

CHILD LABOUR ISSUES AND CHALLENGES: A REVIEW OF INTERNATIONAL AND MALAYSIAN LAW

QUESTÕES E DESAFIOS RELACIONADAS AO TRABALHO INFANTIL: UMA ANÁLISE DO DIREITO INTERNACIONAL E MALÁSIO

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Sally Yeo Yi Tong*

*Faculty of Law, Universiti Kebangsaan Malaysia (UKM), Malaysia

Orcid: <https://orcid.org/0009-0002-6365-5998>
a187017@siswa.ukm.edu.my

Nadhilah A. Kadir*

*Faculty of Law, Universiti Kebangsaan Malaysia (UKM), Malaysia

Orcid: <https://orcid.org/0000-0003-1869-2124>
nadhilah@ukm.edu.my

Ramalinggam Rajamanickam*

*Faculty of Law, Universiti Kebangsaan Malaysia (UKM), Malaysia

Orcid: <https://orcid.org/0000-0003-4017-8826>
rama@ukm.edu.my

Mohd Zamre Mohd Zahir*

*Faculty of Law, Universiti Kebangsaan Malaysia (UKM), Malaysia

Orcid: <https://orcid.org/0000-0002-1572-084X>
zamre@ukm.edu.my

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Abstract

Children are valuable assets to a nation and crucial for the future progress of society and the country. However, the reality of child labour persists as a global challenge, notably in many developing nations like Malaysia. Despite the enforcement of laws, international organisations such as the ILO and CRC continue to urge further action to address the issue of child labour in Malaysia including related to age, child's right to education, and child labour in Sabah. This paper intends to conduct a thorough legal analysis of child labour, focusing on international and Malaysian laws. It begins by examining global standards set by key conventions and treaties. The study then transitions to an analysis of Malaysian legislation to evaluate alignment with international standards and effectiveness in addressing child labour issues. This study employs qualitative method. This study found that the government continues to actively combat child labour through amendments to legislation, such as the Children and Young Person (Employment) Act 1966, and by implementing the National Child Policy to ensure alignment with global standards. Nevertheless, conflict in

Resumo

As crianças são ativos valiosos para uma nação e cruciais para o progresso futuro da sociedade e do país. No entanto, a realidade do trabalho infantil persiste como um desafio global, notadamente em muitas nações em desenvolvimento como a Malásia. Apesar da aplicação de leis, organizações internacionais como a OIT e a CRC continuam a instar a ações adicionais para abordar a questão do trabalho infantil na Malásia, incluindo questões relacionadas à idade, ao direito da criança à educação e ao trabalho infantil em Sabah. Este artigo pretende realizar uma análise jurídica completa do trabalho infantil, com foco nas leis internacionais e malaias. Começa examinando os padrões globais estabelecidos por convenções e tratados importantes. O estudo então passa a analisar a legislação malaia para avaliar o alinhamento com os padrões internacionais e a eficácia no enfrentamento das questões do trabalho infantil. Este estudo emprega o método qualitativo. O estudo constatou que o governo continua a combater ativamente o trabalho infantil por meio de emendas à legislação, como a Lei de Crianças e Jovens (Emprego) de 1966,



the minimum age of children in local legislation infringes on the safety of children and young persons in employment. Recommendations are put forward to strengthen legal protections against child labour in Malaysia, calling for policy reforms, enhanced enforcement measures, better educational opportunities, and increased collaboration among stakeholders.

Keywords: Children and Young Persons (Employment) Act 1966. Child Labour. Children's Rights. Child Protection. Education.

e pela implementação da Política Nacional da Infância para garantir o alinhamento com os padrões globais. Contudo, o conflito relativo à idade mínima de trabalho infantil na legislação local compromete a segurança de crianças e jovens no mercado de trabalho. São apresentadas recomendações para fortalecer a proteção legal contra o trabalho infantil na Malásia, incluindo reformas políticas, medidas de fiscalização mais rigorosas, melhores oportunidades educacionais e maior colaboração entre as partes interessadas.

Palavras-chave: Lei de Crianças e Jovens (Emprego) de 1966. Trabalho Infantil. Direitos da Criança. Proteção Infantil. Educação.

1 INTRODUCTION

Child labour is a specific form of child abuse resulting from the deprivation of childhood, fundamental rights, and natural development. Children engaged in child labour are frequently overlooked, unseen, and subjected to various other types of labour exploitation (Pasaribu & Vanclay, 2021). Globally, the issue of child labour persists as a significant concern in most developing nations, impacting human capital development and economic growth (Soni, 2022-2023). It refers to situations where individuals under 18 engage in socio-economic activities and any form of economic activity (Ali et al., 2019). The International Labour Organisation (ILO) and the United Nations Children's Fund (UNICEF) estimate that approximately 160 million children aged 5-17 worldwide are engaged in child labour, with around 79 million involved in hazardous work. One in ten children globally is engaged in work activities, with one in three children found in Asia and the Pacific. Nearly 70% of child labourers in these regions work in the agricultural sector, including on large palm oil plantations and small farms (ILO-UNICEF, 2020).

Although accurate child labour data is scarce and underreported in Malaysia, the issue persists across various sectors such as agriculture, domestic services, and fishing (The Sun Daily, 2020; Sharma, 2022). Despite Malaysia's enforcement of local laws and ratification of international instruments aimed at safeguarding child labourers rights, concerns remain, particularly in regions like Sabah, where migrant children on palm oil plantations face heightened risks due to limited legal rights and restricted access to

education (UNICEF, 2023; Earthworm Foundation Report, 2021). Between 40,000 and 60,000 Indonesian children are estimated to reside in palm oil plantations in Sabah, Malaysia, as reported by the Earthworm Foundation in 2021. However, this figure excludes Filipino and local children, suggesting that child participation levels may be even higher. (UNICEF Report, 2023). More often, child labour is regarded as consequences of poverty, which deprive their right to access education and an opportunity for development to their full potential. The situation is exacerbated by challenges in enforcement mechanisms and monitoring measures on child labour issues across the nation.

This study analyses two key aspects of the legal framework on child labour in Malaysia, specifically the international standards and Malaysian domestic legislation. The international standards are conventions and treaties like the Convention on the Rights of the Child (CRC), Minimum Age Convention 1973 [No.138] (Convention No. 138) and Worst Forms of Child Labour Convention 1999 [No.182] (Convention No. 182) while turning into the related Malaysian domestic legislations are Child Act 2001(Act 611), Children and Young Persons (Employment) Act 1966 (Act 350) (CYPA 1966) and the Education Act 1966 (Act 550). The study aims to assess the effectiveness of Malaysian legislation in safeguarding children's rights, particularly in education and employment within palm oil plantations in Sabah. Recommendations regarding minimum age requirements of children and other children's rights are provided, aiming to guide potential reforms in legislation, policies, and practices in alignment with ratified international conventions.

2 CHILD LABOUR: INTERNATIONAL FRAMEWORK

The ILO and the Food and Agriculture Organisation have defined child labour as work that deprives children of their childhood, potential, and dignity and harms their physical and mental development. This type of work not only infringes upon human rights but also undermines minimum wage regulations while endangering the physical, mental, and emotional well-being of children. International conventions define two principal forms of child labour, specifically the work below the minimum age and the worst forms of child labour (UNICEF Innocenti, 2023). The universal sources of international human and labour rights standards are the CRC, Convention No.138, Convention 182, and

Sustainable Development Goals (SDGs) Target 8.7. These key conventions and goals recognise and address legal issues concerning child labour as global concerns. The principles contained in them are to prioritise the best interest of the child, combat the worst forms of child labour, address hazardous work, and prohibit forced child labour. The significant fundamental instruments, particularly the CRC and ILO, are widely recognised to complement each other on the essential legal framework for dealing with child labour. In addition, SDGs Target SDG 8.7, a core component of the SDGs, aims to eradicate forced labour, modern slavery, human trafficking, and the worst forms of child labour by 2025.

3 UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The fact that the CRC is the most extensively ratified treaty reflects the global consensus on the importance of children's rights, including access to education. The CRC addresses children's rights by including work that disrupts their education as part of its definition of child exploitation. In 1995, Malaysia demonstrated its dedication to safeguarding children's rights by ratifying the CRC. This explicitly reaffirms its commitment to shielding children from economic exploitation and hazardous activities that could impede their health and education (Wahab & Dollah, 2023). Article 1 of the CRC has defined a child as any person under the age of 18. As part of a vulnerable demographic, children often remain unaware and are sometimes exploited by adults, including industrial players and their guardians (Kadir et al., 2021). This exploitation is troubling as it disregards the best interest of the child, as clearly stated in Article 3 of the CRC. The paramount consideration is the child's best interest, emphasised through the 54 articles of the CRC covering children's rights related to four broad areas, specifically the right to survival, development, protection, and participation. In principle, children have the right to survival, which includes adequate living standards and access to medical services; development, which encompasses education, access to information, leisure and cultural activities, play, and freedom of thought, conscience, and religion; protection from all forms of exploitation, abuse, and cruelty, arbitrary separation from family, and abuse of the criminal justice system; and participation, which includes the freedom to express opinions and be involved in decisions affecting their lives. Therefore, every decision must prioritise the best interests of children.

The above principle emphasises the need to shield children from exploitation and ensure their comprehensive development, in line with the general principles of child labour outlined in Article 32 of the CRC. Under Article 32 of the CRC, the right of the child is recognised to be safeguarded ‘from economic exploitation’ and ‘from performing any work that is likely to be hazardous or to interfere with the children’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development’. Although it does not explicitly prohibit children from working, in certain severe scenarios, children endure being forced to work, separated from their families, and facing dangerous situations and illnesses, all of which qualify as the worst form of child labour (Wahab, 2023). Thus, states must implement comprehensive measures, which include legislative, administrative, social, and educational components, to comply with Article 32 of the CRC (Milena & Milos, 2021). By implementing this article, Malaysia is obliged to establish a minimum employment age, regulate hours and working conditions, and develop enforcement mechanisms, including penalties and sanctions. While the CRC does not provide specific labour regulation frameworks, it directs Member States to consider relevant provisions from other international instruments, particularly ILO, ensuring alignment with broader international standards. It is worth emphasising that access to education is a fundamental children’s right in Article 28 of the CRC. This article guarantees free compulsory primary education for all, progressive free secondary education that should, in any case, be available and accessible to all, and accessibility to higher education on the basis of capacity. In circumstances when children are engaged in work, especially hazardous or exploitative labour, their right to education is deprived as it interferes with their ability to attend school and focus on their studies. This deprives them of the opportunity for comprehensive development, including intellectual, social, and emotional growth, ultimately limiting their future prospects and violating their rights as outlined in Article 28 of the CRC. When children are required to work, their right to rest, leisure, and participation in play and recreational activities, as outlined in Article 31 of the CRC, is deprived. This work obligation reduces the time they have to enjoy their childhood, engage in age-appropriate recreational activities, and participate freely in cultural and artistic life, which is crucial for their overall development and well-being. For many children in both affluent and impoverished countries, child labour significantly reduces the time they have to enjoy these rights.

4 INTERNATIONAL LABOUR ORGANISATION CONVENTIONS

Compared to the CRC, the ILO's instruments are more detailed and widely accepted, and they form the legal and policy foundation for the leading global organisation in this field. There are various factors, including the child's age, the type and duration of work, and the working conditions, which determine whether or not certain forms of "work" qualify as 'child labour' (UNICEF, 2023). Specifically, Convention No. 138 sets general age standards for admission to employment. The Convention No. 182 aims to eliminate the worst form of child labour. Both instruments serve as the primary instruments guiding global efforts to address child labour. In essence, both conventions aim to protect individuals under the age of 18 from work that could endanger their health, safety, or morals due to its nature or the circumstances surrounding it.

5 INTERNATIONAL LABOUR ORGANISATION MINIMUM AGE CONVENTION [NO.138]

In 1997, Malaysia ratified Convention No. 138, demonstrating its commitment by instituting minimum age standards for employment. Article 1 and Article 2 of Convention No.138 stipulate that the minimum age for "admission to employment or work" is consistent with the Committee of Experts on the Application of Conventions and Recommendation (CEACR) and scholarly literature. Article 1 of Convention No.138 mandates Member States to implement measures to gradually increase the minimum age for employment to ensure optimal mental and physical development. The most important provision of Convention No.138 is Article 2 of Convention No.138. It requires Member States to establish a minimum age requirement for employment. The requirement also specifies that the forms of child labour work below the minimum age shall be no lower than the end of compulsory education, generally 15 years of age (UNICEF, 2023). In less developed economies, there is the possibility of reducing this age to 14 years old at the discretion of national authorities. In compliance with this article, Malaysia declared a minimum age of 15 for full-time employment upon ratification.

Under Article 3 of Convention No.138, hazardous work requires a higher minimum age of 18 due to its nature or the conditions under which it is performed. Hazardous work is said to be likely to endanger young individuals' health, safety, or well-

being. Minimum Age Recommendation No. 146 (1973) provides guidance to member states on identifying hazardous work. This Recommendation suggests that consideration should be given to work involving dangerous substances, agents, or processes, including exposure to ionising radiation, as well as tasks involving the lifting of heavy weights and underground work. Convention No.138 provides flexibility to member states to adapt the regulations regarding permissible light work to their unique environmental, cultural, social, political, and economic conditions. However, the Convention does not offer specific operational guidance for assessing what constitutes light work, leaving it to the discretion of the member states to determine the criteria based on their circumstances. Exceptions are made for certain activities like artistic performances under Article 8 of Convention No.138.

Consequently, it can be seen that Convention No.138 highlights the nation's dedication to establishing minimum age requirements for employment. Key provisions of the convention include setting the minimum age for general employment at 15 years, while hazardous work necessitates a higher minimum age of 18 due to potential dangers. Although the convention allows member states to tailor these standards to their unique contexts, it mandates that the minimum employment age must be at least as high as the end of compulsory education. This approach ensures the protection of young workers while accommodating different national conditions.

6 INTERNATIONAL LABOUR ORGANISATION WORST FORMS OF CHILD LABOUR CONVENTION [NO. 182]

The ILO Convention No. 182 builds upon Convention No.138 as the narrower scope, targeting the worst form of child labour. As outlined in Article 3 of ILO Convention No.182, the worst forms of child labour include situations where children are trafficked, forced into prostitution, or made to produce and sell drugs. It also covers jobs that are hazardous to a child's health and safety, such as working in dangerous factories or handling toxic substances.

Hazardous work is considered one of the worst forms of child labour. Notably, under Article 3(d) of Convention No.182, hazardous child labour is described as work likely to endanger children's health, safety, or morals due to its nature or conditions (International Labour Organisation, 2019). This encompasses employment in unsafe

environments where injury, illness, or even death may occur due to inadequate safety measures. Such work can result in long-term physical disabilities, health issues, and psychological harm (International Labour Organisation, 2023). Each Member State is required to develop and execute action plans aimed at eradicating the most severe forms of child labour. These action plans should be formulated and implemented in collaboration with pertinent government bodies, employers' associations, and labour unions while also considering the perspectives of other relevant stakeholders as deemed suitable. Malaysia ratified the convention in 2000, obligating it to promptly address certain forms of child labour, including victims of forced labour aged 5 to 17, as outlined in the convention (Kementerian Sumber Manusia, 2021).

Thus, it can be concluded that Convention No.182 plays a vital role in combating the most severe forms of child exploitation. It clearly defines hazardous work and emphasises its detrimental effects on children's health and safety, underscoring the necessity for strict protective regulations. Malaysia's ratification of the convention in 2000 signifies its dedication to tackling these issues, though the successful execution of action plans is critical. Effective collaboration among government agencies, employers, and other relevant parties is essential to ensure these measures are thorough and effective.

7 SUSTAINABLE DEVELOPMENT GOALS (SDGS) TARGET 8.7

The SDGs outlined in the "Transforming Our World: the 2030 Agenda for Sustainable Development" align closely with the concept of sustainable development (Ali et al., 2019). Target 8.7 of the 2030 Agenda aims to eradicate forced labour, modern slavery, human trafficking, and the worst forms of child labour by 2025. Malaysia has prioritised achieving this target as an Alliance 8.7 Pathfinder Country within the framework of the 17 SDGs (Hee Yuan Ni, 2023; Kementerian Sumber Manusia, 2021). Alliance 8.7 facilitates international collaboration to accelerate efforts toward SDG Target 8.7 by promoting effective solutions, innovation, and resource optimisation to eliminate forced labour, modern slavery, human trafficking, and child labour (Hee Yuan Ni, 2023). Collaboration among diverse partners across borders is crucial for the effectiveness of Alliance 8.7 (International Labour Organisation, 2020). In combating the issue of forced labour, Malaysia's commitment is shown by its ratification of several ILO conventions on forced labour. These conventions include the Forced Labour Convention,

1930 [No. 29], and the Protocol of 2014 to the Forced Labour Convention, 1930 (P029) (New Straits Times, 2023).

The SDGs embody our most significant duty as a global community, to equip children and young people with the services, skills, and opportunities necessary to create better futures for themselves, their families, and their societies. As such, safeguarding children from all forms of violence is a fundamental right established by the CRC (Lepcha & Paul, 2021). The SDGs are directly related to child labour, particularly under goals related to ending violence against children, improving health and well-being, ensuring quality education, and eradicating poverty. Child labour significantly impacts a child's health and well-being. Studies have shown that children engaged in hazardous work face numerous health issues. Studies have shown that children engaged in hazardous work face numerous health issues such as physical, mental, and social health deterioration associated with child labour. For example, child labour is linked to malnutrition, with studies in Pakistan showing associations with wasting, stunting, and chronic malnutrition. Injuries are also common; younger children in Bangladesh are more likely to suffer from backaches, exhaustion, and burns, while children in Iran frequently face injuries from falls and cuts.

Aside from health and well-being, child labour poses a significant barrier to education. Children participating in hazardous labour are less likely to attend school, with only 56% in the age group 5-17 doing so (ILO-UNICEF, 2021). It is further discovered that child labour adversely affects academic performance, resulting in decreased school attendance, diminished interest in education, and higher dropout rates. Their model demonstrates that child labour reduces the time available for studying, exhausts children, and lowers their learning productivity, ultimately impairing their human capital development and future consumption potential.

Therefore, SDGs particularly Target 8.7, emphasise the global commitment to eradicating forced labour, modern slavery, human trafficking, and child labour by 2025. Malaysia's proactive role as an Alliance 8.7 Pathfinder Country demonstrates its dedication to this cause. The detrimental effects of child labour on health, education, and overall well-being underline the urgency of these efforts. Achieving these targets requires robust international collaboration and innovative solutions to protect children's rights and ensure their future opportunities.

8 CHILD LABOUR: MALAYSIAN DOMESTIC LAW

Malaysia has specific laws regulating child employment. However, the government continues to actively combat child labour through amendments to legislation, such as the CYP A 1966, and by implementing the National Child Policy (International Labour Organisation, 2020b). This reflects Malaysia's strong commitment to addressing child labour through robust legal measures. Generally, children often engage in work due to factors such as poverty, family background, and the level of government support they receive. Malaysia has a diversified socioeconomic environment with various degrees of development, industrialisation, and cultural heritage. This requires understanding the complex factors behind child labour and considering cultural norms, family dynamics, and socio-economic conditions (Churchill & Smyth, 2020). Specifically, gaining insights into the cultural and social contexts within different ethnic groups is crucial for effective intervention. It leads to developing targeted policies and interventions. Hence, a holistic approach to legislation, incorporating input from various ethnic communities and civil society organisations, is crucial in addressing this complex issue (Hee Yuan Ni, 2023). Ultimately, sustained collaboration among stakeholders and culturally sensitive policymaking are key to ensuring the long-term eradication of child labour in Malaysia.

9 CHILD ACT 2001 (ACT 611)

Apart from Article 12 of the Federal Constitution, the Child Act 2001 serves as a cornerstone legislation governing children's rights and welfare in Malaysia. It aligns with the principles outlined in the CRC. Child Act 2001 (in its preamble) refers to the protection of all children "without regard to distinction of any kind" and, after listing a number of grounds, includes the wording "or any other status", demonstrating inclusivity of children without domestic legal status. Section 2 of the Child Act 2001 defines a child as: "(a) a person under the age of eighteen years." The Act is one of the most important legislation on children's rights and emphasises the importance of non-discrimination, the best interest of the child, the right to life, survival, and development, as well as respect for the child's views. Under Section 31 of the Child Act 2001, ill-treatment, neglect, abandonment, or exposure of a child likely to cause physical or emotional injury is an offence. In accordance with the broader definition of child labour, actions under Section

31(1)(a) of the Child Act 2001 contribute to the exploitation and harm of children. According to Section 31(1)(a) of the Child Act 2001, the described actions include abuse, neglect, abandonment, or exposure to harm, which can be components of child labour when they occur in the context of work that endangers a child's physical or emotional well-being. As such, the Child Act 2001 addresses child labour by criminalising actions such as abuse, neglect, abandonment, or exposure to harm, which aligns with the broader definition of child labour as exploitative practices that endanger a child's physical or emotional well-being. This approach reflects Malaysia's commitment to upholding children's rights and ensuring their well-being under the guidance of international standards and conventions such as the CRC.

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10 CHILDREN AND YOUNG PERSONS (EMPLOYMENT) ACT 1966 (ACT 350)

The CYPA 1966 is the primary legislation governing child labour in the country that came into force on 1st October 1999 (Kadir et al., 2021). It was first formulated by taking inspiration from international documents like the Universal Declaration of Human Rights (UDHR) and the CRC, which primarily focused on regulating labour involving children and young individuals who are considered vulnerable (Kadir et al., 2021). Due to the dual legal system practising in Malaysia, CYPA 1966 applies solely to Peninsular Malaysia. As outlined in Section 1(2) of the CYPA 1966, the act is enforced by the Peninsular Human Resource Department. In Sabah and Sarawak, the respective human resources departments enforce the Labour Ordinance (Sabah Cap. 67) and Labour Ordinance (Sarawak Cap. 76) on child labour issues. Subsequent amendments were made in 2010 and the latest in 2019, known as The Children and Young Persons (Employment) (Amendment) Act 2019, which took effect on February 1, 2019 (Kadir et al., 2021).

The Children and Young Persons (Employment) (Amendment) Act 2019 (CYPA 2019) introduces crucial revisions to Malaysia's legal framework, enhancing protections

for children. Among the key revisions, the Act redefines a child as someone under 15 years and a young person as aged 15 to under 18 years while also clarifying the definition of “light work” under Section 2 of the Act. Notably, the Fourth Schedule of the CYPA 2019 precisely delineates hazardous work, prohibiting specific exploitative employment and fortifying safeguards against exploitation. Pursuant to Section 14 of the CYPA 2019, penalties for violations are significantly augmented, with fines now reaching up to RM 100,000 and imprisonment terms extended to five years. Additionally, Section 15 of the CYPA 2019 grants the Minister authority to amend schedules, enhancing adaptability and responsiveness to evolving challenges. These amendments mark a substantial stride in fortifying enforcement measures and safeguarding the well-being and rights of children in Malaysia. This recent amendment gives stricter punishments aligned to ILO standards and Malaysia’s ratification of the Minimum Age Convention 1973 and the Worst Form of Child Labour Convention 1999 (Baqutayan et.al, 2020).

In accordance with Convention No.138, Section 1A(1) of CYPA 1966 defines a “child” as an individual under 15 years old, while a “young person” is considered to be under 18 years old. Meanwhile, light work means “any work performed by a child or young person which is not likely (a) to be harmful to his health, mental, or physical capacity or (b) to prejudice his attendance at school, including any place which teaches any religion, his participation in vocational orientation or training programmes approved by the competent authority or his capacity to benefit from the instruction received.” It generally refers to any activity that is unlikely to cause harm to a child’s health or disrupt their education. Under CYPA 1966, public entertainment is permitted, provided employers obtain a licence from the Director-General of Labour to employ a child in public entertainment. Section 3 of CYPA 1966 empowers the Minister to issue an order prohibiting the employment of any child or young person if it is deemed detrimental to their rights and welfare. Thus, children between the ages of 13 and 15 years old are typically allowed to engage in light work as long as the tasks do not pose hazards to their lives, limbs, health, safety, or morals. This indirectly permits children to work in informal employment such as unpaid family workers, small family-owned businesses, street trading, agriculture undertakings, domestic service, and home-based work. The act also provides exceptions for children and young persons in these age groups in family enterprises, work in public entertainment, apprenticeships, and work undertaken in vocational training institutes (Hee Yuan Ni, 2023).

According to Section 6 of CYPA 2019, hazardous work is distinguished from light work based on a risk assessment conducted by a competent safety and health authority appointed by the Minister. Sections 2(1A) and (1B) of the CYPA prohibit children and young persons under 18 years from engaging in hazardous work or any employment not specified in this section in Peninsular Malaysia. The fourth Schedule of the CYPA 2019 delineates hazardous tasks, including operating heavy machinery, handling chemical substances, or working in hazardous environments. The emphasis is primarily on physical risks, with less consideration for psychological and social hazards. Neither Sabah nor Sarawak Labour Ordinances offer a specific definition of “hazardous work”. Specific economic sectors closely associated with the proliferation of child labour include agriculture, palm oil cultivation, and services in the Sabah region. Farming activities are classified as hazardous because they involve chemical spraying and harvesting (ILO, 2019). Additionally, children and young persons are restricted from working between 8 pm and 7 am and must have at least 30 minutes of rest after every three consecutive hours of work. They are also not permitted to work more than six hours a day or more than seven hours combined with time spent at school. Section 6(2) of the CYPA 1966 stipulates variations in work hours for young persons in the agriculture and public entertainment sectors.

Based on the discussion above, it can be seen that the CYPA is the main legislation that governs child labour in Malaysia, providing a comprehensive framework that delineates permissible work conditions for children and young persons, categorising work into ‘light’ and ‘hazardous’ work, and establishing strict penalties for violations to protect the rights and welfare of minors in accordance with international standards.

11 EDUCATION ACT 1966 (ACT 550)

In Malaysia, the education system is governed primarily by two key statutes namely, the Federal Constitution of 1968 and the Education Act of 1996. Article 12 of the Federal Constitution ensures the right to education by prohibiting discrimination in public school admissions and fee payments. Complementing this, Section 18 of the Education Act of 1996 mandates that all public schools adhere to the national curriculum, which sets forth the knowledge, skills, and values students should acquire by the end of their education. According to Section 29A of the same act, primary education is

mandatory in Malaysia. Parents and guardians are responsible for ensuring that their children are enrolled in compulsory primary education for a duration of 6 years, covering standards one to six until the age of 12. Failure to comply with this requirement may result in parents facing penalties, including fines of up to RM5000 or imprisonment for a maximum of six months, or both, upon conviction (Kadir et al., 2021).

Education and legal frameworks are crucial in combating and mitigating child labour in Malaysia by guaranteeing compulsory primary education for all children, as stipulated in the Education Act of 1996. This legislation, in concordance with Article 12 of the Federal Constitution, ensures non-discrimination in school admissions and mandates adherence to the national curriculum, fostering an inclusive educational system. By mandating primary education and imposing responsibilities on parents for their children's enrolment, the Act significantly reduces the likelihood of children engaging in the workforce at an early age. This legislative measure, supported by penalties for non-compliance, demonstrates the government's steadfast commitment to prioritising education over child labour, thereby protecting children's rights and promoting their overall development.

12 EFFECTIVENESS OF MALAYSIA DOMESTIC LAW IN ADDRESSING CHILD LABOUR ISSUES IN MALAYSIA

12.1 Age issue

The Malaysian legislative framework presents significant inconsistencies in defining the age of a child, which complicates the enforcement of child labour laws. According to Section 1A(1) of the CYPA 1966, a "child" is defined as an individual below the age of 15 years, while a "young person" refers to those aged between 15 and 18 years. In contrast, Section 2(1) of the Children Act 2001 (Act 611) and Section 2 of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670) uniformly define a "child" as a person under the age of 18. This discrepancy highlights a misalignment with international standards, such as the CRC, which stipulates that a child is under 18 years old.

The Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (ATIPSOM) 2007 includes acts such as acquiring or maintaining labour or services

through coercion, as well as recruiting, conveying, transferring, harbouring, providing, or receiving a person under the age of 18 for exploitation. Exploitation can include sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, illegal activities, or the removal of human organs (Kamaruddin & Zin, 2021). This inconsistency poses a significant challenge to the judiciary and creates gaps in legal procedures, particularly in cases where the provisions of two overlapping acts could be applied. In some instances, the exploitation of children for labour is intricately linked to the criminal act of human trafficking. While ATIPSOM and other legislation like the Children Act 2001 define a child as anyone under 18, CYPA 1966 defines a child as someone below 15 years old. As a result, this disparity complicates enforcement and protection efforts, as the overlapping provisions can lead to legal ambiguities in cases of child labour and trafficking.

Globally, Article 2 of the International Labour Organisation (ILO) Convention No.138 establishes the minimum employment age, generally set at the end of compulsory schooling and not below 15 years of age. Article 7(1)(a) and (b) of Convention No.138 allows for light work between the ages of 13 and 15, provided it is not harmful to the child's health or development and does not interfere with their school attendance. In Malaysia, recent amendments to the CYPA 1966 address issues of light work for children, setting minimum age requirements and defining hazardous work. However, the labour laws in Sabah and Sarawak remain outdated and not aligned with these amendments, lacking specific provisions for minimum age requirements for light work and clear identification of hazardous work for children. This legislative gap is compounded by inadequate monitoring mechanisms, especially in remote areas and the informal sector, due to a limited number of labour inspectors. This insufficiency hampers effective enforcement across Malaysia's diverse industries. For instance, in Sabah, children under 15 are permitted to engage in light work within their family businesses. In contrast, Section 2(2a) of the CYPA 2016 in Peninsular Malaysia prohibits children under 13 from any form of light work. Reports indicate that in Sabah and Sarawak, children as young as seven years old are involved in activities like fruit picking and carrying loads (UNICEF, 2023).

In conclusion, the inconsistencies within Malaysia's domestic legislation regarding the age definition of a child and their employment age, coupled with the lack

of alignment with international standards, undermine the effectiveness of addressing child labour issues.

13 RIGHT TO EDUCATION

Education is one of the important aspects of development rights. Knowledge and skills are vital tools for all children. This is because it will enhance their development in various fields (Ab Rahman, Mat Basir & Mohd Zahir, 2022). Regardless of their background, every child by nature needs protection based on the principles of equality and non-discrimination as upheld by the 2030 Agenda for Sustainable Development (UNICEF, 2023). It is widely recognised that children have rights to education, parental care, and rest. Through education, children learn about their fundamental rights and the importance of valuing and respecting the rights, cultures, and differences of others (Ab Rahman, Mohd Zahir & Althabhwawi, 2023). Allowing children to work longer hours can deprive them of these rights and hinder their development, especially if they attend school and are often absent. When children engage in labour, they are denied their right to education, which is vital for their future opportunities and personal growth.

In the international legal framework, CRC classifies children's rights into four categories: the right to life, protection, development, and participation. Specifically, Article 29 of the Universal Declaration of Human Rights 1949 (UDHR) emphasises that children's education should foster their personality, talents, and mental and physical abilities to their fullest potential. The right to education is a fundamental tool in eradicating child labour, as Article 28 of the CRC highlights. Although Malaysia signed the convention, it initially reserved several provisions for further review, including Article 28, which addresses free compulsory education. However, the amendment to Malaysian domestic law, specifically the inclusion of Section 29A in the Education Act 1996, has been pivotal in mandating compulsory education for children aged 6 to 12. This mandate highlights the importance of compulsory education in securing children's right to education. Numerous international studies have demonstrated that extending the period of compulsory education effectively addresses issues arising from children not attending school and significantly increases student enrolment rates. The effectiveness of this legislation is enhanced when it is integrated into a broader social dialogue involving stakeholders such as the government, employers, and workers (Hee Yuan Ni, 2023). This

has led to the creation of child labour-related policies such as the National Action Plan on Child Labour (International Labour Organisation, 2020b).

After over ten years of enforcing compulsory primary education, primary-level enrolment has consistently risen annually, culminating in a universal enrolment rate of 91.38% by 2020 (Ministry of Education Malaysia, 2020). On the other hand, secondary-level enrolment continues to face challenges, consistently hovering between 88% and 89% annually, accompanied by a declining transition rate of students from primary to secondary levels (Ministry of Education Malaysia, 2020). Recent research data indicates that in 2023, 14,506 secondary students dropped out of school (New Straits Times, 2024). The primary reasons cited for dropping out included the necessity to work to support their families, poverty, and a lack of interest in schooling. The age at which children are allowed to start working plays a significant role in their decision to leave school prematurely. When the minimum age for employment is lower than the completion of compulsory schooling, children may opt to work legally instead of continuing their education. Conversely, if compulsory schooling concludes before the minimum age for employment, children may be unable to work legally for a certain period, potentially prolonging their stay in school (Sharma, 2022).

When comparing Malaysia's compulsory education enforcement with global standards, it is evident that the country's mandated 6-year education period is relatively limited (Janjang et al., 2023). Compulsory schooling ends at age 12, while the minimum employment age for light work is 13, and the general minimum age for employment is 15. Despite the minimum employment age not being lower than the completion of compulsory schooling, there remains a potential risk of children entering child labour early during secondary education. With compulsory education ending at age 12, there is concern that children may opt out of secondary education, as no legal mechanisms ensure their continued presence in the further education system (Janjang et al., 2023). Some parents' current practices fail to motivate those unaware of the importance of enrolling their children in school. This is a prominent national issue that is widely discussed (Parliament of Malaysia, 2019). The declining enrolment rates in secondary education raise public alarm as they indicate an escalating trend of children engaging in child labour. This trend endangers the nation's welfare. The prevalence of child labour contributes to a widening poverty gap, exacerbates social issues, and fuels instances of underage marriage (Cicca & Krashinsky, 2020). The problem of child labour is particularly

concerning as it has become a significant underlying cause of both Muslim and non-Muslim child marriages in Malaysia. The National Strategy Plan highlights six risk factors for child marriage, one of which is the lack of access to education and poor school attendance. Consequently, ensuring compulsory education is crucial to upholding the right to education among children.

14 CHILD LABOUR IN SABAH

In 2023, Malaysia exported 24.49 million tonnes of palm oil and palm-based products, resulting in a revenue of RM94.95 billion (New Straits Time, 2024). Sabah, in Malaysia, is the second-largest state in palm oil production (Wahab & Dollah, 2022). The rapid expansion in this sector contributed to job opportunities due to labour-intensive production processes and demand for cheap labour sources (United Nations Malaysia, 2019). In contrast to Peninsular Malaysia, Sabah has a distinct policy that permits international migrant workers, primarily from Indonesia and the Philippines, to legally bring their family members, including spouses and children, under a special dependent permit, allowing them to live together (Puder, 2019; Andika, 2021). With the implementation of this policy, it is evident that many immigrant and migrant children from impoverished families are working on various agricultural farms, including in palm oil production, and that children from migrant worker families, refugees, and stateless children are particularly vulnerable to child labour (United Nations Malaysia, 2019). Existing studies also reveal that tens of thousands of Indonesian, Filipino, and stateless children work informally or assist their parents in oil palm-related activities in Sabah (Earthworm Foundation, 2019; Wahab, 2019).

There is potential confusion among different segments of children in Sabah, including migrant children, stateless children, undocumented local children, and undocumented migrant children. For migrant children who are outside their home country, they can either have legal permission to be there, as ‘documented’ or not, known as being ‘undocumented’. Documented migrants in a regular situation enter and stay in a country in accordance with that country’s immigration laws and regulations or international agreements to which the state is a party. Undocumented migrants in an irregular situation lack legal status in a transit or host country due to unauthorised entry, breach of a condition of entry, or visa expiry. Stateless children are those whose parents

originated from another country but who are not considered citizens or nationals under the laws of any country. This also applies to children whose parents have nationality but could not pass it on to their children and those with undetermined nationality (UNICEF, 2023). Children without birth registration or legal identity are particularly vulnerable. The lack of documentation is a root cause of child labour, as it prevents children from accessing formal education in government schools and continuing their education at the secondary level. While there are alternative learning centres providing primary education for non-citizen children, there are no similar government secondary schools for non-citizens (Wahab, 2021; Loganathan et al., 2021).

Child labour in palm oil plantations often faces significant challenges and risks of exploitation, hindering children from enjoying their rights and protection. The challenges are particularly acute for migrant children who lack access to education and health services, often due to their lack of legal identity, such as birth certificates. Limited awareness of the importance of birth registration, high illiteracy rates, and administrative barriers further impede the process of obtaining birth certificates for migrant children (Earthworm, 2019). Moreover, child labour in palm oil plantations is often surrounded by hazardous environments, inadequate infrastructure, and the involvement of children in the production process. It is further revealed that children on oil palm estates were not provided with appropriate protective masks while working, leading to heavy exposure to toxic chemicals. Some children are reportedly engaged in hazardous and heavy activities without suitable protective equipment. These activities have immediate health implications for children and can harm their physical and mental development in the long term (Wahab, 2021). The situation starkly violates children's rights as recognised in the CRC, which mandates protection from economic exploitation and hazardous work that interferes with education or harms their health and development (CRC, Section 32). There is no official statistic on child labour, Malaysia's Ministry of Plantation and Commodities only indicates the presence of child labour and forced labour in the palm oil sector. The existence of previous research studies and public reports does not provide extensive protection for children (Andika, 2019). It can be affected by corrupt government practices that often force business entities to comply with discriminatory and repressive legislation (UNICEF, 2023).

In efforts to address child labour issues, Malaysia has introduced comprehensive standards for the production of sustainable palm oil, including the prohibition of

hazardous child labour in oil palm plantations. The most recognised standards are set by the Roundtable on Sustainable Palm Oil (RSPO) and the Malaysian Sustainable Palm Oil (MSPO) scheme, alongside the 'No Deforestation, No Peat, No Exploitation' (NDPE) policy. MSPO, as a mandatory national framework for Malaysian oil palm plantations, prohibits child labour but allows supervised involvement of children in family farming activities, ensuring it does not interfere with their education or expose them to hazardous conditions. However, concerns exist regarding the piece rate wage system, which can inadvertently facilitate child labour due to the lack of specific guidelines to prevent such occurrences (ILO, 2019). In conjunction with MSPO, NDPE aims to enhance sustainability and reduce exploitation within the palm oil industry (Earthworm, 2020). Additionally, RSPO has established criteria for sustainable palm oil production throughout the supply chain, including a requirement (criterion 6.4) prohibiting the employment or exploitation of children. Despite RSPO's recognition as a leading global standard for sustainable palm oil, criticisms from the Environmental Investigation Agency, a branch of Greenpeace, indicate that RSPO is still considered "woefully substandard" and, in some cases, implicated in 'colluding to disguise violations' (Tullis, 2019).

From a legislative perspective, the Sabah Labour Ordinance governing the employment of children faces significant shortcomings in its alignment with recent amendments to the Children and Young Persons (Employment) Act of 1996. Specifically, the Ordinance lacks crucial definitions of child labour, such as clear specifications for light and hazardous work. Section 72 of the Ordinance permits children and young persons to engage in light work suitable to their capacity in certain approved activities, including family enterprises and public entertainment. However, it fails to define light work and does not establish a minimum age for engaging in such activities. Moreover, the Ordinance lacks specific provisions defining hazardous work, essential for preventing exploitative employment and strengthening safeguards against exploitation. Additionally, the penalties prescribed in the Ordinance for violations related to the employment of children and young persons are relatively lenient. For instance, Section 130F(1) stipulates fines of up to ten-thousand-ringgit, imprisonment for a maximum of two years, or both, which may not adequately deter violations. This legislative gap highlights the urgent need for comprehensive reform to enhance the protection of children in the workforce in Sabah. Clear definitions of light work and hazardous work, along with stricter penalties for

infringements, are essential to ensure effective enforcement and safeguard the rights and well-being of children and young persons.

15 RECOMMENDATIONS TO PROTECT CHILD LABOUR

To overcome child labour issues, the following measures may be taken by the relevant stakeholders. The first would be standardising child labour laws in Malaysia. Due to the dual legal system, CYPA 1966 applies solely to Peninsular Malaysia, while the Labour Ordinance (Sabah Cap. 67) and Labour Ordinance (Sarawak Cap. 76) apply to Sabah and Sarawak respectively. Specifically in Sabah, children and young people are allowed access to employment under specified conditions. (Wahab, 2021). Notably, the Sabah Labour Ordinance (Cap. 67) allows children aged 5 to 14 to engage in light work for up to 17 hours per week. The issue arises when the Sarawak and Sabah Labour Ordinance are yet to be amended to consider the provisions in the CYPA (United Nations Malaysia, 2019). Discrepancies in child labour laws and their enforcement significantly lead to inconsistent child protection in Malaysia. These regional differences undermine the national legal framework's cohesiveness. Stakeholders highlighted that enforcement gaps allow some companies to neglect their legal and moral obligations by employing children and young persons in their operations. Additionally, employers often hire young workers without oversight from authorities (ILO, 2019). As such, it is imperative to standardise child labour laws across Malaysia by revising the Sabah and Sarawak Labour Ordinances to ensure alignment with the Children and Young Persons Act (United Nations Malaysia, 2019). Uniform legal standards would ensure consistent protection and enforcement, thus safeguarding all children equally. Harmonisation would also improve the legal and policy environment to better protect children in Malaysia, particularly in Sabah's plantations.

Secondly, the connection between education and combating child labour suggests that Malaysia should reconsider the mandatory schooling age to align with global standards. In Malaysia, primary education is compulsory, but extending it to secondary levels is crucial. It is suggested that children be kept in school until age 15, which aligns with the legal employment age. This measure is crucial to reduce school dropouts and enhance their educational opportunities. This fundamentally enables children to obtain their rights and prevents early workforce entry among children. Moreover, coordinating

compulsory education and minimum employment age is an alternative way to tackle child labour effectively. CYPA 1966 may set a prohibition age of 12 to ensure full utilisation of compulsory education, barring children below this age from employment to prioritise education (Sharma, 2022). The efficacy of laws and policies mandating compulsory education can help alleviate barriers preventing children from attending school, reducing child labour in the nation. Parents, as the primary custodians of children's rights, play a pivotal role in implementing the proposed 12-year compulsory education policy to ensure its success (Janjang et, al., 2023).

Furthermore, there is a pressing need to enhance monitoring and enforcement mechanisms to ensure the efficacy of child labour laws in Malaysia. The government and relevant stakeholders are responsible for supporting children and young people affected by these regulations. The recent legislative amendment should be accompanied by active and rigorous enforcement measures to maintain the integrity of the law. Therefore, concerted efforts are necessary to implement the National Action Plan on Child Labour, a collaborative initiative by the International Labour Organisation (ILO) and the Malaysian Ministry of Human Resources (MOHR). Monitoring and enforcing child labour laws, especially in the plantation sectors, appears to be limited practice (UNICEF, 2023). Strengthening the labour inspection system is essential to effectively implementing labour laws. Investigating complaints and addressing alleged violations of child labour in plantations are essential. This includes all forms of child labour, such as forced labour, which is considered a serious crime.

In addition to the plantation sector, the informal sector has significantly contributed to the prevalence of child labour. The lack of adequate monitoring of employers, particularly in the palm oil sector, where estates and mills are located in remote areas, poses a significant issue. This problem is attributed to the limited number of labour inspectors available to oversee thousands of companies across various sectors throughout Malaysia, hindering effective enforcement of legal compliance. Thus, the government should consider increasing the number of labour inspectors to monitor companies' compliance in all sectors of the economy and to increase the frequency and coverage of random inspections, especially in high-risk areas in rural and remote areas. Hence, these mechanisms are imperative to ensure comprehensive protection for all children from continuous exploitation.

16 CONCLUSION

The study highlights that while Malaysia has made significant progress in addressing child labour, notable challenges remain. Malaysia's child labour issues are deeply entwined with inconsistencies in legal definitions and enforcement gaps within its dual legal system. Discrepancies between federal and regional laws, particularly in Sabah and Sarawak, complicate the protection and rights of children in employment. Significant challenges persist despite strides in aligning with international standards, such as amending the CYPA 1966 and implementing the MSPO certification. These include ensuring compulsory education, improving enforcement mechanisms, and addressing the vulnerabilities of migrant and stateless children.

To effectively combat child labour, Malaysia should standardise laws related to child labour, extend compulsory education to secondary levels, and enhance monitoring and enforcement practices. Collaborative efforts, both within Malaysia and among ASEAN countries, are crucial in protecting children's rights and eradicating child labour. Policymakers must remain adaptive to socioeconomic changes and committed to international cooperation, ensuring comprehensive and consistent protection for all children.

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Authors' Contribution

The first and second author takes full responsibility for several key aspects of the study: conceiving and designing the research, collecting and analysing the data, interpreting the result, and preparing the manuscript. The third and fourth authors provided valuable feedback on the manuscript and revised it for intellectual content. All authors reviewed the final manuscript.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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