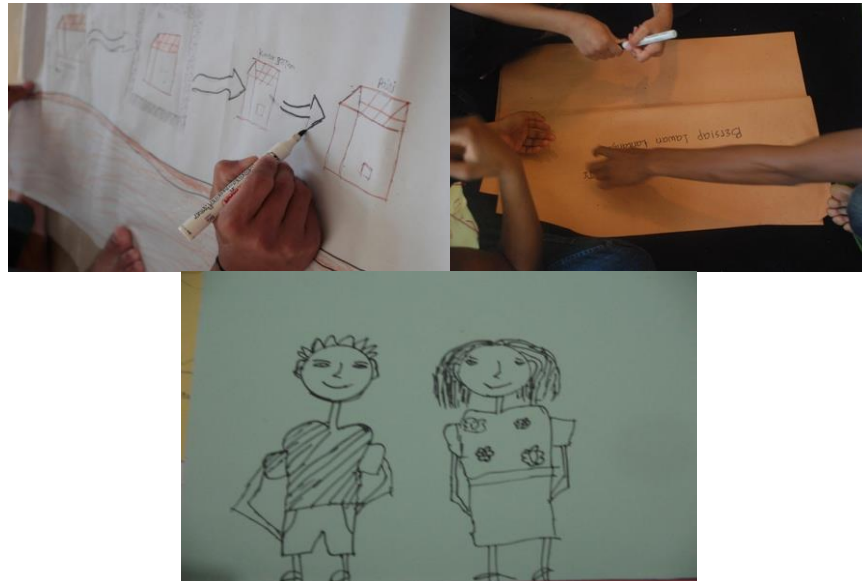


ALTERNATIVE REPORT ON THE THIRD AND FOURTH PERIODIC REPORT OF THE GOVERNMENT OF INDONESIA TO THE COMMITTEE ON THE RIGHTS OF THE CHILD (COVERING THE PERIOD FROM 1997 TO 2012)



Submitted by:

National NGO Coalition for the Rights of the Child Monitoring

Supported by: Save The Children, Terre des Hommes-Netherlands, ChildFund, World Vision Indonesia and Plan Indonesia

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FOREWORD

This Alternative Report is a response of National NGO Coalition for The rights of the child Monitoring, hereinafter referred to as NGO Coalition, on the third and fourth periodic on the implementation of Convention on the Rights of the Child by the Government of Indonesia, which was accepted by The rights of the child Committee of the United Nations on October 18, 2012.

The National NGO Coalition prepared alternative report using four main sources of data, which are: Report of Government of Indonesia for the third and fourth period per October 12, 2012, Convention on the Rights of the Child (CRC), Concluding Observations (by The rights of the child Committee) on the Indonesia second periodic report (KHA/ C/15/Add.223, 26 February 2004), Review Report on the Implementation of Convention on the Rights of the Child in Indonesia for the period of 1997-2009, and update of desk research data derived from secondary data. It is important to know that the Review Report on the Implementation of Convention on the Rights of the Child was initially intended as the alternative report. However, when the report was issued in 2010, the (draft) reports for the third and fourth periods were not yet submitted by the Government of Indonesia to UN CRC Committee. Therefore, NGO Coalition revised the report as Review Report on the Implementation of Convention on the Rights of the Child in Indonesia for temporary use.

Data Collection to support the alternative report was conducted through three activities that are:

1. Children Consultation

Children Consultation is a series of activities conducted to collect data and information directly from children, whether a child as an individual as well as children as a group, by implementing the standard of practice for child participation and child protection policy. To complete the report on children consultation, a research was also conducted to observe children stories of lives and social background of consulted children groups. There were 377 children who directly participated in children consultation. These children came from 14 different children groups, which are: Children who were dropped out from school, Children from the minority groups of indigenous tribes and religions, Children as victim of sexual violence, Internally Displaced Children and Refugee Children, Children who became victims of conflict, Children as students, Trafficked children, Children in conflict with the law, Children with special needs (Disable Children), Street children, Children as victims of commercial sexual exploitation, Children as victims of drug abuse, Children with HIV/AIDS, Factories and convection child labors and Children as housemaids.

Children Consultation was conducted in 14 cities in Indonesia that are: Banda Aceh, Medan, Jakarta, Bandung, Yogyakarta, Semarang, Solo, Palu, Pontianak, Sambas, Mataram, Kupang, Ambon and Jayapura covering 12 (twelve) provinces in Indonesia. Children Consultation involved 14 (fourteen) implementing organizations and 51 supporting Non Governmental Organizations.

2. Research about children situation.

Research is a series of activities to collect and analyze situation and programmatic policy, especially the ones related to the rights of the child on education and health. Research on children situation analyzed deeper the the rights of the child on education and health with special subject of analysis including: children as victims of armed conflict and natural disaster, trafficked children and children in conflict with the law.

3. Legal Review

This is a series of activities to analyze legislation of Indonesia, whether the country legislation complies to UNCRC, follow up the Conclusions of Observations of the CRC Committee and other related instruments. It involves an analysis of the substance and structure of Indonesian legislation, including the Constitution, national laws and local regulations, and all of the legal provisions that relate to the CRC clusters. Nevertheless, the legislation analysis will be particularly focused on the general implementation, definition of the child and general principles clusters.

Alternative Report on the third and fourth periodic reports of CRC implementation by the Government of Indonesia, hereinafter referred to as alternative report, was presented according to the clusters of UNCRC and referred to UNCRC Committee recommendation in the Concluding Observation in 2004 and the concern of NGO Coalition. This Alternative Report is useful for UN CRC Committee as a reference for preparing comparison with periodic report of Government of Indonesia. This report does not only cover the period of 1997 -- 2007, but also up to 2012. This alternative report is also useful for any parties; government, practitioner, academics, parents of children, not only to see the situation of Convention on the Rights of the Child implementation in Indonesia, but also in taking improvement measures for the implementation of CRC.

To support facts and information presented in the alternative report, NGO Coalition attached the report about the Review on the Implementation of the Rights of the Child in Indonesia for the period of 1997 – 2009 and presentation video of observation report.

All processes to prepare this alternative report were supported by INGO Consortium: ChildFund, Plan Indonesia, Save the Children, Terre des Hommes Netherlands and World Vision Indonesia. This report is also supported by the whole members of National NGO coalition and NGO networks in Indonesia. This report is dedicated to children of Indonesia so they can have better lives.

Main Area of Concern and Recommendation

Cluster I: General Measures of Implementation

Reservations

1. NGO Coalition respects the reports of Government of Indonesia that withdrew some of its reservations on articles 1,14,16,17,21,22 and 29 of Convention on the Rights of the Child on 11 January 2005.
2. However, NGO Coalition highlighted the fact that the withdrawal of the reservation of seven Convention on the Rights of the Child articles was not followed by withdrawal of the first paragraph of Indonesian's declaration for the reservation, which states that Convention on the Rights of the Child can only be applied as long as it is align with the Constitutions It makes Convention on the Rights of the Child cannot be fully obeyed. For example, in the consent of having sexual intercourse, the Law no 1 of 1974 regarding Marriage regulated that girls are allowed to get married at the age of 16 years old, and this is clearly violates article 1 of Convention on the Rights of the Child. Similar with the Law No. 23/2002 about Child Protection which was stated as the implementation of Convention on the Rights of the Child actually has reduced the principles for listening to the views and opinions of children as children rights to participate **as long as it is suitable with morality and decency (article 10 Law on Child Protection/UUPA)**
3. **NGO Coalition requested The rights of the child Committee to recommend to Government of Indonesia to withdraw the reservation of the first paragraph of the declaration, which states that Convention on the Rights of the Child can be applied as long as it accordance to Indonesian Constitution.**

Legislation

4. NGO Coalition respects the Government of Indonesia for ratifying ILO Convention No. 105 concerning the Abolition of Forced Labor, ILO Convention No. 138 concerning Minimum Age for Admission to Employment, ILO Convention No. 182 concerning on Worst Forms of Child Labor, UN CRC Optional Protocol related to prostitution, pornography and sale of the children, and UN CRC Optional Protocol about children involvement in armed conflict, in 2012.
5. However, NGO Coalition deeply regrets the fact that Government of Indonesia has not yet ratified Rome Statute on the International Criminal Court, Convention on the Reduction of Statelessness, and Convention on Refugee Status.
6. Based on the recommendation of UN Committee to Indonesian Government on Universal Periodic Report of Human Rights, NGO Coalition regrets the fact that the Government refused to ratify UN CRC Optional Protocol on the communication procedure.
7. NGO Coalition highlights the fact that Government of Indonesia does not adopt provisions on forced labor as arranged in ILO Convention No. 105 into national law.
8. NGO Coalition also highlights that the regulations on sale of children and prostitution are not sufficiently arranged further in national and local law. In fact, in many of local regulations, children as victim of commercial sexual exploitation are being criminalized.
9. NGO Coalition regrets the fact that the Government did not take any implementation measures of the two UN CRC Optional Protocols that were ratified in 2012.

10. NGO Coalition also regrets the fact that the Government refused to improve Convention on the Rights of the Child ratification status with an act. This refusal was done during hearings on discussion about improvement of Convention on the Rights of the Child ratification status and the ratification of two Optional Protocols of UNCRC between the civil society and the Government of Indonesia.
11. NGO Coalition also highlights the fact that the Government of Indonesia does not have mechanism to harmonize conflicting regulations concerning to children by complying to the Convention on the Rights of the Child. For instance, the conflicting age of children arranged in Law no 23 Year 2002 concerning Child Protection with Law no 1 Year 1974 concerning marriage.
- 12. NGO Coalition requested The rights of the child Committee to recommend Government of Indonesia to:**
 - a) Ratify UN CRC Optional Protocols concerning communication procedure, as well as to ratify Rome Statute, Convention to Reduce Statelessness and International Convention relating to the Status of Refugees**
 - b) Increase Convention on the Rights of the Child ratification status from Presidential Decree to be an Act.**
 - c) Prepare new laws concerning on the rights of the child implementation that currently are not available in Indonesia, such as laws that regulates against sale of children and punishment for people who use children for prostitution.**
 - d) Review and harmonize all prevailing laws and local regulations by complying to principles and articles of Convention on the Rights of the Child including but not limited to Law on Child Protection, Law on Marriage no. 1 Year 1974, Labor Law, National Education System Law and other laws that is conflicting with articles in Convention on the Rights of the Child.**
 - e) Indonesia has to develop implementation measures of the two newly ratified UN CRC Optional Protocol; implementation of policy, administrative, programming and budgeting.**

Decentralization

13. NGO Coalition respects the report of Government of Indonesia, which states that the Ministry of Home Affairs owns the mechanism to ensure the consistency of all local regulations with the convention and/or national regulations.
14. However, NGO Coalition also highlights in practice, the Government ignored local regulations that are conflicting with Convention on the Rights of the Child, by being passive in monitoring or reviewing local regulations that do not comply to the provisions and principles of Convention on the Rights of the Child or national regulations.¹

¹ Examples of local regulations that tend to conflict with The rights of the child are: (1) Local Regulation of South Lampung District No 4/2004 about the Prohibition to Conduct Prostitution, Commercial Sex, and Gambling and Prevention of Immoral Acts in the Areas of South Lampung, (2) Local Regulations in Bandar Lampung City No 15/2002 about the Prohibition to Conduct Prostitution and Commercial Sex in the Area of Bandar Lampung City, Local Regulation of Padang Panjang City No 3/2004 about the Prevention, Eradication and Punishment for Social Illness, which explains in the detail in the article six:

- (1) All Women are prohibited from wearing or using any clothing that can stimulate the lust of men who see them in public or in the places that can be accessed by public, except in the specified places.
- (2) The clothing mentioned in verse 1 of this article have the following characteristics :
 - a. showing body parts from knees to breast; and
 - b. tight or transparent that show body curves.

15. NGO Coalition requested The rights of the child Committee to recommend Government of Indonesia to:

- a) Develop national mechanism to ensure services for children in the district level will be improved especially in decentralization setting.**
- b) Develop national mechanism to review and withdraw the laws and local regulations that does not comply with the Convention on the Rights of the Child.**

Coordination and National Plan of Action

16. NGO Coalition respects to the Government of Indonesia for signing several National Action Plans for children. However in practice, most of the National Action Plan was not implemented including by the provincials and districts/municipalities. For example, since 2005, North Sumatra Province has no longer own a Provincial Action Plan on the Elimination of the Worst Forms of Child Labor. Moreover, none of the 33 districts in North Sumatra Province that has neither District Action Plan to eliminate child trafficking nor District Action Plan for Child Friendly City.

17. NGO Coalition highlights that the reason for not implementing National Action Plan is the lack of coordination among departments in the Government in implementing at least 10 National Action Plan, so that each National Action Plan does not maximize in the implementation since there is no support inter government agency.

18. NGO Coalition highlights the fact that the Government has formed so many task forces for each National Action Plan but there is no coordination among those task forces.

19. NGO Coalition concerns about the fact that the Ministry of Women Empowerment and Child Protection does not have capacity to perform coordination function from various National Action Plans relate to children and to implement various strategic policies developed by its ministry. The reason for lacking the capacity is because Ministry of Women Empowerment and Child Protection does not have any authority and capacity over other ministries or different Government structures in provincial and districts to coordinate and instruct the implementation of various action plans and or strategic policy. Furthermore, the Ministry of Women Empowerment and Child Protection is not a technical ministry that can implement all strategic policies that they developed. .

20. NGO Coalition requested The rights of the child Committee to recommend Government of Indonesia to:

- a) Sign a policy to ensure all strategic policies for implementing the Convention on the Rights of the Child, including National Action Plan for children are implemented by all departments of the Government.**
- b) Sign a policy for coordination mechanism, including communication procedure among Government institutions and independent organizations in implementing each national action plan related to protection and fulfillment of the rights of the child.**

And the regulation of North Sumatra Province No. 4 year 2008 about homeless people and beggars who will be criminalized including children who acts as homeless people and beggars.

- c) Provide adequate human and financial resources for the implementation of each national action plan as well as local action plans related to the fulfillment of the rights of the child.**

Independent monitoring

21. In responding to the third and fourth periodic report, NGO Coalition regrets the inaccuracy of the report that states National Commission for the Elimination of the Worst Form of Child Labor has been already existed, while in the reality such commission has never been formed. What was actually formed by the Government is the National Action Committee for the Elimination of the Worst Form of Child Labor.²
22. NGO Coalition highlights Government report states that KPAI and KNBPTA have worked together to investigate, while in practice this collaboration has never happened. KPAI does not have a mandate to do investigation by law and moreover there is not coordination and cooperation mechanism among National Human Rights Institutions.
23. NGO Coalition regrets the fact that there are a lot of Action Committee of the Government, such as KNBPTA in local level, are not functioning at all, while the cases of worst form of child labor or cases of violence against children occurs in the provinces or districts/cities level. There are a lot of cases of child slavery in various working situations, including children slavery in Tangerang³ or slavery case in Kerinci District, Riau Province in 2013⁴ that were failed to be handled by KNPBTA or KPAI.
24. NGO Coalition respects to the Government for forming Indonesia Child Protection Commission (KPAI - *Komisi Perlindungan Anak Indonesia*) through Presidential Decree No. 77 Year 2003 as an independent institution. However, in reality, based on Presidential Decree and the Law, KPAI is not an independent institution because the authority given by the Government to this institution is very limited, including not having the authority to investigate and legal standing to protect children in disadvantage circumstances.
- 25. NGO Coalition requested The rights of the child Committee to recommend to Government of Indonesia:**
- a) To develop a mechanism for evaluating all national committees and commissions in all level (national to district level) to see the effectiveness and implemented functions by involving Government and society.**
 - b) To strengthen the function of KPAI by having authority to investigate and legal standing to protect children in disadvantage circumstances.**

² Indonesian President Decree No. 12 year 2001 National Action Committee for eradication of worst forms of child labor

³ Slavery in pan factory in Tangerang, Police found 5 under-age children,
<http://news.detik.com/read/2013/05/05/054536/2238186/10/?nd772204topnews>

⁴ 10 teenagers become victims of slavery in Kerinci – Riau , <http://harianandalas.com/Berita-Utama/10-Remaja-Kisaran-Jadi-Korban-Perbudakan-di-Kerinci-Riau>

Data collection

26. NGO Coalition respects to the Government efforts to start developing data system in their reports, however it is unfortunate that these reports are contradicting with Government's own statements in National Medium Term Development Plan (*Rencana Pembangunan Jangka Menengah Nasional - RPJMN*) 2010 – 2014, which states that the challenge for the Government in developing child protection policies and programs is the unavailability of comprehensive and integrated data. Since 1997 to 2007 there were no efforts to develop centralized data system for Indonesian children. Data and information collection in different departments of the Government are not connected and not systematic. For example, the Department of Home Affairs has the authority to collect data about birth and civil registration, while Statistic Bureau collects data for population census and development survey. However, the two data systems are not connected to each other. The different standards in each department for collecting data related with children are also worsen the situation.
27. NGO Coalition highlights the fact that since 1997 to 2013 the Government of Indonesia has no comprehensive data about the situation of Indonesian Children, especially children who need special protection. The Government only relies on data of cases from Indonesian Police or data from INGO as well as UN agencies.
- 28. NGO Coalition requested the rights of the child Committee to recommend Government of Indonesia to develop data collection and documentation system which is centralized with statistic vital and disaggregated system, including developing data system for children who need special protection.**

Dissemination of the Convention

29. NGO Coalition respects to report of the Government that states the dissemination of Convention on the Rights of the Child, concluding observation to all stakeholders including children. NGO Coalition also respects report of the Government that states TOT on Convention on the Rights of the Child has been conducted in 33 provinces.
30. NGO Coalition regrets that the TOT on Convention on the Rights of the Child was conducted by the central Government only for local Government through very limited de-concentration funding. It has never been actually implemented by the local, provincial and district government for the stakeholders in their area, including for children. The reason for that situation is because the absence of mechanism to ensure the local government to disseminate or to train other stakeholders about Convention on the Rights of the Child.
31. NGO Coalition finds the facts that from 377 children who participated in children consultation in 10 provinces, with one of the children groups come from ethnic minority, only 16 children who have knowledge about Convention on the Rights of the Child. From the 16 children who have the knowledge about Convention on the Rights of the Child only 2% who stated that they received the knowledge from the government. It was also known that from 377 children who participated, only 0.1% who knows that the government has to prepare periodical report about the implementation of Convention on the Rights of the Child and it has to be submitted to the United Nations. It shows that

the government did not implement adequate efforts to disseminate Convention on the Rights of the Child in Indonesia.

32. NGO Coalition also deeply regrets the fact that the government has never involved all children components, especially children who need special protection, in preparing the government report, which is a form of violation of non-discrimination principle (article 2 and 12). From 377 children consulted by NGO Coalition, none of them was invited by the government to participate in the development of government report for the third and fourth periods.
- 33. NGO Coalition requested The rights of the child Committee to recommend Government of Indonesia to:**
- a) To disseminate Convention on the Rights of the Child to all children, including children who need special protection, children from the minority groups and children of indigenous people.**
 - b) To develop a policy that ensures the participation of representatives of all children components in the development of government reports to The rights of the child Committee, especially children who are classified in special protection and other vulnerable children.**

Cluster II: The Definition of the Child

34. The problems of the definition of the child can be seen from the existing law system in Indonesia. Although Indonesian Constitution (amendment of UUD 1945) acknowledges some of the rights of children, but the definition of the child and the limitation of the age of the child are not included. On the other hand, Law No. 39/1999 regarding Human Rights article 1 verse 5 states that a child is all human being under 18 (eighteen) years old and not married yet, including the child who is still in the wombs if it is for their interests.
35. NGO Coalition regrets that many problems occur because of child definition in law number 39/1999. The first problem is that marriage can cause a child no longer as a child by definition, even though the age is still below 18 years old, and this means that marriage can cause a child to lose his/her opportunity to enjoy his/her rights as a child. The second is there is not an argument to support babies in the wombs as a child either in Law Number 39/1999 or in Law Number 23/2002. It is different from the standard international definition.
36. NGO Coalition concerns on the fact that government does not review and withdraw Law number 1/1974 about Marriage that. The law has discriminatory legal age for marriage in which 16 years old for girls and 19 years old for boys. It causes plenty of children still lose their rights because of early marriage. The government has not shown any serious efforts to change the regulation because they do not seem to be brave enough to confirm the definition either about the age limit for maturity or the age limit for marriage.
37. Although child protection law has already regulated child age complying to Convention on the Rights of the Child, in reality there are still a lot of different arrangements of age limit of children in various laws and regulations that are applied in Indonesia, namely:

- a) The minimum age for the consent of having sexual intercourse is 12 years for girls based on KUHAP or 16 years for girls and 19 years for boys based on Law of Marriage; The age of 18 for girls and boys based on Law No. 23/2002 on Child Protection. Therefore, consent for having sexual intercourse is regulated within the range of 12-18 years old in Indonesia law system, which is still very young and vulnerable to be exploited.
- b) Minimum Age for Admission for Employment. NGO Coalition respects the effort of Government of Indonesia to ratify ILO Convention 138 and ILO Convention 182 and has included the two conventions as part of Indonesian National Law. Although in Law No. 13/2003 about Labor defines children as under 18 years old (Article 1 verse 26) and employers are prohibited to employ children (Article 68), this law still justifies employers to employ children in the age of 13 (thirteen) up to 15 (fifteen) for light works as far as the works do not harm their development and physical, mental and social health (Article 69 verse 1) and additional requirements about written permission from parents or guardian, working agreement between employers and parents or guardian with maximum 3 (three) working hours, work is conducted during the day and should not disturb their school times, work safety and health, clear working relationship; and receiving salary in accordance with the regulations.

Riskily, it was found that in all Indonesian laws, including law number 13/2003, there are no specific regulations for children in the age 16-17 years old. It triggers a question whether children in the age 16-17 years old are allowed to work for any kind of works unless the worst forms of child labor, or does it mean that children in the age 16-17 years old should not work at all. There are no answers found in the laws and regulations. Does it also mean that children in the age 16-17 years old are not allowed to do light works as regulated for children in the age 13-15 years old. The answer for this question was also not found. The absence of regulations about children in the age 16-17 years old created a gap in the law for anyone to use and made it difficult for Ministry of Employment, as the controlling department, to supervise.

- c) Minimum age of criminal responsibility

United Nations The rights of the child Committee emphasized paragraph 77 United Nations The rights of the child Committee Observations that:

The Committee seriously restating their concerns that determining 8 years old as the minimum age of criminal responsibility is too low. Originally Indonesia refers to Law Number 3/1997 about Juvenile Court regulates that the limit for age of criminal responsibility is minimum 8 (eight) years old and has not reached 18 years old, and have never been married (Article 4 verse 1). A child would still be confronted in Juvenile Court if the child conducted a crime at the limit age as intended in verse (1) and to be put on trial after the child concerned over the age limit, but has not yet reached the age 21 (twenty-one) years old, will still be confronted in Juvenile Court. Even a child who has not reached the age of 8 years old and suspected to conduct a crime could be investigated. This regulation is stated in article 5:

NGO Coalition concerns on the case of a child have not yet reached the age of 8 (eight) years old and conducted or suspected to conduct a crime, the child can be investigated by investigator.

- (1) In case a child has not yet reached 8 years old and conducted or suspected convicting the crime, the child can be investigated by an investigator.
- (2) If according to the examination results, the Investigator thinks that the child as mentioned in verse (1) can still be guided by the parents, guardian or foster parents, the Investigator will return the child back to his/her parents, guardians or foster parents
- (3) If according to the examination results, the investigator thinks that the child as mentioned in verse (1) can no longer be guided by the parents, guardian or foster parents, the Investigator will hand the child to the Ministry of Social Affairs after hearing the considerations of Social Counselors.

The regulation about 8 years old as the minimum age for criminal responsibility clearly will deliver children to very dangerous situations. Especially looking at the result of children consultation with children who experienced and/or still experiencing conflict with law in North Sumatra, Banten, West Java, Central Java and Special Area Jogjakarta. They all have experience of physical abuse, and even tortured by the investigators, wardens or prison authorities. Furthermore the additional requirements, which state that even children under 8 years old will be investigated if they are suspected to do criminal actions. There are no guarantees that the investigators have investigation techniques other than the techniques that they apply to children over 8 years old, to be used for children under 8 years old.

However, NGO Coalition appreciates the step forward of the Government of Indonesia for revising and issuing Law No. 11 year 2012 dated 20 July 2012 about Juvenile Court System by lifting up the age of criminal responsibility of children in range of 12-18 years old. Nonetheless, this new Law will only entry into force in two years after the Law is signed.

d) Minimum Age for Consuming Alcoholic

The Act of Civil Law (KUHP) articles 300 verse 1 (2);

“Anyone who deliberately makes a child who has not reached the age of sixteen years old drunk Threatened with at most one year in prison or paying fine about four thousands five hundred Rupiahs”

The formulation of this article made it possible to be interpreted as anyone who has reached the age of 16 years old and above may be made drunk. This regulation is actually already violates Law No. 23 of 2002 regarding Child Protection (UUPA) that acknowledges the rights of the child to optimally grow and develop. As well as the provisions and principles of Convention on the Rights of the Child that protects children with the age below 18 years old from all forms of violence or dangers that threatened their growth and development.

38. NGO Coalition requires The rights of the child Committee to recommend to Government of Indonesia to :

- a) **Raise the age of girls to get married/forced to get married at least the same with the age of boys, which is 19 years old, by amending Law No. 1/1974 that allows parents, if permitted by legal marriage institution to wed their children at any age.**
- b) **Raise the age for the consent of having sexual intercourse to 18 years old from 12 years old in the Civil Law (KUHP) and 16 years old in Law Number 1/1974**
- c) **Review Law of Labor (UU Number 12/2003) to comply to the ILO Convention concerning the minimum age for the admission of employment, which is 15 years old and to regulate clear and strong regulations about the permission for children in the age of 16-17 years old to work.**
- d) **Raise the minimum age for consuming drinks that contain alcohol in Civil law from 16 to 19 years old. Indonesia still have to raise the age for crime responsibility to at least 16 years old from originally 12 years old based on Law no 11/2012.**

Cluster III: General Principles

39. General principles, which are non-discrimination, the best interest for the child, the rights to live, survival and development, and respect to the view of the child are the basis that should be applied in all political, judicial and administrative decisions, and also in programs and service activities that will impact on children in order to guard and fulfill the rights of children.
40. NGO Coalition respects the fact that the general principles have been included in Indonesian Constitution (UUD 1945, second amendment in Year 2000) although not yet completely. By observing article 28 B verse 2, the the rights of the child only recognized as (a) rights to live, grow and develop, (b) protected from violence and discrimination. There is no acknowledgement in the Constitutions for the rights of the child to be heard and principles for the best interest of children. At the same time Law number 23/2002 about Child Protection stated that implementation of the rights of the child to be heard/respect to the view of the child **as long as it is accordance to morality and decency.**

Non-discrimination

41. NGO Coalition respects the fact that the general principles have been included, although not yet fully, in Indonesian Constitution (UUD 1945, second amendment in Year 2000). By observing article 28 B verse 2, the rights of the child is only recognized as (a) rights to live, grow and develop, (b) protected from violence and discrimination. In the Constitution, there is no recognition about the respect to the view of the child as well as the best interest of the child principle. At the same time

Law Number 23/2002 about Child Protection stated that implementation of respect to the view of the child has to be accordance to **morality and decency principle**.

42. NGO Coalition positively welcomes Indonesia's effort to bring into reality the non-discrimination principle to children with China citizenship by withdrawing Presidential Decree Number 14 in 1967 about primary policy on religion, faith and culture of Chinese Community and issuing President Decree Number 6 in 2000; signing to Law Number 12 in 2006 about Indonesian Citizenship and Law Number 23 in 2006 about Population Administration that eliminates discrimination on the Chinese descent children with Indonesian citizenship and children from different nationality marriage.
43. However, the NGO Coalition regrets that UU Number 1/1974 is still applied but by the rights of the child Committee is considered discriminative in regulating minimum age of marriage (16 years old for girls and 19 years old for boys). Aside to that, implementation of policy in the minister level to the lower level still discriminates especially the children from the groups that should have get special protection. The consultation to street children, children with HIV/AIDS, children with disability, children in conflict with the law, children from religious or ethnic minority groups, children as victims sexual and commercial exploitation, children as victims of child trafficking, child labor, children as victims of drugs and addictive substances abuse, indicate forms of discriminations that happen due to their status.
44. Discriminative actions can threaten the other rights of the child. The case on children of Ahmadiyah is a real example of violation of non-discrimination principle and the rights to live, to survive and to optimally develop. Their status as the children of Amhadiyah followers caused them threatened to be killed, to lose access on education, separated from their parents and traumatized. The country, through the police, did not take any action even when they are supposed to move to stop the attack, and should have punished and arrested the attackers. As the result of the absence of the state to protect its citizen, the rights of Ahmadiyah children as victims that include recovery, and rehabilitation have been violated.

Respects to the view of the child

45. NGO Coalition respects the measures to open space for children to communicate their view, by forming child forums, conducting national forums, providing recognition for young leaders, and involving children through Children consultation, especially in discussing about draft of National Action Plan to Eliminate Violence against Children. However, the measures do not reflect that respect to the view of the child is integrated into Indonesia policy and mechanism since there is no mechanism that ensure and guide how children are involved meaningfully in decision process of government policy and program in all levels.
46. NGO Coalition also regrets that Indonesia has not yet fully involving children in report writing on implementation of Convention on the Rights of the Child to child right committee, at least by involving children from various child forums that was formed in many parts in Indonesia and children who need special protection
47. **NGO Coalition requires the rights of the child Committee to recommend Government of Indonesia to:**

- a) **Amend the Constitution 1945 and include the whole principles of the rights of the child including respect to the view of the child, and the best interest of the child to all matters that affects their lives.**
- b) **Amend Law Number 23/2002 about Child Protection to really guarantee and implement CRC principle on respect to the view of the child, and matters that affect children live is for the best interest of the child.**
- c) **Withdraw Law Number 1/1965 that was used as the basis for government policies at the minister level to discriminate religions that are considered unofficial**
- d) **Amend Law Number 1/1974 that becomes the reason why children who were born from the marriage of unofficial religions or from couples with different religions could lose their rights to know their father because the quotes of birth certificate only include the name of the mother.**
- e) **Enforce non-discrimination principles that is already recognize in Indonesian Constitution by prosecuting the perpetrator of violence against children of Ahmadiyah Group and other children and also to provide recovery and rehabilitation to the victims of violence.**

Cluster IV: Civil Rights and Freedom

Birth registration and right to nationality

48. NGO Coalition respects government measure to sign Law Number 23/2006 about Population Administrative that requires the citizen to report the population events such as being born, died, moving, married and divorce. Unfortunately this law implements long bureaucracy for birth registration, specifically for one age year old child or above. Only in 2013 the Constitutional Court cancelled the documentation of birth registration over one year old through Court Order, but the process is enough with Bureau of Citizenship and civil registration.⁵
49. NGO Coalition respects the Government of Indonesia for withdrawing Law Number 62/1958 and replacing by Law Number 12/2006 about Citizenship, as a step forward because the new Law eliminates the discrimination toward children whose fathers are foreigner to have Indonesian nationality. Former law orders children who has father a foreigner might be rejected for having Indonesian nationality.
50. NGO Coalition highlights the fact that there is no adequate mechanism and implementation guideline for government officials in provincials and district levels to ensure the implementation of Law No. 12 /2006. This situation is worsened by the weakness of government human resources in the provinces and district to implement the Law, and the inadequacy of government measures to disseminate citizenship law.

⁵ Constitutional court signed circular letter no.1/2013 regarding abandoning circular letter of minister of interior number no. 6/2012 regarding the guideline in signing birth registration over one years old by state court order

51. NGO Coalition regrets that the substance of Law number 23/2003 relating birth certificate puts the responsibility on the citizen, not on the government obligation. The implementation of this law requires citizen to actively report the birth, while the government acts passively waiting for the report. Moreover, there are huge numbers of administrative requirements to comply the birth registration process that has to be fulfilled by the parents.
52. NGO Coalition also regrets the fact that the Government of Indonesia did not fully amend the law and local regulations to ensure the birth registration is the human rights. Law of Civil Administration Number 23/2006 indicates that birth registration is not fully out of charge for the citizen. Article 90 verse 1 points a financial penalty for citizens who registered child birth beyond 60 days after the delivery.
53. Within decentralization setting, the local governments, such as DKI Jakarta, are also allowed to issue local regulation to collect fees for birth certificate. Data from National Social Economy Survey in the year 2011 shows that 37% of the surveyed community stated that the high price for processing birth certificate is the main reason for the community not to process the certificate.
54. Target for 100% birth registration in 2015 will be difficult to achieve because up to 2011 Indonesia only achieved 59% of registration below four years old. Moreover, NGO Coalition highlights the gap between provinces in terms of the quantity of children who are registered.⁶
55. NGO Coalition also regrets that very small change of progress in achieving 100% of birth registration before and after population administration law is signed. In 2005, the children below four years old who registered is about 42,82%. It is before signing the law of population administration. While in 2011 the children below four years old who registered is about 59%, it is after signing the law.⁷
56. NGO Coalition concerns on the fact that children from certain religious and indigenous groups are still not registered such as children from Ahmadiyah, Jehovah, Merapu and Boti Groups, as well as children who were born from illegal marriage, or even if they are registered, only the mother's name is listed in the certificate.⁸

⁶ National Survey data year 2011 indicates that the gap of children whose birth were registered among provinces is quite wide. For instance number of registered children in Yogyakarta Province is 89.9% while in East Nusa Tenggara is only 29,9%.

⁷ 2005 national survey was conducted by Statistic center agency and 2011 national social economic survey was also conducted by the same agency.

⁸ There are around 200 children who were born from the Boti Ethnic Group from 97 families. (Plan Indonesia field data data Program Unit Soe) whose births were not registered due to the marriage status of their parents that are not yet registered in Civil Office and Registration because the marriage of their parents are only based on culture. Furthermore, they do not have Birth Letter of Explanation because most of them were born without the help of birth attendances or not in the health facilities. (Research of Plan Indonesia, 2013)

57. NGO Coalition highlights that there are still a high number of orphans, born to mothers with Indonesian citizenship and father with other citizenship who are asylum seeker and transited in Indonesia, do not get sufficient protection from the government.⁹
58. NGO Coalition also concerns about the fact that Indonesia does not have redress mechanism for children whose rights for identities were taken, for instance falsifying of age, name or address as the elements of identity. This specifically happens to children who are victims of exploitation and trafficking.
59. **NGO Coalition requires the rights of the child Committee to recommend Government of Indonesia to:**
- a) Ensure all policies concerning birth registration and all of its standard operational procedures are not discriminative to any religious and faith groups that are not recognized by the government, to children who were born from illegal marriage and children whose identities were falsified.**
 - b) Implement dissemination measures widely for the community including children and to train government officers about Law number 12/2006 and prepare guideline for the implementation of the law.**
 - c) Amend Law Number 23 /2006 specifically:**
 - Article about financial penalty in birth registration and to stop practices of local governments to collect fees for processing birth certificate by withdrawing all local regulations that are conflicting with Child Right Convention provisions.**
 - About Civil Administration as well as government regulations in the lower levels in order the rights of children who were born from illegal marriages to know their fathers are guaranteed, the birth of children from minority ethnic and religious groups are recorded and the state will be active in birth registration.**

Violence against children

60. NGO Coalition respects the report of the government, which describes that the government guarantees the rights of every child to be protected from violence, discrimination, harassment, and mistreatment under Law No. 39 year 1999 regarding Human Rights, Law No. 23 of 2002 regarding Child Protection and Law No. 23 of 2004 regarding Elimination of Domestic Violence

⁹ <http://www.theaustralian.com.au/news/features/children-desperate-and-born-stateless/story-e6frg6z6-1226619233368>

61. However NGO Coalition regrets the government measure in forming Integrated Service Center and Empowerment of Women and Children (P2TP2A), which was designed to handle children and women victims of violence in provincial and district levels that are not replicated by most of the districts/cities in Indonesia. Formation of P2TP2A was not also followed by provision of adequate human and financial resources to ensure the service for recovery, protection and reintegration of children victims of violence can be well provided.
62. NGO Coalition respects the Government of Indonesia who adopts Minimum Service Standard (SPM) and Standard Operation Procedure (SOP) on handling children and women victims of violence in the 2010 through Ministry of Women Empowerment and Child Protection decree. However other related government agencies such as Department of Health, Social Welfare Department, Department of Employment, and Police do not apply SPM and SOP in their respective departments. The SPM and SOP were also not disseminated appropriately to all provinces and districts/cities.
63. NGO Coalition respects to report of the Government of Indonesia which states that the Government has developed recording and reporting system for violence events from the national to district levels. However, in reality, NGO Coalition regrets that the systems are not functioning in almost all districts /cities. As a matter of fact, the Government does not have a single systematic data collection mechanism for violence against children in various situations.
64. NGO Coalition highlights the fact that there are still many cases of violence against children within the institutions, especially during the time of trial and in the juvenile prison. The prison has become the place for children to learn about criminality. Children who were arrested by the police were placed with adults prisoners.¹⁰ Results of Children Consultation held by NGO Coalition show those 24 out of 33 children who are in conflict with the law stated that they were arrested by the police and held together with adults.
65. NGO Coalition highlights the recovery and reintegration treatments for children victims of violence are still very weak, which were proven by the inexistence of court order that gives the rights for recovery and reintegration for victim of violence against children.
66. NGO Coalition concerns about the Law of Child Protection that does not regulate on how the state will develop system and mechanism for implementing their obligation to protect the victim of violence against children, related to their rights to get recovery.
67. NGO Coalition respects report of the Government of Indonesia that acknowledges the challenges in fulfilling the rights of children to be protected from any kinds of violence. However, NGO Coalition regrets this acknowledgement, because until the report was submitted, there are no optimum efforts followed up to protect children from violence in various settings and situations.
68. Even though there were no in concluding observation of UN CRC Committee in the year 2004, but it was included in the concluding observations in the year 1994, the NGO Coalition deeply regrets the fact that violence of civil community to followers of certain religious groups such as Ahmadiyah still

¹⁰ http://www.unicef.org/indonesia/id/reallives_19909.html

exists. The violence of course affect children from these groups and happened continuously in 2001, 2002, 2004, 2007 and 2010 including in West Nusa Tenggara and West Jawa. Violence also happened to followers of Syiah Moslem in East Jawa in the year 2010 -- 2013 that also affected their children who were prohibited from attending schools.

69. NGO Coalition highlights the fact that there are no optimum efforts from the government to protect children from violence caused by the openness of information both from printed or electronic media. Children are also never been involved in determining protection mechanism and information that are suitable for them

70. NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:

- a) **Amend Child Protection Law number 23 Year 2002 to order on how the government creates system and mechanism for recovery and reintegration of children victims of violence based on the principles on the rights of the child and justice.**
- b) **Develop integrated data system about violence against children in all provinces and districts/cities, and should also be applied in all units of government officers in the central or local levels, and followed up by providing adequate infrastructures and resources.**
- c) **Stop violence practices, including physical punishment performed by law enforcement officers, providing the needs for protection for all victims of violence, including sexual violence, forming a national system that receive, monitor and investigate reports, legally follow up the cases with guarantee the rights to confidentiality of the victims and providing supports in for counseling, recovering and reintegration.**
- d) **Guarantee freedom of children to follow their religion and faith by withdrawing all regulations that prevent the freedom and to stop practices of violence by civil society towards other followers of other religions that are considered as minority or illegal faith by putting the violence perpetrator on trial.**

Corporal Punishment

71. NGO Coalition highlights that since 1997 the government does not address corporal punishment in Indonesian Law although in the periodic report the Government stated that they guarantee protection from violence for children through the Law No. 39 year 1999 regarding Human Rights, Law No. 23 of 2002 regarding Child Protection and Law No. 23 of 2004 regarding Elimination of Domestic Violence

72. NGO Coalition highlights that the article in Law of Child Protection that regulates on the protection of children from violence at school was not followed by operational policies such as preventive, complains and case management mechanisms for violence cases at schools. Children consultation held for student children and drop-out children in North Sumatra, Nanggroe Aceh Darussalam (NAD), Central Jawa, DIY, NTB, NTT, Ambon, Palu and Papua indicates that from all of consulted children, 42% (forty two percent) stated that they have experienced physical abused performed by their teachers at schools.

73. NGO Coalition highlights that since 1997 there are no efforts from the government to integrate positive discipline and anti-violence approach at schools and no systematic education and/or training for educators to help them to implement non-violence education for children at schools.
74. **NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:**
- a) **Prepare a policy and implementation guidelines for prevention and case management of corporal punishment in schools**
 - b) **Conduct systematic measures in implementing positive discipline and anti-violence approach at school, including improvement of the ability of educators to apply non-violence education.**

Cluster V. Family Environment and Alternative Care

Parental responsibilities

75. NGO Coalition respects to government in signing Article 26 paragraph (1) Law No. 23 of 2002 stipulates that upbringing, caring, educating and protecting a child is the obligation and responsibility of parents. However, NGO Coalition regrets that there are no adequate administrative, programmatic and budgeting measures to implement the mentioned article 26.
76. NGO Coalition highlights the fact that the government did not conduct optimum measures in preparing policies and child care programs in the period of 1997 to 2010. Only in the year 2011 the government issued Regulation of Social Ministry of Indonesian Republic No 30/HUK/2011 about the National Standard for Child Care (SNPA) for Agency of Child Welfare and piloting SNPA in collaboration with Save the Children Indonesia. However, NGO Coalition regrets the fact that the Ministry of Social Affairs does not have any system and strategy to provide technical assistance in SNPA implementation
77. NGO Coalition emphasizes that the family planning program does not have a specific strategy to help parents in implementing their responsibility to nurture, care and protect their children. NGO Coalition also emphasizes that the government does not have any policy to strengthen family based care, In fact the policy and intervention of the government through the Social Welfare Department strongly referred to institution/orphanage based care.
78. NGO Coalition highlights the fact that the government has not ever developed a policy that targets on the child care within the extended families and not the biological parents, while the fact from National Social Economy Survey in 2009 indicates that 8.3 million Indonesian children do not live with their parents and 88% among those children are nurtured by their extended families.¹¹

79. **NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:**

¹¹ (Social Culture and Education Module) (quoted from Indonesian Children Profile 2011, Published by KPPPA, page 23 – 29) shows that in Indonesia 10, 25 % of children do not live with their parents, either biological father or mother, whether the parents are still alive or already died (children living with other families). In West Nusa Tenggara, 22,13 % children do not live with their parents.

- a) **Focus on the service of child care to be more family-based, by strengthening the policy frame for family-based care and to widely disseminate including strengthening human resources.**
- b) **Develop child protection system that focused on strengthening government sectors to respond to child protection and care issues by integrating comprehensive child protection with social protection for community**
- c) **Strengthen social welfare sectors and professions that hold key roles in responding child protection and care**

Family reunification

- 80. NGO Coalition respects government confession about the unsuccessfulness of various efforts to return children from former- East Timor Province to be re-united with their families in Timor Leste.
- 81. NGO Coalition respects statement of the government who will remain obligated and responsible to provide fulfillment of rights and protection for refugee children, and encourage UNHCR to support the process of determination of the legal status of former East Timor refugee, including children.
- 82. However, NGO Coalition regrets the fact that there are no policy measures and program conducted by the government in order to ensure the reintegration of former East Timor refugees with their families.

Children deprived of their family environment

- 83. NGO Coalition respects guarantying from the government to the rights of the child to receive care from their biological parents, while institutional care will be the last choice, as written in Law number 23/2002 regarding Child Protection.
- 84. NGO Coalition regrets that until this report is being written, the fact is anyone can establish an orphanage without having to show the needs, capacity or resources to provide such service.
- 85. NGO Coalition highlights that the acts of violence often happens in the orphanages or in temporary shelters because there are not minimum standard and supervision developed for those orphanages. A sufficient and disaggregated data system is not developed to register children who live in orphanages, so there are no available valid data about the condition of children living in orphanages.
- 86. NGO Coalition respects confession of the government about many problems existing around the issue of orphanage.
- 87. NGO Coalition regrets the fact that the Government has not yet awared about the problems as result of a big amount of Government budget allocation that flows to orphanage institutions. In the meantime, there is no budget allocated to support poor families to keep their children to stay under the family care. This situation encourages a lot of people/institution to initiate to establish orphanages as a mean to access Government funding.
- 88. NGO Coalition respects efforts of the Government (Social Welfare Department, working with Save the Children) in developing rough data that can guarantee all decisions made by the Government will be based on the knowledge and understanding about the situation in the orphanage and other alternative care.

89. NGO Coalition appreciates the government plan as stated in the periodical report, to conduct corrective actions related to institutional based care.
90. NGO Coalition emphasizes on the importance of Government to pay attention to the high number of children placed in the orphanage because their parents cannot afford to fund education of their children. The focus of service of the orphanages is not on the need for care, but for education access in the period between 5 to 17 years (around 90% of children living in the orphanages still have both of their parents).¹²

Child Adoption

91. NGO Coalition respects the good intention of the Government to ensure the rights of adopted children as the implementation of article 39 verse 1 Law Number 23/2002 about Child Protection: "Child adoption can only be done for the best interest of the child and will be conducted based on the local custom and the applied laws and regulations"
92. NGO Coalition regrets the fact that there is no Government Regulations developed to ensure all principles mentioned in Law Number 23/2002 translated into the policy and in regulations to guide the services provided for children.
93. NGO Coalition regrets the number of illegal adoption that is still very high, within and across country.
94. NGO Coalition respects future Government plan related to the improvement of child adoption mechanism as stated in the periodic report.
95. **NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:**
 - a) **Develop a supervision system and minimum standard for institution-based care to stop abuse and acts of violence, and determine institution-based care as the last alternative, and to be provided for children who need special protection measures.**
 - b) **Re-prioritize family care through massive national campaign. Should develop a national policy focuses on integrated approach that involves key sectors, including health, education and legal to seriously conduct the campaign.**
 - c) **Include the services for children and families, not only financial but also psycho-social support to ensure the parents can meet their role as parents and caregiver effectively and appropriately. It has to be done not only to stop family separation but also to help returning hundreds of thousands of institutionalized children.**
 - d) **The government should continue and enlarge the provision of direct support scheme for vulnerable children with specific objective to strengthen families to care for their children, including providing supports for single parent, families supported grandparents and families who care children abandoned by their biological parents. Scheme for Follow up Support should also be developed for families of re-united children.**

¹² Someone that matters, UNICEF and Save the Children, Kementrian Sosial, 2009

Cluster IV: Basic Health and Welfare

Children with Disabilities

96. NGO Coalition (agrees with the National Human Rights Commission) assessed that Law Number 4 Year 1997 on People with Disability is more social based than human rights base. Therefore, the NGO Coalition positively welcomes government legalization of Convention on the Rights of People with Disability through Law Number 19 Year 2011.
97. NGO Coalition regrets the fact that accurate and comprehensive data on the lives and livelihood characteristic of people with disability with various types of disability is not available. The available official data used by the Government so far is the data analyzed from several surveys (National Social Economic Survey). This type of data is very general and the use is very limited for analysis and reporting needs, and cannot be used as the basis for intervention in designing programs which are directed to overcome problems.
98. NGO Coalition appreciates National Action Plan of Indonesian People with Disability 2004-2013 that includes formation of Association of Family and Parents of Children with Disability, and Early Detection, Intervention and Education. However, the NGO Coalition regrets that the National Action Plan does not implemented as expected because it was not clear which party as leading sector.
99. NGO Coalition respects the legalization of Law Number 36 about Health at the end of 2009. It was stated that the Government is obliged to ensure the availability of health service facilities and to facilitate people with disability to live independently and productively in social and economic sectors. However, it is unfortunate that the Law does not have any operational regulation.
100. NGO Coalition considers that the Government has not seriously implemented recommendations of The rights of the child Committee about the equal employment opportunity for people with disability. Although it has been stated in article 28 Law No. 4/1997 about criminal sanction for state or private companies that do not provide equal opportunity and treatment for people with disability, but there are no state or private companies convicted for refusing people with disability as their employees.

Health and Welfare

101. Law Number 23 Year 2002 about Child Protection, especially Articles 44 verse 3 states that the government provides facilities and organizes health efforts and free service for children with poor parents. However, NGO Coalition regrets there is not clear sanction for violators of the rights of the child for health in this Law.
102. NGO Coalition respects Law Number 36 Year 2009 about health that includes some important issues in the content: Effort for mother health, breast-feeding, provision special time and facilities for babies in the work place and public facilities. It is also stated that the Government is obliged to provide complete immunization to all babies and children. The law also strictly states that each baby and child have the rights to be protected and avoided from all forms of discrimination and abusive actions that can affect their health.
103. NGO Coalition respects immunization program, which was one of the most popular program of Health Department as part of preventive actions to reduce the mortality rate. However, up to 2009, the achievement of this program was still very weak. For instance the case of measles immunization. 90% of under-fives are targeted to get measles immunization in 2010 based on

Universal Child Immunization (UCI). In reality, the scope of measles immunization on babies in DKI Jakarta Province (Capital of the country) has only reached 60 per cent in year 2009. (Kompas, Sept 7, 2009)

104. NGO Coalition positively welcomes the reduction of number of Mother Mortality rates that in the year 1991 reached 425 per 100,000 live births, to 228 per 100,000 live births in the year 2007 (Indonesian Demography and Health Survey - *Survey Demografi dan Kesehatan Indonesia* – SDKI - 2007).¹³
105. However, NGO Coalition regrets the high number of Baby Mortality (*Angka Kematian Bayi* – AKB) which is 34 per 1,000 live births. Aside to that, Number of Under-five Mortality Rate (*Angka Kematian Balita* – AKABA) is also still very high, which is 44 per 1,000 live births (SDKI 2007). The result of SDKI 2012 indicates that there is no significant progress, and the AKB is still reaches the number 32 (only reduced 2 points from 2007) and AKABA in number 40 (only reduced 4 points compared to 2007).
106. The number above is a national number, but the problem is there are serious gaps between the numbers in the provinces. 13 Provinces have higher AKB compared to National AKBA. AKB in West Sulawesi is 74, and so is the AKABA. Only 7 provinces reached better AKABA compared to the national status. The AKABA of West Sulawesi is 96.
107. NGO Coalition appreciates government efforts in reducing diseases and malnutrition, through early initiation and exclusive breastfeeding campaign, and other activities. NGO Coalition emphasizes so those efforts will not only be curative actions, but also in forms of preventive actions, for example by empowering family economy.
108. NGO Coalition regrets the high number of environment-based diseases that contributes more than 80% of the diseases suffered by babies and under-fives (Susenas 2006). Similarly, mortality rate caused by diarrhea is also still very high, which is 75 per 100,000 populations (Directory of Environmental Health, Department of Health, 2001).

Adolescent health

109. NGO Coalition respects efforts of the government to issue Presidential Decree Number 75 year 2006 about National AIDS Commission that includes the regulations about protection for children living with HIV/AIDS. Similarly, NGO Coalition sees the effort to improve programs to manage HIV/AIDS.
110. NGO Coalition regrets the fact that the number of AIDS cases in Indonesia continuously grows from year 2000 to June 2009, as reported by Indonesia Health Department AIDS Surveillance year 1987 to June 2009. In Children Consultation conducted in Papua for children with at risks with HIV/AIDS or who is currently living with HIV/AIDS, it was clearly described that there are no serious efforts made by the government to prevent or to cure children with HIV/AIDS. It is already known that Papua is the HIV/AIDS highest prevalence area.
111. Related with the danger of tobacco, NGO Coalition respects government statement which states that the content of cigarettes as mentioned in article 2 verse (1) Law Number 29 year 2007 about tax. In the preamble considering letter a PP Number 19/2007 stated that “That cigarettes is one of

¹³However the number (228) is still far below the target of Millennium Development Goals that yang set target 110 per 100.000 live births.

addictive substances that when used will harm individuals and community, therefore security efforts are necessary". However, NGO Coalition regrets the fact that there are no real measures taken to protect children and youth from the danger of smoking, including cigarettes advertising.

112. NGO Coalition respects Law Number 36 year 2009 about the Health (legalized in November 2009) that begins to regulate the tobacco. However, because the Law is still quite new and there are no regulations for the implementation, it is not yet effectively implemented.
113. NGO Coalition respects the release of Circular Letter from Directorate General of Community Health No.HK00.07.1.31047a year 2006 that forbids paramedics and health profession groups to conduct female genital mutilation practices.
114. In Indonesia cultural/religious practices known as "female circumcision" do exist, which an action to scratch the skin is covering the front part of the clitoris without cutting the clitoris. This practice is considered different with female genital mutilation practice because it does not damage the female genital. However, NGO Coalition regrets the Regulation of Health Ministry No 1636 year 2010 issued by the government, about the female genital mutilation which means legalizing the female genital mutilation. This decision is also conflicting with Circular Letter of Directorate General of Community health Number HK00.07.1.31047a year 2006"

Social Security System

115. The Government already has Laws on National Social Security System (Law Number 40/2004). However, NGO Coalition regrets that the law actually limits the social security for children whose parents work on formal sectors and/or a member of social security system program such as *Jamsostek*, *Taspen*, *Asabri* and *Askes*. Therefore, referring to the current law, children whose parents are working in informal sectors such as small traders, scavengers, farmers etc. will not receive social security.
116. NGO Coalition respects *Askeskin* program, a kind of health security net that is managed by the government special for poor community during critical situations. However, as admitted directly by the government, this program is still facing some challenges and wrong targets due to the weakness of data collection and the lack of socialization.
117. **NGO Coalition requires the rights of the child Committee to recommend Government of Indonesia to:**
 - a) **Stop discrimination towards children with disability by providing equal opportunity and services on the rights of the child, including the rights for health, education and social services.**
 - b) **Develop social security system and health system that are accessible for all children without discrimination.**
 - c) **Develop the regulations about child health to be more "operational", by equipping laws with draft of implementation regulations, withdrawing irrelevant law (Law on Child Welfare), revising discriminative law, especially on children with special needs, and ensuring that designs of health services and basic welfare are also non-discriminative.**

- d) **Formulize coordination mechanism among different institutions related to child health issues, and between the central and local government in implementing health programs. All implementers in central and local levels should have the common understanding related to decentralized health efforts and paradigms based on promotion and prevention. Health promotion efforts, for instance on HIV/AIDS, need to be done systematically to touch children in the lowest level.**

Cluster VII: Right to Education, Leisure and Cultural Activities

Universal and Free Education

118. NGO Coalition appreciates Government of Indonesia for including the rights of the child for education in Constitution 1945 and Law No. 23 year 2002 about Child Protection, ratifying Economic, Social and Cultural Covenant in year 2005; and legalizing Law No. 20 year 2003 about National Education System (*Sistem Pendidikan Nasional—Sisdiknas*).
119. However, NGO Coalition regrets the fact that in the law and regulations, the Government of Indonesia does not seriously integrate the rights of every child to achieve education. The Law provides education access only for the citizen, but not for each child/person.¹⁴ Therefore, children without birth certificate or child refugees from other countries including Children from Rohingya, Myanmar, have no access to education.
120. Although, by law, the Government of Indonesia prioritized the education budget at least 20% for the State Income and Expenditure Budget (*Anggaran Pendapatan dan Belanja Negara – APBN*) and the Local Income and Expenditure budget, but free of charge basic education is still far from what is expected¹⁵, and even conflicting with the constitution.
121. However, NGO Coalition respects Government report confessing there are problems related to objective of education in the periodic reports including inappropriate budget allocation and the high cost of education.
122. NGO Coalition regrets there is not special policy related to protection for pregnant students to avoid school drop-outs, while on the other hand the rights for every child to achieve education is

¹⁴ Constitutional 1945 article 31 (1) Each citizen has the right for education, Law National Education System 5 (1) Each citizen have equal right to qualified education.

¹⁵ Result of Indonesia Corruption Watch (ICW) Research in year 2006 in 10 districts/cities in Indonesia indicates that parents of elementary students still bear education fee for around IDR 1,5 million (USD 1600), consists of direct and indirect fees. Research and Development of Ministry of Education in 2003 has published that the portion of education fee born by the parents is around 63,35 - 87,75 percent of the total education fee. However, the portion of education fee born by the government and community (aside from the parents/students) is around 12,22 percent and 36,65 % from the total education fee. National survey data in year 2010 indicates that most of children aged 7-17 years old have not gone to school or no longer go to school for not having the money to pay for 56,18 percent.

mandated by Convention on the Rights of the Child, Economy, Social and Cultural Covenant, as well as Indonesian Constitution.

123. NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:

- a) Review State Constitution (UUD 1945) and Law on National Education System to emphasize that the rights to get education is the rights of every person, not just the rights of Indonesian citizen. Education is the right of every child living in Indonesia.**
- b) Immediately formulate policies to ensure the education in Indonesia to fulfill standards of Human Rights and the rights of the child.**

Education Quality

124. NGO Coalition respects Government of Indonesia that provides material the introduction about human rights integrated in the education curriculum for elementary, junior high and high school levels in Citizenship Education subject. Meanwhile, the right of the child introduction is given to elementary students in the first semester.

125. However, based on a more detail research, there are some errors in the human rights education curriculum. For instance, the scope of materials for elementary students' grade 2 for the second semester is to know the rights and responsibilities of children. In reality, the perspective of human rights does not recognize rights and responsibilities. Therefore, children who are learning about this subject will have wrong knowledge about human rights in general and the rights of the child specifically.

126. The national exams that were originally intended to measure standard and quality of education, turns out to violate the rights of the child on education. Even the Government does not execute results of decision of Supreme Court in year 2009¹⁶ that stated the negligence of human rights fulfillment of the citizens, specifically rights on education and rights of children as victims of National Exams.

127. NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:

- a) Review the curriculum of human rights and the rights of the child education at schools.**
- b) Ensure the implementation of exams does not make children lose their rights to access education. National exams with imposed standards in principal are a form of the rights of the child violation.**

Violence in Schools

128. Explicitly, protection for children from violence at school is regulated in the Law Number 23 year 2002 about Child Protection, article 54. However, NGO Coalition regrets that until the end of

¹⁶ Decision of Supreme Court RI No: 2596 K/PDT/2008 Jo. Decision of High Court Jakarta No 377/PDT/2007/PT.DKI Jo. 228/Pdt.G/2006/PN.JKT.PST.

reporting period, the Government of Indonesia does not have any policy regulating the prevention and handle of violence cases specifically in the educational institution.¹⁷

129. NGO Coalition also regrets the fact that until the end of reporting period, there is no review or changes made to Teacher Professional Code of Conduct that has existed since 1973.¹⁸ In accordance with the ratification of international instrument and the national regulations/policies related to child protection, specifically education, the teachers are also expected to improve their knowledge and understanding on the rights of children and their skill to use methodology that values the principles of the rights of the child, including not using violence method. However, NGO Coalition deeply regrets the high number of teachers using violence/physical punishment.¹⁹
130. Although after the period of this reporting, the Government of Indonesia has legalized policies related with prevention and handle cases the of violence against children, in reality the violence in schools continues to happen,²⁰ including in forms of fighting between students from different schools.²¹
131. NGO Coalition also regrets the process of teacher certification does not include prevention and protection of children from violence performed by the teachers. Certification process done only for competency test to obtain education certificate. The intended competency test done by reviewing portfolio as part of acknowledgement of the teachers' professional experiences in forms of appraisal on documents that describe academic qualifications, education and training, teaching experiences, academic performance, participation in scientific forum and so on.²²
132. However, NGO Coalition appreciates the report of the government confessing that the problems faced in achieving the education objective is the limitation of the quality and quantity of the educators and education personnel.

¹⁷ New policy legalized after the period of this reporting, which is Permeneg PP & PA No.2 year 2010 about National Action Plan to Prevent and Manage Violence on Children. After that in year 2011, Legalized Permeneg PP & PA No. 6 year 2011 about Guideline to Prevent Violence Against Children in the Family, Community and Education Institution Environments.

¹⁸ Revision and Improvement of Teacher Profession Code of Conduct will only be conducted after the fourth reporting period, which is the year 2008 and will be legalized for implementation in 1 January 2013.

¹⁹Result of UNICEF and Atmajaya Universitas survey (2006) stated that in Central Jawa there are 80% of teachers admit that they have punished their students by screaming in front of the class, 55% of teachers admit that they have ordered their students to stand in front of the class as punishment. Di South Sulawesi, 90% teachers admit that they have ordered their students to stand in front of the class, 73% scream at students in front of the class and 54% ordered their students to clean or wipe the toilet. In Sumatera, 90% teachers admit that they have ordered their students to stand in front of the class as punishment and 80% screamed at their students in front of the class room.

²⁰ Result of KPAI meeting in year 2012 recorded that from 1026 child respondents (Elementary School-SD/Madrasah Ibtidaiyah(MI), Junior high schools - SMP/MTS (Madrasah Tsanawiyah), and high schools - SMA/MA (Madrasah Aliyah) in 9 provinces, , 87,6 percent of children admit that they have experienced violence at schools in forms of physical and psychological.

²¹ KPAI data year 2012, fighting among students in Jabodetabek recorded 53 times with 19 casualties.

²² Article 2 Regulations of Ministry of National Education No. 18/2007 about Certification of Teachers

133. **NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:**
- a) **Systematically apply child-rights-based education method. The environment of education and policy to prevent violence and corporal punishment at schools should also seriously be developed and implemented.**
 - b) **Develop complain and case management procedure and mechanism so children at school can complain and helped when a violence or corporal punishment occur at schools.**

Cluster VIII: Special Protection Measures

Children in Emergency

Children Refugee

134. NGO Coalition appreciates the measures taken by the Government of Indonesia to implement recommendations of the committee on the guarantee for quick and safe repatriation of children from former East Timor Province to Timor Leste. Unfortunately, the information does not indicate any measures have been taken and the data informed still show the high number of refugee staying in East Nusa Tenggara area.
135. NGO Coalition regrets the fact that there is no adequate information available about the management of Internally Displaced Children in the areas of armed conflict, ethnic conflict, and social tensions in Aceh, West Kalimantan, Central Sulawesi and Maluku.
136. NGO Coalition respects the attention and legislative measures and the efforts from Government of Indonesia to provide guarantee for security for the Internally Displaced Children as victims of natural disasters.
137. **NGO Coalition requires the rights of the child Committee to recommend Government of Indonesia to seriously fulfill their responsibility to respect, protect and fulfill the rights of children as refugee and or internally displaced. Authorized institutions need to work effectively, including in the coordination among institutions that has not run well, and to work together with other institutions outside the government Those efforts should be conducted by putting the principle respect to the view of the child as the principle of the program as a whole.**

Children in armed conflict, including Physical and Psychological Recovery and Social Re-integration

140. Indonesia has guaranteed the rights of children not to be involved in armed conflict. It is admitted that there are various conflict situations happened in Nanggroe Aceh Darussalam, Papua, Maluku, North Maluku, West Kalimantan and Central Sulawesi, but there are no enough evidence about the involvement of children in conflict as stated by the Government of Indonesia.
141. According to the report collected by *Yayasan KKSP, Yayasan Anak Bangsa*, People Crisis Center, Jesuit Refugee Service (JRS) in 2004 in *Child Soldier Global Report* year 2008, there are children below the age of 18 year old who had been used by GAM or TNI as informants or spies, guards,

logistic providers, even as fighters or armed soldiers (combatant) in armed conflict in Aceh since year 1976. However the exact number of those children is never available. Children involvement in armed conflict was also mentioned by the participants of Children Consultation representing the conflict areas including Aceh, South Sulawesi and Maluku.

- 142. NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:**
- a) quickly respond all problems happening in the community to avoid conflict and social tensions or to avoid causing prolonged tensions among community groups such as among ethnic, religious and civil society groups. The response should prioritize the principles of human rights and the rights of the child.**
 - b) Provide protection guarantee so children are not involved in conflict; punish the parties that recruit children to be combatant.**
 - c) Provide guarantee for children who are victims of armed conflict or social tensions so they can enjoy their rights by getting supports of rehabilitation, recovery and reintegration from any parties.**

Children in conflict with the law

143. NGO Coalition states the concerns on the handling of children in conflict with the law, which is seen as prioritizing detention and imprisonment, and the whole practice of handling of the legal process does not prioritize the best interest of the child and tend not to suit the applied procedure. It means that there are plenty violence to the rights of the child in law institution.
144. Based on Children Consultation involving 39 children in 4 areas, it was found that children who are in conflict with the law have bad experiences, starting with the detention to imprisonment process that breaks the applied procedures and neglect the rights of children.
145. NGO Coalition regrets that up to this moment there are no strategy and policy for recovery and reintegration of children who are in conflict with the law.
146. However, NGO Coalition appreciates the Government of Indonesia for presenting an honest report about the situation and challenges that they face regarding the detention of children who are in conflict with the law.
147. NGO Coalition positively welcomes the legalization of Law Number 11 Year 2012 about Juvenile Justice System that replaced Law Number 3 Year 1997. In this Law, the age of criminal responsibility is raised from eight (8) to 12 years old. The new law also prioritizes restorative justice approach.
- 148. NGO Coalition requires the rights of the child Committee to recommend the Government of Indonesia to reinforce and implement the regulation article 37 (a) that no child will lose his/her freedom unlawfully and arbitrarily. Detention, imprisonment or punishment of children will be conducted as the last measure and for the shortest period. The violations perform by law enforcer in treating children in conflict with the law should be followed up by taking the rights of the child violator to law process.**

Children in situations of Exploitations, Including Physical and Psychological Recovery and Social Reintegration

Child Economic Exploitation, Including Child Labor

149. NGO Coalition respects the effort of Government of Indonesia to overcome the child labor problems, especially in the worst forms of child labor. However, NGO Coalition regrets the regulations about child labor in Law Number 13 year 2007 for not being assertive. Article 68 stated that the employers are not allowed to hire children, but the article 69 stated that regulations as referred in Article 68 can be excluded for children age 13-15 years old to perform light works as long as the works do not harm their development and physical, mental and social health.
150. NGO Coalition still regrets for the children who are involved in underground economy or children who are involved in putting out system or hired as household workers, in which their conditions cannot be monitored so there are no available service and protection for them.
151. **NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:**
- a) **Prepare a preventive strategy so children will not enter harmful working environment, one of the ways is by providing free access to education for all children including providing access of education for child labor who are returning to schools.**
 - b) **Strengthen the law enforcement of existing law that protect children to the actors of child economic exploitation by intensify the inspection and monitoring of companies, labor agency and or factory as well as households that have domestic worker**

Street Children

152. NGO Coalition regrets the fact that Government of Indonesia has not yet provided reports about street children situation and the measures they have taken to implement the recommendation of the committee.
153. NGO Coalition concerns on the high number of children who are practicing economic activities or even living in the streets. Even though various preventive and recovery programs have been conducted, but the approach contained in local regulations of various areas in Indonesia still positioned street children as criminals and the sweeping process are still dominated with violence
154. NGO Coalition appreciates the Government of Yogyakarta Province that has the initiative to develop and legalized local regulations (Local Regulations Number 6 Year 2011) by using the new paradigm, which using protection approach and based on the rights of the child in preventing and treating street children.
155. **NGO Coalition requires the rights of the child Committee to recommend Government of Indonesia to:**

- a) **Withdraw or change Local Regulations in various areas in Indonesia that criminalizes street children. Those are considered conflicting with the principles of human and the rights of the child even the existing law relate to children.**
- b) **Withdraw violence approach in treating street children. Sweeping process has not contribution at all in the efforts to manage street children issues.**
- c) **Maintain and develop preventive and case management programs by strengthening resiliencies of families, providing supports and accessibility for children to access free education, and continuing to create the program that can help children move out from the street.**

Drugs Abuse

156. NGO Coalition concerns on the increase number of children who consume drugs. National Narcotics Agency (*Badan Narkotika Nasional – BNN*) in year 2001-2006 recorded that the drug cases increased from 3,617 cases to 17,355 cases. In other words, in five years the number of cases increase 5 times. Based on the result of Prevention, Eradication, Mis-used, illegal market of drug of BNN survey in year 2007, more than 22,000 drug cases happened among high school students, 6,000 cases among junior high students, and 3,000 cases among elementary school students. In fact in the celebration of International Drug Day on June 26, 2008, BNN released the number of drug users in Indonesia reached 4 million people and 70% among that are students. (http://www.republika.co.id/berita/65565/Pelajar_Dominasi_Pengguna_Narkoba).
157. NGO Coalition also concerns about the fact that children who consume drugs will be considered to be punished, as seen in the report of Government of Indonesia.
158. NGO Coalition sends the highest appreciation to the Government of Indonesia on the policy of Chief Police that applies discretion for drug users and positioned children as suspect and not victim. It is followed by the change of Law No. 22 Year 1997 about Narcotics to Law No. 35 Year 2009, with one of the provisions is to position the drug users not as criminals but as victims who need rehabilitations.
159. **NGO Coalition recommends the Government of Indonesia through child rights committee to**
- a) **Develop effective preventive actions by providing educations about the danger of using drugs, especially for children in the elementary schools to high schools,**
 - b) **Provide facilities for recovery for children victims of drugs with the handling management that based on the principles of the rights of the child,**
 - c) **Punish heavy punishment for anyone who influence the children to consume drugs.**

Sexual Exploitation and Sexual Harassment

160. National Action Plan to Eliminate Child Commercial Sexual Exploitation has been signed by the Government of Indonesia. Unfortunately, the plan of action has not been followed up in the provincial and district/city levels. The preventive, recovery and reintegration measures for children victims of sexual exploitation and harassment are seen as not effective.

161. NGO Coalition very deeply concerns about the children victims of sexual exploitation and harassment. It is belief the number of children victims of sexual exploitation increases with changing pattern and mode based on individuals or small groups.
162. NGO Coalition highlights that there is no firm regulation or policies so far that can firmly arrest the actors of sexual harassment and exploitation. Moreover, children as victims of sexual harassment and exploitation are considered as the criminals.
163. NGO Coalition appreciates the ratification of Optional Protocols of Convention on the Rights of the Child about prostitution, pornography and sale on children in January 2012.
- 164. NGO Coalition requires the rights of the child Committee to recommend Government of Indonesia to:**
- a) **Place victims of sexual exploitation as well as victims of violence are the victims and not criminals. For that intention, referring to recommendation of the general measures of implementations, to withdraw all local regulations that have criminalized children victims of sexual exploitation and to develop law and regulations that criminalized anyone who use children in prostitution.**
 - b) **Work very hard to improve the capacity of law enforcer to have investigation techniques that uphold the dignity of the victims, as well as to allocate budget so the special units in the police in district level can provide child friendly environment, and have the resource to manage that.**
 - c) **Allocate adequate funding to apply effort for preventing, managing, recovering and social reintegrating for children victims of sexual harassment and exploitation.**

Sale, Trafficking and Abduction

165. NGO Coalition appreciates Government of Indonesia who has tried to overcome human selling and trafficking by ratifying Palermo Protocol and legalizing Law number 21 year 2007 about Eradication of Trafficking in Persons, followed by the supporting policies and measures to develop bilateral coordination with various countries.
166. Unfortunately, the Law number 21 year 2007 about Eradication of Trafficking in Persons does not include definitions about child trafficking, so the concern is there will be a lot of child trafficking that will not be considered as child trafficking cases (referring to the available definition is limited to person trafficking so it has to meet all the elements, including the ways used).
167. NGO Coalition regrets that Anti-human trafficking task force that formed by government does not effectively work either in national, provinces and district. Moreover, still many districts do not have the task force.
- 168. NGO Coalition requires The rights of the child Committee to recommend Government of Indonesia to:**
- a) **Amend Law Number 21 Year 2007 about Eradication of Trafficking in Persons, especially to include definitions about child trafficking.**

- b) **With the decentralization setting, the Government of Indonesia needs to develop a mechanism so coordination among institutions, including law enforcer from one district to another can start to work from the level of prevention, investigation as well as fulfillment of the rights of the child as victims; Reintegration and recovery.**
- c) **Switch the paradigm from the perspective of seeing children victims of trafficking as criminal to children as victim, including by punishing actor who falsify identity of victims and start identifying parties who are potential to conduct child trafficking.**