children aims to ensure that their rights and freedoms are fulfilled, as well as to protect their human rights. This protection covers various aspects related to the welfare of children.⁶ In addition, the supporting regulations of the Juvenile Criminal Justice System Law have not been fully completed to date. Based on the SPPA Law, the government is required to prepare several supporting regulations as the basis for its implementation. However, currently only a few regulations have been issued. The Law on the Juvenile Criminal Justice System requires supporting regulations so that its implementation in the field is more effective and in accordance with its main goal, which is to protect the rights of children in conflict with the law. Without technical regulations detailing various procedures and mechanisms, the implementation of these laws can become inconsistent in different regions.

In Malaysia, the juvenile criminal justice system is regulated in the Child Act 2001 (Child Act 2001).⁷ This law regulates child protection, including procedures for handling children involved in criminal acts. In Malaysia, children aged 10 to 18 years can be held criminally liable, with the division into three categories. First, children under 10 years old are completely exempt from criminal liability. Second, children aged 10 to 12 years are partially exempted. Third, children aged 12 years and older can be held fully liable. Malaysia uses the doctrine of *Doli Incapax* in

⁴ Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

⁵ Problems in the Implementation of the Juvenile Criminal Justice System in Indonesia Are Still Found. (2017, July 21). ICJR. Retrieved October 4, 2024

⁶ Wahyuni, W. (2023, April 30). Implementation of Diversion in the Juvenile Criminal Justice System. *hukumonline.com*.

⁷ Marizal, W., & Marizal, W. (2024, July 31). Juridical Review of Minors as Perpetrators of Criminal Acts

children aged 10 to 12 years, because children at that age are considered not to have the full capacity to understand that their actions are wrong, unless proven otherwise.⁸

Therefore, in some cases, minors may get lighter sentences or even be released if the court finds that they do not fully understand the impact of their actions. Malaysia has special institutions or detention facilities for children that are regulated in the Child Act 2001 or the Child Act 2001.

Based on the Child Act 2001, there are 3 (three) places, namely, first, the Moral Dormitory, second. Approved school/Tunas Bakti School and third, Henry Gurney School.⁹ Henry Gurney School is a special rehabilitation institution in Malaysia for children involved in serious crimes, including murder. Children convicted of serious crimes will be housed here, where they receive skills training, education, and rehabilitative guidance until they reach adulthood.

As 2 (two) neighboring countries that have geographical proximity, Indonesia and Malaysia apply different systems of juvenile criminal justice, especially in terms of criminal liability and protection of children as perpetrators of criminal acts, including murder cases. These differences include legal policies, treatment of children, and institutions that handle children in the judicial process. In addition, Indonesia adheres to the civil law legal system, while Malaysia adheres to common law. This comparison is interesting to see how different approaches are applied in handling child criminal cases, including in murder cases. Therefore, the author wants to examine and compare in depth the juvenile criminal justice systems in both countries, in order to understand the differences and similarities that exist, including the advantages and disadvantages, as well as the challenges faced by each system in handling cases of children as perpetrators of murder.

⁸ Suciadi, A. (2019). Comparison of Children's Criminal Liability in Malaysian Criminal Law with Indonesian Criminal Law

⁹ Child Act 2001

Research Methods

This research is included in the type of normative juridical research. Normative juridical research is research that examines and reviews documents, or literature materials by utilizing various secondary data sources, such as laws and regulations, court decisions, legal theories, and views from experts related to the research topic.¹⁰

The approach in this study uses a type of comparative approach. Comparative approach or comparative research is a type of research that aims to compare one variable with another variable in order to obtain facts from the object being studied. According to experts, the definition of comparative research can be interpreted as follows: Sugiyono said that comparative research is research that compares variables on different samples and time periods.¹¹

Meanwhile, Nazir explained that comparative research is included in descriptive research that aims to find answers to causal relationships through the analysis of factors that trigger or cause the emergence of a certain phenomenon.¹²

This research uses secondary data sources consisting of two, namely primary legal materials which are laws and regulations related to the subject matter researched by the author and secondary legal materials that can be categorized such as journals, articles, literature books and papers related to this research. Primary Legal Materials consist of, among others: (1) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System; (2) Child Act 2001; (3) Penal Code; (4) Convention on the Rights of the Child (CRC) 1989; (5) Criminal Code; (6) Law on Human Rights Courts.

Secondary Legal Materials Secondary sources of legal materials are legal materials that provide explanations of primary legal materials, consisting of: (1) Draft laws; (2) Research results; (3) The work of the legal community; (4) Textbooks; (5) Scientific Journal.

¹⁰ Soerjono Soekanto, 2003, Normative Legal Research, PT Raja Grafindo Persada, Jakarta, p. 13.

¹¹ Salmaa. (2022, August 9). Comparative Research: Definition, How to Structure and Complete Examples. Deepublish Publisher.

¹² Buchori Ibrahim, M., Permata Sari, F., Indra Kharisma, L. P., Kertati, I., & Artawan, P. (2023). Research Methods in Various Scientific Fields (Guide & Reference) (1st ed.).

The technique of collecting legal materials used in this study is a library search. Library research is a data collection technique that is carried out by searching and reviewing literature, books, journals, documents, and other written sources that are relevant to the research topic.¹³ This method aims to obtain existing information and concepts to support analysis and discussion in research.¹⁴ The data collected through library research is secondary and helps researchers understand the theoretical background and problems being researched, so that it can provide a strong scientific foundation in writing scientific papers.

The analysis techniques used in this study are qualitative analysis techniques and content analysis. "THE CRIMINAL JUSTICE SYSTEM FOR CHILDREN WHO COMMIT MURDER CRIMES IN INDONESIA AND IN MALAYSIA"

Results and Discussion

The crime of murder is one of the most serious crimes in the criminal law system. When the perpetrator of murder is a child, the issue becomes more complex because it involves the principles of justice, child protection, and the purpose of rehabilitation. Children as perpetrators of criminal acts are in a different position from adults, so the criminal law system regulates special treatment for them. Children as perpetrators of criminal acts are in a different position from adults due to age factors, psychological development, and understanding of the law. Therefore, the criminal legal systems in many countries, including Indonesia and Malaysia, give them special treatment. This difference reflects the principle that children are not yet fully emotionally and intellectually mature to understand the impact of their actions as adults. Children often do not have the ability to fully understand the long-term consequences of their actions, so their criminal responsibility must be treated more wisely. According to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System or SPPA Law Article 1 Paragraph (3) of the Law, a child

¹³ Moch Nazir, 2008, *Research Methods*, Ghalia Indonesia, Jakarta, p. 111.

¹⁴ Adlini, M. N., Dinda, A. H., Yulinda, S., Chotimah, O., & Merliyana, S. J. (2022). Qualitative research methods of literature studies. *Journal of Edumaspul*, 6(1), 974-980.

is defined as a person who is over 12 years old but has not yet reached 18 years old, who is suspected of committing a criminal act. This provision applies specifically to children who are facing the law. Children under the age of 12 cannot be held criminally liable, but must receive special coaching or intervention by the competent authorities. The SPPA Law also emphasizes that the juvenile criminal justice system aims to provide treatment in accordance with the needs of children's development, by prioritizing the principle of restorative justice through a diversion mechanism.

Furthermore, according to Article 1 Paragraph (1) of the Child Protection Law, a child is someone who has not reached the age of 18 years, including children who are still in the womb. This definition is used to provide comprehensive protection to children, including the right to life, education, health, and protection from discrimination or violence. In Malaysia, the definition of child is also regulated in various laws that range from general protection to criminal contexts.

In Malaysia, the definition of a child based on the Child Act 2001 is a child as an individual who has not reached the age of 18. The Act integrates the protection of children's rights in various aspects, including the right to protection from exploitation, violence, and neglect. In a criminal context, children between the ages of 10 and 18 can be held criminally liable according to their level of capacity. In addition, the definition of child is also found in the Malaysian Penal Code which regulates the minimum age of criminal responsibility at the age of 10 years, with the application of the doctrine of *Doli Incapax*.

Children aged 10-12 years can only be held criminally liable if they are proven to understand that their actions are wrong. Children over the age of 12 are considered to have full responsibility, but are still given special treatment under the children's law. The New Criminal Code (KUHP) (which was passed in 2022 and will come into full force in 2025) introduces a restorative approach for child offenders with the concept of diversion and priority on rehabilitative punishment. The new Criminal Code adopts the principles of protecting children's rights, as stated in the Law on the Juvenile Criminal Justice System (UU SPPA) No. 11 of 2012.

The SPPA Law aims to protect the rights of children in conflict with the law through a diversion approach (out-of-court settlement) and make detention a last resort. The 1945 Constitution Article 28B paragraph (2) guarantees the right of children to survival, growth, development, and protection from violence and discrimination. Malaysia uses the Penal Code as the basis of general criminal law, which also regulates crimes for children, but with a stronger emphasis on formal justice than on a restorative approach. This approach is sometimes criticised for failing to pay attention to the principles of child rehabilitation reflected in the Juvenile Courts Act 1947 which regulates the juvenile court system in Malaysia, which aims to protect and rehabilitate minors.

Juvenile Criminal Justice System in Indonesia Related to Children Perpetrators of Murder

Criminal law in Indonesia regulates special treatment of children in conflict with the law through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA).¹⁵ This law prioritizes the principles of restorative justice and child protection as guidelines in dealing with children involved in criminal acts. In Article 1 paragraph (3) of the SPPA Law, a child in conflict with the law is defined as a child who has reached the age of 12 but has not reached the age of 18.¹⁶

The SPPA Law also stipulates that the juvenile criminal justice system must be different from the general criminal justice system. Children are seen as individuals who are still in the process of growth and development, so the approach used must prioritize coaching and rehabilitation rather than punishment.¹⁷ In the case of the crime of murder, even though it is a serious crime, this approach is still relevant. A child is proven to have committed the crime of murder, classified as an extraordinary crime because it involves the loss of another person's life. It should

¹⁵ Ariani, N. M. I., Yuliartini, N. P. R., & Mangku, D. G. S. (2019). Implementation of Law Number 11 of 2012 concerning the Child Criminal Justice System Against Crimes Committed by Children

¹⁶ Sutrasno, S. A. (2014). Normative Study of Article 1 Paragraph 3 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. *RECHTSTAAT*, 8(1).

¹⁷ Personal, D. (2018). Protection of children is against the law. *Volkgeist Law Journal*, 3(1), 14-25.

be noted that the term (extraordinary crimes) originally referred to crimes against humanity, war crimes, and acts of genocide¹⁸.

In Indonesia, based on the Human Rights Court Law, which is included in the category of extraordinary crimes, it is a gross human rights violation that is limited to two types, namely genocide and crimes against humanity.¹⁹ According to article 9 of the Human Rights Court Law, murder is a form of crime against humanity that violates human rights.²⁰

The crime of murder is regulated in Article 338 of the Criminal Code (KUHP) which states that "Whoever deliberately takes the life of another person, is threatened with murder with a maximum prison sentence of fifteen years." For children who commit this criminal act, the enforcement of criminal law is based on the *lex specialis* principle of the SPPA Law. Article 81 of the SPPA Law stipulates that children can only be sentenced to imprisonment for a maximum of 1/2 (half) of the maximum criminal threat for adults. For example, if a child commits the crime of murder regulated in Article 338 of the Criminal Code, then the maximum penalty for the child is 7.5 years in prison. In addition, Article 71 of the SPPA Law stipulates that before imposing a prison sentence, judges must consider other alternative punishments, such as job training, coaching in social welfare institutions, or supervision by parents. The principle of justice in handling children of murder offenders is restorative justice.²¹ This approach focuses on restoring relationships between perpetrators, victims, and the community. In the context of children, restorative justice aims to provide opportunities for children to take responsibility for their actions. The process of restorative justice²² usually involves deliberation known as diversion. Diversion is regulated in Article 7 of the SPPA Law and must be carried out at every stage of the judiciary, from investigation to

¹⁸ Mark A. Drumbl. (2017) *Atrocity, Punishment, and International Law*, Chapter 1: Extraordinary Crime and Ordinary Punishment: An Overview. Cambridge University Press, p. 4

¹⁹ SH, S. a. T. (2022, January 7). What is Extraordinary Crime and Examples. Legal Cliniconline. <https://www.hukumonline.com/klinik/a/apa-itu-iextraordinary-crime-i-dan-contohnya-cl3012/>

²⁰ Article 9 of the Human Rights Court Law

²¹ Apriandi, N. (2017). Protection of child victims of sexual violence through a restorative justice approach. *Legal arena*, 10(2), 309-332.

²² Hasan, H. (2013). The application of restorative justice in the juvenile criminal justice system in Indonesia. *Journal of Law and Justice*, 2(2), 247-262.

examination in court. Diversion aims to achieve peace between perpetrators and victims, avoid stigma, and avoid children from the formal justice system that can have a negative impact on children. For cases of murder, the implementation of diversion can be challenging. Article 7 paragraph (2) of the SPPA Law states that diversion can only be carried out for criminal acts with a threat of imprisonment under 7 years or for criminal acts that are not threatened with a special minimum penalty. Thus, diversion usually does not apply to murder cases except in certain circumstances, for example if the event occurred due to negligence or accident.

The results of the study show that Indonesia emphasizes a restorative approach in handling the case of children who commit murder. This is realized through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA) This law was passed to regulate the criminal justice system that focuses on the protection, rehabilitation, and development of children who are faced with the law in order to: Protect children's rights in every stage of the criminal justice process; Provides special treatment that is different from adult criminal justice. Basic Principles of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA): Best interest of the child; Avoiding stigma for children; restorative justice and non-discrimination.²³ Age Limits for Children Facing the Law, Children who can be held criminally accountable are those who are 12 years old to less than 18 years old. Children under 12 years old cannot be criminally prosecuted and will be returned to their parents or included in a coaching program.

Diversion is the transfer of the settlement of juvenile criminal cases from the criminal justice process to outside the judicial system.²⁴ Diversion must be applied at every stage of the process (investigation, prosecution, and examination in court), except for serious crimes, which prioritize the rehabilitation and social reintegration of children over retributive punishment. The diversion mechanism is one of the main features that aims to prevent children from the formal judicial process. Diversion is carried out at the stage of investigation, prosecution, or trial through

²³ Sianturi, K. A. (2016). The realization of restorative justice in the juvenile criminal justice system through diversion. *De Lega Lata: Journal of Legal Sciences*, 1(1), 184-210.

²⁴ Jafar, K. (2015). Restorative Justice for Diversi in Handling Juvenile Delinquency (Children with Legal Conflicts). *Al-'Adl*, 8(2), 81-101.

deliberation involving the perpetrator, victim, family, and related parties.

This approach is in line with restorative theory which emphasizes the restoration of relationships between perpetrators, victims, and society. Previous studies, such as those conducted by Zehr, supported this approach by stating that restorative justice can lower the recidivism rate of child offenders.²⁵ The success of diversion in Indonesia is shown in several cases, where children of criminal offenders can return to society without prolonged stigma. However, the implementation of this mechanism faces challenges such as a lack of understanding by law enforcement officials and the public about restorative justice.²⁶

Based on the results of an interview with Mr. Mustakim, SH. MH, an alumnus of Krisna Dwipayana University, has experience in investigating both general and juvenile crimes and is currently working as a legal practitioner or lawyer at the RABS International law office, he stated that the juvenile criminal justice system in Indonesia in general is appropriate and clear. Children who commit the crime of murder starting from investigations, investigations or the arrest process, all must be exempted because the perpetrator is a child. In terms of examination, it must follow the provisions in accordance with the SPPA Law, namely, mandatory assistance for children.

He also had experience in conducting examinations of junior high school students who were facing the law and said that at that time the companions for the children numbered around five to six people. In addition, he also conveyed problems that are often found in the field related to the implementation of the Law. The problems identified by him, first of all, are related to human resources, especially law enforcement officials, where there are still actions that are not suitable to be applied to children who are facing the law.

For example, there are still law enforcers who treat children "roughly", in this case what is meant by "rough" is that law enforcement's treatment of children should be gentle. However, in the facts in the field, unkind treatment is still often

²⁵ Zehr, H., & Toews, B. (2022). *Still Doing Life: 22 Lifers, 25 Years Later*. New York, NY: The New Press.

²⁶ Ananda, F. (2018). The application of diversion is an effort to protect the law for children of criminal offenders. *Journal of Legal Sovereignty*, 1(1).

found. The next problem is the detention process at the investigation level. On average, there is no special place for detained children in the police. Because of this problem, the child who is faced with the law is finally entrusted to the Ministry of Social Affairs or the social service.

According to him, there are still many institutions used for the placement of children who commit criminal acts that are not in accordance with the set standards. However, he said that in general, in big cities, the judicial process for children is in accordance with the provisions of the applicable laws, but in areas there are still many things that are not in accordance with the provisions of the SPPA Law compared to big cities.

Furthermore, according to article 7 paragraph 1 of the SPPA Law, it basically states that at every level of the juvenile court process, it is mandatory to seek diversion. Then in paragraph 2 it mentions two points, namely the first diversion is carried out for criminal acts whose threat is under 7 years. Then in the second point it is stated that diversion can be applied as long as it is not a repeated criminal act (revidivism). The author also questioned this to the interviewees. According to the source, it is basically true that at every stage of the juvenile justice process, diversion must be applied and diversion can be pursued for criminal acts with threats under 7 years. In the event of a crime of murder committed by a child, because the threat is over 7 years old, in writing based on Article 7 of the SPPA Law, diversion cannot be carried out.

However, the resource person said that in practice, diversion efforts are always pursued at various levels of the juvenile justice process and various parties are always involved to jointly resolve the case. Although in this case the child committed the crime of murder, which is clearly written that diversion cannot be carried out, but in practice, in practice, the resource person said that diversion is still carried out by involving various parties. However, this diversion process depends on the agreement of the parties concerned. If they agree to diverge, the effort can be made. However, for cases of murder committed by children, according to the source, the average perpetrator remains detained considering that murder is an extraordinary crime that takes the life of another person and the diversion process

is declared unsuccessful. In accordance with the SPPA Law, the punishment for children who commit criminal acts is 1/2 of the punishment for adults.

The resource person also said that criminal acts committed by children are categorized as *Lex Specialis*. Therefore, in its application, the SPPA Law is still prioritized even though children who commit murder are subject to the murder article in the Criminal Code. Then the regulations related to Restorative Justice itself are regulated in PERMA NUMBER 1 OF 2024 which is used as a guideline by investigators, prosecutors and judges in terms of making decisions or legal actions against children facing the law or children as perpetrators of criminal acts.

Then related to relevant case examples, the author found that a case that has recently occurred related to children as perpetrators of murder crimes is a murder case by a 14-year-old teenager who killed his father and grandmother in Cilandak, South Jakarta. A 14-year-old boy with the initials MAS, killed his father (APW, 40 years old) and grandmother (RM, 69 years old) at their home in Bona Indah Housing, on November 30, 2024.

In addition, MAS also injured his mother (AP), who is currently still being treated in intensive care in the hospital due to the serious injuries he suffered. According to preliminary investigations, MAS used sharp weapons in the attack. After the incident, MAS had tried to escape, but was successfully arrested by the complex's security officers with his clothes and hands covered in blood. During the examination, MAS admitted to hearing whispers that disturbed his mind before committing this act. Previously, the mother had taken MAS to a psychiatrist several times to treat her sleep disorder, but the results of the psychiatrist's evaluation are still in the process of deepening the authorities.

The police are still investigating the motive for the incident, including psychological factors that may have influenced MAS's actions. This case sparked public attention and highlighted the importance of mental health management and appropriate legal treatment for minors involved in serious crimes.²⁷ The Head of

²⁷ Rahmat, A. (2024b, November 30). Chronology of a 14-Year-Old Child in Cilandak, South Jakarta Killed His Father and Grandmother. VIVA. <https://www.viva.co.id/berita/kriminal/1776972-kronologi-anak-14-tahun-di-cilandak-jaksel-bunuh-ayah-dan-neneknya>

the South Jakarta Metro Police Criminal Investigation Unit, Adjutant General Commissioner Gogi Galesung, explained that the victim was killed while sleeping. MAS first stabbed his father, who was sleeping on the second floor with his mother. When his mother woke up due to the incident, MAS then attacked him with a sharp weapon.

MAS was charged with several articles, including Article 338 of the Criminal Code concerning murder, which is supplemented by Article 351 Paragraph 3 of the Criminal Code related to persecution resulting in death. In addition, he is also subject to Article 44 Paragraphs 2 and 3 of the Law on Domestic Violence (KDRT) which regulates violence that causes serious injury or death in the family environment.²⁸

Formalities of the Juvenile Justice Process for Perpetrators of Crimes in Malaysia

In contrast to Indonesia, Malaysia uses a more formal approach in dealing with children who commit murder crimes through the Child Act 2001. The emphasis on the doctrine of *doli incapax* is a hallmark of the Malaysian legal system, which assumes that children under a certain age do not have the capacity to commit a crime. However, for children over the age of 10, the judicial process is still carried out through the juvenile court system with a lighter procedure than the general court.²⁹ This formal process reflects the traditional legal doctrine that applies more emphasis on testing the mental capacity of children to take responsibility for their actions. Based on the results of Mohammad's study,

A., Mustaffa, A., Awang, M. B., Nawang, N., & Yusob, M. L. M. (2017). Criminal Responsibility of Children under Malaysian Law: Time for a Re-evaluation shows that court sentences, although light, are often not accompanied by adequate rehabilitation programs, so the potential for children to reoffend remains

²⁸ Fika, D. R., & Muhtarom, I. (2024, December 10). The Case of a Child Killing Father and Grandmother, the Mother Can Be Asked for Information by the Police. Time. <https://www.tempo.co/hukum/kasus-anak-membunuh-ayah-dan-nenek-sang-ibu-sudah-bisa-dimintai-keterangan-oleh-polisi--1179594>

²⁹ Lubis, M. S. Y. (2022). *International Civil Law Textbook* (Vol. 1). UMSU Press.

high.³⁰

Based on a study of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Indonesia³¹ and the 2001 Child Act in Malaysia which is influenced by the doctrine of *doli incapax*, several findings can be formulated in the form of tables

Research Results:

Table 1 Differences between the Juvenile Criminal Justice System in Indonesia and the Child Act in Malaysia

Mechanism	Indonesia	Malaysia
Minimum Age of Criminal Responsibility	The minimum age of criminal liability is 12 years old (Article 21 of SPPA Law Act 2001. However, a child aged 10-12 No. 11 of 2012). Children under this age cannot be held criminally liable. Detention of a child can only be carried out if the child is at least 14 years old (Article 32 paragraph 1 of the SPPA Law)	The minimum age is 10 years old, as stipulated in the Penal Code and Child years is only responsible if it can be proven that he understands his actions are wrong (rebuttable presumption of <i>doli incapax</i>).
Legal Approach	Restorative justice-based approach through the SPPA Law. Processes such as diversion (out-of-court settlement), mediation, and rehabilitation are priorities.	A more formal and legalistic approach. Children aged 10-18 are generally tried in Juvenile Court, but serious cases such as murder can be transferred to the High Court, where harsher sentences are applied.

³⁰ Mohammad, A., Mustaffa, A., Awang, M. B., Nawang, N., & Yusob, M. L. M. (2017). Criminal Responsibility of Children under Malaysian Law: Time for a Re-evaluation. *World Applied Sciences Journal*, 35(9), 1783-1791.

³¹ Ariani, N. V. (2014). Implementation of Law Number 11 of 2012 concerning the juvenile criminal justice system in an effort to protect the interests of children. *Journal of Legal Media*, 21(1), 16.

	Detention is a last resort, with a focus on child coaching.	
Duration of Prison Sentence	The maximum punishment for children is 1/2 of the threat of punishment for adults (Article 81 of the SPPA Law). For serious crimes such as murder, children can be sentenced to a maximum of 10 years in prison.	Punishment for children does not include the death penalty. The determination of the duration of the sentence depends heavily on the court's decision and can be influenced by the discretion of the Supreme Court, who has the authority to grant pardons or determine lighter sentences.
Special Facilities for Children	The guilty child is placed in the Special Child Development Institution (LPKA). The goal is coaching, not punishment, with education and rehabilitation facilities. Children who are involved in minor crimes or have problems with education and behavior, but are not involved in serious crimes are directed to the Social Welfare Organizing Institution (LPKS), which focuses on social rehabilitation.	The child is placed in a child rehabilitation center under the Department of Social Welfare. Like Henry Gurney's school. For severe cases, children can be placed in prisons separate from adult facilities.

Table 2 Similarities between the Juvenile Criminal Justice System in Indonesia and the Child Act in Malaysia

Mechanism	Indonesia	Malaysia
Death Penalty and Life	Prohibiting the death penalty and life imprisonment for children of criminal offenders.	
Special Facilities for Children	. Both have special facilities for children to avoid the negative influence of adult prisoners.	
Right to Education and Rehabilitation	Provide access to education, training, and rehabilitation to children during the legal process.	
Definition of Child	Both systems define a child as an individual who has not reached the age of 18.	

Source : Author Analysis, 2024

The difference in approach between Indonesia and Malaysia is a different legal provision. Indonesia emphasizes more on the best interest of the child, while Malaysia prioritizes legal certainty. According to the child protection theory put forward by Freeman (2011), the best approach is one that integrates legal protection rehabilitation in a balanced manner.³² This has not been fully achieved in both Indonesia and Malaysia, the justice system in Indonesia has the advantage of giving second chances to children of murder offenders, but it requires an increase in terms of resource support and consistency in implementation. In contrast, Malaysia, despite offering legal certainty through formal processes, pays little attention to the aspects of rehabilitation that are essential for children's development. According to a previous research journal written by Firly Ajurni and Novilia Wulan Sari³³ titled: Comparison of the Legal Systems of Indonesia and Malaysia Regarding Child Protection, there are differences in legal approaches in the juvenile criminal justice system in Indonesia and Malaysia. Indonesia implements a restorative approach as

³² Simatupang, R. S. A. (2024). The Implementation of the Juvenile Criminal Justice System in Indonesia from the Perspective of the Value of Justice. *Juridical Journal*, 11(1), 54-63.

³³ Ajurni, F., & Sari, N. W. (2024). Comparison of Indonesian and Malaysian Legal Systems Regarding Child Protection. *Innovative Law: Journal of Social Law and Humanities*, 1(3), 347-359.

stipulated in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. This approach focuses on restoring relationships between perpetrators, victims, and communities, and prioritizes solutions that not only punish but also educate children. This is in line with the SPPA Law's focus on children's rights to be protected and grow optimally.

Malaysia refers to the Child Act 2001 which is based on the Common Law legal system. The Act regulates the age division of children for criminal liability into three categories, including considering the principle of *Doli Incapax* (the inability of the child to understand his or her actions). This approach is different from Indonesia because it emphasizes more on legal doctrine based on age and maturity of children. This doctrine refers to the assumption that children under a certain age are considered to have no capacity to understand unlawful acts. This approach focuses more on child protection from the conventional criminal justice system, by emphasizing aspects of rehabilitation and legal protection. Child rehabilitation institutions play an important role in the juvenile criminal justice system, both in Indonesia and Malaysia, to ensure that children in conflict with the law, including perpetrators of serious crimes such as murder, are not only punished, but also rehabilitated so that they can better return to society. In Indonesia, children who commit criminal acts are not directly imprisoned like adults. Instead, children can be placed in the Special Children's Development Institution (LPKA). LPKA is a rehabilitation facility that focuses on coaching and education for children who have gone through the criminal justice process. According to article 81 paragraph 3 of the SPPA Law, the Coaching Process at LPKA is carried out until the child is 18 years old.³⁴ Then for criminal acts whose threat is the death penalty or life imprisonment according to article 81 paragraph 6 of the SPPA Law, the penalty imposed on the child is a maximum prison sentence of 10 years.³⁵

In addition, if the child does not meet the age of criminal responsibility or the case is resolved through the diversion process, they can be referred to the Social Welfare Organizing Institution (LPKS). This institution aims to provide social

³⁴ Article 81 Paragraph 3 of the SPPA Law

³⁵ Article 81 Paragraph 6 of the SPPA Law

rehabilitation and education to children with an approach that pays attention to their psychological and social conditions. This system is part of the restorative justice approach implemented through the Juvenile Criminal Justice System Law (SPPA Law), where children who commit criminal acts are placed in an environment that supports recovery rather than severe punishments such as imprisonment. In Malaysia, children involved in serious crimes such as murder can be taken to Approved Schools or child rehabilitation centres under the Department of Social Welfare. One specific example is the Henry Gurney School, which is an institution for teenagers who have been found guilty of serious crimes. The institution provides a rehabilitation program that includes skills training, formal education, and mental coaching to prepare the child to return to society. If a child is found guilty by a court (e.g. by a Juvenile Court), they are not sentenced to prison with an adult but are directed to a special facility such as Henry Gurney's school. In Malaysia, minors who commit serious crimes, including murder, can be subject to sanctions in the form of detention in certain facilities that are adjusted to their age. Such facilities include moral dormitories, graduated schools, Henry Gurney School, or prisons, depending on the severity of the case and the age of the perpetrator.

According to Articles 62 and 66 of the Child Act 2001, children under the age of 10 cannot be placed in these facilities.³⁶ For children aged 10 to under 14 years old, placement is only allowed in an approved moral hostel or school.³⁷ Meanwhile, for children aged 14 and over, they can be placed in Henry Gurney School or prison, in accordance with the provisions of sections 74 and 96 of the Child Act.³⁸ This rule reflects Malaysia's legal approach to dealing with child offenders by tailoring treatment based on their age and rehabilitation needs. In some cases, if a court decides a child is responsible for a serious crime, such as murder, they may be placed in long-term detention but still with a rehabilitative approach. From an implementation perspective, previous research also noted that Indonesia has a more

³⁶ Sections 62 and 66 of the Child Act 2001

³⁷ Habib, M. A. B. A. (2018). *Criminal sanctions for perpetrators of murder who are minors according to the 2001 Child Act (Act 611) and Law Number 11 of 2012 concerning the Juvenile Criminal Justice System* (Doctoral dissertation, UIN Raden Fatah Palembang).

³⁸ Sections 74 and 96 of the Child Act 2001

structured diversification mechanism to handle child cases outside the court system, such as through the mediation process and the role of legal aid institutions.

Indonesia: Referring to Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, the legal approach in Indonesia (1) emphasizes the principle of restoration; (2) This principle involves resolving children's cases through the process of mediation, diversification, and restoration of relationships between children as perpetrators, victims, and the community; (3) The handling of child cases is sought to avoid the litigation process by involving the role of the community, family, and social institutions.

Malaysia: (1) Guided by the Child Act 2001, Malaysia's approach to law is influenced by the doctrine of *Doli Incapax*³⁹ which assumes that children under a certain age do not have the capacity to understand unlawful acts; (2) This legal system focuses on the rehabilitation and protection of children through the juvenile court as the center of the case resolution mechanism. Although it emphasizes rehabilitation, the system is more focused on the role of the courts than a community-based approach like in Indonesia. On the other hand, Malaysia has several comparisons of the legal system with Indonesia in providing protection for children, especially related to the juvenile criminal justice system. This research highlights the differences in legal approaches applied by the two countries, which are influenced by the cultural values, history, and legal systems of each country. Indonesia is superior in dealing with children as perpetrators of crimes, including murder, due to the application of a stronger restorative approach. Indonesia's advantage is *Diversi* as the Main Principle of Avoiding children from the formal justice system which can have a negative psychological impact. Restorative Justice, Providing opportunities for perpetrators, victims, and the community to improve relationships through mediation.

The provisions in the New Criminal Code contain policies that support the restorative and rehabilitative approach of the SPPA Law (Law No. 11 of 2012) emphasizing diversion, mediation, and rehabilitation, making detention a last resort. This approach is more in line with the Convention on the Rights of the Child (CRC),

³⁹ Ali, S. N. I. B. S., Binti, N. A. B., Hairi, A., & Sodin, M. A. B. *Doli Incapax: The Relevancy of Section 113 of the Evidence Act 1950 Relating to Child Rape in Malaysia.*

which emphasizes child protection and rehabilitation-oriented settlements. In contrast, the Malaysian legal system tends to be more legalistic and formal, as seen in the Juvenile Courts Act 1947 and the Penal Code. Although there is protection for children, focusing on the penal approach makes rehabilitation less of a priority.

Conclusion

The legal approach to children in the criminal justice systems in Indonesia and Malaysia shows differences, although both aim to protect children's rights. In Indonesia, the Juvenile Criminal Justice System regulated in Law Number 11 of 2012 emphasizes the restorative principle. This principle focuses on efforts to restore relationships between children as perpetrators, victims, and society through the process of mediation, diversification, and social rehabilitation. The handling of child cases in Indonesia is designed to avoid a formal litigation process, by involving the active role of families, communities, and social institutions. This approach reflects the desire to create more humane and child-friendly solutions, prioritize peaceful conflict resolution, and ensure that children continue to receive social and emotional support. In contrast, Malaysia adopted a different approach through the Child Act 2001, The juvenile criminal law system in Malaysia emphasizes child rehabilitation and protection with the juvenile court as the central mechanism for resolving cases. Although rehabilitation is the main focus, the system is more focused on the role of the court institution in determining the steps to resolve cases than the community-based approach as applied in Indonesia. This approach reflects the tendency to reintegrate children into society through formal supervision and intervention by state institutions.

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