

Key Findings

A Second Chance in Life

Restoring Opportunities for Children in
the Juvenile Justice System in Indonesia





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Research Team

Authors:

Shaila Tieken, Feri Sahputra, Putri Kusuma Amanda, Santi Kusumaningrum

Principal Investigator:

Santi Kusumaningrum

Lead Researcher:

Shaila Tieken

Research Team

Agni Istighfar Paribrata

Ajeng Gandini Kamilah

Cendy Adam

Dwi Putri Bonita

Eriando Rizky Septian

Erlangga Saputra

Feri Sahputra

Ilana Seff

Muh. Andri Fatahillah Al Akbar

Muhamad Bill Robby

Muhammad Unggul Garfli

Putri Kusuma Amanda

Shaila Tieken

Sri Bayuningsih Praptadina

Widi Laras Sari

Reviewers

Clara Siagian, Ni Luh Putu Maitra Agastya, Ni Made Martini Puteri

We gathered and analyzed the data in this document and started the writing process before Covid-19 pandemic in Indonesia. We realized that the reality we captured here has altered dramatically. The context has been changing for everyone, and there are growing adversities for children and vulnerable populations who are the focus of our works. We hope that you can still use the information provided here as a basis for your action during and after the global emergency.

Throughout Covid-19 pandemic, the research team has been observing changes around the juvenile justice system. At the end of March 2020, the Ministry of Law and Human Rights circulated a ministerial decision number M.HH-19.PK/01.04.04 to implement the early release mechanism for children who have completed half of their prison sentences to mitigate Covid-19 pandemic inside institutions. The regulation's enactment and implementation indicated that the alternatives to detention and imprisonment is possible, as long as the right drive is present, without having to wait for another pandemic. The pandemic also pushed the government to implement coordination and training online.

These changes can help the system to overcome coverage and outreach challenges that hamper the coordination and capacity building efforts. Moreover, during the pandemic, the Ministry of Education and Culture has been gathering and developing education materials for online and offline schooling. The shifts in the education mode can be an opportunity for children to study inside the correctional institutions after the pandemic. However, the Covid-19 pandemic also demands greater considerations in placing children inside institutions and, when it must be implemented, to ensure children's health inside the institutions. Moreover, the assistance provider, including probation officers and social workers, also have to adapt in remote monitoring during the reintegration period. Online remote monitoring has to be implemented by considering children's access to the internet.

Key Findings

The State of Children in Conflict with the Law

1. Data from the Ministry of Law and Human Rights (MoLHR) showed that the number of children convicted and incarcerated in correctional facilities has decreased throughout the period of 2014-2018. Since JJS Law only entered into force in August 2014 or two years after it was enacted in 2012, this 2014-2018 period set up the first four years of the law's implementation.
2. Child Correctional Facility (LPKA) administrative data in the four sites revealed that the highest proportion of children in the facilities was 17-year-olds. However, children as young as 13 were still found there.
3. From the district court decisions 2017-2018 in four sites, the study learned that nearly 98% of the child defendants were boys and approximately 2% were girls. This gender proportion seemed consistent every year. This study, however, was not designed to explore the reasons behind such proportion.
4. The same documents also revealed that more than one-third of child defendants were students, while 18% were engaged in work, and 9% were unemployed. Previous studies (ICJR 2016, PUSKAPA 2014) showed similar characteristics remain predominantly among children who came into contact with the law. This indicated the need to study how the law enforcement consider children's schooling status to prevent detention or imprisonment.

5. Court decisions also showed that children were predominantly convicted for property-related crimes (theft and robbery), followed by narcotics and violence against children cases. Previous studies (ICJR 2016, PUSKAPA 2014) showed similar case characteristics with theft remained the first criminal acts involving children, despite it being more of a petty crime.
6. JJS Law directs children's placement into three facilities: child correctional facility (LPKA), child detention facility (LPAS), and social welfare facility (LPKS). The law stipulates that LPKA and LPAS should be established in each province. Both JJS Law and Ministry of Social Affairs (MoSA) regulations do not specify at what level LPKS should be present, but encourage child placement in LPKS or other child welfare facility within the municipalities.
7. From MoLHR public database this study found that, the government has established 33 juvenile correctional facilities (LPKA) across the country in the past several years. LPKA was available in three out of four research sites (Tangerang, Kendari, and Palembang) while LPKA in East Java is was available found in Blitar, about 150 kilometers from Surabaya. On the other hand, LPKS was available in Kendari, Palembang, and Surabaya, while Tangerang relied on LPKS facility in Jakarta. Not one juvenile detention center or temporary placement center (LPAS) existed in any site. All pre-trial CICLs were detained in LPKA, LPKS, adult detention facilities (rutan), or the police cells.
8. The majority of children were still detained in adult correctional facilities. From a total of 3,127 children (as per the end of 2018), only 1,427 (46%) were placed in LPKA while the other 1,700 (54%) were placed in general prisons, locked up together in the same facilities as adult criminals.

Diversion: Preventing Children from Judicial Proceedings

9. This study found that diversion was increasingly practiced as alternative pathways to the criminal justice process. Data from MoLHR database showed an increasing trend of diversion implementation from 2014 when it was first available. However, due to the nature of the data, this study could not conclude whether the increase was statistically significant.

10. Eligibility criteria for diversion varied across research sites. In accordance with JJS Law, diversion is applicable in criminal act punishable by less than seven years of imprisonment and non-repeat offense. However, the law enforcement agencies interpreted the requirements differently. Judges, referring to Supreme Court Regulation (Perma) 4/2014, provided diversion opportunities for cases with alternative or cumulative indictment as long as one of the offense is punishable by less than seven years of imprisonment. The police and prosecutors did not apply the same principle.
11. In addition to the sanction ceiling and repeat offense, law enforcement officers also consider factors not regulated in JJS Law: victim's consent, family and community figures perception on children's behavior, and law enforcement perception on parents' childcare capacity, children's role in the offense, and probation officer's recommendation. In narcotic cases, BNN was weighing in child's behavior and the offense's impact to the community.
12. Police, prosecutors, and judges were facilitating diversionary conferences. In addition, probation officers also played a significant role in initiating diversion and identifying stakeholders. Probation officers' assessment (litmas) was the only document that provided details on children's offenses and their backgrounds. In litmas, probation officers provide recommendations for children's treatment, including recommendation to undergo diversion conferences.
13. JJS Law also provides rooms for community leaders and religious figures as important parties of the diversion process. Law enforcement perceived community leaders as persons that understand children's behavior and able to guide and protect them.
14. Diversion facilitators' capacity was found crucial in ensuring the success of the diversion conferences. In cases where victims were reluctant to participate in diversion, facilitators provided information on the benefits of diversion conferences. Victim's perception toward diversion was important in initiating and settling the diversion conferences.
15. MoLHR data and interviews pointed out that returning children to their parents and restitution was the most dominant form of diversion settlement in all research sites. Returning children to parents was selected due to the lack of rehabilitation programs outside of facilities. Moreover, restitution was implemented without standard, risking more burden for children with lower socio-economic backgrounds.

16. In all study sites, mechanism on probation officers' monitoring and evaluation to the diversion settlement was not found. The situation resulted in the limited information on the successful or failure outcomes and the positive or negative impacts of diversion.

Protection: Legal and Non-Legal Assistance for Children as Offender

17. Legal and non-legal assistance were found in the study sites. This study found legal aid and civil society organizations that provide free legal assistance in the study sites. Probation officers, social workers, regional child protection units (P2TP2A), and civil society organizations mainly provide non-legal assistance for children.
18. The access to legal assistance was limited in the police investigation and prosecution stage. On the other hand, legal aid was more accessible at trial where Posbakum (legal aid post) was available.
19. Albeit accessible, court decision analysis (CDA) still found 9% of children had no legal assistance during trial.
20. National budget's legal aid fund was available in all study sites. However, data from MoLHR still reflected the disparity in legal aid service distribution. In practice, interviews with OBH shows that the legal aid fund budget scheme posits challenges for legal aid provision. The current budget scheme hampered legal aid organizations to claim the fund for cases that spanned across budget years. Moreover, the budget allocation did not consider geographical situation in the field.
21. In all study sites, regional government also provided legal aid fund in the municipal or provincial level. The legal aid fund were also found in the court, police office, and independently managed by civil society organizations.

22. According to the national legal aid system data, children's cases only took 1% out of the annual expenditure of national legal aid fund.
23. Probation officer's assessment (litmas) was the main source of information for law enforcement to understand children's and their offense's background. However, CDA found 25% children went to trial without litmas. Probation officers possibly read the litmas in the trial, but probation officers were also missing in 16% of the court decisions observed.
24. In the interviews probation officers across sites expressed challenges in covering a wide area. The extensive outreach was combined with limited time to handle child cases as stipulated by regulations.
25. Likewise, social workers were practicing in all research sites. Although they have a mandate to assist children, social workers participants admitted that their assistance for children in conflict with the law was limited.
26. Child protection units or P2TP2A was also found in all sites. P2TP2A provides referral or in-house services for CICL. The services, however, are varied depending on the available resources within their network.
27. CSOs, parents, and families were also found accompanying children throughout the justice process. Interviews mentioned that parents' circumstances were considered for diversion settlement and judges' sentences. Returning children to parents relied on the parent's ability to educate, monitor, and fulfill children's needs. It should be noted that this study did not find a data source that enables children's background and diversion settlement tracing. Therefore, this study could not infer if returning children to parents will burden the family or, on the top of that, returning them to the environment that triggered their offense to begin with.
28. Overall, this study did not encounter any agency or formal network that ensures connectivity between children to the basic services such as health, education, and social services in the study sites. Nonetheless, initiatives were present for informal referral mechanisms among assistance providers.

Alternatives to Detention and Imprisonment: Preventing Children from Pre-, During, and Post-Trial Detention and Imprisonment

29. In all study sites, police, prosecutors, and judges were found detaining children in various detention centers before and during trial. Figures from court decision analysis found that most children were detained in the adult facility in all study sites. Placement in LPAS was following behind, but the team did not encounter any LPAS facility in the research sites. The unavailability of LPAS possibly indicated that children were detained in administratively appointed LPAS or LPAS outside of the study sites.
30. The court decisions also showed that children were detained 37.5 days on average out of 50 days maximum detention period. CDA pointed out that some children were detained longer than the limit in 31, 60, and 23 cases during the investigation, prosecution, and trial phases, respectively.
31. This study found that imprisonment was the most frequent court outcome for children, amounting to 587 out of 651 cases (90%). On average, the prison sentence applied was 419 days. The evidence from interviews suggested the lack of alternative rehabilitations outside of institutions. When available, unclear quality of the placement or alternative programs also shaped law enforcement perception towards the alternatives. Other than alternative programs, children's participation in school, housing and family stability, and parent's capacity was considered when applying for temporary release, house arrest, or city arrest.
32. Ease of access was mentioned as one of the determinants for children's pre-trial detention. Law enforcement officers leaned towards children in institutions as it provides efficient mobilization for children during investigation and trial.
33. Judges were considering factors related to the crime and its impact, while also taking into account children's social and economic background and school participation. Statistical analysis from the court decisions found that Judges decisions to incarcerate child offenders were not correlated with the type of cases.

34. Moreover, another set of statistical analysis from the court decisions found that Judges decisions to incarcerate child offenders were not correlated with the gender of the Judge nor with their ever received a training on JJS Law from the Supreme Court. This did not support the assumption that female judges might be better in handling juvenile cases. The same goes with JJS Law training for Judges that might not be enough.

Protection: Rehabilitation and Reintegration for Children as Offenders

35. This study identified Child Correctional Facility (LPKA) and Social Welfare Institution (LPKS) as the main providers for rehabilitation programs. The MoLHR managed LPKA centrally in all regions. On the other hand, the municipal and provincial government or civil society organizations operated LPKS in the study sites. There were variations on the LPKA and LPKS availability in the study sites where cities have either one of LPKA or LPKS, or both.
36. Rehabilitation programs found in LPKA and LPKS were ranging from education programs, life skill training, psychological assistance, to health and medical care. However, both LPKA and LPKS mainly relied on external facilities for psychological assistance and healthcare.
37. In general, Both LPKA and LPKS provide a limited rehabilitation program for child detainees. In LPKA facilities, child detainees were joining education programs and training provided for convicted children. This situation possibly resulted from the regulation, Article 85 of JJS Law, that direct child detainees placement in LPAS and LPKS in the first place.
38. CSOs were found providing rehabilitation and reintegration programs together with LPKA and LPKS or independently. CSO's support in each region was depending on the availability and capacity of the CSOs.
39. Reintegration program was found in LPKA through the parole provision. Parole system for children was similar to adult's as it was following the correctional system. LPKS implemented the reintegration support by sending social workers to reach children in the community.

Protection: Rehabilitation and Reintegration for Children as Victims and Witnesses

40. Overall, P2TP2A, social workers, and the local government provided social assistance, legal assistance, rehabilitation, and reintegration services for child victims and witnesses. This study found social workers that were assigned to social affairs offices in the provincial- and municipal-level or in social rehabilitation facilities.
41. Protection programs for child victims and witnesses from P2TP2A were found in every municipality. Protection outreach for children worked hand-in-hand with protection for women.
42. Social workers also provided assistance for child victims. As mandated by JJS Law, Peksos provided social assessments (lapsos) to inform the justice process on the best interventions or services for child victims. The services were provided either by social affairs offices or P2TP2A in the respective regions.
43. In some areas, CSOs were complementing social affairs offices and P2TP2A services by providing shelter or outreach in the sub-district areas.
44. Legal assistance was available for child victims through referral from P2TP2A and social workers.
45. Psychological and medical rehabilitation were available through the networks between social assistance and rehabilitation providers. Medical rehabilitation mainly provided by the healthcare facilities. However, this study did not find funding mechanisms for child victims aside from the national health insurance.