

ACCESS TO JUSTICE FOR CHILDREN: INDONESIA

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

The CRC was signed and ratified by Indonesia pursuant to Presidential Decree No. 36 of 1990 on the Ratification of the Convention on the Rights of the Child, creating a binding obligation on Indonesia to comply with the CRC.

Under Law No. 24 of 2000 on International Treaties, a signed international treaty is ratified by Indonesia pursuant to law or presidential decree, and becomes binding upon signature and ratification.¹ It remains unclear, however, whether Indonesia recognises the “monism” or the “dualism” approach in respect of the relationship between international law and domestic law. For example:

- Article 7(2) of Law No. 39 of 1999 on Human Rights states that provisions in international law concerning human rights that have been ratified by Indonesia are recognised as legally binding in Indonesia. Article 67 further provides that everyone within the territory of Indonesia is required to comply with ratified international law concerning human rights, and Article 71 explicitly requires the government to respect, protect and uphold international law on human rights;
- the 1961 Vienna Convention on Diplomatic Relations and 1963 Vienna Convention on Consular Relations were ratified through the enactment of Law No. 1 of 1982, but without any implementing legislation or regulation; and
- the 1982 UN Convention on the Law of the Sea (UNCLOS) was ratified by Law No. 17 of 1985 and implemented by Law No. 6 of 1996.

Therefore, the implementation of international agreements must be assessed on a case by case basis.

B. Does the CRC take precedence over national law?

Indonesian laws and regulations do not govern the order of precedence of sources of law in Indonesia, and thus are silent as to whether the CRC takes precedence over national law.

C. Has the CRC been incorporated into national law?

The provisions of the CRC have not been fully incorporated into national law. The Committee on the Rights of the Child in 2004 expressed concern that Indonesia’s ratification of the CRC had not

¹ Preamble, Articles 3, 6 and 9(2) of Law No. 24 of 2000 on International Treaties.

been backed by an Act of Parliament.² Currently, only one provision regarding the juvenile justice system has been incorporated in Indonesia pursuant to Law No. 11 of 2012 on the Juvenile Justice System.³ The Juvenile Justice System Law, however, will not enter into force until 31 July 2014. Other provisions of the CRC have not been implemented through any other implementing laws or regulations.

D. Can the CRC be directly enforced in the courts?

Currently, the CRC cannot be directly enforced in Indonesian courts; however, Indonesian courts have often referenced and discussed the CRC (see part I.E. below).

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

There are at least three cases where a domestic court has referred to and considered the CRC.⁴ One Constitutional Court decision refers to the general comments of the Committee on the Rights of Child as one of its considerations in determining the age limit for a child under Law No. 3 of 1997 on the Juvenile Justice System.⁵ Another Constitutional Court decision refers to Article 37(b) of the CRC as one of its considerations in determining the procedures for child arrests under the Juvenile Justice System Law.⁶ There is also a case of the District Court of Stabat which discusses the applicability of Article 37(b) to child detention in Indonesia.⁷

It should be noted that, as a civil law country, Indonesia does not apply the rule of binding force of precedent or *stare decisis*. Therefore, a prior decision does not have a binding effect on future decisions.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Under the Civil Code, anyone, including a child, is entitled to bring civil cases to the domestic

² UN Committee on the Rights of the Child, *Concluding observations on the second periodic report of Indonesia*, CRC/C/15/Add.223, 26 February 2004, para. 13. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f15%2fAdd.223&Lang=en.

³ The preamble to the Juvenile System Law states that it was enacted in order to comply with Indonesia's obligations under the CRC to protect children before Indonesian laws.

⁴ There is no comprehensive online database of court decisions in Indonesia that can be effectively or reliably searched. Although some courts make available online searchable databases containing a selection of cases, in most cases, online searches in such databases are not reliable. Also, in many cases, court registers are not formally open for searching. Case law research in Indonesia is usually carried out manually and is not conclusive.

⁵ Constitutional Court Decision No. 1/PUU-VIII/2010.

⁶ Constitutional Court Decision No. 110/PUU-X/2012.

⁷ 'Tinjauan terhadap undang-undang nomor 11 tahun 2012 tentang sistem peradilan pidana anak dari perspektif aparat penegak hukum', <http://www.pn-stabat.go.id/userfiles/file/TOR%20DISKUSI%20ILMIAH.pdf>, (accessed 30 January 2014).

courts on the basis of tort.⁸

A child via their representative can bring a judicial review claim challenging an act or law (*undang-undang*) against the Constitution,⁹ or regulations that are lower level than *undang-undang* in the Indonesian legal system (e.g., government regulations, presidential decrees, ministry regulations, etc.).¹⁰ Administrative claims can also be made against government actions or decisions affecting the rights of children.¹¹

Under the Criminal Code, criminal violations of children's rights can only be brought to a domestic court by a public prosecutor.¹² Children or their representatives can file criminal complaints concerning violations of their rights with the Indonesian police.¹³ Whether or not a criminal case will be brought before a court is subject to the determination of the investigator and the public prosecutor based on the investigation under the Criminal Procedural Code.¹⁴

Children may also file a complaint to the Commission for the Protection of Children in Indonesia (*Komisi Perlindungan Anak Indonesia*) for violations of children's rights.¹⁵ Established under the Child Protection Law, the Commission's main objectives are to protect children against violations of their rights and to enable families and communities to prevent violations of children rights. Following the receipt of complaints, the Commission will assist the complainant to take steps towards remedying the violations.

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a representative?

Children may only bring cases in domestic courts with the assistance of a representative.¹⁶

With respect to civil claims, the Civil Code provides that a person under 21 who has never been married is not capable of carrying out legal actions on their own behalf, and must be represented by a legal representative to bring a civil claim before a court.¹⁷

Under the Criminal Code, a child under 16 must be represented by their parents or legal guardian

⁸ Articles 1365 and 1366 of the Civil Code state: "Every illegitimate act, which causes damage to third parties obliges the party at fault to pay the damage caused. Every person is responsible not only for the damage caused by his/her act, but also for those caused by his/her omission to act and by his/her imprudence."

⁹ Article 1, Paragraph 3 of Law No. 8 of 2011 on Constitutional Court.

¹⁰ Article 31 of Law No. 14 of 1985 on Supreme Court.

¹¹ Article 53 of Law No. 9 of 2004 on State Administrative Court.

¹² Articles 1.6 (b) and 13 of Law No. 8 of 1981 on Criminal Procedural Code.

¹³ *Ibid.*, Article 5.a(1).

¹⁴ *Ibid.*, Article 139.

¹⁵ Article 76 of the Child Protection Law.

¹⁶ It should be noted that, in Indonesia, the age threshold for children is provided under several different laws. For example: (i) a child is anyone below the age of 18 under (A) Article 1 of the Child Protection Law, (B) Article 1 of the Juvenile Justice System Law, (C) Article 1, Paragraph 26 of Law No. 13 of 2003 on Manpower, (D) Article 1, Paragraph 4 of Law No. 44 of 2008 on Pornography and (E) Article 1, Paragraph 5 of Law No. 21 of 2007 on the Eradication of Human Trafficking; (ii) a child is anyone below the age of 18 who is not married under Article 1, Paragraph 5 of Law No. 39 of 1999 on Human Rights; and (iii) a minor is anyone below the age of 21 who is not married under Article 330 of the Indonesian Civil Code.

¹⁷ Article 330 of the Civil Code.

in order to submit a criminal complaint.¹⁸ In the absence of parents or a legal guardian, or if the violation is by the parents or legal guardian, the complaint may be filed by the child's other legal guardians (e.g., a board acting as supervisory trustee (*wali pengawas*) or supervisory of guardianship (*pengampu pengawas*)) or blood relatives.¹⁹

C. In the case of infants and young children, how would cases typically be brought?

In the case of infants and young children, their parents or guardians would typically bring a lawsuit.²⁰ In the event that a child's parents are legally incapable to fulfill their duties, other relatives of the child may be appointed by court order.²¹ If there are no relatives who can be their guardian, the court may appoint a non-relative who has the same religion as the infant or child to be their guardian.²²

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

Under the Advocate Law, a lawyer must provide free legal assistance to those who are financially incapable.²³ Requests for free legal assistance must be submitted in writing or verbally to the relevant advocate, advocate associations or legal aid institutions accompanied by a statement of financial incapacity issued by the relevant authority (e.g., the head of sub district).²⁴ In practice, access to legal assistance as guaranteed under the Advocate Law often depends on the goodwill of members of the legal profession and is not a strictly enforced requirement.²⁵

If a representative of a child is able to show that the representative and the child are financially incapable, they would be eligible to receive free or subsidised legal assistance in bringing civil cases.²⁶ Free legal assistance in submitting a criminal complaint may be provided by a lawyer.²⁷ Juvenile courts must ensure that a child is represented by their parent, guardian or legal representative, or by a lawyer or other legal assistant and/or social guardian²⁸ during the proceedings.²⁹ If the child does not have legal representation in any court proceedings, then legal representation may be provided at the Government's expense by the order of the juvenile court.³⁰

¹⁸ Article 72, Paragraphs 1 and 2 of the Criminal Code.

¹⁹ Ibid., Article 72, Paragraph 2.

²⁰ Ibid.; Article 330 of the Civil Code.

²¹ Article 31, Paragraph 1 of the Child Protection Law.

²² Ibid., Article 31, Paragraph 4.

²³ Article 22, Paragraph 1 of Law No. 18 of 2003 on Advocates.

²⁴ Article 4 of Government Regulation No. 83 of 2008 on the Requirement and Procedure for Free Legal Assistance (GR 83/2008).

²⁵ Latham & Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', <http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>, 2012, (accessed 30 January 2014), p. 118.

²⁶ Supreme Court Circular Letter No. 10 of 2010 on the Guidelines of Legal Assistance.

²⁷ Ibid., Article 1, Paragraph 3.

²⁸ A social guardian is any official whose duty is to conduct social research and to guide, supervise and represent children inside or outside the court.

²⁹ Article 55, Paragraph 1 of the Juvenile Justice System Law.

³⁰ Supreme Court Circular Letter No. 10 of 2010 regarding Guidelines of Legal Assistance.

In 2011, the Indonesian Government enacted the Legal Aid Law³¹ to establish a state-funded legal aid scheme. Under this law, legal counsel will be made available to eligible applicants at each step of the legal process in civil, criminal or administrative cases, and also in certain non-litigious matters. To be eligible, an applicant must be considered “poor” (i.e., they cannot adequately satisfy their “basic rights” independently), have an identity card, and have approval from low level government officials.³² It remains to be seen whether the new law will be effective, as much of the detail will be set out in implementing regulations.³³

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

There is no condition or limitation on bringing cases other than the requirement that cases must be brought by the child’s parents or legal guardian.

III. How can children’s rights violations be challenged before national courts?

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

Under the Civil Code Law, children and their representatives may initiate civil proceedings if there is a potential children’s rights violation under domestic law.³⁴ The claim has to be brought before a district court (being the first instance court) where the defendant is domiciled.³⁵ Civil claims are typically brought to request compensation in the form of monetary damages to the victim³⁶ or a declaration from the court that an act is against the law.³⁷

Regarding judicial review, a case can be brought to the Constitutional Court challenging an act or law (*undang-undang*) against the Constitution,³⁸ or to the Supreme Court challenging regulations that are lower level than *undang-undang* in the Indonesian legal system (e.g., government regulations, presidential decrees, ministry regulations, etc.).³⁹

Claims against government actions or decisions that may affect the rights of children are submitted to the state administrative court where the defendant state authority is located.⁴⁰ The administrative court will undertake a preliminary administrative assessment on whether the court has jurisdiction over the case. The administration assessment will include: (i) the identity of the claimant and whether he or she will be represented by an attorney; (ii) the subject matter of the complaint and whether such matter falls under the definition of a state administrative decision under Law No. 5 of

³¹ Law No. 16/2011 concerning legal aid.

³² Articles 4-5, 14 of the Legal Aid Law.

³³ Latham & Watkins, p. 119.

³⁴ Article 1365 of the Civil Code Law.

³⁵ Article 118 Paragraph 1 of the Civil Procedure Law.

³⁶ Article 1365 of the Civil Code Law provides that “[a] party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor.”

³⁷ Y. Harahap, *Hukum Acara Perdata* (Indonesian Civil Procedural Law), (Jakarta: Sinar Grafita, 2010).

³⁸ Article 1, Paragraph 3 of Law No. 8 of 2011 on Constitutional Court.

³⁹ Article 31 of Law No. 14 of 1985 on Supreme Court.

⁴⁰ Article 53 of Law No. 9 of 2004 on State Administrative Court.

1986 on State Administrative Court;⁴¹ (iii) the rationales of the complaint and whether such rationales fulfill all of the elements required to submit a case to the state administrative court;⁴² and (iv) the remedy sought by the claimant. The court may issue a dismissal decision, if deemed necessary.

The victim of a children's rights violation may also initiate a criminal claim against the perpetrator(s) through a criminal complaint submitted to the police. If the law enforcement authorities and the public prosecutor find that the case is supported by sufficient evidence, the case will then be submitted by the public prosecutor to the district court sitting where the alleged violation occurred.⁴³ Any violation of the Child Protection Law is punishable by imprisonment and/or fine.⁴⁴

B. What powers would courts have to review these violations, and what remedies could they offer?

In a civil case, the court may either award monetary damages or declare that an act is against the law.⁴⁵ Note that, generally, there are three types of court decisions: (i) condemnatory decisions (which are punitive and which, in civil cases (as opposed to criminal cases), usually take the form of monetary payment); (ii) declaratory decisions (where the court determines a certain legal position - e.g., decision affirming the rights, duties, or obligations of one or more parties); and (iii) constitutive decisions (which create certain new legal conditions - e.g., decision on divorce case creating a new legal condition where there is no marriage relationship between the parties).⁴⁶

In judicial review cases, the Constitutional Court may declare a law (*undang-undang*), or certain provisions in *undang-undang*, to be null and void if the Constitutional Court finds that it contravenes the Constitution.⁴⁷ For judicial review of regulations that are lower than *undang-undang* in the Indonesian legal system (e.g., government regulations, presidential decrees, ministry regulations, etc.), the Supreme Court may declare such regulations to be null and void if it finds that they contravene a higher ranking regulation.⁴⁸

In administrative decisions, a state administrative court can annul the administrative decision, award monetary damages or order rehabilitation, or a combination thereof.⁴⁹

In a criminal case, the court may convict the perpetrator and determine the primary punishment and any additional punishment. Primary punishment may be in the form of capital punishment, imprisonment, minor punishment and/or fine. As to additional punishment, the court may revoke certain rights of the convicted, order forfeiture of specific property and/or issue a declaration of judicial verdict.⁵⁰

⁴¹ Article 1, Paragraph 3 of the Administrative Court Law.

⁴² Ibid., Article 53, Paragraph 2.

⁴³ Articles 137 and 140 of the Criminal Procedural Code

⁴⁴ Chapter XII of the Child Protection Law.

⁴⁵ Y. Harahap.

⁴⁶ Ibid.

⁴⁷ Article 56 in conjunction with Article 57 of Law No. 8 of 2011 on Constitutional Court.

⁴⁸ Article 31 of Law No. 14 of 1985 on Supreme Court.

⁴⁹ Article 53 of Law No. 9 of 2004 on State Administrative Court.

⁵⁰ Article 10 of the Criminal Code.

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

In order to initiate a civil claim, the civil lawsuit must specifically state the identity of the parties (i.e. the full names of the plaintiff and the defendant, dates of birth, legal domiciles, and nationalities (if not Indonesian)).⁵¹

To file a criminal complaint, the complainant must also specifically state their full identity.⁵²

Generally, class action lawsuits claiming violations of law do not require the name of each individual victim (see below).

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

Where a number of persons have the same interest in a civil case, the court may authorise one or more of such persons to bring a class action lawsuit on behalf of all interested parties.⁵³ The party or parties initiating such proceedings must give notice directly to each person who has a similar interest in the claim.

Generally, class action lawsuits claiming violations of law may be brought as collective complaints and do not require the name of each individual victim. Specifically, the regulation authorises such claims to be brought by “a person acting as a member of, or in the interest of, a group or class of persons” or “association acting in the interest of one or more of its members.”⁵⁴

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Non-governmental organisations (NGOs) in Indonesia are permitted to file challenges to potential children's rights violations if the NGO is: (i) directly affected by the perpetrator's action, (ii) representing the children whose rights have been allegedly violated, or (iii) representing a group of children whose rights are violated (citizen lawsuit).⁵⁵

Furthermore, an NGO may submit a claim as an interested party only if it is vested with the right to submit the claim by a specific law. For instance, under Article 92 of Law No. 32 of 2009 regarding Environmental Law, environmental NGOs are given the right to submit environmental claims.

NGOs are not permitted to intervene in pending cases because Indonesia, as a civil law country, does not recognise the concept of *amicus curiae*. For an NGO to be an intervening party, it must: (i) be directly affected, or (ii) represent another party that is affected. However, there have been

⁵¹ Article 8, Number 3 of *Reglement Op de Burgerlijke Rechts Vordering*.

⁵² Article 10 of Head of Police Regulation No. 12 of 2009 on the Supervision and Management of Criminal Case Settlement in the Republic of Indonesia.

⁵³ Supreme Court Regulation No. 1 of 2002 regarding Class Action Lawsuit.

⁵⁴ *Ibid.*, Article 3.

⁵⁵ *Ibid.*, Article 1.

certain cases in Indonesia where certain interested parties submitted *amicus* briefs to the court (e.g., *Prita Mulyasari v Omni International Hospital*, a defamation case, and case no. 273 PK/PDT/2008 between Soeharto and Tempo); however, there is no evidence that the court gave the *amicus* briefs any weight.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

A civil claim is submitted to the district court where the defendant is domiciled, or to another district court as agreed upon by the parties.⁵⁶ The filing process is set forth in the Civil Procedure Law.⁵⁷ If the defendant's domicile is unknown, the claim must be filed to the district court having jurisdiction over the domicile of any of the plaintiffs.⁵⁸ If a venue has been chosen by a written deed or agreement, the plaintiff may file the claim with the district court having jurisdiction over the chosen venue.⁵⁹

For judicial review, the claims are submitted to (i) the Constitutional Court, if the plaintiff is challenging an act or law (*undang-undang*) against the Constitution,⁶⁰ or (ii) the Supreme Court, if the plaintiff is challenging regulations that are lower level than *undang-undang* in the Indonesian legal system (e.g., government regulations, presidential decrees, ministry regulations, etc.).⁶¹

Claims against government actions or decisions that may affect the rights of children are submitted to the state administrative court where the defendant state authority is located.⁶²

A criminal complaint should be filed with the police,⁶³ and the case can be brought to a district court by the public prosecutor.⁶⁴ The initial filing procedure is a signed report to the police that there is an act that may be considered a criminal act.⁶⁵

B. Legal aid / Court costs. Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

Free or subsidised legal aid (including with regard to filing fees and legal consultation) is only given to plaintiffs who can prove that they are financially incapable of affording filing fees and legal

⁵⁶ Article 118, Paragraph 1 of the Civil Procedure Law.

⁵⁷ *Ibid.*, Chapter IX.

⁵⁸ *Ibid.*, Article 118, Paragraph 3.

⁵⁹ *Ibid.*, Article 118, Paragraph 4.

⁶⁰ Article 1, Paragraph 3 of Law No. 8 of 2011 on Constitutional Court.

⁶¹ Article 31 of Law No. 14 of 1985 on Supreme Court.

⁶² Article 53 of Law No. 9 of 2004 on State Administrative Court.

⁶³ Article 5, Paragraph 1 of the Criminal Procedural Code.

⁶⁴ *Ibid.*, Article 13.

⁶⁵ *Ibid.*, Article 103.

representation.⁶⁶ The application made by the plaintiff who is in need of legal aid is evaluated by the court. The applicant is not required to demonstrate the importance of the legal question at issue or the likelihood of success, but merely must submit documents showing their financial incapacity.

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practising lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

Under the Advocate Law, it is possible for children and their representatives to obtain legal assistance from practising lawyers on a pro bono basis. All lawyers must provide free legal assistance to anyone who is financially incapable.⁶⁷ As discussed in part II.D, an initial request for free legal assistance must be submitted in writing or verbally to the advocate, advocate associations or legal aid institutions accompanied by a statement of financial incapacity issued by the relevant authority.⁶⁸

There are numerous legal aid focused NGOs in Indonesia. For example, LBH provides legal aid services including representation in cases concerning human rights violations. LBH and its regional legal aid provider, the Indonesian Legal Aid Foundation (*Yayasan Lembaga Bantuan Hukum Indonesia*), provide referrals and opportunities for lawyers wishing to participate in the provision of legal aid.⁶⁹

Overall, the pro bono legal culture in Indonesia remains weak, and there is an urgent need for additional pro bono legal services in Indonesia. It is reported that lawyers' compliance with the obligation to provide free legal assistance is poorly monitored, therefore the provision of pro bono services has been limited. Moreover, Indonesia's geography, with a large population spread over an archipelago of over 18,000 islands, prevents many of Indonesia's poor from accessing legal services.⁷⁰

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

A children's rights violation under civil law can be brought to the court within 30 years from the occurrence of the violation.⁷¹

A complaint against a children's rights violation under criminal law must be filed within six months from the time the person who is entitled to file a complaint (the child's representative) hears or becomes aware that such violation has occurred. If the complainant resides outside Indonesia, however, the complaint may be filed by such complainant within nine months.⁷²

⁶⁶ Supreme Court Circular Letter No. 10 of 2010 regarding Guidelines of Legal Assistance.

⁶⁷ Article 22, Paragraph 1 of Law No. 18 of 2003 regarding Advocates.

⁶⁸ Article 4 of GR 83/2008.

⁶⁹ Latham & Watkins, p. 120.

⁷⁰ *Ibid.*, pp. 115-121.

⁷¹ Article 1967 of the Civil Code.

⁷² Article 74 of the Criminal Code.

For judicial review of *undang-undang* in the Constitutional Court, there is no statute of limitation,⁷³ as long as the *undang-undang* was issued after the last amendment of the Constitution.⁷⁴ Similarly, there is no statute of limitation for judicial review of regulations that are lower than *undang-undang* in the Supreme Court.⁷⁵

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

As a general rule, the following types of evidence are admissible in civil proceedings: written evidence, witness testimony, assumption, confession, and a statement under oath by the parties involved in the case.⁷⁶ In criminal proceedings, the following types of evidence are admissible: witness testimony, expert testimony, documents, defendant testimony, and indirect evidence obtained from witness testimony, documents and defendant testimony.⁷⁷

In civil proceedings, the Civil Code Procedure provides that children under the age of 15 may not be summoned as witnesses.⁷⁸ There are no other rules, procedures or practices for dealing with evidence that is produced or presented by children in civil proceedings.

In criminal proceedings, the Criminal Code provides that the testimony of a child under the age of 15 cannot be completely relied upon.⁷⁹ A child under 15 may only give unsworn testimony, therefore the child's testimony may only be used as guidance.⁸⁰ Moreover, in order to testify before a court, children must be accompanied by their parents and/or confidants.⁸¹

The Child Protection Law provides special protection for children who are being summoned as a witness in court, such as (i) humane treatment of the children in accordance with their rights and dignity; (ii) special protection officers for the children, (iii) special facilities, (iv) assurances regarding relationships with the children's parents and family members, and (v) protection against public disclosures of their identities, including photographs and names.⁸²

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

For civil cases, the court's decision must be reached and completed in six months.⁸³ As for appeals to the High Court and cassations to the Supreme Court, there is no specific time limit for the High Court or the Supreme Court to reach their decision. The Supreme Court, however, provides a guidance that an appeal case should be delivered by the district court to the High Court

⁷³ Article 50 of Law No. 8 of 2011 on Constitutional Court.

⁷⁴ The Constitution was lastly amended (fourth amendment) on 10 August 2002.

⁷⁵ Supreme Court Regulation No. 1 of 2011 on Judicial Review.

⁷⁶ Article 1866 of the Civil Code.

⁷⁷ Article 184 of the Criminal Procedure Code.

⁷⁸ Article 145 of the Civil Code Procedure.

⁷⁹ Article 171 of the Criminal Procedure Code.

⁸⁰ Ibid.

⁸¹ Article 23 of the Juvenile Justice System Law.

⁸² Article 64 of the Child Protection Law.

⁸³ Point 1 of Supreme Court Circular Letter No. 3 of 1998 regarding Dispute Settlement.

or the Supreme Court within 30 days from an appeal or cassation request being submitted by the appealing party.⁸⁴ In practice, the process of a case moving from the district court to a binding decision issued by the Supreme Court may take five to six years.

As for criminal cases, there is no specific time limit for courts to issue a decision.

G. Appeal. What are the possibilities for appealing a decision to a higher court?

The decision of a district court may be appealed to the High Court,⁸⁵ and further appealed (as cassation) to the Supreme Court.⁸⁶ A lower court decision does not become enforceable until the appeal and cassation remedies have been exhausted (including during the appeal and cassation proceedings) or remain unused.⁸⁷ Judicial review (*Peninjauan Kembali*) proceedings to challenge a Supreme Court judgment rendered at the cassation stage are available as an extraordinary remedy, subject to certain conditions (e.g., new evidence).⁸⁸

H. Impact. What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Unlike the common law system of precedent, Indonesian courts under the civil law system may refer to prior court decisions, but only to achieve consistency and not because of a legal requirement to follow earlier judicial decisions.

Although the Government has enacted laws and regulations protecting the rights of child, as described below, law enforcement may still be an issue in Indonesia.

I. Follow up. What other concerns or challenges might be anticipated in enforcing a positive decision?

One common criticism of the legal system in Indonesia is the lack of robust law enforcement. Even clear laws and clear court rulings are often not followed by strict enforcement.⁸⁹

In recent years, this criticism has often spread to the operations of the Supreme Court, as well as other parts of the Indonesian legal system.⁹⁰ This issue is a serious matter for the Supreme Court since enforcement of Supreme Court rulings sets standards for the enforcement of court rulings

⁸⁴ Ibid., Point 3.

⁸⁵ Article 87 of the Criminal Procedure Code.

⁸⁶ Ibid., Article 88.

⁸⁷ For criminal proceedings, see elucidation of Article 2 paragraph 1 of Law No. 22 of 2002 on Commutation of Sentence/Grasi. For civil proceedings, see Article 195 of the Civil Procedure Law.

⁸⁸ Article 263 of the Criminal Procedural Code.

⁸⁹ See Save the Children, 'Review report: the implementation of Convention on the Rights of the Child in Indonesia 1997-2009',

http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/IDN/INT_CRC_ICO_IDN_15725_E.pdf, 2010, (accessed 30 January 2014); Asian Human Rights Commission, Indonesia: Government and law enforcement officials are expected to take serious measures to combat paedophilia in Bali', <http://www.humanrights.asia/news/alrc-news/human-rights-council/hrc22/ALRC-CWS-22-06-2013>, 2013, (accessed 30 January 2014).

⁹⁰ See P.J. Hairi, 'Urgensi pembentukan sistem kamar Mahkamah Agung Republik Indonesia', http://berkas.dpr.go.id/pengkajian/files/buku_lintas_tim/buku-lintas-tim-4.pdf, (accessed 30 January 2014).

across the rest of the Indonesian legal system.

A commonly cited problem is that the enforcement institutions and mechanisms are underfunded and lack operational capacity. There are numerous instances of long delays in the enforcement of court decisions, even the decisions of the Supreme Court.⁹¹

Another challenge to enforcing a positive decision in Indonesia is corruption. There are two key areas in the public sector in which corruption is prevalent: the justice sector and the civil service sector. Corruption within the justice sector, including in the police and the courts, is apparent in its ineffectiveness to enforce laws and failure to uphold justice, which undermines the rule of law. In the 2008 Public Sector Integrity Survey, the Supreme Court ranked the lowest in integrity compared to the other public services in Indonesia. The courts were viewed as making unfair decisions and having high informal costs.⁹²

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

With the exception of Aceh as a special autonomous region,⁹³ under Article 24 of the Constitution, the Indonesian judicial system comprises four parallel court systems: (i) civil courts, (ii) religious courts, (iii) military courts, and (iv) state administration courts. All courts are organised under the Indonesian Supreme Court, but each court system has its own competencies.

Under Law No. 7 of 1989 on Religious Courts, as amended by Law No. 50 of 2009, religious courts are authorised to adjudicate cases relating to marriage, inheritance, wills (*wasiat*), gifts (*hibah*), and religious endowments (*waqaf and shadaqah*) for Muslim people in accordance with Islamic law.⁹⁴ The rules and procedures of religious courts are the same as those of civil courts, unless stipulated otherwise by the Religious Court Law.⁹⁵

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁹¹ Ibid.

⁹² Komisi Pemberantasan Korupsi, *Integritas Sektor Publik Indonesia Tahun 2008: Fakta Korupsi dalam Layanan Publik*, (Jakarta: Direktorat Penelitian dan Pengembangan Komisi Pemberantasan Korupsi, 2009), p. 10.

⁹³ Article 25 of Law No. 18 of 2001 on Special Autonomy Region for Nangroe Aceh Darussalam.

⁹⁴ Article 49 of the Religious Court Law.

⁹⁵ Ibid., Article 54.