

ANNEX 5

Juvenile Justice System Threats the Life of Children

According to data obtained from Central Bureau Statistics up to July 2006, there are 136.00 children in Indonesia who have to deal with the law. It means, every years at least there are 4000 cases of violations of law committed by children.¹ They were brought to court for committing minor felony such as petty theft.² In general, most of them have no support from any lawyers or social services. It comes as no surprise that nine of ten children end up in correctional facility or penitentiary. Throughout 2000, according to police crime statistics, there are more than 11.344 children who are alleged in committing crimes. This number is an increase compared to 6.029 cases in 1999 and 10.025 cases in 1998.³ From January to May 2002, there are 4.325 juveniles imprisoned in correctional facilities all over Indonesia. Worse, the majority of those children (84.2%) are kept in penitentiaries for adults. This number does not include children jailed in police stations (*Polsek, Polres, Polda* and *Mabes*). In the same period of time, January to May 2002, there are 9.465 children bearing the status of *Educated Children* (Anak Didik) (Civil, State and Criminal Children / Anak Sipil, Anak Negara dan Anak Pidana) from all over Indonesia who are kept in correctional facilities and penitentiaries. The majority of them 53.3% are kept in penitentiaries for adults.⁴

One of the causes of such high number of children who have to deal with the law is the age limit used to categorize children as having the ability to be responsible for crimes they commit. Law no 3/1997 on Juvenile Court adopts 8 years as the age for children to be responsible for criminal actions.⁵

This gloomy portrayal was worsened with minimum number of juvenile correctional facilities in Indonesia. Up to 2002, there are only 17 correctional facilities.⁶ Below is a list of juvenile correctional facilities in Indonesia.⁷

No	Juvenile Correctional Facilities	Province
1	Medan juvenile correctional facility	North Sumatera
2	Tanjung Pati juvenile correctional facility	West Sumatera

¹ www.kompas.com/kompas-cetak/0310/08/nasional/61124.htm

² Actually, children in minor felony do not have to go through formal legal system, as regulated in *Beijing Rules* point 11.1,2,3,4; Juvenile Penal Code article 4, article 37 poin b; International Covenant for Civil and Political Rights, Article 24 point (1)

³ Purnianti, Mamik Sri Supatmi, and Ni Made Martini, *Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Justice System) di Indonesia*, UNICEF, Indonesia, 2003

⁴ Steven Allen, Introduction, in Purnianti, Mamik Sri Supatmi, and Ni Made Martini Tindak, *Analisa Situasi Sistem Peradilan Pidana Anak (Juvenile Justice System) di Indonesia*, UNICEF, Indonesia, 2003, hal. I

⁵ Usia minimum yang paling rendah bagi pertanggung jawaban pidana adalah 12 tahun. Lihat paragraph 16 GENERAL COMMENT No. 10 (2007) Children's rights in Juvenile Justice. Bandingkan dengan UU No.3 Tahun 1997 tentang Pengadilan Anak, Pasal 1 angka 1 yang menyatakan : Anak adalah orang yang dalam perkara Anak Nakal telah mencapai umur 8 (delapan) tahun tetapi belum mencapai umur 18 (delapan belas) tahun dan belum pernah kawin

⁶ Jumlah LAPAS ini tentu tidak sebanding dengan jumlah wilayah administrasi di Indonesia yang terdiri dari 33 propinsi, 349 kabupaten, dan 91 kota. Kemungkinan jumlah propinsi dan kabupaten/kota akan cenderung bertambah dengan fenomena pemekaran daerah

⁷ Purnianti, Mamik Sri Supatmi, dan Ni Made Martini, *op. cit*, lampiran 1

3	Pekanbaru juvenile correctional facility	Riau
4	Muara Bulian juvenile correctional facility	Jambi
5	Palembang juvenile correctional facility	South Sumatera
6	Kota Bumi juvenile correctional facility	Lampung
7	Male juvenile correctional facility	Tangerang
8	Female juvenile correctional facility	Tangerang
9	Kutoarjo juvenile correctional facility	Central Java
10	Blitar juvenile correctional facility	East Java
11	Sungai Raya juvenile correctional facility	West Kalimantan
12	Pontianak juvenile correctional facility	West Kalimantan
13	Martapura juvenile correctional facility	South Kalimantan
14	Pare-Pare juvenile correctional facility	South Sulawesi
15	Tomohon juvenile correctional facility	North Sulawesi
16	Gianyar juvenile correctional facility	Bali
17	Kupang juvenile correctional facility	East Nusa Tenggara

As a result, overcapacity seemed to be a trend in almost all juvenile correctional facilities. Below are descriptions of condition of some juvenile correctional facilities:

- Tangerang juvenile correctional facility with the capacity of 220 children has to accommodate 343 boys with age ranging 12 to 26 years old. As a result, 3 boys has to sleep without mattress in a room of 1 x 1,5 meter which is designed for one person only.
- Pondok Bambu juvenile correctional facility with the capacity of 504 people now accommodate 854 female juvenile convicts and 364 male juvenile convicts, ranging from 14 to 22 years old.⁸
- Kebon Waru correctional facility, juvenile convicts have to be imprisoned alongside with adult convicts. Juvenile convicts are gathered in a 5x10 meter room packed with 22 children. This correctional facility has 1.482 convicts, which exceeds its capacity of 780 prisoners.⁹

The abovementioned situation is due to Indonesian legal politics which do not adopt the best interest of the child paradigm. The current criminal justice system potentially threat children who have to serve under formal legal mechanism. It is because this mechanism does not accommodate the elimination of responsibility for children committing minor felony and children forced to commit minor felony. In other words, Indonesian criminal legal system tends to over criminalized people. As a result, this confirms the pattern of power relation between children and adult and pattern of patron-client relation between children and parents.

In the context of juvenile justice in Indonesia, such patterns of relation are apparent in children facing formal legal mechanism. The process of coercion starts from an institution for investigation up to the one implementing the verdicts, ranging from police force, attorney and judge up to penitentiary institutions. So children accused of crimes would have to undergo the stages of investigation, examination, indictment, court and execution.

⁸ www.kompas.com/kompas-cetak/0310/08/nasional/61124.htm

⁹ www.kompas.com/kompas-cetak/0411/26/muda/1400764.htm