

# THE JUVENILE JUSTICE SYSTEM IN INDONESIA

*By Harlan Mardite\**

## I. THE CURRENT SITUATION OF URBANIZATION IN INDONESIA

From 1971 to 2003 the percentage of the population living in urban areas rose from 17 percent to nearly 31 percent nationally. Surveys showed that the movement toward urban areas, particularly to West Java, and to south eastern Sulawesi (Celebes), Kalimantan (Borneo), and other islands, stemmed not from the innate lure of the cities but from the lack of employment in the countryside. Migrants seemed to view the pollution, crime, anonymity, and grinding poverty of the city as short-term discomforts that would eventually give way to a better life. For high-school and college graduates with no prospects for employment in the rural areas, this may in fact have been a correct assumption. But for those migrants without capital or qualifications, the main hope for employment was in the so-called "informal sector": street vending, scavenging, and short-term day labour. Many migrants also cultivated tiny but nutritionally important gardens. Most urban growth was in cities of more than one million in size. Although the capital enjoyed a disproportionate amount of the nation's resources, anthropologist P. D. Milone observed in the mid-1960s that "Jakarta has never been a true 'primate' city in terms of being the only centre for economic, political, administrative, higher education, and technical functions" in the way that, for example, Bangkok has been for Thailand.

Surabaya has always been a major import-export centre and a major naval station, and Bandung has been a centre for transportation, higher education, and industry. Nonetheless, in terms of population growth and as a symbol of the centralization of power in the nation, Jakarta has steadily grown in importance.

Like many countries, Indonesia experienced rising crime as a by-product of increased urbanization and the social and economic dislocations associated with national development. The scope of the crime problem was difficult to gauge, but conditions such as large numbers of unemployed or underemployed in the nation's cities, lack of sufficient jobs for high school and university graduates, and a breakdown in traditional systems of social control were often cited as responsible for the increase in crime. During the 1980s, the government sometimes resorted to extrajudicial means to control a perceived increase in crime, especially in urban areas.

## II. CHILDREN'S PROTECTION IN INDONESIA

The Government has stated its commitment to children's rights, education, and welfare, but has devoted insufficient resources to fulfil that commitment. Poverty has put education out of the reach for many children. Between 2000 - 2002 child labour and sexual abuse were serious problems. Among girls aged 7 to 12, 7 percent, or 923,000, do not attend school. Although girls and boys ostensibly receive equal educational opportunities, boys are more likely to finish school. A noted rights activist in West Kalimantan (Borneo) said many parents could not afford to educate all of their children, and concentrated their resources on their sons.

In 2002 the Government estimated the number of prostitutes under the age of 18 at 49,500, but the actual number may be much higher. In the country's biggest red light district, in Surabaya, 40 percent of the prostitutes are under the age of 18. Malnutrition is a growing problem, and more than 70,000 children live on the streets. Between 2000 and 2002 the Government made some progress in protecting children. On August 13, 2002 the President approved a National Action Plan on the Elimination of the Worst Forms of Child Labour. The plan consisted of 5, 10 and 20-year goals that included raising awareness, policy development, and intervention to eliminate the worst forms of child labour. On September 23, 2002 the DPR (House of Representatives) passed the National Child Protection Act, which addresses economic and sexual exploitation, including child prostitution, trafficking in children, and the involvement of children in the narcotics trade.

The legislation also covers adoption, guardianship, and custody, and requires parents who wish to adopt to practice the same religion as the child. The Ministry of Women's Empowerment, responsible for children's issues, opened up the Bill to NGO input. On August 16, 2002 former President of Indonesia, Megawati Soekarnopoetri, announced the upcoming education budget, which was \$1.46 billion (13.6 trillion rupiah), or less than 4 percent of total Government spending. Education experts welcomed the 15 percent

---

\* Public Prosecutor, Metro Lampung District Prosecution Office, Sumatra, Indonesia.

increase over the previous year's allocation; however, legislators and officials of the Ministry of National Education stated they would seek a significant additional increase. In August 2002 the MPR (People's Assembly) amended the Constitution to stipulate that a minimum of 20 percent of total state and regional budgets would be allocated to education.

By law children are required to attend six years of elementary school and three years of junior high school. In practice, however, the Government do not enforce these requirements. According to UNICEF (In their published report: *Situation Analysis of the Juvenile Justice System in Indonesia*), 96 percent of children aged 7 to 12 are enrolled in school; among children aged 13 to 15, 79 percent are enrolled in school; and among children aged 16 to 18, 49 percent are enrolled in school. The monthly fees for public schools varied from province to province, and were based on average incomes. Some parents found it difficult to afford the \$1.20 (10,650 rupiah) to \$5.00 (44,374 rupiah) monthly fee that most public elementary schools charged. It was unclear how many children were forced to leave school to help support their families. Conflicts disrupted the education of many children (2000 - 2002).

In Maluku (Molluca) and North Maluku, inter-religious violence displaced 452,000 persons, many of them children. Some children attended classes in makeshift classrooms at camps. In August 2003 in the Maluku capital of Ambon, UNICEF introduced its "school in a box" system to help compensate for the destruction of 118 schools. Muslim-controlled areas reported a severe shortage of teachers, as a majority of teachers in the Moluccas were Christian, and many of them fled to Christian controlled areas when the violence escalated. In Central Sulawesi (Celebes), bombings near schools disrupted education and displaced many of the children. The provincial capital of Palu suffered a number of such bombings, including two on September 19, 2003 which injured three persons. Clashes among student groups also drew increased scrutiny during the year. The country's infant mortality rate remains high. According to the Indonesian Child Welfare Foundation, there were 38 deaths for every 1,000 newborns between 2000 - 2002. Some NGOs attributed the problem to poor service at public health centres. The World Health Organization stated that prenatal care in the country was poor.

Malnutrition remains a serious problem, particularly among younger children. In 2001 UNICEF stated that 31 percent of the country's children under the age of five were moderately or severely underweight. This figure represented an increase from 26 percent recorded in 1999. On July 29, 2001 Aris Merdeka Sirait, the Head of the National Committee for Child Protection (KOMNAS Perlindungan Anak), called attention to the plight of child domestic workers. He estimated the child servant population at 1.8 million, based on 2000 data, and said such children faced sexual harassment and physical abuse by employers, due mainly to the absence of any legal protection.

A recent study by Family Health International (FHI) estimated the number of street children nationwide at 70,872. This was based on data provided by the Government and a network of NGOs that cooperate with Save the Children. Other sources provided higher estimates. East Java, Jakarta, West Java, North Sumatra, and South Sulawesi Provinces have the largest street children populations.

Child abuse is not prohibited specifically by law; however, there were no reliable sources on violence within families. Governmental efforts to combat child abuse have been slow and ineffective due to cultural sensitivities and a lack of monitoring mechanisms and verification.

Child prostitution is pervasive. NGO estimates of the number of child sex workers in the country range from 40,000 to 300,000. Although some teenage girls entered the sex trade knowingly, many were forced or tricked into the practice. At times law enforcement officials treated child sex workers as perpetrators of crime, rather than victims. The NGOs stated that fewer than 10 percent of child prostitutes were rehabilitated successfully (Local NGO's data, 2002). Women's rights activists and religious groups accused government officials, including police and soldiers, of operating or protecting brothels that employed underage prostitutes. In 2002 there were reports that corrupt civil servants issued identity cards to underage girls, facilitating entry into the sex trade. Sexual exploitation of boys was a major problem in Bali, according to NGOs active there. On July 24, 2004 in the city of Denpasar (Bali Island), 37 local NGOs discussed the problem and urged the Government to deport foreign paedophiles. Activists also described the island of Batam as a centre for child sexual abuse. On July 17, 2004 the Minister of Women's Empowerment identified Medan (capital of North Sumatra) and other parts of Sumatra as trouble spots for child sexual abuse.

Trafficking of children was a problem but has since diminished with the introduction of the Law for the Protection of Children's Rights 1997. There was no separate criminal justice system for juveniles. Ordinary courts handled juvenile crime, and juveniles often were imprisoned with adult offenders. However, today there is a separate criminal justice system for juveniles, although it is not fully implemented. In most cities there are now separate prisons for children and adults. The National Commission for the Protection of Children's Rights stated that more courts were starting to involve social workers in children's trials to safeguard children's rights. At the end of 2004 the Government still had not implemented the Juvenile Justice Law, which was approved in 1997 to establish a special court system and criminal code to handle juvenile cases.

A number of NGOs promoted children's rights. The National Commission for the Protection of Children's Rights campaigned for legislation to protect children. Save The Children worked with street children, while the Institute for Advocacy of Children (Lembaga Advokasi Anak Indonesia) struggled to end child exploitation on fishing platforms.

### III. THE CURRENT SITUATION OF JUVENILE DELINQUENCY IN INDONESIA

An increase in urbanization has increased the amount of juvenile delinquency. According to the criminal statistics released by the Police Department of the Republic of Indonesia between January - May 2002 more than 4000 Indonesian children are brought before the court every year for petty criminal offences, such as theft. According to the Police criminal statistics, there were more than 11,344 children that allegedly committed offences in 2003. From January until May 2003, 4,325 children were detained in prison throughout the country. Most of them (84.2 %) were detained in adult prisons. The children who were detained in police offices were not included.

The data on Juvenile Delinquency in Indonesia shows that quantitatively speaking, the phenomenon is not a serious problem, but qualitatively it can create feelings of fear in society. In Indonesia, a juvenile delinquent is a child under the age of eighteen who commits any act against the criminal law. One course of action in dealing with such offenders is to proceed through the courts, where the judge can decide between several available alternative punitive measures. However, it might well be decided that to proceed in this way would not be appropriate because the process might have a negative effect on the child's future. The Police Department social worker, therefore, is often faced with a critical decision: first, whether the case should proceed to court or the child sent back to his family or to an institution; second, whether the police have the authority to decide the case, or whether this authority rests with the court.

There are services available for juvenile delinquents both inside and outside institutions, based on a consideration of what is best for the child. Services are offered both by government and non-government organizations. The latter concentrate on dealing with juvenile delinquents and deviant behaviour as part of a community participation effort. In dealing with juvenile offenders, there are two kinds of policies: depending on the seriousness of the offence and the assessment of the offender, he may be processed through the court or may be referred to a government or non-government social institution.

The legal basis in dealing with juvenile delinquents is contained in the Juvenile Court Act (Law No. 3 year 1997). According to the Law, the judge has three alternatives in dealing with a child who commits crimes:

- (i) The child may be sent back to his parents or family without any sanction;
- (ii) He may be sent to a government institution without any sanction; or
- (iii) He may be found guilty and punished.

In relation to the second option, Article 24 para. 1 elaborates that the child can be sent to a reformatory or placed under the guardianship of a suitable foster family. In relation to the third option, Article 26 states that the maximum penalty for juveniles is a half of the punishment which would be given to an adult; in the case of an offence where the death penalty would be appropriate, for a juvenile the maximum sentence is 10 years imprisonment.

In general, the definition of a child in national legislation follows the standard set forth in the Child Welfare Act (Law No. 4 / 1979); that is, a person under the age of 18. The definition of a child is also set forth in other national legislation, namely the Juvenile Court Act, Law No. 3 year 1997.

#### IV. THE JUVENILE COURT ACT (LAW NO. 3, 1997)

##### A. General

The Indonesian government has ratified the Children's Rights Convention by Presidential Decree No. 36, 1990. The government also issued Law No. 3, 1997 (the Juvenile Court Act) and Law No. 5, 1998 to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). And afterwards, the government also issued Law No. 39, 1999 on Human Rights. And in 2002, Law No. 23, the National Child Protection Act, was issued by the House of Representatives. All of these national law instruments were deemed to guarantee the protection of children's rights while they have to face the law and have to follow the justice process. In accordance with the spirit of the law to give certain protection to children who are in the legal process and children who are in detention or imprisonment, it is an unavoidable reality that a limitation of statistical data on children who face the legal process is the main obstacle to analyzing such a situation. The age of criminal responsibility, which is different within institutions that handle children's cases, is one real example how the children's problem has to be maintained as a priority. Without closing our eyes against progress that has been achieved by the government of Indonesia in order to improve children's protection, supervision of the fulfilment of children's rights who face the law and children who are in detention and imprisonment should be intensively applied and regularly evaluated.

The Juvenile Justice System is every element of criminal justice which is related to the handling of juvenile delinquency cases. There are four stages of law enforcement in the juvenile justice system.

Firstly, the police as the formal institution when a delinquent juvenile faces the legal process for the very first time, which will decide whether the juvenile should be released or face the next process.

Secondly, the public prosecutor and probation system will also decide whether the juvenile should be released or face the juvenile court.

Thirdly, the juvenile court is the stage at which the child will either be free or be put in detention or given imprisonment.

Lastly, is punishment institution.<sup>1</sup>

There are two categories of children's behaviour which makes them liable to face the legal process, namely:

- a. Status Offence is behaviour which if committed by an adult would not be considered a crime, such as disobedience, absence from school or running away from home.<sup>2</sup>
- b. Juvenile Delinquency is behaviour which if committed by an adult would be considered a crime or violation of the law.<sup>3</sup>

One weakness is that the Criminal Code does not establish the age of criminal responsibility for more serious crimes. In addition, with the Juvenile Court Act, the concept of statutory crime is applied in a more general sense for all crimes perpetrated by children, although this Act comes under much criticism for setting the age of criminal responsibility too low at eight years. A child under the age of eight is free from all criminal responsibility (Art. 5, paras. 1-3). Under this Act a child is defined as a person under the age of 18 years who has never been married. However, the procedure for court hearings involving children is applicable for persons up to the age of 21 (Art. 4, paras. 1 and 2).

Indonesia's juvenile justice system is responsible for keeping citizens safe and rehabilitating delinquent youth. Meeting these two responsibilities has been the goal of the system since it was first implemented. The dilemma that has faced policymakers and citizens has been deciding which of the two aims should receive the most emphasis, and thus, funding. Should the state build more juvenile penitentiaries and immediately protect its citizens, or should it teach current prisoners life skills that will help them to live in such a way that they will be less likely to recapture. Or, in a separate, preventative effort, should the state

---

<sup>1</sup> Robert C. Trajanowicz and Marry Morash, *Juvenile Delinquency: Concepts and Control*, Prentice Hall, New Jersey, 1992, page 175-176.

<sup>2</sup> Harry E. Allen and Clifford E. Simmons, *Correction in America: An introduction*, 5<sup>th</sup> edition, Macmillan Publishing Co., 1989, page 393.

<sup>3</sup> *Ibid*, page 420-421.



use its resources to fund parenting, recreational, and mentoring programmes that build up youth and enable them to make good decisions early on. In the end, the state must balance effectiveness with urgency. Preventative and rehabilitative measures have been proven time and time again to significantly lower the likelihood of a youth offending (or re-offending). However, the results of prevention and rehabilitation programmes do not become apparent until years after they are begun, and few are willing to risk the immediate threat that could befall the community should funding of penitentiaries experience a shortfall while prevention and rehabilitation programmes are being established.

### **B. Limitation of Age**

According to Chapter 4 para. (1) of the Act, the minimum age children can be brought before the court is eight years old and the maximum age is 18 years old and never been married. Chapter 5 para (1) states that in case the child has not reached eight years old, he/she should be investigated by an investigator, and the investigator will decide whether the child should be returned to his parents (in case his/her character can still be changed) or to the social department (if there is no hope to change his/her character).

The children's limitation of age is a critical thing in a juvenile delinquency case, because it is used to determine their legal status, whether they can be categorized as a child or an adult. Certainty in the law regarding this is important for law enforcement on the front line in order to avoid an error in arrest, investigation, prosecution or judgment. This is a very important because it is connected with human rights. Regarding the limitation of age within Law No. 3, 1997, apparently Article 1 (1) is in harmony with Article 4 (1). Article 1 (1) states that: A child is a person in a juvenile delinquency case who has reached eight years old but has not reached 18 years old and never been married.

Article 4 (1) states that: The limitation of a naughty child who can be brought to the juvenile court is at least eight years old but has reached 18 years old and never been married.

The limitation of age abovementioned shows that someone who can be considered a child who can be brought before the court is limited between eight and 18 years old. A child under 18 years old but who has been married should be treated as an adult instead of a child. Therefore, he/she will not be processed based on the Juvenile Court Act, but based on the Criminal Code.

How to determine whether someone can be categorized as a child? In handling children's cases, law enforcers should be thorough by demanding an authorized certificate verifying the date of birth, such as a birth certificate. If he/she does not have such a certificate, it can be shown by another kind of document, such as an ID card. The effectiveness of such documents cannot be used as evidence in the court trial because there are certain conditions to treat some documents as evidence. In a criminal case the document should be admitted under oath. Comparing the limitation of age within the Juvenile Court Act with the limitation within Article 45 of the Criminal Code (no longer valid), it is apparent that in the Juvenile Court Act the limitation is higher. Within Article 45 of the Criminal Code the limitation is only under 16 years old and there is no minimum age, or distinction concerning whether the juvenile is married or unmarried.

### **C. Definition of Juvenile Delinquency**

The definition of children as stipulated within Article 1 (1) of Law No. 3, 1997 is someone who is involved in juvenile delinquency. The definition of juvenile delinquency in Article 1 (2) has two meanings:

#### 1. A Child who Commits a Crime

Even the Juvenile Court Act gives no further description, but it is understandable that an action by a child who commits a crime is not limited to actions that violate only the Criminal Code, but also violate other rules that exclude the Criminal Code, such as the Anti Narcotics Act, IPR Act, etc.

#### 2. A Child who Commits an Action that is Considered Forbidden for Children

The meaning of forbidden action for children is an action which is forbidden not only by the law but also by the norms which are applied in society. In this case the norms are the written or unwritten regulations, for example customary law or good manners and polite behaviour.

According to the above "1. A Child who Commits a Crime" is the appropriate definition of a child who can be brought before the court of juvenile delinquency.

#### **D. Detention for Juvenile Delinquency**

A juvenile who allegedly commits a crime can be detained in a detention centre. The Juvenile Court Act allows a law enforcer to detain a juvenile when the investigation process has been conducted. The child is detained after carefully considering the child's interests and society's interests.

The detention of a child who is involved in a criminal action, is fundamentally based on the Criminal Procedure Act. The actual reason for detention is based on potential evidence. Article 21 para. (1) of the Criminal Procedure Act stipulates three conditions regarding the detention, as follows:

- a. It is suspected that he/she may flee.
- b. He/she may damage or destroy evidence.
- c. He/she may repeat the crime.

The period of detention for such stage is different than stipulated in the Criminal Procedure Act. The Juvenile Court Act provides for a shorter period of detention compared with the Criminal Procedure Act. This policy was considered for the sake of the children. The Investigation process should be completed before the period of detention has finished. Otherwise, the suspect or defendant should be released.

#### **E. Legal Sanction against Juvenile Delinquency**

The Legal sanction against juvenile delinquency is stipulated in the Juvenile Court Act chapter III. There are two kinds of sanction: criminal sanction and measures.

##### 1. Criminal Sanctions

Criminal sanctions consist of the core penalty and additional penalty. There are four kinds of core penalties as stipulated in Article 23 para. (2), as follows:

- a. imprisonment;
- b. detention;
- c. fine;
- d. supervision.

Whereas additional penalties according to Article 23 para. (3) include:

- a. confiscation of certain things;
- b. the payment of compensation.

Compared with Article 10 of the Criminal Procedure Act it is obvious that there are four kinds of core penalties, as follows:

- a. death penalty;
- b. imprisonment;
- c. detention;
- d. fine.

It is obvious that the Juvenile Court Act does not provide for the death penalty for a juvenile. As we know in investigating and trying juveniles, we have to have regard for the child's interest. Children are our hope for the future and an asset for the country. They need guidance and protection in order to guarantee their physical and mental growth. In addition, under Article 26 (2) of the Juvenile Court Act, juveniles who commit a crime punishable by the death penalty or a life sentence, have their sentence reduced to a maximum of ten years.

Among those core penalties within the Juvenile Court Act, "supervision" is a new kind of special penalty for juveniles. The meaning of "supervision" is an act of supervision conducted by a prosecutor over a juvenile and the giving of guidance and counselling by society counsellors (*pembimbing kemasyarakatan*).

Regarding the additional penalty of the confiscation of certain things, the Juvenile Court Act does not give an example of the things that can be confiscated. Within the Criminal Procedure Act things that can be confiscated are evidence that can be brought before the court.

## 2. Measures

According to Article 24 para. (1) of the Juvenile Court Act, there are three kinds of measures, namely:

- (i) Return them to their parents.
- (ii) Send them to the State in order to receive education.
- (iii) Deliver them to the Social Department or other organization in the field of education and training.

In case a delinquent juvenile is returned to their parents, or foster parents based on a court verdict, the child will still be under the supervision of a social counsellor who will be involved in the juvenile's activities.

## **V. THE ROLE OF THE PUBLIC PROSECUTOR IN JUVENILE DELINQUENCY LAW ENFORCEMENT**

The Prosecution Service of the Republic of Indonesia is a Government institution that executes the state powers, especially in the field of prosecution, within the authority of the law and justice enforcement agencies and is headed by the Attorney General who is appointed by and responsible to the President. The Attorney General's Office, the High Public Prosecution Office and the District Public Prosecution Office are the executor of the state powers, especially in the field of prosecution, and they represent a single undivided entity.

### **A. The Duty and Authority of the Prosecution Service are as Follows (based on Article 30 of Public Prosecution Act No. 16, 2004):**

#### 1. In the field of criminal cases:

- (i) To institute a prosecution in criminal cases;
- (ii) To execute a judge's stipulation and law courts judgment;
- (iii) To supervise the execution of a verdict on parole;
- (iv) To conduct an investigation into a certain crime based on the Law;
- (v) To make a complete dossier of the case and to carry out the necessary additional examination.

#### 2. In the field of civil and administrative matters is to represent the Government or State in and out of court.

#### 3. In the field of security and public order:

- (i) To promote awareness of law in society;
- (ii) To take precautionary measures in law enforcement policy;
- (iii) To take precautionary measures in the circulation of printed matters;
- (iv) To supervise mystic beliefs or sects which can endanger society and the State;
- (v) To prevent the misuse and/or blaspheme of religion;
- (vi) To research and develop the law and gather statistics on crime.

#### 4. In addition to the duty and authority mentioned in this Act, the Prosecution Service could be given other duties and authority based on the law (Article 32).

### **B. Investigation Process**

The general public prosecutor after receiving the record of the case (preliminary) from the preliminary investigator, prepares the memory/contra appeal memory. At the investigation stage, the ordinary Police will be granted authority to act as investigators, according to Law no. 8 of 1981 of the Law on Criminal Procedure (Kitab Undang-undang Hukum Acara Pidana: KUHAP). These civil functionaries are especially authorized to act as investigators. Their competency consists of investigating the correctness of the criminal report filed concerning a juvenile delinquent. They are in a position to investigate persons and confiscate material which has a connection with a juvenile delinquency case which may be used as evidence in the criminal case. They also can ask for assistance from experts in the frame of their investigation. At the start and the end of the investigation they report to the State Public Prosecutor. This is in accordance with Article 107 of the Law of Criminal Procedure (KUHAP).

Hence, the success of prosecutors in using their prosecution authority in regard to juvenile delinquents depends, among other things, on the success of the police investigating officer.

**C. Prosecution Process**

After receiving the results of the investigation from an investigator, the prosecutor should examine it immediately and within seven days it is mandatory for the prosecutor to give an information to the investigator as to whether the dossier is complete or not. If the dossier is not yet complete, the prosecutor will return it to the investigator with instructions for it to be completed. Article 138 para. (2) of the Criminal Procedure Code stipulates that within 14 days the investigator should return the complete dossier to the prosecutor. After receiving the complete dossier, the prosecutor should create an indictment letter immediately (according to Article 54 of the Juvenile Court Act). Afterwards, the prosecutor will deliver the dossier and indictment letter to the court for trial. The court will determine the day of trial and the panel of judges who will handle the case.