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LEGAL PROTECTION OF CHILDREN'S RIGHTS IN HIGHER EDUCATION ENVIRONMENTS: A CASE STUDY OF INDONESIA AND MALAYSIA

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Abstract

Demographic shifts in higher education have led to an increase in the number of students under 18, triggering uncertainty about their legal status and the urgency of special protections. This normative legal research comparatively analyzes the regulatory frameworks and institutional mechanisms for student protection in Indonesia and Malaysia. Through a legislative and comparative approach, the study finds divergences in the characteristics of protection. Indonesia implements a structural-administrative model through the PPK Task Force based on Ministerial Regulation No. 55 of 2024, which prioritizes internal prevention and broad coverage, but is hampered by structural independence. In contrast, Malaysia adopts a remedial-legalistic model through the Anti-Sexual Harassment Tribunal Act 2022, which offers executive certainty and independence, but is materially limited to sexual offenses and is reactive in nature. The research concludes that both jurisdictions need to harmonize towards a hybrid model. Indonesia is recommended to establish an external oversight mechanism to mitigate conflicts of interest, while Malaysia needs to integrate a mandatory prevention curriculum and expand protections against bullying. The direction of legal policy is expected to shift from rigid age limits to vulnerability-based protection that is responsive to power relations in the academic environment.

Keywords:*Student Protection; PPK Task Force; ASHA Tribunal; Comparative Law.*

INTRODUCTION

Historically, higher education has been built on the assumption that participants are legally mature adults with full competence (bekwaamheid) and emotional maturity. However, empirical data suggests a shift. Through accelerated programs, matriculation, and differences in basic education systems, some students in Indonesia and Malaysia begin university studies before the age of 18 (University of Nottingham Malaysia, n.d.). This situation presents unique challenges regarding legal status. These students are in a transitional position: academically deemed capable, but legally still considered "children" protected by international human rights instruments and national law (Jauhari, 2014). This situation requires attention given the asymmetrical power relations within the campus environment—both between lecturers and students and between seniors and juniors—which pose potential risks related to the safety and comfort of their studies.

In Indonesia, this protection aspect is strengthened through Ministerial Regulation of Education, Culture, Research, and Technology Number 55 of 2024. This regulation was introduced to improve protection mechanisms for the academic community, which were deemed suboptimal. Meanwhile, in Malaysia, despite the existence of the Child Act 2001, the campus environment is specifically regulated by the UUCA 1971. This law is characterized by strict regulations on student activities, although the introduction of ASHA 2022 has begun to provide a new perspective on this governance (Tirtayana, 2021). In this study, the legal framework is analyzed using a preventive legal protection approach. Unlike repressive legal protection, which focuses on post-event management, preventive protection aims to minimize risk. Within the university context, this includes:

1. Environmental Conditioning: Standardization of a safe physical and social environment (such as campus area surveillance, lighting, and code of conduct).
2. Mandatory Education: Integration of violence prevention materials into orientation and lectures to instill an understanding of norms.
3. Supervisory Function: Optimization of work units (such as Task Forces or Integrity Units) in monitoring compliance with applicable regulations.

Legal literature indicates that the challenge of preventive efforts often lies in inter-institutional coordination and policy synchronization (Wulan et al., 2025). Therefore, this study examines law in books (regulatory text) and law in action (implementation) to measure the effectiveness of the legal framework (Latifiani, 2015).

LITERATURE REVIEW

Current legal studies highlight the fact that more and more students are entering higher education before the age of 18 (Fikri, 2020)This situation creates confusion regarding their legal status: they are considered academically capable, but in the eyes of the law they are still classified as children in need of protection (University of Nottingham Malaysia, n.d.; Jauhari, 2014). The main problem lies in the differing definitions of "adult" in legislation. In Indonesia, overlapping regulations between the Child Protection Act and civil law create administrative uncertainty on campus. Meanwhile, in Malaysia, the age of adulthood is rigidly defined by the Age of Majority Act 1971, which limits students' capacity to undertake legal actions such as signing contracts (Latifiani, 2015; Singh & Lui, 2020).

In Indonesia, academic discussion has centered on the issuance of Minister of Education, Culture, Research, and Technology Regulation No. 55 of 2024. This regulation broadens the definition of violence to include bullying and intolerance, and requires universities to form a Task Force (Satgas) and include prevention materials in the curriculum (Abidatuzzakiyyah, 2025). Although this regulation emphasizes education and prevention, various literature highlights problems with the position of the Task Force (Satgas).Fikri, 2022)Because it is directly responsible to campus leaders, the Task Force's independence is questionable. Furthermore, many campuses face funding and personnel constraints in effectively enforcing this regulation (Khairunnisa & Putri, nd; Noer et al., 2025).

Meanwhile, literature on Malaysia focuses more on the victim redress approach under the Anti-Sexual Harassment Act 2022 (ASHA). A key breakthrough of this law is the establishment of an independent, off-campus Tribunal that can order compensation (Rohime et al., 2025; Herbert Smith Freehills Kramer, 2025). However, legal analysis indicates that this Tribunal's authority is limited to sexual cases. Cases of ordinary bullying still have to be resolved through the rigid campus disciplinary rules under the Universities and University Colleges Act 1971 (Hamin et al., 2023; Tirtayana, 2021). Overall, the literature indicates that both countries still face difficulties in fully implementing the "Best Interests of the Child" principle in campus governance (Agcaoili, 2024).

METHOD

This research is a normative legal study that uses a statute approach and a comparative approach. The study focuses on a comparative review of the regulatory framework for the protection of students under 18 years of age in the jurisdictions of Indonesia and Malaysia. The data sources used are secondary data sourced from primary legal materials, including related laws and regulations such as Permendikbudristek Number 55 of 2024, the Child Protection Law, the Child Act 2001, the Universities and University Colleges Act 1971, and the Anti-Sexual Harassment Act 2022. In addition, this study also utilizes secondary legal materials in the form of legal literature, academic journals, and internal university policy documents relevant to the object of the problem.

The data collection technique was conducted through a literature study, which was then analyzed qualitatively using descriptive-analytical methods. In this process, the legal norms applicable in both countries were systematically outlined and then examined using preventive legal protection theory. The analysis aims to map the similarities and differences in protection mechanisms, particularly regarding the status of students' legal competence, the effectiveness of supervisory institutions (Task Force and Tribunal), and the characteristics of the sanctions applied (Fikri, 2023).. The results of the analysis are used as a basis for formulating recommendations for improving the legal framework that is responsive to the rights of students with child status in higher education environments (Fatmawati, 2023).

RESULTS AND DISCUSSION

1. Legal and Institutional Framework for Student Protection in Indonesia and Malaysia

1.1. Uncertainty of Legal Status and Protection Regulations in Indonesia

The main challenge in designing a protection scheme in Indonesia lies in the different definitions of maturity in the legislation.(Aspan, 2021). Child Protection Law Number 35 of 2014 stipulates that the age limit for children is before 18 years. However, the provisions in civil law vary: the Civil Code stipulates 21 years, the Marriage Law 19 years, and the Compilation of Islamic Law uses the aqil baligh approach (Latifiani, 2015). These differing norms create administrative uncertainty for higher education institutions (Hamzani et al., 2021). Questions arise regarding the legal status of new students under 18, whether they are treated as children requiring guardian approval or as

adults. In practice, most universities implement a uniform policy treating all students as adults. This potentially results in underage students' special protection rights not being optimally accommodated (Latifiani, 2015).

Table. Comparison of Legal Status and Student Action Skills in the Indonesian and Malaysian Higher Education Systems

Legal Aspects	Indonesia	Malaysia
Adult Age Limit (General)	18 years (Child Protection Law), but varies to 21 years (Civil Law)	18 years (Age of Majority Act 1971)
Status at University	Generally treated uniformly as "Adult Students" without significant procedural distinctions.	Strict distinction. Students under 18 require a Consent Form & Local Guardian.
Contracted Capacity	Ambiguous for 17-21 year olds in the context of campus civil law.	Legal incompetence for <18 years; contract signed by parent/guardian.
Loco Parentis Doctrine	It is often implicitly assumed to exist, especially in dealing with morality.	Explicitly rejected by the university (University will not act in loco parentis).

As a policy response, the government issued Ministerial Regulation of Education, Culture, Research, and Technology Number 55 of 2024 (PPKPT). This regulation expands the scope of protection from sexual violence to include bullying and intolerance (Abidatuzzakiyyah, 2025). The implementing instrument is a Task Force (Satgas) involving lecturers, education staff, and students. However, the institutional structure of the Task Force presents its own challenges. Given that its legality is determined by a Chancellor's Decree and its accountability to university leaders, independence is a concern, particularly if the case involves parties with powerful relationships within the campus structure. In terms of enforcement, the sanctions applied are administrative, ranging from written warnings to termination of academic status and accreditation sanctions for the institution (Khairunnisa & Putri, nd).

1.2. Age Limit and Tribunal Mechanism in Malaysia

Unlike Indonesia, Malaysia has more specific regulations regarding adulthood. The Age of Majority Act 1971 sets 18 as the age of full legal capacity, including for entering into contracts (Singh & Lui, 2020). This has impacted university policies, particularly those at overseas branch campuses, which require students under 18 to have a local guardian and emphasize non-in loco parentis clauses (University of Nottingham, 2025). Regarding violence management, Malaysia uses a restorative approach through the Anti-Sexual Harassment Act 2022 (ASHA). This law establishes the Anti-Sexual Harassment Tribunal as an out-of-court dispute resolution mechanism (Herbert Smith Freehills Kramer, 2025). The tribunal has the authority to order compensation of up to RM250,000 and an apology. This mechanism is designed to provide victims with efficient access to justice without the burden of high litigation costs (Rohime et al., 2025). However, protection within the campus environment goes hand in hand with the Universities and University Colleges Act 1971 (UUCA). This law grants university authorities disciplinary powers to regulate student conduct (Tirtayana, 2021). This regulatory structure can influence victims' decisions to report, given the risk of internal disciplinary proceedings.

2. Comparative Analysis of Effectiveness and Implementation Challenges

2.1. Institutional Comparison: Task Force vs. Tribunal

In order to provide a comprehensive overview of the divergence of protection models in the two jurisdictions, the table below outlines a comparison of the structural characteristics and authorities between the PPK Task Force and the ASHA Tribunal:

Table. Comparison of Legal Construction of Administrative and Adjudication Mechanisms in Handling Violence

Aspect	Indonesia (PPK Task Force)	Malaysia (ASHA Tribunal)
Form of Institution	Internal Campus (Mandatory)	External (National)
Authority	Administrative Sanction Recommendations	Compensation and Apology Decision
Proof	Administrative	Civil (Balance of Probabilities)
Independence	Internal (Chancellor's Decree)	External (Independent Panel)
Coverage	Broad (Sexual, Bullying, Intolerance)	Limited (Sexual Only)

The Indonesian model has a proactive approach within the campus environment and includes addressing bullying. However, its effectiveness depends on follow-up on recommendations by university leaders. In contrast, the Malaysian Tribunal has binding decisions equivalent to court orders, but they are passive, based on reports and limited to cases of sexual harassment (Masood, 2023).

2.2. Differences in Handling Bullying and Characteristics of Sanctions

There are differences in how non-sexual bullying is handled. In Indonesia, Permendikbudristek 55/2024 explicitly mandates the Task Force to handle bullying cases. In Malaysia, the ASHA Act 2022 does not cover bullying, so cases such as ragging are generally handled through university disciplinary mechanisms or general civil lawsuits, which require independent funding (Hamin et al., 2023; Menon, 2025). Regarding sanctions, Indonesia emphasizes the impact on academic status (dismissal as a lecturer/student) as a deterrent. Meanwhile, Malaysia emphasizes redressing victims' losses through financial compensation. Malaysia's approach accommodates the material losses experienced by victims, which are not directly addressed in administrative sanctions in Indonesia.

2.3. Application of the Principle of Best Interests of Children

The implementation of the "Best Interests of the Child" principle faces challenges in both countries. In Indonesia, although the state mandates a safe educational environment, procedures for handling violations involving students under 18 are often equated to those for adults (Bachdlar et al., 2025). In Malaysia, this principle is often translated into activity restriction policies (such as mandatory dormitory placement), which aim to protect but restrict freedom of movement (Agcaoili, 2024). Besides regulatory aspects, sociological factors also play a role. In Malaysia, social factors and stigma can influence victims' willingness to report to the Tribunal (Mohd Noor et al., 2025). In Indonesia, the hierarchical structure within the academic environment poses a challenge to the effectiveness of reporting to the Task Force (Hashim et al., 2024). Resource constraints are also an issue, with universities with limited capacity facing difficulties in establishing an ideal Task Force (Noer et al., 2025), while in Malaysia there are challenges in socializing the Tribunal's existence to students (Rohime et al., 2025).

Based on a comparative analysis, the legal framework for student protection in Indonesia and Malaysia exhibits fundamentally different characteristics. Indonesia adopts a structural-administrative approach that focuses on building a prevention infrastructure within the institution, namely through the establishment of a Task Force (Satgas) and the integration of prevention materials into the curriculum. This model emphasizes internal preventive and educational efforts. However, the main challenge of this approach lies in the institutional aspect of the Task Force, which is administratively accountable to university leaders, thus creating the potential for conflicts of interest in handling cases involving internal power relations.

CONCLUSION

In contrast, Malaysia adopts a legalistic-remedial approach, emphasizing the provision of external dispute resolution mechanisms through tribunals and contractual legal certainty for minors. This approach guarantees legal certainty and enforces legally binding decisions. However, challenges with this model include the limited educational-mandatory prevention mechanisms in academic settings and the lack of specific regulations regarding the handling of bullying outside of sexual violence offenses, which currently rely on conventional university disciplinary mechanisms.

To improve the protection system, it is recommended to strengthen the checks and balances mechanism within existing regulations. For Indonesia, consideration should be given to establishing an administrative appeals mechanism at the Higher Education Service Institution (LLDikti) or ministry level. This mechanism would serve as a channel for reviewing university-level Task Force decisions deemed to have failed to provide a fair resolution, ensuring objectivity in case handling. Furthermore, ministerial regulations should provide more specific legal recognition for students under 18 to ensure the protection of their special rights is accommodated within higher education governance.

For Malaysian jurisdictions, it is recommended to adopt more structured preventative policies, such as mandatory legal literacy curricula for new students, to complement existing repressive laws. Furthermore, consideration should be given to expanding the scope of material protection in higher education regulations to explicitly address bullying and intolerance. This could be achieved through a revision of the Universities and University Colleges Act 1971 (UUCA) to include a mandate to protect student welfare as an integral part of university authority, allowing disciplinary approaches to coexist with the protection of student rights. The direction of future legal policy is expected to shift from a rigid age-based approach to protection that is responsive to the vulnerability of legal subjects in academic relationships.

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