

I. Context of Child Rights in Indonesia

Indonesia is the world's fourth largest nation with an estimated population of 219 million living on 6,000 islands. The country has 300 ethnic groups and 250 languages. Every year, approximately 180,000 children are victims of abuse and violence and thereby potentially come in contact with the law as victims. Today, however, only 10 per cent of them receive legal, medical or psycho-social services¹. Some 5,000 children are brought before the formal justice system² as offenders and about 80,000-100,000 women and children as victims of sexual exploitation or trafficking³. Many more children are witnesses of criminal activity including domestic violence. Most of these children undergo justice procedures, which can have devastating consequences if they are not child friendly and gender sensitive. Children and their families may be stigmatized for life, even if their case has been dismissed for lack of evidence or they have been proven innocent. In the case of trafficking, it is not unusual that child victims are seen as the perpetrators.

Children in contact with the law are being dealt with in largely the same way as adults since there is no specialised child justice system in Indonesia. The system therefore often fails to consider the needs and best interests of the child as well as to address the root causes of the situation. It is crucial that all children receive protection and their human rights are protected and respected at all times.

International and National Regulations

Guided by a number of international legal instruments, guidelines and rules that guarantee protection of the human rights of all persons, including children, involved in the criminal justice system as well as those safeguarding the rights of children specifically, a range of national laws and executive orders were promulgated offering protection to Indonesian children in conflict with the law. Even if the laws offer greater protection to children suspected or convicted of being in conflict with the law than other laws dealing with criminal law offenders in general, they are confined solely to the realm of the formal criminal justice system and provide little opportunities for external or alternative dealings with children accused of committing offences.

Definition of a Juvenile

The different national legal instruments concerned with children suspected or convicted of violating the law and their treatment offer different age of majority definitions for the purposes of criminal law. Under the Criminal Code a child is a person under the age of

¹ National Commission of Women (KOMNAS Perempuan)

² Ministry of Law and Human Rights

³ Data is derived from Ministry of Social Welfare and Indonesian Police statistics.

16, under the Juvenile Court Law the age of majority is 18, in keeping with international standards, while Police statistics use 17 years as a cut off age for children. The above mentioned majority age limits are subject to one condition: a child must not be or have been married.

On the other hand, the Child Protection Law of 2002 defines a child as any person under the age of 18 years. The disadvantage of non-uniform ages of majority is that, subject to different interpretations of the law, many juveniles are deprived of benefiting from the juvenile justice system and are instead treated as adults. In addition, the minimum age of criminal responsibility, which in Indonesia according to Juvenile Court Law is set at 8 years, is extremely low considering that a child of that age is still too young to be accountable for his/her actions.

Statistical Data

In 2005, 3,110 Indonesian children (208 are girls and 2,902 of them are boys) are detained in prisons and detention centers in 2005. This is a decrease by 57,5% from 1999, but 85,8% of the pre-trial detainees and 57,1% of the post-trial ones are still detained together with adults. 1,172 of those children are detained in pre-sentence status, awaiting trial. 85,59% of the juvenile cases processed by police were sent to further judicial proceedings and are most likely to end up being sent to prison by the court. 61,09% of those cases are sent to more than 1 year of imprisonment.

The Role of the Police, Prosecutors and the Court

According to the qualitative findings in 2003, there is a big discrepancy between the juvenile justice system on paper and that exercised in practice. The treatment meted out to juvenile offenders is often not much different to that administered to adults. The Police, as a first point of entry into the justice system, frequently resort to violence during the arrest and interrogation of juveniles suspected of committing crimes. The arrest of the child is often not backed by a warrant nor are the child's parents formally notified of the arrest. Incidences of bribery in regards to "out-of-court settlement" are reportedly common. While in Police detention, children are frequently held in the same cells as adults.

Public prosecutors, in a similar manner, lack an adequate comprehension of the problems faced by children and the awareness on the existing laws related to children. Apparently, within the Indonesian Police and Public Prosecution Service there is no unit or department specifically responsible for dealing with children in conflict with the law. The prosecutors are frequently unwilling to crosscheck the contents of the Police Interrogation Report or to conduct an independent investigation. Their primary concern seems to be to have as expedient a process as possible, so to that end, they frequently advise or intimidate children to accept the charges brought against them. Sometimes they offer to lighten or drop the charges against children suspected of committing offences in return for the payment of a bribe by the children's families.

Court proceedings involving juveniles are also plagued by irregularities with a clear disregard for the Juvenile Court Law. In reality, Court hearings are rarely held with the child being assisted with legal counsel, the probation officer and the parents or guardians are frequently absent, while judges and prosecutors usually wear their official robes. Social inquiry reports prepared by probation officers are often not presented at court, and when they are presented they often contain incorrect information. There is little cooperation between legal institutions to ensure that the solutions found in the Court are in the best interests of the child. Instead, prosecutors tend to require custodial sentences for juveniles, even those who have committed minor offences or disobeyed their parents by playing truant, while the judiciary tends to endorse such requests.

Detention facilities

Children placed in detention facilities are those who have been subject to detention prior to their trial or prior to the final disposition in their cases as well as those who have been placed by the Court's ruling in a custodial institution. In all cases children are frequently found in detention centres and correctional institutions for adults, despite international regulations and national laws that guarantee children's right to be separated from adults. It is also a common occurrence that those children who are technically undergoing rehabilitation following the Court's verdict are placed in detention centres intended for those awaiting trial and vice versa. Detention of children in facilities designated for adults exposes these children to risk of violence, abuse, harmful influence and other forms of violation of their rights.

Situation of children in detention facilities while awaiting trial

The majority of children awaiting trial are placed under detention by order of the District Court. One of the reasons for such a high percentage of children in detention is that they are kept for relatively long periods, sometimes even exceeding explicit domestic standards. Another reason is that transcripts of court verdicts are frequently used as bargaining tools; often the expediency of the delivery of the verdict is related to the amount of money paid to the court officers.

Situation of children in correctional institutions

Boys constitute the majority of children undergoing rehabilitation, while girls account for only about 4% of the total number. More than half of all children undergoing rehabilitation were sentenced to one or more years of imprisonment. This number presents a serious concern because the imposition of heavy sentences in cases involving children could either be the result of a) increases in serious crimes committed by children or b) lack of sensitivity on the part of criminal justice institutions.

Children Involved in Armed Conflict

In 2002, Indonesia signed the Optional Protocol on the Involvement of Children in Armed Conflict but has yet to ratify it. Efforts are currently underway by a number of civil society organizations in lobbying and advocating for the ratification of the Optional Protocol.

The Child Protection Law enacted in 2002⁴ includes specific articles to prevent the recruitment of children in armed groups and armed forces⁵ while also outlining general provisions for children affected by armed conflict⁶. In 1999, the Human Rights Law of Indonesia stipulated similar regulations. However, national legislation to protect children in armed conflict has not been translated into measures for practical implementation.

Gender Based Violence

The 1999 Human Rights Law identifies war crimes, including rape. While there have been some reports on abuse and violence on girls and women, particularly in Aceh⁷, very few cases have been addressed or brought to justice. During the Martial Law in Aceh in 2004-2004, some Government forces were brought to the military court and charged with acts of sexual violence. They were, however, found to be not guilty and all charges dismissed.

Truth and Reconciliation

Indonesia's relations with other countries (such as in the case of the Governments of Indonesia and East Timor) and international community, as well as its local politics (such as the military power or the local governance in Aceh) promote impunity. Reconciliation is used to justify putting aside a human rights tribunal. Therefore, particularly cases of abuse involving children and women are neglected. In 2006 a Truth and Conciliation Commission (TRC) was established, however, very little progress has been made. Following the change of government in East Timor, there is a belief efforts to enact the TRC will be re-invigorated.

⁴ Republic of Indonesia, Law number 23, 2002;

Article 15 of the Republic of Indonesia Law Number 23 Year 2002 on Child Protection provides for the protection of every child from involvement in armed conflict, social unrest, or an "event that involves violence" and "misuse for political activities". Article 63 states that "All persons shall be prohibited from recruiting or equipping children for military or similar purposes, and from putting the lives of children in danger." Article 87 provides for the imprisonment of no more than five years and/or a maximum fine of 100 million rupiah⁴ for anyone who recruits and equips children for military purposes, or "misuses children by involving them in political activities, or in an armed conflict, social disturbance...or in a violent event". It is not known if anyone has been prosecuted under this provision. Article 1 (1) defines a child as someone under 18 years of age.

Article 17 (1) of the 2002 Child Protection Law provides for "(1) Every child whose liberty has been taken away shall be entitled to: a. Receive humane treatment and be housed separately from adults;" as well as legal assistance

⁵ Law number 23, Article 15, 63

⁶ Law number 23, Articles 15, 60, 61, 62, 63

⁷ See Amnesty International report; "The Impact of Impunity on Women in Aceh", 2003

UNICEF's assistance to the Government of Indonesia and other partners in building justice for children has led to the following:

- a) **Improved political commitment from the Government and Law Enforcement Agencies** by strengthening the national policy and legislative framework to safeguard children's rights. Initial steps have been taken toward the ratification of CRC Optional Protocols on Children Affected by Armed Conflict and on Sale of Children, Child Prostitution and Child Pornography.
- b) **Adoption of legal and policy reform**, for example the Child Protection Law and the Victim and Witness Protection Law. In February, a long-awaited Anti-Trafficking Law was adopted by the Parliament. National Plans of Actions have been adopted on the elimination of sexual exploitation, worst forms of child labour and the elimination of trafficking of women and children. The existing Juvenile Court Law is under revision as a Juvenile Justice Law with specific provisions on diversion and restorative justice.
- c) **Increased capacity development for Law Enforcement** through a training Manual for Police, Prosecutors, Probation Officers and Judges on the protection of children. The manual was developed jointly with law enforcement agencies, universities and NGOs and is being widely used in trainings for law enforcers. More than 2,500 law enforcers have been trained on applying child-friendly and gender-sensitive procedures. Around 300 of them are multiplying the trainings all over the provinces. A training manual for health professionals and teachers on recognizing, reporting and referring child abuse cases has been developed and trainings have been conducted.
- d) ***Increased visibility and stakeholder mobilisation on issues related to justice protection for children*** through national and provincial forums, such as National Seminars, Provincial Workshops and Joint-session trainings. A National Task-Force and Provincial Working Groups on Children in Contact with the Law have been established.
- e) ***An enhanced knowledge base on justice for children***, with the country's first-ever Situation Analysis on Juvenile Justice completed in 2003, a survey on child abuse in six major cities of Indonesia in 1999, and assessments of child abuse in East Nusa Tenggara and West Nusa Tenggara in 2003. Participatory research was also carried out on child labour in East Java, on sexual exploitation of children in Central and West Java and on restorative justice in West Java.
- f) ***Models of community-based initiatives have been developed*** to support the implementation of diversion programmes, community-based restorative justice on conflict resolution and child-friendly schools at the provincial level. A number of cases have already been diverted in the pilot areas. UNICEF has also supported

the establishment of a child-friendly courtroom for children, and is supporting a development of a mediation model in provincial courts.

- g) ***Establishment and strengthening of Special Police Units for Women and Children and of Special Counter Trafficking Units:*** UNICEF has been supporting the capacity development of police officers working in Women and Children's Desks (called RPK) and in the Counter Trafficking Unit who are dealing with children's and women's cases.