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Rp.95.000
Reforming Indonesia’s juvenile justice system: Lost cause or worth the investment?

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There are stories from time to time in the local media about Indonesian children being locked up behind bars and facing prosecution for committing minor crimes. Some stories catch the public’s attention, such as the 2006 story of an 8-year-old boy who was sent to an adult detention facility in North Sumatra for assaulting his friend. He was 7 years old when the alleged assault happened. In 2010, a courthouse in Tangerang, outside Jakarta, was in the spotlight when 10 schoolboys between the ages of 12 and 16 were put on trial for gambling - which actually was little more than a game of coin toss. The children were found guilty by the court after a month in detention awaiting trial and were then returned to their families. Then there was the more recent story of a boy from Central Sulawesi accused of stealing a pair of sandals from a police officer, who then beat him up and arrested him.

The public reaction to such cases varies. Some say no youth misbehavior should go unpunished, while others, clearly appalled, mobilized to collect hundreds of sandals and brought them to police stations to shame the officer. The debate on how juvenile offenders should be handled is probably one where consensus will never be reached. Regardless of the pros and cons, the House of Representatives (DPR)
will have its hands full trying to finalize the long-awaited Juvenile Justice bill in August. The bill was only submitted last year as one of the national legislative priorities, but for many child rights advocates across the country, the journey began almost 10 years ago.

Despite having ratified the UN Convention on the Rights of the Child in 1990 and enacting Law No. 23 on Child Protection in 2011, Indonesia does not yet have a dedicated juvenile justice system. Law No. 3/1997 on the court, regulating the mechanism in contact with the law, is applied in the full criminal justice system that Children going through the system for the most part treated the same. Under the current mechanism, children under 18 years old can be pros-

When children go through trials, lawyers are rarely available for child offenders, and most lawyers and paralegals lack knowledge of child rights and juvenile justice. In most cases, children do not get prompt access to legal and other assistance because they have very little knowledge of the process needed to obtain help. There is no legal representation to question the validity of a detention and insist upon minimum due process guarantees for children accused of violating the law. Children brought before the formal justice system often experience many forms of ill-treatment, which can have devastating consequences for their well-being and development. There is no adequate monitoring and complaint-handling mechanism in place. Probation officers and social workers develop weak social inquiry reports, resulting in them not being considered seriously by the court in order to dispose of sentences.

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The Juvenile Justice bill was developed to replace the Juvenile Court Law with a more comprehensive law. Once adopted, the new law will increase the minimum age for criminal responsibility from 8 to at least 12 years old, institute diversion practices that allow children to be handled through mediation and facilitation at any stage of the formal proceeding, guarantee a speedy process when a child needs to go through the justice system and employ restorative principles involving family and community. The juvenile justice
A study conducted by the United Nations Children’s Fund and the University of Indonesia in 2007 concluded that more than 85 percent of juvenile cases received by the police were being processed further for prosecution.

system will uphold two main principles of rehabilitation and reintegration for children: (1) that any form of deprivation of liberty and/or incarceration of a child shall be a measure of last resort; and (2) that should a child have to be institutionalized, it shall be for the shortest period of time and include special protection procedures and mechanisms.

Reforming the juvenile justice system will protect the most vulnerable, and in the end benefit the well-being of children and society. It is highly critical that we also accommodate the protection of children coming into contact with the justice system as victims or witnesses. There is hardly any debate against that idea but making the case for protecting child offenders or those suspected of having broken the law is far more complicated and challenging. Whether children can be - and how they should be - held responsible for criminal actions are difficult issues to digest. On one side, some people believe that children cannot be held fully accountable for their criminal behavior in the same manner as an adult because in most cases they are unaware that their actions are wrong. On the other side, some believe that everyone should be held responsible for their mistakes and that most crimes are the result of a conscious decision and therefore should be punished accordingly regardless of age.

One argument that people usually table is that the number of crimes committed by children is increasing. While cases of sexual violence or murder by juveniles are infrequent, they invariably are reported in the media. This public exposure reinforces a general idea that criminal behavior has become more serious and children today seem to know more and mature faster than previous generations. This kind of thinking supports the notion that offenders should bear responsibility for criminal behavior regardless of their age.

On the contrary, the 2007 study by UNICEF and UI shows that most children (almost 45 percent) who end up in jail committed minor offences or petty crimes such as theft of less than Rp100,000 (around $11). Following that are cases of student brawls and drug abuse. More recent court records show that among the juvenile cases being brought before the courts in 2009, 53 percent were for theft, followed by persecution (8 percent) and drug abuse (6 percent). According to the Indonesian Probation Office, more than 90 percent of these children come from low-income families.

Is it true that juvenile crime is increasing? Based on the below data from the Ministry of Justice and Human Rights on the number of children in prisons and detention, we cannot confirm that assumption. There was an increase from 2009 to early 2011, but these figures do not necessarily prove there is an increase in juvenile crimes. In 2010, the Department of Corrections initiated a new database and information program and improved recording methods and provided more detail, but that did not mean
the number of inmates increased much.

The current justice system is still causing many children to end up in detention and prisons, serving sentences in those institutions for more than a year for relatively minor offences. The mechanisms to accelerate their release are supposed to be implemented to uphold the principle of “shortest period of time” imprisonment. However, implementation has reportedly been untimely due to a poor recording system that is not accessible to all children who are entitled to release, due to a lack of transparency and corrupt practices such as officials asking for money to process releases.

Another argument often used to question efforts to reform the juvenile justice system is that punishment is necessary so that children will learn the consequences of their actions. This is true when the response to a child’s offending behavior takes into account age and the need to promote the child’s recovery and reintegration. The objective of the treatment (or “punishment”) should be to reinforce the child’s respect for other people’s security and fundamental rights, and help the child resume a constructive role in society.

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Unfortunately, that is not the case with Indonesia’s current system. In addition to children being held in prisons and detention facilities throughout the country, other juveniles are in police and prosecutor cells awaiting further processing and remain undetected due to the absence of an adequate monitoring system. From the UNICEF and UI study, we learned that more than 85 percent of children awaiting trial and 57 percent of those who had been sentenced were put together with adult offenders in adult detention facilities. This is mostly because Indonesia only has 17 special juvenile prisons in its 33 provinces, which are listed below. Existing child care institutions run by the Ministry of Social Affairs do not have the capacity to accommodate any of these children.
<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Institution</th>
<th>Province</th>
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<tbody>
<tr>
<td>1.</td>
<td>Lapas Anak Medan</td>
<td>North Sumatra</td>
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<td>2.</td>
<td>Lapas Anak Tanjung Pati</td>
<td>West Sumatra</td>
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<td>3.</td>
<td>Lapas Anak Pekanbaru</td>
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<td>4.</td>
<td>Lapas Anak Muara Bulian</td>
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<td>5.</td>
<td>Lapas Anak Palembang</td>
<td>South Sumatra</td>
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<td>6.</td>
<td>Lapas Anak Kotabumi</td>
<td>Lampung</td>
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<td>7.</td>
<td>Lapas Anak Priyana</td>
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<td>9.</td>
<td>Lapas Anak Kutoarojo</td>
<td>Central Java</td>
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<td>10.</td>
<td>Lapas Anak Blitar</td>
<td>East Java</td>
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<tr>
<td>11.</td>
<td>Lapas Anak Sungai Raya</td>
<td>West Kalimantan</td>
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<td>12.</td>
<td>Lapas Anak Pontianak</td>
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<td>13.</td>
<td>Lapas Anak Martapura</td>
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<td>14.</td>
<td>Lapas Anak Pare-Pare</td>
<td>South Sulawesi</td>
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<tr>
<td>15.</td>
<td>Lapas Anak Tomohon</td>
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<td>16.</td>
<td>Lapas Anak Gianyar</td>
<td>Bali</td>
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<td>17.</td>
<td>Lapas Anak Kupang</td>
<td>East Nusa</td>
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Putting children in the same institutions as adult “criminals” renders them vulnerable. But sometimes it is the only option available, and at times is done to keep children close to their families so they can visit them inside the prison. It should also be underlined that conditions in dedicated facilities for juveniles are far from ideal for their development, and placing children in detention institutions is not the best solution. Neither is building more prisons for children, which is often proposed by the government.

In adult facilities, exclusive blocks are being provided for child detainees. However, the use of most basic facilities is still shared, exposing juvenile inmates to regular contact with adult detainees. The cells are frequently overcrowded, and children do not always have access to proper health care and education. They are also at risk of abuse and violence by other detainees and even by detention officials, as some institutions practice corporal punishment. These cases, however, remain hidden due to the lack of regular monitoring and effective complaint handling.

When facing incarceration, children are separated from their families, schools and communities. The existing juvenile prisons and correctional institutions cannot provide proper rehabilitation and reintegration due to lack of institutional capacity. The one-size-fits-all approach fails to address specific needs and problems, such as for drug-related offences. The activities are poorly developed and executed due to a combination of lack of resources and shortage of skilled staff. Religious counseling is the most common “treatment” available inside these facilities, instead of proper psychological treatment. This situation means that behavioral problems are not properly treated or are even left undetected.

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Pre-release and post-release care and monitoring, when they occur, are poorly overseen, worsening the challenges faced by the child in overcoming stigmatization, accessing services such as education or entering the job market. As a result, these children are more likely to become repeat offenders. The system tends to neglect the best interests of the child and fails to address the root causes of various problems.

A proper rehabilitation approach would demand that each facility focus on individual treatment even when financial resources are far from sufficient. When implemented properly, of course, this means that the cost of imprisonment would be higher. But the effectiveness of the current deterrence and punishment model is highly debatable and has not proven effective in deterring juveniles from returning to crime or helping them to change bad behavior.

A recent study by The Asia Foundation and the Center on Child Protection found that it is very difficult for most child offenders even to understand the process they are being put through. To them, it is hard to make sense of the criminal proceedings because they are not provided with the necessary support to guide them. They know they did something wrong, but the punishment they receive has detached them from understanding why what they did was wrong, and in some cases why they were sentenced to prison, for example, after they returned the goods they had stolen and sincerely apologized. They failed to see the relevance. By going through judicial proceedings and serving time in detention or prison, they instead learn about injustice, corruption and violence. Some children also see the reality that for some well-connected people, being behind bars does not necessarily remove access to certain services and luxuries.

Poverty, dropping out of school and unemployment are social conditions often identified as risk factors that increase the likelihood of children, particularly poor children, coming into contact with the justice system. Child abuse and neglect have also resulted in behavioral problems, juvenile crime and increased drug abuse.

The new Juvenile Justice bill does not excuse juvenile delinquents from wrongdoing, and it does not mean to encourage and condone criminal behavior. It proposes a system that works to prevent more children from being caught in a cycle of crime and poverty and falling into contact with a legal system tailored for adults; it seeks to encourage mediation and diversion mechanisms that avoid formal justice procedures. It promotes the development of a specialized juvenile justice system and improving the institutional capacity of law enforcement, the judiciary and social services; it increases protection through improved conditions for children in prison and detention centers, acceleration of juvenile probation, rehabilitation and reintegration services as well as monitoring and complaint mechanisms. The bill upholds restorative principles that focus on helping
offenders, the victim and the community to repair their relationships whenever possible.

Of course, there is no such thing as a perfect system. Is there a risk that this proposed new juvenile justice system will be seen as “soft”? Knowing that a child is unlikely to be prosecuted, will there be adults using children to commit crimes they would otherwise have done themselves? People working on this issue should never stop posing these kinds of questions. We need to keep the brainwork going so we can always anticipate shortcomings and improve an imperfect system. It is now up to lawmakers to come up with the best possible solution to save our children from being lost to a life of despair at considerable cost to society.