

# REVIEW REPORT THE IMPLEMENTATION OF CONVENTION ON THE RIGHTS OF THE CHILD IN INDONESIA 1997-2009

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We, the National NGO Coalition for Child Rights Monitoring and the Consortium International NGO would like to thank you to all children who have eagerly expressed the their views and opinions during the drafting of this report.

We also would like to thank you to local organizations, individual, child rights experts and volunteer who have been involved in the process of research, legal review and child consultation.

And lastly, we would like to thank you to all contributors of this review report who have been working hard to analyze and integrate all the findings from research, legal review and child consultation in to this review report.

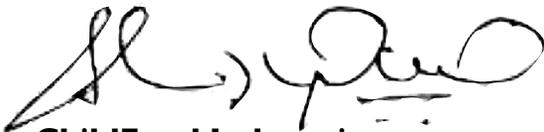
# **FORWARD FROM CONSORTIUM INTERNATIONAL NGO**

We would like to congratulate the National NGO Coalition for Child Rights Monitoring for completing the Review Report on the Implementation of the Convention on the Rights of the Child in Indonesia 1997-2009. This review report will become the main source of Alternative Report to the Government of Indonesia's periodic report III-IV (1997-2007) to the Committee of UN CRC on the Implementation of CRC Indonesia once it is submitted.

The process to draft this report has started since the end of 2007 through researches of legislatives, policies and programmatic measures of the Government of Indonesia. Most importantly, the child consultation process has been conducted from 2008 through 2009 in 14 (fourteen) provinces covering 14 (fourteen) child groups and issues.

As part of the global movement in making child rights a reality globally, we are grateful that we have been partnering and supporting the National NGO Coalition for Child Rights Monitoring in Indonesia in the process of drafting this review report.

This review report sees the implementation of the Convention on the Rights of the Child in Indonesia through civil society's and children's perspectives. We hope that the findings and recommendations presented in the report will be considered by all the duty bearers of child rights realization in Indonesia.



**ChildFund Indonesia**

Sharon Thangadurai



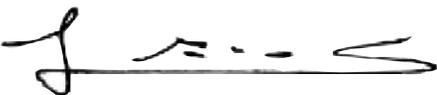
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# FORWARD FROM NATIONAL NGO COALITION FOR CHILD RIGHTS MONITORING IN INDONESIA

Child rights issues are too often not taken seriously. Therefore in almost every planning developed by the government, child rights issues are being kept aside. In every planning document, be it at national or provincial level, child rights have never been considered as one of the indicators, let alone as the main indicator. Likewise in our law system and procedures, there is very few that regulates child rights. At the same time, there is still a misperception in understanding child rights issues.

Therefore, ratifying the Convention on the Rights of the Child (CRC) and other relevant international instruments, which will subsequently be followed by other Acts or domestic regulations in line with the CRC, is a hope for a better world for children in the future. It will at least serve as a reference for upholding and protecting child rights in Indonesia. Furthermore, child rights issue is no longer a strange topic to be put forward in the national and provincial political agenda. The question is whether this political agenda is in line with child rights and human rights perspectives or, on the contrary, does it divert the main issue to another topic? This is where the right paradigm and perspective is required.

This book of Review Report (based on Legal Review, Policy Review and Child Consultation) aims to place child rights issues in the perspective of child rights and human rights. Taking this perspective as a starting point, we can then assess the legal, policy and situational analysis of child rights in Indonesia while taking into account children's opinion. Integrating children's opinion into this review is deemed essential because disregarding their opinion would reduce the essence of child rights perspectives. This review model is meant to provide us an objective, comprehensive and critical standpoint on child rights conditions in Indonesia. In so doing, we are more informed of what we have achieved and what remains as the major problems to be fixed in the future. Furthermore, by using this review model, we are expected to comprehend children's real expectations.

If we are of the same opinion that child rights have to be integrated in the national and provincial political agenda, each one of us should be involved in pushing forward a change of paradigm in our development planning, a reform of law system and a restructuring of the current institutions to be more sensitive and accommodative of child rights issues. Our involvement based on each of our own expertise is required. It is in that context that the National NGO Coalition for Child Rights Monitoring is willing to work together, hand in hand with anyone who is interested in this struggle.

Yes we can!



Ahmad Taufan Damanik  
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# CHAPTER I

## INTRODUCTION

*Muhammad Jailani.*

### ***Convention on the Rights of the Child and Alternative Report***

The Convention on the Rights of the Child is a comprehensive instrument that represents a bringing together of the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and the Covenant on Economic, Social and Cultural Rights, and is specifically directed at children bearing in mind that children, in the context of their growth and development, require special treatment. The Convention on the Rights of the Child was adopted by the United Nations in 1989, and consists of 54 articles that enshrine fundamental rights and liberties for children, and take account of their needs in the form of special help and protection arising out of their vulnerability.

Indonesia signed the Convention on the Rights of the Child (CRC) in 1990, and since its ratification, Indonesia has been bound by international law to implement its provisions. This means that Indonesia is obligated to protect, fulfill, respect and promote the rights of children, as recognized by the CRC. To achieve this goal, Indonesia needs to adopt legislative, administrative and programmatic measures so as to ensure that the rights of children are realized. As a signatory to the CRC, Indonesia is also required to ratify other international human rights instruments that are related to the CRC.

In line with the provisions of the Convention on the Rights of the Child, after two years following ratification Indonesia is required to submit a preliminary report on the Convention's implementation to the United Nations Committee on the Rights of the Child, and regular reports every five years thereafter. Based on the Indonesian government's reports, and other reports, including reports from civil society organizations and children, the UN Committee on the Rights of the Child will engage in a constructive and open dialog with Indonesia. Subsequently, the Committee will adopt a Concluding Observation on Indonesia, setting out the progress that has been made, concerns and recommendations. Following that, Indonesia must take follow-up action on the recommendations of the Committee.

In the States Parties Reporting Guidelines issued by the UN Committee on the Rights of the Child in 2005, States Parties are required to prepare their reports based on CRC Clusters designed by the Committee.<sup>1</sup> These clusters are as follows:

1. General Measures of Implementation;
2. Definition of the Child;
3. General Principles;
4. Civil Rights and liberties Freedom;
5. Family Environment and Alternative Care;
6. Basic Health and Welfare;
7. Education, Leisure and Cultural Activity;
8. Special Protection Measures.

Each of the above clusters must refer to:

1. Follow-up measures taken by the State Party based on the Concluding Observation arrived at as a result of the monitoring conducted by the UN Committee on the Rights of the Child and submitted to the State Party in respect of each periodic report.

2. Comprehensive national programs and monitoring. This aspect requires the state to provide information to the UN Committee on the Rights of the Child regarding the measures that have been taken by the state to ensure the effective implementation of the CRC, including the implementation monitoring mechanisms put in place by the state.
3. Funding allocations and other resources, including information on the allocation of national budget resources and the availability of other resources, including international funding and funding provided by private sector banks.
4. Statistical data, including annual statistical data disaggregated on the basis of age, sex, gender, minorities, and so forth.
5. Constraints and difficulties, including information on the problems faced by the state in fulfilling its obligations under the CRC and implementation targets.

The Indonesian government's preliminary report, which covered the period 1990-1992, was submitted in 1993, while the first periodic report covered the period 1993-1997. The government's second report was submitted to the UN Committee on the Rights of the Child at the start of 2002, and was reviewed by the Committee in January 2004. Indonesia was then required to submit a report on 7 October 2007, constituting the third and fourth reports covering the period from 1997 to 2007.

Besides requiring states parties to submit periodic reports, the UN Committee on the Rights of the Child also seeks information from civil society in connection with the implementation of the CRC. The Committee also seeks information from areas or regions in respect of which the official government report fails to provide satisfactory or adequate information, areas or regions that are not covered by the government report, and, in the opinion of Non Government Organization (*further will be written as NGO. ed*) areas or regions that are improperly covered<sup>2</sup>. All of this information is then used by the UN Committee on the Rights of the Child as input for arriving at its Concluding Observation in respect of the periodic reports submitted by the government.

Reports from NGO's are referred to generically as "Alternative Report", or shadow report once prepared by national NGO Coalition for child rights monitoring in Indonesia (*further will be written as NGO Coalition. ed*) civil society coalitions formed to monitor the implementation of the CRC, and are submitted in response to the official periodic report submitted by government. The NGO Coalition report titled "Commentary on the First Periodic Report of the Indonesian Government to the UN Committee on the Rights of the Child for the Period 1993 to June 2000" formed a significant reference for the Committee in the review it conducted with the Indonesian government.

At the present time, the National NGO Coalition is in the process of preparing its Alternative Report on the government's third and fourth reports. An international NGO consortium, which consists of ChildFund Indonesia, Plan International, Save the Children in Indonesia and Terre des Hommes Netherlands and World Vision Indonesia, has agreed to assist the National NGO Coalition in preparing the said Alternative Report.

### ***Review on the Implementation of the Convention on the Rights of the Child in Indonesia, 1997-2009***

An Alternative Report should respond to the periodic report submitted by government to the UN Committee on the Rights of the Child. Accordingly, this Alternative Report should be based on the third and fourth reports submitted by the Indonesian Government. In reality, the government's third and fourth reports are still only at the draft stage, although these have already been published on the

website (<http://www.kotalayakanak.org/images/data/KHA/KHA3dan4.pdf>). So although the government has yet to officially submit its third and fourth reports, the National NGO Coalition has already started to prepare its Alternative Report based on the most recent draft of the Indonesian government, and its Concluding Observation on the response to the conclusions of the UN Committee on the Rights of the Child in 1994 and 2004. It is doing so in the expectation that by the time all of the relevant data and information have been collated, the government will already have submitted its official reports to the Committee.

As of the end of December 2009, the UN Committee on the Rights of the Child had yet to receive Indonesia's third and fourth periodic reports. In the light of this, the National NGO Coalition has agreed with the INGO Consortium to change the design of the Alternative Report so as to convert it into a review of the CRC's implementation in Indonesia during the 1997-2009 period. This Review will continue to serve as the basis for an Alternative Report after the government of Indonesia has submitted its official reports to the UN Committee on the Rights of the Child. Following receipt by the Committee of the government's reports, the National NGO Coalition will update its review so as to serve as the basis for its Alternative Report.

### ***Data Collection and Review Preparation Methods***

The terms of reference for the preparation of the review are the same as for the preparation of the Alternative Report. Accordingly, the review will also be based on the reporting guidelines issued by the UN Committee on the Rights of the Child. As a consequence, the review must describe in a clear and balanced manner the legislative situation, practical implementation situation, the funding and program situation, and the results of the implementation of the CRC during the reporting period. The review should describe and analyze the situation of children, the legislative situation, the administrative situation, and the measures taken on the basis of the eight CRC clusters identified by the UN Committee on the Rights of the Child.

For the purpose of drafting the review, the National NGO Coalition has designed data collection tools and analysis instruments which are the interpretation of international Human Rights instruments. It has also taken into account the draft of government's report for the third and fourth period. Among the international Human Rights instruments and national documents are the following:

1. Convention on the Rights of the Child
2. Universal Declaration of Human Rights
3. International Covenant on Economic, Social and Cultural Rights
4. International Covenant on Civil and Political Rights
5. General Guidelines Regarding the Form and Content of Periodic Reports to be Submitted by States Parties under Article 44, paragraph 1(b), of the Convention (CRC/C/58/Rev.1, 29 November 2005)
6. Concluding Observations of the UN Committee on the Rights of the Child on the First Periodic Report of Indonesia (CRC/C/15/Add.223, 26 February 2004)
7. Concluding Observations of the UN Committee on the Rights of the Child on the First Periodic Report of Indonesia (CRC/C/15/Add.25, 24 October 1994)
8. Twelve General Comments issued by the UN Committee on the Rights of the Child up to 2009
9. Recommendations of the UN Committee on the Rights of the Child on Juvenile Justice (1995)

10. Recommendations of the UN Committee on the Rights of the Child on Children with Disabilities (1997);
11. Convention against Torture;
12. Convention on the Elimination of All Forms of Discrimination Against Women;
13. Convention on the Reduction of Statelessness;
14. Convention on Protection of Children and Cooperation in respect of Intercountry Adoption;
15. ILO Convention 138 on minimum age for involvement in employment;
16. ILO Convention 182 on the worst forms of child labor;
17. The Palermo Protocol;
18. The Rome Statute;
19. Standard Rules on the Equalization of Opportunities for Persons with Disabilities
20. “The Beijing Rules”
21. “The Riyadh Guidelines”
22. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“The Havana Rules”)
23. The Indonesian government’s draft third and fourth periodic reports.

Based on the data collection tools referred to above, the National NGO Coalition will collect high-quality and reliable information through in-depth and extensive participation on the part of civil society and vulnerable children. The process of obtaining this information will also provide an opportunity for such children and civil society organizations to participate in the process and to voice their opinions and views.

There are three principal components that support the conducting of the review, namely:

#### **I. Consultations with children**

This component involves a series of activities designed to explore that data and information collected as material for the Alternative Report. Such information is collected both directly and indirectly from children, whether on an individual or group basis. Data collection, which will employ the principles of child participation, will be carried out by facilitators appointed by the National NGO Coalition.<sup>3</sup> In order to further improve the quality of the child consultation reports, regard will be had to the children’s life stories and the social backgrounds of the children’s groups that are consulted. A total of 377 children are involved in the consultation process, and are differentiated into 14 groups, namely:

- School dropouts;
- Children from indigenous and religious minorities;
- Child victims of sexual violence;
- Internally displaced children and refugee children;
- Child victims of conflict;
- School students;
- Trafficked children;
- Children in conflict with the law;
- Children with special needs (disabled children);
- Street children;
- Child victims of commercial sexual exploitation;
- Child victims of substance abuse;
- Children with HIV/AIDS;
- Child workers in factories and the textile industry, and child domestic workers;

The consultations with children are being held in 14 Indonesian cities, namely Banda Aceh, Medan, Jakarta, Bandung, Yogyakarta, Semarang, Solo, Palu, Pontianak, Sambas, Mataram, Kupang, Ambon and Jayapura, and involve 14 executive organizers, one supervisor, one coordinating facilitator, five national facilitators, and 38 local facilitators.

## **2. Research on the situation of children**

This consists of a series of activities designed to gather and analyze data on the situation of children and programmatic policies, particularly as regards the rights of children to education and healthcare. The situation study involves an in-depth analysis of the education and healthcare situation, with particular focus being placed on child victims of armed conflict and natural disasters, trafficked children, and children in conflict with the law.

## **3. Legal Review**

The legal review consists of a series of activities designed to analyze the level of compliance of Indonesian legislation with the Convention on the Rights of the Child following up the Concluding Observation of the UN Committee on the Rights of the Child, and other relevant 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.

The above three principal data collection activities will then be used to prepare three reports on, respectively, child consultation, the legal situation and the situation of children. These three reports were then collated and analyzed by the National NGO Coalition and the INGO Consortium so as to prepare the review on the implementation of the Convention on the Rights of the Child in Indonesia during the 1997-2009 period.

The review report of the implementation of the CRC in Indonesia (*further written as review report CRC review report*) consists of nine chapters. In general, each chapter, save for the introductory chapter, addresses the concerns and recommendations of the UN Committee on the Rights of the Child regarding Indonesia based on the second periodic report, and contains a review of the implementation of the Committee's recommendations, a review of issues not addressed by the Committee and the government's draft report, and recommendations for the making of improvements in the implementation of the CRC in Indonesia. More specifically, the chapters in the report cover the following issues:

### **Chapter I: Introduction**

This chapter sets out the background to the preparation of the review on the implementation of the Convention on the Rights of the Child in Indonesia, and describes the data collection and review preparation methods.

### **Chapter II: General Measures of Implementation**

This chapter describes the measures that have been taken by the government in reviewing Indonesia's reservations in respect of the Convention on the Rights of the Child, its ratification of other human rights-related conventions, an assessment of legislative, decentralization, dissemination and coordination measures, the National Action Plan, monitoring and data collection.

### **Chapter III: Definition of the Child**

This chapter describes: (a) the minimum and maximum age or period where one is referred to as a child, (b) marriageable age, (c) the minimum age of consent to sexual relations, (d) the minimum age for taking up employment, consume alcohol, and criminal responsibility.

### **Chapter IV: General Principles**

This chapter discusses: (a) the right of children to be heard/ respect to the views of the child and the best interest of the child, (b) Non-discrimination.

### **Chapter V: Civil Rights and Freedoms**

The chapter deals with: (a) birth registration and the right to citizenship, (b) violence and corporal punishment, (c) and the freedom of religion.

### **Chapter VI: Family Environment and Alternative care**

This chapter, reviews: (a) alternative care, (b) adoption.

### **Chapter VII: Basic Health and Welfare**

This chapter reviews: (a) children with special needs, (b) the standards of children's health, (c) the guarantee of healthcare, (d) youth health.

### **Chapter VIII: Education, Leisure and Cultural Activity**

This chapter reviews: (a) universal free compulsory basic education, (b) education for children in special circumstances, (c) the issue of pregnant students being expelled from school, (d) Human Rights-based curriculum, (e) violence in school.

### **Chapter IX: Special Protection Measures**

This chapter reviews the issues of: (a) children in conflict with the law, (b) trafficked children, (c) internally displaced children and refugees, (d) children victim of sexual abuse, (e) children victim of sexual and commercial exploitation, (f) street children, (g) children victims of substance abuse

This Review Report is the first to be conducted in Indonesia since the CRC was ratified. With the publication of this review, all concerned will be able to trace the progress of the Convention on the Rights of the Child's implementation in Indonesia between 1997 and 2007. This review is intended to serve as a reference for all involved, including the government, practitioners, academics, and parents, not only in assessing the implementation of the CRC in Indonesia, but also in making the necessary improvements to its implementation.

The process of preparing this review was supported throughout by the INGO Consortium consisting of ChildFund Indonesia, Plan International, Save the Children in Indonesia, Terre des Hommes Netherlands and World Vision Indonesia. In addition, its preparation was also supported by the members of the National NGO Coalition and various NGO networks in Indonesia. This review is dedicated to all of Indonesia's children in the hope that it will help bring about a better future for them.

## Chapter II

### GENERAL MEASURES OF IMPLEMENTATION

*Setiawan Cahyo Nugroho & Emmy Lucy Smith*

#### INTRODUCTION

***The General Measures of Implementation of the Convention on the Rights of the Child consist of articles 4, 42, and 44(6), the contents of which require the state to:***

- undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the Convention on the Rights of the Child. With regard to economic, social and cultural rights, states parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. The said measures should include the withdrawal of reservations, the ratification of other international human rights instruments, the adjusting of national legislation to take account of the principles and provisions of the CRC, and the designing of a comprehensive national strategy for children within the framework of the CRC.
- make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike. The measures taken should include the translation of the CRC into the national language and local language, and the wide dissemination of the Convention.
- make their reports and the Concluding Observations of the CRC Committee widely available to the public in their own countries.

#### ***Reservations to the CRC, Ratification of the CRC and Ratification of Other Human Rights Conventions***

##### ***Recommendation of the the CRC Committee in its Concluding Observation 2004:***

- The Committee, in line with its previous recommendations (CRC/C/15/Add. 25), and bearing in mind the Vienna Declaration and the 1993 Action Program, recommends that Indonesia withdraw all of its reservations as a matter of priority, and to take all procedural steps that are required to achieve this objective.
- The Committee encourages Indonesia to consider the possibility of ratifying the Convention through legislation enacted by Parliament.
- The Committee would also encourage further consideration of the ratification of other human rights instruments, such as the 1966 Covenants on the Economic, Social and Cultural Rights, and Civil and Political Rights, as well as the Rome Statute of 1998 on the International Criminal Court, and to effect such ratification through legislation enacted by Parliament.

#### IMPLEMENTATION IN INDONESIA

Since 1998, Indonesia has ratified a significant number of international human rights instruments by way of legislation, including:

- Act Number 5/1998 on the ratification of the Convention against Torture and Other Cruel,

- Inhuman or Degrading Treatment or Punishment;
- Act Number 20/1999 on the ratification of ILO Convention No. 105 (1957) on the abolition of forced labor;
  - Act Number 20/1999 on the ratification of ILO Convention No. 138 (1973) concerning the Minimum Age for Admission to Employment;
  - Act Number 29/1999 on the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination;
  - Act No. 1 of 2000 on the ratification of ILO Convention No. 182 (1999) on the worst forms of child labor;
  - Act No. 11 of 2005 on the ratification of the International Covenant on Economic, Social and Cultural Rights;
  - Act No. 12 of 2005 on the ratification of the International Covenant on Civil and Political Rights;
  - Act No. 5 of 2009 on the ratification of the UN Convention on Transnational Organized Crime;
  - Act Number 14 of 2009 on the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime;
  - Act Number 15 of 2009 on the ratification of the Protocol on the Protocol against the Smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organized Crime.

The Government of Indonesia ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990, which was accepted by the United Nations on 5 September 1990. As a result, the CRC entered into effect in Indonesia on 5 October of the same year. However, there were widespread concerns regarding the scope and extent of the reservations entered by Indonesia at the time of ratification. The full text of these reservations is as follows:

The 1945 Constitution of the Republic of Indonesia guarantees the fundamental rights of the child irrespective of their sex, ethnicity or race. The Constitution prescribes those rights to be implemented by national laws and regulations.

The ratification of the Convention on the Rights of the Child by the Republic of Indonesia does not imply the acceptance of obligations going beyond the Constitutional limits nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution.

With reference to the provisions of articles 1, 14, 16, 17, 21, 22 and 29 of this Convention, the Government of the Republic of Indonesia declares that it will apply these articles in conformity with its Constitution.

Then in November 2005 the Government of Indonesia submitted the withdrawal of the reservation. The complete text of the “Instrument of withdrawal of Declaration” is as follows:

WHEREAS the Republic of Indonesia is a State Party to the United Nations Convention on the Rights of the Child adopted at New York on 20 November 1989

AND WHEREAS the Government of the Republic Indonesia has ratified the said 1989 Convention, along with its Declaration on the provisions of Articles 1,14,16,17,21,22 and 29 of

the Convention

NOW THEREFORE, the Government of Republic of Indonesia, in view of the fact that it is in a position to implement its full participation in the said 1989

HEREBY WITHDRAW its declaration on the provisions Article 1, 14, 16, 17, 21, 22 and 29 of the said 1989 Convention

IN WITNESS WHEREOF I, Dr. N. Hassan Wirajuda, Minister for Foreign Affairs of the Republic of Indonesia, have signed this Instrument of Withdrawal of Declaration and affixed the official seal.

The Declaration of Withdrawal of Reservation only applies to the third paragraph in the above reservation, meaning that the remainder of the paragraph is still in effect. As a consequence the CRC is only applicable in Indonesia in so far as the rights it confers on children are recognized by the Indonesian Constitution. If they are not recognized by the Constitution, then there is no obligation whatsoever on Indonesia to recognize or uphold them. The fact paragraph two remains in effect has very far-reaching implications. As will be described in the chapter on General Principles, the right of children to be heard/ and have their opinions respected and the best interest of the child – two of the general principles of the CRC – are not recognized by the 1945 Constitution. The rights that are recognized by the Constitution are the rights to live, grow and develop and to protection from violence and discrimination (article 28B of the Constitution).

The complete texts of UUD 1945 Amendemen article 28B paragraph 2 is as follows:

(2) Every child has rights to survival, life and growth and the rights to be protected from violence and discrimination.

The Indonesian Constitution that does not recognize the principle of the best interest of the child and the rights to be heard/respect to the view of the child, besides give evidence that not all of the provisions and general principles of CRC are applied in Indonesia, also means Indonesia can not be obligated to introduce and implement these principles as the reservation on these matter is still exist.

The weak juridical recognition for the application of all of the provisions and principles contained in the Convention on the Rights of the Child is further compounded by the way in which the convention was ratified. Unlike other international conventions ratified by Indonesia, which were adopted by way of national legislation, the CRC was ratified by presidential decree, namely, Presidential Decree No. 39 of 1990. While it may be argued that the Child Protection Act 2002 (No. 23 of 2002) represents the incorporation of the CRC into the Indonesian legal system, nevertheless Presidential Decree No. 39 of 1990 was not employed as a legal basis for the framing of this Act. This is because in the Indonesian legal system a presidential decree is lower in the legal hierarchy than a statute. As a consequence, a degree of legal harmony has resulted given that the implementing provisions for the application of the CRC are set out in a law. Given the continuing effect of Indonesia's reservations in respect of the CRC, which state that there is no obligation on the state to recognize rights outside of those set out in the Constitution and the fact that Indonesia ratified the Convention by way of presidential decree, rather than a statute, it may be queried as to whether Indonesia has taken the most appropriate legislative measures to ensure the implementation of the provisions of the Convention in this country? One thing, however, is clear -- one of the general principles of the CRC, namely, respect for the opinions of children/the right of children to be heard during all processes and decisions that affect their lives, including administrative,

judicial and legislative process has been reduced by the Law No. 23/2002 on Child Protection to the right of children to participate solely on grounds of “decency” and “propriety” (article 10 of the Child Protection Act)<sup>4</sup>. Furthermore, as regards the provisions of the Child Protection Act on the placement of children in alternative care, including adoption and foster care, not one of these recognizes the principle that the opinions of children must be heard during such processes.

Another impact of the ratification of the CRC by way of Presidential Decree concerns the ratification of the optional protocols to the CRC. There are currently two such optional protocols, namely, the Optional Protocol on the Involvement of Children in Armed Conflict and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Both of these optional protocols refer to the CRC and it is essential that they be quickly ratified so as to ensure proper protection for children in situations of armed conflict, and to protect them from sale, prostitution and pornography. Bearing in mind that the protection of children in such situations is weak, and that cases involving the sale of children and child prostitution and pornography are rife in Indonesia, and given the fact that Indonesia is committed to protecting children from all situations that threaten their physical wellbeing and their growth and development, it is important that Indonesia quickly act to ratify both of these optional protocols. However, if Indonesia is to do so, then under Act No. 24 of 2000 on the Ratification of International Treaties, they must be ratified through legislation<sup>5</sup>. However, this would mean that while the two subordinate instruments are enshrined in acts of parliament, the principal instrument, namely, the CRC, is only ratified by way of Presidential Decree. This will further create disharmony, not only with the provisions in general measures of implementation but also with national law system.

## **B. Legislation, Decentralization and Dissemination of the CRC**

With regards to the legislation, decentralization and dissemination of CRC, The UN CRC Committee in its Concluding Observation recommended (in short):

- A review should be conducted on national legislation to ensure that it is in line with the provisions of the CRC (1994);
- The principles of “Best interests of the child” and “Non-discrimination” should be incorporated into national legislation and be capable of being invoked before the courts (1994);
- Legislation at the district/municipal levels should be brought into line with the CRC (2004);
- Mechanisms for monitoring the implementation of the laws and regulations related to children should be put in place, including mechanisms for collaboration with NGOs (1994);
- Dissemination efforts and training in respect of the CRC should be directed at all relevant professions;
- The implementation of the CRC should be systematically pursued;
- Measures should be taken to disseminate the CRC among children, and particularly children from ethnic minorities;
- Government reports and the Concluding Observation of the CRC Committee should be widely disseminated (1994).

## **IMPLEMENTATION IN INDONESIA**

### ***The mechanism to review legislations***

Reviewing the national and local legislation to see whether it is in line with the CRC also involves assessing

the extent to which the principles enshrined in the CRC are being implemented. For such purposes, state parties are required to ensure that all of its legislation is in compliance with the CRC. Should only some enactments be in line with the Convention while others are not, it cannot be said that the state in question has taken the most appropriate measures for ensure the implementation of the provisions and principles of the CRC. Accordingly, a mechanism is required for harmonizing and reviewing all national statutes. This mechanism must also be capable of ensuring that there is no disharmony between individual statutes that would serve to undermine the implementation of the CRC.

However, even if we assume that all national laws are in line with the provisions and principles of the CRC, this does not automatically mean that the said provisions and principles are being properly implemented. Harmonization also needs to be brought about in respect of subordinate legislation, such as Presidential Decrees, Presidential Regulations, Ministerial Decrees, Ministerial Regulations, and local regulations. Accordingly, a mechanism is also required that is capable of ensuring harmony between national legislation and subordinate legislation with CRC.

Similarly, as regards general measures of implementation, even if we assume that all national and subordinate legislation is in line with the CRC, once again this does not mean that the principles and provisions of the Convention are being properly implemented. The CRC's general implementation framework also requires that its principles and provisions are capable of being invoked before the courts. If not, then the rights guaranteed by the Convention will be meaningless as there are no remedies for children whose rights have been violated. This is reflected in the concept "justiciability of rights" (i.e., whether or not rights can be enforced and upheld through the judicial process), which requires that every violation of human rights, in this case, the rights of children, must be capable of being acted upon through legal mechanisms, whether administrative law, civil law or criminal law.

Indonesia does not adhere to monism, that is, a system where a norm of international law can automatically be sued as a reference by the law enforcement authorities and the judiciary during the legal process. Rather Indonesia adheres to dualism, under which international human rights norms must first be translated into national law. It is only then that international norms can be used as references by the Indonesian courts. To date, there has been virtually no progress made in Indonesia as regards the justiciability of child rights. In addition to the concept of dualism, which means that the Indonesian courts cannot automatically uphold the rights enshrined in the Convention on the Rights of the Child, the situation has been compounded by the fact that the CRC was ratified by way of Presidential Decree, while the Child Protection Act 2002 (No. 23 of 2002), as the domestic application of the CRC, is not always in line with the CRC's provisions and principles, as explained above.

The matter is worsened by the fact that there has never been any judicial process in Indonesia involving violations of children's rights committed by the state apparatus, such as violence inflicted on children by the police, prison guards and public order officers. As regards cases other than those involving the state apparatus, these have been confined to those involving the infliction of physical violence on children, such as cases of child abuse. In all cases, the principal focus of the judicial process has been to punish offenders, rather than uphold the victim's rights to rehabilitation, reparation and psycho-social services. To date, there have been no cases involving violations of the principles contained in the CRC, such as violations of the principle of non-discrimination as reflected in the failure of the Indonesian government to acknowledge the right of children from marriages between adherents of religions not recognized by the government that be processed before the court.

Also regarding the harmonizing of legislation, the only mechanism provided for this in Indonesia is the Constitutional Court. Unfortunately, however, under the Constitutional Court Act 2003 (No. 24 of 2003), the court is only permitted to review the substantive constitutionality of laws. In so far as the Constitution recognizes children's rights, it is possible to review the Constitutionality of relevant legislation. However, as the Constitution only recognizes some of the rights protected by the CRC, as explained above, the Constitutional Court mechanism is quite weak in this regard. In addition, there is no review mechanism should a particular legislative provision conflict with the provisions and principles of the CRC or, indeed, should local legislation conflict with the CRC. In such circumstances, the only option is to frame a new law to supersede the existing legislation. The responsibility for this rests with the national legislature and executive, and besides being a long-drawn-out process, there is also no guarantee that the resulting legislation will in fact comply with the provisions and principles of the CRC. Thus, we have a situation where the Marriage Act 1974 (No. 1 of 1974), which sets a minimum marriageable age of 16 for girls and 19 for boys, something that clearly violates the principle of non-discrimination, continues in effect despite the fact that the Child Protection Act recognizes the principle of non-discrimination.

It is also virtually impossible to review local regulations that do not comply with the principles and provisions of the Convention on the Rights of the Child. While the Legislation Act 2004 (No. 10 of 2004), which covers both national and local legislation, states that the contents of a legislative enactment should have regard to human rights, and that the contents of local legislation should represent an elaboration of higher legislation, there is no review mechanism should (a) local legislation that purports to elaborate human rights actually end up violating human rights, including the human rights of children; or (b) should local legislation violate human rights, including the rights of children<sup>6</sup>. Examples of local legislation that violates the rights of children are: (1) South Lampung District Regulation No. 4 of 2004 on the prohibition of prostitution, immorality and gambling, and the prevention of immorality in South Lampung District; and (2) Bandar Lampung Municipal Regulation No. 15 of 2002 on the prohibition of prostitution and immorality in Bandar Lampung Municipality. Both of these local regulations, besides being ambiguous and open to varying interpretation, confer judicial powers on civil servants and give the right to the local authority to conduct arbitrary raids and arrest women and children found on the streets. Meanwhile, article 4 of Tangerang Municipal Regulation No. 8 of 2005 reads as follows: "All persons shall be prohibited from engaging in intimacy, hugging and kissing in a manner that suggests sexual relations in both public places and places that are open to public view." This regulation also confers the power on the local authority to arrest women and children on the streets and other places based on its own criteria. The formulation of article 4, which is clearly ambiguous and open to a variety of interpretations, is normally applied in such a way as to criminalize women and young adults. In addition to the above, there is also Padang Panjang Municipal Regulation No. 3 of 2004 on the Prevention and Eradication of Social Illnesses, article 6 of which reads as follows:

- (1) All women shall be prohibited from wearing clothes that could arouse sexual desire in men in public places or in places that are frequented by the public, save for exempted places.
- (2) The clothes referred to in section (1) above, shall have the following characteristics:
  - a. reveal body parts from the knee up to the chest; and
  - b. tight-fitting or transparent so as to accentuate body shape.

Given these local regulations, it is clear that there has been a widespread process of criminalization of women and girls deemed to be the cause of "social illnesses" simply due to the fact that they wear clothes that are capable of "arousing sexual desire n men." The definition of such clothes is "clothes that reveal body parts from the knees up to the chest." Many similar regulations have been introduced

by local governments since the introduction of local autonomy in 1999. There have been a few notable exceptions in this regard, such as Central Java Provincial Regulation No. 9 of 2007 on the eradication of child labor, which represents an effort to apply the provisions of the CRC, ILO Convention No. 138 concerning the Minimum Age for Admission to Employment, and ILO Convention No. 182 on the worst forms of child labor. However, in general, there appears to be a very strong will on the part of local governments to introduce regulations than enforce particular moral values, many of which are incompatible with the provisions and principles of the CRC. In fact, many of them may be said to be incompatible with the Constitution and the Child Protection Act. Unfortunately, no action has been taken by the central government to prevent the enactment of such local regulations, or to revoke them after their enactment. The only mechanism for reviewing local government regulations is the power of the Minister of Home Affairs to annul regulations that exceed the powers of local government. However, this mechanism does not involve a review of compliance with human and children's rights aspects.

### ***Dissemination of the CRC and Government Reports***

The State Ministry for Women's Empowerment and Child Protection is the government institution that is responsible for the dissemination of the Convention on the Rights of the Child. This ministry has been working with Save the Children to translate and disseminate the CRC. The ministry has also translated and disseminated the monitoring conclusions of the CRC Committee in collaboration with Save the Children. However, no efforts on the part of the ministry are apparent to disseminate the CRC to children from ethnic minorities, or to translate the CRC into minority languages. This has been acknowledged by the government of Indonesia.<sup>7</sup> The ministry has also made efforts to provide training on the CRC, with the assistance of both local NGOs and Unicef. While this signals that the ministry has been working hand in hand with civil society, and national and local NGOs to socialize the CRC, it is also clear that there is a severe shortage of adequate human resources in the ministry.

Regarding the involvement of children as the holders of rights in the drafting of the government's reports to the CRC Committee, the ministry states in the third and fourth draft government report to the CRC Committee for the period 1997 to 2007 that the process of preparing the reports has, with the assistance of Unicef, involved other ministries concerned with children, provincial governments, provincial child protection agencies throughout Indonesia, NGOs, international NGOs, and child representatives. In fact, the ministry has already organized a public assessment of the draft government reports.

Meanwhile, there is no data available on the effectiveness of the efforts to disseminate the Convention on the Rights of the Child and to involve children in the preparation of the government reports. The National NGO Coalition has conducted consultations with 14 groups of vulnerable children, consisting of School dropouts; Children from indigenous and religious minorities; Child victims of sexual violence; Internally displaced children; Child victims of conflict; School students; Trafficked children; Children in conflict with the law; Children with special needs (disabled children); Child refugees; Street children; Child victims of commercial sexual exploitation; Child victims of substance abuse; Children from minority groups; Children with HIV/AIDS; Child workers in factories and the textile industry, and child domestic workers. The said consultations were conducted in 14 provinces of Indonesia, namely, Nanggroe Aceh Darussalam, North Sumatra, Banten, Jakarta, West Java, Central Java, Yogyakarta, East Java, West Nusa Tenggara, East Nusa Tenggara, Ambon, Papua, Central Sulawesi and West Kalimantan. By applying the standards of child participation practice (Save the Children), the consultations were carried out in 2008 and 2009 and involved two stages: first consultation to elicit information from the children, second

consultation to obtain feedback from the children in respect of the measures already taken and the results achieved, and the deepening research of the life stories of the children in which they spoke about their lives and experiences. A total of 3000 children participated in the selection process, with 377 eventually being chosen to provide input and opinions. In addition to eliciting their views on the situations in which they found themselves and had previously found themselves, the consultations also attempted to ascertain whether the children had obtained information on the Convention on the Rights of the Child, whether they had been involved in the process of preparing the government reports, and whether they hoped they would be so involved. This process provided us with a clear picture of the extent to which the government's program of disseminating the CRC and the government's reports had been effective.

- 62 percent of children who were directly involved in the consultations said that had at one time or another received information on the CRC, while the remaining children said they had never heard about it. Of the 62 percent who had received information on the CRC, 63 percent had actually received that information during the consultation process. **Very surprisingly, only 2 percent of the children who had received information on the CRC had received it from the government, while 79 percent had received it from NGOs.**
- Only 0.1 percent of the children said that there were aware that the government was required to report to the CRC Committee. Meanwhile, none of the children said that they had been involved in the government reporting process. However, the children clearly wanted to be involved in the government reporting process. In fact, 65 percent of them said that it was incumbent on the government to involve them!

### ***Coordination and the National Action Plan, Independent Monitoring and Factual Investigation***

The CRC Committee has recommended (Concluding Observation 2004) that:

- The National Action Plans (RAN) and the National Development Program Indonesian Children (PNBAI) cover all of the clusters and provisions of the Convention on the Rights of the Child, and that the substance of the RAN be incorporated into all programs at the provincial and district/municipal levels.
- The State Ministry of Women Empowerment and Child Protection coordinate with the mechanisms at the provincial and district/municipal levels.
- That the RAN Coordination Body involve other stakeholders, including NGOs.
- That the National Child Protection Commission (KPAI) should be capable of being accessed by children, particularly through its being given the authority to conduct investigations and receive complaints from children.
- The independence, objectivity, effectiveness and public accountability of the National Human Rights Commission (KOMNASHAM) and the KPAI be strengthened.
- The data collection system be improved so as to cover all aspects of the CRC.
- Appropriate data and indicators be used in the formulation, monitoring and evaluation of policies, programs and projects related to the implementation of the CRC.
- That relevant information and statistical data be widely disseminated.

The government has to date designed a number of National Action Plans, such as:

1. The National Action Plan on the Commercial Sexual Exploitation of Children;
2. The National Action Plan on the Trafficking of Women and Children;
3. The National Action Plan on the Worst Forms of Child Labor;
4. The 2004-2009 National Action Plan on Human Rights;
5. The National Action Plan on Education for All by 2015;
6. The 2015 National Program for Indonesian Children;
7. The 2010 Healthy Indonesia Vision;
8. The National Action Plan on Teenage Reproductive Health;
9. The application of the Millennium Development Goals;
10. The Child-Friendly City Development Program.

Unfortunately, no detailed information is available on the effectiveness to date of the above National Action Plans. But it is clear that given Indonesia's current system of decentralized government, the said National Action Plans need to be followed up on by the framing of action plans at the local level. Further, in order to support the implementation of the plans, duties need to be clustered and coordinated by government so as to ensure that they are in fact implemented.

Unfortunately, such clusters have not been established, save in the case of human trafficking, which is in fact mandated by the Suppression of Human Trafficking Act No. 21 of 2007.

In 2008, the State Ministry for Women's Empowerment and Child Protection issued its Guideline for the Protection of Children, which state that governors, district heads and mayors are required to integrate child protection policies, programs and activities into their local government development plans.<sup>8</sup> In this regard, the said guidelines specifically require such policies, programs and activities to be incorporated into local Long-Term Development Plans (RJPD), Mid-Term Development Plans (RPJMD), the Strategic Plans of local government Line Units (RKPD), and the Work and Budget Plans of local government Line Units (RKA-SKPD), having regd to the National Child Protection Policies (KNPA), and the 2015 Program for Indonesian Children (PNBAI 2015). However, the question immediately arises as to who has the power to compel governors, district heads and mayors to do so? Under the current system of government, based on the Local Autonomy Act (No. 32 of 2004), local governments have been accorded wide-ranging autonomy to manage their own affairs, including matters related to public services, financial management and natural resources. The central government is only responsible for foreign affairs, defense and security, justice, national monetary and fiscal policy, and religious affairs. At the provincial level, the governor is only responsible for coordinating the work of district heads and mayors in respect of matters that have been delegated to local government, and is himself subject to coordination by the Minister of Home Affairs. Accordingly, a governor is primarily accountable to the Minister of Home Affairs, rather than to the State Minister for Women's Empowerment and Child Protection. Consequently, the effectiveness of the Guidelines referred to above is highly questionable. Meanwhile, local government regulations that clearly violate the rights of children can be introduced by districts/municipalities at will, even where they conflict with the Child Protection Act, so will the regulation released by the ministry that is not direct supervisor of governor or district head be obeyed?

### ***Independent Monitoring***

Indonesia has also set up a special commission to protect children, namely the Commission of Indonesian children Child Protection, as required under the Child Protection Act. The duties of the said National Child Protection Commission are to disseminate information on all legislative provisions concerning

child protection, to gather data and information, to accept complaints from the public, and to conduct research, monitoring, evaluation and supervision in respect of child protection endeavors. In addition, it also provides reports, advice, input and considerations to the president in connection with child protection matters (article 76 of the Child Protection Act 2002 (No. 23 of 2002)). However, despite its remit, the Commission of Indonesian Children Child Protection has no authority or mechanisms that would allow it to be accessed directly by children. Furthermore, while the legislation states that it may receive complaints from the community, it is not accorded a mandate to conduct investigations into cases involving the violation of children's rights. While the legislation also clearly states that the Commission shall provide reports, advice, input and considerations to the president, it is not required to submit these to the House of Representatives (DPR). This gives rise to the impression that the National Child Protection Commission lacks independence as it reports directly to the President. Asking the Commission of Indonesian Children Child Protection to have more authorities and duties means amending the Law No.23/2002 on Child Protection as the mandate of this commission has been defined by this law.

### **Data Collection**

The collection of data on children in Indonesia is characterized by a lack of coordination. Data on education is collected by the Ministry of education and demographic data by the Central Statistics Bureau. Meanwhile, the collection of data on births by the Ministry of Home Affairs has been decentralized, with the responsibility now being vested at the district/municipal level. As regards disadvantaged children, including children in childcare institutions, the responsibility for data collection rests with the Ministry of Social Affairs. In the case of children in need of special protection, there is not only a lack of valid data, but also a lack of clear mechanisms governing who is responsible for collecting such data. This is despite the fact that data and information on the circumstances of such children is essential if we are to be able to ascertain their number and distribution so that programs can be developed to assist them. The fact that responsibility for data collection is spread among so many ministries and local governments results in a marked lack of coordination. If there was better coordination in the collection of data on births, which is obtained from birth registrations, then at the very least we would have information on the number of births, distribution, sex and so forth. Similarly, if the data on births was to be coordinated and combined with data on deaths (the collection of which is also decentralized), then at the very least we would have information on the frequency of registrations of births and deaths. Furthermore, if such data was centralized and combined with data and information on marriages from the country's civil registration offices, then we would be able to trace the relationship between births, marriages and deaths. Besides the fact that data is collected in an uncentralized manner by various ministries, another problem is that the practice of recording births is also discriminatory, so that births among certain groups go unrecorded.<sup>9</sup> If a centralized data system is to be developed to cover all Indonesian children, a great deal of effort and high level of commitment will be required, together with the allocation of the necessary funding.

## **NATIONAL NGO COALITION RECOMMENDATIONS**

- Indonesia must withdraw all of its reservations to the Convention on the Rights of the Child, not only its objections to specific articles, but also the sweeping, catch-all reservation which states that Indonesia is only required to uphold children's rights that are recognized by the Constitution.
- Indonesia must upgrade the status of its ratification of the Convention on the Rights of the Child from a Presidential Decree to parliamentary enactment following the recommendation of UN CRC Committee and in order to create harmony within national legal system.
- Indonesia must amend the 1945 Constitution so that the rights of children are fully recognized, including the recognition of basic principles, such as the right of children to be heard and to have their opinions appreciated.
- Indonesia must ratify OPAC and OPSC.
- Indonesia must develop a legal mechanism whereby national legislation that conflicts with the provisions and principles of the Convention on the Rights of the Child can be overturned, and local regulations that violate the CRC be revoked.
- Indonesia must introduce a legal mechanism that allows the provisions and principles of the Convention on the Rights of the Child to be adduced before the courts, including the principle of non-discrimination.
- Indonesia must make more strenuous efforts to disseminate the Convention on the Rights of the Child and the Monitoring Conclusions of the CRC Committee, including their dissemination to minority groups and children in need of special protection. In this regard, Indonesia needs to translate the Convention on the Rights of the Child into local languages.
- Indonesia must strive harder to involve children in the government reporting process to the CRC Committee.
- Indonesia must amend the Child Protection Act to ensure that the mandate of the National Child Protection Commission is extended to the conducting of investigations, and to make the Commission more independent, rather than being positioned directly under the President.
- Indonesia must create a national mechanism so that, in the context of decentralization, the services afforded to children at the district/municipal level are improved.
- Indonesia must develop a centralized data collection system that is capable of integrating data on births, marriages and deaths, and make available the disaggregated data of vulnerable children.

## Chapter III

### DEFINITION OF THE CHILD

Setiawan Cahyo Nugroho & Ahmad Taufan Damanik

#### INTRODUCTION

##### ***Recommendation of the UN Committee for the Rights of the Child Concluding Observation 1994 - 2004***

- The government of Indonesia must review age limits of children which are stipulated differently in many laws and regulations; the government should make sure that all the law are in line with the Convention on the Rights of the Child.
- Indonesian government must ensure there will be no gender discrimination on the age limit permissible for marriage for boys and girls.
- Indonesian government must take measures to prevent and reduce early marriage.
- The government has to run campaigns to raise awareness on the danger and problems due to early marriage.

One of the central issues in definition of the child is on the start and the end of someone being called as a child. The Convention of the Rights of the Child itself does not stipulates when childhood begin. Those who drafted the Convention respected the diversity of nations domestic laws in defining the starting age of someone to be called a child to avoid single solution. As a minimum standard, the Convention recommends every nation legal system to regulate the definition itself. It means a legal system can make a regulation that is higher than the minimum standard. Although Article I in the Convention recognizes the variety of someone is considered to be mature in countries that ratify the Convention but it also consistently emphasizes that the countries do not violate the convention principles in defining the age of maturity. Moreover, the Committee for the Rights of the Child requests the member countries to inform in the reports about the definition of children and age limits in every aspect in detail.<sup>10</sup>

#### IMPLEMENTATION IN INDONESIA

In Indonesia, several laws related to the definition of the children are:

1. The amended 1945 Constitution
2. Civil Law Code
3. Criminal Law Code
4. Law No. 1/1974 concerning Marriage
5. Law No. 39/1999 concerning Human Rights
6. Law No. 23/2002 concerning Children protection
7. Law No. 13/2003 concerning Manpower
8. Law No. 21/2007 concerning Eradication of Human Trafficking Crimes
9. Law No. 20/1999 concerning Ratification of the ILO Convention No. 138 (1973) on Minimum Age Minimum Age Admission for Employment.
10. Law No. 1/2000 on Ratification of the ILO Convention No. 182 (1999) on Worse Forms of Child Labor

## ***On when someone is considered a child***

One much debated discussion on definition of children in Indonesian legal system is about when someone is considered a child, which defines a legal subject entitling to certain legal protection, and when the child becomes an adult, which ceases his or her entitlement to the rights of the child. The amendment of 1945 Constitution does not stipulate definition of children although it embraces several rights of the child from the convention. In the second amendment, human rights gain recognition with, among others, Chapter XA Article 28A-I, which recognizes the rights of the child. (Article 28B Clause 2). However, there is no further regulation stipulating the definition of children and the age limit. In Article I Clause 5 Law No. 39/1999 on human rights states:

“Children is a human being below the age of 18 (eighteen) years and has not married yet, including a child in the womb if it concerns its interest.”

This law brings us to the first debate about the age of someone to be called a child. The law does not stipulate why a child in the womb is considered a child when its interest is concerned. There is no explanation about what kind of law makes a child in the womb a child. A clearer explanation, however, is available in Civil Law Code Article 2:

“A child in a womb of a woman is considered to have been delivered if it concerns its interest. Death before birth is considered non-existent.”

The stipulation in the Civil Law Code is of course related to someone civil rights and obligations. In this case, the rights of a child in the womb to inheritance from parents if he or she born alive. This is different from a stipulation about children definition in Article I in Law No. 23/2002 on Children Protection:

“A child is a person below the age of 18 years including one in the womb.”

It is not further elaborated why a child in the womb can be considered a child. Because the law does not regulates inheritance, a question arises, whether this is related to criminal law, especially on abortion, which is perhaps related to the rights of a child to live.

The absence of an explanation or stipulations in this law leaves the question unanswered in this law. This also happens to Law No. 21/2007 on the Eradication of Human Trafficking Crimes in Article I Clause I:

“A child is a person below the age of 18 years, including a child in the womb.”

There is no further explanation why a law on human trafficking finds it necessary to define a fetus in the womb a child. However, explanation on Indonesian Law position on abortion is stipulated in Article 299 Clause I of the Criminal Code:

### **Article 299**

(1) Whoever gives drugs to a woman intentionally or orders her to get drugs or treatment intentionally, while informing her or giving her hope the drug the pregnancy can be aborted is punishable to a maximum four years in jail or fine of a maximum fourty five thousands rupiah.

## ***On when someone is deemed an adult/mature***

Defining when does someone cease to be a child is important because it will deny the person of the rights one has as a child or it will make the person entitles to rights of the adult. In national legal system, Indonesia has various definitions on the matter. The Law No. 23/2002 on Children Protection and Law o. 21/2007 on anti-human trafficking bear a similar definition on the age someone is considered an adult, which is 18 years old.

However, the law which is deemed the elaboration of the amendment of 1945 Constitution on human rights, Law No. 19/1999 concerning Human Rights, in its Article 1 Clause 5 instead stipulates that “A child is a human being below the age of 18 years and **not married yet**, including a child in the womb if it concerns its interest.”

In other words, this law states that a child who is married before 18 years old is no longer a child. Consequently, the stipulation deprives such children of all the rights of the child as guaranteed in the Convention of the Rights of the Child.

As a result, the human rights law, besides not in line with law on children protection, violates the Convention. Moreover, the Civil Law Code determines the age of someone to be called an adult is 21 years old and not married yet. Marriage makes someone deemed an adult although he or she is not yet 21.

Meanwhile, Law No. 1/1974 concerning Marriage also follows the stipulation in the Civil Law Code. Implicitly the law defines a child is a person below the age of 21 years like mentioned in Article 6 Clause 2:

“To get married, a person who is not yet 21 (twenty one) has to get parents consent.

The consent is a requirement for those below the age of 21 years because they are considered to be not yet competent before the law and not able to decide for themselves thus needing consent from parents. Indirectly, the article states that one below 21 years old is categorized as a child.

Scrutinizing the laws on when is a person considered a child and when the child ceases to be one demonstrates the different standards in the national legislation. The legislation recognizes civil rights for a child in the womb and criminalizes abortion and also regulates a child in the womb even in a law that regulates human trafficking eradication. On the other hand, it stipulates different age limit for children, which is 21 for legal competence and 17 for those protected by laws like in the children protection law.

Complying with the children protection law, a child after 18 will lose his or her rights as a child and he or she will gain a competence like an adult. However, that is not the case in Indonesia because if he or she is married, the child will be considered an adult regardless the age. This is clearly a violation to the Convention on the Rights of the Child principle, which stipulate everybody below the age of 18 years has the rights as children.

## ***Mature Age to Enter Marriage***

The government does not provide official data on early marriage in Indonesia but it does not mean that early marriage is not a problem in the country. National Family Planning Coordinating Agency recorded

that in West Java there are 10 percent of marriages involving underage population.<sup>11</sup>

In Malang, East Java, the Religious Court reported in 2008 the number of dispensation requests to get married before permissible age of 16 for girls and 19 for boys increased 500 percent. The court said the request were filed by parents and the marriages were arranged by the parents.<sup>12</sup>

The root of this problem is because Indonesian laws and regulations still allow early marriage. Besides, the laws still relate marriage to define whether someone is still a child or already an adult. Consequently, many children who are in the age category of children are no longer consider ones. Therefore, many children are deprived of their rights due to early marriage.

The law that is become the reference of the minimum ages of marriage in Indonesia is Law No. 1/1974 on Marriage. Article 6 Clause 1 states that marriages require parents consent. However, Law No. 1/1974 states that someone is independent to decide to enter marriage when he or she reaches 21. Someone below 21 is not yet considered independent to decide to enter marriage, hence the parents consent. Therefore, although minimum limit for marriage is 16 for girls and 19 for boys does not mean marriage under those ages are prohibited. As long as there is a dispensation request from the parents, the court or other officials can give allow marriage to happen. In detail the article says:

**Article 7**

- (1) Marriage is only permitted if the man has reached 19 (nineteen) and the woman 16 (sixteen).
- (2) In case of deviation from Clause 1, groom or bride parents can request dispensation to the court or other officials.

Scrutinizing the article, it is clear that the minimum age for marriage is not fixed but depending on parents' consent and dispensation from the Court or other officials. The article allows parents to arrange marriages for their children even though their daughter are not yet 16 or the son not yet 19.

Besides, the difference between age limit for men and women itself does not have any justified reason. This law clearly violates the Convention on the Rights of the Child, especially the principle of anti-discrimination based on gender and of best interests of children.

Giving the authority for parents to arrange marriage for their underage children like stipulated in the Law No.1/1974 not only violates the convention but also the national law on children protection, which states that parents are obliged to prevent their children from early marriage. Law No. 23/ 2002 Article 26 Clause 1 says:

- (1) Parents are obliged and responsible for:
  - a caring, raising, educating and protecting children;
  - b developing them according to their capacity, talents and interests;
  - c prevent them from entering marriage when they are still of children age.

This gives indication, once again, how the Law on Children's Protection, which is claimed as a law that is trying to apply all regulations and principles of the Convention on the Rights of the Child, is ignored by other laws. Giving the authority to parents to arrange their children's marriage is a violation to the Convention on Civil and Political Rights, which has been ratified by Indonesia, especially Article 23 Clause 3, which states: "There is no single marriage could be done without full and informed consent from those who enter the marriage". Not only that, it also violates the Covenant on Economic, Social

and Cultural Rights, which has also been ratified by Indonesia. The Article 10 Clause 1 of the covenant says that marriage should be done based on voluntary consent from the bride and the groom. Meanwhile the discrimination of age limit for marriage between men and women also violates CEDAW, which has also been ratified by Indonesia. Article 16 Clause 1a and 1b and 2 oblige all state parties to deliberate a legislation which eradicates all forms of discrimination against women in all aspects related to marriage and family ties including the same age limit for marriage.

Unfortunately, Law No. 1/1974, as a legal basis of early marriages and discrimination against women, is still effective. Lately, there has been an effort from the government to amend the law but there are some who contend the amendment due to the complexity of the matter of marriage, which has been the much debated issue among different views between the state, social norms and the variety of religious values in Indonesia. Therefore, despite the government's effort to change the law, as mentioned by the government in their draft report, we must know that the problem lies on the commitment, whether the government is serious or not in positioning the state above all views and promoting human rights protection, including that of children's.

### ***The low minimum age for consented intercourse***

The issue of the low minimum age for consented intercourse has also drawn the attention of Committee on the Rights of the Child. Concluding Observations of the Committee on the Rights of the Child: Indonesia (KHA/C/15/Add.223, 24 February 2004), paragraph 81, says:

Committee is concerned that the existing legislation does not provide effective protection (for instance the minimum age of consented intercourse is 12, which is too low).

The laws in Indonesia stipulates the minimum age of someone to give consent for sexual intercourse are:

- Age 12 for girls according to Criminal Code
- Age 16 for girls according to Law No. 1/1974 on Marriage
- Age 19 for boys according to Law No. 1/1974 on Marriage
- Age 18 for boys and girls according to Law No. 23/2002 on Children's Protection

From the three laws, it can be concluded that the minimum age is between 12 and 18 years old. All three laws are still effective and cannot cancel each other out. As a consequence of the difference in the age limit in the law:

- A child who reaches 12 years old is considered capable of giving consent for sexual intercourse.
- A girl below 16 years old is considered capable of giving consent for sexual intercourse and entering marriage.

The law on child protection itself does not stipulates any regulation on minimum age of giving consent for sexual intercourse. Article 81 and 82 apply only on rape cases.

Scrutinizing the minimum age for children to have consent for sexual intercourse we may see that this minimum age is very low and put children into vulnerable position to be sexually exploited.

### ***Some violation of minimum ages in accordance to CRC***

Although child protection law has accommodated the limit age of maturity for a child just like CRC, in practices this new legislation is rarely used.

Disharmony between child protection law and other laws is significant to the problem. Several laws related to children still violate the Convention on the Rights of the Child. The delay in harmonizing the stipulations in the laws related to children as mandated by the Convention has jeopardized efforts in children's protection.

### ***Minimum Age for Admission to Employment***

The Convention on the Rights of the Child, Article 32 Clause 1, states that member countries must recognize the rights of the child to be protected from economic exploitation and all dangerous works and those that will hamper the optimum development of the children. For that purpose, in Article 32 Clause 2, member countries are requested to pay attention to other legal instruments, in this case ILO Convention No. 138 along with the recommendations No. 146 (1973) and ILO Convention No. 182 to determine the minimum age for admission to employment, put order in the legislation concerning working hours and condition as well as stipulate punishment or other sanctions to guarantee an effective implementation of the legislation.

In 1999, the government of Indonesia ratify the ILO CONVENTION NO. 138 CONCERNING MINIMUM AGE FOR ADMISSION TO EMPLOYMENT with Law No. 20/1999. The Convention regulates the minimum age of someone for admission to employment and the minimum age of a child to work in a condition that is not harmful to their physical, psychological and moral developments. The Convention elaborates Article 32 Clause 2 of the Convention on the Rights of the Child. A year later in 2000, Indonesian government ratified ILO Convention No. 182 Worst Forms of Child Labour through Law No. 1/2000. The Convention highlights the worst forms of child labor, which the member countries should prevent. The Convention elaborates Article 32 Clause 1 in the Convention on the Rights of the Child.

The Committee on the Rights of the Child considers ILO Convention 138 as a relevant standard for member countries. The stipulations from the ILO Convention 138 on the minimum age for admission to employment is designed to eradicate child labor and to enhance effort so the target to eradicate child labor could be attained. The ILO Convention 138 itself, in concern with minimum age for admission to employment, states in the Article 2:

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.
2. Each Member which ratified this Convention may subsequently notify the Director General of the International Labor Office, by further declarations, that it specifies a minimum age higher than that previously specified.
3. The minimum age specified in pursuance of paragraph of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.
4. Not with standing the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.

Therefore, it is clear that Indonesia, which has ratified the convention, has to stipulate a minimum working age of 15 years. If Indonesia wants to set 14 years old, it should be considered a temporary measure to be upgraded.

### **Law No. 13/2003 on Manpower**

This law in the beginning states that children are persons below the age of 18 years (Article 1 Clause 26). It is also stipulated that employers are not allowed to hire children. However, the law also states that employers could hire those aged 13 to 15 years old for light works as long as it does not hamper their physical, mental and social development. Here are the complete articles:

#### Article 68

Employers are prohibited from hiring children.

#### Article 69

(1) Regulation as stated in Article 68 can be exempted for children aged between 13 and 15 years to do light works as long as it does not hamper their physical, mental and social development.

Upon reading this, we know that minimum working age in Indonesia is between 13 and 15 years as long as the works are light. However, there are no regulations on the definition of light works that do not hamper the children's physical, mental and social development.

Next article, Article 69 Clause 2, says:

(2) Employers who hire children for light works as stipulated in Clause 1 has to fulfill these conditions:

- a. written consent from parents or guardians
- b. working contract between employer and parents or guardians.
- c. maximum working hours of three hours.
- d. one in the afternoon without interfering with school time.
- e. ensuring safety and health at workplace.
- f. clear stipulation of working relation.
- g. wage in compliance with the regulations.

Once again, there is no regulations on light works definition. However, the clause sends a message that this regulation could be a loophole used by anybody to exploit children as stipulated in Article 69 Clause 3:

(4) Regulation as stated in Clause (2) letter a, b, f and g, exempted for children who work the their family enterprises.

Of course, we will never know if the law fails to stipulate definition of light works that do not hamper the children's physical, mental and social development and what kind of family enterprises are exempted. Moreover, if the rules on family enterprises are not detailed, they could be a loophole, and employers could hire workers aged between 13 and 15 years without parents' or guardians' consent, no working contract between employers and parents or guardians, no clear working relations and no wage according to the regulations.

The lack of details in the regulation clearly would trigger problems, not only to the employers but also to the manpower agencies that are obliged to monitor the employers' compliance and any possible violations.

The ignorance continues. Upon further study, all these laws do not have specific regulations on children between 16 and 17 years old. Questions arise, are these children allowed to work in whatever kind of jobs and conditions except for the worst forms, or are they not allowed to work at all? The answer, however, cannot be found anywhere in the law. Does it mean children aged 16 to 17 can take up light works like those between age 13 to 15? There is no answer, as well. The absence of regulations on children between 16 to 17 years old provides loopholes to anyone to abuse it. It also makes the works of the monitoring agency, which is the manpower agencies, harder.

### ***Minimum Age Level of Criminal Responsibility***

In paragraph 77 of UN Committee on the Rights of the Child Concluding Observation, the UN Committee on the Rights of the Child emphasizes that:

The Committee again seriously expresses its concern that the minimum age of criminal responsibility according to the regulation, which is 8 years old, is too low.

Indonesia refers to Act no. 3/1997 of Juvenile Court whenever a child is suspected of conducting a crime. The Act states that the minimum age at which a child is able to be held responsible in a court of law is 8 (eight) years old. Section 4 of the act states that:

- (1) The age limit of a delinquent to be prosecuted in a Juvenile Trial is at least 8 (eight) years old but not exceeding 18 (eighteen) years old, and the delinquent has never been married.
- (2) In the event that the child conducts a crime within the age limit mentioned in article (1) and is presented before the court after the child has exceeded the age limit but is still under the age of 21 (twenty one) years old, the child shall still be prosecuted in a Juvenile Trial.

Even when a child is under 8 years old, he/she is liable to be examined by investigating officers if he/she is suspected of committing a crime. Section 5 of the act states that:

- (1) In the event that a child under the age of 8 (eight) years old commits or is suspected of committing a crime, the child can be examined by Investigating Officer.
- (2) If, according to the result of the examination, the Investigating Officer contends that the child aforementioned in article (1) can still be put under the care of his/her parent(s), ward, or foster parent(s), the Investigating Officer shall return the child to his parent(s), ward, or foster parent(s).
- (3) If, according to the result of the examination, the Investigating Officer contends that the child aforementioned in article (1) can no longer be put under the care of his/her parent(s), ward, or foster parent(s), the Investigating Officer shall entrust the child to the Ministry of Social Affairs after considering the opinions of the Civil Counsellor.

Stipulating 8 years old as the minimum age level for criminal responsibility clearly leads children to a very dangerous situation. Furthermore, in practice, as indicated by the result of consultation with children who were and are in conflict with the law in North Sumatera, Banten, West Java, Central Java, and the Special Region of Yogyakarta, nearly all of the children experienced physical violence, or even torture, from the investigating officers, wardens, or prison officers. That is not to mention the additional provision which states that children under 8 years old will also be subjected to examination if they are suspected of committing an act of crime. There is no guarantee that the investigating officers are equipped with special investigation techniques for children under 8 years old, other than those

applied to children over 8 years old.

### **Minimum Age Level for Alcohol Consumption**

Criminal Law Code section 300 article 1 (2);

- (1) A maximum of one year imprisonment or four thousand and five hundred rupiahs of fine is imposable to:
- (2) Those who purposefully intoxicate a child aged less than sixteen years old;

The legal drafting of this section leads to an interpretation that if one is 16 years old or older, any person can get him/her intoxicated. This regulation violates the Child Protection Act No. 22/2003, which acknowledges the rights of children to grow and develop in the best way possible, as well as the provisions and principles of Convention on the Rights of the Child, which protect children aged under 18 years old from any form of violence or dangerous situation that threatens their growth.

### **NATIONAL NGO COALITION RECOMMENDATIONS**

Based on the above, the NGO Coalition puts forward the following recommendations:

- The government should increase the minimum age level of girls to be able to get married/ be married to someone to a minimum of 19 years old, the same age level for boys.
- The government should increase the age level where children are considered able to give consent for sexual activity from 12 years old in Criminal Law Code and 16 years old in Act No. 1/1974 to 18 years old.
- The government should review Act No. 1 year 1974 on Marriage by adhering to the principles of Convention on the Rights of the Child to ensure that marriages are conducted voluntarily and with willful consent from both bride and groom.
- The government should ensure that the Manpower Act (Act. No. 13/2003) are subject to the ILO Convention, with regards to the minimum age for admission to employment, which is 15 years old, and that the act contains clear and distinct regulations on children aged 16-17 years old.
- The government should increase the minimum age level for alcohol consumption in the Criminal Law Code from 16 years old to 18 years old.
- The government should increase the minimum age level of criminal responsibility to 16 years old or older.

# CHAPTER IV

## GENERAL PRINCIPLES

*Setiawan Cahyo Nugroho*

### INTRODUCTION

#### **GENERAL PRINCIPLES OF CRC, with articles 2,3 (1), 6,12 of the CRC:**

**(1) Article 2 CRC: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind.** The implementation of the principle of non-discrimination on equal access to every rights recognized in CRC does not mean identical treatment. The non-discrimination principle does not bar affirmative action, such as positively different treatment to children with disabilities. Therefore, it is important to emphasize this in the General Comment No. 18 of the Human Rights Committee to the International Covenant for Civil and Political Rights on Non-discrimination. The Committee on Human Rights stated that the term “discrimination” should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as **race, colour, gender, religion, or political view or other view**, which **has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise** by all persons, on equal footing of all rights and freedoms.

**(2) Pasal 3 (1): In all actions concerning children, the best interests of the child shall be a primary consideration.** The actions refer to those carried out by private and government based social welfare institutions, courts, government officials and legislative bodies. The implementation of the principles requires real action from the state parties by its governments, parliaments and judiciary so that in any decision which directly or indirectly influences the child, the child’s best interest should become the main priority.

**(3) Article 6: The right of a child to live which is inherent and the obligation of the state parties to best ensure the child’s survival and development.** This means that no-one nor party may take away the child’s life. Meanwhile, for the Committee on the Right of the Child, the child’s development should be interpreted by the state parties in a wide and holistic manner which includes physical, mental, spiritual, moral, psychological and social development.

**(4) Article 12: The child’s right to express their views freely in all matters affecting them, the views of the child being given due weight.** For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

## **Recommendations of the Committee on the Rights of the Child in 2004:**

- The General Principles of the Convention should be integrate in all relevant legislation concerning children;
- The General Principles in the CRC should be applied in all political, judicial, and administrative decisions, as well as in programmes, services and reconstruction activities which have an impact on all children.
- The Government of Indonesia should conduct an in-depth review of all its legislation with a view to fully guaranteeing the application of the principle of non-discrimination in national legislation.
- The Government of Indonesia should take proactive and comprehensive strategy to eliminate discrimination on any grounds to vulnerable groups.
- The Government of Indonesia should provide specific information in the next periodic report on the measures and programmes relevant to the Convention undertaken by Indonesia to follow up on the Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking account of General Comment No. 1 on article 29, paragraph 1, of the Convention (Aims of Education).
- The Government of Indonesia should review its legislation and administrative measures to ensure that article 3 of the Convention is duly reflected therein and implemented in all parts of the country.
- The Government of Indonesia should amend its legislation to fully reflect article 12 of the Convention so that any child “who is capable of forming his or her own views” can express those views freely, including in all administrative and judicial proceedings affecting them.
- The Government of Indonesia should develop a nationwide campaign to increase public awareness of the participatory rights of children, particularly at the local level and in traditional communities.
- The Government of Indonesia should encourage respect for the views of the child in families, schools, and the care, administrative and judicial systems.

# THE IMPLEMENTATION IN INDONESIA

## ***The child's right to be heard/ respect for the view of the child and the best interest of the child***

There's mutual relationship between General Principles of the CRC. The rights to be heard/respect to the view of the child, in one hand is a rights in itself which should be fulfilled and in the other hand is a procedure in order to meet the principle of the best interest of the child and to ensure that the growth of the children can be maximal. In other words it is impossible to make decisions for the best interest of the child and to attain the maximum growth and development of children if the children are not given their rights to be heard and their opinions are respected in decision making concerning them.

Since 1998, there has been rapid change on administration and governance in Indonesia including in the area of human rights in general and children's rights in particular. Over a period of 11 years (1998-2009), four amendments were made to the Indonesian Constitution (1945), a number of International Conventions were ratified and laws on children were put into effect, including the law no. 23 year 2002 on Child Protection which tries to apply the provisions and principles of CRC domestically. However, this does not mean that there is a guarantee that the child's right to be heard and the best interest of the child as stated in the CRC becomes principle guidance for all decisions concerning children.

Unfortunately, this stems from the 1945 Constitution, the highest law in Indonesia. In its second amendment of the Constitution year 2000, on human rights article 28B section 2 it is stated that "every child has the right to survival, grow, and develop as well as entitled to protection against violence and discrimination." The prescription in the Constitution concerning child's right is fundamental because it is the highest source of law in Indonesia, which will guide and be translated into subordinate laws and policies. It also become more important for the Indonesia because based on the withdrawal of reservations in 2005, Indonesia stilly apply the paragraphs which declare that the ratification of the CRC does not imply the acceptance obligations beyond Constitutional limit nor nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution. It means that Indonesia is only bound to implement child rights recognized by the Constitution. Reading carefully the prescription of the child's rights in 1945 Constitution, it is clear that there is no recognition of the right of the child to be heard in every decision affecting his or her life and the principle of the best interest of the child. The Constitution only recognizes child rights to (a) to live, grow and develop, (2) be protected from violence and discrimination. Because the child's right to be heard and the best interest of the child are not recognized then Indonesia does not have obligation to implement by Indonesia. This isn't a good starting point because Constitution is the main reference for citizenship and the reflection of the State paradigm. There is no further explanation as to why the child's right to be heard and the principle of the best interest of the child has not been recognized in the Constitution while others are. Does the State only want to recognize some of the rights of the child?

Meanwhile Law No. 23 on Child Protection seems to follow the Constitution by reducing the provisions in the CRC on the child's right to be heard and that his/her view be given due weight in all matter affecting his/her life. Article 4 Law No. 23 year 2002 stated that every child has the right to live, grow, develop and **participate naturally according to his/her human dignity**, and to have protection from violence and discrimination. It gives no further explanation how to participate in a proper manner according to the principle of human dignity. It is also not explained which parties can decide how to participate naturally or properly. In addition, Article 10 of the Child Protection Law states that every child has the right to express and to be heard of his/her his/her view to be heard, accept, search and

give information according to his/her level of intelligence and age for his/her development as long as that's obey the **decency and propriety**. Once again, no further explanation is given of what is meant by "... according to the decency and propriety". As a product of legislation, the law turns out to include a phrase with many possible interpretations i.e. the relevance of the child's right to express his/her view with decency and appropriateness. The complete text of article 10 Law No.23/2002 on Child Protection is as follows:

### **Article 10**

Every child has rights to express and be heard of her/his views, accept, search for and give information according to the level of intelligence and his/her ages for the growth of his/herself **according to the decency and propriety**.

If the law is the domestic application of the CRC, where other regulations and provisions will refer to Article 10 can no longer be used as a reference. The broad and rather unclear prescription as to how decency and propriety will be translated brings consequences that each individual and society may interpret it by themselves. From a sociological perspective, with respect to how social norms are formed and upheld, a child is a party that is subject to and must follow the value of decency and propriety that is set up by adult. There's a risk, if individual or society will determine how the children participate according to the decency then the very substance of rights to be heard will not be fully respected.

In fact, the drafter of Law No. 23 year 2002 on Child Protection has limited the meaning of rights to be heard with decency and propriety and put it in to an activity that is not related to anything. The drafter of Law No. 23 year 2002 did not read the whole text of Article 12, particularly section 2 which states that "for this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law". Section 2 of the Article 12 put the rights to be heard in to the context, in which the State party should create a procedures and mechanism to facilitate children to express their views in judicial and administrative proceedings affecting them.

Other provisions in the Law on Child Protection confirm incomplete understanding of the meaning and provisions related to the recognition of the rights to be heard. Other articles regarding administrative provisions, for instance in terms of guardianship, adoption, placement of the child in alternative care institution exclude the child to express his/her views. In the case where the child can form and express his/her view, it has obviously violated the general principle of the CRC particularly Article 12. Meanwhile the State has an obligation, according to the CRC, to make procedures in administrative processes so that it guarantees the child's right to be heard. It is also an obligation to promote respect to children's views in all settings including family through programs and policies as well as campaigns. On the contrary, the state, through the Law on Child Protection has made a regulation that restricts the child's right to be heard by decency. The 1945 Constitution and the Law on Child Protection seems to correspond each other in terms of not believing that the child has the right to express his/her views. The incomplete recognition and non-existence procedures and mechanism on how to involve children in any decisions affecting them in the Law No. 23 Year 2002 means children are excluded from all processes that determine his/her life. As rights to be heard is also procedure to gain the decision for the best interest of the child, the exclusion of children from any decision impacting them also means that there's no guarantee the decisions made are for the best interest of the child. For example, the decision on who has the right to care for the child when a divorce occurs, where a court is involved in the process, does

not provide the child with the right to be heard and that his/her views be given due weight. Therefore, it should be questioned whether the decision taken is in the child's best interest.

The Indonesian Government has indeed made several programs to promote children's participation, such as those reflected in the Presidential Decree No. 7 year 2005 on National Mid-Term Development Plan 2004-2009 with the program to establish various forums such as child's forum, youth parliament, Indonesian Child Congress, National Forum for Child Participation and so on. Government, through the Ministry of Women's Empowerment and Child Protection has also issued the ministerial decree related to a program for child-friendly cities. However, the government also admitted that child participation in the national development process is still lacking and that there are no guidelines on child participation to be used as a reference: draft of Government Report III and IV. The admittance shows, on the one hand, that some efforts have been made by the government to promote the child's right to be heard, but on the other hand, it tells us that the Law on Child Protection No. 23 year 2002 is not considered to be as the guidelines for the implementation of the child's right to be heard, even though the Presidential and Ministerial Decree made the law a legal reference in addition to the Indonesian Constitution. In addition, this acknowledgement describes the limited natural resources and expertise from the government in promoting the child's right to be heard. The Ministry of Women's Empowerment and Child Protection is a non-departmental ministry so that it has no adequate resources available in district level. At national level, the ministry has a deputy for child protection in areas such as children's social problems and violence, education, health, civil matters and participation. The extension of the role of the Ministry from focusing on women to also focusing on child protection has just been carried out recently. In addition to the overlap with the Ministry of Social Affairs that also deals with social matters and violence related to the child and also child participation, the ministry is faced with a huge task – to coordinate with other ministries on the implementation of child protection. With limited resources, the role of the Ministry of Women Empowerment and Child Protection is vital in coordinating the other ministries and departments, advocating to other departments on mainstreaming of child protection program and conducting awareness program on child protection.

In addition, the programs above which are designed by the government - Ministry of Women Empowerment and Child Protection contradict the findings of the child consultations conducted in 14 provinces for reporting important information.

The data and information from the children consultation which are important related to the rights of the child to be heard is about the involvement of children in drafting the government report to UN CRC Committee. **From the total children involved in the children consultation, no one (0%) of them ever been involved in the process to draft the government report. This however, does not mean that children did not know that they had the right to be involved in the process of making the government report. At least 65% of children said that they felt they should be involved in the government report making.** Then, confirming other findings, they are not just unfamiliar about the government report making. **32% of the total children said they knew about it but most of them (81% of this 32%) said that NGOs informed them about it. This reinforces the fact that the role of civil society is significant and that the state obligation in terms of child participation is not performed.**

Other provisions and regulations related to the child are also confirming of non-recognition of the child's right to be heard and his/her opinion given due weight. No one has ever found a provision, or procedure

on the right to be heard and to have his/her opinion considered in all settings – family, alternative care, in health service, education and school, in working place in accordance to ILO Convention No. 138 (1973) and 182 (1999)--children who are allowed to work, their rights should be heard; in conflict and violence, in developing strategy and policy on prevention, in request for asylum or immigration, in emergency situation and in national and provincial/district process of legislation. Indonesia has the Law No. 3 year 1997 on Juvenile Justice, Law No. 13 year 2003 on Workforce, Law No. 23 year 2004 on Elimination of Domestic Violence, Law No. 23 year 2006 on Administration of Population, Law No. 24 year 2007 on Disaster Management, Law No. 32 year 2004 on District Government, Law No. 20 year 2003 on National Education System, Law No. 12 year 2006 on Citizenships, Law No. 13 year 2006 on Witness and Victim Protection, Law No. 10 year 2004 on the Drafting of Law. None of them ever acknowledge the rights to be heard. In addition, there are regulation in districts/ province and various regulations issued by ministers that set up mechanism of adoption, guardianship and foster system, but none of them incorporate the principle of the rights to be heard. In addition, there are also regulation on the alternative care institutions, on national action plan (RAN) which focuses on child protection of certain groups such as RAN concerning Elimination of Women and Child Trafficking, RAN concerning Elimination of Sexual and Commercial Exploitation of Children, RAN education for all in 2015 and National Program for Indonesian Children (PNBAI and so on. All of the program and provision are in questions as none of the involving children in the process of drafting and none of them recognise the importance of involving children when it comes to the implementation.

In addition not even one procedure has been determined on how to listen to child's view and their view given due weight in deciding the school rules, or giving feedback to the school learning environment, placement children in alternative care or decision on guardianship, fostering and adoption, and in legal process for children in conflict with the law. Exception is probably made in the trial where the magistrate once in a while ask the children to speak. But it is voluntary and not systematic because no clear mechanism governs whether the child's view is given due weight by the magistrate when making decision. This also happens in decentralization setting, where local government issued a lot of local policies governing the child's life for instance the regulation concerning street children. But none has been consulted to the children and none of the procedures provide space for children to talk when in the process of designing them. All regulations and procedures which exclude the children's voices for any decisions concerning their life are consistent with the Constitution that has not acknowledged the child's right to be heard. Strangely with regards to the law of general election, the rights to choose for children ages 17 year are acknowledged. It is unknown what the basis of the regulation is. It again reconfirm the obscurity of direction on where Indonesia is heading in its efforts to view children as active citizens. Closing all the possibilities for children to learn to express their voices and open the political participation only when children 17 years old make children have no chance to learn how to become active citizen and therefore can't be an actor of changes.

By not acknowledging the child's right to be heard in the Constitution, limiting this right to conform the decency and propriety, and by not having stipulation that governs the procedures and mechanism of the child's right to be heard in judiciary and administrative process as well as lack of the State promotion on respecting the child, it is therefore no guarantee that decisions which matter them will become the best interest of the child. As a conclusion, the State seems to act as a father who place the child's matters to the mother (Ministry of Women Empowerment and Child Protection) and controlling and deciding all things related to the child's life and exclude children from that decision making by not giving children their rights to express their opinion and views.

## ***Principle of Non-discrimination***

Indonesia has removed the Law No. 62 year 1958 on Citizenships and replaced it with the Law No. 16 year 2006 which later removed discriminative treatment towards Tionghoa group. Thus, Indonesia acknowledges the child's right to be protected against discrimination such as enshrined in the Constitution article 28B and the Law No. 23 year 2002 on Child Protection Article 4. However, it does not mean that the provisions in the Constitution and the law are applied in all legislations, regulations, and policies related to the child. In addition to Law No. 1 year 1974 which was by the Committee of the CRC is called discriminative in deciding minimum age for marriage (16 years for girls and 19 years for boys), the policy practice at the ministerial level to local level is still discriminative towards the group of children who should receive special protection. Children consultation to street children, children with HIV/AIDS, children with special needs (disabilities), children with conflict with the law, children from religious or ethnic minority, children victim of sexual and commercial exploitation, children victim of child trafficking, child labours, children victim of drug and substance abuse shows the types of discrimination happen to them.

Firstly, they have difficulty in accessing education and health services. For children with disabilities/special needs, the Ministry of National Education has only 1.390 schools which the number of children with disabilities throughout Indonesia is still unknown provided reliable data is available. The Ministry of Social Affairs in their survey in 8 provinces found that there are 299.203 children with disabilities (physical, mental, and multiple disabilities). Children who have conflict with the law and children victim of commercial sexual exploitation said that they cannot access formal education. For street children, even some can access formal or non formal school, access to health services is difficult because of their lack of identity. For children who are ethnic minority, in the children consultation samples were from Dayak ethnic group. They have to move from Dayak community to the city with 2-3 days land travel to access formal education. This has forced them into staying in child care institution and removed them from their cultural root. Some child labourers were from Central Java. Contrary to the general assumption that they work because of low economic level of the family, they said that they get discriminative treatments (Even violence) from their teacher because their situation. They are called "bad" so that they decided to not going to school any more and saw the school and teachers as traumatic things.

Secondly, for all children under such circumstances no one was free from discriminatory treatment, such as verbal abuse or degrading other children and from family as well as the community. For children who have conflict with law, street children and children who were sexually commercially exploited, they felt that there is stigma that they are criminals or sinner of violating religious norms. This can become psychological barrier that can hinder their growth and development. For children from religious minority, in this children consultation we had children from Ahmadiyah with extended discriminative treatment resorted into violence done by both the community and their teachers and schools friends.

Thirdly, for street children, children with conflict with the law or children from Ahmadiyah the state apparatus is seen to directly involve in making discriminative actions and even violence because of their status for instance Civil Police to street children, judge-police-jailer to the children with conflict with law and police to Ahmadiyah children. For children who are conflict with law or Ahmadiyah children, they think that the law enforcement let things happen as for instance when horizontal violence took place. For example in conflict between convicts in jail or even burning the houses of Ahmadiyah members.

All this gives a picture that discrimination which is based on their position or situation that caused the missing partly or wholly of all their rights has taken place. In a matter of principle of non discrimination, one of the main indicators for showing to what extent the country has applied this principle is whether or not this principle can be enforced in the court of justice. Justifiability of rights is a central issue which can inform to what extent the State has implemented its obligation to run the principle of non discrimination entirely. For instance the application of non-discrimination (article 2) in the freedom of religion (Article 14).

The freedom of religion was not mentioned in the recommendation of the Committee of the UN-CRC year 2002 but it was discussed in 1994 recommendation which showed concerns towards the limitation for official religions in Indonesia will increase discriminative actions towards many children groups in Indonesia. However, it was not only about restricting the official religions in Indonesia but also about rules in family which stated that official, legal marriage is when it is in accordance to each religion. So that it did not allow marriages of people with different and/or unofficial religions. Therefore, the children who are born from inter-religious marriages are considered unlawful so that it results in rights not being acknowledged because only the mother is put on the birth certificate. Moreover, this arrangement is derived from the law on marriage, Law No. 1 year 1974 which is extended into issues on guardianships, adoption, fostering of child. All process of alternative care or guardianships, adoption or fostering a child should be done by the child and parents/candidate parents of the same religion. This law is discriminative because it has treated people with unofficial religion differently which can result in the loss of child's rights or reduction of child's right to get to know his/her parent, or to get care from adoption, guardianship or fostering process.

In the context of limiting official religions, Indonesia has still been applying the Law No. 1 year 1965 on the Prevention of misuse and/or disgracing religion. In the statute made during old regime under Soekarno leadership, for more than 45 years now, bases of legitimations are given that official religions that are allowed in Indonesia are six – Islam, Catholic, Protestant, Hindu, Budha and Confucius. Legal legitimation was also given to suspend, dismiss or even arrest people or religious institution that has abused the religions without giving any clear explanation on what it is meant by abuse or disgrace The law has later become the basis for the Ministry of Religious Affair, attorney office and of Interior to issue a number of decisions each of their own or together to suspend, arrest or dismiss any religion which is considered deviating or disgracing other religion. The state intervention in the freedom of religion is called as the effort to control and ensure public order. However, the fact is that situation has never been in order. Direct violence from mass organisation happens to the groups of certain religious minority because it has been considered deviated and disgracing. The government has not focused on prevention. They, instead, respond when violence has taken place and it usually follows with suspending the religion. This is what happened to Ahmadiyah congregation in Indonesia who has been suffering due to the application of the regulation until now. Recently, a group of civil community has performed test on the content of the Law No. 1 year 1965 because it's contradicted with the Constitution which guarantees the freedom of all religions in Indonesia to the Court of Constitution. However, contrary to the view of the civil community group, the Court of Constitution confirmed the government action and policy previously by rejecting their lawsuit. It means that the formal legal foundations is getting stronger in stating the religions in Indonesia is restricted in number.

## Ahmadiyah Case

There are some differences on exact number of Ahmadiyah followers in Indonesia, at least in 2008. One document has mentioned that Ahmadiyah followers are 400.000 while government said it's 50.000 to 80.000. They are spread around West Java, 5.000 in Sukabumi, 3.000 in Kuningan, 2.000 in Garut, 243 in Bandung, 40 in Cimahi, 74 in Cicalengka, 80 in Majalaya dan 200 in Tasikmalaya. Outside of Java, there are about 3.000 in Medan, North Sumatra; 500 in Makassar, South Sulawesi; 500 in Padang, West Sumatra; 32 in Tanjung Pinang, Riau; and 23 in Banjarmasin, South Kalimantan. No number for Lombok, West Nusa Tenggara.<sup>13</sup>

National Commission on Human Rights stated that since 2001 there have been tens of incidents related to Ahmadiyah.<sup>14</sup>

Year	Event
2001	Destruction of mosque, property and murder of the member of JAI (Indonesian Ahmadiyah Congregates) in Sambielen, Lombok, (2) the issuance of Regent Decree in West Lombok on Prohibition of Ahmadiyah activities in West Lombok.
2002	Destruction of mosques of JAI in Cigitung, Majenang, Central Java, (2) Destruction of 3 Mosques, house and properties of JAI members in Pancor, West Lombok, NTB, (3) Destruction of 8 mosques, houses and properties of JAI members in Kuningan, West Java, (4) the issuance of the Regent Decree of East Lombok on prohibition of Ahmadiyah
2003	(1) Destruction of Orphanage in Kawalu village Tasikmalaya, (2) Destruction of JAI Mosque in Tolenjang Tasikmalaya, (3) the issuance of Kuningan District Government Decree on prohibition of Ahmadiyah, (4) fake letter signed from Secretary General of Religious Affairs that prohibited Ahmadiyah with fake letter from the Court.
2004	Destruction of mosques of JAI in Arsari, district of Bandung, (2) Destruction of JAI Mosques Parigi Ciamis, (3) Destruction of 8 mosques, praying spaces and properties of JAI members in Manis Lor, Kuningan, West Java, (4) the issuance of the Regent Decree of Kuningan on prohibition of Ahmadiyah
2005	
18/02	Destruction of mosques of JAI in Sintang, West Kalimantan, (2) the issuance of the Muspida Decree on prohibition of Ahmadiyah in West Kalimantan.
28/06	Destruction of JAI Mosque in Cinea, Wajo district, South Sulawesi.
09/07	(1) strikes in front of sector police, military police headquarter at district level, head of Parung subdistrict office and threat to attack Mubarak campus if JAI does not stop its activities, (2) Attack to Mubarak campus
14/07	The issuance of SPB (joint warrant) for the closing down of Mubarak Campus by Bogor district government.
15/07	Attack, destruction, robbery, and force removal of JAI members in Mubarak campus.
20/07	Prohibition of JAI activity in Mubarak Kampus by the local Bogor government

26/07	A threat to attack the mosque of An Nasir, Jl. H. Sapari, Bandung
27/07	Destruction of JAI mosques in Ciaruteun, Bogor
29/07	<i>The issuance of MUI fatwa that Ahmadiyah is outside of Islam, lost and make you lost, and the government is obliged to prohibit the expansion of Ahmadiyah in Indonesia, (2) the stamping/ close down of 8 mosques, small praying spaces and houses by the civil police of Kuningan.</i>
30/07	The head and vice head of Jai Pangauban Garut, is threatened with long knives and forced out from JAI by Pamulihan Head of Village.
02/08	The issuance of decree prohibiting JAI activity by MuspidA Tasikmalaya
04/08	Threat of destruction of the JAI mosque in Perintis, Bogor
06/08	Destruction of mosques and houses by JAI member in Cijati, Cija, Cianjur
09/08	The issuance of decree prohibiting JAI activity by Muspida Garut
11/08	Threat of prohibition JAI activities by MUI District Cimahi

Moreover, the National Commission of Human Rights noted a number of official prohibition by the state official in which it is considered violation human right particularly the right to practice his/her religion:

6 prohibitions of Ahmadiyah by the State & Higher Attorney since 1976-1994 by Subang District Attorney, Selong District Attorney of East Lombok, Sidenreng Rappang District Attorney, Tarakan District Attorney, Sungai Penuh District Attorney and Higher D.A. North Sumatera.

9 Prohibitions of Ahmadiyah by the official of the Ministry of Religious Affairs and/or the district head of forum (muspida) through a Joint Decree since 1980 to 2005 throughout Java, Lombok, Sumatera, and Kalimantan.

**The peak of all sequence of events that have been recorded by the National Commission on Human Right is that Indonesian Government at National Level on June 8, 2008 “suspend Ahmadiyah” through the Decree signed by the Minister of Religious Affairs, Supreme Court and Minister of Interior. The decision is entitled, “ Joint Decision of the Minister of Foreign Affair, Supreme Court and Minister of Interior of the Republic of Indonesia No. 3. 2008, KEP-033/A/JA/6/2008, 199 year 2008 on the Warrant and Command to the Followers, Members, and/or Members of the Management of Ahmadiyah Congregation in Indonesia (JAI) and Community.** It was to instruct Ahmadiyah to stop its dissemination of religion, threat to give sanction to its followers who did not follow the instruction, ask the community and community organisations to stop unlawful actions against Ahmadiyah and threat the society members who did not observe this will be subjected to applicable law.

**Then, to explain the necessary steps taken, Letter is Distributed signed by the Secretary General of Religious Affairs, Young Intelligent District Attorneys and Director General of the National Unity and Politics in Ministry of Interior SE/SJ/1322/2008; No:SE/B-1065/D/Dsp.4/08/2008; No: SE/119/921.D.III/2008) on**

**the Guidelines of the Implementation of the Joint Decree between Minister of Religious Affairs, Supreme Court and Minister of Interior No: 3 Year 2008; No: Kep-033/A/JA/6/2008; No:199 year 2008 on the Warrant and Instruction to the Followers, Members and/or Members of Management of Ahmadiyah Congregation in Indonesia This Letter, in addition to explaining the aims of the five items above, also instruct supervision and guidance to be given to Ahmadiyah group by the government and related government to district level. Basically, referring to International Crisis Group on the Impact of Joint Decree by three Ministers and Letter from the Three Ministers are “the suspension” of Ahmadiyah Activity.**

The Joint Decree on Ahmadiyah Suspension, even though it threatens the violence actor towards the followers of Ahmadiyah, in reality is only the suspension of Ahmadiyah activity, because it did not arrest and process by law the violence perpetrator instead until today the rights of Ahmadiyah members on the recovery and reparation have never been fulfilled. Meanwhile the perpetrators in violence are set free, while Ahmadiyah group is forced not to have any activity. The application of the policy and the unfulfillment of the rights to reparation or rehabilitation and psychological helps strengthens the view that even though the Constitution guarantees in which all children are protected from discrimination but in practice this cannot still be enforced in the court of law. This has not only reflected on the weakness of law enforcement but also the paradigm of law in Indonesia in which the rights of citizens should be upheld in the court of law. Here, the State has created a system which justifies the violation to the law by neglecting and failure to uphold justice in the process of trial. This has also reflect the main weaknesses in the law system of Indonesia because the International Convention on Human Rights, including child's right, does not immediately put into force before the court of law. It is necessary to conduct domestic application in the context of freedom of religion, even though the Constitution guarantees this, but it still means the freedom for official religions.

The impact caused from a number of violence and the real ignorance to the visible acts of violence towards Ahmadiyah is the vulnerable group of children members of Ahmadiyah. Children consultation with their representatives was carried out. Children Consultation was conducted in two phase by using various methods; visual, in-depth interview or FGD. Children Consultation is done with children representatives from Lombok and West Java. All, during Children Consultation was carried out in one of West Java districts.

15 children from Ahmadiyah were involved in the consultation, 8 boys and 7 girls. The youngest was 13 years old the oldest was 17. During the consultation, the children lived in two districts nearby within a province. Children who come from Lombok live in a village with mix residence – some Ahmadiyah and some are not. Those who are from Lombok are 9 people – 6 boys and 3 girls and go to the same high school in the area. All did not born in where they live now. They moved to West Java in different years. The children who are from Lombok told the incident of attack to their community in 2002 and 2006 and its impact for them.

Meanwhile 6 participants from West Java are 2 boys and 4 girls. They all sit in Junior High School at the time of consultation. They told about the incident occurred in September 2005.

The main findings on the consultation with the two groups of children are as follows:

**Discriminative treatment to them happened in all of their neighborhood where they live; Big family, house and school. It has already happened be-**

**fore the incident and getting worse after the incident. A child from Lombok remembered clearly that his father extended family change their behaviors into negative ones after his family becomes Ahmadiyah followers. Discriminative treatment experienced by the children is different. It includes mockery, tease, exiled from big/extended family. At school: Mocked, bitten, sworn, condemned, expelled from school People who did that are: Friends, neighbors, teachers.**

**When the incident of attack happened, the police was just let it be according to the children, let the attack and house burning happened. The police was also considered as being afraid but change into defensive anger when they were claimed not acting to protect the people.**

**All children were forced to temporarily evacuate. Children from Lombok even evacuate in temporary shelter provided by the government.**

**During the attack and after it the children were threatened to be killed. The terror for them was only a rumour, in terms of yellings, or writings on school wall.**

**9 Lombok children moved to West Java as the impact of the attack, is to provide them with access to education. The effect of moving, they were separated from parents and had difficulty in adapting in new environment, even though it's still Ahmadiyah community.**

**All children said they are still afraid, even to retell about the incident of attacks. Some are even still afraid if there's loud noise.**

**All children said that the government should protect them because they are human and religious people. They hope that the government does not put a side on one group but the whole groups. They also expected that they will be protected in the future from all types of violence and discrimination.**

The case of Ahmadiyah children is real example of the violation of the principle of Non-discrimination and the right to live, survival and development maximally. Because of their status as the Ahmadiyah followers they are threaten to be killed, lose access to education, separated from parents and experience trauma. The state, through its police apparatus, in the case of Ahmadiyah has not done anything where they should act accordingly to prevent attack and whereas they should punish and arrest the perpetrators of the incident. Consequently, the rights of Ahmadiyah child as the victims are reparation, rehabilitation and recovery have been violated. The policy and decision of local and national government have violate the general principle of CRC particularly on non discrimination by issuing official decree to Ahmadiyah group so that their rights are missing/cannot be enjoyed. The case of Ahmadiyah children is real example that even if the principles of CRC have been integrated into the constitution and other related law on child, the guarantee of Indonesian children, particularly those from vulnerable and minority groups, to enjoy their rights is simply none existing.

## **NATIONAL NGO COALITION RECOMMENDATIONS**

- Indonesia should amend 1945 constitution and fully incorporate the CRC General Principles including the child's right to be heard/respect to children's opinion and the best interest of the child in decisions affecting their life.
- Indonesia should amend the Act No. 23 year 2002 on Child Protection so as to ensure that it fully guarantees and implements the principle of respect to child's views/the child's right to be heard, and in every decisions (legislative, administrative, judicial) affecting and impacting them the best interest of the child is the primary consideration.
- Indonesia should amend the Act No. 3 year 1997 on Juvenile Justice so that the procedures and mechanism to guarantee the rights to be heard and the best interest of the child are incorporated in the process.
- Indonesia should amend all laws regulating education and schooling, health service, work environment, immigration and asylum and emergency situation so that the child's right to be heard and the best interest of the child are incorporated.
- The government should amend ministerial decree and regulation on administrative and judiciary. process affecting children so that standard procedures are established therein to enable children to express views and concerns in order to ensure that decisions made in these processes are for the best interest of the child.
- The government, in this case the Ministry of Women Empowerment should be more advanced in the effort to promote the child's rights to be heard and should involve children in the process of reporting the implementation of child's rights in Indonesia to the UN Committee of the Rights of the Child as well as in the process of designing action plans and development plans.
- Indonesia should revoke the Act No. 1 year 1965 which becomes the basis of government policy at ministerial level to prevail in discriminatory practices against children belong to religions considered unofficial.
- The government should amend the Act No. 1/ 1974 which has become the basis for the discrimination toward the children born from the marriage of spouses from unofficial religion or spouse couple of different religion to lose their rights to know their father as in their birth certificate only the mother is recorded.
- The government should uphold the principle of non-discrimination which has also been acknowledged in the constitution by way of legally processing the perpetrators of discriminatory based violence against children including children from families of Ahmadiyah and other children. The government should give these children their right to reparation, recovery and rehabilitation.

## CHAPTER V

### CIVIL RIGHTS AND FREEDOMS

*Setiawan Cahyo Nugroho & Muhammad Jailani*

#### INTRODUCTION

The main points of discussion in this chapter concern birth registration and the right to citizenship, violence against children and the use of corporal punishment, as well as freedom of conscience and religion for children. The focus of this discussion stems from conclusions made from the observations of the U.N CRC Committee and also from phenomena occurring in Indonesia considered important by the National NGO Coalition. For instance there's no recommendation or concerns of UN CRC Committee specify the problems of freedom of religion which mentioned in Concluding Observation in 2004. Nevertheless, in the 1994 Concluding Observation it is stated that the Committee concerns the limitation of official religion in Indonesia tends to push the discrimination based on religion.

#### ***Birth registration and the Right to Citizenship***

##### ***Concerns and recommendations of the CRC Committee 2004***

In the matter of birth registration, the CRC Committee recommends that Indonesia brings into accordance all its National Laws and regulations relating to birth registration as well as implement a comprehensive strategy with the aim of achieving its target of 100 percent birth registration by 2015. This strategy would include joint efforts with UNICEF and other international organizations. An essential part of this is a guarantee of the right of children to know their parents. This is of concern to the Committee, as the law allows for children to be deprived of the right to know their father, should these children have been born out of wedlock. In the matter of birth registration, the committee asks that Indonesia reform Act No. 62 of 1958 regarding citizenship. The committee notes that this act is discriminatory despite the fact that the right to citizenship is guaranteed by the Indonesian constitution. One example of this discrimination is that children born to fathers of foreign nationality can be denied Indonesian citizenship. In effect, this means that such children are denied citizenship from their mother's side and are also not guaranteed citizenship from their father's country of origin.

#### IMPLEMENTATION IN INDONESIA

The recognition for someone to be a citizen including elements of identities is the first step to guarantee the citizen to get other rights. However, that does not mean the State then directly give all the rights to the citizen. There should be a system that links the recognition of citizenship with his/her rights. In the context of children, the recognition of citizenship will not automatically come. A registration system of birth and a system of citizenship recognition is a starting point which should be linked with other systems, such as marriage record, the system of social security and others. In this context, Indonesia has a limited progress.

The repealing of Act No. 62 of 1958 and its replacement with Act No. 12 of 2006 regarding citizenship represents a step in the right direction, as this new act abolishes discrimination against children denied Indonesian citizenship on the basis that their fathers are of foreign nationality. The effectiveness of this

new law is, however, still in question. In the present governmental set-up, in which wide autonomy exists at the district level, it can happen that those responsible for processing citizenship applications at this level disregard the new law. Bearing in mind also that another group subject to discrimination through Act No. 62 of 1958 were those Indonesians of Chinese heritage, it is quite possible that the process of registering people for citizenship still involves convoluted bureaucracy aimed at garnering financial gain for those in charge of the process.

Indonesia has also introduced Act No. 23 of 2006 regarding Population Administration as well as Government Regulation No. 37 of 2007 regarding the implementation of Act No. 23 of 2006. These two regulations put in place a system in which applying for Indonesian citizenship involves giving information about various life events such as birth, death, moving addresses, marriages and divorces. The Ministry of Home Affairs, meanwhile, has the authority to be given and record all this information. This assumes that citizens are active in giving information, while the state is passive in receiving and recording the information. As such, due to social and economic barriers as well as convoluted procedures, the information mentioned above (which, in the case of children, refers to birth registrations) is often not recorded in local Civil Registration Offices.<sup>15</sup> An example of the difficulties in the procedure for obtaining a birth certificate is found in Presidential Regulation No. 25 of 2008 regarding the Conditions and Procedures for Population Registration and Civil Records. This regulation states that the registration of a birth must be accompanied by a letter certifying the birth from a doctor, midwife or other birth assistant as well as the name and identity of a witness to the birth, the family registration card and identity card of the parents and a copy of their marriage certificate. No provision is made for the possibility of one of these documents being missing or unavailable. It is unclear whether a birth could be recorded and a birth certificate issued in such circumstances. The stipulation that a copy of the marriage certificate of the parents is required also threatens the possibility of children born out of wedlock, or from parents married in a manner deemed unofficial, to be registered. An example of a marriage deemed unofficial, in the Indonesian context, is one in which the spouses are of different religions or adhere to a faith or religion not officially recognized in Indonesia. This was enshrined in Act No. 1 of 1974 which declared that for a marriage to be officially recognized it must adhere to the tenets of the couple's religion. This has led to cases in which the births of children born to parents in a marriage ruled unofficial by the state, including Islamic marriages, were not registered. This is also the case for children from families of minority religions and those from indigenous ethnic groups who are also subject to discrimination stemming from the same regulation. Examples of these are the Ahmadiyah, Jehovah, Marambu religious movements and the Boti tribe, children born into which failed to receive birth registration services. (Plan Indonesia 2007 and Ministry of Law and Human Rights 2008). In the context of registering births, it seems that Indonesia has paid inadequate attention to the concerns of the CRC Committee regarding regulations that allow for children to be deprived of the right to know their father.

In addition, in the context of decentralization, article 27(2) of the Population Administration Act, which states that birth certificates are to be issued free of charge, has not been adhered to by several regional governments. In organizing their governmental policies and regulating their regional income, these regional governments referred to Act No 25 of 1999 on fiscal relations between the central and regional governments. An example of this is the government of the Special Region of Jakarta which applies a fee for the making of birth certificates. This example clearly points to a system in which laws and policies in Indonesia tend to impede on and contradict each other, making it uncertain as to which law or policy one should follow. This often encourages those in authority at the district and municipal levels to determine their own policies using a legal basis justified only to themselves.

With the assortment of barriers that exist at the policy level, in the procedures for the birth registration process, and given the prevailing social and economic conditions and decentralization, it is no wonder that the government's national program of achieving 100% (one hundred percent) birth registration by 2015 is in danger of missing its target. Another barrier is that the importance of obtaining a birth certificate is not being effectively communicated to all the people who should be made aware of this. The government program, as well as the Government Strategic Plan announced in a circular of the Ministry of Home Affairs No. 474/1/2218/SJ of 2008 proclaiming that by 2011 all Indonesian children will possess a birth certificate, seem very ambitious and appears realistic only on paper. Data from the National Census of 2007 show that only 42% (forty-two percent) of babies in Indonesia possess a birth certificate. Moreover, no data is available on the percentage of all children in Indonesia (those under the age of 18) who possess birth certificates. However, from children consultation conducted with 14 groups of children ranging in age from 13-17 in 14 provinces, it was found that 33% (thirty-three percent) of those surveyed had no birth certificate.

The system of birth registration designed by the Ministry of Home Affairs is also not integrated with other registration systems, such as the system for keeping population records through the issuance of Identity Cards (KTP) and the system of the Central Bureau of Statistics which is responsible for the national census and other surveys. These Identity Cards (KTP), which are very susceptible to duplication and manipulation as they are issued by sub-district agencies without coordination with the relevant interior departments at the district level, are relied upon for just about all self-identification processes in Indonesia. For example, Identity Cards are necessary when doing any civil transaction, when voting in a general election, when applying for a driver's license, when getting married, when applying for a job and when obtaining permission to work. At the same time, there is no stipulation that in order for an Identity Card (KTP) to be issued, a copy or even an extract of a birth certificate must be provided. As such, it is quite possible that a person below the legal age of 18 could find work overseas by using an easily falsified Identity Card (KTP) stating that he or she is above the age of 18.

Meanwhile, identity fraud is not seen as a serious problem. For example, there is no system of redress for children whose identity documents are falsified or manipulated in terms of their age, name or home address. From children consultation in West Kalimantan, it was discovered that children who had fallen prey to trafficking had had their identity information altered through the creation of false Identity Cards (KTP). This was also the findings of other research done in 2008 in areas of Indonesia from which many child workers are sent to work elsewhere, like Kefa and Soe in West Nusa Tenggara. In these places the data indicated that as many as 300 children had had their ages falsified on their Identity Cards (KTP). (Plan Indonesia 2007 and the Ministry of Law and Human Rights 2008). The children found with these falsified Identity Cards (KTP) surprisingly all possessed birth certificates. This fact makes apparent the reality that the systems for collecting and recording data from Indonesian citizens are not integrated or in accordance with each other.

The system relating birth registration, marriage record, identity card, family card and death certificate does not exist. The uncoordinated registration and record system creates almost all record of above mentioned is easy to falsified. Central Bureau of Statistics which runs the census and surveys of the population of Indonesia also has no connection to these data. The government of Indonesia is said to want to implement as fast as possible a SIN (single identity number) program. However, without coordination between the different agencies to create an integrated data system and while still relying solely on identity data found on Identity Cards (KTP), this will be hard to achieve. That leads to the other serious problem; there is no system established to link the resident record, birth registration, citizenship

and other record with social insurance and other insurance where these insurances are actually arises after the citizenship are recognized. It is therefore, as it will be elaborated in the chapter Family and Alternative Care, while the government enact many programmes targeting poor and vulnerable people, the way the government define and determine who are poor and vulnerable citizen uses the data which are not reliable.

The birth registration which require the citizen actively record, denying the child born from unofficial marriage the rights to know the father, the fee for getting birth registration, all document related to the citizenship which can easily falsified, the discrimination which still occur to children belong to indiginous groups and minority religions to not getting the birth registration describe the reality of many Indonesian children which will be excluded from the fullfillment of rights to identity and other citizenship rights.

## ***Violence against Children and Corporal Punishment***

### ***Concerns and recommendations of the CRC Committee***

The CRC Committee firstly recorded the number of victims of violence, neglect and abuse, including sexual abuse at school, in public places, in detention centers and in the family. Acting on this, the Committee recommended that Indonesia respond to these problems by establishing a national system that listens to, monitors and investigates complaints, and, if necessary, follows up on cases in a legal manner. This should be done while treating the child in question in a sensitive manner, not revealing his or her identity, and respecting the confidentiality of the situation. In addition, the Committee also asked that child victims be given access to counseling, recovery assistance and help in reintegrating themselves with their peers. Children who have been separated from their parents due to suspicions of violence in the home need to receive alternative types of protection and care and should only be placed in an institution as a last resort and for as short a time as possible. Meanwhile, the perpetrators of violence should be prosecuted in a proper fashion.

In terms of the issue of corporal punishment, the committee was concerned that this type of punishment is still in widespread use in schools and in families and is still both culturally accepted and legal. Because of this, the committee asked that Indonesia make amendments to its existing legislation by outlawing corporal punishment in all places including in the home, in schools and in other places that look after children. It also called for a public campaign disseminating information about the negative effects of this type of punishment while promoting other, positive forms of discipline which don't involve violence as alternatives to corporal punishment.

## **IMPLEMENTATION IN INDONESIA**

Indonesia ratified the Child Protection Act 2002 (Act No. 23 of 2002), whose provisions cover the problems of violence against children and the criminalization of such violence. With particular regard to violence in the family environment, this act also provides for additional criminal charges on top of those provided for through the enactment of the Domestic Violence Act 2004 (No 23 of 2004). Some problems did, however, arise from the enactment of Act No. 23 of 2002. Firstly, the definition of the term 'violence' is not detailed enough even though it is stated that violence can take physical, psychological and sexual form. When it comes to prosecuting a perpetrator of violence, the lack of a detailed definition affords law enforcement authorities a weak frame of reference with which to categorize the criminal elements of the violence perpetrated against the child. Also, the law dealing with the eradication of violence, which encompasses physical, psychological and sexual violence, sadly only applies to violence perpetrated in the household/family environment. A consequence of this is that law

enforcement authorities tend to only process cases in which suspects are alleged to have perpetrated violence on a child with clear physical effects. In contrast, those suspected of committing other forms of violence are not prioritized in the legal process. With respect to the criminalization of violence, article 80 (eighty) of the Child Protection Act reads as follows:

- (1) Any person convicted of perpetrating cruelty, violence or the threat of violence, or abuse against a child shall be subject to a sentence of 3 (three) years and 6 (six) months in prison and/or a fine of Rp 72,000,000.00 (seventy-two million rupiah)
- (2) Further to the stipulations of point (1), in the case of a child who suffers serious injury, the perpetrator shall be subject to a sentence of 5 (five) years in prison and/or a fine of Rp 100,000,000.00 (one hundred million Rupiah).
- (3) Further to the stipulations of point (2), in the case of a child who dies, the perpetrator shall be subject to a sentence of 10 (ten) years in prison and/or a fine of Rp 200,000,000.00 (two hundred million Rupiah).
- (4) The sentences stipulated above in point (1), point (2), and point (3) shall be increased by a third, in a case where the perpetrator of the abuse is a parent of the victim.

This article seems to be adequate in threatening any potential perpetrator of violence against children with sanctions. However, if we pay close attention to the points, we notice that the state seems solely concerned with the perpetrator but not with the child victim. No articles deal with the state's responsibility to protect child victims of violence either. This does not accord with the right of such child victims to be given the opportunity to recover from the abuse they have suffered. For example, article 69, which is dedicated to special protection for child victims of violence, fails to deal with the question of a victim's recovery and rather states that child victims of violence, including those of sexual violence, receive special protection by having, amongst other things, the provisions of the Child Protection Act disseminated and made known, as well as through monitoring, reporting and applying sanctions. The full text of article 69 is as follows:

- (1) Further to article 59, special protection afforded to child victims of violence covers physical, psychological and sexual violence using the following methods:
  - a. Dissemination and familiarization of the provisions of the law protecting child victims of violence;
  - b. Monitoring, reporting and applying sanctions.
- (2) No person is permitted to cause, allow, commit, order to commit, or participate in violence as referred to in point (1).

It is all well and good to establish regulations criminalizing violence as well as introducing measures to protect children. However, if the perspective used for protecting child victims is not clear, then these regulations will not be applied effectively. When these regulations are applied, it is the protection of children, paradoxically, that will be endangered. Article 80, point 4 above, which states that a parent convicted of abusing his or her child shall be subject to an addition of one third to their original sentence, fails to take into account the fate of the child victim if his or her parent is jailed for a longer time than

another perpetrator, or if the parent has to pay a larger fine. In such a case, who will look after the child/children in question who, of course, are the original victims of violence?

Furthermore, the regulation increasing the sentence by a 1/3 (a third) for a parent of the victim is not reciprocated in the Domestic Violence Act as a deterrent for potential perpetrators of household violence. 17 This discrepancy in regulations and sanctions for the same action committed in the same environment (the family environment), is clear evidence of discordance in the criminal law system in Indonesia that results in difficulties for those overseeing trials (judges) and those prosecuting cases (prosecutors). It also leads to confusion as to which is the most appropriate statute to follow when prosecuting a parent alleged to have abused his or her child. Also, in the Child Protection Act, there is no provision as to whether violence committed by a parent represents a criminal complaint or not, while the Domestic Violence Act states explicitly that physical, psychological and sexual violence do indeed constitute criminal complaints. This means that a complaint alone could be processed by the police. However, the question is who will make a complaint to the police about violence carried out on a child by his own parent(s) when in the majority of cases the child is under the authority of this very same parent(s)?

Even though the Ministry of Social Affairs includes child victims of violence as one of the groups prioritized to receive service, it only includes child victims of trafficking and victims of household violence in this category. As to children who are subject to sexual abuse outside of their family environment, no clear plan is in place. While the recommendations of the CRC Committee are naturally very clear about the fact that perpetrators of violence have to be properly prosecuted, they also call for steps to be taken to rehabilitate and find alternative locations for the child victims of this violence.

Indonesia does actually have such alternative locations for the placing child victims of violence but unfortunately all of them fall into the paradigm of institutionalization. Research conducted by Save the Children working together with Unicef in 2007 on shelters/institutes for child victims found that the children in these places were subjected to further maltreatment.<sup>18</sup> This began with the conduct of the caregivers/instructors who adopted an inhumane, militaristic approach. The children were also subjected to physical and psychological punishment and it could be concluded that such places had no real policy at all to protect the children living in them. This gives an indication that in Indonesia, even if a temporary place of shelter is provided to child victims of violence, there is no guarantee that such a place will actually protect the children.

The Child Protection Act and the Domestic Violence Act both state the victim (the child) shall be protected by complaints being received monitored, and investigated. The reality, however, is that Indonesia has no system for receiving, monitoring, and investigating complaints. Once again, as was discussed in the section on general measures of implementation, the National Child Protection Commission (KPAI) has only been given a mandate to accept complaints with no clear mechanism as to how to act on these complaints as it lacks the power to carry out investigations. Some of the police forces at the district/municipal level already have a mechanism called the Special Service Room (RPK). It is unfortunate then that violence in the family setting has not been made into a criminal complaint because without such a complaint, the police take no action. Besides this, these units are still very new and require better resources and funding from the police service.

Furthermore, sufficient data and information showing the level of seriousness of the problem of violence against children in Indonesia is also hard to obtain. The National Child Protection Commission (KPAI)

has no comprehensive or detailed data about the number or type of cases of such violence. To date, the National NGO Coalition, based on children consultation in 14 provinces, have found children in need of special protection including street children and children in conflicts with the law are punished with violence by the very same adults tasked with looking after them, namely prison warden, officials from the Ministry of Social Affairs, or district/provincial public order officers (Satpol PP). This gives a clear illustration that while there are provisions in the existing legislation governing the handling of cases of violence, if such violence is perpetrated by those who have authority over the children, a care-giver/instructor in a temporary shelter, prison warden, or officials from the Ministry of Social Affairs or district/provincial public order officers in the case of street children, a mechanism has yet to be created through which complaints could be processed and then investigated. At the same time, media coverage given to the legal process against perpetrators of violence never covers the legal process against perpetrators if they are part of the state apparatus.

In the case of sexual violence, the National NGO Coalition has uncovered information from children who have been abused in this way by carrying out consultation in three provinces, East Nusa Tenggara (NTT), West Nusa Tenggara (NTB) and the Special Region of Yogyakarta (DIY). The findings from its process of consultation confirmed that sexual violence is often carried out by the parties/people who have the authority to protect children, or at the very least are known to the child and his or her family (girlfriend/boyfriend, neighbor, parent, teacher). A child in East Nusa Tenggara (NTT) province who had experienced sexual violence said that this had been done by his own neighbor who then threatened to kill him if he told anybody about it. This shows how sexual violence committed by somebody close to the victim is even harder to uncover as the child victim often feels intimidated and scared to talk about it. Moreover, the lack of both a national and regional mechanism for receiving, monitoring and investigating complaints means that victims of violence get no appropriate service or assistance from the government or law-enforcement agencies. In fact, the children involved in the consultations said they had only ever been assisted or represented by local NGOs. Another matter is that the Police Service, acting through its Special Service Room (RPK) mechanism, does not have the skills needed to carry out an investigation/questioning in a friendly or protective manner. As a consequence of this, children are often more traumatized and upset after having spoken to the police about the incident(s) of violence involving them than they were before.

The same is true about incidents of violence that take place in prison. The National NGO Coalition also conducted children consultation to the children and former children in conflict with the law in North Sumatra, West Java, Central Java and the Special Region of Yogyakarta (DIY). A more detailed description of the findings of this children consultation will be given in the chapter about 'special protective measures', but it can be stated here that every child who participated in the survey had suffered violence while in detention. The forms of violence to which they had been subjected ranged from verbal insults/abuse to actual torture. The latter of these is especially worrying. Forms of torture included; being locked up in a tiny cell, being beaten, being stamped on, or even being hit with a cane. In addition, incidents of violence between inmates of the prison, even those involving hardened convicts, are simply allowed to happen by the prison warders. Not one perpetrator of this violence in the prison environment has ever been prosecuted and no mechanism has been created to monitor these incidents or prevent them from happening.

Violence at school should be preventable as, in the Child Protection Act, article 54 states that children must be protected from violence from teachers, school administrators, or other students from the same or a different school. The effectiveness of the regulations in this piece of legislation is, however, still in

question even though the law has been in effect for 8 (eight) years since being enacted in 2002. The consultations with school students, and other children who dropped out of school, in North Sumatra, Nanggroe Aceh Darussalam (NAD), Central Java, the Special Region of Yogyakarta (DIY), East Nusa Tenggara (NTT), West Nusa Tenggara (NTB), Ambon, Palu and Papua revealed that, of all the children, 42% said they had suffered physical violence in various forms at the hands of a teacher while at school. To date, there is no mechanism in place, either in the school environment or even the Ministry of National Education, to receive and act upon complaints of violence perpetrated by a teacher at school. The consultations also found that there were several cases of violence by teachers who ended up being prosecuted (there was a case in West Nusa Tenggara for example). This example, however, merely confirms the previously mentioned finding that only cases in which actual physical evidence (harm) is visible are followed up. In this case, the victim had been subjected to sexual violence by a teacher. Other research shows that in 2006 in Central Java, from the total number of teachers interviewed, 80% (eighty percent) admitted that they had punished students physically at one time or another. In South Sulawesi, meanwhile, the figure was 90% (ninety percent) of all teachers interviewed (Unicef, 2006).

In the institutional environment, in this case residential cares, corporal punishment was found to also be still in use. While detailed descriptions of problems of violence in the home and alternative places of shelter will be given in the chapter dedicated to those problems, it is clear from the findings of comprehensive research carried out by Save the Children, Unicef and the Ministry of Social Affairs in 2007 on 36 childcare institutions in 6 Indonesian provinces (including Nanggroe Aceh Darussalam, Central Java, West Nusa Tenggara, and West Kalimantan) that problems of violence against children still exist. Firstly, in order to instill obedience in the children, these shelters employ a militaristic approach using things like roll calls, standing in formation and general assemblies/parades. In the matter of discipline, various forms of physical punishment are used such as push-ups, rolling on the ground, crawling through mud, and running. Other more serious methods employed include mobbing, slapping, caning, shaving of hair and dousing children with foul water. Even more disturbing is the fact that this militaristic approach and the punishments meted out are seen as perfectly normal both by the people running the institutions and by the children themselves. This confirms the findings of the CRC Committee that corporal, or physical, punishment is culturally accepted. The people running the institutions are unable to grasp, and deal with, the reasons why children break rules and are more concerned with the fact that they have broken the rules and thus deserve to be punished. Furthermore, in the context of a mechanism for handling children problems and preventing violence, only 1 shelter was found to have a policy designed to protect children. This is very frustrating as there are clearly many children who have been removed from their home environments and need protection and assistance. Also, in various institutions, it was found that children were actually doing work, under the pretext that this was a form of education that benefited the finances of the institutions in question. Some of this work was fairly demanding, such as making bricks or even building new structures for the institution.

In terms of decentralization, especially in the context of the special autonomy granted to NAD (Nanggroe Aceh Darussalam), it was found that corporal punishment such as the caning of people including children is still in use. Nanggroe Aceh Darussalam, as a region with special autonomy under accordance with Act No. 18 of 2001, has its own authority over most matters, one of which concerns the administering of punishment according to the tenets of the majority religion of the area. The legislative and executive bodies of the region were encouraged to act upon this by creating regional regulations or “qanun.” Among these qanun are 3 (three) that deal with violations of Islamic law/shariah, namely Nos. 12, 13 and 14 of 2003. These deal respectively with Khalwat, which forbids an unmarried couple to be together in dark or quiet places, Maisir which forbids gambling, and Khamar which forbids the consumption of

alcohol. These qanun have been in legal effect in Nanggroe Aceh Darussalam since 2003, and only in 2008 was a review of them conducted at the urging of various sectors of society. Until today, however, there have been no changes made to these regulations, or qanun. In the same year, Qanun No. 11 of 2008 concerning the Protection of Children was ratified by the provincial legislative body. This qanun, however, does not provide for special treatment or exemption for children who are alleged to have breached qanun Nos. 12, 13 and 14 of 2003, as detailed above. Not only are these qanun allowed to be enforced in Nanggroe Aceh Darussalam due to the special autonomy the region enjoys, but also the criminal sanctions sections in these qanun dealing allows for the flogging of those alleged to have infringed them. (IDLO, 2008). As such, children who violate Qanun Nos. 12,13 and 14 of 2003 are also liable to be flogged.

Besides the fact that the definitions or interpretations of Khalwat, Maisir and Khamar are debatable, the qanun regulating these violations are applied to everybody without exception (including children). This illustrates that in Nanggroe Aceh Darussalam (NAD), corporal punishment is not only viewed as legitimate but is also legal.

### ***Freedom of conscience and religion***

The 2004 Concluding Observation CRC Committee express no specific concerns or recommendations on the part of the Committee as to problems concerning freedom of religion. Nevertheless, in the 1994 Concluding Observation, the Committee declared its concerns about the discriminatory practice of allowing only official religions to exist in Indonesia. The National NGO Coalition noted that just because this issue was not included in the 2004 Concluding Observation does not necessarily mean that the problem does not exist anymore. On the contrary, the National NGO Coalition is very concerned about the fact that some elements of civil society adopted violence against followers of the religious movement Ahmadiyah (the victims of which certainly include children), in 2001, 2002, 2004 and 2007 successively in West Nusa Tenggara and West Java amongst other places. The violence perpetrated included the burning of houses and places of worship as well as threats of murder. While details of the causes and effects of this violence already discussed more specifically in the chapter on 'General principles', it can be stated here that the findings indicate a tendency on the part of the state to allow groups from civil society to carry out direct violence without hindrance. This constitutes a violation of the right of children to enjoy freedom of religion as guaranteed in the Convention on the Rights of the Child article 14 and by the Child Protection Law. Seeing the problems of freedom of religion in the historic perspectives, it can be traced that the limit of recognition to only certain religion in Indonesia have been occurred since 1965, with the enactment of Act No 1 of 1965 regarding Prevention of Misuse/ Blasphemy or Digracing religion which give legitimation for the policy in the ministerial level and above to "frozen" the activities of unofficial religion with a reason that these unofficial religion disgraced the official religion. With the legitimation from the state and the state turn in to blind eye to the actions violated the child rights to religion, Indonesia become a state that does not respect the rights of the child for thoughts and religion.

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

While taking into consideration the progress achieved by Indonesia in the matters of civil rights and freedoms, as well as in respect of other problems already discussed above, the National NGO Coalition recommends as follows:

- The government should create a program and a policy which must be adhered to by all ministries concerned with rights to citizenship. This includes the regional government level, where the provisions of Act No. 12 of 2006 regarding citizenship must be guaranteed and applied consistently. Convoluted administrative procedures to apply for citizenship should be abolished and officials using these procedures for their own financial gain must be prosecuted.
- The government should make amendments to Act No 23 of 2006 regarding Population Administration so that children born out of wedlock are guaranteed the right to know their father, births of children born into families from minority groups and religions can be registered; and the state becomes more active in the matter of birth registration.
- The government should put an end to the practice of charging a fee for birth certificates by regional governments by abolishing all regional regulations that stipulate that a fee must be paid for a birth certificate. The procedure for obtaining a birth certificate must be simplified so that no government official is able to use this procedure for his or her own gain. Also, a campaign should be launched informing people of the importance of registering all births.
- The government must ensure that all laws at both the national and regional levels prohibit the use of corporal punishment including caning.
- The government must put an end to the practice of violence, including corporal punishment, carried out by members of law-enforcement agencies against children including sexual violence. A national system which affords children much needed protection by receiving, monitoring and investigating complaints and, where appropriate, following up on cases using the law must be established. This system should also safeguard the privacy of the victim and see to it that the victim receives counseling, is helped to recover and is reintegrated back into his or her community
- The government must put an end to the practice of violence suffered by those who embrace religions regarded as being deviant. Members of mass organizations who perpetrate such violence should be treated as criminals.

## CHAPTER VI

# FAMILY ENVIRONMENT AND ALTERNATIVE CARE

*Florence Martin*

### INTRODUCTION

International Law has established a number of fundamental principles in relation to children's rights to care and protection. The UN Convention on the Rights of the Child, reaffirms the crucial role that the family plays *'as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children'*.

In line with this, the Convention places the primary responsibility for the care and protection of children on parents and families. The State's overall and ultimate responsibility is in ensuring that those carers are able to fulfill fully their role towards children by supporting them and ensuring that they have access to the fundamental services and conditions which are essential to ensure that their children's rights are fully respected and implemented.

The Convention articulates clearly the principle that children should not be separated from their parents against their will unless it is deemed to be in their best interest and this can only be done through a determination by the competent authorities that is in accordance with the law and can be judicially reviewed. In cases where it may be in the best interest of the child to be removed from his/her parent or where parents are dead or have abandoned the child, the emphasis should be on placing the child with the remaining family including extended family. This is further underlined in the 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children which states: *'When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute – foster or adoptive family or, if necessary, by an appropriate institution should be considered'*.<sup>18</sup> As a result international standards firmly point to the family environment, including from a non blood related family, as being the preferred option in all cases where children are either parentless through death or abandonment or in the cases where the child has had to be removed from the parental care for his/her own safety. Institutional care is clearly identified as a last resort and as the least desirable option.

International law thus points to the role of the State as enabling parents to fulfill their crucial role and where they are unable to do so, to look to the child's extended family or to provide an alternative family setting for the child through fostering or adoption rather than looking at an institutional care setting as the desirable alternative. In addition, in its 2005 Recommendations on Children without Parental Care (CRC/C/156), the Committee on the Rights of the Child has emphasized that the fact that a family is poor and unable to provide their children with adequate access to food, health, education, housing, food should not be the reason for separating a girl or a boy from her or his family but instead the State has a responsibility to ensure that the most vulnerable families and children are able to access the support needed to make sure that they do. States parties should *'ensure that poverty as such should not lead to the separation decision and to the out-of-home placement'* and as a result they should *'increase efforts to provide material assistance and support to economically and/or socially disadvantaged children and their families.'*

In its Concluding Observations to Indonesia's second periodic report under the Convention (CRC/C/15/Add.223), the Committee expressed *"its concern at the high number of children who are placed in institutions*

*and at the living conditions in these institutions, and at the increasing number of children who are abandoned by their parents.”* It recommended that a comprehensive study be undertaken by the Government “to assess the situation of children placed in institutions, including their living conditions and the services provided” and that a number of measures be taken to prevent children being placed in institutions and for the reunification of children that are already institutionalised whenever possible. It also called on the Government to set “clear standards for existing institutions and ensure periodic review of the placement of children”.

In the context of adoption as one of the care alternatives, the Committee has seen discriminatory regulations with regard to adoption for particular groups. The Committee calls for the adoption regulations to be amended in accordance with the CRC principles i.e. non-discrimination and for the best interest of the child. It is also recommended that the necessary steps be taken to monitor and supervise the child adoption system effectively based on the best interest of the child and urge in respect of Inter-country Adoption Indonesia should accede the Hague Convention on Protection of Children and Cooperation.

## **IMPLEMENTATION IN INDONESIA**

Following ratification of the UN Convention on the Rights of the Child (CRC) in 1990, Indonesia adopted a new **Law No 23 on Child Protection (2002)**, which sought to integrate the CRC into national legislation. Articles 7 and 14 in particular recognised that a child has the right to know and be brought up by his or her parents and that separation should only be required where that is in the best interest of the child and as a last resort. It also restated the principle that “should for any reason his/her natural parents not be able to guarantee the child’s growth and development, or the child has been neglected and/or abandoned, then the said child may be fostered or adopted as a foster or adopted child by other person in accordance with the provisions of the laws and regulations in effect” (Article 7(2)). As such it brought together a framework for alternative care that includes fostering, guardianship, adoption as well as residential care. Law No 23 also articulated clear responsibility by the government and State institutions in providing ‘special protection’ for a range of children deemed at risk including of abuse, neglect and exploitation as well as a result of emergency situations. (Article 59)

*Despite this, no Government regulation was developed to ensure that the principles set under Law no 23 were translated into policies and in order to guide the way services were being delivered to children.* Instead the emphasis in government policies and interventions remained firmly on the provision of social services for children either in or through the childcare institutions. Kemensos updated its guidelines and provided sets of directives for the care of children in institutions (**2002 General Guidelines for the Operation of Childcare Institutions and the 2004 Guidelines for the Provision of Child Care in Institutions**). While it also issued a set of guidelines for the care of children ‘outside of institutions’ (**2004 Government Guidelines for the Provision of Services to Neglected children outside of institutional care (2004)**) the delivery of services under the guidelines continued to rely primarily on residential care institutions.<sup>21</sup>

Moreover, those Guidelines actually broadened the role of these institutions to provide social welfare services to all ‘neglected children’ defined generally as children whose parents cannot provide for them adequately, economic factors being the primary determinant. As stated in the guidelines, “Given these sort of social situations, it is no longer feasible to rely on families to deal with the problems of neglected children. Instead, institutions are required that are capable of substituting for children’s parents. This is why childcare institutions have been developed as institutions that are capable of providing professional services to children.” As a result, despite the adoption of the Child Protection law and its emphasis on the right of the child

to grow and develop within his or her family and not to be separated from them except clearly in their best interest, social welfare interventions towards children have continued to place residential care as the primary option to ensure children's access to basic services rather than the last resort that it is required to be under Indonesian and international standards.

Following the devastating Tsunami that affected the Province of Aceh in north Sumatera, the Ministry of Social Affairs (Kemensos) with support from Save the Children and UNICEF began in 2005 a major comprehensive review of the situation of children in institutional care. Working with two Save the Children advisers seconded to the Ministry, comprehensive research and policy review was undertaken and the Government began a process of responding to the Committee's Concluding Observations. While considerable progress has been made since this process was initiated, it also highlighted the enormity of the challenges facing Indonesia.<sup>20</sup>

### ***The institutional care problem***

*Indonesia among the countries has one of the highest numbers of childcare institutions in the world, an estimated 8000 childcare institutions (Panti Asuhan) where over half a million children spend the greater part of their childhoods.*<sup>21</sup>

Over the last 20 years, the number of such institutions has at least doubled and indications are that it may even have quadrupled, if data provided by the Government to the UN Committee on the Rights of the Child in 1994 is correct. A major study of the situation of children in institutional care in 6 provinces of Indonesia was undertaken in 2007 by Kemensos with Save the Children and Unicef. The research, "*Someone that Matters: the quality of care in childcare institutions in Indonesia*", found that Indonesia had a major institutional care problem, with the use of residential care being seen as the primary protection response for children deemed 'at risk' in Indonesia by Government, faith based and other community organizations and in many cases families. The Ministry itself recognizes and supports 18 different types of institutions for children and other vulnerable groups (one for each "social problem"), and yet lacks both a regulatory system and proper data on these. No licensing system is in place and the vast majorities of these institutions (98%) are privately run, mostly by faith based organizations, and left entirely unregulated. Furthermore Kemensos has been providing substantial funding directly to thousands of these institutions (over 4300 in 2007) through its ever growing annual BBM subsidy (Bahan Bakar Minyak – *Financial support scheme established to compensate for a decrease in Governmental subsidy for fuel*) and has not used this as a means of ensuring basic standards of care are met. This has led to a rise in the number of institutions across the country as organisations wanting to respond to welfare issues on the ground are further encouraged to see opening an institution as the means of accessing government funding.

In 2007, Kemensos allocated USD 9 million to local Government under the decentralized system for the provision of services to "neglected children". It allocated in the same year another USD 11.7 million directly to childcare institutions across the country, more funding than it provides to all local governments in the country to run local social services for these children. This is despite the fact that decentralised funds (Dekon) are also generally used by local Government to support institutional care and that no regulatory system is in place to ensure the funds are spent appropriately.

*Anyone can set up a childcare institution in Indonesia without having to demonstrate needs, the capacity or resources to deliver such services. No licensing or regulatory system has been established for the delivery of social services for children including through residential care.*

The only requirement under the Child Protection Law pertains to making sure that faith based organizations provide services only for children of the same faith. In 2004 Kemensos adopted a decision (No 50/HUK/2004) on the Standardization of Social Care Institutions, requiring institutions to have “*proof of their legality from the competent authorities in order to get recognition and professional guidance*”. This only entailed, however, the parent organization being registered as a social organization (ORSOS) with the local or national social authority but did not include any substantive criteria nor any evidence of capacity to deliver services or compliance with set conditions or standards. In 2006 Kemensos published a *Manual for the Standardization of the Social Assistance Institutions (Panti Sosial)*. Covering the range of institutions caring for vulnerable groups as defined under the social welfare framework, the standards are very general and primarily focused on the bureaucratic aspects of the management of these institutions and in particular the fulfillment of certain reporting requirements on budget, staffing and on services. No minimum standards were set on the types, quality or approaches to be taken in the delivery of services. No body or mechanism for the accreditation or monitoring of childcare institutions was established. This is in clear violation of Article 3(3) of the Convention and the Committee’s 2004 recommendation (50 (d)) that the Government should “set standards for existing institutions.”

In 2009, following the research and review of policies regarding children in alternative care, Kemensos began work in partnership with Save the Children and local academic and practitioners to develop National Standards of Care for Childcare Institutions. The draft standards, due to be adopted through a Ministerial regulation in 2010, will require the establishment of a licensing system and compliance with a range of standards for the delivery of childcare services by institutions. It will also require a shift of role for these institutions from a primary focus on residential care towards supporting children in their families whenever possible and in their best interest. The implementation of these standards will require major commitment from Kemensos working in partnership with local government and social affairs offices to support their implementation and link financial support for childcare institutions to the provisions of appropriate quality services.

*The overwhelming majority of the children in childcare institutions are not without parental care or families and only 6% of them were found to be orphans (10% in post Tsunami Aceh).<sup>22</sup>*

Instead the children are placed in these institutions primarily by families that feel or are deemed to be poor (*tidak mampu*) and unable to provide for their children, in particular in terms of paying for their education. The focus of the services provided by the institutions and of the placement is not on the care needs of children but primarily on their accessing school until senior high school. As a result the vast majority of the children in institutional care are between (5 to 17 years). The institutions operate very much like boarding schools without schools or dormitories with little focus or capacity to address the psycho-social needs of often young children, let alone children who may have faced particular protection issues including family neglect or violence. Screening are generally not carried out to determine whether a child actually needed residential care and supporting the child in his or her family is rarely seen as an option. Instead institutions *recruit* actively children and the very limited criteria for doing so are solely linked to the educational needs of the child and the needs of the institutions as most institutions recognize that they had very limited capacity to care or oversee children.

Placements are carried out primarily by parents and relatives with no government involvement or formal decision by a social or legal authority. Children deemed ‘with problems’ are generally not admitted including children that have a disability or any medical problem. Children with a disability are placed in Disabled People’s Homes that generally care for both children and adults. The number of

these institutions across the country is much smaller, however, with no more than one or two such institutions in a single regency compared to the number of childcare institutions which can be hundreds. Another common criterion for selection found in almost all of the institutions is that children have to be capable of 'taking care of themselves' including washing, cleaning themselves and their clothes, cooking, as most institutions do not have sufficient staffs or adults to do so.

*No mechanism is in place at either national or local level to oversee the placement of children separated from their parents or families into care.*

While the Constitution of the Republic of Indonesia and the Child Protection Law articulate the State's clear responsibility in relation to children who are 'neglected or abandoned', no legal and administrative system is in place at national or local level to assess and supervise the placement of children in alternative care, including in institutional care. Article 55(1) of the Child Protection Law provides that the Government shall be required to ensure the maintenance and upkeep of neglected and/or abandoned children, whether in the context of an institution or outside an institution. It also provides for oversight and supervision by the Ministry of Social Affairs but does not provide clear guidance in terms of responsibility for decision making in relation to children's placement in alternative care. Instead it only states that "*should a child be neglected due to the failure of his/her parents to exercise their responsibilities for some reason, then an institution as referred to in Article 55 hereof, the family or an authorized officer may submit an application to the court for an order declaring the child to be neglected.*"(Article 57) As a result the institution itself as well as the social authority and the child's family can apply for such a declaration and as a result for the child to be placed in institutional Care. In reality though, children are routinely placed in institutional care by their families, by local authorities or by NGOs/FBOs without any court order or any form or formal decision as to their status and situation. In fact, no case has so far come to light where a Court Order has been sought to deem a child 'neglected' under this law so that a placement order could be made.

No system is in place within local social authorities to enable such applications and decisions to be made and there is no evidence of knowledge in the Government either at national or local level or in the institutions that the placement of children into care entails legal and statutory responsibilities. The basis for the placement was found to be almost entirely informal and where a formal agreement with the parent/families was sought prior to the placement of the child, this invariably related to the obligations of the child and his/her family to obey the rules and regulation of the institution. As a result the placement of children in institutional care is being carried out entirely without supervision and in most cases without local government knowledge and no gate-keeping mechanism is in place. In addition, and in line with the institutions' stated aim of providing access to education until senior high school, no review of placement is undertaken at any stage, in violation of Article 25 of the Convention, except where the child is deemed to have broken the rules of the institutions or to be performing poorly academically. In such cases, placements would be terminated unilaterally and the child sent back to his/her family generally without any prior assessment as to whether this was in the child's best interest.

*The daily operational needs of the institutions including maintaining order and managing the children are usually prioritised over the children's needs to form secure emotional and social attachments, including ties to a family and community. Instead further protection issues were found in many of the institutions including the use of violence and child labour.*

The institutions' primary focus on providing access to education and the little importance given to family relations also means that children tend to be placed in the institutions for very prolonged period of

times, generally from elementary to senior high school (up to 12 years), and they are given only limited opportunities to visit their families, siblings and friends outside of the institutions. This is clearly in violation of the Convention's recognition of the importance of children retaining regular contact with their parents and families. Going home is usually allowed only once a year for the main religious holiday, at most twice, and mostly for children whose families live nearby or can afford the transport costs.

The question of the psychological and emotional impact this could have on these children and the difficulty it is likely to place on their eventual return to their families and communities after graduation is not seen as an issue by the service providers or the Government. Instead managing children is usually perceived as a matter of control and discipline. The institutions' staffs generally see their role as ensuring the smooth operation of the institutions rather than the positive growth and development of the children placed in their care and children's time was found to be control tightly with few opportunities for play and socializing with friends outside of the institutions. As a result, research has found that further protection issues often arose in the institutional care setting including neglect and, in a number of disturbing instances, violence often under the guise of disciplinary action and punishment. The use of physical and psychological punishment was found to be prevalent in the majority of institutions assessed. Worryingly both staff and children had come to accept this as part of the normal daily life in the institutions and the reasons for children violating the rules was never considered nor why, despite the use of physical punishment, children would continue to break the rules. The forms of violence used in the context of discipline or 'educating children' ranged from punching, slapping, hitting with wood or rattan canes, pinching stomachs, pulling ears, making the children crawl in the mud, ordering them to run around the field, carrying heavy loads, making them stand in the sun, doing push ups or 'scout jumps', throwing dirty water on them, shaving the child's head in public as well as locking them up in toilets and other forms of isolation. Generally the more serious the offence or the more 'naughty' a child was considered to be, the higher the level of physical violence. Research with children in the institutions showed that they felt that humiliating and degrading treatment including verbal abuse was just as bad as physical punishment and in some cases even worse.

The majority of institutions were also found to rely on the children's work for their operational needs. While there is no doubt that contributing to domestic chores can be an important way for children to learn important life skills and feel that they are contributing to their living environment, it was found that in most of the institutions the children were not just providing support to adult staff but they were actually carrying out work instead of staff. In other words, without them the institutions would simply not be able to operate as they would not have been the required support staff to clean, cook and wash. In some cases, children were even involved by the institutions in clearly harmful child labour including construction work and brick making, in clear violation of Articles 19, 31 and 32 of the CRC.

*The lack of a regulatory system for childcare institutions has also been compounded by the fact that no data collection system was in place to enable the situations of the children and the institutions to be known, enabling proper accountability by the social authorities.*

Prior to 2007, the only data on children in institutional care available in Kemensos was collected solely in the context of the Government subsidy programs to childcare institutions and was extremely limited in terms of quality and accuracy. The data collected at the regency and provincial level also tend to cover only the number of institutions in receipt of the subsidy and the number of children deemed to benefit from it. As the subsidy only covers a given percentage of the institutions (estimated to cover between 50 to 70%) and a given number of children in them depending on the availability of the subsidy,

the data does not provide an accurate picture of the actual number of children in institutional care nor of the number of institutions in the country.

It also provides no information about the situation of the child beyond total numbers and is not gender or age disaggregated. Local government collects this data primarily in the context of the annual subsidy program and in order to carry out its own program of assistance to the institutions. Only where institutions have organized into local networks in a few regencies is marginally better data collected and updated even though, in those instances too, the primary aim of data collection was to facilitate access to Government and private donor funding. This situation is indicative of a broader problem in relation to the lack of an effective data collection and management system for child protection in Indonesia with data only collected and available in the context of broad socio-economic survey or census or for the purpose of individual projects.

In 2007, Kemensos established, with support from Save the Children, a National Database system for Children in Alternative care, initiating for the first time collection of accurate and comprehensive data on the situation of children in residential care. A national registration system was developed and a directive issued by the Ministry to all regency level social authorities asking them to register all childcare institutions. A national numbering system was used to facilitate data entry in the database. By 2009, data on over 2000 childcare institutions across the country had been entered and over 1500 had been issued with registration numbers. Progress was however slow and not sufficient resources and priority given to this data collection within the Ministry despite the fact that over 5000 childcare institutions continued to receive direct financial support from Kemensos. Accountability for the situation of these children remained low within the Government including at the National level, threatening the progress that has been made in this area.

### ***Lack of Support for Families and Family based Care, including Adoption***

*Little attention and recognition has been given to the critical role played by families, including extended families, in the care of children deprived of parental care whether temporarily or permanently.*

While a number of national and local programmes have been initiated by the Government to support family planning and reduce poverty, including a recent program of conditional cash transfer programme (*Hope for Families Program*) with a focus on access to health and education, no specific program targeting care givers in particular difficult circumstances have been established. Despite the stated focus on 'neglected' children, government responses and resources have been targeting institutions rather than the children and the families that need support, pushing family separation rather than family preservation and responsibility taking. The Government has not adopted any comprehensive policy framework to support appropriate family based care and to ensure local child and family services are provided to support best outcomes for children and their families linking education, health and protection services.

This is despite the fact that data from a National Population Survey (*Module Kependudukan*) carried out jointly with the 2000 Population census showed that there were over 2.15 million children under the age of 15 in Indonesia that were not living with their parents and that 88% of these children were being cared for by their extended families, in particular their grandparents (58.6%) while another 30% were being cared for by other members of their families. Only 10% of these children were orphans and 72.5 % still had both parents alive indicating that there may be a range of reasons why children are placed in the care of their relatives and not primarily due to the death of parents.

This data confirms that extended family care plays a huge role as an alternative to parental care and yet no programs, no targeted services were aimed to these key care givers to support them in their important role. The data also shows that the vast majority of orphans in the country<sup>3</sup> are actually not in institutional care but within the care of their families and that the institutions in fact play a small role in the provision of alternative care for these children. Yet the bulk of social assistance is not provided to these families or targeted to the other 4.4 million of children under 15 that live with a single parent (3.4 million with their mother and just over 1 million with their father) but instead targeted to support the care of children in institutions.

Article 26 (2) of Law No 23 on Child Protection (2002) states that the primary form of alternative care for children who cannot be cared for by their parents is extended family care (Kinship Care). This important alternative, however, has not been prioritized, supported and strengthened by the Government through clear policies and programmes that support family preservation and the care of children in their extended families.

*Limited formal alternatives for children who cannot be cared for in their families means they are often left unprotected with no one taking responsibility for their situation while other families that would be able and willing to care for them are not provided with the opportunity.*

While the vast majority of children in institutional care today in Indonesia could be reintegrated into the care of their families with a mixture of both financial (in particular assistance for education costs) and psycho-social support, a small but important number actually face real care and protection issues and as a result will require alternative care either on a temporary or permanent basis. While the Child Protection law provides for adoption, fostering and guardianship, only a limited and flawed system of adoption is in place at this stage and no formal fostering system exists. The Guardianship system remains limited to the management of inheritance and decision making at the time of marriage for children of the Muslim faith.

Law No 23 on Child Protection (Articles 39-41) provides for the adoption of children when in their best interest and in accordance with laws and regulations in force as well as customary laws. It sets out that adoption does not break the blood line and that adoptive parents have an obligation to tell the child about his/her origin and the identity of his/her biological parents, taking into account the child's readiness to receive this information. It also requires potential adoptive parents to be of the same religion of the child and that adoption by a foreign citizen should be a last resort. In 2007 Government Regulation No 54 was adopted to regulate criteria and procedures for adoption. The regulation was the subject of lengthy discussions and yet remains problematic on a number of fronts. While it establishes considerable number of administrative and formal criteria to determine the eligibility of the child and of the prospective adoptive parents, it sets out no real mechanism to enable appropriate assessments of the child's situation and of the prospective parents to ensure that the adoption is being carried out in that child's best interest. It also set out a formal adoption regime that requires a decision by a court of law but also recognizes customary adoptions that are not regulated and only provide that these may be formalized through the courts without stating whether similar criteria would be applied. This creates considerable uncertainty in terms of the legal status of children 'adopted' under customary law regimes and undermines attempts to provide a sound legal regime and protection for adopted children. While the Regulation improves on the previous regulation that had limited children's eligibility for adoption to the under 5 and provides that children up to 18 years can be adopted, it includes confusing criteria for the adoption of children of different ages.

More positively, the Regulation also amended the previous requirement that prospective parents should be unable biologically to have children in order to be eligible. It now requires the couple to have been married for five years at least, be between 30 and 55 years of age, to have no children or only one, to have got the permission of the parent(s) or the guardian of the child and permission from the Minister of Social Affairs or the head of the local Office of Social Affairs.

Adoption can be carried out directly from a family that has agreed to give up their child for adoption by someone else or through an institution that has received authorization from the Ministry of Social Affairs to carry out adoptions. Monitoring is to be carried out by anyone including individuals and communities and while the regulation requires a report to be prepared to assess the suitability of the prospective parents and the progress of the child, there are no formal mechanism either at national or local level in place to ensure this important requirement is carried out properly except in the case of inter-country adoption.

In practice, much of the focus and efforts from Kemensos on adoption has been focused on administering inter-country adoptions which require the authorization of the Minister. While inter country adoptions are clearly stated to be a last resort and much energy has been put to ensure that this is restricted to only a few cases, in reality there has been almost no efforts or mechanisms in place directed to supporting domestic adoptions. The lack of a serious domestic adoption system with appropriate safeguards but also providing opportunities for children in need of permanent alternative care to be provided with a new family through adoption remains a serious problem for Indonesia. As a result babies and infants who are abandoned are almost never considered for adoption unless they are in one of the handful of childcare institutions that have obtained a license to carry out adoptions. The vast majority end up spending their entire childhood in institutional care. It remains the case that adoption in Indonesia is only carried out when couples need children rather than when children need families. Highlighting this is the fact that there is no centralized data on domestic adoptions and Kemensos does not know how many children are adopted through Courts of Laws in Indonesia each year. This situation has lately been recognized by Kemensos and a Ministerial directive has been adopted which has introduced some improvements and strengthening of the domestic adoption system as well as clarifying some of the confusion over inter-country adoptions including ensuring that couples in Indonesia who are of mixed nationality (Indonesian married to non Indonesian) are able to adopt as part of the domestic adoption system. The need for a clearer regulatory framework including centralized authority to support domestic adoption and ensure that a national system is in place that can find families for children who need to be adopted means that Regulation No 54 should be reviewed and amended.

The Child Protection Law provides for the fostering of children in the case of “children whose parents are unable to guarantee their proper physical, mental, spiritual and social development” to be carried out through an organization that is authorized for this purpose on an individual basis or residential care basis. As discussed above, no formal fostering system has been established in Indonesia so far and the placement of children in institutional care had traditionally been entirely unregulated. No fostering agency had been set up by 2009 and the reference to such alternative care has been understood by the Government and service providers as only referring to institutional care despite the fact that the articles under the Child Protection Law clearly foresee the need for fostering with individuals and families and not only in institutions. In 2010, Kemensos was in the process of drafting a regulation on alternative care that would provide a clearer policy and legal framework for various forms of alternative care including establishing family based fostering. This will require a major shift of resources by Kemensos and local Government Social authorities including the establishment of effective social work teams at the local

level that will be competent and able to authorize and supervise the placement of children in foster care and in institutional care. Without this, institutional care will remain the primary, and in many cases, only option for vulnerable children in Indonesia.

As identified above, current practices in relation to the placement of children in care, including institutional care, are not linked to any formal determination about the need for alternative care in the case of a particular child and do not entail social authorities taking responsibility for ensuring children without parental care are cared and protected appropriately. As a result, children are routinely placed in institutional care without any clarification of their care status or a formal transfer of parental responsibility, either legal or actual, to the care provider.

This in turn has led to the current situation where children are either left in the care of their families even in circumstances when it is clearly not in the child's best interest or placed into institutional care when it is often not necessary. The vast majority of children do not need alternative care but lack of child and family support services at the community level to support them in their critical role and strengthen their capacity to cope at times of crisis means that resort to institutional care is often seen as the only resort.

The fact that Government funding is primarily targeted to the institutions rather than the families themselves has served to compound the problem massively. Why so many families have to resort to placing their children in care to ensure they have access to education at a time when the Indonesian Government is spending considerable resources to ensure 9 year compulsory education for all children through its *Bantuan Operasional Sekolah (BOS)* scheme, needs to be better understood and addressed. Children should not have to choose between their right to know and grow up in their families and their right to an education.

In addition to forcing hundreds of thousands of children and their families to choose between family care or education, the present paradigm of residential care as the primary response to children and families with 'social problems' is also not addressing the needs of children who are facing specific protection risks including children who are at risk of family violence, neglect and exploitation. While these children are often found and placed in these institutions, the fact that the focus of child care institutions is not care or protection at all but rather access to education means that the very real and specific needs of these children are simply not addressed under the present system.

Provisions under the Child Protection Law in that context which provide that "*a care institution, the family or an authorized officer may submit an application to the court for an order declaring the child to be neglected*", and that such an order should state where "*the child is to be accommodated, placed or cared for*" (Article 57 and 58) are not being used. Similarly, provisions in relation to the removal of parental rights by a Court and the appointment of a guardian for the child in that context (Articles 30-32) are also not being implemented anywhere.

The fact that these provisions only state that these procedures "*can*" be used rather than requiring them to be used in such cases and that responsibilities for implementing them lies vaguely with a range of actors, including family members and undefined '*authorized officials*' certainly compounds the problem. In that context the State and social authorities' responsibility for the care and protection of children who cannot be cared for by their families is poorly defined and these provisions should be revised.

It is essential for a range of alternative care settings prioritizing the family and a family like environment to be established including kinship care, formal fostering, guardianship as well as institutional care as a last resort. As discussed above, no formal fostering system exists in Indonesia although Law no 23 provides for the care of 'neglected children' by a care organization on an institutional or individual basis. In that context, the Government should build on the enormous resources and social involvement of communities and families in Indonesia to establish a formal fostering system and procedures at the community level that will enable such children to be put formally in the care of foster parents. Authority for decision making and supervision for placement in care should be clearly assigned to the local social authorities and structures put in place at those levels including Regency and Provincial levels with teams of social workers mandated, trained and competent to do so.

To make residential care really the last resort requires community level services that are accessible by children, their families and other responsible members of the community and that can respond quickly and effectively. Without these, the child will not only face the risk of serious harm but the likely response will be to remove that boy or girl and place them in institutional care whether more appropriate solutions are available or not. This will entail not just a shift of thinking, of policy and of law, it will also require a change in the way social work is delivered and social services resourced. It will mean the development of a workforce of social workers that are actively interacting with children and their families and handling cases. There are, at this stage, no social workers with the skills and mandate to assess, take and supervise decisions relating to children's care and protection including ensuring that appropriate alternative care is available, initiate the removal of parental rights where need be and supervise the placement of children in alternative care. The present social work system in Indonesia is relying heavily on civil servants who are primarily desk based and operating within a bureaucracy rather than practitioners working in communities. Meanwhile the social work carried out on the ground by community and faith based groups remains generally unsupported and unregulated.

In 2009, the adoption of Law No 11 on Social Welfare provided, however, an important framework for the establishment of a clearer and more professional basis for social work practice. Following its adoption, a Ministerial Regulation (Permensos No. 108/HUK/2009) established the legal basis for the first time for the certification and licensing system for professional social work. The regulation recognises that there are certain core knowledge, skills and competencies that should be held by all social workers but also clear accountability. It also opens the door for the development of the much needed specialised skills that will be required to respond to the particular needs of certain groups such as children, the elderly, and persons with disabilities but also to certain situations such as child abuse and neglect, family violence and substance abuse among others. This Regulation, together with other regulations that are being developed to support the development of a social welfare workforce that includes not only professional social workers but also social welfare officers (TKS) and social volunteers must provide a strong basis for the delivery of relevant and targeted social services that recognise the diversity of situations and realities facing individuals. It is therefore essential that a credible and resourced Certification Body be established and resourced and in order to do so Kemensos must work closely with the Indonesian Association of Professional Social Workers and the Indonesian Association of Social Work Education.

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

- The Government of Indonesia has violated its own regulations, including the Act No. 23 of 2002, and the CRC and international standards such as the UN Guidelines of the Alternative Care of Children by only prioritizing institution-based care. Indonesia should shift its policies from prioritizing institution-based care to family-based care.
- The Government of Indonesia should launch major campaigns at the national and local level to reprioritize family-based care. A national policy focus should be developed with an integrated approach that involves other key sectors including health, education and religion as well as the justice sector.
- The Government of Indonesia's child and family services should include not only financial assistance but also psychosocial support to families to ensure they are able to fulfill their parenting and care role effectively and appropriately.
- The Government of Indonesia should establish alternative care options that link between formal fostering system and a strengthened adoption system that enables appropriate families to be found the eligible children.
- The government Regulation 54 on Adoption (2007) should be amended and the Government should seriously consider ratifying the Hague Convention on Inter-country Adoption to strengthen the national adoption system including a central adoption agency whose role is to ensure that an effective domestic adoption system is in place and becomes a real first option for children who are eligible.
- The Government of Indonesia through the Ministry of Social Affairs should enact the draft the National Minimum Standard for residential care soon and implement it starting from national level until district level.
- The Government of Indonesia through the Ministry of Social Affairs should develop a licensing system at national level and implemented at regency/municipality level with clear procedures for a review of the license on the basis of compliance with the National Standards of Care for childcare institutions.
- The Government of Indonesia through the Ministry of Social Affairs should register all childcare institutions in the country and their data should be entered and updated regularly into the National Database on children in alternative care.
- The government of Indonesia, for the residential cares should establish a reporting and response system for children in alternative care to ensure they are able to report safely and freely incidences of violence, neglect and exploitation as well as providing for feedback on the services they received more generally.
- The Child Protection Law should be revised to provide a clearer framework to support families in fulfilling their care and protection responsibility, clarify priorities, assign mandates and accountability in the provision of alternative care for children who cannot be cared for by their families including in cases where suspension or removal of parental rights is required, elaborate on the responsibility of local social authorities and the basic requirements including licensing for social services providers in that context.

- A regulatory system for children services including licensing and supervision must be established by Kemensos working together with local social authorities. Government financial support to service providers should be linked to regular and credible assessments of compliance with national standards. A gatekeeping system should be established at the Regency/Municipality social authority level (Dinas Sosial) with teams of trained and competent social workers with a mandate to assess, monitor and report on the provision of social services for children in need of care and protection including institutional care facilities. This should be backed by a national program from Kemensos to support the development and training of such teams and ensure national standards are adopted and integrated into the program and services provided by local government.
- All childcare institutions in the country should be registered and their data entered and updated regularly into the National Database on children in alternative care. A licensing system should be established at national level and implemented at regency/municipality level with clear procedures for a review of the license on the basis of compliance with the National Standards of Care for childcare institutions. Financial assistance to the institutions including under the BBM subsidy should only be provided to institutions that are registered, licensed, that have accurate and updated data entered in the national database and that assess to be either compliant or working towards compliance towards the national standards of care.
- Kemensos should develop a program to support childcare institutions to review systematically the placements of children under their care and support the reintegration of children in their families or in alternative family care whenever in their best interest. This would include an intensive collaboration program with provincial and regency/municipality governments to support the integration of the National Standards into local government policy and services and support for the implementation of the national standards by the childcare institutions. This process should be backed by a redirecting of existing financial support including the BBM subsidy and Deconcentrated Funds (Dekon) to transform the role of the institutions towards supporting children in their families and communities.
- A reporting and response system should be established for children in alternative care to ensure they are able to report safely and freely incidences of violence, neglect and exploitation as well as providing for feedback on the services they received more generally. Clear directives should be issued by both national and local governments prohibiting the use of violence including physical and humiliating punishment and setting clear criteria for children's work in the context of institutional care, in line with national and international standards in that context.
- Kemensos should revise its policies and data collection system to ensure that appropriate and accurate data is collected on children in need of care and protection. Interventions that use only poverty level data to determine which children may be at risk, including of abuse, wilful neglect and abandonment or exploitation, will not be effective for reaching targets or responding to their needs appropriately. In that context, terminology used by Kemensos including concepts such as Anak terlantar (Neglected Children) and indicators should be revised to ensure clarity about the types of vulnerabilities that it is seeking to address and refocus social services to respond appropriately to a range of vulnerabilities.

- The Government should review the legal framework for the care and protection of vulnerable children to ensure a comprehensive body of laws and policies is in place to prevent abuse, neglect and exploitation and support appropriate care for children in their families or a family like environment. In that context, revision of the Child Protection Law should be undertaken to provide a clearer framework to support families in fulfilling their care and protection responsibility, clarify priorities, assign mandates and accountability in the provision of alternative care for children who cannot be cared for by their families including in cases where suspension or removal of parental rights is required, elaborate on the responsibility of local social authorities and the basic requirements including licensing for social services providers in that context.

## VII

# BASIC HEALTH AND WELFARE

*Muhammad Jailani & Aan Subhansyah*

## INTRODUCTION

The subject matter of this chapter is basic health and welfare. The chapter consists of three subs, i.e. disabled children, health and welfare, and teenager health. Three of them are recommendation of United Nations Committee on the Rights of the Children of 2004 based on second report of Indonesian Government.

The subs describe how Indonesian Government as a State Party has interpreted and implemented Committee's recommendations on the rights of the child on basic health and welfare from policy making to programme implementation.

A recommendation of Committee starts each sub that was followed by examination on Committee recommendation that Indonesian government implemented. While the last part of each sub presents recommendation on improvement of implementation and things to be done with regard to health issues that are beyond CRC and Indonesian Government concerns.

### ***Disabled Children***

#### ***Concern and Recommendation***

Regarding disabled children the Committee expressed concern that only a handful of disabled children could access special services rehabilitation centres. The Committee recommended Indonesia to ensure collection and employment of separated and comprehensive data to develop policies and programmes for disabled children.

Furthermore, the Committee also recommended Indonesia to examine the children's situation in terms of access to health care and to monitor sufficient resources allocation with regard to the children's needs including provision of professionally trained personnel in this domain.

The last recommendation of Committee is that Indonesian Government look to Standard Regulation on Equal Work Opportunity for Disabled (Resolution of General Assembly 48/49 annex) and recommendations that Committee has adopted during general deliberation on the rights of disabled children (CRC/C/69 paragraph 310-339), and suggested Indonesia to cooperate with other organisations such as UNICEF and WHO.

## IMPLEMENTATION IN INDONESIA

Disabled children were addressed by Law No. 4 of 1997. Article 6 sub (6) of the Law stated that the Disabled were entitled with equal rights to develop their talent, skill, and social life, particularly so for disabled children who live with their families and communities. Subsequently, it was stated in the explanation that the purpose of the provision is assure disabled children's rights to live and fully enjoy their childhood, to get fair treatment and service both in their families and communities.

There is a risk that the Law would not be applicable, though. One serious problem is the lack of Government Regulation (PP) to implement the Law. Seven crucial articles of 31 articles of Law No. 4 of 1979, i.e. Article 15, 18, 20, 22, 26, 27, and 29 require PP to be operative. For example, Article 18 that address government's rehabilitation effort states that "would be further addressed in PP." Similarly, Articles 29 on administrative sanction for institution with no access for disabled.

Concerning resources allocation, according to prevailing regional autonomy policy most resources allocation for service and rehabilitation of disabled rest within the purview of district/municipal government, since the administrator of service and rehabilitation for disabled is government in this level. The problem is, not even single local regulation, both at provincial and district/municipal level, is existing to address disabled, disabled children in particular. Resources allocation for service and rehabilitation, therefore, is not maximally afforded by provincial and district/municipal government.

Administratively, there is ambiguity on which Department should be main rights protector of the disabled, particularly disabled children. It is fair to say, therefore, that the Law merely enumerated rights but failed to afford mechanism to claim them.

One could find a clear example of such ambiguity in Article 16, Chapter V of Law No. 4 of 1997. The article stipulated that rehabilitation, social aids and life improvement for disabled would be carried out by "government and/or society." It is obvious that Government did not determine who is responsible for the fulfilment of disabled children's rights. Worst still, Government attempted to share its responsibility to society/citizens.

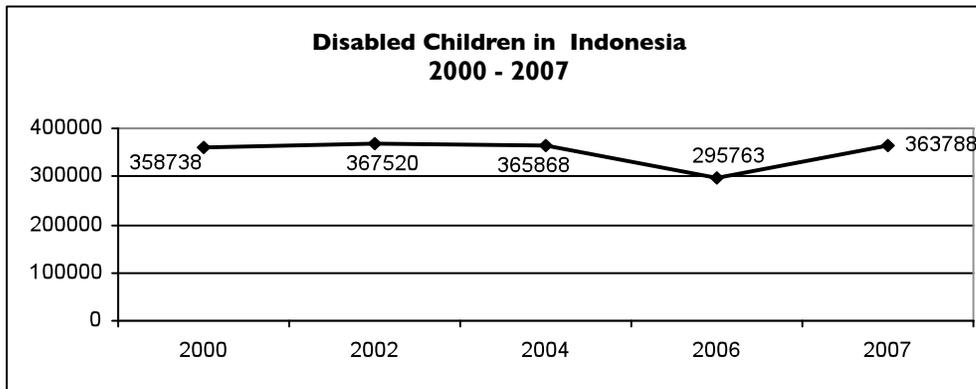
Also, Government did not seriously implement Committee recommendation with regard to equal work opportunity for the disabled. It is true that Article 28 Law No. 4 of 1997 addressed criminal sanction against both state-owned and private companies that omit equal opportunity and treatment for the disabled, but there is no company (state-owned or private one) that was punished for denying the disabled employment. Most companies use the weakness of Article 14, its last paragraph that stated, "... and/or company's qualification", to deny the disabled.

According to 2003 Census that Central Bureau of Statistics organised, disabled children made up 0.7 percent of total population 211,428,572. Of 1,480,000 disabled children, 21.42 percent (or 317,016 children) are at school age (5-18 years old). 0.01 of them are children of 0-4 years old, or 57-58 disabled children of 10,000 populations. 35.8 percent of them are children with physical disability, 17 percent blindness, 14.27 percent deafness, 12.15 percent mental disability and less than 7 percent other disabilities (RIP KPA 2001). Using basic data of 2003 that was projected proportionally the number of disabled children of school age in 2007 amounted to 321.000.

The result of Susenas 2001 showed that physical defect prevalence of babies under 1 year old is 29.9 percent and organ structure disorder prevalence is 2.5 percent. For babies 1-4 years old the former prevalence is 31.6 percent while the later is 3.3 percent. For children 5-14 years old body function prevalence is 24.2 percent, organ structure disorder is 3.6 percent, participation and activity defect is 9.6 percent. On average 29.9 percent babies under 1 year, 32.8 percent children 1-4 years and 30.1 percent children 5-14 years have one or more defects.

On national level, from 2000 to 2004, absolute number of disabled increased, but decreased significantly by 2006. And increase again significantly by 2007.

Graphic 2.1



Source: Centre of Social Welfare Data and Information. Indonesian Ministry of Social Affairs 2008.

Government Regulation No. 43 of 1998 on Social Welfare Improvement Effort for the Disabled underlined that social welfare improvement for disabled was carried out through equal opportunity, rehabilitation, social aid, and social welfare standard perseverance. National Action Plan for Indonesian Disabled 2004-2013, particularly 1<sup>st</sup> Action on Association of Family and Parents of the Disabled, the 3<sup>rd</sup> Action on Early Detection, Intervention and Education.

Various hindrances stand in the way of health and welfare service for disabled children. Such hindrances are ranging from unavailability of accurate and comprehensive data on characteristic of existence and livelihood of the disabled with their diverse defects. Available official data that Government recently used was processed data from various surveys (susenas). Such data is, of course, very global and usable only for analysis and reporting, unable to be used as basics for intervention and programme designing to handle disabled children's problems. The available data, that is to say, is unable to show the real condition. Head of Social Welfare Data and Information Centre, Drs. G. R. M. Soerjo Darsono MH, admitted that numbers in data should be made clearer by name and by address. Centre of data and information is not able yet to perform data processing as such because of budget limitation.

The insufficient dissemination that government carried out regarding defect early detection and undesired pregnancy is another problem regarding disabled children. This is important because natural disability amounted to 34.5 percent, while disability that was caused by accident or natural disaster only 15.2 percent.

The above mentioned hindrances closely related to the inadequacy of number and quality of specialist personnel for various defects and insufficiency of health instrument and other social services. So far, the disabled were reached through existing institutions such as Puskesmas (Community Health Centre) and SLB (Special School for the Disabled). And SLB has to cope with difficulties to maximise its role for innumerable reasons, many SLBs even found difficulties to recruit new pupils since most of the disabled children disadvantage families.

Generally, disabled children's problems were aggravated by inability to access basic services because of, again, their poor parents. Furthermore, fundamental problem that surround the disabled in Indonesia is public accessibility, provision that is unevenly distributed, with regard to both physical and non-physical accessibility.

## **Health and Welfare**

### **Concern and Recommendation of the Committee**

Although there are improvements with regard to health budget allocation, the Committee expressed concern on health-related issues such as prenatal and postnatal problems, malnutrition, contagious diseases, and environmental health, including potable water, particularly in conflict areas.

The Committee also highlighted fragmented policies on health care that obstructed coordination and implementation of comprehensive approaches to children and teenagers health.

Accordingly the Committee recommended Indonesia to assure primary services access related to, in particular, mother and children health that reach rural areas and all conflict-affected ones.

The Committee also recommended priority of potable water and sanitation service provision. Government of Indonesia was also asked to augment the effort to prevent malnutrition, to eradicate malaria and other mosquito-caused diseases, and to expand services related to contraception, to sustain mother's milk campaign, and expand those programmes to reach conflict areas.

The Committee's last recommendation regarding health and welfare is that Government ensures the availability of long-life approach to health and children and teenagers growth by developing holistic and comprehensive health policy.

## **IMPLEMENTATION IN INDONESIA**

### **Child Health Standard**

There are two existing important Laws concerning children health, i.e. Law No, 23 of 1992 on Health and Law No, 23 of 2003 on Child Protection

Law No. 23 of 1992 on Health dealt with children health issue in section that addressed family health, particularly mother and children health, which was detailed in some articles. Article 17, for example, stipulated that children health was managed to support children growth and development. This effort was carried out by improving children health in womb, babyhood, infancy, preschool and school age. Concerning prenatal and postnatal health, Article 14 stipulated, "wife health comprise pre-pregnancy, pregnancy, childbirth, post-childbirth health and health beyond pregnancy and childbirth." This Law also addressed abortion (Article 15) and School Health (Article 45).

With regard to the implementation of above mentioned articles (based on Article 6 of the same Law), Government held responsibility to organise, upgrade and supervise health endeavour administration. There is critical note here: the weakness of this Law rested in its articles that did not explicitly stipulate children's rights to (access) health facility, health service, and drugs. It is fair to say, therefore, that this Law is not optimal in stipulating the fulfilment of children right to health service.

Meanwhile, Law No. 23 of 2002 on Child Protection, particularly Article 44 sub (3), stipulated tat government would provide facility and administrate health endeavour and free service for the disadvantaged. Nevertheless, criminal provisions for violator of children's rights to health service are

inadequate in this Law. Some of existing criminal provisions only addressed specifically violence on children and negligence of children's rights to health service by *parents* or other relevant parties. In health issue context, this Law is no more than "declaration of children's rights" with inadequate in its implementation to ensure protection and fulfilment of children health service by government.

### **Infant Mortality Rate (IMR) Mother Mortality Rate**

Death rate in a group of population may reflect the health condition of community. The success and failure of health service and various other health development programmes could also be measured by the existing mortality right.

Infant Mortality Rate is one well-known indicator to determine community health level, either at provincial or national scope. Moreover, many health programmes in Indonesia that emphasise decreasing IMR effort. IMR refers to number of babies' death during the first year of life per thousand live births.

In 2007 BPS released number of IMR which is 34. The number only decreased slightly from number of 2003-2004 period which is 35.

IMR varies from one province to another. The variations went as follow: 19 in Special Region of Yogyakarta, 25 in Nangroe Aceh Darussalam, and 26 in East Kalimantan per 1000 live births. While highest IMR could be found in West Sulawesi, 74; and then West Nusa Tenggara, 72; and Central Sulawesi, 60.

In addition to IMR, indicator Children Under Five Mortality Rate (CUFMR). This indicator describes infants' death chance between birth and before five years old. CUFMR number of 2007 according to BPS is 44 per 1000 live birth. The number only decrease two points from Year 2002-2003 which is 46.

Province with lowest CUFMR was Special Region of Yogyakarta (22), followed by Central Java (32) and Central Kalimantan (34). While the highest one was West Sulawesi (96), followed by Maluku (93) and West Nusa Tenggara (92).

Until 2007 Indonesia's IMR and CUFMR remained highest among its ASEAN neighbouring countries.

According to Susenas 2001 some main causes of death for babies under one year old was perinatal death (36 percent), followed by pneumonia (28 percent), diarrhea (9 percent), digestive disorder (4 percent), tetanus (3 percent), and neural disease (3 percent).

Children's health degree could not be separated from that of mother. Data from Indonesian Demography and Health Survey of 2007 Mother Mortality Rate (MMR) is 228 per 100,000 live births. It was a significant decrease compared to data of 1992 which was 425 per 100,000 live births. Nonetheless, this number (228) was far below Millenium Development Goals that targeted 110 per 100,000 live births.

Within regional autonomy bureaucracy, local government holds pivotal role to support central government's target. One role of local government in decreasing IMR and MMR is giving special attention to the health of give birth mother which remains low. Of local government budget for health issue only about 0.085 percent was allocated to give birth mother sector. Moreover, training for skilled health personnel remains somewhat overlooked by government in addition to the scarcity of infrastructure and health support facilities development. This is a huge homework for government, especially in local level.

The existing regional autonomy offers two options for local government. It could be better off, but could also be the contrary. Take the District of Asmat as an example. Once stood as a district on its own as a result of regional splitting of Merauke District, IMR and CUFMR of Asmat became the highest in Indonesia. The causes are many. In addition to geographic conditions and costly transportation, the good will of local government invited questions. Corruptions remain ubiquitous and tend to shift to peripheries. In Report of 2004-2005, Financial Supervisory Agency (BPK) said that local health budget manipulation by officials had depleted drug stocks.

On the other hand, regional autonomy played positive role in IMR and CUFMR diminution as Province of West Nusa Tenggara showed. After increased in 2003, IMR of NTB decreased in 2004 (118 deaths) and decreased further in 2005 (108 deaths), in 2006 (95 deaths). District of Bone Bolango showed similar trend. While in 2006 IMR of this district was 22 (880 deaths per 100,000 live births), the number decreased into 5 (198 deaths per 100,000 live births) in 2007.

In fact, many programmes local government may use as models local to decrease IMR and CUFMR. In Bone Bolango programmes such as waiting-house, alert village, and Health Community Centre for Basic Emergency Neonatal Obstetric Service serve as effective instruments. Childbirth Planning and Complication Prevention Programme also went well. These favourable achievements, of course, need to be synchronised with government's will to sensibly expend health fund, including fund to develop facilities and health personnel training.

### **Nutrition Status**

Mother's milk is the most important nourishment for baby's growth and health. By 2007 at national children under five were breast-fed for 16.5 months on average. The percentage was slightly lower than previous year that was 16.9 months.

In addition to mother's milk for child under five, nutrition adequacy programme is also very important for child under five. Survey on Household Iodine Consumption tat BPS carried out showed that percentage of children under five with normal nutrition decreased from 69.59% in 2003 into 68.84% in 2005. Meanwhile, children under five with inadequate nutrition status decreased insignificantly from 19.62% in 2003 to 19.24% in 2005. Children under five with extra nutrition and with less nutrition, in fact, increased from 2.24% and 8.55% in 2003 to 3.48% and 8.80% in 2005.

Various surveys also pointed out that children under five nutrition status in rural area was lower than in urban area, and children under five nutrition status in eastern Indonesia was lower that in other parts of the country. This data suggested that, in general, multidimensional crises in Indonesia brought negative impact for children under five nutrition status.

2005-2007 was a dreadful period in terms of people's rights to health services. Many chronic starvation cases were found in Indonesia, especially in eastern part of the country, where percentage of rice production was unable to meet the existing demand, Gorontalo (1022 cases in 2005) and Papua (1155 cases in 2005) were cases in point.

ELSAM observation on cases reports related to nutrition that 7 media released during 2005 pointed out that at least 1,091,474 people, mostly children, had problems with nutrition. Of those people, dispersed in 73 districts, at least 61 died of malnutrition.

According to data of Indonesian Health Ministry, in 2004 there were 5,119,935 children under five with shortage nutrition problem and 1,528,676 with poor nutrition problem. In 2005 those with shortage nutrition decreased to 4.4 million or diminished 13.7 percent. In 2006 the number decreased to 4.2 million, and in 2007 became 4.1 million. All in all, in four years malnutrition problems decreased 20 percent.

However, the decreased malnutrition was not proportional with budget that increased every year. The same data said that in 2004 total budget for poor nutrition mitigation was Rp 170 billion. In 2005 the budget increased to Rp 175 billion, while in 2006 the budget tripled to Rp 582 billion and in 2007 increased, again, to Rp 700 billion.

Head of Nutrition Alertness Upgrading Section of Ministry of Health, Tatang S. Falah, said to media that the target, in 2009, was to diminish nutrition shortage and poor nutrition as much as 20 percent. The target was based on National Socio-Economic Survey of 2005, according to which poor nutrition and malnutrition was 28 percent among Indonesian children. During 2006, according to Ina Hernawati, Director of Community Nutrition Upgrading, no more than 19,567 poor nutrition cases that government managed to handle. It was a worrisome number compared to that of 2005 which was 76,178.

However, 2005 National Socio-Economic Survey that BPS carried out estimated that poor nutrition cases amounted to 8.8 percent of Indonesian Children. That is to say there were 1.5 children with poor nutrition problem (*Tempo Interactive*, 3 January 2007).

Addressed to One Day Seminar on National Nutrition Day of 2007 in Jakarta, Welfare Coordination Minister Aburizal Bakrie said that the number of poor nutrition and malnutrition remains around 27-28 percent of 19,799,874 registered children in Indonesia over. As to school age children, there were more than 10 million children suffered from nutrition anaemia of 31 million children of this category.

Another important nutrition problem is micro nutrition deficiency. Although Indonesia was declared free from xerophthalmia in 1992, children under five in Indonesia are at risk to be stricken again by the disease. One potential cause is proportion that remains high of children under five with retinol serum  $<20\mu\text{g}/100\text{mL}$ . Moreover, consumption of vegetables and coloured fruits is not yet become a habit among children under five.

Data of Rikedes 2007 pointed out that prevalence (at national level) of poor nutrition among children under five was 5.4% and malnutrition among them was 13.0%. At a glance the two percentages proved that Middle-Term Development Planning to accomplish nutrition improvement programme (target 20%) and Millennium Development Goals target (18.5%) were achieved in 2007. But, 19 of 33 provinces retained poor nutrition and malnutrition prevalence above national prevalence. Those provinces are NAD, North Sumatra, West Sumatra, Riau, Jambi, West Nusa Tenggara, East Nusa Tenggara, West Kalimantan, Central Kalimantan, South Kalimantan, East Kalimantan, Central Sulawesi, Southeast Sulawesi, Gorontalo, West Sulawesi, Maluku, North Maluku, West Papua, and Papua.

<b>Year</b>	<b>Population</b>	<b>Malnutrition Children Under Five</b>	<b>Poor Nutrition Children Under Five</b>
1989	177,614,965	7,986,279	1,324,769
1992	185,323,456	7,910,346	1,607,866
1995	95,860,899	6,803,816	2,490,567
1998	206,398,340	6,090,815	2,169,247
1999	209,910,821	5,256,587	1,617,258
2000	203,456,005	4,415,158	1,348,181
2001	206,070,000	4,733,028	1,142,455
2002	208,749,460	5,014,028	1,469,596
2004	211,567,577	5,119,935	1,528,676

Several data above pointed out a fact that the number of children under five with poor nutrition remained high. It is a must, hence, that nutrition improvement endeavour to be continually developed and directed to increase community nutrition status. During relatively prolonged economic crises, Indonesia adopted policies of rescue and “lost generation” prevention and in the same time reform measures so that the problem would not reoccur.

The rescue programme was known as Health Sector Social Safety Net within which nutrition improvement included. The policy was aimed to enhance children nutrition status recovery endeavour, to diminish death out of poor nutrition and to improve human resources through society nutrition status improvement, to provide food supplement for baby and infant 6-24 months and pregnant and breast-feed mother among the poor. Revitalisation of Nutrition and Food Alertness System to identify early food and nutrition in certain region, and revitalisation of Integrated Care Post (Posyandu) were the aims of the programme.

Responsive and short-term measures were taken by government through inter-ministry coordination. It is worth to note, however, that those measures are more curative than preventive as following example showed. Nutrition Aware Operation Team to respond the increasing number of poor nutrition cases in West Nusa Tenggara, introduction of early alertness system, special treatment for poor nutrition patients in Community Health Centre and hospitals, and provision of basic instrument such as food aid.

Chairman of Nutrition Expert Association, Prof. Dr. Herdiansyah MS, said that the lack of success of nutrition treatment programme in Indonesia was a result of inexistence of synergy between the programme and that of community empowerment. Provision of financial assistance and food supplement for children under five among poor families was considered inappropriate as long as those families remained unimproved socio-economically. In many cases the government often intervenes by assisting children under five whose nutrition status is lack or poor by putting them in hospital. After treatment and intervention, the cured child went home. But some time later, the child's nutrition status worsened again. It is clear now that nutrition treatment should be begun from the root of problem that is family economic strength improvement. And it is important to combine synergistically nutrition treatment programme with other programmes such as community economic empowerment and elucidation on the importance of nutrition improvement for family, particularly children under five. Therefore government has to change nutrition treatment from curative approach into preventive one, and family economic empowerment is one option.

Referring to PNBAI and Healthy Indonesia 2010, community empowerment should be prioritised in health endeavour strategy, including this nutrition improvement programme. And it is rather surprising that government has overlooked these points.

### **Sanitation and environmental health**

Poverty-stricken, according to UNICEF, 69 million people in Indonesia have no access to basic sanitation and 55 million people have no access to potable water. UNICEF said that the condition has caused 100 thousand children under three dead of diarrhea every year in Indonesia. It was also said that around 5,000 children under five dies of dhiarrhea on daily basis (*Kompas*, 28 March 2008).

There are four health problems in Indonesia that were caused by poor water management and sanitation, i.e. diarrhea, typhus, polio and worms. Survey of 2006 revealed that diarrhea cases among Indonesian children of all age categories were 423 per 1,000 population and occurred one-two times per year among children under five. In fact, among babies and children under five environmentally based diseases were causes of 80% their diseases. This fact highlighted limited scope and low quality of environmental health intervention (National Socio-Economic Survey).

Data of Environmental Sanitation Directorate of Ministry of Health revealed that in 2001 mortality rate of diarrhea was 23 per 100,000 population, while higher number was found among children under five which was 75 per 100,000 population.

Ministry of Health admitted that environmentally based diseases remained to be main causes of children death in Indonesia. This trend became ever stronger with the emergence of Avian Flu and Swine Influenza, two diseases that closely related to environment sanitation.

Recurrence of contagious diseases was caused by ever increase environmental health problems that closely related to sanitation such as lack of potable water and family toilet, unhealthy housing, microbe-contaminated food, worm egg and chemical substance, garbage and waste inappropriate management, uncontrollable disease vector (mosquito, fly, cockroach, kidney, rat, etc), exposures out of work (pesticide employment in agriculture, small industry and other informal sector), natural disaster, and community behaviour that was not yet supportive clean and health live pattern.

Four interventions to prevent diarrhea are water processing and storage in household level, practice

of hand washing, sanitation improvement, and water provision improvement. Unfortunately data of Ministry of Health revealed that only small portion of community practise hand washing: 12 percent after excretion, 9 percent after baby buttock cleansing, 14 percent before meal, 7 percent before infant feeding, and 6 percent before meal preparation.

Community health experts did agree with H. L. Bloom's conclusion that greatest contributor to one's health level improvement is environmental health quality, above all else. Regretfully, again, Indonesian's energy to support health policy and budget heavily inclined to curative programmes. (Source: *Kompas*, Bad Environmental Sanitation, Threat for Life, Wednesday, 19 March 2008. An article by Dyah Messwati.)

Chairman of Indonesian Doctor Association (IDI), Fachmi Idris, said that government policy that somewhat overlooked preventive approach and focused merely on curative approach (disease treatment) was one factor that impede Human Development Index of Indonesia. All things considered, preventive approaches such as healthier life pattern, sports, environmental quality maintenance, sanitation improvement, and so forth should be prioritised soon that in their turn would better promote community health status improvement.

### **Health Insurance**

There are two Laws with regard to Health Insurance, Law No. 6 of 1974 on Social Welfare Basic Principles and Law No. 40 of 2004 on National Social Security System.

The "considering" and "remembering" sections of Law No. 6 of 1974 suggested that the Law is a kind of "operational provision" of Article 35 Constitution that demanded social security. Explicitly Article 34 of 1945 Constitution promised State guarantee to take care of neglected children. Logically, Law No. 6 of 1974 as embodiment of Article 34 of 1945 Constitution should provide detailed scheme how to finance the poor and the needy and neglected children. One example, what facilities the State would provide for child care institutions, orphanages, and special units within government institutions that handle children and the needy, and so on. Unfortunately Law No. 4 of 1967 said nothing about social security for children.

Law No. 4 of 2004 on National Social Security System (NSSS) stipulated security for family members (including children, through benefits that their parents acquired from health insurance). Article 41 stipulated heir's rights (until a child reaches 23 years old, work or marry) to acquire benefit of pension security in form of monthly cash.

The weakness of this statute is its limitation of social security to insurance management context for certain groups such as civil servant, military and police personnel, and formal private employee. It is true that general provision of the Law stated that social security should be defined as one form of social protection to enable people to meet their needs decently. But, the Law went further by specifying that National Social Security System is one method social security as carried out by social security agencies. Considering this definition, it is obvious that children's right to acquire social security from the State applicable only for children whom their parents are beneficiaries of government's social securities that were managed by State-owned Companies such as Jamsostek (Labour Social Security), Taspen (Saving and Insurance for Civil Servant), Asabri, and Askes (Health Insurance). That is to say, children whom their parents earn living as small trader, unused objects collector, farmer, and so forth were out of the question.

Based on interpretation above, Law on National Social Security System could not be qualified as an adequate statute to ensure the fulfilment of children's rights to social security. It is also obvious that the State is unable to prevent when certain third party seize children's rights to social security. Moreover, the Law violated non-discriminatory principles as CRC explicitly stated.

Article 52 sub (2) Law No. 40 of 22 on National Social Security System stated: "All provisions on Social Security Agencies as stated in sub (1) should be adjusted with the Law at least 5 (five) years after promulgation of this Law." And Article 6 specified: "To organise National Social Security System in accordance to this Law a National Social Security Board should be established." With regard to such establishment Article 10 stated: "Organisation structure and work procedure of National Social Security Board as Articles 6, 7, 8, and 9 specified would be further arranged by Presidential Regulation."

The Law on National Social Security System was enacted on 19 October 2004. In line with imperative of Article 52 sub (2) all Social Security Agencies in Indonesia have to comply with the provisions of the Law. Up to year of 2007 no progress could be seen with regard to such conformity. The same thing is true concerning imperative to establish soon National Social Security by a Presidential regulation.

The establishment of National Social Security Board (hereafter NSSB) is a crucial point for the sustainability of social security in Indonesia. If this point cannot be passed, social security programme in Indonesia will not fulfil the imperative of Law No. 40 of 2004 on NSSS. The same is true with regard to establishment of Social Security Agency (Article 5 stipulated, "Social Security Agency should be established by Law") that exclusively manage Health Insurance. The recent arrangement of health insurance (Askeskin, Health Insurance for the Poor, in this respect) is basically carried out according to principles incompatible with the imperative of Law on NSSS (should be carried out by Agency that was established exclusively by Law and in accordance with general principles on health insurance arrangement as social security, i.e. cooperativeness, non-profitability, compulsory participation and so on.

Health Social Security Net Programme (HSNP) that had been carried out since mid 1998 is one attempt of Indonesian Government to cope with economic crisis impact on health level of children among poor families. The program was further regulated in Decision Letter of Health Minister No. 1241/Menkes/XI/2004 that eventually altered into Decision Letter of Health Minister No. 56/Menkes/I/2005 on Health Care Social Programme for the Poor.

Basically HSNP is additional operational cost for Community Health Centre and Hospital to serve the poor. Including in it is food supplement provision for baby with poor nutrition and pregnant mother and childbirth cost. Up to 2002 there were 12,985,128 poor families of targeted 13,997,030 has Health Card and 6,815,501 poor families took advantage of available health facilities. So far health services for poor family had been focused on mother's health service (basic midwifery care, childbirth aid and postnatal care) and Recovery Additional Food Provision for infants of 6-23 months and pregnant mother with chronic energy deficiency.

Until December 2002 HSNP covered 84,071 pregnant mothers, antenatal care reached 83.4 percent, childbirth aided by health personnel reached 72.2 percent, and postnatal care reached 80.1 percent. 9.6 percent pregnant mother of poor families received referred care to Community Health Centre or hospital.

Of 135,498 infants of 6-11 months among poor families who received Recovery Additional Food

amounted to 40.2 percent, and 38.7 percent of 240,382 infants of 12-23 months among families received Recovery Additional Food. Of 30,220 pregnant mothers with chronic energy deficiency 56.2 percent received Recovery Additional Food. Elucidations were delivered for 39.8 percent of 413,375 children of 24-59 months.

In 2002 the Health Social Safety Net was altered by PKPS BBM. Basically the later had same mission as the former, i.e. to expand access of the poor to health service, nutrition improvement, environmental and behavioural health improvement. In 2005 there was a change name again; the new name of the programme is Health Care Security for Poor Community (JPKMM). In 2006 JPKMM was handled by PT ASKES Indonesia. Department of Health appointed PT ASKES as an experienced insurance management agency to manage health service for the poor. But in the process there were bumps because of budget for Ministry of Health from State Budget did not flow smoothly. Accordingly, PT ASKES delayed payment for Community Health Centres and hospitals. Service cost for 2006 was paid by PT AKSES to hospitals in 2007, and it was not full payment. Consequently hospitals found difficulties to deliver health care for the poor. Some hospitals had had to make medicine loan to third party, medicine supplier, drug factories or pharmaceutical merchants who could not wait repayment too long. Hospitals, therefore, had to bear deficit.

No doubt that health service for the poor did not well proceed. Health service for the poor as a system consists of input, process, and output. Input is availability of data on the poor, cost availability, existence of health service instruments from Health Community Centre and its network to hospitals. In terms of personnel, it is necessary to recruit doctors, nurses, midwives, and other health personnel and procedure manual for service delivery. In the process problems arise with data, data that district/municipal government used usually data of BKKBN or Agency or Office that handle Family Planning; while central government used data that BPS gathered. There was difference between data of BPS and that of BKKBN. In data collection BKKBN used welfare family approach, therefore poor family is one that included in pre-welfare family category; while BPS collected data based on beneficiaries of BLT (Cash Direct Assistance as a compensation of fuel price rising).

Fund allocation is inseparable from data. Ministry of Health expended fund in accordance with data of the poor from BPS. The problem of data standard raised cases where people “entitled” to Askeskin were denied while those unqualified received Health Insurance for the Poor. To cope with the problem SKTM (Poor Declaration Document) was introduced to accommodate those unrecorded in Askeskin.

For health service in Health Community Centre fund was used to cover Centre operational, nutrition improvement, and midwifery service. Askeskin programme arrangement relatively well proceed in the Centre, but not so in hospitals. Incompatibility of data and procrastinated fund led hospitals into financial stagnancy, and eventually many drugs left unpaid, as was the case with care service and patient accommodation. It was stated, in procedure manual of health service security for the poor, that drugs to be used were generic ones. In fact, not all drugs were listed in generic preparatory so that Askeskin clients could not be cared since drugs price might not be burdened to the poor. Output of overall input and inappropriate process is miserable health service for the poor.

On regional level there was a programme called Health Maintenance Security for Poor Family (JPK Gakin) of which only eligible for people who officially declared as “poor”. That is to say, to get free service or medical cost relief in hospital the poor has to show local Identity Card (KTP) and/or JPK Gakin card. The reason behind this policy, according to the authority, is the poor who is not local

resident is covered by Health Insurance (Askes) from Department of Health. JPK Gakin fund could be obtained by poor residents in Jakarta, for example, provided that they have JPK Gakin. While those without the card could arrange official poor declaration (SKTM) as long as they have local KTP.

It is clear, therefore, that the State is unable to take significant measures with regard to health security for poor citizens/children. The policy was unfair (discriminative) and unable to prevent other practices that disadvantaged poor citizens/children.

On the other hand, it is important to note financial source of insurance programme for the poor which was came from compensation for Fuel subsidy cutting. Many people doubted the policy for allegedly short-term consideration and politically driven. People were promised with “free” health service, but the system to bring it forth was instantly produced and perfunctory. As a comparison, Achmad Sujudi (Ministry of Health 1999-2004) said that in some countries free service policy could be introduced after many long studies were done on various aspects and was perceived in long-term perspective. In other word, the policy was made as a system for decades, not just for one or two terms of power. Various health problems, e.g. malnutrition and tuberculosis, could not be solved during a period of government. Long-term policy, therefore, is a must. So, when the policy was introduced the achieved result would nearly perfect, in a long-term run tough.

## **Juvenile Health**

### **Concerns and Recommendations of the Committee**

Even though reproduction committee was established in 1999, the Committee saw many unsettled problems regarding the lack of well-organised system for counselling and reproduction health service and education on HIV/AIDS and sexual contagious diseases. The Committee also expressed concerns on the high percentage of smoking juvenile.

The Committee, for that matter, recommended Indonesia to develop policy regulation and comprehensive planning for juvenile health in accordance with General Comment No. 4 (2203) of the Committee on Juvenile health and growth. Furthermore, it is of necessity to strengthen the implementation of recommendations Reproduction Health Commission made; to promote collaboration between State institutions and NGOs to establish formal and informal education system on HIV/AIDS, sexual contagious disease, and sex education.

And then, it is important to observe General Comment No. 3 of 2003 of the Committee on HIV/AIDS and the rights of the children as enumerated in international guidance on HIV/AIDS and human rights (E/CN.4/1997/37) to promote and protect the rights of children with HIV/AIDS problems.

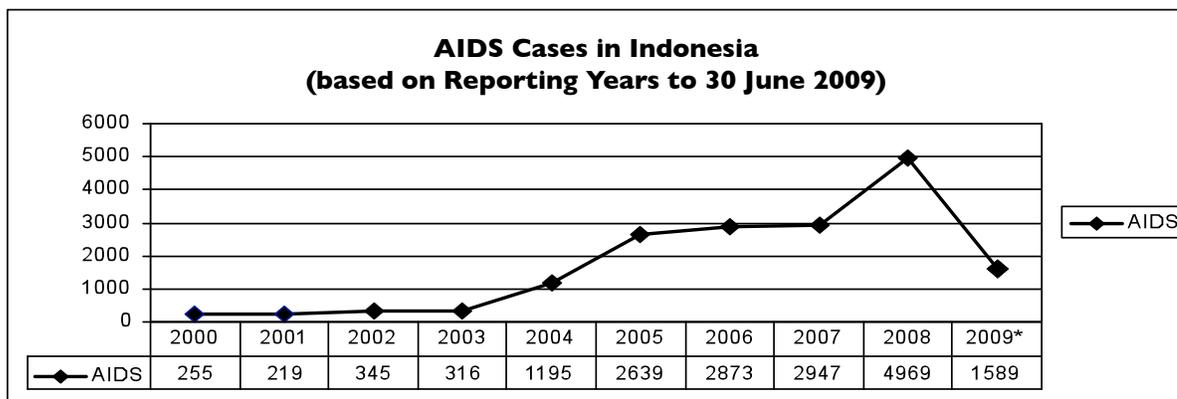
The Committee also advised access guaranteeing to counselling, information, and reproduction health service for juveniles; to provide accurate and objective information for juvenile on harmful consequence of tobacco consumption and to protect them from detrimental misunderstanding through limitation of tobacco ads.

## Examination on Implementation of the Committee Recommendation

National Coalition of NGO for Child Rights Monitoring has appreciated Government's efforts such as promulgation of Presidential Decree No. 75 of 2006 on National AIDS Protection Commission that regulate protection for children with HIV/AIDS. The Coalition also noticed efforts to improve HIV/AIDS treatment programmes.

On the other hand, AIDS cases in Indonesia have been increasing since 2000 to June 2009 as Graphic 2.10 showed.

Graphic 2.10



Source: AIDS Surveillance Report, Indonesian Ministry of Health, 1987 – June 2009

\* Data for January – June 2009

Data indicated significant leap AIDS cases from 2007 to 2008. According to sexes, 25.2 percent female and 74.3 male were infected HIV/AIDS. According to ages, 50 percent were those of 20-29 years old, 29.63 percent those of 30-39 years old. Among children ages there were 0.88 percent of less than 1 year, 1.05 percent of 1-4 years, 0.57 percent of 5-14 years, and 3.03 percent of 15-19 years.

As for HIV/AIDS infected children in Papua (one of the most seriously affected in Indonesia), according to data of Health Bureau of Amungme and Kamoro People Development Institute, in 2006 HIV sufferers in Timika amounted to 1.210, children and the dead included.

With due respect to government's measures, Coalition of NGO has noticed that attempts to prevent HIV/AIDS contagion government has been performing were not systematically designed to reach children at primary school age.

National legislation of Indonesia is not yet offer protection for juvenile from cigarette and tobacco. Indonesia has not yet statute related to cigarette/tobacco control. In 2006, according to data of Indonesian Paediatrician Association, 70 percent of Indonesian male smoke. 7-12 years old boys who smoke amounted to 20.4 percent, while 4.14 percent girls are smoker. Boys of 13-15 years old who smoke amounted to 12.5 percent while the girls 8.3 percent. Boys of 16-18 years old who smoke amounted to 47.9 percent, while the girls at the same age 6.25 percent.

Indonesia has not yet legislation that strictly and seriously intended to abolish all traditional practices that damage children health, for example circumcision for girl. This is important considering WHO has declared that the cutting away of female genital is violation of human rights on enjoyment highest health standard as stipulated in Article 24 sub (1) and (3) of CRC.

In addition, Indonesia also has not yet special regulation related to children health in natural disaster context. This is of necessity since geologically Indonesia is located in sensitive in terms of natural disaster. Another lack worth to note, Indonesia has not yet sufficient and exclusive legislation on contagious disease among children. The existing legislation, Law No. 4 of 1984 on contagious disease, omitted children's particular problem.

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

- It is important to make legislations on children health more “operative” through enactment of procedural provision which any Law lack of (for example Law on the disabled), revocation of irrelevant Law (e.g. Law on Children Welfare), revision of discriminative Law especially regarding children with special needs, and ensuring that development design is not discriminating against children. Also, the Government should enact new legislation to ensure health service for children as well as health service for children during emergency or natural disaster. In this respect the Rights of the Child and Human Rights perspective seriously demands full attention when a Law was formulated.
- Government should formulate health policy that is not discriminating the poor, such a policy should contain minimum standard of health service that any child need to live healthy life. Health policy should be based on a long-term perspective, not just on certain health trend that ruling government favours.
- It is important to formulate proper coordination mechanism between institutions that have to do with children health issues, between central and local governments, with regard to implementation of health programmes that were formulated at national level (by BAPPENAS, for example). In this respect, understanding on health endeavour decentralisation and health paradigm with promotion and prevention approach needed to be correctly understood by local and central agencies. Health promotion effort, such as HIV/AIDS issue, should be conducted systematically to reach children at basic level.
- It is necessary to revitalise public participation in health affairs by posit Community Health Centre in its original function as facilitator for public health efforts not merely as medical clinic. Accordingly, with regard to revitalisation of Integrated Care Post, participatory research should be conducted to find out public participation within community-based health institutions such as Posyandu. This is important with regard to community capacity to detect their needs related to health and able to find out and implement the solution synergistically with relevant government institutions.

# CHAPTER VIII

## EDUCATION, FREE TIME AND CULTURAL ACTIVITIES

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### INTRODUCTION

This chapter is a review of the implementation of children's rights to education, free time and cultural activities. There are three main topics: universal and free primary education, education quality and violence in schools. Each topic comprises sub-topics based on the recommendations from the Committee on the Rights of the Child concerning children's rights to education, free time and cultural activities.

However, the chapter does not only contain a review of the implementation of the convention according to the committee's recommendations in 2004. It also reviews several basic problems in the system and management of education in Indonesia, like the general policy on education, information management system, coordination system, education for children in special circumstances, education budget and national examinations. This review aims to probe into how Indonesia has integrated international educational instruments into the national laws and how the government has implemented the national laws.

Every topic starts with concerns and recommendations issued by the United Nations Committee on the Rights of the Child, followed by reviews by the National NGO Coalition for Child Rights Monitoring on the Indonesian government's implementation of these recommendations. The last part of each topic consists of recommendations concerning improvements in the implementation and actions that have to be taken to fulfil children's rights to education, free time and cultural activities – regardless of whether or not they received the attention of the Committee on the Rights of the Child and the Government of Indonesia.

### ***Universal and Free of Charge Education***

#### ***Concerns and Recommendation of the Committee on the Rights of the Child***

The Committee on the Rights of the Child welcomes the inclusion of children's rights to education in the 1945 Constitution, the extension of primary education from six years to nine years and the allocation of scholarships for children from low-income families. However, the Committee on the Rights of the Child expresses concerns about the fact that some forms of education are not free of charge and the fact that primary and secondary education are still not affordable for many families.

The committee also has concerns about the persistently high dropout rates and children who are left behind at school. At the same time, the committee calls attention to the fact that pregnant teenagers and children who are tied in marriages arranged by their families mostly do not continue their education.

In this regard, the Committee on the Rights of the Child recommends that the Government of Indonesia reinforces its actions to provide free universal education and to progressively ensure that children, both girls and boys, from rural, urban or remote areas have equal access to educational opportunities without any financial barriers.

The Committee on the Rights of the Child also recommends that the Government of Indonesia implements additional actions to provide access to early childhood education for all children. With regard to dropout rates, the committee suggests that the government takes effective steps to lower the rates and lower the number of children who are left behind, as well as the illiteracy rate. The government should also provide educational opportunities for children in arranged marriages and pregnant teenagers.

## **IMPLEMENTATION IN INDONESIA**

### ***General Policies on Education in Indonesia***

The National NGO Coalition for Child Rights Monitoring appreciates the Indonesian government for its ratification of the Covenant on Economic, Social and Cultural Rights in 2005 and the amendment to the 1945 Constitution which includes an article stipulating every child's rights to education and self-development (Article 2b C clause 1). The Constitution also mandates a minimum of 20 percent of the national budget to be allocated to education. The government also passed Law No. 32/2002 on Children Protection, especially the Article 9 and Law No. 20/2003 on the National Education System.

However, there is a risk because the 1945 Constitution is not consistent in stipulating whether only Indonesian citizens or all those who reside in Indonesia have the right to education. Article 28c Clause 1 of the Constitution (second amendment) stipulates that "Every person has the right to self development through the fulfillment of basic rights to education and obtains the benefits of science and technology, arts and culture, for the enhancement of the quality of life and the welfare of the human race".

But Article 31 Clause 1 of the 1945 Constitution, after the amendment, states that "Every citizen has the right to education". This article is fortified by Article 5 Clause 1 in the Law on National Education System, which says "Every citizen has an equal right to quality education".

The situation shows that the policy makers and the government do not fully understand the consequence of ratifying an international instrument. It is clearly stated in the Covenant on Economic, Social and Cultural Rights in the Article 13 that "the state recognizes the rights of all persons to education". The basic differences between the articles in the same Constitution reflect the half-heartedness of the government to integrate the children's rights to education within the Indonesian system of law. Among the consequences of this, is that the Rohingyas, refugees from Burma, in Indonesia are deprived of their right to education. It is also the case among children who do not have a birth certificate, which is a proof that they are registered as citizens. They are also deprived of their right to education.

### ***Indonesian Education Information Management System***

According to the National Education Ministerial Decree No. 50 in 2007 on Education Management Standards by the Provincial Governments, before formulating a plan for education programs, the provincial government should have in place an information management system based on information technology which covers the gathering, processing and reporting of educational statistics data in a format that is standardized, accurate, valid and up to date for each region.

Our studies, however, show that educational statistical data are not integrated with statistical data on other children's rights, which are related to children's rights to education. This situation has arisen from the absence of a policy to regulate the system and mechanism for the standardization of information management systems for all institutions. Each institution mostly has its own system, which is different

from the others<sup>26</sup>. For example, the National Education Ministry has its own information management system under its Research and Development Department, which processes data in the educational statistics center, which runs the data gathering, the educational data processing and the education statistics reporting functions.

However, the educational statistical data are not related to the information management system in the Health Ministry. Its information management system is under the management of the Research and Development Center, which does not communicate with its counterpart in the education ministry.

It is the same case with the Social Services Ministry, which has its own information management system. The data processing of the ministry is conducted by the Social Welfare Research and Education Body, called the Social Welfare Information and Data Center. The separate education information management systems in the ministries related to children, causes inaccuracy in the mapping the problems in education, as well as in other social sectors.

### ***Education Management Coordinating System in the Regions***

Since the implementation of Law No. 22/1999 and Law No. 32/2004 on Regional Autonomy, the educational institutions coordination system has changed into two systems. The first system is educational policy, which is under the National Education Minister, who structurally heads the National Education Ministry along with its subordinate organizations in the regions. The latter work in an auxiliary capacity, under the provincial and municipal Education Agencies. The second system is that, since the heads of the provincial agencies answer to the Governors and the heads of the municipal agencies answer to the mayors, structurally the heads of the education agencies coordinate with the governors or the mayors.<sup>27</sup>

These dual coordinating systems often create problems, which are caused by the governors' position, which is not under the Education Minister, but under the Home Affairs Minister. The consequence is that coordination between the head of the agencies and the education ministry is difficult.

This problem is noticeable in the implementation of education policies issued by the ministry. The ministry cannot use its structural authority over the provincial and municipal agencies to implement education policies, because they are not directly under the National Education Ministry. As a consequence, many education policies made by the central government fail to be effective in the regions.

Actually, the National Education Minister has issued ministerial regulation No. 50/2007 on the Standard of Education Management in the Regions. The regulation has determined the roles of the regional governments at both provincial and municipal levels in education management, from program planning, the implementation of educational working programs, to the monitoring and evaluation. Education management in the regions is followed with an obligation to submit reports and a responsibility to coordinate with various institutions like the Education Quality Assurance Institution, School Committee, Education Board and the regional offices of the Religious Affairs Ministry at both provincial and municipal levels.

Unfortunately, the regulations governing the roles and functions of the regional government are inconsistent with each other. For instance, government regulation No. 41/2007 on Regional Personnel Organizations, which serves as the guidelines for implementation, does not contain an article on the institutional mechanism between the regional governments and the other ministries, other than the

Home Affairs Ministry. Under the current mechanism, the Home Affairs Ministry holds the right to monitor and evaluate the regional personnel organizations<sup>28</sup>. The mechanism starts with submitting the provincial bylaw on Regional Personnel Organization from Governors to Home Affairs Minister<sup>29</sup>. This regulation does not contain a stipulation about the coordination system between governors and institutions concerning education, as with the education and religious affairs ministries.

In addition to this, several education institutions like School Committees and Education Boards have unclear functions, tasks and authority. There is no regulation on when these institutions should be involved by the government in policy or program making, what is the structural and coordination hierarchy between the Education Board and the School Committee, etc. This is in spite of the fact that these independent institutions actually perform important functions in the monitoring and evaluation of education policies.

### ***Education budget has yet to fulfill the Constitution's mandate***

Although it is included ideally in the Mid-Term Development Plan, the reality is that the government still lacks the political will to give priority to education. One of the indications of this is that the budget allocation for education, which is far from adequate. Under the Susilo Bambang Yudhoyono-Jusuf Kalla administration in 2005, the National Budget allocated Rp 25.71 trillion for education. The amount was a mere 9.7 percent of the total budget. From that amount, the Directorate General for Primary and Secondary Education gets Rp 11.357 trillion<sup>30</sup>. In the 2008 National Budget, the National Education Ministry got its budget cut from Rp 49.7 trillion to Rp 44.7 trillion<sup>31</sup>.

Budget wise, Indonesia ranks lowly in education. In 1992, UNESCO reported that the Indian government covered 89 percent of all the education sector's needs while Indonesia covered only 62.8 percent of the total needs of the national education. When compared with other countries, including Sri Lanka, Indonesia ranks lower in terms of the government's budget for education.

The results of Asian Development Bank (ADB) study with CERC Hongkong University show that the operational costs subsidy from the government for elementary schools in 1995/1996 amounted to Rp 5,000/student/year on average. This means that, over five years, the schools have experienced a decline in the value of the operational cost subsidy. If inflation is added into the calculations, the amount each student has received since 1995/96 has reduced in value.

The Indonesia Corruption Watch (ICW) research report for 2006, based on 10 municipalities, showed that parents still had to shell out Rp 1.5 million for the costs of their children's elementary education. This amount comprises direct and indirect costs. The education ministry's Research and Development Department reported in 2003 that parents bore 63.35 to 87.77 percent of the total education costs of their children.

The portion of educational costs covered by the government and the society (besides the parents and the students) stood between 12.22 and 36.65 percent of the total cost of education. This demonstrates that high participation rates in education have resulted in high costs being borne by the society and parents. This means that access to compulsory education can be categorized as affordable, because people do not obtain it for free, contrary to what has been promised in various laws<sup>7</sup>.

It is only after the Constitutional Court issued a ruling ordering the government to allocate a minimum of 20 percent of the total national budget to education that the government in 2009 started to increase it to 20 percent.

## **Education is Not Free**

Basically, the government, through the Article 4 in Law No. 20/2003 on the National Education System, has regulated education in a democratic, fair, non-discriminatory manner, as well as upholding human rights. To be compliant with the Covenant on Economic Social and Cultural Rights, the government's policies and strategies in the education sector have to guarantee the principle of non-discriminatory access (economic accessibility and physical accessibility). The government has issued the Mid-Term Development Plan, which targets, in particular, an improvement in education participation among Indonesians, measured by two indicators: firstly, a percentage increase in the population which completes the Nine-Year Compulsory Primary Education Program, and secondly, an increase in the number of the population which enroll in secondary education.

The government later issued Government Regulation No. 47/2008 on Compulsory Education. But this is problematic. The regulation places a responsibility on civil society to bear the costs of the nine-year compulsory education program. Article 4 of the regulation stipulates: "The government and the regional government assist the funding of the compulsory education program, which is run by the society". The word "assist" in the article implies that the government shares only half the responsibility for compulsory education. This half-hearted responsibility is also palpable in Article 7 which says: "Funding for compulsory education can come from the society or other unbinding donors".

The compulsory education regulation is similar to Law No. 20/2003 on National Education System, which says in the Article 46 (1) that education funding is a responsibility of the government, regional governments and the society. The "responsibility of the society" could be interpreted as a responsibility borne by the students' parents.

Therefore, education that is free of charge, as recommended by UN Committee on the Rights of the Child, is still far from being fulfilled. Society's participation in education funding, as stated in National Education System Law, the Bill on Education Legal Entity and the Bill on Compulsory Education, is a paradigm that opposes the Constitution, which states that every citizen has to participate in primary education and that the government is obligated to finance it. This means that primary education for citizens should be free of charge.

## **School Operational Cost (BOS)**

The BOS Program has helped children and schools to cover the operational costs of education, in particular for students from low-income families. The program itself is aimed at mitigating the negative impact of economic crisis on low-income families' access to education and to the government's target on nine-year compulsory education.

But in the process, BOS program has two different main goals. In the beginning, the program aimed to give all children free primary education, on the basis that all citizens have equal rights to education. Later, the program aimed to give a subsidy to students from low-income families, because of their limited access to education. The goal stipulated in the Guide Book version 2005 and 2006 is different. The 2005 book says: "BOS aims to give assistance to schools in a bid to abolish tuition fees while keeping the quality of the education". Version 2006 says: "BOS aims to give exemption from tuition fees to students from low-income families, while lowering the fees for others so they can have quality education until they complete the nine years compulsory education".

The two different goals encourage schools to interpret them differently, at the expense of the students. One result of the consultation with children and field observation concerning children's rights to education by the National NGO Coalition for Children's Rights Monitoring in 2009, showed that children were still asked to bear the costs of education. Students in Medan, for example, still have to pay for text books, school activities books, school organization fees, national activity fees, Islamic charity every Friday, re-registration fees, self-development fees and money for school uniforms. The situation has become worse because the BOS allocation is not reported transparently, regarding how much the school proposes to the government, the exact amount of money transferred by the government and how much of the BOS allocation is used for operational costs and how much for the students. The society has never received reports from transparent evaluation and monitoring of the system, therefore it is difficult to know whether or not graft is a factor.

### ***Education for Children with Special Needs***

The legal instrument that provides the grounds for quality education, including that for children with special needs, is the 1945 Constitution in the Article 31 Clause 1 and 2 and Law No. 20/2003 on child protection in Article 5 Clause 1. Further guarantees are stipulated in Article 49, 51 and 52 of the 2003 law. The law's Article 9 Clause 2 in particular states: "Besides children as defined in the Clause 1, disabled children are also entitled to receive special education, while children with extraordinary gifts also have the rights to special education".

Indonesia is also a signatory to the Dakar Declaration in 2000, which is committed to education for all. It agrees to commit to the improvement of education services, especially to girls, vulnerable and underprivileged children, minority children etc. A similar commitment was reiterated in the Bandung Declaration, "Indonesia Towards Inclusive Education" on Aug. 8 to 14, 2004.

In reality, however, inclusive education is not reflected in the design of Indonesian education. Children with special needs, such as disabled children, are separated from regular education. This separation has evoked in these children a feeling of isolation from the world and from mainstream education. As a result, these children later experience difficulty in interacting with their peers. Meanwhile, the stigma among "normal" kids that children with special needs are weak and embarrassing continues to grow.

Even in the implementation of separating children with special needs, not all of the children can access special education. Although the education ministry has a Special Education Directorate, in practice the office has not managed to fulfill all children's rights to education. Many parents complain that special education is expensive while many children with special needs come from low-income families.

Existing special schools are mostly owned by the private sector; private special schools vastly outnumber public ones. Private special schools saw an increasing trend from 2004 to 2007. In 2004/2005, the country registered 957 private special schools and 2005/2006 recorded 1,010 and in 2006/2007 1,070. Although public special schools also experienced an increase during the same period, the rate was not comparable to the private growth. Latest data show that the number of public special schools is only 25 to 30 percent of that of the private schools. Given the astronomical costs of education, it is not surprising to find that many children with special needs do not have access to education.

### ***Compulsory Education Program Misses the Target***

The government deserves appreciation for the increase in the proportion of the population that receive elementary education, from 41 percent in 1986 to 94 percent in 1996. Those who got into junior high

schools increased from 62 percent in 1993 to 80 percent in 2002. In 2009, the rough estimation of the participation rate for junior high school reached 93.79 percent.

However, data from Education for All (EFA) shows that primary education in Indonesia is experiencing a complex problem. The Education Development Index (EDI) in November 2007 reported Indonesia ranked lower than before; Indonesia, along with other 53 countries, fell into “medium” category. The indicators were elementary school participation rate, literacy rate for population above 15 years of age, participation rate based on gender equality, the number of students who stayed until the fifth grade. Indonesia dropped from 58 to 62 among 130 countries.

According to EDI, which is a composite index of four educational main indicators used as a proxy for EFA, Indonesia experienced a decline especially in two indicators: The number of students who stayed in education until the fifth grade and the adult literacy rate. In 2002 Indonesia ranked 68 for the first indicator, and in 2005 dropped to 77. For adult literacy rate, Indonesia dropped from 67 to 71 in the same period<sup>32</sup>.

Another report came from Millennium Development Goals (MDGs) report, where two indicators recorded an improvement. For net enrollment ratio, Indonesia ranked 39 in 2002 and 28 in 2005. For gender equality index, Indonesia ranked 65 in the period of 2002-2005. The contradicting facts should serve as a wake up call about bias in measuring the achievement in Indonesia’s education development. It turns out that quantitative indicators like net or gross enrollment rate do not adequately demonstrate the real achievement in the education sector of a country.

There are two crucial issues in using enrollment rate as proxy indicators of education development achievement. Firstly, the use of gross and net enrollment rates gives the impression that the government focuses more on curative or ex-post programs rather than prevention or ex-ante. It means the government is not serious in preventing cases where children do not enroll as soon as they reach school age. The wider the gap between the net and the gross rate (when the net rate is below 100 percent, the gross rate is always higher), the more children who have not followed education according to their age.

Secondly, the improvement of gross and net enrollment rates indicators make the government heedless of the sustainability and completion rate of the education. Amid the achievement in net enrollment rate to elementary school which almost reaches 100 percent, the dropout rate at this level is also high, reaching 414,000 in 2005 (EFA, 2007). Not to mention elementary school graduates’ preparedness to enter junior high schools and maintain their achievement<sup>33</sup>.

The high rate of dropout at elementary school level has become one of the factors that explains the contradiction in Indonesia’s education achievement. While other countries have seen an improvement, the economic crisis has forced many Indonesian children leave elementary school early. In the future, it seems that even though the elementary school net enrollment rate may reach 100 percent, this would probably not contribute much to an improvement in the country’s EDI rank, let alone to poverty eradication, if there is no significant improvement in the quality of elementary education.

Our finding shows that the compulsory education program has missed the target because the government could not prevent dropouts. This is related to the fact that elementary education, which is compulsory, still requires parents to bear the cost, despite various policies like BOS. From the consultation with the

children we learn that dropouts are mainly caused by lack of funding, parents forcing children to work or living in a situation where they have to work.

The Indonesian version of Compulsory Education is not consistent with that in the Covenant on Economic Social and Cultural Rights. Besides compulsory education that is not free of charge, there are other differences in the design between the two versions. The covenant has the following characteristics:

1. There is an element of enforcement on the part of the government, so that all school age children enroll in schools.
2. Regulated by a law on compulsory education.
3. Success is measured by the absence of parents who get punished for hampering their children from going to school.
4. There is a punishment for parents who hamper their children from education.

Indonesian characteristics:

1. No enforcement element, but rather persuasion.
2. No legal punishment, but morally parents and students should feel there is a calling to complete primary education due to the provided facility.
3. There is no particular law for it.
4. Success is measured by enrollment rate.

## ***Two Formal Education Routes***

Due to the limited education funding, the government issued regulation No. 19 in 2005, which defines two routes of formal education: independent and standard formal schools. Independent formal school is a route for citizens who have adequate financial and/or academic capabilities and regard education as an investment. Meanwhile, the formal standard schools are a route for underprivileged citizens, either academically or financially, and act as a safety net for those who fail to compete in the independent route.

The division of formal schools clearly violates the non-discriminatory principle in the Convention on the Rights of the Child, National Education System Law and Children Protection Law. The two-fork education process is systematically discriminatory. Students are effectively segregated into rich and poor groups. The segregation not only results in different education fulfillment based on economic capability but also creates a stigma of “rich school” and “poor school” among the students themselves, the society and the workplace. Students from low-income families consequently cannot enjoy the facility provided in the independent route because the families have to finance the education independently.

The state’s responsibility as the education provider is transferred to independent formal schools, which act as private companies that have to find their own funds, either from students (parents) or other private endeavors. Therefore, the government has neglected children’s rights to education.

## ***Gender Equality in Education***

Although the laws have regulated that education is for all, girls have always had less access to education than boys. Several factors affecting the gender inequality among other occur in three categories of education policy problems: First, Equal Education Opportunity. Second, Majors and Study Programs and third, Curriculum, Teaching Materials and Education Process.

Upon careful observation, the proportion of the female population that is literate has experienced an increase but is still behind that of male population. Data from 1980 showed that only 63 percent of women were literate, which was less compared to the 80 percent of males. In 1990, the proportion of literate women saw an increase to 79 percent while men reached 90 percent (SP, 1990). The proportion has continued to increase to 85.54 percent, but still lags behind men's 93.4 percent<sup>34</sup>.

According to a World Bank study in 2006, only 41 percent of children of junior high school age from low-income families enrolled to schools, while those from financially capable families reached 50 percent. Children from poor families have 20 percent less chance to continue to junior high school compared to the more capable ones. A similar finding was made in relation to gender, where girls have less chance compared to the boys, especially those from low-income families or from families with many children. The country's poorest quintile account for only 6 percent of junior high school seats and even less, 3 percent, of high school seats<sup>35</sup>.

Gender inequality is also shown in the school textbooks and reading materials, whose contents are still gender blind. This would affect the gender equality measures in education. Observations show that textbooks on Social Sciences (IPS), Citizenship, Physical Education, Indonesian language and literature and Arts have failed to regard gender equality measures. The authors of the books are predominantly male, or 85 percent of them. Most of the authors, both the males and females, have not demonstrated a gender sensitive view in writing the books.

### ***Protection of Pregnant Children to Continue Education***

In Indonesia, girls who get pregnant while in school still receive unfair treatment. Most of pregnant students are expelled from schools, according to a junior high school student in North Sumatra. The students said a senior in the school was pregnant and was soon expelled from the school. The school does not want pregnant students to continue education because they considered such a thing would tarnish the school's reputation. Another case also occurred in a different junior high school, according to another student in Medan. The student said the school never let pregnant students to continue their education.

A regulation related to protection for pregnant students who stop their education has yet to be issued by the government, despite the mandate from the Convention on the Rights of the Child, the Covenant on Economic Social and Cultural Rights and the Constitution.

### ***Education for Children in Special Circumstances***

#### ***Education access for children who become victims of conflicts and disasters***

Article 32 in Law No. 20/2003 on National Education System has stipulated that: "Special education service is an education for students in remote and underprivileged areas, indigenous people in remote areas and/or those who experience natural or social disasters and financially underprivileged". However, in reality, the 2004-2009 Mid-Term Development Plan formulated by the National Planning and Development Agency (Bappenas), especially on the quality education access improvement program, fails to mention education for children in special circumstances, like in conflict-affected areas and those affected by natural disasters, as an issue that needs more attention regarding the children's special physical and psychological needs<sup>36</sup>. The mid-term plan does not have a particular education program plan for conflict-affected areas, those hit by natural disasters. or for remote areas. There is no plan to

ensure that students in such areas can get access to education, infrastructure improvement, teachers and education staff, education budget and the Minimum Service Standard<sup>37</sup>.

An example of such a situation is students who are victims of conflict and natural disaster in Nanggroe Aceh Darussalam Province. Abdul (not his real name) is a 12<sup>th</sup> grade student in the province. During the conflicts, Abdul resided in a displaced people's shelter not far from a settlement. However, Abdul and other children in the shelter did not continue their school because the schools for the people in the settlement also did not open. Other children like Abdul also experienced the same situation<sup>38</sup>.

### ***Education for Trafficked Children***

Children who fall victims to trafficking must get special protection as stipulated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Law No. 14/2009) and Law No. 23/2002 on Child Protection, which stipulates that "The government and other state institutions is obligated and responsible for giving special protection to children in emergency situations, children in conflict with the law, from minority groups and isolated groups, those who are sexually or economically exploited, who are trafficked, who fall victims to drug abuse, alcohol, psychotropic substance and other addictive substances, children who are victims of kidnapping, trafficking, physical and/or mental violence, disabled kids and children who are victims of abuse and neglect".

There are cases where trafficked victims are deprived of their rights to education. Trafficked children are usually repatriated or reintegrated into the family without first discussing with them a plan on how they would continue their education.

Poverty has also been one of the causes trafficked children fail to continue education. From the consultation with trafficked children done by National NGO Coalition for Child Right Monitoring, only one of the children enrolled to a learning group program B to get education equal to junior high school and later got a vocational training. However, the one who provided the child with the program and the training is an NGO, not the government.

### ***Education for Children in conflict with the Law***

Children who face legal troubles are still deprived of their rights to education. There are even children who are sentenced to imprisonment who do not receive any form of education. Mostly, the education they receive is non-formal, due to the lack of facilities to run formal education, as in Kebonwaru Prison in Bandung. Data from the Children's Rights Aid Institution (LBHA) in 2008 showed that there were 65 children in the detention center, and as many as 52 had been convicted and 14 of them were sentenced to more than a year in jail<sup>39</sup>. Kebonwaru Correctional Facility does not have a facility for formal teaching activities despite the high number of children there. As a consequence, many are forced to drop out of school. The education provided in the facility is a non formal program, such as like learning group programs (Paket) A, B and C, as well as the Society Learning Center.

The Correctional Facility in Tanjung Gusta in North Sumatra, however, has a special education service which aims to give detained children an education like other children outside the facility. The special education service comprises sewing, trainings, painting, sports, library, trainings to make concrete blocks and shuttlecocks.

Basically, the laws have regulations on education service for children in correctional facilities as stipulated in Law No. 12/1995 on Correctional Facility and Law No.3/1997 on Juvenile Court. Children in prisons

mostly cannot go to schools outside the facility. The Law No. 3/1997 is in opposition to the Covenant on Economic Social and Cultural Rights and 1945 Constitution, which stipulates that education is the right of every citizen.

## ***The Quality of Education***

### ***Concerns and Recommendations from the Committee on the Rights of the Child***

In essence, the UN Committee on the Rights of the Child is impressed with the reforms in the education sector that have been undertaken since 1994 by the Indonesian government and with the Indonesian government's effort to increase teachers' teaching standards. However, the Committee on the Rights of the Child is highly concerned with the high teacher-student ratio and the low quality of teachers' skills.

Therefore the UN Committee on the Rights of the Child recommends the Indonesian government to continue current efforts to ensure teachers to be adequately trained.

The Committee also recommends Indonesia to take appropriate actions to introduce human rights, including children's rights, into the school curriculum.

Furthermore, the committee recommends Indonesia to continue and strengthen its efforts in education mainstreaming in Islamic schools (madrasa) and boarding schools to ensure greater compatibility with regular public education and to carry out a better monitoring system on the quality of education.

## **IMPLEMENTATION IN INDONESIA**

### ***Low quality of education***

#### ***Infrastructure in education***

Even though the government has stipulated a policy in the form of a National Education Ministerial decree No. 24/2008 on Education Infrastructure Standards for elementary and middle school, in reality facilities for elementary education have yet to be distributed evenly. Limited education facilities in rural villages and islands have caused children in those areas face difficulties in accessing elementary education. There are still a lot of elementary and middle school buildings that are damaged and do not meet livable standards. According to a 2004 National Education Ministry survey, 57.2 percent of elementary schools and Madrasah Ibtidaiyah (MI) or Islamic elementary school and 27.3 percent of junior high school and Madrasah Tsanawiyah (MTs) or Islamic junior high schools buildings suffer from minor to severe damage. This results in children having to study outdoors or having to risk studying inside a building that is about to collapse.

On the issue of infrastructure, the government already has a 2007 National Education regulation No. 24 on SD/MI, SMP/MTs, and SMA/MA Infrastructure Standards. Here, it is clearly stated that middle schools must have libraries, biology and physics laboratory, sports equipments and so forth.<sup>40</sup> The Indonesian government states that the whole teaching and learning process should continue to run until the school has achieved the infrastructure standard. However, the government does not elaborate further on how to reach that goal or whether or not a Minimum Service Standard (SPM) is present for

a school to be able to carry out teaching process.<sup>18</sup> The Elementary and Middle Education Management Directorate stated that the government was deliberating the SPM on education services, which includes empowerment in the School Committee, the Education Board and the community to be carried out in regions.<sup>23</sup>

The various conditions explained above shows that Indonesia has yet to fully comply with the Convention on the Rights of the Child, and Covenant on the Economic, Social, and Cultural Rights, especially in the implementation of the rights of the children in conflict and disaster areas. Indonesia has yet to fully implement the principle of accessibility, especially on nondiscrimination and economic and physical access as stated in the UN Convention on the Rights of the Child's General Comment E/C.12/1999/10 *The right to education* (Art.13).

### ***Inadequate qualification and welfare of the teacher***

The National NGO Coalition for Child Rights Monitoring acknowledges various governmental efforts to increase the quality of teachers. For example, on Dec. 2, 2005, the National Education Minister declared school teaching as a profession. The status increase of teachers from workers into professionals had to be followed by special training that can increase the teachers' quality. According to the minister, to improve the quality of education, an increase in the quality of teachers was necessary.<sup>41</sup> The government then stipulated Law No. 14/2005 on Teachers and Lecturers and has prepared a main institution to oversee the teacher's profession, which is the Directorate General Education Resources Quality Improvement under the National Education Ministry.

However, the National NGO Coalition for Child Rights Monitoring is concerned with the low quality of educators based on the 2004 National Education Ministry survey. The survey shows that not all SD/MI educators have D-2 and above qualifications (only 61.4 percent are). The same is seen in the SMP/MTs educators; many have qualifications of D-3 or lower. The percentage of SMP/MTs teachers with D-3 education and above is only 75.1 percent. It is impossible to expect a high quality of education with low qualifications in teachers' formal education.<sup>21</sup> In essence, Indonesia does not have a systematic and gradual national policy on how to improve the teaching quality of teachers. The only policy that the government stipulated was the Law No. 14/2005 on Teachers and Lecturers, which promises a lucrative salary for teachers and lecturers if they become certified; followed by a 2007 National Education Ministerial decree No. 18 that regulates the certification of teachers.

As of 2008, Indonesian teachers have the lowest salary compared to teachers in the Philippines, Malaysia, Thailand, or Sri Lanka. According to data in the World Education Indicator (WEI), the starting salary for elementary school teachers in Indonesia is 1/25 of teachers' salary in the developed world, 1/10 of salary of teachers in Malaysia and the Philippines, 1/6 of teachers' salary in Thailand and 1/3 of teachers' salary in Sri Lanka. For junior high school and high school teachers, Indonesian teachers receive 1/13 of Malaysian teachers' salary, 1/10 of the Philippines', 1/6 of Thailand's', 1/3 of Sri Lanka, and 1/27 of developed countries'.<sup>22</sup> Only in 2009, Indonesian teachers experienced a significant salary increase on the condition that the teacher should pass certification, as mandated by the 2007 National Education Ministry regulation No. 18, one of whose requirements is that teachers need to have a bachelors degree education.

### ***National Examinations***

The government aims to use the national examinations to increase the standard of Indonesian education and, on the other hand, to measure the quality of education in Indonesia. However, the national exam

in fact cannot be used as a measure of education standards and even violates children's rights to education.

The national exam cannot be used as a measure of students' capabilities, since the low average grades for national exams are often followed by a high percentage of graduates. In the 1998/1999 school year, the average Final National Exam (UAN) grade was 3.99. The minimum score to graduate high school in Indonesia is 6. In that period, however, 97 percent of high school students passed. This shows that grades in the final exam are not the only tool used to filter students' passing or failing.

It is not an easy feat to improve the quality of education and the standard of education as regulated by the government through the 2007 National Education regulation No. 50 on Standard Regional Education Management. Article 1 states that the regional government should implement education management according to the national education standard. Political will, regional supporting power, and the quality of human resources become the key factors that differentiate the quality of education resources in each region. In a lot of areas in Indonesia, the education resources have never been improved to support an education process that would produce quality students. Therefore, it is no wonder that, to fulfill the passing standard set by the central government, teachers and students use all means to pass the test.

Based on the aforementioned situation, the Constitutional Court actually banned the government from holding national exams in 2009 because it violated the child's right to access to education. However, the government, in particular the National Education Ministry ignored the Constitutional Court's ruling and continued to hold the National Exam.

Students who do not pass the National Exam are allowed to re-take the exam or to take the learning group program C (Paket C). However, by the same token, students who do not pass the National Exam face psychological pressure. Students who do not pass the exam and have to follow the Paket C program are also subject to pay the fees for the non-formal Paket C program. Until 2008, students who did not pass the National Exam and who followed the Paket C program were not allowed to continue their studies to university level. However, since 2008, Paket C graduates have been allowed to follow the university selection test like their other peers.

### ***Education in Madrasa***

According to the 2003 Law No. 20 on The National Education System, primary education consists of two parts, which are the elementary school (SD) or the Madrasah Ibtidaiyah (MI), both of which run for six years, followed by the junior high school or the Madrasah Tsanawiyah (MTs) that run for three years. These schools are run by either the government or private entities. For SD and MI, in 2001 the government manages 93 percent of 148,964 SDs, 23 and 7 percent of 22,799 MIs.<sup>42</sup>

The teaching and learning process in SD uses a general curriculum that contains general knowledge subjects regulated by the National Education Ministry. The SD curriculum must have at least these subjects:

1. Pancasila (national ideology) Study.
2. Religious Studies.
3. Citizenship Studies.
4. Indonesian Language.
5. Reading and writing.
6. Mathematics, including counting.

7. Introduction to science and technology.
8. Geography.
9. National history and general history.
10. Arts and crafts.
11. Physical education and health.
12. Drawing.

The Madrasah Ibtidaiyah (MI) uses a mixed curriculum that contains not only general knowledge, as taught in SD, but also Islamic studies, under the management of the Religious Ministry. The Islamic studies curriculum is an expanded form of the SD Islamic religious studies curriculum, consisting of the five sub-subjects of Islamic studies, which are:

1. Koran-Hadith (textual study of the Prophet Muhammad's words).
2. Aqida (tenets of belief) – Akhlak (morals).
3. Fiqh (Islamic jurisprudence).
4. History and Islamic culture.
5. Arabic Language.

Having two different types of education results in different standards of education. One of the problems that often arises from this is the tendency of low quality in the teaching and students' results in general knowledge subjects in MI. It is compulsory for students to learn all the general knowledge subjects taught at elementary school, as regulated by the National Education Ministry, and all Islamic studies subjects required by the Religious Ministry. The difference between MI and SD can also be seen in the quality of education management and administration. Ironically, governmental funding is usually prioritized for SDs, even though a lot of MIs have bad school administration, and most of the students come from poor families that need more help.<sup>43</sup>

### ***Education based on human rights and children's rights***

As a follow up of the 2003 Law No. 20 on National Education System Article 4 sub-article (1) since 2004, introduction to human rights has been integrated to the curriculum in the SD, SLTP, and SLTA through citizenship studies. Meanwhile introduction to children's rights is given to SD students in the first semester.

However, if we look further in the curriculum released by the National Education Ministry, we can see a mistake in the human rights curriculum. The focus of the first grade SD students in the second semester for example is on the rights and responsibilities of the child. The standard competency expected from students is that they are able to implement their rights and responsibilities in the family and school. In fact, the concept of universal human rights does not make a link between rights and responsibilities. There is also no causal relationship between the two, which states that someone has to perform their responsibilities first in order to receive their rights. That mistake can cause students to have wrong notions of human rights and of children's rights in particular.

### ***Violence in School***

#### ***The Committee on the Rights of the Child***

On the issue of violence in school, the Committee on the Rights of the Child recommends the government to take actions to reduce the incidences of violence in schools.

## **IMPLEMENTATION IN INDONESIA**

The National NGO Coalition for Child Rights Monitoring view that the government has regulated children's protection against violence in school in the 2002 Law No. 23 on Children Protection Article 54 that says: "Children in the school and in the surrounding area must be protected from violence carried out by teachers, school management or their peers inside the school or other educational institution".

Even though Indonesia has the legal instruments to protect children from violence in school settings, it does not however have policies that regulate the prevention and the handling of cases of violence in schools. Cases are handled by the police and go through a lengthy process. It cannot be ensured that the process will respect the dignity of the victim and human rights standards. The lack of policies on prevention, including education for teachers on how to handle violence in schools, is compounded with the fact that there is no Code of Conduct or a kind of Code of Ethics for the teacher's profession that has to be followed in the teaching and learning process. The lack of Code of Conduct or Code of Ethics in the teaching process creates a void in the rules of the game for teachers. The teachers' knowledge and skills on learning methods that respect the rights of the child have never been improved. Teachers then freely use all the methods they deem correct, including the use of violence.

According to findings from students' group consultations in Medan, there are a lot of teachers who give physical punishment to students. Examples of the children's testimony in the group consultation show that a lot of children still face violence at school, both from peers and teachers. Andre (not his real name), a junior high school student in Deli Serdang said that his teacher threw a wooden board eraser at him, that caused him to have a bruised eye, just because he was talking to his friend while the teacher was explaining a lesson. The parents of the child sued the teacher that did the throwing. However, the school representatives defended the teacher. In North Sumatra, from data gathered by non-governmental organizations, in 2008 there were 373 cases of violence in schools.<sup>44</sup>

A UNICEF survey found that in Central Java, 80 percent of teachers said that they had punished students by yelling at them in front of the class, 55 percent of teachers confessed that they had told students to stand in front of the class as punishment. In South Sulawesi, 90 percent of the teachers said that they had punished students by making them stand in front of the class, 73 percent said that they had yelled at students in front of the class, and 54 percent said that they had punished students by making them clean the toilet. In Sumatra, 90 percent of the teachers said that they had told students to stand in front of the class as a punishment and 80 percent had yelled at students in front of the class. According to the UNICEF report, these forms of punishment that humiliate children and disregard their dignity and capabilities happen often in schools in Indonesia.

A Code of Conduct that bans corporal punishment is gravely needed to ensure that teachers behave well and are role models for students in the teaching process. Since Indonesia has yet to have a Code of Conduct that would give guidance in the teaching process, the current certification process for teachers and lecturers carried out by the government to measure teachers' feasibility to be educators does not include compliance with a code of conduct as part of assessment.

Prevention, protection and rehabilitation of children that have been victims of violence should start from teachers, who are often the main perpetrators of violence in schools. The teachers' certification process carried out by the government does not include this. The current certification process is a mere competence test. The competence test is carried out by evaluating a teacher's portfolio, which includes

assessments on various documents that describe a teacher's academic qualifications, education and training, teaching experience, academic achievements, participation in scientific forums and so forth.<sup>45</sup>

As regulated in the 2007 National Education Ministry regulation No. 16 on Academic Qualifications Standards and Teacher's Competence, teachers are required to meet the main competence standards, which are pedagogic standards, personality, social and professional standards. Pedagogic competence includes a teacher's competence in mastering the characteristics of students in their physical, moral, social, cultural, emotional and intellectual aspects. Personality competence includes a teacher's competence to act in the teaching process in line with religious norms, the law, and Indonesian culture. The teacher should also present themselves as honest personalities with good moral integrity and be a role model to students and the community. For social competence, teachers should be inclusive, act objectively and not discriminate against students based on sex, religion, race, physical condition, family background or economic status. For professional competence, teachers should master the material, the structure, concept and the scientific paradigm of the subject.

In reality, however, the four standards of competence are not well fulfilled and there is no system to monitor this. In the certification process that measures teacher and lecturer's feasibility to teach, these standards of competence should be based on tests that indicate the competence, besides academic qualification. In other words, assessments should not just be based on a portfolio such as in the current process that the government is carrying out. It should be based on a series of test on professional competence, pedagogic competence, social and personality competence, which in the end would produce educators that use human rights and child's rights approach.

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

Our recommendations are:

- The Indonesian government should draft a policy that ensures education in Indonesia is based on human rights and child's rights standards so that education in Indonesia is in line with the Convention on the Rights of the Child and other human rights instruments.
- The Indonesian government should revise the 1945 Constitution so that the right to education is the rights of everyone. This revision will ensure that right to education is not only the right of citizens of Indonesia but also the right of everyone who is in Indonesia.
- The government should draft a policy that ensures and clarifies the structural and coordinating line between institutions in the education system, so that the function and authority of each institution is clear. Furthermore, the government should draft a policy to empower independent institutions that have yet to function well, such as the School Committee and the Education Council, and improve its coordinating function with other education institutions. These institutions have important roles especially in monitoring and evaluating policies in the education sector.
- The Government of Indonesia should draft a policy that would regulate a standard information management system and mechanism in the education system. This is to ensure the validity and accountability of important data in the education sector for planning and educational development.
- Indonesia should draft a policy on the structural and coordination lines of regional education institutions so that these institutions have a clear function and authority in supporting education programs.
- There should be further discussion regarding the education system, including the goal of the education. Meanwhile, education in madrasa and Islamic boarding schools should be better integrated.
- The national exam should only be held after the standards of education services, the infrastructure and the quality of teachers have reached the same level in every region, because basically a forced national exam is a violation of children's rights.
- Systematic teacher training should be carried out on the implementation of educational methods that are based on children's rights. At the same time, the school should seriously develop and implement the environment and policies aimed at the prevention of violence.

## Chapter IX

### SPECIAL PROTECTION MEASURES

*Odi Shalahuddin, Emmy L Smith, Aan Subhansyah and Hening Budiawati*

#### INTRODUCTION

The discussion in this chapter deals various groups of children that were focused on by the Committee on the Rights of the Child in its 2004 Monitoring Report on the Indonesian government in cluster 8. These groups are as follows:

1. Child refugees
2. Child victims of armed conflict, including child combatants
3. Child victims of substance abuse
4. Street children
5. Child victims of sexual exploitation
6. Child victims of economic exploitation
7. Children who have been sold, trafficked or abducted
8. Children from minority groups.

The principal source of the material in this chapter is consultations that were held with children. These consisted of two stages; first, the gathering of information from the children and the providing of information to them so as to complement what they already know. In order to flesh out the profiles of each group of children, research was conducted on life stories of children representative of each group, as well as the contextual background of each group.

#### **Child Refugees**

##### **Recommendations and Concerns of the Committee on the Rights of the Child**

*Regarding the position of refugee and internally displaced children in Indonesia, the Committee on the Rights of the Child in its 2004 Monitoring Recommendations stated that it was very concerned by the plight of both transnational refugees and internally displaced children forced to live in camps (point 65). The Committee recommended (point 66) that Indonesia:*

1. Take immediate measures to ensure that transnational child refugees and internally displaced children and their families have access to basic health and education services, and that all of their rights, as set out in the Convention on the Rights of the Child, be protected, including the right to birth registration.
2. Strengthen efforts to ensure the immediate repatriation of separated East Timorese children to Timor Leste;
3. Comply with the provisions of the 1951 Convention on the Status of Refugees and the 1967 Protocol thereto, the 1954 Convention on the Status of Stateless Persons, and the 1961 Convention on Reducing Statelessness;
4. Continue its collaboration with such organizations as the UNHCR.

## **IMPLEMENTATION IN INDONESIA**

The children with which the Committee on the Rights of the Child was concerned can be differentiated between refugee children (transnational refugees) and internally displaced children (refugee children from within Indonesia itself).

The problem of refugee children in Indonesia is primarily related to the violence that occurred in the former Indonesian province of East Timor following the independence referendum held there in August 1999. Meanwhile, the problem of internally displaced children is mostly related to the armed conflict in Aceh (what is termed a “non-international armed conflict”), ethnic conflicts and social disturbances in various parts of the country in recent years, such as in West Kalimantan, Central Sulawesi and Maluku, following the fall of the New Order regime. In addition, children have been displaced by natural disasters, such as the tsunami in Nanggroe Aceh Darussalam province and the Nias Islands in 2004, and the earthquake in Yogyakarta in 2007.

In its reports to the Committee on the Rights of the Child for the period 1993-June 2000, the Indonesian government stated that based on data from the Coordinating Ministry for Public Welfare and Poverty Eradication, as of the end of December 2009 there were a total of 256,098 refugees from the former province of East Timor living in East Nusa Tenggara, which is the Indonesian province that borders directly on Timor Leste. It was estimated that 40 percent of these refugees were children aged under 18. This means that some 102,440 children from the former East Timor province were living as refugees in Indonesia.

Regarding the measures that were taken to address these problems, it was reported that since the forced influx of refugees following the East Timor referendum, the UNHCR had successfully managed to reunite 400 separated children with their families. Meanwhile, 1,236 children were still separated from their families, with the UNHCR saying that it was continuing its efforts to reunite them.

According to the same source, the Coordinating Ministry for Public Welfare and Poverty Eradication, there were some 500,00 internally displaced persons resulting from the conflicts in Aceh and other areas. It was estimated that 38-43 percent of these were children, meaning that there were between 190,000 and 215,000 internally displaced children living in IDP camps in Indonesia.

Data collected by the National Emergency Response and Refugee Board (Bakornas Penanggulangan Bencana dan Penanganan Pengungsi) and published in May 2002 estimated that there were 1,245,874 refugees throughout Indonesia, of which 38-43 percent were believed to be children. As regards child victims of social conflict, the Minister of Social Affairs put the number of such children at some 400,000 spread through 24 provinces, with the provinces where most victims were found being Aceh, East Nusa Tenggara (and the former province of East Timor), and Central Sulawesi.

In the draft Indonesian government report for the 1997-2007 period, paragraphs 152-158, coverage is only given to the position of internally displaced children resulting from natural disasters, and the measures taken to alleviate their plight. No data is given on refugee children or internally displaced children resulting from armed conflicts. Consequently, many of the concerns and recommendations put forth by the Committee on the Rights of the Child in 2004 have been ignored, despite the fact that the Committee will undoubtedly query the government over the measures it has taken to give effect to the Committee’s recommendations.

Poor living conditions and the non-fulfillment of their rights are undoubtedly being experienced by internally displaced children and refugee children in various places around Indonesia. One outstanding issue continues to be the nationality of children displaced by the conflict in East Timor. To date, there is still a lack of clarity about their citizenship. As a consequence, there are often unable to attend school and to properly grow and develop in the same way as other children.

Research conducted by the Ministry of Foreign Affairs' Directorate of Human Rights and Humanitarian Affairs in various parts of Indonesia found that a number of ex-East Timor refugee children in that have been in Indonesia since 1999 still had not been provided with personal identities so that their citizenship status continued to be unclear. This situation has resulted in them experiencing a host of problems, including participation in school and other social activities. The Ministry of Foreign Affairs has said that it is not fully at liberty to become involved in such internal technical matters. So where did the data come from? Meanwhile, support from the relevant line ministries, particularly the Ministry of Law and Human Rights, has to date been inadequate. In fact, the Ministry of Social Affairs in dealing with displaced persons fails to distinguish between the two categories of such persons, namely refugees and internally displaced persons. It has said that this is because it does not wish to discriminate in the provision of services.

The problems concerning legality are quite serious in the case of the ex-East Timor refugees and can be traced back to the time of the former province's "integration" into the Republic of Indonesia. In fact, there was never any legislation passed that specifically stated that the territory of East Timor had been incorporated into the territory of the Republic of Indonesia. Thus, if we relate this to the Citizenship Act 1958 (No. 2 of 1958), which was in force at the time of "integration", it may be argued from the legal perspective that the people of East Timor never in fact became Indonesian citizens.<sup>46</sup>

As is widely known, during the reporting period Indonesia was hit by various natural disasters, such as the tsunami in Nanggroe Aceh Darussalam and the Nias Islands, the earthquake in Yogyakarta and Klaten District,, the tsunami in Pangandaran, Sukabumi District, and the earthquake in Bengkulu.

Various advances have taken place in Indonesia at the legislative and policies levels as regards the guaranteeing of protection to refugee children and internally displaced children, including:

- The Child Protection Act 2002 (No. 23 of 2002)
- The Disaster Response Act 2007 (No. 24 of 2007)
- Presidential Regulation No. 7 of 2005 on the 2004-2009 National Mid-Term Development Plan, particularly chapter 12
- Presidential Decree No. 3 of 2001 on the establishment of a coordinating agency to deal with refugee children and internally displaced children (Bakorstanas Penanggulangan dan Penanganan Pengungsi (Bakornas PBP))

In the context of providing protection to children in disaster/emergency situations, the Child Protection Act 2002 provides in article 59 that "the government and other state institutions shall be required to provide special protection to children in emergency situations", while article 60 provides that "children in emergency situations, as referred to in article 59, shall consist of (a) refugee children; (b) child victims of disturbances; (c) child victims of national disasters; and (d) child victims of armed conflict."

The next article, article 51, reads as follows: "Special protection for refugee children, as referred to in article 60(a), shall be provided in line with humanitarian law," while article 62 provides that "Special

protection for child victims of disturbances, national disasters and child victims of armed conflicts, as referred to in article 60(b), (c) and (d), shall be provided through (a) the fulfillment of their basic needs for food, shelter, housing, education, healthcare, study and recreation, security guarantees, and equality of treatment; and (b) the fulfillment of the special needs of disabled children and children with psychosocial problems.”

The Child Protection Act also clarifies the role of the public in providing protection to children, and provides that the public/community shall be afforded the widest possible opportunities to play a part in the protection of children (article 72(1)). The role of the public/community may be fulfilled by (I) individuals, child protection organizations, charitable/social organizations, non-governmental organizations, educational institutes, religious organizations, the private sector and the media. The role of the public/community is to be effected “in accordance with the provisions of the laws and regulations in effect”.

Meanwhile, article 48 of the Disaster Response Act 2007 (No. 24 of 2007) reads as follows: “Disaster response efforts during the emergency response phase, as described in article 33(b), shall cover: (a) rapid and appropriate surveys of the location, the damage and the available resources, (b) the determination of a state of emergency, (c) the rescue and evacuation of members of the public affected by the disaster; (d) the fulfillment of basic needs (e) the protection of vulnerable groups, and (f) the rehabilitation of vital infrastructure and facilities. Subsequently, article 55 provides as follows: “The affording of protection to vulnerable groups, as referred to in article 48(e), shall be carried out by prioritizing the rescue, evacuation, safeguarding, and the provision of medical and psychosocial services to the members of such groups. Vulnerable groups, as referred to in section (I) above, shall consist of (a) infants, under-5s and children; (b) expecting and nursing mothers; (c) the disabled; and (d) the elderly.

The Disaster Response and Refugee Board, was established by Presidential Decree No. 3 of 2001, and is directly accountable to the President. Article I of this Decree clarifies a number of issues related to the Board, namely:

1. The Board is a coordinating, non-structural umbrella body responsible for the handling of disasters and refugees and shall be directly under and accountable to the President;
2. The handling of disasters, as referred to in section (I) shall include the handling of both national and man-made disasters, and shall include prevention, mitigation, rescue, rehabilitation and reconstruction efforts.
3. The handling of refugees, as referred to in section (I), shall cover the provision of humanitarian services and protection to refugees displaced by both social and political conflict in a particular area, and shall include prevention, emergency response, and sheltering, moving and relocating the refugees.

Meanwhile, article 2 of the Presidential Decree provides that the duties of the Board are as follows:

- a) formulating and adopting policies for responding to disasters and handling refugees in a timely, efficient and effective manner;
- b) coordinating disaster response and refugee handling measures in an integrated manner;
- c) Providing guidelines and directions for disaster response and refugee handling efforts, including prevention, rescue, rehabilitation and reconstruction.

The Disaster Response and Refugee Board has networks in various regions through the Provincial Disaster Response and Refugee Units (Satkorlak PBP), which are coordinated by the relevant provincial governors, as well as the District/Municipal Disaster Response and Refugee Units, which are coordinated by the relevant district heads/mayors. The Disaster Response and Refugee Board carries out its duties in coordination with various government managements, including the Ministry of Home Affairs, Ministry of Social Affairs, Minister of Health, Ministry of National Education, and Ministry of Regional Infrastructure.

The Board provides humanitarian assistance, such as food, tents, shelter, clothes, education services, medical services, nutrition supplements for under-5s, assistance with sanitation, and other forms of assistance in collaboration with the Coordinating Ministry for Public Welfare and Poverty Eradication, UNHCR, ICRC, UNICEF, UNDP and international NGOs. Meanwhile, the Ministry of National Education has an emergency school program in operation in a number of places, such as Aceh, Maluku, Poso, and Sampang, while the Ministry of Health has established crisis centers in every location where refugees and internally displaced persons are found (data source: <http://www.indosiar.com/ragam/21373/anak-anak-korban-kerusakan-politik-di-indonesia--memorandum-pandangan-ykai>).

The government of Indonesia, through the Ministry of Social Affairs, launched its Separated Children Program in East Nusa Tenggara to help overcome the problems faced by children of under 18 years of age from the former province of East Timor who were forced by the violence or forced removal to flee to East Nusa Tenggara following the 1999 referendum and who in the process were separated from their parents or guardians. One of the legal bases employed for this program is the Child Protection Act 2002 (No. 23 of 2002).

In 1999-2003, the following interventions were effected:

- Assistance for separated children in East Nusa Tenggara province in collaboration with the UNHCR and other concerned organizations;
- Collaboration with local, provincial and national charitable organizations.

In 2004, the following actions were undertaken:

- Assistance for separated children by the Ministry of Social Affairs and the UNHCR, in collaboration with the East Nusa Tenggara Provincial Social Affairs Agency.
- The targets of the assistance were not only separated children from the former East Timor, but also other children (irrespective of ethnicity, religion, class or race) who were separated from their parents by national disasters, social disturbances, and other causes.
- East Nusa Tenggara province was selected to host a pilot project for the handling of separated children in 2005 as the programs for the handling of separated children that had been carried out or facilitated by the UNHCR in Indonesia were aimed at children from the former East Timor, with the center of activities being West Timor. Another reason was that the majority of the separated ex-East Timor children were located in East Nusa Tenggara.

Objectives of the separated children program:

- To reunite children with their parents or nearest relatives having regard to the best interests of the child in accordance with the Convention on the Rights of the Child and the Child Protection Act 2002 (No. 23 of 2002).
- To protect and provide services to separated children until such time as their parents or nearest relatives were found;

- To refer children to appropriate service providers should it prove impossible to locate their parents or nearest relatives, or should these have passed away.

It was stated that various approaches were employed in dealing with separated children, including social work approaches, religious approaches, cultural approaches, and security/military approaches. The last approach, along with investigations, was only adopted in very special cases because a separated child is not the same as a missing or abducted child. Based on the cases of separated children submitted by the UNHCR to the Indonesian and Timor Leste governments, the number of cases involving separated children from the former East Timor (as per 31 October 2005) stood at 107.

### **Situation and Views of Children**

*“I don’t believe there is a religious conflict. When we took refuge in the mountains, we met Muslims and they helped us. While some adults say that Muslims want to kill Christians, Christians also want to kill Muslims. I was only a little kid of 7, and all of the houses had been burned.” (MMY, girl, 16 years of age)*

In this section, we will look at the situation and views of children based on the results of the consultations that were conducted with internally displaced children who were forced to flee their homes due to armed conflict and natural disasters. The thirty children (10 boys, 20 girls) involved came from Nanggroe Aceh Darussalam, Central Sulawesi, and East Nusa Tenggara. More than half of them (17) were between the ages of 12 and 14, two were under 12, and nine were between 15 and 17. All of the children were attending school, two of them elementary school, 14 junior high school, and 14 senior high school.

While all of the children had experienced living in a conflict zone, the children from Aceh had also experienced the tsunami that claimed hundreds of thousands of lives and left countless people missing. Consequently, the consultations with the Acehnese children also elicited information on their situation and views as tsunami victims.

When asked why they had to flee their homes, all of the children were able respond quickly – not surprising given that their experiences will be with them for the rest of their lives. The children from East Nusa Tenggara and South Sulawesi said that they had forced to flee due to conflict. “Because of the unsafe situation in East Timor, where there was too much violence ... ” (BMY, girl, 17 years of age). Meanwhile, SFS (girl, 15 years of age) said that there were 500 children in his refugee camp for East Timorese. One of her friends, PSN (girl, 14 years of age) estimated that around 75 percent of the refugees were children.

One child from Nanggroe Aceh Darussalam said that his family had been forced to flee by the earthquake and tsunami.

*“Before the tsunami, I loved to play with my slingshot. It was great fun. Then the earthquake struck. I was called by mum, dad and we fled to Sibreh. We stayed first in a relative’s house, and then we put up a tent in the Social Affairs Building. The next day we went to look for dad’s brother, we keep looking until night. Dad had a dream that his brother was dead and buried under a pile of timber near the well. SO we all kept looking until we found dad’s brother’s body under the wood. After 2 weeks, we got a place in a barracks. When we were there, there was another earthquake. Abang had come from Meulaboh and was with us at the time. We had to run again.” (FDR, boy, 9 years of age).*

As reported, the government appears to have made serious efforts to provide support and services to refugees and internally displaced persons, including children, particularly as regards medical and education services. However, on the hand, the children also said that the places in which they were housed were cramped, leaky, dirty, smelly, lacking in sanitation facilities, and that they had been afraid of becoming involved in fights, had no one to play with, suffered from a lack of food and drink, and had been frightened by disputes between refugees and local people.

The principal thing that had made them uncomfortable was the conditions in the camps. According to children from East Nusa Tenggara, the facilities in their camps were atrocious.

*“Piles of garbage, pools of stagnant water that were never cleaned and stank, so many mosquitoes ...” (PSN, girl, 14 years of age).*

*“Lots of garbage, feces everywhere, a really bad environment ...” (TRE, boy, 12 years of age).*

Children from Nanggroe Aceh Darussalam wrote in their essays that they were always afraid whenever it rained. They couldn't sleep and were pressed up against each other.

*“The tents were full of leaks. Couldn't sleep at night, I'd just lie there crying ...” (ASM, girl, 13 years of age).*

*“What was really bad was that we had to sleep pressed up against each other, there were also a lot of mosquitoes ...” (ZTF, girl, 13 years of age).*

Although the children felt very uncomfortable in the refugee centers, there were also things that they enjoyed, particularly making new friends, as well as gathering together with their families, playing with their new friends, receiving assistance, and participating in activities organized by NGOs. According to the children, they made many new friends, which allowed them to enjoy themselves despite all the pain and suffering that surrounded them.

*“What really made me happy was making lots of new friends ...” (ZTF, girl, 13 years of age).*

*“I was together with my parents, family and neighbors...” (NDM, girl, 16 years of age).*

In addition, the children also were comforted in the refugee centers by the fact that they were with their families, that the people in the surrounding area were very helpful and friendly, and that received assistance and facilities. One child from South Sulawesi said:

*“Me and my family were happy as we were given help by local people living around the refugee center, like water, food, milk, stoves, pots and things like that ...” (LTM, girl, 12 years of age).*

## **Medical Services**

Given the poor conditions in the refugee centers, the people living in the centers were left very vulnerable to illness, particularly the children. Consequently, the need for medical services was paramount. However, it appeared that it was not easy to consult a doctor. This was because of the distance from the centers to the nearest doctor or hospital. Nevertheless, they were able to avail of the services of the nearest community health clinics. For example, in East Nusa Tenggara there was a community health center in Oebelo, and a dispensary set up by CCF.

*“There was the health post set up in each tent and the nearest community health center ...” (PSN, girl, 14 years of age).*

*“In the refugee barracks, there was a medical team. For those who lived in neighbors’ houses for a year, they normally went to the community health center or hospital. Refugees were given special cards so that they could get free treatment.” (MMY, girl, 16 years of age).*

*“Yes, there were medical services, like the PMI set up a tent in the refugee center ...” (ASM, girl, 13 years of age).*

However, four children in Palu and one in Nanggroe Aceh Darussalam said that no medical facilities were available.

*“There was nothing. If we became sick, we treated ourselves, or contacted the village administration ...” (NRE, girl, 17 years of age)*

*“There was no hospital and no medical help while we were in the tents ...” (DPI, boy, 12 years of age).*

Even when medical assistance was provided, not all of the children were able to avail of it. One child said that medical examinations were rare now, and another said that they were no longer provided (CDM, girl, 17 years of age and DNA, boy, 17 years of age).

### **Basic Education Services**

Education is a major problem for refugee and internally displaced children. Consequently, the Committee on the Rights of the Child places particular focus on monitoring this area, besides the provision of medical services. Many refugee and internally displaced children have to drop out of school or suffer delays in their progress at school due to a lack of educational facilities.

According to the children in South Sulawesi, they had never received special education or additional tuition so as to enable them to keep up with their lessons. “If you talk about special education, there was no such thing in the refugee centers,” said MMY.

Unlike the children in South Sulawesi, the children in East Nusa Tenggara and Nanggroe Aceh Darussalam had received special tuition.

*“There was a school tent, but within less than a year they built a permanent school in Boelbaki. Its roof was made of corrugated iron and the walls of plywood. Now there is no longer a school in the camp, and the kids go to the nearest elementary school ...” (GRT, girl, 15 years of age).*

*“For me, I never had any problems about school because I was only a month in the refugee center when relatives took me away and put me in school. My friends who are still in the camp get lessons from teachers ...” (BMY, girl, 17 years of age).*

*“Yes, there’s an NGO that set up a school tent so that we wouldn’t fall behind in our lessons ...” (PSN, girl, 14 years of age).*

*“There was a school in the refugee center. The teachers were really afraid that we would fall behind in our studies ...” (IRN, girl, 13 years of age).*

*“Yes, we had lots of lessons, like English, computers, maths. We weren’t long in the barracks before there was an elementary school in Neuheun...” (ARZ, girl, 12 years of age).*

The Committee on the Rights of the Child’s recommendations are particularly important in the area of

psychosocial support and help because many refugee and internally displaced children are traumatized, such as the trauma experienced by the East Nusa Tenggara children as a result of witnessing explosions, fires and communal panic.

*“Some trauma, because when we were fleeing we heard a lot of explosions ...” (TRE, boy, 12 years of age).*

*“Trauma, from the panic and fear we felt when fleeing to Kupang.” (PSN, girl, 14 years of age).*

*“I was terrified by the sound of shooting and seeing all the fires ...” (SFS, girl, 15 years of age).*

*“For example, I was traumatized by the sound of the explosions ...” (FYS, boy, 14 years of age).*

*“Sure I experienced trauma from all the shooting, seeing people panic, running everywhere ...” (DNA, boy, 17 years of age).*

*“All the shooting, the panic, the fires ...” (SRF, girl, 18 years of age).*

*“Yeah, the sound of explosions, seeing all the fires ...” (BMY)*

*“Panic when we heard shooting or bombs going off ...” (PMA, girl, 18 years of age).*

The children in Nanggroe Aceh Darussalam also said that they had been traumatized by the national disaster they had experienced. “I’m terrified of another earthquake ...” said AMR.

Some of the children said that they had received help to overcome their trauma, including from teachers, imams, religious institutions, such as inviting them to school to play.

*“The imam helped me overcome my trauma in the prayer house ...” (ASM, girl, 13 years of age).*

*“Yeah, a religious institution (Sunday school), and the tent school run by UNICEF ...” (PSN, girl, 14 years of age).*

*“The teachers invited us to come to school to play with the other children so that we could overcome our trauma ...” (PMA, girl, 18 years of age).*

*“The teachers invited us to come to school ...” (SRF, girl, 18 years of age).*

*“Yeah, those who opened the tent school and Sunday school ...” (CDM, girl, 17 years of age).*

Others who helped the children overcome their trauma included family members, as experienced by the children in East Nusa Tenggara and Nanggroe Aceh Darussalam.

*“Yes, my parent used to keep us laughing so that we would forget about the war ...” (SFS, girl, 15 years of age).*

*“Yeah, friends tried to make us forget about our fear ...” (MAF, boy, 10 years of age).*

DNA from East Nusa Tenggara said that he had received help from JRS and an NGO, while ARZ from Nanggroe Aceh Darussalam said that she had been helped by World Harvest and AMDA. Meanwhile, FDR and RMM from Nanggroe Aceh Darussalam said they had been helped overcome their trauma by the PMI by being invited to play games.

### **Assistance with basic needs**

The children said that they had received assistance in the form of food every day. As regards variety, children from all three areas gave differing responses. However, the majority said that they received rice/corn, eggs, salted fish and instant noodles.

*“The food was OK, rice, noodles and dried fish ...” (PSN, girl, 14 years of age).*

*“Salted fish and fried noodles ...” (CDM, girl, 17 years of age).*

*“It wasn’t very nice, mostly instant noodles ...” (SFS, girl, 15 years of age).*

*“We sometimes got bananas and sweet potatoes ...” (MMY, girl, 16 years of age).*

Sometimes, the food served to the refugees, including the children, was unfit for consumption, such as instant noodles that had expired, or rice with lots of small stones in it.

*“Rice and eggs, wasn’t good. The rice had lots of stones in it ...” (ASM, girl, 13 years of age).*

*“Sometimes the noodles had passed their use-by date ...” (MAF, boy, 10 years of age).*

Despite the problems with the food, the children said they had no choice but to eat it.

*“The important thing is that we got something to eat ...” said DNA.*

The children from East Nusa Tenggara and Nanggroe Aceh Darussalam said that they had experienced difficulties in accessing clean water. The children in Kupang experienced such difficulties as the well from which they got their water was far away from the refugee camp – one child said that it was around 7 kilometers from the camp. After conditions in the camp began to improve, the refugees no longer received subsidized water from the local municipal water company. If they wanted to get such water, they had to pay for it. As recalled by PSN:

*“The camp was no longer supplied with water by PAM [municipal water company] after conditions started to improve. If you wanted to get water from PAM, you had to pay Rp 200,000 per tanker.”*

PSN’s statement was supported by BMY from East Nusa Tenggara:

*“When we were in the refugee center, it was really hard to get water. Mum and my brothers and sisters had to bathe in dirty water that was also used by the cattle. We also had to drink contaminated water.”*

In Nanggroe Aceh Darussalam, the children also experienced difficulties in accessing water in the refugee centers.

*“It wasn’t easy to get water. Sometimes water was late in being distributed so that bad people tried to get it first ...” (IRM, girl, 13 years of age).*

According to AMR from Nanggroe Aceh Darussalam, they were only given around one kotak so that there was often not enough to go around.

*“We had to queue up to get water. But if the water was already finished, then those at the end of the queue got nothing ...” (ZTF, girl, 13 years of age).*

The children in South Sulawesi were more fortunate as there was sufficient water for drinking and other purposes. This was because their refugee center was located in a residential area whose residents either had wells or were supplied by the municipal water company (PAM). WAH and NDM said that in their refugee center there was a well, the water from which could be drunk after boiling.

The children brought few clothes with them to the refugee centers. In fact, some of them in Nanggroe Aceh Darussalam had no clothes at all as everything had been lost to the tsunami. ZTF and IRN from Nanggroe Aceh Darussalam, who lost all their clothes said that “to get clothes, you have to have money to buy them in the market.” A similar comment was made by FYS from East Nusa Tenggara.

However, CDM and SSS (girl, 14 years of age) from East Nusa Tenggara said that they had sufficient

clothes for everyday needs. NRE said that he had hidden clothes in the plantation as his family had anticipated the possibility that their house would be torched.

*“We didn’t have much clothes because we had to flee. I only had a couple of outfits with me ...” (PSN, girl, 14 years of age).*

*“I’ve enough for a change of clothes. We left with little more than we were wearing ...” (WAH, boy, 14 years of age).*

The children received assistance with clothing, like IZA (boy, 16 years of age) and RMM from Nanggroe Aceh Darussalam. According to IZA, he eventually ended up with more clothes than he ever had. Nevertheless, not all of the clothes could be used as they were mostly hand-me-downs and frequently didn’t fit.

### **Security in the refugee centers**

Security is essential for children in refugee centers. However, almost all of the children from Nanggroe Aceh Darussalam had unfortunate experiences in this regard, with violence being inflicted on them not just by other refugees and children, but also parents or foster parents. Many of the Kupang children experienced beatings:

*“They abused us for being refugees that were taking over their land ...” (PSN, girl, 14 years of age).*

*“They insulted us, for being Timor Leste people ...” (BMY girl, 17 years of age).*

*“One time when I came home late from school, I was locked up by my foster parents without any food ...” (FLT, girl, 17 years of age).*

*“They shouted at me that I was just a refugee and not to try to be too smart or pretty. They shouted that refugees had not right to be there and that we should go back to where we came from ...” (SFS, girl, 15 years of age).*

Meanwhile, the Nanggroe Aceh Darussalam children said that some refugees had been evicted from the houses where they were sheltering. With regard to security inside the refugee centers, they said that there was a lot of theft and fighting among the refugees.

*“Some were ordered out of the refugee center and told to go home. Dad was heckled ...” (MAF, boy, 10 years of age).*

The children from East Nusa Tenggara said that some of them had been ill-treated by their parents – one case of beating had been reported to the police. In addition, cases of ill-treatment had been reported to the local village head and local youth leader, while others had been settled within the family. Meanwhile, the children from Nanggroe Aceh Darussalam said named other refugees and local people as the main perpetrators of violence against children.

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

1. The government must make more serious efforts as regards respecting, protecting and fulfilling the rights of children in refugee centers. Accordingly, the work of the relevant authorities and institutions needs to be improved, including better coordination between institutions and more cooperation with non-governmental organizations. These efforts need to be accompanied by concern for the opinions of children (child participation) as an integral and inseparable part of all programs.
2. The government must make immediate efforts to clarify the citizenship status of the children from the former East Timor, including adopting new approaches to the issue where necessary. This is essential bearing in mind the impact of citizenship on the fulfillment of other rights, such as the right to medical care and education.
3. Indonesia needs to ratify the various covenants and protocols concerned with the status of refugees. As a country that adheres to international humanitarian law, Indonesia must strive to satisfy the standards set out in these instruments. Standard rules are also needed for the protection of internally displaced persons. Indonesia, as a country that is highly vulnerable to national disasters and social/communal conflicts that force people to flee their homes, must ratify all of the conventions and protocols that deal with the status of refugees.

### ***Child victims of armed conflict***

#### ***Concerns and Recommendations of the Committee on the Rights of the Child***

Regarding the Committee on the Rights of the Child's 2004 monitoring conclusions on child victims of armed conflict, the following recommendations (point 71):

1. That Indonesia take all necessary measures to prevent and end violence that impacts of the lives and rights of children, particularly in areas like Papua, Aceh and Maluku.
2. That Indonesia ensure that the application of military law in Aceh does not conflict with the rights guaranteed by the Convention on the Rights of the Child;
3. That Indonesia take immediate action to facilitate access to children and their families of assistance provided by national and international humanitarian organizations, particularly in Aceh;
4. That activity act to prevent the exploitation of children in armed conflicts by regular military forces, paramilitary groups, and resistance groups;
5. That Indonesia faithfully apply human rights law and the international humanitarian principles and conventions to which Indonesia has committed itself;
6. That Indonesia ensure that all persons, including senior officials, who have sponsored, planned, caused, funded or participated in military or paramilitary operations that employ children as combatants, child as sexual slaves or which violate the rights of children be processed in accordance with the law, including those responsibility for the mayhem in East Timor in 1999.

Subsequently, in point 72 the Committee on the Rights of the Child recommended that Indonesia develop policies and programs to ensure the fulfillment of the rights of children affected by armed conflicts. In particular, the Committee on the Rights of the Child recommended that Indonesia:

- a. Develop, in collaboration with NGOs and international organizations, a comprehensive system for supporting and providing psychosocial help to child victims of armed conflict, particularly child combatants, unaccompanied internally displaced children and transnational refugee children, returning internally displaced and refugee children, and child victims of trafficking, and also take measures to fulfill their rights to privacy.
- b. Take effective measures to ensure that child victims of armed conflict can be reintegrated into the education system, including through the provision of non-formal education programs, and by prioritizing the rehabilitation of schools and educational facilities, and water, sanitation and electricity services in conflict areas.
- c. Criminalize the recruitment and use of children for military purposes by any armed force or armed group.
- d. Provide alternatives to military recruitment, including by increasing employment and education opportunities, particularly for vulnerable children in refugee diaspora and tribal areas.

## **IMPLEMENTATION IN INDONESIA**

In its periodic reports for the period 1993 to June 2000, Indonesia stated that situations of armed conflict existed in two parts of the country – East Timor and Aceh. Other conflicts were also occurring in places such as West Kalimantan, Central Sulawesi and Maluku, but according to the government these should be treated as ethnic conflicts or outbreaks of social tension.

It was acknowledged in the report that the said armed conflicts, ethnic conflicts and outbreaks of social tension had resulted in a humanitarian disaster for children.

In the research conducted by the National NGO Coalition on the situation of various groups of children in need of special protection, it was endeavored to identify the impacts of the conflicts on children.

The armed conflict in Aceh had been underway from the date of establishment of the Free Aceh Movement (GAM) on 4 December 1976 to seek independence from the Republic of Indonesia. There then ensued 29 years of conflict between the Aceh Army (TNA) and the Indonesian National Military (TNI). This conflict finally came to an end on 15 August 2005 after GAM and the Indonesian government signed an MoU in Helsinki, Finland, following facilitation by the Crisis Management Initiative, an international mediation organization. Since that time, peace has gradually taken hold in Nanggroe Aceh Darussalam.

During the course of this 29-year conflict, it is estimated that some 15,000 people died. Accordingly, 4.6 people died every day in Aceh during the conflict.<sup>47</sup>

According to statistics from the Ministry of Social Affairs and Save the Children (2006), 1,318 children fell victim to the conflict in Nanggroe Aceh Darussalam, consisting of 785 boys and 508 girls who were abandoned or separated from their families and placed in childcare institutions, while another 6 disabled boys and 19 girls were be cared for in special needs institutions. These figures clearly represent only

the tip of the iceberg, with many other children believed to have been separated/abandoned, disabled and even killed.

According to a report compiled in 2004 by Yayasan KKSP, Yayasan Anak Bangsa (YAB), People Crisis Centre (PCC), and the Jesuit Refugee Service (JRS), which was in published Child Soldier Report 2008, children of under 18 had been employed by both GAM and the TNI as informants, spies, guards, to carry supplies, and even to fight as combatants in the armed conflict in Nanggroe Aceh Darussalam since 1976. However, the number of these was incapable of being assessed with any accuracy. In interviews conducted by the Child Soldier Coalition (CSC) with four former child combatants in Banda Aceh on 8 May 2007, it was found that the informants had been between the ages of 14 and 17 when they had been forced by the TNA to spy on police movements and procure supplies. They lived in a GAM-controlled village, and while they were still able to attend school, they frequently felt afraid and even had experience of involvement in armed skirmishes, during the course of their involvement with GAM/TNA.<sup>48</sup> Of 2,000 political prisoners released by the Indonesian government following the signing of the peace agreement between GAM and the Indonesian government on 15 August 2005, 19 were boys aged between 14 and 17. They had been arrested on suspicion of GAM membership. In addition, a number of female detainees of below the age of 17 were also released. They had not been categorized as children as they were married.<sup>49</sup>

In Central Sulawesi, particularly in Poso, a bloody social conflict, known as the Poso Disturbances, occurred between December 1998 and June 2000, in which Muslims and Christians took up arms against each other.

According to Wikipedia (13 February 2008), these disturbances involved three phases:

- The Poso riots (25-29 September 1998);
- Poso II (17-21 April 2000)
- Poso III (16 May-15 June 2000)

The disturbances officially came to an end on 20 December 2001 when the two sides signed the Malino Agreement.

Nevertheless, according to a report by George Junus Aditjondro, the disturbances actually involved three broader phases:<sup>50</sup>

- Period I (25-28 December 1998 up to the Malino Conference on 20-21 December 2001)
- Period II (Post Malino Declaration up to the attack on four villages in Morowali and Poso)
- Period III (mid-October 2003 to the time of writing of the report in 2004).

The social conflict in Poso gave rise to a humanitarian disaster of very worrying proportions. According to Wikipedia, the disturbances left 577 people dead, while according to George Junus Aditjondro, more than 4,000 people were killed.<sup>51</sup>

No specific data is available on the number of children who fell victim to the Poso disturbances. However, figures from the Poso District Social Affairs Agency (2009) on groups vulnerable to social and national disasters 2003-2008, the focus was placed on a comparison of data for the years 2003-2005, which represented the transition stage of the disturbances. According to this data, the number of disadvantaged children in 2003 stood at 470, but this had increased to 16,316 by 2004, and declined

to 6,274 in 2005 and 2006. Meanwhile, the number of orphans and children living in one-parent families was very high in 2003 and 2004 at 6,169, which figure subsequently declined to 324 in 2006-2008. No children were recorded as “delinquent” in 2003-2007, but in 2008 the number of such children was put at 738.

The Ambon Disturbances were very similar in origin to those in Poso, in other words, the conflict was religious. There is no specific data on the number of dead, disabled or traumatized victims. The only data available from the Ministry of Social Affairs refers to 2008, when the number of victims of social conflict in Maluku province was put at 17,435.

**Table 1.21**  
**Response to Public Welfare Problems (Children)**  
**Social Rehabilitation Sub-Agency**  
**2005-2008**

Types of Problem	Total	Year				Number Assisted	Number Not Yet Assisted
		2005	2006	2007	2008		
Delinquent children	12.871	257	432	780	210	1.679	11.192
Street Children	2.899	260	1.656	350	265	2.531	368
Disadvantaged children	91.595	2.710	2.388	5.000	720	10.818	80.777
Disabled Children	5.784	365	200	188	102	855	4.929

Source: Maluku Provincial Social Affairs Agency 2008

As will be seen from the above table, there is no data on the number of internally displaced children or child victims of the armed conflict. According to the Maluku Provincial Social Affairs Agency, these children have been categorized as “disadvantaged”, the number of which children is indeed very high at 91,595.

Also, it will be seen from the above table that the provision of assistance to disadvantaged children was very slow. Of the total of 91,595 who needed assistance, during the four years from 2005 to 2008 only 10,818 received such assistance, while 80,777 were denied the help they needed. This unfortunate situation was due to a lack of funds.<sup>33</sup>

The scale of the conflicts in Indonesia surprised the Committee on the Rights of the Child, particularly the large numbers of deaths in Aceh, West Kalimantan, Central Sulawesi and Ambon, as well as in the former East Timor province in 1999. The Committee on the Rights of the Child also expressed concerns that children caught up in armed conflicts were still vulnerable, and that those involving in violations of their human rights were not brought to justice (Concluding Observations, 2004, point 67).

The Committee on the Rights of the Child also expressed its concerns that martial law in Aceh could have negative implications for the protection and upholding of children's rights, about the reports on the use of child combatants in Aceh and Maluku, as well as East Timor up to 1999, and about the large numbers of internally displaced children resulting from the conflicts (Concluding Observations, 2004, points 68-70).

In the draft third and fourth period reports for the 1997-2007 period, the Indonesian government states that it has guaranteed the rights of children not to be involved in war, armed conflicts, social disturbances and other situations that involve violence. Such guarantee is provided by legislation (see point 159). It is also stated that during the reporting periods, conflicts occurred in Nanggroe Aceh Darussalam, Papua, Maluku, North Maluku, West Kalimantan and Central Sulawesi, which resulted in a large number of fatalities. Regarding the involvement of children in the said conflicts, it was stated that the Indonesian government did not have enough evidence to say that this was the case. Meanwhile, the government said that various efforts had been taken to ensure physical, psychological and social rehabilitation, although no mention was made of what these efforts were (point 160). The government then referred to the efforts it intends to make over the five years subsequent to the report (point 161).

Based on this report, it may be said that Indonesia has ignored the recommendations of the Committee on the Rights of the Child.

The statement that Indonesia lacks evidence on the involvement of children as combatants is open to question. The principal issue here is what efforts have been made by Indonesia to obtain such evidence. It is clear that of the 2,000 political detainees released in 2005, 19 of them were boys of between 14 and 17, and a girl who was 17 when released. These facts were ignored by the government (Child Soldiers Global Report, 2008).

### ***Situation and Views of Children***

In this section, we will discuss the situation and views of children as expressed during the Consultations conducted in Nanggroe Aceh Darussalam, South Sulawesi and South Maluku. A total of 30 children were involved (12 boys and 18 girls).

When speaking about their experiences of armed conflict, the children in all three areas made similar comments and statements, referring to issues such as fear, abduction, maltreatment, burnings, killings, bombings, explosions, gunfire, and the loss of friends and family members, including mothers and fathers.

*“Living in a war zone is really worrying and scary. I had a friend who was killed, his brains and guts were everywhere. His body was in bits ...” (DMR, girl, 16 years of age).*

In Nanggroe Aceh Darussalam, the armed conflict between the Aceh National Army (TNA) and the Indonesian National Military (TNI) frequently spilled over into the civilian population, which found itself trapped between the two warring sides. People were frequently subjected to maltreatment from both sides. All of the children who participated in the consultations recounted frightening stories of what had happened to them and their families, for example, SLJ (girl, 15 years of age), DZH (girl, 15 years of age), and NHN (girl, 16 years of age), all of whom lost their fathers in tragic circumstances.

*“Dad was a farmer. One day he was on the way home from where he had been working when he was stopped by “X” (a combatant), who demanded money from him. Dad said he didn't have any. “X” got*

*angry and started hitting dad. He beat him to death. Some people saw what was happening but were too afraid to help dad because they thought they would be killed too. I was in elementary school at the time.” (SLJ)*

*I became an orphan during the conflict after dad was shot by “Y” (a combatant). Dad was taken away from the house on Thursday night by “Y” and was shot.” (DZH)*

“My dad was the village head. I knew all about the conflict, even when I was very small. It happened at 10 o’clock at night. Me and my younger sibling and some friends from school were in the mosque studying the Koran. Dad and mum were watching TV when there was a knock on the door. Dad opened it and they came in and said “good evening” to dad. They asked my dad about someone they thought was a spy. Dad wouldn’t tell them anything. They then brought him out into the forest and tortured him with a knife before shooting him in the head with a pistol. My mum was looking everywhere for him when we met her on the way home from Koran study. She was crying and we all started crying too. My dad didn’t do anything and they left my mum was two months pregnant. We found my dad’s body on Friday. My mum fainted when she saw he was dead. I was only in grade 2 of elementary school when he was killed.”

FNA (girl, 14 years of age) recounted how she had lost her mother to the conflict.

“Someone came and knocked on the door. Mum got up and up and said “who is it?” She was pulled out of the house, slapped and kicked. “X” (a combatant) asked her, “Where is your husband?” She said that he had gone away to earn money. After being tortured, mum was shot three times. When the shots rang out, the entire village was terrified. I was in a total panic. Then my sister came in a hugged me. I was crying, “mum ... mum, what’s happened to her?” My sister told me that mum was dead. When I heard that, I fainted. After that, my mum’s body was brought to the house, batched and wrapped in a shroud. She was buried in the village on 6 March 2003. After my mum was shot, all of the villagers fled their homes.

The religious conflicts in Central Sulawesi and Maluku also resulted in children experiencing various heartrending events.

“Seeing the smoke, the fires, the bodies dumped in the river,” recalled KTR (boy, 15 years of age), who hails from South Sulawesi.

“It was terrible. Two of my siblings were killed. I was really awful. I was then separated from my family after our house was burned down. But the worst was the killing of my two siblings ...” HJP, boy, 17 years of age, from Maluku).

### **Children views on the backgrounds to the conflicts**

The backgrounds to the conflicts in the three areas were different. In Nanggroe Aceh Darussalam, only one child expressed an opinion, namely, SAS (girl, 14 years of age) whose father was involved as a combatant and was shot by the opposing side while sitting with his friends in a paddy field. SAS said: “The causes of the conflict in Aceh were differences of opinion, and the fact that all of them wanted to win.”

Regarding the conflict in South Sulawesi, all of the children expressed similar opinions, namely, that there were third parties who attempted to stir up trouble between Muslims and Christians. As a result,

they started to insult each other. NFA (boys, 13 years of age) said: “Because these people couldn’t keep their mouths closed, because they started insulting each other’s religions, people started fighting and getting angry. And so we had a sort of war in Poso during the disturbances.”

Meanwhile in Maluku, some of the children said that the conflict was due to religion, and also due to conflicts between the TNI and National Police. This was exacerbated by the presence of provocateurs. Not only were the two religions at loggerheads, there were also those who were intent on independence. Two children said that they did not know who was responsible as they were very small at the time of the conflict.

*“There were provocateurs who said bad things about people’s religions ...” (HJP, boy, 17 years of age).*

*“They wanted to make their own country, independent of Indonesia. They thought that by causing chaos they could get their way, but it didn’t turn out like that ...” (AIN, girl, 16 years of age).*

SAD (girl, 18 years of age), who hails from Maluku, said that there had always been something strange about the conflict:

*“I felt it was really strange. We all used to live together, but then suddenly people were fighting. So how did this all happen at once? It seems really odd that this could happen. First peace, living in harmony. Different religions living together in peace. Then fighting. How could it happen?”*

### **Information received by the children on the conflicts**

The children’s sources of information on the conflicts consisted of their own experiences, what they were told by their parents, friends, and neighbors, what they read in the newspaper, what they heard on radio and TV, and what they were told by their teachers at school.

Most of their information came directly from their own experiences or what they heard from those around them. Meanwhile, information from radio and TV was limited. PM (boy, 17 years of age) from Ambon, commented as follows:

*“The first I heard about it was from my parents. When the conflict broke out I was living with my parents. I was sitting around one evening when I heard there was rioting on the streets. I didn’t just hear this from my parents, it was also on TV. In fact, after the rioting went on for a while, the TV went off the air.”*

The children also obtained information from often inflammatory CDs that were widely distributed.

### **Impact of the conflicts on the children’s lives**

All of the children said that they would never forget their experiences during the conflicts. They had suffered extraordinarily and some had lost their parents, brothers and sisters, friends, property, being forced to drop out of school, suffered trauma and stress, and were deprived of the opportunity to play with their friends.

They said that the conflicts were very frightening and had put their lives in danger. As a result of the conflicts they were often unable to go out. SLJ (girl, 15 years of age), from Nanggroe Aceh Darussalam commented as follows: “I was terrified, I was too afraid to go anywhere,” while MNN (girl, 16 years of age, from South Sulawesi), said: “We were always too afraid to go anywhere in case there was shooting or a bomb would go off.”

They were also often too afraid to go to school. LZA (boy, 15 years of age, from Nanggroe Aceh Darussalam) said that the situation was “really dangerous. Lots of people died and we couldn’t go to school because we were too afraid. All of the kids were afraid to go to school ...”. This was experienced by the majority of the children from the three areas.

*“Kid became stupid as we couldn’t go to school,” said FDW (boy, 13 years of age), while LZA commented: “The conflict destroyed children and that will in the end destroy the nation.”*

*“The fighting only caused trauma, the loss of everything, tears everywhere. In my opinion, there was no point to it at all ...” (YSM, girl, 15 years of age).*

Furthermore, the destruction and burning of homes and the risks to personal safety meant that the children and their families had to flee to safer areas. HBG (girl, 16 years of age) said: “We fled because we were attacked, our house was burned ...” Similarly, YSM and NFA said that they had fled into the jungle to save themselves.

Twenty-eight of the 30 children said that at the time of the conflicts, they had been forced to leave their villages or to flee with their families to a safer place.

The decision to flee was also taken because their villages were the scenes of fighting and combat. SLJ said: “We couldn’t take it any more in our village as there was always fighting there. So we took to the road and went to another village. We sheltered there for around five months ...”.

From Maluku, HJP (boy, 17 years of age) related his experiences as a displaced person: “When the fighting started, we fled across the mountains. We stayed in the moderen for just one night and in the morning we went to the Athletes’ Residences, where we stayed for 7.5 years.”

Other children, such as BEM, SAD and HBG, also took refuge in the Athletes’ Residences.

### ***Assistance received by the children***

The children said they had received various forms of assistance, including basic necessities, medicines, clothes, blankets, school requisites, and housing in barracks. This assistance was provided by NGOs, government and international organizations. Nevertheless, four children said they and their families had never received any assistance.

### ***Involvement of children in the conflicts***

Regarding the involvement of children in the conflicts, three views were expressed by the children, namely, that children had been involved, that children had not been involved, and that they could not say for sure as they had fled their villages or had never seen such involvement for themselves.

Of these three opinions, only a very few of the children said that children were involved in the conflicts. Among those who said that children were involved, DMR commented: “Many kids of our age had swords in my village.” LZA said that he had a friend who joined GAM: “Some of my friends became Aceh soldiers (GAM). Some were still at school. I also had friends who died in the fighting ...”

Besides carrying weapons and serving as combatants, some of their friends also served as spies or operated radio equipment. This was stated by STM and FDW.

NFA (boy, 13 years of age) said that in South Sulawesi there were children who were involved in the conflict although this was prohibited. “There were guys of 15 and 16 who took part, even though this wasn’t allowed.”

Meanwhile, PWM (girl, 16 years of age, from Maluku) said that there would be children involved in every conflict: “Yeah, of course all of the kids where things like that occur take part.”

### **Views of the children on efforts to resolve the conflicts**

The children from South Sulawesi and Maluku said that they had seen efforts from various parties to resolve the conflicts in their areas, while the children from Nanggroe Aceh Darussalam said that they had never seen clear efforts to end the conflict. This was apparently a result of the fact that the conflict in Nanggroe Aceh Darussalam was an armed conflict between the TNA and the TNI.

In Poso, CTM said: “In my view, efforts were made by the police and religious leaders in Poso city.” This was supported by SDF (14 years of age), and 7 other children: “there were efforts by the local government, the police, and of course the people of Poso themselves.”

Of the 11 children from South Sulawesi, 8 of them said that peace-building efforts had been made by the government, security forces, religious leaders and non-governmental organizations. Two of the children also said that an end had been brought to the conflict through growing awareness on the part of the people themselves. According to AIN (girl, 16 years of age):

*“Maybe there were some efforts, but I don’t really know. But what was really important was the awareness of the people, they didn’t want any more of this ... if they didn’t want their children’s futures to be destroyed, they had to give up fighting.”*

The children from Nanggroe Aceh Darussalam said that no one had attempted to end the conflict. STM said: “Nothing ... at that time no one was brave enough to approach GAM and the TNI.”

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

- 1 The state must immediately respond to problems that develop in society so as to avoid conflict and social tension. Otherwise prolonged conflict could result between social groups. Nevertheless, the principles of human and children’s rights must be upheld at all times.
- 2 Guarantees of protection for children are needed so as to avoid them becoming ensnared in conflicts, and legal action taken against those who recruit children as combatants.
- 3 Guarantees need to be put in place so that child victims of conflict continue to enjoy their rights, and are able to access assistance from all those willing to provide such assistance.

## **Substance abuse**

### **Concerns and Recommendations of the Committee on the Rights of the Child 2004**

- The Committee expressed concern at the large number of children who use drugs or narcotics and that those children are treated as criminals rather than victims.
- The Committee recommended that Indonesia:
- Provide children with accurate and objective information about the harmful consequences of substance abuse;
- Ensure that children using drugs and narcotics are treated as victims and not as criminals;
- Develop recovery and reintegration services for child victims of substance abuse;
- Seek cooperation with and assistance from WHO and UNICEF.

## **IMPLEMENTATION IN INDONESIA**

According to data from the National Narcotics Agency (BNN), the number of drug cases in Indonesia increased from 3,617 to 17,355 between 2001 and 2006. In other words, the number increased fivefold. In fact, the number of such cases has increased by 20 thousand performance between 1970 and 2008, or ever since drugs started to become commonplace in Indonesia. According to a BNN survey conducted in 2007 (Prevention and Eradication of the Illegal Drug Trade), more than 22 thousand cases of drug abuse involving high school students have been recorded, 6,000 involving junior high school students and 3,000 cases involving elementary school students. On World Antidrug Day on 26 June 2008, it was announced that the number of drug users in Indonesia had reached 4 million, 70 percent of whom were school students ([http://www.republika.co.id/berita/65565/Pelajar\\_Dominasi\\_Pengguna\\_Narkoba](http://www.republika.co.id/berita/65565/Pelajar_Dominasi_Pengguna_Narkoba)). Another cause of concern is findings by a study conducted by the BNN and the University of Indonesia that children of as young as 7 years of age were engaged in substance abuse through sniffing and that children of as young as 8 are using marijuana. The study also found that children of 10 were using hard drugs of various kinds, including inhalents, marijuana, heroin, morphine, ecstasy and so forth (<http://www.kesrepro.info/?q=node/400>).

At the national level, the relevant legislation consists of the Narcotic Substances Act 1997 (No. 22 of 1997) and the Psychotropic Substances Act 1997 (No. 5 of 1997). Another policy instrument is a Supreme Court Practice Circular requiring judges to bring in court verdicts in drug cases.

In the government's draft report on Indonesia for the 1997 to 2007 period (paragraphs 183-186), it is stated that children are guaranteed the right to protection from various forms of substance abuse, as mandated by article 65 of the Human Rights Act 1999 (No. 39 of 1999). This is reinforced by article 59 of the Child Protection Act 2002 (No. 23 of 2002), which provides that the government and state agencies are required to provide special protection to child victims of substance abuse.

The report also quotes from a 2005 study by the BNN on the problems faced by drug prisoners in correctional facilities, which reveals that there have been school students accused or prosecuted for drug offenses. This shows that children are still treated as been liable to punishment by the criminal law, and clearly poses a challenge for Indonesia in provided special protection to child victims of substance abuse.

One encouraging development has been brought about by the National Police. On 11 November 2007, during the signing of an MoU between the Java Pos Group and the BNN, the National Police Commander stated that “I am now going to exercise discretion in the case of drug users, particularly children, so that they are not charged as suspects. They should rather be treated as victims,” (Source: Television and Police Journalism Blog). This statement is in line with the recommendations of the Committee on the Rights of the Child.

Another encouraging development, albeit outside the reporting period, has been the enactment of new legislation, the Narcotics Act 2009 (No. 35 of 2009), to supersede Act No. 22 of 1997. One of the changes brought about by the new act is the positioning of drug users as victims in need of rehabilitation, rather than criminals.

### ***Situation and Views of Children***

“Never get involved with drugs. Stay away from friends who use drugs. Don’t be coaxed into trying them by your friends. Live a normal and healthy life without drugs. If you *become* hooked, everything changes. Always try to achieve your dreams, think about school and study hard. We should be more open with our parents if we have problems. Think about yourself and don’t destroy your future ...” (TLH)

Seven children (six boys and one girl) took part in the consultations on substance abuse. All of them came from the same city in West Java. By age, one child was 15, four were 16 and two were 17. By educational status, the majority (five boys) had dropped out of school. One of the children had dropped out of elementary school, three out of junior high school, and one had only recently dropped out of high school. Only two of the children (one boy and one girl) were still attending school (high school). Of the seven children, only two were still living with their parents (TLH and AHD), one child was living with his grandmother, one was living in a boarding house with his adoptive sister, and three children spent most of their time on the streets (around the central market), even though they had parents or family members in the same city.

### ***Knowledge about drugs***

Based on the results of a group question and answer session, as well as individual interviews, the majority of the children (6) said that they knew about the dangers of substance abuse. Only one of the children said that he had never received any information on the dangers of substance abuse (SSY, 16 years of age). For those who had received such information, they had obtained it from various sources, including both private sources and from education campaigns in their schools or villages, or conducted by official agencies.

TNJ, a street child who lived in the central market, had heard about the dangers of drugs while participating in a “peer educator” program on drugs that was organized by a non-governmental organization. He commented:

“I once received information during a PE (peer educator) campaign around 2000. There training went on for three days, and there were lots of materials on drug abuse. I knew it all off by heart. But when I feel (like taking drugs), I still take them. But I’m not too hooked.”

YMA, who lives on the streets and whose family live behind the central market, said that he had been warned about drugs by a security guard at the market and a social worker from a non-governmental organization. SIF said that he had also been warned about drugs, in his case by a guard at a pharmacy.

Meanwhile, TLH, AHD and RFM said that they knew about the dangers of drugs from information they had received during an antidrug campaign at school.

The experience related by RFM was very worrying. He said that he had been consuming drugs since he was in grade 5 of elementary school. He started by sniffing glue, and had since then experimented with various other drugs. At high school, he had received information on the dangers of injecting drugs from a non-governmental organization. However, through the influence of his uncle, he had become an active injecting drug user and knew many of the big dealers in Jakarta, where he often went to buy drugs.

Also regarding the impact and dangers of substance abuse, all of the children voiced similar opinions. The said substance abuse could “mess up their heads”, destroy their bodies, get them in trouble with the law, and even result in death.

“Sometimes they cause grief, especially if a friend dies. They damage the heart, mess up our heads. You just want to get high. You don’t care about friends. You want to fight, you want to do bad things, you want to rape girls...” (YMA)

“Drugs are no good. They’re just good for showing off. The dangers? You can OD (overdose), lose control, get on the wrong side of people. You don’t look after yourself, you get skinny. You can get HIV/AIDS if you inject them.” (RFM)

According to TLH, drugs can be useful if they are used in accordance with the directions. If too much are taken, then, “they can kill you, reduce your intelligence, destroy your health and put you in jail.” He added that, “People need to be warned about the dangers so that they don’t use them.”

All of the participants agreed that children should stay away from drugs as they could destroy children’s lives.

“You shouldn’t do because you’re under age, it’s against the law, its destroys the body ...” (AHD)

TLH went further, saying that this did not only apply to children, but also to adults:

“The fact is that drugs are illegal. They’re not only illegal for children, but for everyone. They’re illegal because they are so dangerous.”

### ***Experience of substance abuse***

Of the seven participants, all of them had consumed prohibited substances from an early age. The oldest age at which consumption had started was 14 in the case of TLH. Meanwhile, the youngest age was 10, in the case of TNJ and YMA. Meanwhile, RFM had first tried drugs at 11, SIF at 12 and AHD and SSY at 13.

Most of them had first tried drugs in pill form (YMA, AHD, SIF and SSY), while three had first tried other forms of harmful substances. TNJ started with alcohol, RFM by sniffing glue, and TLH by smoking marijuana.

“The first time I tried drugs, I was 14 and in grade 2 of junior high school. I was offered them by friends who were already used to them. The first time I tried drugs, I didn’t enjoy it. But

my friends kept saying it would get better the more times I tried. The first drug I took was marijuana.”

The children were most frequently introduced to drugs by their friends (6 of the children). Only one child (SSY) had started using drugs after being offered them by a dealer.

TNJ, who also tried to earn money on the streets, such as by busking, said that he was 10 the first time he had tried harmful substances (alcohol). He had been at school, when a friend offered him alcohol in the school toilets. Over time he became hooked. After moving on to the junior high school, he started taking pills. At the start he was given these free by friends on the street who were also dealers. He then started buying from them.

“When I was in junior high school, I was given them to try by my friends on the street. I had spent a lot of time on the streets busking ever since I was in elementary school. At first, I was given them for free. They were pink, with SP written on them. I was then told that if I wanted them, I was going to have to pay for them – if you want to buy one, buy it from me! Whenever I felt upset or confused, I’d buy one. One pack cost Rp 50,000 usually. So at the start I was given them free, but bit by bit I had to start paying for them.” (TNJ)

TNJ’s experience reflects the method used by dealers to entice children to get involved in drugs, namely, by offering them free drugs at first. After the children become hooked, then they become loyal customers.

SSY had also been the target of a dealer’s approaches, although in his case he was coaxed into buying drugs. He said that while he was resting after busking, he was approached by a dealer:

“I’ve been taking drugs since I was 13. I bought them from the very start. A dealer offered me them. “You want to try this?” “How much is it?” He told me the price. Later I was resting again in the park after busking. The dealer came up to me. I told him that I hadn’t felt anything from the drug when I was busking. “Try this,” he said, “this is good stuff. “You can also work at this,” he said. “But if you get caught by the police, you must keep your mouth closed.” I kept buying drugs until I got hooked.” (SSY)

Among the addictive substances consumed by the children were “dextro” (dextromethorphone), Lexotan, Tramadol, Dumolid, Sanax (Xanax), Subutek, “Gama” (gamma-hydroxybutyrate), “Camlet”, “sabu-sabu” (crystal methamphetamine), heroin, marijuana, magic mushrooms, glue, and local alcoholic beverage “anggur merah.”

All of the children said that they still engaged in substance abuse. Four of them said that they did so almost every day.

“I inject 4-7 ml of Subutek every day now, mixed with other drugs (dados, leksotan, camlet, aprazolam and so on); I take Gama 3 times a week. If I’m coming down from a high, I take tramadol and antidepressants like camlet or sanax, or something else. I get the drugs from friends, relations and dealers.” (AHD)

“I take drugs almost every day. I get them from dealers, friends, or antidepressants from the pharmacy.” (RFM)

“I take drugs almost every day, but I’m trying to cut back to 2 or 3 times a week as I’m afraid of HIV. I get my drugs from dealers, friends, my boyfriend.” (TLH).

Meanwhile, the other three children, while not consuming drugs everyday, still have a high frequency of use.

“Once every two weeks at most. It’s hard to come by the stuff. The police are really cracking down. I usually take destro nowadays. Five times a week, taking 30-50 pills each time. I also drink almost every day -- us kids share it around. Normally, we start off slowly, and then we take more and more, sometimes to 2 am. We once knocked back 12 bottles together. I also often sniff glue, sometimes 5 cans a day.” (YMA)

“Normally, I take 6000s, 4000s, about 30 pills at a time. I don’t often take them. Twice a week at most. I used to do it every day, but now money is hard to come by. So it’s pretty hard. I normally buy them in the pharmacy or get them from friends. Dekstro is easy to get, but the rest are hard.” (SIF)

When asked why they chose to consume addictive substances, they said they were addicted or hooked. Other reasons given were to relieve stress, to gain “Dutch courage” and as a form of escape.

One child said that because he was addicted, if he did not consume drugs he would suffer withdrawal symptoms.

“I use them because I’m hooked. If I don’t take them I feel really sick and I can’t think straight. After I get a hit, I feel good again and can think.”

Another child acknowledged that taking drugs did nothing to resolve his problems:

“I take them to feel better, but the problems never go away. You feel good today, but the problems will still be there tomorrow.”

The children said that many of their friends also consumed addictive substances.

“Lots of my friends of the same age take drugs – school friends, friends in my neighborhood. Yeah, I know that lots of them take drugs because we do it together.” (RFM)

“Lots of my friends take drugs. The ones staying in boarding houses almost all take them. There could be eight people in one room.” (SSY)

“Lots of friends of my own age take drugs, also in my neighborhood. Many of their brothers and sisters also take them. It doesn’t happen so much around school, but there are some. Maybe the rest are afraid of being expelled.” (TLH)

One child admitted that he had resorted to crime to feed his addiction.

“If I don’t have any money, then I steal it, I rob it to buy drink, or to buy a pack of pills – there’s 18 or 24 pills in a pack. I also give some of the money to my friends. I don’t take so much, at most two pills in the evening or at night if I’m on my own, so that I don’t feel hungry. I mix everything up to get high quickly.” (JNT)

## ***Experiences with the law***

The Committee on the Rights of the Child has recommended that child victims of substance abuse not be treated as criminals, but rather as victims. Accordingly, their rehabilitation should be the foremost priority.

In line with this, the National Police Commander on 11 November 2007, during the signing of an MoU between the Java Pos Group and the BNN, stated that “I am now going to exercise discretion in the case of drug users, particularly children, so that they are not charged as suspects. They should rather be treated as victims,” (Source: Television and Police Journalism Blog).

Of the seven children who participated in the Consultations, four (RFM, AHD, SIF, and YMA) had been at one time or another arrested by the police in connection with drug offenses. One other child had had dealings with the police in connection with theft. In general, the children had little to say regarding their experiences with the law. The exception was RFM who related the following account when interviewed about his life story:

“One day I went to my friends house on the outskirts of Bandung. I was set up. When I arrived I had “boti”, marijuana and “sabu-sabu” on me. Four of us were there at the start, then two of my friends left. Then the other one left to pick up his girlfriend. When I was on my own two cops arrived out of nowhere. I was sleeping at the time, and couldn’t get away. They brought me to the police station. Before that they beat me.

At the station, one cop took out his pistol and pointed it at me. Maybe he was afraid I would try to get away. After that, I was ordered to face the wall and was pushed and kicked by the cops. I spent one night in the police station. They really beat me up badly.

I was tortured, hit with a steel chair. They stopped for a while and then started up again. They told me to have a cigarette, but as soon as I had taken a puff, they put it out. They took turns at beating me. They came and went. I also saw a thief who had been arrested getting it even worse than me.

This went on all night until my mum came to bail me out in the morning. It cost her Rp 2.5 million. After being bailed, I was allowed to go. But they told me that if they caught me again, I would be sent to the juvenile prison in Jakarta.

After that experience, I’m always on my guard. I’m always careful. Whenever I see a policeman, I immediately feel nervous.” (Quoted from RFM’s life story).

AHD, who said he had just dropped out of grade I of high school because of family problems, recounted the following experience:

“I was once arrested by the police for drugs. I was treated like an animal by the cops. I was put in a cell with adults. My parents couldn’t afford to get me out. So I was hauled before the court and sentenced. But I was only fined.” (AHD)

YMA did not recount the details of his case. He only related his experiences during interrogation.

“While they questioned me, they were hitting and slapping me with a fish’s tail. But I got out after paying one million.” (YMA)

Meanwhile, SIF had been arrested when he was drunk. He was held overnight before being released.

“I was once arrested. They just gave me a warning. I was taken to the Sector 4 Police Station for being drunk. They asked me also sorts of things, wrote it all down. I was kept in overnight and then let go in the mornign.” (SIF)

Four of the children said they had friends who had been through similar experiences. According to TLH and AHD, many cases were not processed but rather settled out of court, although there were also some that were brought before the courts and resulted in prison sentences.

“Some of my friends have been in trouble with the police more than once. But normally they aren’t held for long. Normally it doesn’t go to court as they’re bailed out by their parents.” (TLH)

“I’ve lots of friends who were arrested by the police. Mostly a settlement is reached at the station. But one was brought to court and given five years.” (AHD)

## **Rehabilitation and Social Reintegration**

### Reaction of Family, Friends and Community

Only one of the children said that his parents did not know that he took addictive substances.

“My family don’t know. If they knew they wouldn’t allow me to go out anymore, I’d have to stay in the house. All my old friends know that I drink. At most the treat me a bit differently, but they don’t cut me off. Sure, they treat me differently, they keep their distance compared to when I didn’t drink.” (SSY)

All of the other children said that their parents or families were aware that they took addictive substances, but that the most that had happened was that they were scolded or told to stop. Only one of the children had been punished (by his father).

“At the beginning my family didn’t know. But my brother told them. I had told him not to tell as I would be beaten by dad. He once beat me for sniffing glue. I was grounded, couldn’t go out. My school friends no longer wanted to know me. I couldn’t hang out with them any more.” (YMA).

Two children who still lived with their families (AHD and TLH) had different experiences. AHD said that his family and those around him already knew about his problem. He tried to ignore what was said about him by his family. He also stopped hanging out with his former friends in the neighborhood. Meanwhile, TLH said that his parents did not care about him.

“My parents, our neighbors and my friends all knew that I used drugs. Lots of negative thinking about me and what I was doing. My parents didn’t like the fact that I took drugs. None of our neighbors or my friends took drugs so they started to ostracize me.” (AHD)

“Our neighbors didn’t care about me as I kept to myself, and also didn’t care what they thought

about me. Some of my friends knew, my family also, but they never talked about it with me. The reaction from my friends was basically “so what?” (TLH)

RFM also admitted that his family and friends knew about his habit.

“My family and friends knew that I took drugs. Not so many neighbors knew, though. My family were really angry when they found out and told me to stop. They said they were tired trying to keep me straight.”

Two other children did not live with their parents and only returned home now and again. Their parents found out that they consumed addictive substances because they had been intoxicated when they went home. However, the children appeared not to care that their parents were angry or about the advice they were given.

“Only my family knows about it. The neighbors don’t know anything. When I came home high, mum was angry: ‘Don’t get high like this. If you want to come home, come home sober.’ I often came home high and received similar advice. My friends in the neighborhood weren’t to concerned.” (SIF)

“Of course they were worried. They were angry and crying. Told me to stop. But I didn’t want to accept it. I listened, but what went in one ear went out the other. My friends didn’t say much, it was no big deal. They don’t care about things like that. The most that was said was “don’t get high around here.” (JNT)

## **Rehabilitation Efforts**

Besides their families telling them to stay away from addictive substances, the children also said that they had received help from other parties, mostly non-governmental organizations involved in campaigning against drugs, which provided counseling and facilitated rehabilitation efforts. These organizations also worked together with other institutions, such as hospitals. However, the success of the children in freeing themselves from drugs and addictive substances also depended on the children themselves. While almost all of the children acknowledged that they were still taking drugs, they also said that they were willing to try to reduce the intensity of this. All of the children said that they were being ignored by their parents, and it was this that left them vulnerable to drugs.

TLH said that his parents did not care about him at all, even after they found out that he used drugs. He said that he longed for more attention from his parents.

“My family are really cold. It’s like they know but don’t want to talk about it. It would be really nice to be doted on by my parents, to be cared for, to be able to talk to them joke with them, to have my needs fulfilled, like if they would buy me things that I like, and gave me other things that I want.” (TLH)

THL was provided with support by his friends and girlfriend, who encouraged him to quit drugs. However, whenever he tried to do so, he experienced withdrawal symptoms, in which case he would be supplied with more drugs by his girlfriend.

“My friends only tell me to stop them right away. And sometimes my girlfriend does the same.

But when I'm having withdrawal symptoms, she sometimes offers me drugs." (THL)

TLH originally injected drugs every day. However, he said he now only does so two or three times a week. He obtained drugs from dealers, friends and his girlfriend. He had reduced his injecting frequency for fear of HIV/AIDS. During the feedback session, he said that he had had a blood test and had been found to be HIV positive. He also said he had been assisted by a foundation:

"Yeah, once, but it wasn't a rehab place. It was a foundation. They had heard about me, maybe from my dad or brother. They give me life skills training that I could use if I stopped taking drugs." (TLH)

YMA said that he had also been helped by a foundation to escape from drugs.

"I was given comics by the foundation. The staff also always warned me about the dangers of drugs. A staffer from another foundation also asked me to go to the hospital to be examined. I was seen by a doctor, was X-Rayed." (YMA)

RFM, who had been taken various types of drugs since grade 5 in elementary school, started to get worried about his problem after overdosing on pills. Initially, he took 5 tramadol pills each time, then he tried 50. However his friends' worries that he would overdose proved unfounded. He then kept increasing the dosage until one day he consumed 150 dextro pills. Five minutes later he ODeD. This experience encouraged him to enroll in a rehabilitation program. He told his parents about this, but received no help. In the end, he was taken to the rehabilitation center by the same uncle who had first introduced him to drugs.

"I entered a rehabilitation center in West Java, in CMH hospital, to be exact. I was brought there by my uncle. Maybe he felt guilty as he was one of the ones who introduced me to drugs at the beginning.

After I entered the center, I was put in detox. I was forced to get up at dawn to wash, the water was really freezing. It was terrible at the start of the detox program, but after a while it became normal. I went through detox for four days before they moved me into rehabilitation.

At the start of the rehabilitation process, I was quite happy. After a month, it was like we were all family. We had to be really open with each other. I learned a lot from this process. Before I was really shy, but I learned to come out of my shell.

For the first week, I was locked up in my room. Food and water were brought to me in the room. I was only given painkillers to help me cope with the withdrawal symptoms. I was watched all the time. At the start of the second week, I started out in the Community Therapy Program. During therapy, we were taught about the dangers of drugs, learned discipline, responsibility and were given spiritual guidance.

We had a sharing session every night, when all of the patients got together. We learned how to speak to other people, learned about drugs, and the risks and dangers. Our daily activities were: morning bath, morning meeting, meal, afternoon nap, evening study, and then cleaning up.

I also discovered during rehabilitation that many children had had a worse time of it than me. We often talked about all we had experienced. Some of the children had been abandoned by their parents when

very small. I had hated mum for leaving me when I was small, but this feeling gradually began to leave me while I was in the rehabilitation center. While I didn't finish the program as my parents couldn't afford to pay for me any more, what I learned during my time there was a great help when I left. (RFM)

AHD said that those close to him had given him a lot of support to help him quit drugs.

“Lots of people tried to help me quit drugs. My parents promised me they would give me anything I wanted if I stopped. My brothers kept telling me to think about my future. My girlfriend gave me all her support. Also, an non-governmental organization helped me get drug substitution therapy in a public hospital.” (AHD)

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

- Outreach and education on the dangers of substance abuse must be aimed at all components of society, including children at both the community level and in the schools from elementary school up to high school. Information about the dangers of drugs should also be incorporate in the school curriculum.
- Children suspected of involvement in drug use must be viewed as victims, not as criminals, with the focus being placed on rehabilitation.
- Proper facilities need to be provided for rehabilitation centers so that child victims of substance abuse can get the help they need, while at all times prioritizing the best interests of the child.
- Children in conflict with the law
- Concerns and Recommendations of the Committee on the Rights of the Child
- In paragraphs 75-78 of its Conclusions on the second periodic report, the Committee on the Rights of the Child stated that:
- The Committee welcomes the adoption of Law No. 3 of 1997 on Juvenile Justice.
- The Committee is very concerned at the very large number of children sentenced to jail even for petty crimes and despite article 66, paragraph 4, of Law No. 39 of 1999 on Human Rights, and that these children are often detained with adults and are detained in poor conditions, even when in detention centres for children.
- The Committee reiterates its serious concern that the minimum age of criminal responsibility, set at eight years, is too low..

### ***The Committee recommends that the State party:***

- Raise the minimum age of criminal responsibility to an internationally acceptable level;
- Ensure that detained children are always separated from adults, and that deprivation of liberty is used only as a last resort, for the shortest appropriate time and in appropriate conditions;
- In cases where deprivation of liberty is unavoidable, improve procedures of arrest and conditions of detention and establish special units within the police for the handling of cases of children in conflict with the law;
- Ensure the full implementation of juvenile justice standards, in particular article 37 (b) and article 40, paragraph 2 (b) (ii)-(iv) and (vii) of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and in the light of the Committee's 1995 day of general discussion on the administration of juvenile justice.

## **IMPLEMENTATION IN INDONESIA**

To date, the Indonesian government has only taken one legislative step that specifically deals with children in conflict with the law, namely, the Juvenile Justice Act 1997 (No. 3 of 1997). Besides this, no other laws or regulations have been put in place aimed expressly at children in conflict with the law. Of course, article 64(1) of the Juvenile Justice Act 1997 states that:

“(1) Special protection shall be afforded to children in contact with the law, as referred to in article 59, including children in conflict with the law and child victims of crime. This is an obligation on the state and the responsibility of the government and community.”

It is clear from this article that the provision of special protection to children in contact with the law is both an obligation and responsibility of the state and community. Unfortunately, no explanations are given regarding the role of the community in handling children in contact with the law. Given the lack of explanations, this Act cannot be used as a reference in the handling of children in conflict with the law by law enforcers or the community, even though the Act appears to intend that the community provides special protection to children in contact with the law. In addition, this legislation signals that the government is not solely responsible for responding to children in contact with the law. Furthermore, the processing of children in conflict with the law involves the state from start to finish (law enforcement agencies and judges, who are given the power by the state to uphold the law, conduct investigations, prosecutions, and hand down decisions on children in conflict with the law). The question arises if the community is also required to participate in these processes? While the community may of course be involved in responding to children in conflict with the law through restorative justice, this does not mean that the community can also take part in the investigation, prosecution and adjudication processes. If the contrary were to be the case, then every member of the community would be entitled to take the law into his or her own hands. Thus, it will be seen from the outset that the Juvenile Justice Act 1997 is biased against the essence of special protection for children in conflict with the law. In addition, the lack of clarity about the purpose of this provision means that it is often ignored by law enforcers. This is because to date the one and only reference that law enforcers have in upholding the law in respect of children in conflict with the law is the Juvenile Justice Act 1997.

Meanwhile, the Indonesian government's draft reports for the third and fourth periods (1997-2007), reveals that no specific steps have been taken to improve the situation. This can be seen from the constraints that are identified in giving effect to the Convention on the Rights of the Child (see paragraphs 164, 168 and 172), even though the Committee on the Rights of the Child recommended in the previous period that the all of the provisions of the Convention on the Rights of the Child be put into effect. One constraint that is of particular concern is the lack of understanding on the part of law enforcers involved in the juvenile justice system, such as the police, prosecutors, judges, civil service investigators and prison guards (paragraph 164(a)). Given that the law enforcers are the principal actors in administering the juvenile justice system, even though progress is made with the legislation, the lack of understanding on the part of law enforcers results in them applying old patterns that fail to have regard to the best interests of the child. Furthermore, there is a very high risk of violations of children's rights.

### ***Situation and views of children***

The situation described in this report is based on consultations with 39 children (30 boys and 9 girls) in five regions. The children are differentiated into two categories, namely, those who have served sentences (two groups) and those who are still serving sentences (three groups). The consultation participants were aged between 14 and 20. A total of 14 were aged 18 or above (7 boys and 7 girls), 10 of whom were still serving their sentences. The cases they were involved in were committed when they were still under the age of 18 so that the data and information they provided can properly be included in this report. Thirty of the participants (21 boys and 9 girls) had dropped out of school, with the majority dropping out of junior high school. Of the 9 children who were still at school, four of them were attending junior high school and high school in Juvenile Facility.

Seven types of the crime were committed by the children, namely, theft and robbery, murder, drug offenses, sexual violence, abduction and receiving stolen goods.

The results of the consultations confirmed that violations of children's rights were continuing in cases involving children in conflict with the law. These violations took place during all stages of the juvenile justice system, with the practices and actions of state officials frequently not being in compliance with the minimum prevailing standards.

We shall now discuss the situation of children in conflict with the law based on the results of the consultations. This section is divided into groups based on the General Guidelines on the Format and Contents of the Periodic Reports that Must be Submitted by States Parties to the Committee on the Rights of the Child, which were developed by the Committee on the Rights of the Child in 2006, with the contents having regard to the recommendations of the Committee to Indonesia in 2004.

### ***Administration of juvenile justice (Article 40 of the Convention on the Rights of the Child).***

Article 37(b) of the Convention on the Rights of the Child states that the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. This means that the handling of children in conflict with the law should not be resolved through punishments that could have a negative impact of the children. This can be brought about through the application of restorative justice and diversion. These approaches were adopted by Indonesia through article 66(4) of the Human Rights Act 1999 (No. 39 of 1999), and article 16(3) of the Child Protection Act 2002 (No. 23 of 2002).

***The Child Protection Act sets out provisions on children in conflict with the law in articles 16, 17, 18, 59, 64(1) and (2) and 78.***

Progress has been achieved by Indonesia through the enactment of the Juvenile Justice Act 1997 (No. 3 of 1997),<sup>53</sup> in respect of which appreciation has been expressed by the Committee on the Rights of the Child (see 2004 Conclusions).

The minimum age of criminal responsibility was first dealt with by the Beijing Rules of 1985 (article 4), which were strengthened by article 40(3)(a) of the Convention on the Rights of the Child. This has become a focus of the Committee on the Rights of the Child in respect of Indonesia. In its Conclusions the Committee on the Rights of the Child said that Indonesia's age of criminal responsibility was still very low at 8 (paragraph 77). Accordingly, it recommended that Indonesia raise the age in line with international practice (paragraph 78(b)).

The concept of the age of criminal responsibility takes as its point of departure an awareness that a child, because of his level of development, does not understand what he may or may not do according to the prevailing norms, including legal norms, and so he cannot be held to account in respect of his actions (Farid, undated).

Article 67 of the Juvenile Justice Act 1997 (No. 3 of 1997) states that articles 45, 46 and 47 of the Criminal Law Procedures Code shall be repealed. These articles governed the minimum age of criminal responsibility, placement and sentencing. The minimum age of criminal responsibility set out in article 45 deals with the prosecution of persons who have not attained the age of 16, in which case the judge may determine that the child be returned to the custody of his parents or guardian, or be placed in the custody of the state without any sanction being imposed, or be sentenced for his crime. This provision is unclear for while a child cannot be subject to criminal sections, he can be subject to criminalization based on the crime he has committed.

The low age of criminal responsibility in Indonesia has given rise to recommendations on the part of the Committee on the Rights of the Child. But in practice little has been done to address the. One case that made national headlines in 2006 was the Raja case, who was believed to be under 8 and was prosecuted for fighting with and injuring another child.

When asked what an appropriate age of criminal responsibility would be, the participants in the consultations gave a variety of responses. One child did not give any age, while two children proposed 10. However, the majority (15 children) suggested the age of 17.

One participant gave a particularly interesting response:

“What I would like to see is that underage children aren't given harsh sentences. They should have mercy on them, the minimum they get is a few months. Where possible, underage children shouldn't be sent to jail. It's not right. Although it's fair enough for adults. These are only children so they're very impressionable. Is it right that they should be locked up? In my opinion, it isn't. They should be sent to rehab, or a childcare institution or a Pesantren (Islamic boarding school). Prison just a terrible place. (Rya Vebriyani – Jakarta).

Children deprived of their liberty, including all forms of criminal detention or placement in the custody of other parties (article 37(b),(c) and (d)).

Convention on the Rights of the Child, Article 37.

## **Arrest**

The police are entrusted with the power to arrest individuals whom they have strong grounds for believing have committed criminal offenses based on sufficient prima facie evidence (article 16(1) and article 17 of the Criminal Law Procedures Code).

Arrests cannot be carried out arbitrarily. The provisions on arrest are covered by article 9 of the Universal Declaration of Human Rights and article 9 of the Convention on Civil and Political Rights. In Indonesia, the procedures governing arrest are also quite tight and are set out in article 18 of the Criminal Law Procedures Code, which reads as follows:

An arrest shall be carried out by a member of the Republic of Indonesia Police upon the showing of his duty order and the presentation of a warrant stating the particulars of the suspect, the reasons for the arrest and a brief description of the offense and the place where it occurred.

A suspect may be apprehended in flagrante delicto, in which case it shall not be necessary to show an arrest warrant, subject to the provision that the arresting officer must deliver the arrested suspect and evidence to the nearest investigating or deputy investigating officer.

Copies of an arrest warrant, as referred to in section I above, must be furnished to the family immediately after the arrest.

However, in practice these procedures are not adhered to when police officers make arrests. This is reflected in the experiences of the participants in the consultations. Twenty (16 boys and 4 girls) out of the 39 participants said that they had not be arrested in flagrante delicto. However, at the time of their arrests only five of them said that they had been shown arrest warrants, while 14 of them said they had never been shown or received arrest warrants. The remaining one child did not provide any information.

One of the participants related his experience of being arrested by the police:

“I was arrested at 4:30 program. I had no idea why they were arresting me. I was just watching TV at home, when I was called out along with a neighbor. I went out and then someone grabbed me, saying “GD, where’s GD?” I said I didn’t know. It was a policeman that grabbed me. He wasn’t in uniform when he arrested me, he was in plainclothes. Suddenly, GD arrived. I was put in the car with GD. I was punched in the car. There were 5 or 6 of them who arrested us. They never told why I was being arrested. They had no warrant or duty order. They arrested me just like that and took me away in the car. We were then separated. I was ordered to look for NN. NN was then arrested too. I had no idea when they would tell my parents, or give them my arrest warrant or their duty order. My parents soon found out what had happened, but they were never given the warrant. I was only allowed to see my parents after 6 days in the police station. (INS, Central Java)

The time of arrest is not dealt with in the arrest procedures, but needs to be had regard to. There were a number of cases in which children were arrested in the afternoon or at night. As a result, when they arrived at the police station they went unregistered so that they were denied their basic needs, such as food and water. Arrestees are normally questioned immediately after arrest. It is disturbing to think of children being questioned from the middle of the night until early the next morning.

## ***Detainment and separation from adults***

Almost all of the participants in the consultations had experienced detainment, whether by the police, prosecutors or the court.

Article 21(1) of the Criminal Law Procedures Code states that a detainment order or detainment extension order may be issued in respect of a suspect or accused who is strongly suspected of having committed a criminal offense based on sufficient prima facie evidence should there be grounds for believing that if not detained the suspect or accused would abscond, destroy or interfere with evidence, or commit another offense.

At the police level, it was found that there was a tendency for them to always detain children. A total of 33 of the 39 participant children said that they had been detained by the police. The other six children did not relate their experiences in this regard. However, based on information from those accompanying them, four of them had actually been detained. Only two of the children had never been detained.

A situation that clearly conflicts with the prevailing rules, and minimum standards and procedures is the fact that many detained children are not kept separate from adults. At the police level, 33 of the participants related their experiences. A total of 13 of them said that they had been held with adults during their detainment, while 11 said that at the start of their detainment they had been held with adults, but had later been separated. Nine other children said that they had been detained separately from the very beginning.

In none of the cases was the period of detainment kept to the minimum possible, but rather tended to be for as long as possible under the procedures. While this meant that there was not breach of the prevailing procedures, it may be said that few attempts were made to prioritize the best interests of the child.

## ***Legal and other assistance***

The rights of children to access legal and other assistance is recognized by article 66(6) of the Human Rights Act and article 17(b) of the Child Protection Act. In practice, however, children are frequently not provided with information on their right to legal assistance. For example, one child said that in the statement read out to her by the police, the police had said that she had opted not to seek the assistance of a lawyer.

“No. When I read it, I wanted to ask about it but in the end I didn’t say anything. It said that I didn’t want a lawyer. I didn’t say whether I wanted a lawyer or not. I didn’t say anything.” (BPA, 14 years of age, boy, Juvenile Facility in Central Java)

The majority of children in conflict with the law have similar experiences. Among the Consultation participants, only four said that they had been accompanied by a lawyer. This is very worrying as the children were unaccompanied throughout the process at the police and subsequent levels, thus leaving them unprotected and at risk of maltreatment, as experienced by many of them (See section on maltreatment).

Extortion of children and their families to force them to pay bribes so as to have charges lessened or even to have the proceedings stopped is frequently experienced by children in conflict with the law.

“After I was 21 days in the police station, a policeman said to me, ‘It’s like this, we want money within a week to change the case file so that you get off lightly. So, find the money within the week.’ I was asked again at the end of the week, “do you want to change the case file or not?” No money, and so I was offered again. “Do you want a lawyer or not?” I said no.” (MPS, 19 years of age, Juvenile Facility in Jakarta)

“After they were finished at the local police station, I was sent to the district police station. They asked me for money, and mum gave it to them without me knowing. They didn’t even question me when preparing the case file. They wrote it up themselves and then sent it to the prosecutors.” (SDA, 17, boy, MES)

In SDK’s case (18 years of age), criminal proceedings were halted after the police were paid. When he was 15, SDK had committed theft along with some friends and been arrested. His family and the families of his friends got the children out of prison by paying Rp 2.2 million per child.

### ***Relationship with family***

The right to continue in contact with their families is one of the rights accorded to children in conflict with the law. Article 64(2)(f) states that children shall be permitted to maintain their relationships with their parents and families.

Of 17 children who related their experiences as regards maintaining their relationships with their families, 13 of them said that they had always been allowed to do so, although the frequency of visits varied. Their families “sometimes” or “always” visited them while they were in police detention, a detention center or while in prison. Four children said that their families never visited them.

HJT said that his family were able to visit him more often when he was in prison. It was much easier, he said, although bribes had to be paid.

“In the police station, they made it difficult for people to visit. But in prison it was easy, even though visits were limited to 15 minutes. For example, if you wanted to have a 15-minute visit, you paid Rp 10,000.” (HJT, 17 years of age, boy, BDO)

Meanwhile, SDR (17 years of age) from BDO said that he had never been visited by family members.

“Never. Never during the whole process. I don’t know, maybe they didn’t know where it was, or they forgot about me. Anyway, it didn’t matter. I knew they had it tough. They had to look after grandma. There’s also two kids that had to be looked after. I’m the eldest and I don’t want to be a burden on my family.” (SDR, 17 years of age, boy, BDO)

Neither capital punishment nor life imprisonment shall be imposed on children (Convention on the Rights of the Child, article 37A)

### ***Torture or other cruel, inhuman or degrading treatment or punishment***

Torture and other cruel, inhuman or degrading treatment or punishments are still being imposed on children in conflict with the law. This takes place at the time of arrest, in the police station, in detention and in prison.

SDA, 17 years of age, who is currently serving his sentence in a prison in MES, related his experiences after being arrested and asking for an explanation from the police.

“A police officer came in and started asking me questions. He asked me my name and whether I would talk. When he asked me whether I knew Wak SK, I said that I didn’t. I tried to get away from him. But he caught me by the hair and we started pulling and pushing, knocking over all the chairs. He fired four warning shots, and then I gave up.

When they arrested me, they stamped on me repeatedly. This was all seen by my family, who were there. I was brought to the police station and beaten. They hit my hands with a shoe so as to make me tell them where I had got the goods. I found out at the police station that I had been on the wanted list for the last year.”

SDA then recalled his experiences while in the detention center:

“While I was in the detention center, an officer slapped me around the face and pulled my hair. It was the same policeman that had abused me at the police station. They crushed my hands, tramped on me and sat on me. I was also punched in the chest, I was kicked around the legs, all by the same cop.”

HJT, 17 years of age, from BDO, had served a sentence for brawling, which resulted in the death of one victim. He related how he had been maltreated while in the police station. He was repeatedly punched and beaten by the police, including with a chair, book and a steel pipe. As a result of the beatings, HJT said that he lost the hearing in one ear. He was interrogated from 10 pm until early the next morning. During his detention in the police station, he was not given any food. The only food he got was from his parents when they came to visit him. It was only when he was moved to the district police station that he received two meals per day. Meanwhile, GTR, who was still serving his sentence at the time of the consultations, recalled the maltreatment he had received when being interrogated by the police:

“I was shocked to see how cruel they were. I was terrified. They threatened me with a pistol, slapped me. They hit me on the legs with the pistol. They did everything they could to make me confess ...” (GTR, 17 years of age, boy, MES)

Girls were also subjected to maltreatment. IYA, who was still serving a sentence for involvement in theft, recalled what had happened to her in the police station:

“I was hit in the stomach, stamped on. It really hurt, my legs and my torso. It was only after I was brought before the Police Sector Chief that they started treating me better. At night, my nose bled because of all the hitting. They hit me on the hands with a baton. It was really sore.” (IYA, girl, 16 years of age)

APA, who was still serving her sentence, also experienced maltreatment while in police custody:

“When they changed watch, the new ones would come in and ask me what I had done. Then they’d hit me. This happened each time they changed watch. Every time, for sure I’d be hit. It went on and on. I was hit on the head, on the back, my hands were stamped on.” (APA, 18 years of age, boy, Juvenile Facility in Central Java).

## **Sentencing**

The requirement that children of under 18 be exempted from the death penalty and life imprisonment has been given effect to by Act No. 3 of 1999 (article 6(b)). Article 64(2)(e) of Act No. 23 of 2003 states that sentences should be imposed that accord with the best interests of the child.

The participants in the consultations expressed various concerns about sentencing, particularly the imprisoning of children.

“How can it happen, miss, that children are sentenced to years in prison. This means that the officials are only out to cause problems. Corrupt judges and prosecutors, and whatever. How can they impose sentences like that. We’re only children.” (BPA, boy, 14 years of age, Central Java)

“No, they shouldn’t treat children and adults the same, like the processes they use. They beat children just like adults, it’s not right treating children the same as adults. For children, it should be enough to give them a warning. Children need to be told what to do. Don’t treat them like adults, hitting them, even giving them electric shocks. They once gave me electric shocks. It shouldn’t be like that.” (HJT, 17 years of age, boy, BDO)

“It shouldn’t be like that. Children under 18 shouldn’t be treated like that. If they’re sent to jail, they shouldn’t be treated in the same way as adults. It’s not right.” (AGA, 17 years of age, boy, BDO).

In general, the participants said that children who commit crimes must be punished, but that the forms of punishment should be in the best interests of the child. They said that children should not be imprisoned save for particularly serious crimes, like murder and rape.

HJT and RMS from Bandung and AYS from Jakarta proposed ways in which problems involving children could be resolved amicably through the involvement of the community.

“If it’s just an ordinary case, it should be capable of being settled at the RT/RW level, cases like stealing chickens or normal juvenile delinquency.” (HJT, boy)

“The first time, maybe he should be given a warning, he can still be forgiven and things can be resolved amicably. He shouldn’t be sent to the detention center. It should be resolved by the RT, RW or village head, community leaders. If he’s arrested by the police, the case will only drag on and on, and it will cost a lot more. The police also ask for money to arrange cases.” (RMS, boy, 17 years of age).

“In my opinion, it’s not necessary. Children should be just given a warning, guidance. They should be punished like that. It’s not going to resolve the problem. In fact, it’s only going to make it worse. That’s what happens. In my view, children shouldn’t be put in jai; It’s useless.” (AYS, girl, 19 years of age).

YVR and IYA, who at the time of the consultations were serving sentences in a Juvenile Facility, put forward the following suggestions regarding rehabilitation centers for children who became caught up in crime.

“What I would like to see is that underage children aren’t given harsh sentences. They should have mercy on them, the minimum they get is a few months. Where possible, underage children shouldn’t be sent to jail. It’s not right. Although it’s fair enough for adults. These are only children so they’re very impressionable. Is it right that they should be locked up? In my opinion, it isn’t.

They should be sent to rehab, or a childcare institution or a Pesantren (Islamic boarding school). Prison just a terrible place.” (YVR, girl, 20 years of age)

“Like the Ministry of Social Affairs’ rehabilitation centers for drug addicts. If you send children to prison, there’s no facilities for them, and they will only come under bad influences if they’re mixed with adults.” (IYA, girl, 16 years of age)

### **Physical Recovery and Social Reintegration (Article 39)**

The physical recovery and social reintegration of children in conflict with the law is covered by article 39 of the Convention on the Rights of the Child, which states that “States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

The juvenile justice system in Indonesia appears to still focus on punishment in the form of the imprisonment of children in conflict with the law as retribution for their crimes. This system is known as retributive justice. Various studies, however, have shown that imprisonment is not the best way of dealing with such children. In fact, imprisonment has negative physical, mental and social impacts on children, and they not only lose their right to liberty, but many other rights besides.

The right of children that is most frequently neglected is that of education. Children, even before they have been found guilty, normally find themselves under pressure from their schools to stay at home. This was the experience of SDK, who was involved in a theft case but whose processing was halted by the police. SDK said that he was very upset at not being able to stay on at his original school, and the fact that no other school was willing to accept him.

“I was really upset as I couldn’t stay on at school, even though I wanted to do the exams for grade III of junior high school. Because I was expelled. Well, I wasn’t actually expelled, I was given a transfer order. I tried to move to another school, but none would have me.”

### **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

- The National NGO Coalition reaffirms that the Juvenile Justice Act 1997 (No. 3 of 1997) needs to be amended so as to bring it into line with the provisions of the Convention on the Rights of the Child, the Beijing Rules and the Riyadh Guidelines. In particular, the age of criminal responsibility needs to be raised to 16.
- Greater efforts should be made to comply with the provisions of article 37(b) of the Convention on the Rights of the Child (“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”) Accordingly, it is of the utmost importance that legislation and rules be introduced to allow restorative justice to be applied to children in conflict with the law.
- The very many cases of violations of children’s rights committed by law enforcement officials need to be acted upon and the perpetrators prosecuted to the full extent of the law.

## **Street Children**

### **Concerns and Recommendations of the Committee on the Rights of the Child**

The Committee welcomes the introduction of the Social Safety Net Programme for Street Children and of the Free Street Children Programme of Bandung Raya. It is nonetheless concerned at the high number of children living on the streets and at the violence to which they are subject, especially during sweep operations.

The Committee recommends that the State party take all necessary measures:

- To end the violence, arbitrary arrest and detention carried out by the State apparatus against street children;
- To bring to justice those responsible for such violence;
- To facilitate the social reintegration of street children, notably by ensuring that street children, especially those who are runaways, can obtain an official identity card.

## **IMPLEMENTATION IN INDONESIA**

The Indonesian government's draft report on the implementation of the Convention on the Rights of the Child during the 1997-2007 period does not have anything to say about street children. Accordingly, it is not known to what extent Indonesia has had regard to the recommendations set out in the Committee on the Rights of the Child's 2004 Conclusions.

However, the facts on the ground reveal that the problem of street child is still a serious one in Indonesia. According to Shlahuddin (2004), children have been living on Indonesia's streets since the 1970s, with them first appearing in Jakarta, Bandung and Yogyakarta, followed later by Medan, Malang, Surabaya and Semarang. Today, they are present almost everywhere, even in small cities.

Concern for the problems of street child became more pronounced at the time of the crisis at the end of the 1980s, when their number increased in Jakarta by some 400 percent, according to Minister of Social Affairs at that time (Kompas, 4 December 1998). This clearly demonstrates the seriousness of the crisis that assailed Indonesia in the closing years of the last century.

Awar and Irwanto (in Irwanto, et al., 1998), quoted data from the Ministry of Social Affairs that put the number of street child around the country at some 50,000. A survey conducted by PKPM Atmajaya, the Ministry of Social Affairs and the Asian Development Bank in 12 cities identified 39,861 street child. Farid and Adidananta (2002) postulated that if this figure was extrapolated to the entire country, then this would give a figure of 120,000, which they said seemed to be quite conservative.

The government of Indonesia, with the support of UNDP, started to design and implement programs aimed at street child in 1998, starting with the establishment of shelters in five cities. The program was subsequently expanded with the support of the ADB to 12 cities. This marked the first time that the term "street child" was officially employed by the Indonesian government. Previously, it had been unwilling to use the term and had even tended to prohibit its use, with the term "delinquent children" being the government's preferred choice.

Also around the end of the 1990s, a number of non-governmental organizations emerged that were focused on the problems of street child. This period may be said to be the best time experienced by Indonesian street child. Raids, of which all children living on the streets are terrified, were discontinued. Government agencies, the private sector, civil society organizations and community leaders, including media celebrities, all took a hand in efforts to help street child, and the media was full of stories highlighting their plight. Darmanto Jatman, a cultural activist, as quoted by Shalahuddin, commented that “Street child have now become celebrities.”

Unfortunately, however, all of the programs that have been instituted have proven themselves unable to resolve the issue of street child. It appears that this has left the government “frustrated” so that raids on street child, and other people who make their living on the street, have been resumed. This is very clear from the issuance of various draconian local regulations, such as those issued in Palembang, Bandung and Jakarta. At the present time, similar regulations are being debated in Yogyakarta, Semarang, and Medan/North Sumatra.

***The following are three examples of such regulations:***

In Palembang, Local Regulation No 44 of 2002 on public order imposes fines of up to Rp 5 million and detainment for up to three months for those who give money to beggars on the street.

In Bandung, Local Regulation No. 3 of 2005 on public order and cleanliness prohibits begging in public places, busking and windscreen cleaning on the streets, with the maximum fine being Rp 250,000.

In Jakarta, Local Regulation No 8 of 2007 on public order prohibits various activities, including “jockeys” flagging down cars entering the central business district (article 4), begging, busking, hawking, and wiping windscreens (article 40), and prostitution (article 42). Violators of the regulation are subject to detainment and fines. These also extend to those who make purchases from hawkers or avail of prohibited services.

Having regard to these three regulations, it is very clear that most of the offenses established are very minor. Furthermore, they also involve an unnecessary intrusion by government into the private domain as punishment is also imposed on those who give money to those making their living on the streets. These regulations only erode the capacity of the urban poor to make a living, but fail to do anything to provide them with alternative sources of livelihood.

There have been angry actions to these type of regulations in many cities from civil society groups. In fact, Indonesia’s independent National Human Rights Commission (2008) conducted a study on Jakarta Regulation No. 8 of 2007 on public order. The seven conclusions arrived at by the commission stated that this regulation conflicted with the human rights principles acknowledged and recognized by national legislation, such as the 1945 Constitution and the Human Rights Act 1999 (No. 39 of 1999). The Commission said that the regulation had the potential to endanger civil, political, social and cultural rights, which should be guaranteed by the state. It would also result in the state having to give explanations to international human rights bodies.

Over the last five years there have been frequent news stories of draconian actions by public order officers (Satpol PP) in enforcing such local regulations. These have become more intense, consisting of evictions and raids directed against various disadvantaged groups, including street children. The methods employed are almost invariably repressive and frequently result in injury and death.

In those areas where similar regulations are currently being considered, the last five years has seen intense campaigning on the part of local governments urging people not to give money to street child. This has happened in tandem with more raids than ever before.

Given this situation, it may be said that the Indonesian government has totally ignored the recommendation of the Committee on the Rights of the Child that violence and arbitrary arrests directed against street child be halted, that those responsible for ensuing violence be brought to justice, that facilities be provided for the social reintegration of street child, particularly those who have run away from home, and that street child be allowed to obtain official ID cards. In fact, what has been happening has been the exact opposite of what was recommended by the Committee on the Rights of the Child.

### ***Situation and views of children***

“The worst thing about being on the street is when you’re arrested by the public order police. When they arrest you, they normally hit you, take your guitar and all your money. If you have no money, they beat you again, and after that they send you to a reform center where they lock you up overnight.” (DYZ, boy, 17 years of age).

The information on the situation and views of children came from consultations with children in four cities – Jakarta, Semarang, Yogyakarta, and Medan. The total number of participants in the four cities amounted to 36 (15 boys and 11 girls). During the feedback stage, a total of 19 children were involved (18 boys and 1 girl). Thus, the total number of children who participated in the entire process amounted to 55 (33 boys and 12 girls). However, the information presented in this section only refers to that provided by the participants in the consultations (36 children).

The age criteria for participation was between the ages of 12 and 17, with the proviso that children of more than 18 could participate in special circumstances for the purpose of providing information about their experiences before they reached 18. Only one participant did not satisfy the age criteria, namely a girl who had just turned 11 (Yogyakarta). Meanwhile, two participants were 18 or over – one was 18 and the other 20 (both in Yogyakarta). The biggest age group was made up of children between 15 and 17.

As regards educational status, the majority of the children had dropped out of school (27 children consisting of 22 boys and 5 girls). Of the nine children who were still attending school, all of them were junior high school students (3 boys and 6 girls).

There were various factors that encouraged the children to spend most of their time on the streets. Most of the factors were interrelated. The results of the consultations supported the findings of existing research and programs. Family reasons was the dominant factor, including lack of attention, violence, pressure to bring in income, and so forth. Other factors included encouragement from friends to run away from home and the fact that parents already lived on the streets.

“In my case, I just wanted to hang out. At the beginning we just sat around. We had friends, they had friends too. From there, we started busking. But I got bored with that. I want to go home, then when I’m there I want to go out on the streets again. And when I’m out on the streets, I want to go home. So, I’m confused.” (CXA, boy, 16 years of age)

“I was 6 when I went on the streets. I was still at school. I stopped school at 12 to help my parents. I’m a busker.” (GNN, 15, girl).

“(I’ve been on the streets) 5 or 6 years. I was told to go out by my parents. Dad didn’t have any money. Mum didn’t have any money. Dad had no job. So, me and my little brother started busking. We were told to do it by our parents.” (RJF, boy, 16 years of age).

“I’ve been out busking since I was a baby, when my mum carried me around with her. We lived under a bridge. I started busking myself when I was 4 to get money. When I was 7, I said to mum, “Mum, why don’t we just rent a place. We shouldn’t be living under a bridge!” I wanted to help my parents, so I collected as much money as I could, Rp 250,000 in all, which we used to rent a house. I wanted to repay my parents for all they had done for me.” (DRE, girl, Jakarta).

The life of children on the streets is always marked by violence and exploitation. Various experiences of violence and exploitation that demean human dignity are felt on a daily basis by them, whether at home, on the streets or in the community. The perpetrators include parents, other street child, street toughs, and the state apparatus, who should be providing protection to them.

Most of the children participating in the consultations said that some of the money they earned was given to their parents. This was acknowledged by SNE (girl, 13 years of age), IRA (girl, 12 years of age), ANP (girl, 12 years of age), and RNB (girl, 13 years of age). However, from the consultations it appeared that almost all of the young children were required to give money to their parents. As they got older, the children (usually the boys) became more likely to refuse to hand over their money, or to spend more time outside the home living on the streets. This was acknowledged by RJF (boy, 16 years of age, a street child in Jakarta, who said:

“When I’m busking, I used to pay about Rp 30 thousand to my parents. But I don’t do that any more. I haven’t been living with my parents for the last six years, so I keep the money for myself.

GNN (girl, 15 years of age), said she hated her parents as they were always demanding money (“they’re just like the thugs on the street ...”). Almost all of the children said they had to pay money to street toughs for protection. NPH from Medan said that if he did not do so, he would be beaten:

“The toughs will beat me up. If you don’t pay they’ll slap you around. Even if I’ve only got Rp 5,000 left, I have to hand it over. I even have to give my food money to Himpun.” (NPH, 14 years of age, boy).

Street children are also subjected to violence by the state apparatus, even where this has nothing to do with official policy. RJF (boy, 16 years of age) said that he had been maltreated by police officers:

“I was coming back from busking. Normally after work, we all sit around, the boys and girls all together. I was sitting there as usual when two guys showed up that we didn’t know. “What are you all doing hanging around here? You got a permit for that, eh?” “Permit from who?” “No?. You need a permit?” One of them said, “Hey, small fry, don’t you have any respect for the police?” The then arrested me. I was brought to Prumpang on the cop’s motorbike. “You’re high, aren’t you? Those girls, they’re hookers, aren’t they?” the cops said. “No way, they’re just my busking friends.” Then he said, “You got any money? Cigarette money for the Chief?” “I don’t have any money, Sir.” “Oh, you’ve got all the excuses.” He then drew out and hit me. He also pinched me hard behind. Then he kicked me. Then he stopped, then he hit me again. “Be serious, where’s the money?” He then pulled out his pistol. First, he aimed it at my legs. “I’m going to have to shoot you in the legs because you tried to run. Maybe I’ll just kill you,” the cop said. “What have I done, sir,” I said. “I was only sitting around. I didn’t do anything.” He said we were taking drugs. He wasn’t too far off the mark as we often take drugs, But not that time.

No one was high that time. We were just sitting around. The most we had done was take a few drinks. Anyway, after all that I was taken to Cipinang Jaya. We stopped three times on the way. I was abused all the way. One cop cursed me and hit me, hit me on the chest, on the legs. Lucky he didn't hit me on the head. He said he was going to break my legs. "I'm going to smash up your legs!" He even lifted up a lump of wood. It was like a tree! "You're going to get your legs broken!" The other one kept saying, "No point letting this one go, no point." He was the cop who had threatened to shoot me. "No point letting this one go. Where's my pistol!" But in the end, they told me and the other boy to get lost.

DYZ and PKJ recounted their experiences of being caught up in raids.

"The worst thing about being on the street is when you're arrested by the public order police. When they arrest you, they normally hit you, take your guitar and all your money. If you have no money, they beat you again, and after that they send you to a reform center where they lock you up overnight. I've been caught five times by the public order police, twice when I was sleeping and three times when I was busking. The first time they catch us, they normally take our names and other details and then let us go. The second time they caught me I was busking. They said, "You again, always you. Looking for money on the streets. You can do it if you went but not at the traffic lights. If you go busking around the cafes and bars, no problem, we won't arrest you." They then smashed my guitar and sent me to the reform center." (DYZ, boy, 17 years of age).

When I was booked by the public order police, I was working as a jockey in Menteng. It was morning time, around 6:30 am, I had just got up and finished washing myself. They brought me to Menteng, about 15 minutes away. All the jockeys they had caught were put together in Menteng football stadium. When I was caught, I was still high. I'd only slept for about half an hour. When they arrested me, they pushed me around and hit me. "You're high, aren't you?" "No sir," I replied. "I can see it from your eyes, they're popping out of your head." I was in trouble. They brought me to the Kedoya reform center. It's like a prison there, it's like you're being crushed by the system. When you go in, they don't say anything to you." (PKJ, boy, 17 years of age)

Street children arrested during raids can be tried under article 505 of the Criminal Law Procedures Code or sent to a childcare institution. In many cases, the children or their families opt to get the children out by paying bribes to the officers, or they have to agree to do what the officers tell them.

"You have to pay Rp 15,000 to get out. If you don't have any money, they'll lock you up for two weeks (not in a prison cell, but in the sector police station)." (IWD, 17 years of age, boy).

"They ordered me to wash the motorbikes of the public order officers. Then they ordered me to do 10 pushups. After that they gave me rice and chicken, and Rp 20,000, and brought me to Mangkang" (YDR, boy, 13 years of age).

Almost all of the street children had experience of being arrested and put in a reform center. Sometimes they had been arrested more than once. The following are accounts of some of their experiences in the reform center:

"I was arrested and brought to Karanganyar. They kept me there for three days. I was locked up, miss. In the reform center. I was photographed, fingerprinted, and had to give my signature. We were given food, rice and sometimes vegetables, sometimes an egg."

In the reform center, we're locked up all day and all night. It has two sections, one for the males and one for females. Children and adults are kept in the same place – street children, punks, and also lepers. There's nothing to do there, just sleep and daydream. Sometimes we talk amongst ourselves about how we were arrested. We're only allowed out of the holding rooms to eat. You have to urinate and defecate in the holding room as well. You never get to wash. When it's meal time, we're taken out, and then put back in again after the meal.”

The above descriptions are only some of those given by the street children during the consultations. However, they paint a worrying picture about the treatment meted out to such children, particularly during raids and their incarceration in the reform centers.

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

- All local regulations that conflict with the human rights and child rights' principles, and higher legislation, should be revoked or amended. Street children should not be criminalized.
- The repressive, violent approach to the issue of street children needs to be abandoned. Bearing in mind that raids do nothing to overcome the problem, they should be abandoned.
- The state needs to retain and develop programs to overcome the issue of street children, including programs designed to strengthen the resilience of families, provide support and facilities to children so that they can access free education, and ensure that children who live on the streets can get better lives.
- Commercial sexual exploitation of children

## **Concerns and recommendations of the Committee on the Rights of the Child in 2004**

- The Committee welcomes the launching of the National Plan of Action for the Elimination of Commercial Sexual Exploitation of Children in 2002. However, the Committee is concerned that existing legislation does not provide effective protection (e.g. the age limit for sexual consent of 12 years is too low) and that child victims of sexual exploitation often do not receive adequate protection and/or recovery assistance. The Committee is also concerned about the lack of information about how the National Plan of Action will be carried out at the provincial and district levels.
- The Committee wishes to reiterate its opinion that child victims of sexual abuse and exploitation can never be held responsible or guilty of such acts.
- The Committee recommends that the State party:
- Develop and implement legislation that adequately protects child victims of sexual exploitation, including trafficking, pornography and prostitution, that includes a significant increase in the minimum age of sexual consent;
- Train law enforcement officials, social workers and prosecutors on how to receive, monitor and investigate complaints and prosecute perpetrators in a child-sensitive manner that respects the privacy of the victim;
- Prioritize recovery assistance and ensure that education and training as well as psychosocial assistance and counseling are provided to victims, and ensure that victims who cannot return to their families are provided with adequate alternative solutions and are institutionalized only as a last resort;
- Ensure that the National Plan of Action for the Elimination of Commercial Sexual Exploitation of Children is allocated appropriate resources for its implementation and is effectively carried out at the provincial and district levels.

## **IMPLEMENTATION IN INDONESIA**

An analysis of the situation conducted in 1998 by child rights activist Mohammad Farid (1999) found that the prostitution involving persons of under the age of 18 accounted for 30 percent of all commercial sex workers in Indonesia. Meanwhile, Sulistyaningsih & Hull (in Farid, 1999), estimated that the total number of commercial sex workers in Indonesia amounts to between 140,000 and 230,000. This would mean that the number of prostituted children in Indonesia ranges between 40,000 and 70,000. Meanwhile, Wagner and Yatim estimated that there are about 500,000 commercial sex workers in Indonesia, which would mean that there are more than 150,000 prostituted children. Farid stressed that these estimates only cover children who are prostituted within Indonesia, and do not take into account the number of Indonesian children prostituted overseas.

One form of commercial sexual exploitation of children, pornography, appears to not be such a big problem as the other two forms of commercial sexual exploitation of children. However, this may be due to a lack of data on the number of Indonesian children who fall victim to the pornographers. So, obviously Indonesian children are not safe from being exploited for purposes of producing pornography. One of the problems in revealing information on child victims of pornography is the difficulties involved

in tracking the networks. So it is likely that many children fall victim to pornography. One example is working as an erotic dancer. One of the children involved in the consultations gave the following account:

“There’s lots of girls involved. There were about 20 between the ages of 15 and 20, and 14 between the ages of 12 and 15 ... we used to move around, sometimes working out of town, sometimes in CKG. I was also moved around. From one discotheque to another. If you’re a dancer, if you’re dancing in the nude, you often get doused in beer. All sorts of things, you get drenched with whatever’s on the table. They also throw peanuts at us. If you’re wearing knickers, bra, they often tear at the clothes until they’re ripped off. It’s really annoying. It’s like that in the discos. In the hotels, they have dancers in the hotels ... I was ordered to dance naked in a hotel.” (LAA, 15 years of age).

There have been a number of cases revealed in Indonesia that are a cause of concern as regards the growth in child pornography. Peter W. Simth, an Australian national, was arrested by the Jakarta Metropolitan Police in 2006. In his statement, he admitted that since 2000 he had had sexual relations with 50 Indonesian children in different parts of the country. He also admitted that he had had sexual relations with children in India and Vietnam. When having sex with the children, he would video and photograph them (Suara Karya online, 8 August 2006). Then in November 2006, a case of sexual exploitation came to light in Surabaya. The perpetrator had filmed his sexual encounters with children. The police found some 100 video recordings on his cell phone that had been made since March 2006 alone (Kompas daily, 5 November 2006; [www.fajar.co.id](http://www.fajar.co.id)). However, most worryingly in this case, justice failed to side with the child victims. Although there was ample evidence, the defendant was found not guilty as no “violence” had been involved (<http://jkt2.detiknews.com>).

There have also been many cases of trafficking in children uncovered in recent years. In Indonesia, it is estimated that there are 100,000 child victims of trafficking every year (Unicef Fact Sheet on commercial sexual exploitation of children and child trafficking), with the majority of the victims being trafficked for sexual purposes.

Besides the children being trafficked to various places outside Indonesia, the problem is also widespread within Indonesia itself. In 2000, a reporter estimated that of the some 6,000 commercial sex workers in Batam, more than half of them were children (Kompas, 12 August 2000). At that time, the media contained many reports on the rescue by the West Java Police of hundreds of children who had become trapped in prostitution in Batam and the Riau Islands (see Shalahuddin, 2004.a). The problem is made more complex by the fact that a particular area may not just be a trafficking destination, but also a source or transit area.

The government appears to have taken few significant, strategic measures to reveal cases of commercial sexual exploitation of children, despite the existence of a National Action Plan on the Commercial sexual exploitation of children.

Protection measures need to focus on efforts to improve the legislative framework and to ensure that the legislation is based on child-friendly perspectives. Perpetrators who involve children in prostitution and other forms of commercial sexual exploitation and the “clients” of the victims must be treated as criminals and punished severely. Nevertheless, there is as yet no legislation that criminalizes the clients. The Child Protection Act 2002 (No. 23 of 2002), which is said to reflect the provisions of the Convention on the Rights of the Child, contains no criminal provisions aimed against clients. IN fact,

what happens in practice is that the child victims are treated as criminals and are subjected to raids and arrest. Indeed, many child victims arrested during raids are subjected to more sexual violence following their arrests, as in the case of JST (18 years of age):

#### Experience 1:

“I was forced to have sex with two uniformed cops in their patrol car. They said they were arresting me as part of a raid. In fact, that was only an excuse because I was the only one arrested. The others were left alone. It happened at night. They took turns having sex with me. One would drive and the other would have sex with me in the back. After he was finished, they swapped places. I couldn't get away, there was nothing I could do.”

#### Experience 2

“One night I went out for a few drinks with friends. After they arrested us, they brought us to the police station. My friends were beaten by the cops, but they didn't beat me because they didn't know whether I was a man or not. They asked me if I had breasts. They asked to see them and then they felt them.”

The sort of treatment meted out to JST and other child victims is a serious cause for concern given the responsibility of the authorities to protect the public.

“IN the police station, I couldn't complain to anyone. It would have been useless as they were all cops as well. Who am I going to complain to? I'm a nobody, I don't have any money, I don't have any power. They should be upholding the law, arresting the guilty and defending those who are in the right. Not treating us like that.”

DWY, 16 years of age, and her friends were arrested by the public order police and subjected to sexual violence:

“I really wanted to get out, I really wanted to get away from that place. I had to have sex with him for two weeks. The same officer. If I didn't, he would never have let me go. The kids have to have sex with the officers, just like workers mixing cement. If we want to get out, we have to be nice to him, or maybe some nice person gives us money.”

Bringing about the recovery and reintegration of child victims of commercial sexual exploitation obviously requires a lot of time and money. This is because such exploitation has a profound impact on the children's physical, mental and social wellbeing, particularly in the case of children who have been trapped in commercial sexual exploitation for a long time. However, the fact is that the victims of the commercial sexual exploitation of children rarely if ever receive recovery and reintegration services, such as counseling, and access to formal and non-formal education. These children are under severe pressures. For example, the participants in the consultations who worked in cafes and bars in CKG had to meet targets for the sale of alcohol every day. In order to meet these targets, they also had to drink alcohol with the customers so as to encourage them to order more.

### **Sexual violence**

Compared with cases of commercial sexual exploitation of children, cases of sexual violence are easier to uncover. For example, the West Java Police between October 2001 and March 2002 (6 months)

dealt with 116 cases of sexual violence against children, including rape, indecency, sodomy, sexual assault, and attempted rape. Meanwhile, the SAMIN Foundation in Yogyakarta dealt with ... cases of sexual violence between 2005 and 2007. Based on data from the LBH-APIK Jakarta, during 2003 (up to October) 50 percent of 239 cases involved children. In the same year, the National Child Protection Commission recorded 221 cases of sexual violence against children. Given the above data, it is clear that sexual violence against children is a major problem in Indonesia.

From a survey of the print media conducted by the National Child Protection Commission in 2000 revealed that girls were the most frequent victims of sexual violence, although boys were also vulnerable, as in one case uncovered in AMI city, which involved 7 of the boys who participated in the consultations. The boys were subjected to sexual violence by their teacher, someone who should have protected them. All of the boys attended the same elementary school.

“I started in elementary school when I was six. It happened when I was 10. Many of my other friends were also sodomized. There have been a lot of victims in our hamlet. One of my friends was badly hurt by the teacher. I told my dad about it and the teacher was arrested. I graduated from elementary school when I was 12...” (LAN, 13 years of age, West Nusa Tenggara).

There are two legislative provisions in Indonesia that deal with the issue of sexual crimes against children – the Criminal Law Procedures Code and the Child Protection Act 2002. Farid in his Situation Analysis on Sexual Explanation [2] states that the articles of the Criminal Law Procedures Code that can be employed in respect of sex crimes are articles 285, and 287(1). Other relevant provisions of the Criminal Law Procedures Code are articles 290(2) and (3), 292, 293(1) and 294(1). Article 285 provides for a heavy penalty in the form of 12 years’ imprisonment. In the case of sexual crimes committed against children, Farid states that the Criminal Law Procedures Code fails to take account of the fundamental character of non-consensual sex, which by definition includes sex with minors, as it differentiates between rape (article 285) and non-consensual sexual relations with a minor, where an offender is liable to imprisonment for a minimum of 9 years (article 297(1)). The age limit used to define a minor is clearly too low, even if compared the Marriage Act. As stated in paragraph 2 of article 287, a violation of the previous paragraph shall be treated as valid grounds for bringing a prosecution, save where the victim is under 12. This situation was also a concern of the Committee on the Rights of the Child, as expressed in its Conclusions.

Nevertheless, as of the date of the preparing of the draft Government Report to the Committee on the Rights of the Child, no changes had been made, despite the enactment of the Child Protection Act 2002, which is said to reflect the provisions of the Convention on the Rights of the Child. IN fact, articles 81 and 82 of the Child Protection Act 2002 provide that a sexual offense against a minor must be proved by showing violence or the threat of violence, compulsion, duping, enticement, a tissue of lies to engage in a sexual act or to permit a sexual act to be performed. On the plus side, the penalties provided by the Child Protection Act are more severe than under the Criminal Law Procedures Code. Nevertheless, prosecutions brought under the Child Protection Act continue to employ the Criminal Law Procedures Code.

### ***The perpetrators***

The perpetrators of sexual violence frequently tend to be people who are known or are close to the victims, as in the case of AMI above. In fact, in that case, 20 children became the victims of sexual violence perpetrated by their teacher. However, only 7 were courageous enough to complain.

During the consultations, the facts that emerged were similar to those reported by various studies and programs, namely, that the perpetrators of sexual violence against children are frequently those who are close to or are known to the children. The perpetrators identified by the children were as follows:

- Parents
- Family members
- Neighbors
- Teachers
- Friends
- Boyfriends
- Persons unknown

Two children were victims of sexual violence at the hands of their own fathers (TYS and STD). TYS, who lived in SLM district, became a victim at the age of 16 when he was in grade 2 of high school. As a result of being raped by her father, who worked as an agricultural laborer, she became pregnant and gave birth to a child. She became heavily depressed and had to be treated in a number of different hospitals. In addition, she had once been placed in a shelter run by the provincial government. As a result of what she experienced, TYS dropped out of school, and only resumed her education after the legal process had run its course. She completed her education at PKBM. Meanwhile, STD (girl, 17 years of age, from East Nusa Tenggara), was also raped by her father when she was 15.

Sexual violence at the hands of a family member was experienced by MGA (13 years of age) from East Nusa Tenggara, who was raped by her adoptive brother. The case was reported by MGA's parents and the perpetrator was sentenced to nine years in prison.

The largest group of perpetrators consists of neighbors. Nine of the children had been subjected to sexual violence by people living near them. In the case of WTA (15 years of age, from Yogyakarta), who was 11 at time of the incident, the perpetrator was also still a minor. He was sentenced to two years' imprisonment. Meanwhile, in the case of MFS (12 years of age), who was nine at the time of the incident, the perpetrator was elderly. He received two years in jail. The other seven girls who were subjected to sexual violence by neighbors were SRE (13 years of age), EYH (10 years of age) and HNA (18 years of age), all from Yogyakarta, and BTM (16 years of age), LBE (17 years of age), RRJ (14 years of age), and SSD (14 years of age), all from East Nusa Tenggara.

### **Legal Process**

Many cases of sexual violence and exploitation against children go unreported and unpunished. The most common reasons for this are fear of stigma and a desire to protect the reputation of the family, school or neighborhood. As a result, it is widely believed that the number of cases of sexual violence and exploitation against children is much higher than has been reported.

The participants in the consultations in three locations were facilitated by non-governmental organizations. Of the 22 cases involving the children, 20 had been reported to the police. In the case of one child, the case was initially reported, but as the perpetrator was willing to marry the girl, her family withdrew the complaint. In another case, the child reported the case to the police, but as the police failed to find and arrest the perpetrator, no further action was taken.

According to the children, the parties that most frequently helped them were their parents (father or

mother), family members, like siblings, neighbors, community leaders and local government officials.

What happened to LAN (Mataram) was reported by her father to the village head. Thanks to his report, it was discovered that the perpetrator, a sports teacher, had interfered with many of the boys in his charge (at least 20). However, of this number, only seven boys (including LAN) were willing to testify against the perpetrator in court.

In LBE's case, his aunt reported the case to the police, while in STD's case, it was her neighbors who reported the case to the police.

"When I was running the neighbors saw me. They asked me why I was running and I told them what had happened. They then took me to the police, first to the Kanaan station, then to the station in Oebobo, and finally to the police station in the town." (LBE, East Nusa Tenggara).

In RRJ's case, his father and uncle reported the case to the police:

"I was really scared. Dad wasn't there, he was working. When he came home, mum told him what had happened. I was in my room and my brother asked me to come out. I told them all what had happened. Then dad called his brother and the reported the case." (RRJ, East Nusa Tenggara).

In the case of IMJ (West Nusa Tenggara), who was sodomized by someone he didn't know, the report to the police was not successfully concluded as the perpetrator could not be found. When the perpetrator fled, he left his motorcycle behind him, which IMJ then brought to the police station.

### ***Feelings of the children when questioned by police***

Their experiences with the police left most of the children stressed and afraid. In the cases of WZH and MLz from West Nusa Tenggara, sometimes their fears reemerged unpredictably and inexplicably. WZH was afraid because, in her words, the police were "scary." She was also embarrassed as some neighbors accompanied her to the police station. Meanwhile, WZH was afraid and tense during questioning at the police station because the police officers were very big.

Six of the seven children from Yogyakarta said that they had not been comfortable when being questioned by male police officers. One other child was also questioned by a male police officer, but she was unable to speak due to what had happened to her. So her mother answered the officer's questions.

HNA was upset with the police because they didn't believe her and made insinuating comments about her:

"If you're talking about rape, you're only talking about once. This went on for three years. If you didn't like, it's impossible it could have gone on so long," said the police, as quoted by HNA from Yogyakarta.

Another child was upset because she had to pay the police.

"They said at the police station that we didn't have to pay in a case like this. But in the end we had to, miss. The same with the medical examination, they said we didn't have to pay. But again in the end we had to pay." (TYS, Yogyakarta).

BTM was afraid when been questioned by the police. She did not give the reasons for her fear. In TMG's case, meanwhile, when her parents tried to withdraw their complaint after the perpetrator agreed to marry TMG, the police asked for money.

“The police asked for Rp 10 million. But dad finally got them down to Rp 7 million.”

However, LAN's experience was different. She said that the officers who questioned her were very nice and helpful, as was the doctor who performed the medical examination on her.

### ***Medical Examination***

LBE was embarrassed while being examined by a male doctor. She said that she should have been examined by a female doctor, who would have empathy for her. After being examined, LBE went back to the police station for questioning, and had to spend the whole night there. She experienced feelings of both fear and shame while there. She did not say whether she was questioned by male or female officers.

STD also felt embarrassed during the medical examination as there were many people in the room watching the proceedings.

“When we went to the hospital, the police came with us. So lots of people were asking what was going on. The doctor also asked me lots of questions, which made me afraid. There were lots of people in the room, gawking, it made me embarrassed.” (STD, East Nusa Tenggara).

### ***Children's feelings when testifying in court***

LAN said that she was tense and afraid when he saw the perpetrator who had sodomized him taking the stand in the courtroom. They were all in the room, as well as the other victims. LAN was also afraid and embarrassed by the fact that there were so many journalists peering into the courtroom through the windows. However, he said that luckily the prosecutors and judge were nice to both him and the other victims.

LBE testified in court when her child was 3 months' old. During the trial, LBE said she was afraid, especially because the presiding judge was harsh and spoke to her brusquely. The judge even asked, “Was it good with him?” LBE also said that the perpetrator had threatened her.

### ***Sentencing of perpetrators***

Most convicted perpetrators of sexual violence and exploitation now usually receive quite heavy sentences thanks to the enactment of the Child Protection Act 2003.

The lightest sentence that can be passed on perpetrators is two years' imprisonment, while the heaviest is 15 years. Overall in the cases involving the children participating in the consultations, four perpetrators received sentences of less than five years, while eight were given more than five years. Besides imprisonment, all of the perpetrators were also ordered to pay fines, although no information on the size of was forthcoming during the consultations.

All of the children said they were dissatisfied with the sentences imposed on the perpetrators. They said that the sentences should reflect the gravity of the crimes.

MFS said that the perpetrator in her case should have received five or 10 years in jail. Two years, according to her, was too light. LAN said that in his case a sentence of 15 years was not enough. The perpetrator, had interfered with 20 children, and LAN said he should have got 30 years. TYS also said that the 13 year sentence imposed on her father, who had raped her, was not enough. She had hoped that her father would have been sentenced to life imprisonment (her father subsequently died in prison). EYH and HNA also said that the perpetrators in their cases should have received life.

“I really don’t want to see him ever getting out. I want him to stay in jail until he dies (HNA – Yogyakarta)”

### ***Role of parties charged with helping children***

During the consultations, the children were asked to identify those who should protect or help child victims of sexual violence. The methods employed were different. In Kupang, this was done by way of group discussion and presentation, with the results being as follows:

Parents should protect, advise and teach their children about good and bad, and right and wrong.

Family members (brothers and sisters) should provide support;

Non-governmental organizations ( the children named particular non-governmental organizations) are willing to help children with their problems;

1. Hospitals provide medical help.
2. The government should protect the rights of children;
3. Security so as to prevent sexual violence and receive reports from victims
4. The President, to supervise the police and prevent violence in society.
5. The majority of the children referred to non-governmental organizations as providing support:

“I’m both embarrassed and happy. Embarrassed because people find out what happened to us, but happy because there are people who are willing to help us solve our problems.” (BTM – East Nusa Tenggara).

Non-governmental organizations were stated by the children to play a very important role in helping child victims of violence. However, we should not generalize here bearing in mind that all of the children involved in the consultations were recommended or selected from among children who had been facilitated by non-governmental organizations. The 22 children involved in the consultations had been facilitated by:

- Six girls in Kupang by Rumah Perempuan
- Seven girls in Yogyakarta by the Yayasan Sekretariat Anak Merdeka Indonesia)
- Nine boys in Mataram by LBH Apik and Yayasan Santai.

The help provided by the non-governmental organizations included accompaniment during the legal process, provisions of legal assistance and, psychosocial and reintegration services.

The children and the non-governmental organizations had been introduced in a number of ways:

1. Referral by local authorities (RT and subdistrict) and the community;
2. Referral by the police
3. Initial contact from the non-governmental organizations

Government agencies in the two consultation locations had also assisted the children. SSD said that he had been given food when in hospital and also additional food assistance in the form of rice, instant noodles, sugar, milk and coffee. LBE said that she had been assisted by the Children's Social Protection Home (RSPA) through her participation in a sewing course. She said the officials were kind and helpful. TYS (Yogyakarta) had her maternity costs covered, had been accommodated in a provincial government shelter, and had been given psychosocial support. The victims had been introduced to the government agencies by non-governmental organizations.

Support and assistance at school has a big role to play in allowing victims to recover. Unfortunately, many schools demonstrated a lack of concern, and even pressured the children or their parents to leave school.

MLZ, who was sick for two months, was ordered to leave school by her teacher on the grounds that she had been out of school for too long without providing notice. However, MLZ said that she had informed the school that she was sick. Nevertheless, the school refused to change its decision. Later, MLZ recommenced her education at PKBM. In TMG's case, she was forced to leave school when it was found out that she was pregnant. SRE from Yogyakarta said that her teacher knew all about what had happened to her. However, he refused to believe she had been raped and accused her of lying. Meanwhile, MFS and TYS said that although the school authorities knew they had been raped, they failed to provide them with any assistance. TYS was also forced to quit school. She said she felt ashamed and regretted that none of her teachers had come to inquire about her. "This shows that they are not responsible people, miss," she commented.

However, LAN and HNA had a different experience. According to LAN, the school authorities provided him with full support during the trial, while HNA said that the authorities at her school always provided her with support so that she could continue her education.

"Because I was so upset, I didn't go to school for two months. I fell really far behind, and the National Examinations were coming up. But the teachers told me that they understood why I was angry, but that if I didn't go to school, I'd be the only one to lose. And all the money and time that had been spent up to now would be lost." (HNA, Yogyakarta).

### ***Vies of the children on the type of assistance that is needed***

The children said that questioning should be done by women. Supported by MFS, HNA commented as follows:

"When something like this happens to you, especially if you're a girl, the questioning should be conducted with the doors closed. It should be done by a woman, not a man. A woman will be more sensitive than a man." (HNA – Yogyakarta).

According to LAN, the government should help children like him by providing entertainment and recreational activities.

## **Views of the children on how to prevent sexual violence**

“Don’t hang out with men.” (LBE, East Nusa Tenggara)

As a result of her experiences, LBE was severely traumatized about men. So when asked how to prevent sexual violence, she said that children should stay away from them.

The views of the children were very much colored by what had happened to them. GCO, from West Nusa Tenggara, who had fallen victim to a tourist, commented, “We want to see all homo bules (Caucasians) being deported so that they don’t make any more victims.”

Meanwhile, LAN, WZH and MLZ (all from West Nusa Tenggara) said that perpetrators of sodomy should receive life imprisonment.

“They should be put away for life to teach a lesson to other homos.” (LAN, Mataram)

The girl victims of sexual violence from Kupang said that girls should be careful with people whom they didn’t know:

“You’ve got to be careful, don’t go off with someone you don’t know. There’s a friend of mine who was always hanging out with boys. I warned her, but she didn’t want to hear. In the end, the same thing happened to her as happened to me. She came to me crying, looking for advice.” (RRJ – East Nusa Tenggara).

“Don’t walk around in lonely places. If you want to go far, always go with your friends.” (IMJ – East Nusa Tenggara).

### **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

- The Indonesian government needs to accept that child victims of violence and exploitation are just that, victims, not criminals. In this regard, all local regulations that criminalize such children must be repealed, and new legislation passed criminalizing the “clients” of prostituted children.
- Many law enforcement officers employ investigation techniques that traumatize children. The Indonesian government must make every effort to improve the capacity of investigators so that they can apply investigation techniques that respect the dignity of victims. In addition, proper funding must be provided to special police units at the district level for the provision of child-friendly interview rooms.
- The investigation government must bear in mind article 39 of the Convention on the Rights of the Child, which requires that victims, including the victims of trafficking, be provided with recovery and reintegration services, and all other services, such as medical care and education, in an environment that respects their dignity and which is capable of assisting with their physical and mental recovery. Accordingly, the Indonesian government needs to immediately provide sufficient funding right down to the local government level for the bodies/committees established for such purposes. In addition, the government must establish a centralized data collection system for cases of sexual violence and exploitation that extends down to the district/municipal level.

## **Economic Explanation of Children**

### **Recommendations and concerns of the Committee on the Rights of the Child**

- In point 84 of its conclusions on the economic explanation of children, the Committee welcomed the establishment of the National Plan of Action on the Elimination of the Worst Forms of Child Labour as well as the State party's ratification of ILO Conventions No. 138 and No. 182 in 1999 and 2000, respectively. Nevertheless, it remains concerned at the high number of children, many of them under 15, still working in the informal sector, on fishing platforms, in factories, as domestic servants, on plantations, in the shoe, food and toy industries, in the mining and quarrying sector, and on the streets.
- In points 85 and 86, the Committee recommended that the government:
- Ensure that the National Commission on the Elimination of the Worst Forms of Child Labour reach and protect children employed in the informal sector, in particular domestic workers, prostituted children and children engaged in other types of exploitative labour;
- Ensure that the National Plan of Action against the Elimination of the Worst Forms of Child Labour is allocated sufficient resources and that its implementation is appropriately monitored.
- The Committee recommends that the State party continue its efforts to eliminate child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and access to education, as well as by developing a comprehensive child labour monitoring system in collaboration with NGOs, community-based organizations, law enforcement personnel, labour inspectors and ILO/IPEC.

## **IMPLEMENTATION IN INDONESIA**

The government of Indonesia has done quite a lot to address the problem of child labor, including the ratification of ILO Convention No. 105 on forced labor (through Act No. 18 of 1999); ILO Convention No. 138 on the minimum age for admission to employment (through Act No. 20 of 1999) and ILO Convention No. 182 on the worst forms of child labor (Act No. 1 of 2000). These are defined in the convention as:

*all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;*

*the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*

*the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*

*work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*

Following the ratification of the convention on the worst forms of child labor, the government issued Presidential Decree No. 12 of 2001, which set up the National Action Committee on the eradication of the worst forms of child labor, which subsequently prepared a National Action Plan to prevent and eliminate the worst forms of child labor in Indonesia. The government then enacted the 2003 Manpower Law (No. 13 of 2003), which also deals specifically with the issue of child labor.

At the local level, a number of provincial and district/municipal governments have also taken legal and administrative measures to outlaw the worst forms of child labor, including the government of Central Java Province, which issued Local Regulation No ... of 2008 on the eradication of the worst forms of child labor, North Sumatra Province, which issued Local Regulation No. 5 of 2004 on the prevention of the worst forms of child labor. At the district level, the government of Kutai Keranegara District has issued Local Regulation No. 9 of 2004 on the establishment of a child labor-free zone.

Nevertheless, the number of underage workers in Indonesia is still very high. IN 2007, the ILO said that their number stood at some 2.6 million. Even though this was a reduction on the 2004 figure of 2.8 million, it is clear that the number of child workers remains unacceptably high. According to another ILO survey, some 40 percent of child workers are employed in agriculture. The three provinces with the highest number of child workers toiling on farms and plantations are North Sumatra (155,196 children), Central Java (204,406) and East Java (224,075).<sup>54</sup>

According to a statement from the chair of the local legislature's special committee charged with drafting a Child Protection Regulation, there are some 8,000 child workers who have dropped out of school, although it is widely believed that the figure is higher.

It is interesting to note that in the government's report for the first reporting period, it was stated that the rate of increase in the number of child workers in urban areas (5.1 percent) was higher than in rural areas during the 1990-1998 period. However, the situation was different in 2006 and 2007, when statistics from the Central Statistic Bureau showed that the percentage rate of increase was higher in rural areas at 3.2 percent (2006) and 6.6 percent (2007) compared with urban areas on 1.2 percent (2006) and 2.4 percent (2007).

One group of child workers consists of domestic helpers. Research conducted by the ILO and the University of Indonesia found that in 2002-2003 there were some 700,000 children working as domestic helpers, with more than 90 percent of these being girls.

At the time of their recruitment, children who work as domestic helpers are frequently not fully informed about their hours, the work involved and so forth.

In its third and fourth periodic reports, the government acknowledged the lack of accurate and comprehensive data. In fact, much of the data that is available is collected by international organizations like the ILO, in collaboration with non-governmental organizations and universities. The government of Central Java, for example, has admitted that it has not data whatsoever on the number of domestic helpers in the province, despite the fact that its Manpower Agency is required to conduct monitoring on child labor.

Another issue that was not referred to in the government report, despite the fact that it is crucial, is the long hours worked by children, particularly domestic helpers. In addition, children are also often required to work in hazardous conditions. This is unacceptable bearing in mind that the Manpower Act

2003 (No. 13 of 2003) provides that children may not work more than 3 hours a day, as well as other requirements concerning their working conditions and environments, which must not interfere with their physical, mental and social wellbeing, or their education.

### ***Situation and views of children***

“In reality it shouldn’t be allowed. It’s the responsibility of parents to earn money. Children should be entitled to play, go to school, participate, and not have to go out to work.” (NMS, 17 years of age, boy).

NMS statement was one of the comments expressed by children during the consultations when discussing the situations they found themselves in.

The consultations with children on child labor involved 10 children (3 boys and 7 girls), all of whom were from Central Java and ranged in age from 14 to 17. Of these 10 children, three worked in the garment industry (small businesses), one boy in a yarn factory and one girl in a photo printing shop. They also had previous experience working in other places, such as shops, fireworks factory and small garment businesses. The other five girls worked as domestic helpers, and all lived with their employers. As regards educational status, among those working in the non-domestic sector, four had graduated from junior high school (2 boys and 2 girls), while one boy had graduated from elementary school. Among the domestic helpers, two of the children were attending junior high school and one high school. Meanwhile, the other two children had not continued their education after junior high school.

The dominant reason for them seeking work had been the fact that they had left school for various reasons. As stated by NMS from YMT,

“When I graduated from junior high school I was 15. Instead of hanging around doing nothing, just getting bored, helping my parents. I was bored at school, I was hit by the teachers.” (NMS, 17 years of age, boy).

“My parents didn’t have the money to send me to high school. There was nothing for me to do at home. So I started working in November 2007. I was 16.” (YMT, 16 years of age, girl).

As stated above, the reasons the children sought employment included boredom and nothing to do at home.

### ***Methods and processes in recruiting child workers***

Those who recruited the child workers tended to be people who were known to them or who had links with their families. All of the participants in the non-domestic sector worked in small industries or businesses where no special skills were required. In addition, no formal requirements were need to get a job. The children would be simply introduced to the employer, and if accepted would start working straight away.

NMS, 17 years of age, said he had been helped by his uncle to get a job in a small sewing business. However, he only kept on for 2 months in the job as business was poor. He then got a job in another small business doing the same kind of work.

In ASL’s case, she had held a number of different jobs, and received information on employment opportunities from the brother of a neighbor, friends and relations.

“I started working when I was 13, straight out of elementary school. I heard about the job from a brother of our neighbor. So I decided to try it. That was the start. I started out in SRG. After that I moved to SDK. I was there for a year. Then I got a job with HDN (SRG). After half a year, I was brought to NBC. Then I went home again. After that I went back to SRG, which is in Pdg. When I left there, I came here to NGL. I heard about the different jobs from friends, recruitment agents, and also my brother. But moving around is very tiring. In one place, the kids were really bad. So I moved. In another place the boss was really fussy, but clever at the same time. In Pdg, I had to look after two little kids – one was 2 and the other 3 months. It was exhausting. Now I’m with NGL.” (ASL, 16 years of age, girl”).

At the start of their employment, they were taught by other employees and in this was learned to do their duties themselves.

“Ono lowongan, trus diajak mase, butuh nyambut gawe nggo dolan dadi ora njaluk wong tuwo. Trus nembung juragane, trus nyang juragane di olehke, trus diajari milih benang” (TLD, 14 years of age, girl).

“Lots of my neighbors worked there, and they told me I should look for a job there as well. I spoke directly to the foreman, and he showed me what I had to do. So, I was put straight to work. Better have a job than sit at home watching TV.” (YSS, 15, girl).

According to DWA, 16 years of age, she only need one months to become expert at the work entrusted to her (sewing garments).

### **Working Hours and Workload**

One of the most serious problems that needs to be address is the long hours worked by children, which in general, at between 5 and 9 hours, are not much different from those worked by adults.

“We start at 8 am and finish at 3 pm. We go to work by bus, and have a break from 12 midday to 1 pm. We don’t get any meals allowance, so we bring our own food.” (WRF, 16 years of age, girl).

One child said that he only got a 5 minute break when there was a lot of work, like at times when there was a big demand for fireworks.

“I start work at 8 am and immediately start drying the wet fireworks. After that, I put the dry fireworks in packages. One package contains 10 fireworks. After packing, I put the packages in boxes – one box contains 50 packages of fireworks. I go home at 4 pm, but before knocking off, I collect the fireworks that have been drying and put them in boxes. It’s only ater this that I can go home. The work’s hard and I’m paid very little ... we get a break from 11:30 am to 12 midday. We get Rp 1000 for food, but it’s a coupon, not cash, but you can exchange it for cash as well as food. We’re supposed to get 1 hour for lunch, but we only get 30 minutes. Sometimes if there’s a lot of wok we’re order in again after only 5 minutes.” (YSS, 15 years of age, girl).

For the children who worked as domestic helpers and lived with their employer’s families, the worked more than 10 hours a day. The only rest the five domestic helpers who participated in the consultations got was in the afternoon when their employers were working at their offices and their children were at school.

“I get up at 3:30 am, wash myself. Then I boil water, cook rice, sweep the floor. After that, I say perform

morning prayers, and after praying I do the laundry. My boss goes out to work at 6 am, and I'm left looking after the little kids. At 8 am I bring them to school. Between 9 am and 12 midday, I clean up the house – mopping, sweeping up, arranging the beds. After that, between 11 am and midday, I feed the kids. Then the kids go to bed and I also grab a nap. But not for long. I get up again at 3 pm to bathe the kids. After they've washed, it's meal time again at 4 pm. From 4 pm to 5 pm, it's playtime and we all go out to the front. After that, I can rest until 7 pm, when its time for prayers. Then after praying I do the ironing until 10 pm." (NWA, 15 years of age, girl).

The most frequent issue that troubled the domestic helpers was that there employers would not give them any free time. The children lived in the homes of their employers, which was one of the reasons they lacked bargaining power. Four of the child domestic helpers were given no fee time at all, while one was given time off during the school holidays.

"I get no time off. There's no time off for domestic helpers. You just have to keep working, it's not like someone who works in an office. In an office they can take a week off, get public holidays, but a domestic helper gets nothing." (SNF, 16 years of age, girl).

The children who got no time off normally availed of their rest times to meet with friends of the same age (other domestic helpers) in the housing complexes where they worked and lived. According to ASL, she could normally spend three or four hours in her friends house on Saturdays and Sundays.

The description given above obviously means that children are being deprived of free time and recreation, and also has an impact on the growth and development of the children. The fact that they also have to do the same work as adults only serves to endanger their physical and mental wellbeing.

### ***Workmates of the same age***

Lack of supervision and uncontrolled supervision patterns are part of the reason why children are able to work in factories and companies. Two children from the non-domestic sector who participated in the consultations said that there were other children of the same age working with them.

"Lots, there's lots of Suko children working in the factories. Most of them are from around there. In my place, there 10 kids the same age as me." (YSS, 15 years of age, girl).

"There eight girls of between 15 and 17 working there." (WRF, 16 years of age, girl)

Another child said that there were no other children of the same age working with him. All of the other workers were 19 and over. Many small garment enterprises have only a few workers.

### **Knowledge of legislation outlawing child labor**

The majority of the children said they were aware that there were laws and regulations that prohibited children from working. They had heard about this from non-governmental organization workers.

Almost all of the participants said that children should not have to work. In fact, one participant, NMS, while he was not aware of legislation in Indonesia banning capital, nevertheless emphatically made the following statement:

“In reality it shouldn’t be allowed. It’s the responsibility of parents to earn money. Children should be entitled to play, go to school, participate, and not have to go out to work.” (NMS, 17 years of age, boy).

Five of the children from the domestic helper group all said that children should not have to work until they were 18.

“It shouldn’t happen. We’re only children. It’s not right that we should be working. Children want to enjoy themselves, they want to go out, they want to meet their friends, but you can’t do that when you’re working. In my opinion, we should be able to finish school first, up to high school at a minimum. Maybe to around 20.” (ASL, 15 years of age, girl).

Two other children said that children should be permitted to work to allow them to gain experience and learn skills. They also said that it was better than sitting at home doing nothing.

### ***Government Supervision and Responses***

To ensure the proper supervision of the manpower legislation, there is supposed to be monitoring. However, according to the children, no government inspectors had ever visited their work places while they were working. They said that only their bosses or employers conducted supervision in respect of the workers.

Only the child who worked in the fireworks factory said that they had ever been visited by an official for the purpose of collecting data on child workers.

“Someone came and took the details of the children.” (YSS, 15 years of age, girl)

However, YSS did not know why the official had visited the factory.

### ***Pleasant and Unpleasant Experiences***

The pleasant experiences related by the non-domestic sector children in their writings and statements mostly concerned the fact that they were earning money, especially if they faced no particular problems at work.

Going back to school and finding a nice employer were pleasant experiences identified by the domestic helpers. They also said that meeting with their friends was pleasant.

“It’s really nice to go back to school again, paid for by my employer. She never scolds me. When I’m out with the children, I meet up with lots of my friends. Also I’ve lots of friends at school. I can sit down and watch TV with my employer, I can joke and chat with her.” (YMT, 16 years of age, girl).

However, the non-domestic sector workers and the domestic helpers also had many unpleasant experiences to relate. Like TLD from the non-domestic sector, who had to carry heavy rolls of yarn. He had once collapsed under the weight.

“The work is really hard. OK, it’s not so hard, but the dust is terrible, you have to have a mask on.” (TLD, 14 years of age, boy).

Making a mistake during work also led to a bad experience for NMS as his mistake resulted in a customer complaining.

“When I was making the trousers, I sewed them up wrong. I undid the stitching but I made a rip. I was really shouted at by my boss, and was given hard work to do. I had cut my finger with a needle so it was difficult to do sewing. Kalo membuat klambi kan modele neko-neko, nek modele angel kan tekok bosen disek, kesuwen. Regane cuma bedo 2000, padahal nek modele gampang iso njaet klambi loro. Diunek unek ke uwong karena njahit celana belum selesai” (NMS, 17 years of age, boy).

The domestic helpers also had many unpleasant experiences to relate, such as that of ASL:

“I don’t feel happy. If I make a mistake I get really worried. Having problems like that makes me fed up. If I make a mistake, I get scolder. I was even hit once. If I don’t want to help madam, she pinches me or does something else. She once tied me up. Just because I was playing one night, I was ordered to go home. I didn’t want to go home. She kept shouting and shouting at me. The door was locked. I could do nothing but cry. And then the kids clothes, I have them all neat and tidy, and then the kids mess them up again, even though they’re already big.” (ASL, 17 years of age, girl).

Being given heavy work, being scolded, and even not being paid for their work were some of the other unpleasant experiences related by both the non-domestic sector children and the domestic helpers.

These problems arise clearly because the children are placed in hazardous conditions and situations, where they run a high risk of being injured.

### ***Complaints and responses***

Protection for child workers is of the utmost importance as their physical and mental condition is not sufficiently developed for performing work. However, both their bosses and overseers seem to view the problems of child workers as being unimportant. In some cases the children have to themselves overcome the problems they face in their workplaces.

“I once was helped to buy a mask. I’ve also been given soda to help clean out my lungs.” (TLD, 14 years of age, boy).

Child workers lack bargaining power and are consequently exploited by their employers and supervisors. If they complain that their work agreements have been broken, they are more than likely to be threatened. This was the experience of YSS when she worked in the fireworks factory.

“They promised me a one hour break, but I only ever got 30 minutes. Sometimes we were ordered back in again after only 5 minutes. I once protested, but it was no good. They said if I wanted to leave, go ahead.” (YSS, 15 years of age, girl).

### ***Health services***

Unsuitable work environments, particularly in factories that use hazardous substances, are obviously very injurious to children’s health. Protection of workers health and safety is provided for by the Manpower Act. Of the five non-domestic sector child workers, the majority said that they had been assisted by their employers when they were sick. TLD, NMS and DWA all said that if they were sick, their bosses would bring them to a doctor, buy them medicine and bring them home.

However, the girl who worked in the fireworks factory said that very little assistance was available to employees if they got sick. Both she and a friend of hers who had fell ill at work were told to go home on their own by their boss. According to the child, the company should have been responsible because the girls had fallen sick due to the chemicals used in making the fireworks.

Among the illnesses that had afflicted the children were sore eyes, being cut with a needle, stomach problems, backache, lung problems, stiffness, sore legs, fatigue, stiff neck, pins and needles in the legs, getting an electric shock to the leg.

## **RECOMMENDATIONS OF THE NATIONAL NGO COALITION**

- The government needs to formulate strategies to prevent children from working in hazardous workplaces. This effort would be helped by the provision of free education to all children so that they have the option of staying on at school.
- The provision of access to education for child workers who want to return to school.
- Firm action needs to be taken against those who exploit children economically so as to demean their dignity and interfere with their physical and mental development.
- Better supervision is required in the industrial sector, including both large and small businesses, and the domestic sector so as to ensure that children are not employed.

### ***Sale, trafficking and abduction***

Concerns and recommendations of the Committee on the Rights of the Child:

The Committee welcomes the endorsement by the State party of relevant international and regional agreements such as the Regional Commitment and Action Plan of the East Asia and Pacific Region against Commercial Sexual Exploitation of Children of 2001 and the Yokohama Global Commitment of 2001. The Committee further welcomes the launching of the National Plans of Action for the Elimination of Commercial Sexual Exploitation of Children and on the Elimination of Trafficking in Women and Children in 2002.

The Committee is nonetheless concerned at the lack of awareness in the State party on this phenomenon, at the insufficient legal protection for victims of trafficking, and that few measures have been taken to prevent and protect children from sale, trafficking and abduction.

The Committee recommends that the State party:

Upgrade its system of data collection to cover all forms of sale, trafficking and abduction of children, and ensure that all data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects;

Establish an appropriate definition of trafficking, increase legal protection for child victims, take effective measures to strengthen law enforcement, and intensify efforts to raise awareness in communities about the sale, trafficking and abduction of children;

Seek to establish bilateral and multilateral agreements with neighbouring countries to prevent the sale, trafficking and abduction of children, and facilitate their protection and safe return to their families;

Seek cooperation with and assistance from, inter alia, UNICEF and IOM.

## IMPLEMENTATION IN INDONESIA

Various efforts have been made by the government but the number of victims of human trafficking, particularly children, continues to rise. According to 2009 data from National Police Criminal Investigation Department, the number of cases of trafficking between 2004 and 2008 consistently increased (see table 1):

Table 1: Recapitulation of Data on Human Trafficking Cases, 2004-2009<sup>55</sup>

NO	Year	Adult Victims	Child Victims	% Child Victims	Total Cases	PROCESS
1.	2004	103	10	9%	76	45 : P2I
2.	2005	125	18	13%	71	40 : P2I
3.	2006	486	129	21%	84	57 : P2I
4.	2007	334	240	42%	177	88 : P2I
5.	2008	519	88	14%	199	107 : P2I
6.	2009	145	53	27%	102	41 : P2I

The above table also shows that that not all of the cases uncovered are processed in accordance with the law. Even when they are so processed, as of the date on which the data was collated, they were still at the P2I stages, meaning that no final decision had been arrived. Further information is needed as to which legislation is applied when such cases are processed.

In its report, the Indonesian government said that it had enacted the People Trafficking Act 2007 (No. 21 of 2007). Article 17 of this act provides that should a victim of trafficking be a child, then the sentence that may be imposed on the perpetrator shall be increased by one third. Similarly, Indonesia has taken strategic steps by designing and implemented the National Action Plan on the Eradication of the commercial sexual exploitation of children, which is enshrined in Presidential Decree No. 87 of 2002, the National Action Plan on the Elimination of Trafficking of Women and Children (Presidential Decree No. 88 of 2002) and the National Action Plan on the elimination of the worst forms of child labor (Presidential Decree No. 59 of 2002).

In line with the requirements set out in article 58 of the Human Trafficking Act 2007 (No 21 of 2007), the government has issued Government Regulation No. 9 of 2008 on the procedures and mechanisms for the provision of integrated services to witnesses and/or victims of human trafficking.

Furthermore, the government has issued Presidential Regulation No. 69 of 2008 on the division of duties as part of the effort to eradicate human trafficking. Also, in accordance with article of the Human

Trafficking Act 2007 (No 21 of 2007), the National Police Commander has issued Order No. 10 of 2007 on the organizational structure and working procedures of special service rooms and procedures for interviewing witnesses and victims. Finally, in accordance with the mandate set out in Government Regulation No. 9 of 2008, the State Ministry for Women's Empowerment and Child Protection has issued Regulation No. 01 of 2009 on minimum service standards in integrated service centers for witnesses and/or victims of human trafficking.

The Human Trafficking Act 2007 (No 21 of 2007) also provides to a limited extent for coordination in the area of human trafficking between ministries and between the central government and local governments, as well for coordination between economic policy and social policy. In order to further provide for coordination, as required under the Human Trafficking Act 2007 (No 21 of 2007), Presidential Regulation No. 69 of 2008 on the handling of cases involving human trafficking was issued on 6 November 2008.

The Human Trafficking Act 2007 (No 21 of 2007) also provides for the establishment of a coordinating board at the national and local efforts to coordinate all the efforts to eradicate human trafficking. This is complemented by the coordinating mechanisms set out in Presidential Regulation No. 69 of 2008 on the prevention and response to cases of human trafficking.

Government coordination in respect of cases of human trafficking covers coordination between ministries, coordination between the central and local governments, and coordination as between economic and social/public policy. In addition, article 18(4) of Presidential Regulation No. 69 of 2008 on the prevention and response to cases of human trafficking also provides for national coordination that also involves community organizations, non-governmental organizations, professional organizations, and academia, besides the already existing coordination between government and law enforcement agencies.

Furthermore, the Indonesian government has ratified the UN Convention against Transnational and Organized Crime by way of Act No. 5 of 2009. This was followed by the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Act No. 14 of 2009).

To date, a total of 305 special service rooms, or Women and Child Service Centers, have been established throughout Indonesia. Working groups have also been set up in a number of provinces and districts/municipalities, including West Java, East Java, North Sumatra, Tanjung Pinang municipality, Batam municipality, Riau Islands, Karimun District, Dumai municipality, Riau Islands, West Kalimantan, East Kalimantan, West Nusa Tenggara, and Buleleng District, Bali. In addition, local regulations on the eradication of human trafficking have also been issued in number of provinces, districts and municipalities, including West Java, Indramayu District (West Java), East Java, North Sumatra, Riau Islands, Riau, South Sulawesi, Lampung, North Sulawesi, Sambas District (West Kalimantan), West Kalimantan, East Kalimantan, and West Nusa Tenggara and East Nusa Tenggara. Furthermore, Action Plans have been adopted in a number of provinces, districts and municipalities, including West Java, Surakarta Municipality (Central Java), East Java, North Sumatra, Dumai Municipality (Riau Islands), West Kalimantan, the Riau Islands and Lampung.

In its report on the implementation of the Convention on the Rights of the Child to the Committee on the Rights of the Child, the Indonesian government stated that it had enacted the Human Trafficking Act

2007 (No 21 of 2007), article 17 of which provides that should a victim of trafficking be a child, then the sentence that may be imposed on the perpetrator shall be increased by one third.

Similarly, the government said that Indonesia has taken strategic steps by designing and implemented the National Action Plan on the Eradication of the commercial sexual exploitation of children, which is enshrined in Presidential Decree No. 87 of 2002, the National Action Plan on the Elimination of Trafficking of Women and Children (Presidential Decree No. 88 of 2002) and the National Action Plan on the elimination of the worst forms of child labor (Presidential Decree No. 59 of 2002).

### ***Compliance with national legislation with the UN Trafficking Protocol***

Under article 297 of the Criminal Law Procedures Code, human trafficking is prohibited in a general fashion, while article 83 of the Child Protection Act specifically prohibits human trafficking. Both of these instruments, however, fail to satisfy the standards of the Protocol as they only criminalize trafficking of people and children, but fail to define what the elements of the crime of trafficking are. Furthermore, in the absence of precedent, these instruments seem to be confined to the principle of criminalization (for example, the sale or purchase of a child). As a result, the majority of the actions defined as criminal in the Protocol, such as the recruitment, transportation, and receipt of a child for purposes of exploitation are not covered by these instruments.

However, in the Human Trafficking Act 2007 (No 21 of 2007), the definition provided in article 2 comes close to meeting the international standards, and prohibits all actions and actors, as defined in article 5 of the UN Trafficking Protocol, which provides that the state must criminalize persons who attempt human trafficking, act as accomplices or organize or cause other to organize human trafficking. These requirements are fulfilled by articles 8-11 of the Human Trafficking Act 2007 (No 21 of 2007).

Article 12 of the Human Trafficking Act 2007 (No 21 of 2007) criminalizes every person who uses or exploits a victim of human trafficking for sexual intercourse or other sexual purposes, employs a victim of human trafficking for purposes of exploitation, or profits from a victim of human trafficking. These provisions satisfy the basic demand for creative ways of addressing the problem of human trafficking, something that is not required by the Human Trafficking Protocol or other international instruments. In this regard, the government of Indonesia has shown its determination to provide maximum protection to children, going further than required under international law.

### ***No explanations on human trafficking.***

From the human rights context, particularly as regards the Palermo Protocol, the Human Trafficking Act 2007 (No 21 of 2007) also exhibits a number of weaknesses. One of these is the fact that it lacks a definition of child trafficking that accords with the Protocol to Prevent, Suppress, and Punish Trafficking in Persons (the Palermo Protocol). As a consequence, the Human Trafficking Act 2007 (No 21 of 2007) lacks more substantive provisions on child trafficking viewed from a human rights perspective.

The Human Trafficking Act 2007 (No 21 of 2007) also provides no exceptions. It fails to recognize the vulnerability of children and that children cannot agree to be exploited. It fails to criminalize human trafficking without have regard to the modus employed by the perpetrator. If a child is trafficked for purposes of exploitation without having regard to the element of modus, this will not be covered by the Act. While it may help protect children from trafficking, it fails to fulfill the minimum standards required by international law.

## ***Definition of the child in the Human Trafficking Act 2007 (No 21 of 2007)***

The definition of the child given in the Human Trafficking Act 2007 (No 21 of 2007) is a person under the age of 18, including unborn children. Besides not being in line with the definition given in the Palermo Protocol, which states that a child is every person under the age of 18, the use of the term “unborn child” in the Human Trafficking Act 2007 (No 21 of 2007) fails to explain who the victim is in such a case – is it the expecting mother or is it the fetus? If the child is still in the womb, how form of exploitation is it suffering? This is important bearing in mind that besides the process elements involved in human trafficking (recruitment, movement and receipt), there is also the question of exploitation.

One of the implications of this is that a fetus born to a trafficked mother will also be a child victim of trafficking.

## ***Compliance of national legislation with the Optional Protocol to the Convention on the Rights of the Child on the the sale of children, child prostitution and child pornography***

Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography requires the state to employ extraterritorial jurisdiction to hold Indonesian citizens and residents to account for involvement in the commercial sexual exploitation of children, including the trafficking of children for purposes of commercial sexual exploitation. While the Criminal Law Procedures Code does allow for extraterritorial jurisdiction in respect of crimes committed by Indonesian nationals abroad, it fails to do so in the case of permanent residents (see article 4). Meanwhile, the Child Protection Act does not mention extraterritorial jurisdiction, and does not refer to the relevant provision of the Criminal Law Procedures Code, thus giving the impression that the crimes established by the act only refer to crimes committed in Indonesia. As a consequence of this, Indonesian law fails to comply with the prevailing international standards in this regard, as set out in the Optional Protocol to the Convention on the Rights of the Child on the the sale of children, child prostitution and child pornography.

## ***Local Regulations***

Indramayu District issued Local Regulation No. 14 on the prevention and prohibition of trafficking for purposes of the commercial sexual exploitation of children in 2005. This Regulation was issued on 10 November 2005 and came into effect on the same date. However, it suffers from a number of weaknesses, namely:

1. It is of very limited scope as it only applies to trafficking for the purpose of the commercial sexual exploitation of children. Consequently, it does not cover trafficking of migrant domestic helpers. This is despite the fact that trafficking for non-sexual purposes is a major problem in Indramayu. As a result of the limited scope of the Regulation, women and children trafficked for non-sexual purposes are unprotected.
2. No definition of child trafficking is given in the regulation, and so it is not in line with the Palermo Protocol. In fact, the regulation appears to treat the problem of child trafficking from the perspective of adults.
3. The issuance of this regulation should be seen in the context of the mandate set out by Act No. 7 of 1984. Unfortunately, Act No. 7 of 1984 was not included in the Acts that were used

as references in the regulation. The failure to do so shows that (a) a lack of gender sensitivity in dealing with the problem of trafficking for purposes of the commercial sexual exploitation of children. This issue is apparently only seen as a question of protecting children from trafficking, regardless of their gender, despite the fact that girls are more vulnerable to such trafficking than boys. This type of misplaced thinking has serious implications. For example, the focus of the efforts to prevent child trafficking is placed on education, without having regard to the practice of parents marrying off girls for the purpose of allowing them to be sold as commercial workers. Accordingly, girls will continue to be victims of trafficking until such time as interventions are made for the purpose of reconstructing local values so as to make them less gender biased. Second, the distinction that is made between child protection and women's issues. In the human rights context, there is now a heightened awareness that upholding the rights of children is very closely linked with upholding the rights of women. In the World Fit For Children document produced by the 27th Special Session of the UN General Assembly (10 May 2002), it is stated that "The achievement of goals for children, particularly for girls, will be advanced if women fully enjoy all human rights and fundamental freedoms, including the right to development, are empowered to participate fully and equally in all spheres of society and are protected and free from all forms of violence, abuse and discrimination."

This means that the fulfillment of women's rights will encourage the fulfillment of children's rights, particularly in the case of girls. Furthermore, such distinction results in the state's interventions in the areas of child protection and upholding the rights of women being divorced one from the other.<sup>64</sup> It also of importance that the issue of trafficking in women and children be seen as a human rights issue.

### ***Dealings with the police and other components of the state apparatus***

For three of the participants in the child consultations, in their dealings with the police they were treated like criminals, rather than child victims of trafficking. This was the result of them having obtained false passports. HSM had the following experience:

"HSM, who comes from West Java, was recruited by a neighbor who offered her a job in Malaysia with a salary of Rp 900,000 per month. In reality, she had wanted to go to Saudi Arabia, but in the end she agreed to accept the neighbor's offer. Together with a group, she set off on her journey. She stayed for four days in Entikong. When she got to the border, she was arrested by the Immigration Service for using a false passport. She was rescued by a non-governmental organization which brought her to a shelter. At the time of the consultations, she was still living in the center.

TAL had a similar experience. She had run away from her employer and this brought her into contact with the police. The police attempted to extort money from her and to force her to have sex with them. Her story is as follows:

"TAL was arrested when the bus on which she was traveling was stopped and searched by the police. She was arrested because she had no ID documents. She had to pay 400 ringgit. She was allowed to resume her journey but had to pay again at every checkpoint along the road. TAL then met with someone who helped her return home by an illegal route. She was arrested again. She was asked to pay a bribe or to have sex with the officers. TAL opted to pay using the remainder of the money she had with her. In the end, she managed to return to her home village, but all of her money was gone."

AAS came into contact with the police in Malaysia when she fled from the home of her employer. She

asked for and was accorded assistance at the Indonesian consulate. At the consulate, she also came into contact with a non-governmental organization that subsequently helped her return home. Her parents were enraged when they found out what had happened to their daughter and reported the matter to the police. The person who recruited her was subsequently arrested by the police and brought to justice. She related her story in her own words:

“No long after that, me and a friend arrived at the Indonesian consulate. The gate was locked tight. We asked for permission to come in from the guard. When I told him what had happened to me, the guard opened the gate and brought us into the consulate, where a lady talked to us. I really felt safe there.

While I was in the consulate, I was questioned by the Indonesian police. They asked me about how I had got to Malaysia and where my passport was. They asked me nicely and didn't treat me badly. While I was at the consulate I spent my time sweeping up and mopping. I spent a week there, waiting for my case to be resolved by the consulate officials. In the end, my employer gave me my wages for the first time, a total of 250 ringgit. That's all I got for working for a year, it was ridiculous. By I had to accept it, what was most important for me was that I was going home to Indonesia, and would be together again with my family at home.

There were lots of women with the same problem as me in the consulate. Some of them had been there for a month. But I had to leave the consulate after they discovered my passport was fake. I packed my things twice after they told me I was going to be collected and brought home, but no one came.

The third time, I was finally collected by someone from a foundation to be brought to Entikong. On arrival in Entikong, I was brought home immediately. I was first provided with therapy and life-skills training by the foundation in Pontianak. I learned how to sow and do hairdressing there. I was also invited to travel a few times outside the area so as to tell my story about what had happened to me in Malaysia.

When my parents found out what had happened to me, they were really angry at the sponsors who had arranged for me to go to Malaysia, especially Abin, who was a neighbor from our village.

After that, I will never go back to Malaysia again to work. I'm afraid something bad might happen to me. I'll just stay at home, working for a small wage. But at least I won't be abused and I'll be near my family. I'm still very young and there's lots of things I can do.

After my case was finished and Abin and Ambong had been sent to jail, I worked as an assistant in a shop in Kambayan. But there's still one guy who hasn't been caught yet, Jus, one of Ambong's men. He's the one who brought us to Malaysia. I've heard rumors that Jus has fled to Malaysia. He hasn't been caught yet.”

## RECOMMENDATIONS OF THE NATIONAL NGO COALITION

- Based on the above, the National NGO Coalition has formulated the following recommendations:
- In line with the recommendations made in the implementation section, the Indonesian government must immediately ratify the Optional Protocol on the sale of children, child prostitution, and child pornography.
- The Indonesian government needs to amend the Human Trafficking Act 2007 (No 21 of 2007) so as to bring it into line with the Palermo Protocol.
- With regard to decentralization, the Indonesian government needs to create a mechanism for greater interagency coordination, including between law enforcement agencies at the district/municipality levels, in the areas of prevention, investigation and the fulfillment of children's rights to reintegration and recovery.
- The Indonesian government needs to have regard to article 39 of the Convention on the Rights of the Child, which requires the state to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child. Accordingly, the Indonesian government must immediately allocated the necessary resources down to the district/municipal levels for bodies/committees set up for such purposes, and also a centralized data collection system for cases of sexual violence and exploitation that extends down to the district/municipal level.
- As regards transnational trafficking, the government of Indonesia, in line with the recommendation that it ratify the Optional Protocol on the sale of children, child prostitution and child pornography, must work closely with other nations.
- The Indonesian government must reserve the paradigm of viewing child victims of trafficking as criminals and rather position them as victims. This includes the criminalizing of those who falsify children's ID documents and the identification of those who have the potential to become involved in child trafficking.

## END NOTES

- 1 General Guidelines Regarding the Form and Content of Periodic Reports to be submitted by State Parties. KHA/C/58/ Rev.1, 29 November 2005
- 2 A Guide for Non Government Organizations Reporting to the Committee on the Rights of the Child, NGO group, Geneva, 2005, third edition.
- 3 Further regarding the principles as of Child Participation and Child Protection policy see in: Practice Standard in Children's Participation, International Save Children Alliance, 2005 and Child Protection Policy, International Save the Children Alliance, 2007.
- 4 Further elaboration on this subject, please see chapter 4: General Principles
- 5 The complete wording of article 10 Law No. 24/2000 is as follows:
  - a. Using statute for enactment of International Treaties if the treaties relate to:
  - b. matter concerning politics, peace, the state defence and security
  - c. changes of territory or provisions related to the territory limits of Republic of Indonesia
  - d. Sovereignty or the state rights to sovereignty
  - e. Human rights and environments
  - f. Loan or grant from overseas
- 6 See in law No. 10 /2004 concerning the drafting of law and regulation article 8 (a).
- 7 Please see the draft of government report 3 & 4 in: <http://www.kotalayakanak.org/images/data/KHA/KHA3dan4.pdf>
- 8 Regulation of State Minister of Women Empowerment Republic of Indonesia Nomor 3 year 2008 concerning implementation guidelines of child protection.
- 9 Further elaboration on birth registration system is discussed in chapter 5: civil rights and freedom.
- 10 See in the Implementation Handbook for CRC, Fully Revised Edition, Unicef, 2002 page 1 and following pages
- 11 Media Indonesia online accessed in 17 Januari 2010
- 12 (<http://malangraya.web.id/2008/10/30/angka-pernikahan-dini-naik-500/>, accessed 15 Mei 2010).
- 13 Read in Indonesia: Implication of SKB on Ahmadiyah: Update Briefing, ICG, July 2008
- 14 A Preliminary Report of National Commission on Human Rights on the Ahmadiyah case, 2007.
- 15 Investigation Team Report on the fulfillment of civil rights and politic, National Commission of Human Rights 2009.
17. Furthermore read Law No. 23/2004 concerning Domestic Violence, especially the criminalization articles; 44-53
18. See in "Someone that Matters: the Quality of Care in Residential Cares in Indonesia, Depsos, Save the Children, UNICEF, 2007
- 20 Further read UN Declaration on Social and Legal Principle Relating to the Protection and Welfare of Children, with Special Reference to the Foster Placement and Adoption Nationality and Internationally. A/RES/41/85
- 21 A Rapid Assessment of Child Residential Care in Post-Tsunami Aceh, 2006
- 22 Meanwhile, the 2007 give an estimate estimated 5000-8000 child care institutions, subsequent work including the development of a national database on children in alternative care is showing that the actual number is likely to be closer to 8000
- 23 While the 2007 Research gave an estimate of 5000-8000 childcare institutions, subsequent work including the development of a national database on children in alternative care is showing that the actual number is likely to be closer to 8000.
- 24 A Rapid Assessment of Children's Homes in Post-Tsunami Aceh (2006) The Ministry of Social Affairs and Save the Children; A Rapid Assessment of the Islamic Boarding Schools (Dayahs) in Post-Tsunami Aceh (2007) NAD Department of Education, Save the Children and Unicef; 'Someone that Matters': the Quality of care in Childcare Institutions in Indonesia (2007) The Ministry of Social Affairs, Save the Children and Unicef; Reports from the Child led Research in childcare institutions in West Kalimantan and Maluku (2008) Save the Children.
- 25 A Rapid Assessment of Children's Homes in Post-Tsunami Aceh (2006) the Ministry of Social Affairs and Save the Children; A Rapid Assessment of the Islamic Boarding Schools (Dayahs) in Post-Tsunami Aceh (2007) NAD Department of Education, Save the Children and Unicef; "Someone that Matters", the Quality of care in Childcare Institutions in Indonesia (2007) Ministry of Social Affairs, Save the Children and Unicef; Reports from the Child led Research in childcare institutions in West Kalimantan and Maluku (2006) Save the Children.
- 26 Pasal 7 Peraturan Pemerintah No. 41/2007 tentang Organisasi Perangkat Daerah.
- 27 Pasal 42 Peraturan Pemerintah No. 41/2007 tentang Organisasi Perangkat Daerah.
- 28 Awaluddin, Child Soldier Global Report, 2008.
- 29 Source: Child Soldiers Global Report, 2008.
- 30 Source: Child Soldiers Global Report, 2008.
- 31 Anto Sangaji, Beberapa Catatan Mengenai Kerusakan di Poso, paper presented at the meeting of NOVIB Partners in Jakarta on 26 July 2000, reprinted in "Pemutakhiran Data dan Analisis Situasi Perlindungan Anak 2008," State Ministry of Women's Empowerment , 2008, p. 59.
- 32 Anto Sangaji, Beberapa Catatan Mengenai Kerusakan di Poso, paper presented at the meeting of NOVIB Partners in

- Jakarta on 26 July 2000, reprinted in “Pemutakhiran Data dan Analisis Situasi Perlindungan Anak 2008,” State Ministry of Women’s Empowerment , 2008, p. 59.
- 33 Interview with Drs. J. Saparcoly, Head of the Maluku Provincial Social Affairs Agency’s Rehabilitation Section.
  - 34 The Juvenile Justice Act 1997 employs the term “delinquent children”.
  - 35 Tempo Interaktif, 30 April 2007.
  - 36 Presented by Police Commissioner Khatarina Ekorini Indriati, SS, Unit III/PPA Dit. I, National Police CID, during the Seminar on Trafficking in Persons, Effective Criminal Justice Response to Trafficking, Bandung, Indonesia,, 29 October 2009
  - 37 National Socio Economic Survey of 1996.
  - 38 World Bank review of 2006.
  - 39 In the Middle Term Development Plan of 2004-2009, a number of problems have been identified as priorities in the education sector:
    1. Low level of community’s education.
    2. The dynamics in a change of the populatio structure have not been fully overcome in developing education.
    3. A wide gap in education level still exists in the community, for instance the rich and the poor, men and women, people living in cities and those living in villages.
    4. Educational services, particularly those meant for junior high school and higher have not been provided sufficiently.
    5. The quality of the population is relatively low, thus inadequate to fulfill the needs of students.
    6. Educational development has not managed to fully increase the graduates’ capacity in entrepreneurship.
    7. The higher education is still faced with the difficulties in developing and creating technology.
    8. Education management is yet to be implemented effectively and efficiently.
    9. Education development budget is inadequate.
  - 40 In the Strategic Meeting (Renstra) 2004-2009 of the National Ministry of Education, there is no program which is specifically intended for children in conflict and natural disaster areas.
  - 41 Result of interview with one of the conflict victims in NAD, February 2009.
  - 42 No Formal School in Kebonwaru Prison, Pikiran Rakyat Daily, 22 November 2008.
  - 43 Attachment to Ministry of Education’s Decree No. 24 of 2007 regarding the standard of equipment and supporting equipment for Elementary School (SD/MI) Junior High School (SMP/MTs) and Senior High School (SMA/MA).
  - 44 Result of interview with the Head of Planning for Religion and Education, National Development Planning Agency, Jakarta, 10 February 2009.
  - 45 Result of interview with the Head of Informatics and Planning Department, Directorate of Elementary and Higher Education, Department of Education, Jakarta, 11 February 2009.
  - 46 The Citizenship Act 1958 defines a Republic of Indonesia national as:
    - a. a person who based on the laws and/or treaties, and/or regulations in effect since the Proclamation of 17 August 1945 have become citizens of the Republic of Indonesia;
    - b. a person who had the time of his birth had a legal familial relationship with his father, a Republic of Indonesia citizen, subject to the provision that the Indonesian citizenship commenced at the time the said legal familial relationship arose, and that it commenced prior to the person reaching the age of 18, or the person’s marriage should this have occurred before he reached the age of 18.
    - c. a child who was born within 300 days after the birth of his father where the father had at the time of his death was a Republic of Indonesia citizen;
    - d. a person whose mother at the time of his birth was a Republic of Indonesia citizen, provided that the said person does not have a legal familial relationship with his father;
    - e. a person whose mother at the time of his birth was a Republic of Indonesia citizen should the said person’s father be stateless or should the nationality of his father be unknown;
    - f. a person who was born within the territory of the Republic of Indonesia and whose parents are unknown;
    - g. a child who is found within the territory of the Republic of Indonesia and whose parents are unknown;
    - h. a person who is born within the territory of the Republic of Indonesia and both of whose parents are stateless or whose nationalities are unknown;
    - i. a person born within the territory of the Republic of Indonesia who at the time of his birth did not take the nationality of his father or mother, and for so long as he does not obtain the nationality of his father or mother;
    - j. a person who acquires Republic of Indonesia citizenship by virtue of the provisions of this Act.
  - 47 Survey result of the National Ministry of Education, 2004
  - 48 Sri Hartati Samhadi, SOS Indonesia’s Education Sector, Kompas Daily, 10 December 2007.
  - 49 Data from National Ministry of Education, 2001
  - 50 Data from the Ministry of Religious Affairs, 2002.
  - 51 Research Result of SMERU research institute, of 2003.

- 52 Discussion Meeting of End of Year Reflection by three NGO concerned in children's issues: KKSP in North Sumatra, (Center of Education and Child Rights Information), Centre of Child Protection Analysis (PKPA) and Pusaka Indonesia (PI) at the KKSP Secretariat in Medan, Friday, 26 December 2008.
- 53 Article 2 National Education Minister Decree No. 18 /2007 regarding teacher's certification.
- 54 This Act defines citizens of Indonesia as follows:
- a. People who based on the legislations/ agreement/regulations which take into effect since the independence on 17 August 1945 have already been a citizen of Indonesia.
  - b. People who at birth have a family, legal relationship with the father, a citizen of the Republic of Indonesia, with the understanding that the citizenship has taken into effect since the aforementioned family relationship, and that the relationship has existed before the person is 18 years old or before he is married under the age of 18.
  - c. Children who are born 300 days after his father passed away, if the father was an Indonesian citizen.
  - d. People who at the time of birth, the mother was a citizen of Indonesia, if at that time he did not have any family relationship with the father.
  - e. People who at the time of birth, the mother was a citizen of Indonesia, if the father has no citizenship, or his citizenship was unknown.
  - f. People born within Indonesia while his nationality is unknown.
  - g. Children found in Indonesia when the parents' identity are not known
  - h. People born in Indonesia, if the father has no nationality as long as the parents' nationality is not known.
  - i. People born in Indonesia who at the time of birth was not granted his father or mother's nationality provided he does not receive the nationality from the parents.
  - j. People who are granted of Indonesian nationality based on the constitution.
- 55 Awaluddin, Child Soldier Global Report, 2008.

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# **NAME LIST OF DOCUMENTATION (PHOTO/FILM) TEM DURING CHILD CONSULTATION**

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6. Maman Natawijaya (NAD, NTT, Sumatra Utara)
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# NAME LIST OF CHIL CONSULTATION PARTICIPANTS

1. Abdul Hadi (L)
2. Abdullah Al Anshori (L)
3. Aco Suardi (L)
4. Adelia Anggita (P)
5. Adelina Icha Lestari (P)
6. Adi Hidayat Pradana (L)
7. Adriana Aprilia Sriwahyuni (P)
8. Agi Irawan (Arai) (L)
9. Agil Prihambodo (L)
10. Agung Budiman (L)
11. Agung Joko Supriyanto (L)
12. Agus Alfiah (P)
13. Agus Mulyana (L)
14. Agustina (P)
15. Agustina Dini Hardiyanti (P)
16. Agustina Nurhayatik (P)
17. Agustinha Mendousa Peveira (P)
18. Ahmad Affandi (L)
19. Ahmad Wildan (L)
20. Aji Priyo Astopo (L)
21. Ajis Saputra (L)
22. Aldi (L)
23. Alexandro Chandra (L)
24. Alfrian Tahepe (L)
25. Al-Muhajirul Mi'raji (L)
26. Aminnatul Fitri (P)
27. Aminullah (L)
28. Amrizal (L)
29. Andi Nissa L. (L)
30. Andika (L)
31. Angelina (P)
32. Angga Ferdiansyah (L)
33. Anisa Tarawati (P)
34. Anita Julina (P)
35. Anna Rufaeda (P)
36. Anugrah Munthe (L)
37. Apriani (P)
38. Apriyanti (P)
39. Ardi Setiadi (L)
40. Ardiansyah (L)
41. Ardiwinata (L)
42. Ari Widodo (L)
43. Ari Widyaningrum (PRT) (P)
44. Arianto Silalahi Haloho (L)
45. Arin Perwitasari (P)
46. Arip Sutisna (L)
47. Ariyance Monika Ikari (P)
48. Arken (P)
49. Arnaldo Dasilva (L)
50. Atin (P)
51. Atma Wijaya (L)
52. Aubri Luthvia (P)
53. Ayu Amelia (P)
54. Azhari (L)
55. Bambang Kurnia Hamdali (L)
56. Bariqi Al Qadarun (L)
57. Bartolomeus Diaz (L)
58. Bastian Efendi (L)
59. Bertie Joue (Bobby) (L)
60. Bunga Ria (P)
61. Cintya Novianty (P)
62. Dadang Herdiana (L)
63. Dahlia (P)
64. Dani Lustanto (L)
65. Dani Ramdani (L)
66. Dani Setiawan (L)
67. Dani Setiawan (L)
68. Darvi Yanto (L)
69. Darwadi (L)
70. Darwiti (P)
71. Daryanti (P)
72. Dea (P)
73. Dede Setiawan (L)
74. Delavita Tiara Sanu (P)
75. Desi Manfa (P)
76. Dessy Anatasya (P)
77. Dessy Tafetin (P)
78. Desti Sesfaot (P)
79. Destiar Hananto (L)
80. Dewi Pariyanti (P)
81. Dhyhan (P)
82. Dian Laila Wahyuni (P)
83. Diki Subambang (L)
84. Dina Mardiana Nengsih (P)
85. Dwi Putra Ramadhan (L)
86. Dwi Windi Asih (P)
87. Dyah Ayu Intan Sulistyowati (P)
88. Edwin R Tilaar (L)
89. Ega Ramadhan (L)
90. Eka Purwanti (P)
91. Eko Rio Tumanggor (L)
92. Eksan Rania (L)

93. Elita Novita Sari (P)
94. Elsa Oktaviani (P)
95. Endin Saputra (L)
96. Engkus Manto (L)
97. Erfin (L)
98. Erlindawati Khoiriyah (P)
99. Erma Yuliana Wwelsinta (P)
100. Ermawati (P)
101. Ervi Riska Ratnasari (P)
102. Esry Yunita Bawa Loni (P)
103. Esther Gaspersz (P)
104. Fadel Hidayat Laitupa (L)
105. Faiz Agustian M (L)
106. Fajar (L)
107. Fauzi Iqbal Setia (L)
108. Febby Faralitha Tolimba (P)
109. Feri Fadli Lubis (L)
110. Feri Setiawan (L)
111. Filemon Aloysius Limba (L)
112. Filza Zakiya (P)
113. Fira Tiyasning Tri Utari (P)
114. Firdaus (L)
115. Firman Rizwan Supendi (L)
116. Firmansyah (L)
117. Firnandi (L)
118. Fitri Rahmawati (P)
119. Fitria Zahra (P)
120. Fitriyani (P)
121. Fitrotun Nissa (PRT) (P)
122. Florencia Irena Mahmud (P)
123. Florince (P)
124. Francelina Da R.A. da Silva (P)
125. Gabriel Mone (L)
126. Gabriella Hukum (P)
127. Galuh Marhta Tivani (P)
128. Geovani Agustini (P)
129. Gista Anisya (P)
130. Grace Given Nainatun (P)
131. Grace Ratulina S Panjaitan (P)
132. Grant Kurniawan (L)
133. Gunawan Tomia (L)
134. Hafizatuddiniah (P)
135. Hairil Anwar (L)
136. Haji Maiker Iba (L)
137. Hammatul Hayyi (P)
138. Hamzan Wadi (L)
139. Hasan Laitupa (L)
140. Helma Listiani (P)
141. Hendra (L)
142. Hendri Hidayat (L)
143. Hendri Kriswantoro (L)
144. Henita Ria (P)
145. Hesti Yuni Ernawati (P)
146. Hidayah Mandela Daulay (L)
147. Himpun (L)
148. Ibania Vivianti (P)
149. Idalia Bilaut (P)
150. Idayanti (PRT) (P)
151. Idin Supriyatna (L)
152. Imas Suhartini (Ade) (P)
153. Imron Nur Prasetya (L)
154. Indra Wati (P)
155. Ineu Puspita Sari (P)
156. Iqbal (L)
157. Irene Pratiwi Kanan (P)
158. Irfan Syahputra (L)
159. Iriyani (P)
160. Ispandiar (L)
161. Jamalina Lia Sari (P)
162. Jati Kayangga Akbar (L)
163. Jayanti Rebeka Rihi (P)
164. Jaynuddin (L)
165. Jinto (L)
166. Joko Mustain (L)
167. Jovanka Kiki Pramustyo (L)
168. Juli Septiadi (L)
169. Jumaat (L)
170. Jumaidi (L)
171. Jumardi (L)
172. Jumriah (P)
173. Kapiten Ginting (L)
174. Karningsih (Wiwini Rosita) (P)
175. Khaerul Anwar (L)
176. Khotijah (P)
177. Krisna Defri Setiawan (L)
178. Kukuh Adi Saputro (L)
179. La Ode imin (L)
180. Lena Lince Menanti (P)
181. Leni Desi Ana (P)
182. Lia Amelia (P)
183. Lia Astuti (P)
184. Lili Suriyani (P)
185. Linawati (P)
186. Lisa Astuti Puru (P)
187. Lusiana (PRT) (P)
188. M. Amirullah (L)
189. M. Atiqurrohman (L)
190. Mada Lena (L)

191. Magfira (P)
192. Maisura (P)
193. Malik Saifur Rahman (L)
194. Marcela Wafom (P)
195. Mardiana Nggata (P)
196. Maretifanny Chaesavia Mardia Awusi (P)
197. Maria Amata Murni Ningsih (P)
198. Maria Da Costa (P)
199. Mariana F. Sanam (P)
200. Marina Hetskace Tistilistin Lontaga (P)
201. Marselly Afasedanya (P)
202. Marteda Malelak (P)
203. Martunis (L)
204. Masriah (P)
205. Masrifun (L)
206. Mawaddah Warahmah (P)
207. Maxy Maxton Paais (L)
208. Maya Adiyani Sangadji (P)
209. Melati Kusniati (P)
210. Melia Handayani (P)
211. Mia Ardanata (P)
212. Michael Berhitu (L)
213. Michael Womsiwor (L)
214. Mira Noviaranti (P)
215. Miranda Dwi Sari (P)
216. Mirnawati Papalia (P)
217. Misra Yanti (P)
218. Moch. Fahmi Rizqi (L)
219. Mohamat Samsudin (L)
220. Muanisah (PRT) (P)
221. Mubarak Hamdan Umar (L)
222. Muh. Sal Sabil (L)
223. Muhajirin (L)
224. Muhamad Angga Dimas Saputra (L)
225. Muhammad Afifuddin Akbar (L)
226. Muhammad M (L)
227. Muhammad Radhyni (L)
228. Muhammad Satria Makmur (L)
229. Mulia Fathan (L)
230. Nahdi Abdul Latif (L)
231. Nanda (L)
232. Nalthia Aprilia Muabuay (P)
233. Nencia da Silva Pareira (P)
234. Neng Erni Supartika (P)
235. Ninih Darsinih (P)
236. Nining (P)
237. Nowindri Hilgutsiani Mariny Pratiwi Pitauki (P)
238. Nur Aspui (P)
239. Nur Hadija (P)
240. Nur Irma (P)
241. Nur Puji Triyanto (L)
242. Nuranisa Muslimin (P)
243. Nurgaiyah (P)
244. Nurhasanah (P)
245. Nurhidayah (P)
246. Nuri Andayani (P)
247. Nurrahmi (P)
248. Nurul Khotimah (P)
249. Ocong (L)
250. Osal Yanto (L)
251. Patrick Jackson Hetharie (L)
252. Prety (P)
253. Putri Novalina (P)
254. Radi Ahmad Nizal (L)
255. Raditiya (L)
256. Rahma La Hima (P)
257. Rahmania (P)
258. Rahmat Fauzi (L)
259. Rahmatul Maulidar (P)
260. Rahmawati (P)
261. Rainhat Mario Simanjuntak (L)
262. Ratri Mardiani Djiraudju (P)
263. Ray Trisani Hawu Haba (L)
264. Rendi (L)
265. Ridwan (L)
266. Rifval Lavisa Tanjung (L)
267. Rika (P)
268. Rilo Bagas Prakoso (L)
269. Rina Veronica (P)
270. Rina Wahyuni (P)
271. Rina Zahratunnisa (P)
272. Rini Anggariani Mautuka (P)
273. Rio Delfino (L)
274. Ririn Saputri (P)
275. Riswan Anwar (L)
276. Riyan Helfian (L)
277. Riyan Wahyuda (L)
278. Rizky Andrew Tangka (L)
279. Roby Rusmanto (L)
280. Romi Setiawan (L)
281. Rovi Enggayani (P)
282. Rr.Retna Ayu Mustikarini Kencanasari (P)
283. Rudiansyah (L)
284. Rusli (L)
285. Rya Vebryanie (P)
286. Safitri (P)
287. Salma Zahwa Shaqila (P)

288. Salman al Farisi (L)  
 289. Samsul Wahyi (L)  
 290. Samuel Jerry Imbiri (L)  
 291. Sandi Muharam (L)  
 292. Santi Dewi (P)  
 293. Santika Fatimah (P)  
 294. Sanuri (L)  
 295. Sapto Tirto Aji Setiawan (L)  
 296. Sara Umaina (P)  
 297. Sarfin (L)  
 298. Sebastio Yofi Fina (L)  
 299. Seli (P)  
 300. Septiannas Yogi (L)  
 301. Setio Raharjo (L)  
 302. Setya Nugroho Jati (L)  
 303. Shintia Eka Wulandari (P)  
 304. Silsilia Asiana (P)  
 305. Sischa Soares (P)  
 306. Siti Aisa (P)  
 307. Siti Aisa Monika (P)  
 308. Siti Annisa (P)  
 309. Siti Rahmawati (P)  
 310. Sodiman (L)  
 311. Sri Ayu Rizki (P)  
 312. Sri Pahriati (P)  
 313. Sri Rahayu (P)  
 314. Sri Ratih (P)  
 315. Sri Suyatmi (P)  
 316. Sri Wulandari (P)  
 317. Srikalsum Tuhuteru (P)  
 318. Sry Nurbaya Tuhuteru (P)  
 319. Subur Nurdin (L)  
 320. Suci Wardani (P)  
 321. Sudrajat (L)  
 322. Sugiyati (P)  
 323. Suirat (P)  
 324. Sujani (L)  
 325. Sukma (P)  
 326. Sulaiman (L)  
 327. Sumarlina (P)  
 328. Sumarno (L)  
 329. Suparlan (L)  
 330. Supraptiningsih (P)  
 331. Supriyanti Fransischa Soares (P)  
 332. Supriyanto (L)  
 333. Suriadi (L)  
 334. Suriati Siuata (P)  
 335. Suryana (P)  
 336. Sutika Anjasmara (L)  
 337. Sya'Baniyah (P)  
 338. Taufik Hidayat (L)  
 339. Teresa Gomo (P)  
 340. Theresia Agatha Antonie Sulistio Wati (P)  
 341. Thony Johari (L)  
 342. Tifani Lordes (P)  
 343. Timah (P)  
 344. Tina Ririn N (P)  
 345. Tini (P)  
 346. Tito Sanjaya (L)  
 347. Tun Mardiyah (PRT) (P)  
 348. Uun (P)  
 349. Vera Wally (P)  
 350. Verra Wati (P)  
 351. Wa Ode Diana (P)  
 352. Wahid Choirul Amin (L)  
 353. Wahyu Jati Nugroho (L)  
 354. Wandu (L)  
 355. Wanti Rohimah (P)  
 356. Wati (P)  
 357. Wildan Firdaus (L)  
 358. Wiro Saputra Ablelo (L)  
 359. Yhudias (L)  
 360. Yiyin Rika Mulyanti (P)  
 361. Yoga Irwanto (L)  
 362. Yogi Pramana Mukti (L)  
 363. Yoseph Edwin Tanaem (L)  
 364. Yudhistira Adi Kuncoro (L)  
 365. Yuli Nuryanti (P)  
 366. Yuliana Marsyana Manengtrey (P)  
 367. Yulius Denmich Alekhaunter Nabuasa (L)  
 368. Yuliyanti (P)  
 369. Yuly Wulandari (P)  
 370. Yustina Mendonca Babu (P)  
 371. Yusuf Samsy (L)  
 372. Zarina (P)  
 373. Zulaemi (L)  
 374. Zulaiman L. (L)  
 375. Zulmi (L)  
 376. Zurina Wati (P)  
 377. Zurrahmah (P)

# NAME LIST OF ORGANIZATION INVOLVED IN CHILD CONSULTATION

1. Children Media Center (CMC), Aceh
2. Child Fund –Kupang
3. CIS Timor Kupas
4. LPA -Kupang
5. Jaringan Kerja Anak (JARAK), Palu
6. Kalyanamandira, Bandung
7. Komite Perlindungan Perempuan dan Anak (KPPA), Palu
8. Komunitas Plumpang, Jakarta
9. Lembaga Advokasi Hak Anak (LAHA), Bandung
10. Lembaga Bantuan Hukum Perempuan Indonesia untuk Keadilan (LBH-PIK), Pontianak
11. Lembaga Pengembangan Masyarakat Mandiri (LPM2), Kupang (Organisasi Penyelenggara)
12. Plan Internasional - Kupang
13. Panti Asuhan Nurul Ikhlas, Ambon
14. Panti Asuhan Ebenhaezer-Desa Seberkat Kecamatan Tebas- Sambas
15. PERISAI, Semarang
16. Pondok Pesantren Al Ziziyah, Banda Aceh
17. Save The Children -Kupang
18. Sahabat Anak, Jakarta
19. Sanggar Akar, Jakarta (Organisasi Penyelenggara)
20. Sanggar Garasi, Jakarta
21. Sanggar Score, Jakarta
22. Social Action Research Institute (SARI), Surakarta
23. Solidaritas Anak Jalanan untuk Demokrasi (SALUD) Jakarta
24. WVI, Aceh
25. WVI, Jayapura
26. WVI, Kupang
27. WVI, Tentena
28. WVI, Wamena
29. WVI, Pontianak
30. Yayasan Anak Bangsa (YAB), Banda Aceh
31. Yayasan Anak Bangsa (YAB), Sambas
32. Yayasan Anak dan Perempuan, Jakarta
33. Yayasan Bahtera, Bandung (Organisasi Penyelenggara)
34. Yayasan Bhakti Luhur, Malang
35. Yayasan Ekaleo, Ambon
36. Yayasan Harapan Ibu, Jayapura
37. Yayasan Galang Anak Semesta (GAGAS), Mataram
38. Yayasan Galatea, Medan
39. Yayasan Indrianati (YIN), Yogyakarta
40. Yayasan KAKAK, Surakarta
41. Yayasan KKSP, Medan (Organisasi Penyelenggara)
42. Yayasan Panca Karsa, Mataram
43. Yayasan Permata Harapan Kita, Jayapura
44. Yayasan Persekutuan Pelayanan Masirey, Jayapura
45. Yayasan Rumah Kita, Jakarta
46. Yayasan Rumah Perempuan, Kupang
47. Yayasan Santai, Mataram
48. Yayasan Sekretariat Anak Merdeka Indonesia (SAMIN), Yogyakarta (Organisasi Penyelenggara)
49. Yayasan Setara, Semarang (Organisasi Penyelenggara)
50. Yayasan Tunas Alam Indonesia (SANTAI), Mataram
51. YLPS Humana, Yogyakarta (Organisasi Penyelenggara)

## LIST OF TERMS

BNN	Badan Narkotika Nasional
BAKORNAS PBP	Badan Koordinasi Nasional Penanggulangan Bencana dan Penanganan Pengungsi
CEDAW	Convention on the Elimination of All Discriminations Against Women
ICRC	International Committee of the Red Cross
IDP	<i>internally displaced people</i>
NAPZA	Narkotika, alkohol, psikotropika, dan zat adiktif lainnya
NGO	non-government organization
UNDP	United Nations Development Program
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UU PTPPO	Undang-Undang Pemberantasan Tindak Pidana Perdagangan Orang
SIN	<i>Single Identity Number</i>



