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LEGAL DUALISM AND JUDICIAL REASONING IN SEXUAL EXPLOITATION CASES: A COMPARATIVE ANALYSIS OF INDONESIAN AND MALAYSIAN LAW

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ABSTRACT

Sexual exploitation remains a serious human rights and criminal justice problem requiring coherent regulation and consistent judicial application. This article examines how Indonesia and Malaysia regulate sexual exploitation and how selected court decisions reflect the application of those legal frameworks. Using normative legal research with statutory, conceptual, case, and comparative approaches, the study analyses relevant legislation and judicial decisions in both jurisdictions. The findings show that both countries adopt multi-layered legal frameworks, but their structures produce different challenges. In Indonesia, overlapping provisions on trafficking, sexual violence, and morality offences may create uncertainty in charge selection and judicial classification. In Malaysia, the legal framework differentiates prostitution-related offences, trafficking, and child sexual offences, but effective enforcement depends on proof of exploitation, control, profit, and victim vulnerability. The comparative analysis indicates that judicial reasoning plays an important role in determining whether conduct is treated as facilitation of prostitution, trafficking, or sexual exploitation. The article argues that clearer statutory coordination, more precise prosecutorial charging, and more consistent judicial reasoning are necessary to strengthen legal certainty and victim protection in both jurisdictions.

Introduction

Court decisions concerning perpetrators of sexual crimes in Indonesia and Malaysia are shaped by different legal frameworks, socio- cultural dynamics, law enforcement practices, and limitations withn their res[ective justice system. To improve justice for victims, both countries must to address these challenges through legal reforms, public education, and increased awareness of legal rights (Berenstain, 2020; Brewin et al., 2022; Dwivedi et al., 2023; Tang et al., 2020; Wood et al., 2021). Sexual crimes represent a violation of an individual's legal rights and interests. In this context, criminal justice serves as a protective function, establishing legal rules to safeguard their rights and interests from criminal acts (Bath et al., 2020; Christensen & Tsagaris, 2020; Santoso & Satria, 2023). The evolving modus operandi of sexual crimes, particularly influenced by technological advancements in transportation and communication, is a key driver in the era of globalization (Hasan et al., 2023; Lallie et al., 2021; Y. Li & Liu, 2021; Ma, 2021). Globalization creates seemingly borderless world, faciliatting rapid information exchange and mobilization, which in turn impacts social, economic, and cultural changes that lead to the formation of modern society. Globalization has a positive impact on the world community such as increasingly open information, and the advancement of science and technology is progressing rapidly; however, the era of globalisation also presents challenges, including the evolution of criminal methodologies. Crime continues to develop along with the development of human civilization, with its complex quality and quantity with a variety of modus operandi. Since crime has existed as long as humanity, its prevalence and variety correspond to the evolution of human existence. It is evident that as society becomes more advanced and modern, the types and methods of criminal activity also evolve correspondingly (Ceccato et al., 2021; West et al., 2022).

Previous studies have addressed sexual exploitation and human trafficking from several perspectives. Saffanah et al. (2024) examined law-enforcement strategies and the obstacles faced in combating human trafficking, but their discussion is primarily institutional and does not analyse judicial reasoning in concrete sexual exploitation decisions. The previous authors explored victim protection and legal responses in Malaysia through a doctrinal and Islamic legal perspective; however, their work does not compare the operation of Malaysian criminal law with Indonesian law in actual court practice. Maskun et al. (2023) analysed criminal-law policy on sexual violence facilitated through electronic media in Indonesia, while Utari et al. (2024) and Zubaidi (2021) discussed child grooming, internet child pornography, and related enforcement challenges. These studies have enriched the understanding of legal protection and enforcement problems, but they remain fragmented: some focus on human trafficking, others on cyber-enabled sexual offences, victim protection, or general criminal-law policy. They have not sufficiently examined how judges interpret statutory elements, choose between overlapping provisions, and justify sentencing in sexual exploitation cases.

The research gap therefore lies in the limited comparative legal analysis connecting statutory regulation, judicial reasoning, and law-enforcement consequences in Indonesia and Malaysia. Existing studies have not adequately explained why similar factual patterns may be processed under different legal provisions, such as Article 296 of the Indonesian Criminal Code, Article 2 of Law No. 21 of 2007 on the Eradication of Criminal Acts of Trafficking in Persons (Law No. 21 of 2007), Article 12 of Law No. 12 of 2022 on Sexual Violence Crimes (Law No. 12 of 2022), or Malaysian provisions under the Penal Code (Act 574), the ATIPSOM 2007, the Child Act 2001 (Act 611), and the Sexual Offences Against Children Act 2017 (Act 792). Nor have previous studies clearly compared how courts distinguish between merely facilitating prostitution, profiting from prostitution, trafficking for sexual exploitation, and online child sexual exploitation. This gap is important because the choice of legal basis affects the proof of elements, sentencing severity, victim status, and the availability of protection and recovery mechanisms.

This study fills that gap by integrating doctrinal analysis with a comparative case-based examination of Indonesian and Malaysian court decisions. It analyses selected Indonesian cases, including *Kendari District Court Decision No. 426/Pid.Sus/2023/PN Kdi* (2024) and *Tanjung Selor District Court Decision No. 161/Pid.Sus/2019/PN Tjs (2019)*, together with Malaysian cases such as *Chan Boon Lee v. Public Prosecutor* (2023)*, Chai Vun Hing v. Public Prosecutor* (2022)*, Public Prosecutor v. Hwong Yu Hee & Ors.* (2012)*,* and *Hendra bin Mulana v. Public Prosecutor* (2024). By comparing facts, legal issues, decisions, judicial reasoning, and critiques, this article explains how statutory overlap and legal dualism shape judicial interpretation and law enforcement. The contribution of this study is therefore not merely

to describe sexual exploitation laws in both countries, but to show how those laws operate in court and how judicial reasoning can either strengthen or weaken legal certainty, victim protection, and sentencing consistency.

Methodology

The writing applies normative legal methods with statutory, conceptual, case, and comparative approaches. This legislative approach aims to identify laws and regulations that are relevant to the issue of legal dualism and law enforcement in cases of sexual exploitation in Indonesia and Malaysia. This step is through a regulatory inventory, which is to collect all laws and regulations related to sexual exploitation, both at the national and local levels in Indonesia and Malaysia. This includes the Criminal Code/Penal Code, Laws/Acts related to child protection, Laws/Acts related to the eradication of the crime of trafficking in persons (TPPO), and other implementing regulations. Conceptual approach analyzes Understanding the legal concepts underlying the regulation of sexual exploitation, as well as concepts related to the dualism of law and law enforcement. This step formulates a clear and comprehensive definition of key concepts such as sexual exploitation, victims of sexual exploitation, legal dualism, law enforcement, legal certainty, justice, and legal utility.

This study employs normative or doctrinal legal research supported by statutory, conceptual, case-law, and comparative approaches. These methods were selected because the article does not aim to measure empirical perceptions, collect field data, or produce statistical generalisations. Instead, it examines legal norms, statutory elements, judicial interpretation, and the legal consequences of applying different criminal provisions to sexual exploitation cases. A doctrinal legal method is therefore appropriate because the study analyses primary legal materials, particularly legislation and court decisions, to determine how sexual exploitation is regulated and how courts apply the relevant provisions in concrete cases.

The statutory approach is used to identify and compare the legal provisions governing sexual exploitation in Indonesia and Malaysia. In Indonesia, the study examines Law No. 21 of 2007, Law No. 12 of 2022, and Article 296 of the Indonesian Criminal Code. In Malaysia, the study examines the Penal Code (Act 574), the ATIPSOM 2007, the Child Act 2001 (Act 611), and the Sexual Offences Against Children Act 2017 (Act 792). This approach was selected because the central problem of the article concerns statutory overlap, differences in criminal elements, and the legal consequences of prosecuting sexual exploitation-related conduct under different provisions.

The conceptual approach is used to clarify key concepts that are central to the analysis, including sexual exploitation, trafficking for exploitation, facilitating prostitution, profiting from prostitution, brothel management, online child sexual exploitation, victim protection, legal dualism, legal certainty, and judicial reasoning. This approach is necessary because similar factual conduct may be characterised differently depending on whether the court emphasises recruitment, control, benefit, prostitution, exploitation, vulnerability, consent, or the age of the victim. The conceptual approach therefore provides the basis for distinguishing sexual exploitation as a broader offence from offences that merely concern prostitution-related facilitation or morality-based conduct.

The case-law approach is used because this article seeks to understand how laws operate in judicial practice, not only how they are written in legislation. Court decisions are examined to identify the facts of each case, the legal issue before the court, the applicable statutory provision, the decision, the judicial reasoning, and the sentencing approach. This approach directly supports the article's objective of analysing judicial reasoning and law-enforcement problems in sexual exploitation cases.

The cases were selected purposively because they illustrate the main legal problem examined in this article: how courts classify sexual exploitation-related conduct when several legal provisions may potentially apply. The Indonesian cases selected are *Kendari District Court Decision No. 426/Pid.Sus/2023/PN Kdi* (2024) and *Tanjung Selor District Court Decision No. 161/Pid.Sus/2019/PN Tjs (2019)*. The Malaysian cases selected are *Chan Boon Lee v Public Prosecutor* (2023), *Chai Vun Hing v. Public Prosecutor* (2022), *Public Prosecutor v. Hwong Yu Hee & Ors.* (2012), and *Hendra bin Mulana v. Public Prosecutor (2024)*.

The selection of these cases was based on four criteria. First, the case must involve conduct connected to sexual exploitation, prostitution-related exploitation, trafficking for sexual exploitation, or online sexual exploitation of a child. Second, the case must contain judicial reasoning on the relevant statutory provision, including the interpretation of criminal elements, evidentiary requirements, or sentencing considerations. Third, the case must demonstrate an issue of legal classification, such as the distinction between facilitating obscene acts, profiting from prostitution, managing a brothel, trafficking for sexual exploitation, or requesting child pornography. Fourth, the case must be useful for comparative analysis because it shows how courts in Indonesia and Malaysia respond to overlapping or specialised criminal provisions.

The Indonesian cases were selected because they demonstrate different judicial approaches to similar prostitution-related exploitation facts. In the Kendari case, the court applied Article 296 of the Indonesian Criminal Code, whereas in the Tanjung Selor case, the court applied Article 2 of Law No. 21 of 2007. These cases are therefore relevant for examining legal dualism and judicial choice between general morality offences and trafficking-based exploitation offences. The Malaysian cases were selected because they represent different statutory pathways: Section 372A of the Penal Code (Act 574) on living on the earnings of prostitution in Chan Boon Lee, Section 373 of the Penal Code (Act 574) on brothel management in Chai Vun Hing, Section 12 of ATIPSOM 2007 on trafficking for exploitation in Hwong Yu Hee, and Section 8(b) of the Sexual Offences Against Children Act 2017 (Act 792) on requesting child pornography in Hendra bin Mulana. Together, these cases allow the study to compare how courts reason across adult prostitution-related exploitation, trafficking, brothel management, and child online sexual exploitation.

Indonesia and Malaysia were selected for comparison because both are Southeast Asian jurisdictions that criminalise sexual exploitation through multiple legal instruments rather than through a single comprehensive provision. Both jurisdictions regulate sexual exploitation through a combination of general criminal law, anti-trafficking law, child-protection law, and specialised sexual-offence legislation. At the same time, their legal structures differ in important respects. Indonesia relies on the relationship between the Indonesian Criminal Code, Law No. 21 of 2007, and Law No. 12 of 2022, while Malaysia relies on the Penal Code (Act 574), ATIPSOM 2007, the Child Act 2001 (Act 611), and the Sexual Offences Against Children Act 2017 (Act 792). These similarities and differences make the two countries suitable for functional comparative legal analysis.

The comparison is not intended to claim that Indonesia and Malaysia have identical legal systems. Rather, the study compares them because both jurisdictions face a similar regulatory problem: sexual exploitation may be prosecuted under general prostitution-related provisions, trafficking provisions, or specialised child and sexual-offence provisions depending on the facts and prosecutorial framing of the case. This provides a useful basis for examining whether statutory overlap produces uncertainty, different forms of judicial reasoning, different evidentiary burdens, or different consequences for victim protection and sentencing.

The comparative legal analysis applies a functional and element-based analytical framework. The functional dimension asks how each jurisdiction responds to the same legal problem, namely the protection of victims and the punishment of persons who recruit, facilitate, profit from, manage, or digitally exploit others for sexual purposes. The element-based dimension examines the statutory components required to establish liability, including the actus reus, the required means or circumstances, the purpose of exploitation, the victim's age or vulnerability, the role of consent, evidentiary requirements, and available sanctions.

Each case is analysed using the same structure: (1) facts, (2) legal issue, (3) applicable statutory provision, (4) decision, (5) judicial reasoning, and (6) critique. The findings are then compared across five indicators: judicial consistency, legal dualism or statutory overlap, interpretation of statutory elements, victim protection, and sentencing approach. This framework ensures that the comparison does not merely describe the laws of each country, but explains how legal rules are interpreted and applied by courts in concrete sexual exploitation cases.

The legal materials used in this study consist of primary and secondary legal materials. Primary legal materials include statutes and court decisions from Indonesia and Malaysia. Secondary legal materials include journal articles, books, and scholarly commentary relevant to sexual exploitation, trafficking, victim protection, criminal-law interpretation, judicial reasoning, and comparative legal method. The analysis is qualitative and interpretive. It does not attempt to generalise from all sexual exploitation cases in Indonesia and Malaysia. Rather, it uses selected cases to identify doctrinal patterns, problems of legal classification, and judicial reasoning issues that are relevant to law enforcement and future legal reform.

The Indonesian cases selected are *Kendari District Court Decision No. 426/Pid.Sus/2023/PN Kdi* (2024) and *Tanjung Selor District Court Decision No. 161/Pid.Sus/2019/PN Tjs (2019)*, while the Malaysian cases selected are *Chan Boon Lee v Public Prosecutor* (2023), *Chai Vun Hing v. Public Prosecutor* (2022), *Public Prosecutor v. Hwong Yu Hee & Ors.* and *Hendra bin Mulana v. Public Prosecutor* (2024). The selection was based on four criteria: the case must involve sexual exploitation, prostitution-related exploitation, trafficking for sexual exploitation, or online child sexual exploitation; it must contain judicial reasoning on relevant statutory provisions; it must raise an issue of legal classification, such as the distinction between facilitating obscene acts, profiting from prostitution, brothel management, trafficking, or requesting child pornography; and it must be useful for comparing how Indonesian and Malaysian courts respond to overlapping or specialised criminal provisions.

Indonesia and Malaysia were selected because both are Southeast Asian jurisdictions that regulate sexual exploitation through multiple legal instruments, including general criminal law, anti-trafficking law, child-protection law, and specialised sexual-offence legislation. However, the two jurisdictions differ in the structure and operation of these laws: Indonesia relies on the relationship between the Indonesian Criminal Code, Law No. 21 of 2007, and Law No. 12 of 2022, whereas Malaysia relies on the Penal Code (Act 574), ATIPSOM 2007, the Child Act 2001 (Act 611), and the Sexual Offences Against Children Act 2017 (Act 792). These similarities and differences provide a suitable basis for functional comparison. The revised manuscript also explains that the comparative analysis employs a functional and element-based framework. Functionally, the study examines how each jurisdiction responds to the same legal problem, namely protecting victims and punishing persons who recruit, facilitate, profit from, manage, or digitally exploit others for sexual purposes. Elementally, each case is analysed through the required statutory components, including *actus reus*, means or circumstances, purpose of exploitation, victim age or vulnerability, consent, evidentiary requirements, and sanctions. Each case is then examined using six steps—facts, legal issue, applicable provision, decision, judicial reasoning, and critique—and compared across five indicators: judicial consistency, legal dualism or statutory overlap, statutory interpretation, victim protection, and sentencing approach.

Results and Discussion

The regulation of sexual exploitation in Indonesia's criminal laws and Malaysia shows a different approach, with each having its advantages and disadvantages. Legal reform and public awareness raising are essential to ensure effective protection for victims and fair enforcement of the law against sexual exploiters in both countries (Köhler & Gollwitzer, 2024; Marshall, 2023, 2024; Salat, 2022; Shaw et al., 2024). In Indonesia, the trafficking in person regulations states that exploitation is an act, with or without the victim's consent, encompassing but not limited to prostitution, forced labour or service, slavery or analogous practices, oppression, extortion, exploitation of physical, sexual, or reproductive organs, unlawful removal or transplantation of organs and/or body tissues, or the utilisation of an individual's energy or abilities by another party for both material and immaterial gain (Agusmidah & Shalihah, 2023; George, 2023; Hurtado et al., 2023; Moses, 2022; Utari et al., 2023; Wetangterah, 2023). Furthermore, in the law, sexual exploitation encompasses any utilisation of the victim's sexual or other organs for profit, including, but not limited to, all actions related to prostitution and fornication. Referring to the provisions of Article 1 of 7 and 8 as explained above, sexual exploitation has a very wide range of regulations so that the qualifications for criminal acts in the context of sexual abuse are not only specifically restricted to prostitution and fornication activities as explained in Article 1 of 8. Therefore, once more in the context of law enforcement of sexual exploitation in the penal system, several principles of criminal code are used as stipulated in Article 2 of Law No. 21 of 2007, Article 12 of Law No. 12 of 2022 and Article 296 of the Indonesian Criminal Code. However, the rule of the this provision has a difference in substance with the

elements in the regulation (Ali & Yulia, 2023; Amberi, 2023; Fazny et al., 2024; Herawati et al., 2021; Kasuma et al., 2022; Law et al., 2023; Maskun et al., 2023).

This section presents analytical findings rather than a descriptive inventory of legislation. The findings are organised around three issues: the substantive differences between Indonesian and Malaysian legal frameworks, the implementation consequences of those differences, and the way courts interpret the relevant statutory elements in selected cases.

Substantive Differences in the Legal Construction of Sexual Exploitation

The first finding is that Indonesia and Malaysia both use multi-layered criminal-law frameworks, but they construct sexual exploitation differently. In Indonesia, the regulation of sexual exploitation is distributed across Law No. 21 of 2007, Law No. 12 of 2022, and Article 296 of the Indonesian Criminal Code. These provisions do not criminalise the same conduct in the same way. Law No. 21 of 2007 frames sexual exploitation through the logic of trafficking: the relevant inquiry concerns whether a person has been recruited, transported, harboured, transferred, or received through certain means and for the purpose of exploitation. Law No. 12 of 2022 frames sexual exploitation more directly as a sexual-violence offence by focusing on the use of a person's sexual organs or other bodily organs for sexual purposes, profit, or benefit through coercion, abuse of position, vulnerability, dependence, inequality, helplessness, or similar circumstances. Article 296 of the Indonesian Criminal Code, by contrast, is not specifically designed as a sexual-exploitation provision. It focuses on intentionally causing or facilitating obscene acts by others and making such facilitation a livelihood or habit. Thus, the Indonesian framework creates substantive overlap between trafficking-based exploitation, sexual-violence-based exploitation, and morality-based facilitation.

This overlap produces an important doctrinal consequence. Where the same factual pattern involves the offering of a person for paid sexual services, the case may be classified either as facilitation of obscene acts under the Indonesian Criminal Code or as exploitation under anti-trafficking legislation, depending on how the court interprets the defendant's role, the victim's vulnerability, the defendant's benefit, and the purpose of the conduct. This finding shows that the Indonesian problem is not merely the existence of several laws, but the absence of a clear hierarchy or doctrinal boundary between general morality offences and special laws on exploitation and sexual violence.

Malaysia also adopts a multi-layered framework, but the structure is more functionally differentiated. The Penal Code (Act 574) regulates prostitution-related offences, including procuring or exploiting a person for *prostitution*, living on the earnings of prostitution, solicitation, and brothel-related conduct. ATIPSOM 2007 regulates trafficking in persons for exploitation and requires attention to exploitation, control, profit, movement, or trafficking-related conduct. The Child Act 2001 (Act 611) and the Sexual Offences Against Children Act 2017 (Act 792) separately address child-related sexual offences, including offences involving child pornography, child grooming, and sexual assault against a child. The Malaysian framework therefore distinguishes more expressly between prostitution-related exploitation, trafficking for exploitation, and child sexual offences. However, this differentiation also creates a strict evidentiary consequence: the prosecution must prove the specific elements of the selected statutory pathway.

Differences in Implementation and Charge Selection

The second finding is that statutory structure affects implementation. In Indonesia, the principal implementation problem is charge selection. The Kendari and Tanjung Selor cases demonstrate that similar prostitution-related exploitation facts may lead to different legal classifications. In the Kendari case, the court applied Article 296 of the Indonesian Criminal Code, treating the defendant's conduct as the facilitation of obscene acts. In the Tanjung Selor case, the court applied Article 2 of Law No. 21 of 2007, treating the conduct as trafficking-related exploitation. This difference matters because Article 296 carries a substantially lighter sanction and does not fully reflect the victim-protection logic of anti-trafficking law. Conversely, Law No. 21 of 2007 requires proof of trafficking-related elements and the purpose of exploitation, but better captures conduct involving recruitment, offering, profit, and vulnerability.

The implementation finding for Indonesia is therefore that legal dualism affects not only legal theory but also prosecutorial and judicial practice. When prosecutors frame charges in the alternative and courts select the lighter or more general provision, the legal character of the conduct may shift from exploitation to mere facilitation of immoral conduct. This shift affects the seriousness attributed to the offence, the level of punishment, and the extent to which the victim is legally recognised as an exploited person rather than as a person merely involved in prostitution.

In Malaysia, implementation problems arise less from a general-versus-special-law conflict and more from the evidentiary burden attached to each offence. The selected cases show that Malaysian courts require the prosecution to prove the precise statutory elements of the offence charged. In *Chan Boon Lee v. Public Prosecutor* (2023), liability under Section 372A of the Penal Code (Act 574) was upheld because the evidence connected the appellant to the earnings of prostitution. In *Chai Vun Hing v. Public Prosecutor* (2022), the conviction under Section 373 of the Penal Code (Act 574) was set aside because the court required proof that the premises were being used as a brothel and that the accused's acts amounted to assisting in the management of that brothel. In *Public Prosecutor v. Hwong Yu Hee & Ors.* (2012), the prosecution's case under ATIPSOM 2007 failed because the evidence did not sufficiently establish control, custody, deprivation of freedom, or benefit from the alleged exploitation. These cases demonstrate that Malaysian law may provide more differentiated statutory routes, but successful enforcement depends heavily on evidentiary precision.

Differences in Judicial Interpretation

The third finding concerns judicial interpretation. In Indonesia, judicial interpretation determines whether a case is treated as a morality offence or an exploitation offence. In the Kendari case, the court's reliance on Article 296 indicates a narrower legal characterisation that emphasises the facilitation of obscene acts. The problem with this approach is that it may understate conduct involving the active offering of another person for paid sexual services and the receipt of benefit from that activity. In contrast, the Tanjung Selor case reflects a broader exploitation-based interpretation because the court treated the defendant's conduct as falling within Article 2 of Law No. 21 of 2007. The interpretive difference between these two cases illustrates how Indonesian courts may reach different legal outcomes depending on whether they prioritise the act of facilitation or the exploitative relationship behind the facilitation.

In Malaysia, judicial interpretation is more closely tied to the statutory function of each offence. In Chan Boon Lee, the court focused on whether the appellant knowingly lived on or benefited from the earnings of prostitution. In Chai Vun Hing, the court interpreted the terms relating to assisting in the management of a brothel and required a connection between the accused's acts and the operation of premises as a brothel, not merely assistance to sex workers. In Hwong Yu Hee, the court treated trafficking for exploitation as requiring more than the presence of foreign women in a venue where sexual services were alleged; the prosecution had to prove the accused's control, benefit, and the victims' lack of freedom or forced involvement. In Hendra bin Mulana, the court's reasoning centred on the child-specific nature of the offence under the Sexual Offences Against Children Act 2017 (Act 792), particularly whether the accused requested child pornography from a victim who was legally a child. The Malaysian cases therefore show that courts tend to apply a more element-specific approach, although this may result in acquittal where the prosecution chooses a provision that is not fully supported by evidence.

Comparative Analytical Findings

The comparison produces four principal findings. First, Indonesia's framework creates a more visible problem of legal dualism because general morality offences and special sexual-exploitation or trafficking provisions may compete in the same factual setting. Malaysia's framework is also multi-layered, but the provisions are more functionally separated into prostitution, trafficking, brothel management, and child sexual offences. Second, Indonesia's challenge lies in maintaining consistency in judicial classification, while Malaysia's challenge lies in satisfying the evidentiary requirements of the specific charge selected. Third, Indonesian courts may produce different sentencing consequences depending on whether they apply the Indonesian Criminal Code or special anti-trafficking legislation. Malaysian courts, by contrast, may impose heavier or more specialised penalties where the statutory elements are proven, but they may also overturn convictions where the evidence does not satisfy the selected provision. Fourth, victim

protection is more likely to be strengthened when courts identify the exploitative nature of the conduct rather than reduce it to prostitution facilitation or immoral conduct.

These findings indicate that the key difference between the two jurisdictions is not simply the number of statutes regulating sexual exploitation, but the relationship between statutory design, evidentiary requirements, and judicial reasoning. Indonesia requires clearer coordination between Article 296 of the Indonesian Criminal Code, Law No. 21 of 2007, and Law No. 12 of 2022 so that exploitation-related conduct is not under-classified as mere facilitation. Malaysia requires careful prosecutorial selection of charges and strong proof of the specific elements of exploitation, control, profit, brothel management, or child sexual offending. In both jurisdictions, consistent judicial reasoning is essential because it determines whether sexual exploitation is treated as a serious violation of victim autonomy and human dignity or as a narrower prostitution-related offence.

Analytical Summary

The analytical summary shows that Indonesia and Malaysia both regulate sexual exploitation through multi-layered criminal-law frameworks, but they differ in the way those frameworks are structured and applied. In Indonesia, the main issue lies in the overlap between trafficking law, sexual violence law, and morality-based offences under the Indonesian Criminal Code. This overlap may create uncertainty in charge selection and judicial classification, particularly when courts must decide whether the conduct should be treated merely as facilitating obscene acts or as a broader form of sexual exploitation. As a result, similar factual circumstances may be classified differently depending on whether the court emphasises the element of facilitation, exploitation, recruitment, profit, or victim vulnerability.

By contrast, Malaysia demonstrates a more functionally separated legal structure. Prostitution-related offences are mainly regulated under the Penal Code (Act 574), trafficking offences under ATIPSOM, and child-specific sexual offences under specialised child protection legislation. However, this clearer statutory separation does not eliminate enforcement problems. The Malaysian cases indicate that successful prosecution depends heavily on the ability to prove the specific elements of the offence charged, such as profit from prostitution, brothel management, control over victims, exploitation, or the child status of the victim.

The comparison therefore reveals two different enforcement challenges. Indonesia's challenge is primarily one of legal classification and consistency in judicial reasoning, while Malaysia's challenge is primarily evidentiary and element-specific. In terms of victim protection, Indonesia's framework may weaken protection when exploitative conduct is reduced to a morality offence rather than treated under anti-trafficking or sexual violence law. In Malaysia, victim protection depends on whether the prosecution can match the available evidence with the correct statutory offence. These findings indicate that effective protection against sexual exploitation requires not only comprehensive legislation, but also precise prosecutorial charging, coherent judicial reasoning, and careful interpretation of statutory elements.

Malaysia has several laws addressing sexual exploitation or abuse which protect adult women from being exploited sexually, such as the Penal Code (Act 574) and the ATIPSOM 2007. As for girls who are under 18 years old, Malaysia previously had the "Act 106" of 1973, which protects women and girls, and "Child Protection Act 1991 (Act 468), which governed girls from being exploited sexually within the country. However, these statutes have been repealed and replaced by the Child Act 2001 (Act 611) because of inadequacies in protecting the rights of the child, together with the Sexual Offences Against Children Act 2017 (Act 792) as well as some provisions under the ATIPSOM 2007. These laws aim to safeguard individuals since various kinds of sexual abuse and ensure that offenders face appropriate penalties. There have been reported cases of sexual exploitation in Malaysia. For instance, there has been a rise in online sexual harassment of minors, with many cases involving sextortion. Additionally, there are challenges with under-reporting and lack of cooperation from victims, making it difficult to get a complete picture of the situation. In Malaysia, the regulation of sexual exploitation in the provisions of the Penal Code (Act 574) reflects a commitment to protect victims, especially children under the relevant and strict laws with heavy sanctions. However, challenges such as social stigma and legal dualism still need to be addressed to improve the efficacy of law enforcement and the safeguarding of victims. Reform and raising public

awareness are also important to ensure justice for victims of sexual exploitation (Chung et al., 2022, 2023; Chung & Sheridan, 2022; Ibrahim et al., 2022; Rozubi et al., 2024; Zubaidi, 2021).

Comparison of Indonesian and Malaysian Laws in the Regulation of Sexual Exploitation

Legal Aspects	Indonesian Laws	Malaysian Laws
Court Decision	Judicial Inconsistencies: In both Indonesia and Malaysia, this study found judicial inconsistencies in the application of laws related to sexual exploitation. Case analysis reveals a tendency for judges to give lighter sentences to perpetrators who provide prostitution sites compared to perpetrators who directly offer victims for sexual services. This point happens in both countries. Criminalization of the crime of sexual exploitation according to Article 12 of Law No. 12 of 2022 in Indonesia, namely criminal threats using the word "and/or" so that the judge can choose to impose either alternatively between imprisonment or a fine or cumulatively in the form of imprisonment and a fine	Challenges of Law Enforcement in Malaysia: The study also found difficulties in law enforcement in Malaysia, such as the increase in online sexual abuse of minors and the lack of reporting and cooperation from victims. Comparison with Islamic Law: In Islamic law, pimp can be categorized as a perpetrator of *jarimah ta'zir* whose sanctions are left to the judge's discretion. In contrast, positive law tends to impose lighter sanctions with less deterrent effect.
Definition of Exploitation	The act of recruiting and using a person for sexual services, forced labor, slavery, exploitation of physical, sexual, or reproductive organs, illegal organ removal, or the use of energy/abilities for material/immaterial gain. The use of sexual organs or other organs for profit, including prostitution and fornication.	It is not explicitly defined in the Penal Code (Act 574) but is covered by various laws that protect women and children from sexual exploitation.
Legal Protection	The New Criminal Code 2026, Law No. 21 of 2007, Law No. 12 of 2022, Article 296 of the Indonesian Criminal Code. In the event of the provisions of the article regarding the Crime of Trafficking in Persons as referred to in paragraph (l) letter q refers to Article 2 of the relevant Law, the reference is replaced with Article 455 of the New Criminal Code. Sentenced to imprisonment for a maximum of l5 (fifteen) years and/or a maximum fine of category VII. Sentenced to a maximum of 15 (fifteen) years in prison and/or a maximum fine of category VII. Sentenced to a maximum prison sentence of 15 (fifteen) years and/or a maximum fine of category VII. Sentenced to a maximum prison sentence of 15 (fifteen) years and/or a maximum fine of category VII.	Penal Code (Act 574), ATIPSOM 2007, Child Act 2001 (Act 611), Sexual Offences Against Children Act 2017 (Act 792).

Protection Focus	It is not only limited to prostitution and fornication but covers a very wide range of regulations.	Protect adult women and children (under 18 years old) from various types of sexual abuse.
Law Enforcement Challenges	Differences in substance between the elements in different regulations.	Lack of reporting and lack of cooperation from victims, social stigma, and legal dualism.
Issues That Arise	The use of energy/ability for material/immaterial gains.	Increase in online sexual abuse of minors (sextortion).
Efforts to Increase Effectiveness	The use of several principles of the Indonesian Criminal Code as stipulated in Article 2 of Law No. 21 of 2007, Article 12 of Law No. 12 of 2022 and Article 296 of the New Criminal Code. The New Criminal Code became a national codification and the Sexual Violence (TPKS) Law remained valid as *a lex specialist.*	Relevant and strict laws with heavy sanctions.
Recommendations	Legal reform and public awareness raising to ensure effective protection for victims and fair enforcement of the law against sexual exploitation.	Reform and increase public awareness to ensure justice for victims of sexual exploitation.

Legal Dualism in the Regulation of Sexual Exploitation in Indonesia: Between Positive Law and Social Reality

The regulation of sexual exploitation in Indonesia is characterized by a complex legal dualism, where the positive laws of the state interact and sometimes conflict with the social, customary, and religious norms that prevail in society. This dualism is manifested in various aspects, ranging from the definition of sexual exploitation, the determination of the elements of criminal acts, the application of criminal sanctions, to victim protection mechanisms. As highlighted, the effectiveness of law enforcement in eradicating trafficking in persons depends heavily on adequate legal instruments and in-depth analysis of legal materials. However, in the Indonesian context, existing legal instruments are often unable to reach the full complexity of the problem of sexual exploitation, especially those that occur in the private sphere or that involve traditional practices that are considered reasonable by some people. For example, the definitions of sexual exploitation in the Anti-Trafficking Act and the Anti-Trafficking Act, while expanded to include various forms of adverse exploitation, still have the potential to be interpreted narrowly by law enforcement officials, especially if they conflict with their personal beliefs or values.

In addition, differences in substance between laws and regulations, as stipulated in the Indonesian Criminal Code, the Law No. 21 of 2007, and the Law No. 12 of 2022, can cause legal uncertainty and complicate the evidentiary process in court. To overcome this challenge, efforts are needed to harmonize and synchronize laws and regulations, as well as to increase law enforcement officials' capacity in understand and apply the law sensitively across social and cultural contexts. Furthermore, this study adopts the theory of legal pluralism to examine how various legal systems and social norms interact and influence one another in regulating human behavior related to sexual exploitation. This theory recognizes that state law is not the only source of prevailing norms in society, and that the effectiveness of law depends heavily on societal acceptance and support.

The implications of legal dualism in regulating sexual exploitation in Indonesia are strongly felt in law enforcement and victim protection. As highlighted by Maskun et al. (2023), the formulation of criminal law policies related to sexual violence through electronic media still faces challenges in finding a balance between victim protection and the guarantee of perpetrators' rights. This challenge is increasingly complex in the context of legal dualism, where conservative social and religious norms can influence the perceptions and attitudes of law enforcement officials towards victims and perpetrators. For example, in cases involving prostitution or fornication, victims are often stigmatized and blamed for what happened

to them, while perpetrators are acquitted or lightly punished. In addition, the lack of coordination between law enforcement agencies, as highlighted, in the Malaysian context, is also an obstacle in handling cases of sexual exploitation. Differences in legal interpretation, limited resources, and a lack of sensitivity to victims' needs can hinder the investigation, prosecution, and recovery of victims. To address these challenges, a paradigm shift in law enforcement is needed, focusing on protecting human rights, advancing gender justice, and supporting victim recovery. This statement requires increasing the awareness and understanding of law enforcement officials on issues related to sexual exploitation, as well as the development of effective coordination and cooperation mechanisms between relevant agencies. In addition, adequate support is needed for civil society organizations working to protect victims and promote gender equality. Thus, countering sexual exploitation in Indonesia requires a holistic and integrated approach, which involves legal reform, law enforcement capacity building, social change, and victim empowerment.

The Indonesian Perspective on Exploitation of Sexual Minors in Law No. 21 of 2007

The regulation of sexual exploitation in Law No. 21 of 2007 is essentially regulated in Article 2 which substantially contains the provision that "Any person who recruits, transports, shelters, sends, transfers, or receives a person with the threat of violence, use of force, kidnapping, detention, forgery, fraud, abuse of power or vulnerable position, debt bondage or provides payment or benefit even with the consent of a person who has obtained the consent of a person from a a person who holds control over another person, to exploit that person in the territory of the Republic of Indonesia, shall be sentenced to imprisonment for a maximum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least IDR 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah)". The elements contained in the requirements of this proviso are as follows (Utari et al., 2024):

i. The any person element

ii. Elements of employing, conveying, sheltering, distribution, moving, or receiving a individual by the intimidation of ferocity, use of force, abduction, custody, forgery, fraud, abuse of power or vulnerable position, debt bondage or the provision of salary or benefits;

iii. Element of obtaining approval from the person who controls others;

iv. Elements for exploitation purposes.

Regarding the element of "for exploitation" as described in Article 2 as described above, the provision is substantially qualified as a formal offence that focuses on how to commit a criminal act (Finkelhor et al., 2022). Therefore, in the crime of sexual exploitation as explained above in general 3 elements must be met, namely the element of the act, the element of the means or means by which the act is carried out, and the element of the purpose to be obtained as described below:

i. Elements of action that focus on doing of employing, conveying, touching, walloping or getting;

ii. Elements of means by which the perpetrator performs an act to control the victim committed by coercion, application of power, diverse manifestations of aggression, abduction, deception, duplicity, exploitation of authority or vulnerable position or the provision of payment or benefit to obtain consent, from the person controlling the victim;

iii. Elements for exploitation are at least related to prostitution activities or alternative manifestations of sexual exploitation as delineated in Article 1(7) of Law No. 21 of 2007.

Regarding the formulation of the crime of sexual exploitation as formulated in Article 2 of Law No. 21 of 2007 regarding the elements and elements of the offense as explained above, the crime of sexual exploitation constitutes a sequence of offences perpetrated by recruiting or accepting a person who is used as an object offered to another person for sexual services to obtain benefits executed with the approval of that individual (Meneses-Falcón & Rúa-Vieites, 2023). Thus, the crime of sexual exploitation, as structured in Article 2 of Law 21 of 2007 involves a series of actions that include recruiting or accepting

individuals to be used as objects of sexual services offered to other parties, intending to obtain profits, and carried out with the consent of the individual (Angkasa et al., 2023).

Sexual Exploitation in Law No. 12 of 2022 regarding Sexual Violence

The crime of sexual exploitation in Law No. 12 of 2022 is an act that is regulated and threatened using Article 12 which substantially contains the provision that "Any person with violence or threat of violence or by abusing his position, authority, trust, carrying arising from fraud or circumstance, vulnerability, inequality, helplessness, the dependence of a person, debt slavery or providing payment or benefits by intent to gain profits, or use sexual organs or other organs of the person contrary to sexual desire with him or with another person, is punished with sexual exploitation, with a maximum prison sentence of 15 (fifteen) years and/or a maximum fine of Rp 1,000,000,000.00" (one billion rupiah) Nasution et al., 2022; Rachmawaty et al., 2024). The elements contained in the provisions of this Article are as follows:

i. The any person element

ii. Elements through coercion or intimidation of violence or as a result of mistreatment of one's position, power, trust, or carrying on a fraud or circumstantial relationships, exposure, disparity, helplessness, reliance, servitude due to debt or providing payment or benefit with the aim of acquiring;

iii. Elements of the use of genitalia or other bodily organs of the individual directed towards sexual desire with him or with another person;

iv. Elements of Sexual Exploitation;

v. Referring to the criminal element of Article 12 of Law No. 12 of 2022, the element of sexual exploitation as referred to in this provision is the act of utilizing sexual organs or other organs based on sexual attraction towards him or another individual carried out by violence or the menace of violence and/or the victim's helplessness in certain situations.

Thus, according to Article 12 of Law No. 12 of 2022, the element of sexual exploitation includes the act of utilizing sexual organs or other organs based on sexual desire, which is carried out through violence, threats of violence, or by taking advantage of the victim's helplessness in certain situations (Bhochhibhoya et al., 2021; Cazalis et al., 2022; Gama et al., 2021; L. Li et al., 2023; Martin-Storey et al., 2021; Razi et al., 2021).

Law No. 1 of 1946 of the Indonesian Criminal Code

In the context of criminal law enforcement, especially related to the application of the Article in the crime of sexual exploitation in many cases that are tried and decided by the court as a criminal act of sexual exploitation using Article 296 of the Indonesian Criminal Code which substance of this proviso contains the provision that "[w]hoever deliberately causes or facilitates an obscene act by another person with another person, and makes it a search or habit, threatened with imprisonment for a maximum of one year and four months or a fine of up to fifteen thousand rupiah" (emphasis added). Therefore, the elements contained in this Article are:

i. The any person element;
ii. Element of intentionality;
iii. Elements that instigate or enable indecent conduct with others; and
iv. These elements make it a livelihood or habit.

Concerning the elements as stipulated in Article 296 above, as intended in the components of instigating or enabling indecent behaviour with other persons, the substance of the birth of this provision is directed to eradicate the person who holds a brothel or brothel. Criminal law experts explain that Article 296 of the Indonesian Criminal Code is used to ensnare a person or businessman who provides a place or rents a place to someone to have sex (Utari et al., 2024; Zubaidi, 2021). Referring to the description above, then included in the definition of "simplifying" is also the act of renting a room to give another person the opportunity to commit an act that violates morality (Di Dionisio et al., 2023; Estes, 2017; Loha, 2014;

Moss et al., 2023; Williams et al., 2022). To "make things easier" is that it is not necessary to do something or not to actively do something of the obligations prescribed by law. Furthermore, to be said to have been done "as a habit", the act must be done repeatedly and between one act and another, there must also be a relationship, so it is not enough if the letter of accusation is only mentioned with the word "frequently". Referring to the description of the elements of the illicit act as delineated in the Article 296 of the Indonesian Criminal Code as explained above, rendering to the author, it is not a criminal act of sexual exploitation because it does not include elements of recruitment or is based on violence or threats of violence to use sexual organs for sexual interests and services to himself or others. Based on the explanation of the elements of a criminal act in Article 296 of the Indonesian Criminal Code, the authors believe that the act is not categorised as a criminal act of sexual exploitation, because it does not meet the elements of recruitment or is not based on violence or threats of violence to exploit sexual organs for the purpose of sexual services (Farikhah, 2021; Rohman et al., 2023; Shidarta et al., 2022).

Judge's Considerations in Sentencing Perpetrators of Sexual Exploitation

Judges are required to be professional, honest, fair, and free from outside influences in making concrete decisions based on juridical principles and a sense of equity. The judge's decision in court must be objective and authoritative so that the judge's ruling must be substantiated with rationale or considerations why the judge arrived at his decision, and these reasons or considerations are a form of the judge's responsibility to the community. Judges' considerations in deciding an important case in providing a sense of justice for defendants and justice seekers as well as the future development of national law (Nasution et al., 2022; Rachmawaty et al., 2024; Shidarta et al., 2022). Referring to the description above, judges as law enforcers as well as law enforcers must be able to apply laws and regulations following concrete legal events that occur. In this context, judges act like logistical views, namely judges who use the right logic in adjudicating a case and are subject to laws and regulations. The judge is required to give a decision on a case that must be strictly based on existing laws and regulations, if the action is following the formulation of laws and regulations, then the judge must decide following the laws and regulations. Meanwhile, if the legal case has not been reached by laws and regulations or there is a legal vacuum, the judge can also act as a former and determine the law (Farikhah, 2021; Putra & Ahyani, 2022).

Regarding the judge's consideration, the essence of the judge's consideration in weighing and deciding on the elements of a violation whether the defendant's actions meet and are in accordance with the criminal act alleged by the public prosecutor so that the consideration is relevant to the judge's decision/dictum. Judges' considerations in criminal justice practice are usually qualified into two forms: juridical and non-juridical factors (Meneses-Falcón & Rúa-Vieites, 2023). Juridical considerations are judges' considerations based on juridical facts disclosed in the trial and by the laws stipulated as must be contained in the verdict such as the prosecutor's indictment, the defendant's statement, witness statements, evidence and Articles in criminal law regulations. The juridical consideration of the alleged violation must also be by the theoretical aspects, doctrinal views, jurisprudence, and position of the case being handled, and then limited by its founder. Non-juridical considerations Judging from the defendant's background, the defendant's condition and the defendant's religion.

Regarding law enforcement against perpetrators of sexual exploitation crimes by judges, it can be seen in the following decisions:

Analysis of the Kendari District Court Decision No. 426/Pid.Sus/2023/PN Kdi (2024)

Observing the judge's considerations in the Kendari District Court's decision dated January 15, 2024 Number 426/Pid.Sus/2023/PN Kdi. The Prosecutor's indictment arranged alternately where the defendant was charged with violating the provisions as stipulated in Articles 2(1) and (2) of Law No. 21 of 2007 and Article 296 of the Indonesian Criminal Code, the two Articles were substantially different but then the judge in his decision chose to apply the provisions of Article 296 of the Indonesian Criminal Code because the defendant Dedi Astamar Bin Sapruddin Alias Dedi had been legally and conclusively proven guilty of committing the act criminal "Deliberately Facilitating the Implementation of Obscene Acts" so that the judge sentenced the Defendant to imprisonment for 1 (one) year with the provision that the detention period that has been served by the Defendant is completely reduced from the sentence imposed. Interestingly, when the judge stated in his view quoting H.R, dated February 15, 1943 Number 320 the basis for fulfilling the criminal element of Article 296 of the Indonesian Criminal Code carried out by the

defendant in the author's view is related to the position case as described above, the judge did not understand the philosophical basis contained in Article 296, considering that Article 296 was in principle deliberately held to ensnare everyone who provides a house, room or bed for a man and woman to commit obscene acts as also found in H.R. 18 nop. 1918, N.J. 1919, 6, W. 10349; H.R. 6 nop. 1941, N.J. 1942 No. 48; and H.R.18 nop. 1940, N.J. 1941 No. 169 which are described as follows:

i. H.R. of November 18, 1918, N.J. 1910, 6, W. 10349 stated that the provisions of Article 296 not only prohibit facilitating acts that violate public decency in places of prostitution but also acts of facilitating acts that violate non-public decency that are carried out as a livelihood or habit;

ii. H.R. 6 November 1941,1942 No. 48 states that included in the definition of "facilitation" is also the act of renting a room to give another person the opportunity to commit an act that violates decency;

iii. H.R.18 November 1940, 1941. No. 169 states that to "make it easier" it is not necessary to do something or not to do something actively from the obligations prescribed by the law

Reinforcing the above argument, the author also uses the views of R. Sianturi and R. Soesilo. R. Sianturi stated in his view that Article 296 was deliberately held to 'fight' fornication, including despicable intercourse. Meanwhile, R. Soesilo stated that Article 296 of the Indonesian Criminal Code is useful for the eradication of people who hold brothels or brothels. Therefore, in the author's view, the fulfilment of the elements of the criminal act listed in Article 296 of the Indonesian Criminal Code, must be placed on a person who deliberately provides a place or room to be used as a place of despicable intercourse and who is actively looking for a date is not the owner who provides the place or room, but the female commercial sex worker herself (Armia, Karim, Sarong, et al., 2022; Nasution et al., 2022; Talli et al., 2023). Regarding the judge's consideration of using Article 296 to impose a criminal act against the defendant in the quo case, in the author's view, it is inappropriate and disagrees with the judge's decision because the act committed by the defendant is not an act of deliberately facilitating the commission of an obscene act by providing a place or room as contained in Article 296 of the Indonesian Criminal Code, but acting as stated in Article 2(1) of Law No. 21 of 2007 as the first alternative indictment of the public prosecutor (Faisal et al., 2024; Hanafi et al., 2024; Syaufi, 2023).

The judge in the quo verdict in the author's view should be more appropriate to apply Article 2(1) of Law No. 21 of 2007 in his decision as in the first alternative indictment of the public prosecutor based on the case of the position and statement of the defendant Dedi Astamar Bin Sapruddin alias Dedi which was presented at the trial which admitted that the defendant was active through the mobile application (MiChat BO) offering witnesses or victims to other people as users commercial sex services at a certain rate from which the defendant also benefits according to the agreement between the defendant and the witness or victim offered to another person so that the act of the defendant offering to another person for obtaining benefits or payment from the witness or victim as a cost should be viewed as an act of exploitation (Westendorf, 2023). Referring to the above considerations, the author is of the view that the actions of the defendant Dedi Astamar Bin Sapruddin alias Dedi meet the elements of a criminal act as stipulated in Article 2(1) of Law No. 21 of 2007 for committing acts in the form of recruitment, transportation, residence, delivery, transfer, or provision of payment or allowances, even though obtaining approval from a person who controls the consent of another person, to exploit the person in the Indonesian State Territory (Westendorf, 2023).

Analysis of the Decision of the Tanjung Selor District Court dated December 9, 2019 Number 161/Pid.Sus/2019/PN Tjs

Observing the judge's consideration in the decision of the Tanjung Selor District Court Number 161/Pid.Sus/2019/PN Tjs., with the prosecution's indictment being arranged alternately in which in essence the defendant was charged with three provisions at once, namely Articles 2(1) and (2) of Law No. 21 of 2007 as the first alternative indictment, Article 296 of the Indonesian Criminal Code as the second alternative, and Article 506 of the Indonesian Criminal Code as the third alternative (Angkasa et al., 2023). Regarding the Prosecutor's indictment which is prepared in an alternative manner as described above, the judge in the quo case chose to use Article 2(1) of Law No. 21 of 2007 as the first alternative indictment

by basing his consideration on the case, the position and facts of the trial in the author's view are appropriate considering that the defendant's actions as explained in the case of the position above are acts or acts of exploitation of a person (victim) by offering others to obtain benefits or payments from the victim as a fee (Bogerts, 2021; Bondestam & Lundqvist, 2020; Ceccato & Loukaitou-Sideris, 2022; Zeng, 2020).

Reinforcing the argument above, based on a series of acts committed by the defendant in the quo case which means that the defendant asks the witness (victim) to accompany the guest for food and karaoke ordered by the defendant agreed by the victim, then the defendant asks the victim to open a booking order who was initially rejected by the victim but because the salary was good and with economic considerations and daily needs so that the victim was willing to accept the job, in the author's view that the defendant deliberately recruited to be paid and took advantage of the victim's vulnerable position to be exploited (Ceccato et al., 2021; Musto et al., 2021; Utari et al., 2024). Therefore, in the author's view, the judge is correct in applying the provisions of Article 2(1) of Law No. 21 of 2007. The application of Article 2(1) of Law No. 21 of 2007 by the judge to the defendant in the quo case, according to the author, the judge is categorized as an adherent of syllogism where the judge decides by the formulation of the rule of law, where an act is under or per the formulation of the rule of law, then the judge decides following the provisions of the law, or in other words, judges who examine and adjudicate quo cases are seen as a mouthpiece of law (*la bounhce de la loi*) so that judges apply the law under concrete events (Ahmatnijar et al., 2022; Armia, Karim, Sarong, et al., 2022; Armia, Karim, Tengku-Armia, et al., 2022).

Furthermore, related to the judge's consideration to mitigate the reason for the defendant by considering that the defendant is the backbone of the family so that the judge imposes a prison sentence of 3 (three) years lower than the prosecutor's demand, in the author's view, the judge adheres to the punishment guidelines in the relative theory or the theory of purpose so that the criminal act is not only to provide revenge or reward to someone who commits a crime but have a specific purpose that benefits the defendant and society at large (Wroe, 2021).

The Malaysian Perspective

As for adult women, Sections 372, 372A and 372B of the Penal Code (Act 574) deal with the crime relating to prostitution, which prohibits the exploitation of any individual for the purposes of prostitution, either male or female. Under the Malaysian Penal Code (Act 574), "prostitution" is defined the act of an individual providing their body for sexual pleasure in exchange for compensation, whether monetary or in kind, as stipulated under Section 372(3). A similar definition of "prostitution" can also be seen under Section 2 of the Child Act 2001 (Act 611). Under Section 372 of the Penal Code (Act 574), whoever commits "prostitution" shall incur imprisonment for a duration of up to fifteen years, along with corporal punishment, and shall additionally be subject to a monetary penalty. Section 372A of the Penal Code (Act 574) states that Any individual who knowingly derives entirely or partially from the earnings of another person's prostitution shall be subject to imprisonment for a term of up to fifteen years, corporal punishment, and a monetary fine. According to Section 372B of the Penal Code (Act 574), any anyone who solicits or requests prostitution or engages in any immoral activity in any location shall face imprisonment for a duration not exceeding one year, a monetary punishment, or both penalties.

In *Chan Boon Lee v. Public Prosecutor* (2023, the Appellant appealed before High Court on the conviction by the Session Court for intentionally subsists entirely or partially on the proceeds of prostitution of four Thai citizens in an apartment under Section 372A of the Penal Code (Act 574) where he received a sentence of eight years' imprisonment and four lashes. In this case, the police raided the apartment and found the Appellant, together with a Thai woman, at the dining table in the living room. further inspection was done in one of the rooms and found 12 condoms and cash amounting to RM1,350.00 together with three other Thai women and 8 Bangladeshi men in the room. The Appellant argued that the money and the condoms found did not belong to him and were not found with him at the time of the raid. One of the Thai women testified and confirmed that she does both massage and sex work. The Appellant is the person who is looking for clients for her and admitted that the payment received by her for the said sex activities would be partially passed on to the Appellant and that the Appellant would pay him wages for such activities. She also confirmed that the Appellant was her guardian, as well as the other three Thai women who were detained that night by the police who also carried out sex work like her and confirmed by three

other witnesses called by the prosecution during the raid. As the learned Session Court judge ruled that the Appellant has, beyond reasonable doubt, earned income from sex activities carried out by all the Thai women based on the consistent testimony given by one of the Thai women and other witnesses, the High Court upheld the findings of the learned Session Court.

Moreover, Section 373 of the Penal Code (Act 574) suppresses brothels whereby Any location that is utilised by two or more individuals, either concurrently or sequentially, for the purpose of prostitution. Under this provision, any anyone who maintains, oversees, or aids in the management of a brothel, or who knowingly participates in the ongoing operation of such an establishment, shall be subject to imprisonment for a term of up to fifteen years, in addition to potential financial penalties as provided under Section 373. In *Chai Vun Hing v. Public Prosecutor* (2022), The Appellant was initially charged before the Session Court with two allegations under Section 12 of the ATIPSOM 2007 for trafficking adult women for sexual exploitation. Upon conclusion of the prosecution's case, the learned Sessions Court Judge determined that the prosecution was deficient to establish all the ingredients of trafficking in persons, thus discharged and acquitted the Appellant on the two original charges. However, from the evidence adduced by the prosecution, the learned Sessions Court Judge found that a prima facie case had been made out against the Appellant on an offence under Section 373 of the Penal Code (Act 574) in the management of establishments for prostitution with Ah Chai, another suspect who was still at large at the D'New1 Hotel, particularly rooms 105 and 113 of the Hotel.

The learned Sessions Court Judge found the Appellant guilty, convicted him, and sentenced him to seven years imprisonment. The Appellant appealed on, among other things, that no principal offender was established as being involved in the management of the brothel and that there was no evidence that those women were involved in prostitution activities. However, the High Court interpreted the word "assist" as doing something to help somebody do something, while the word "manage" is to control or be in charge of a business of a brothel under Section 373 of the Penal Code (Act 574). The High Court found no evidence or suggestion that the owners of the Hotel or rooms 105 and 113 were involved in anything illegal, not to mention the offence of operating a brothel but based on the trading licenses as a hotel. The acts of the Appellant and Ah Chai must relate to assisting in the management of rooms 105 and 113 of D'New1 Hotel, which must be first established as a brothel and is being used as a brothel and not merely relate to helping the two Thai women in conducting their trade of prostitution. Thus, The High Court granted the appeal, annulled the convictions, and nullified the imposed sentence the learned Sessions Court Judge.

Furthermore, Section 2 of the ATIPSOM 2007 defines "exploitation" as all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs. About the present discussion, Section 12 of the ATIPSOM 2007 provides that any person who traffics in persons not being a child for the purpose of exploitation commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be liable to fine. Section 15 of the ATIPSOM 2007 further elucidates that any person who profits from the exploitation of a trafficked person commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be liable to a fine of not less than RM500,000 but not exceeding RM1 million and shall also be liable to forfeiture of the profits from the offence.

In *Public Prosecutor v. Hwong Yu Hee & Ors.* (2012), three accused were charged and jointly tried before the Session Court under Section 12 of the ATIPSOM 2007 for trafficking five Indonesian citizens (the victims) into Malaysia for sexual exploitation purposes at a pub. In this case, the Court found that the prosecution had failed to prove a prima facie case where the charge ingredients were not proven beyond reasonable doubt. This is because, although Section 12 of the ATIPSOM 2007 must not necessarily be confined to buying and selling a human being and must also be extended to include profiting from her activities, moral or immoral, legal or illegal, these must be done in an enslaved manner. Nevertheless, the prosecution failed to adequately demonstrate that the five victims were in custody and entirely under the control of the three defendants, nor did they derive any advantage from the sale of the victims or from the illicit activities of the victims. This is due to the seizure of the documentary exhibits, which are the records book of the alleged prostitution activities of the victims, which did not prove that the accused benefited from such activities. Moreover, the essential ingredient of proving that the victims were held against their

own will or deprived of freedom or being forced into prostitution has also not been established by the prosecution since the victims had every chance to escape from the employment. In addition, evidence had been adduced mainly through all the victims that they were brought to this country by various persons, but none of these various persons were the three accused. As a result, the Court ordered all of them to be discharged and acquitted accordingly.

On the other hand, Section 14 of the ATIPSOM 2007 further provides that Any anyone who engages in the trafficking of a child for the purpose of exploitation commits an offence and, upon conviction, shall be subjected to imprisonment for a duration of no less than three years and no more than twenty years, in addition to being responsible for a fine. Moreover, the Child Act 2001 (Act 611), together with the *Sexual* Offences Against Children Act 2017 (Act 792), also protect children from the same situation. Part II of the Sexual Offences Against Children Act 2017 (Act 792) mentions offences relating to child pornography as stipulated under Sections 4 to 10 of the Act; Part III of the Act further elucidates on offences relating to child grooming as provided under Sections 11 to 13 and Part IV of the Act explains on offences relating to sexual assault on a child under Sections 14 to 15. The punishments under Part II, Part III and Part IV of the Sexual Offences Against Children Act 2017 (Act 792) vary whereby they provide punishments: Upon conviction, the individual shall be subjected to jail for a duration not exceeding 30 years and shall receive a corporal punishment of no fewer than six strokes or fine not exceeding RM20,000 or to both, depending on the respective charge.

For instance, in *Hendra bin Mulana v. Public Prosecutor* (2024), the Appellant was found guilty and convicted on four charges of requesting child pornography under Section 8(b) of the Sexual Offences Against Children Act 2017 (Act 792) by the Session Court. The Appellant was sentenced to 13 years imprisonment and three strokes of whipping for each charge, and all imprisonment sentences were to run concurrently. He was also sentenced to undergo counselling while in prison and 3 years of police supervision after completing the imprisonment sentence. The victim testified that she spent much time on the World Wide Web and chatting on social media platforms such as “BIGO” and WhatsApp, and she would often stay up late. The victim first came to know the Appellant in 2019 through the live streaming platform BIGO when she was in Year 6 at 12 years old. She told the Court that she had lewd conversations and sent sexual-related pictures and videos to the Appellant upon his request. The mother was shocked to see her daughter’s lewd video and conversations in WhatsApp with the Appellant and took only a glance at the last two videos in the chat with him. One showed her daughter lying in her bedroom and playing with her private part. It was sent to the Appellant, and the other video showed the Appellant masturbating and that video was sent to her daughter’s phone. Police investigations with a telecommunications provider led to the arrest of the Appellant. The ingredients of the offence under Section 8(b) of the Sexual Offences Against Children Act 2017 (Act 792) were satisfied by the prosecution where the victim was a child, and the Appellant had asked for pornography from the child at the material time.

Based on all the evidence adduced by the prosecution, the Sessions Court Judge conducted an optimal assessment of the evidence at the prima facie stage and called for the Appellant’s defence. The Appellant never disputed the authenticity of the videos and the makers therein and admitted that he did not think his actions were wrong because they were lovers and he wanted to marry the victim. The defence of the Appellant was that he did not know her actual age because her BIGO profile stated her as 19 years old, and she had also told him she was still in school in Form Six (Upper). In her evidence, the victim told the Court that she admitted that she did not give her actual age as she wanted to keep it a secret. However, she was adamant that she told the Appellant that she was 14 years old, although she was 12 then and had never said she was in Form 6. The Session Court found that the ingredients for the crime were fulfilled and sentenced the Appellant accordingly, and although the Appellant was dissatisfied with the decision of the Session Court and appealed to the High Court, it was upheld by the High Court on appeal.

Conclusion

This study succeeded in identifying the existence of legal dualism in the regulation of sexual exploitation in Indonesia and Malaysia, as well as analyzing judges' considerations in sentencing perpetrators. Although both countries have legal frameworks aimed at protecting individuals from sexual exploitation, their implementation faces a variety of challenges, including differences in substance between laws and regulations, a lack of coordination between law enforcement agencies, social stigma against victims, and

the complexity of interactions between secular laws and social or religious norms. These findings confirm that sexual exploitation is a multidimensional issue that requires a holistic and integrated approach, which not only focuses on formal legal aspects but also considers social, cultural, economic, and technological dimensions. However, the study also acknowledges limitations that need to be addressed in future research.

First, the analysis of judges' judgments is still descriptive and has not explored in depth the psychological, sociological, and political factors that influence judges' decision-making. Future research will need to adopt more qualitative research methods, such as in-depth interviews with judges, to more comprehensively understand the legal reasoning processes they use in sexual exploitation cases. Second, the study has not explicitly tested the effectiveness of various law enforcement strategies implemented in Indonesia and Malaysia. Further research needs to be conducted on an empirical evaluation of the impact of various policies and programs aimed at preventing and addressing sexual exploitation, as well as identifying best practices that can be replicated in both countries. Third, the study has not adequately considered the role of digital technology in facilitating and expanding the reach of sexual exploitation, primarily through social media and other online platforms. Further research needs to analyze how existing laws and policies can be adapted to address the new challenges posed by digital technologies, as well as develop effective prevention and intervention strategies to protect children and adolescents from online sexual exploitation.

Future research will need to expand the scope of analysis, deepen research methods, and consider issues that are more complex and relevant to the times. In particular, further research needs to develop a more comprehensive analytical model to examine the psychological, sociological, and political factors influencing judges' decision-making in sexual exploitation cases. It should also evaluate the effectiveness of law enforcement strategies implemented in Indonesia and Malaysia to identify best practices that could be replicated in both countries. In addition, further studies should investigate the impact of digital technologies on sexual exploitation and develop effective prevention and intervention strategies to protect children and adolescents from online sexual exploitation. Finally, future research should adopt a more participatory and inclusive approach by involving victims, civil society, and other relevant stakeholders in the formulation and implementation of policies and programmes.

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