

# The Republic of Indonesia

## National Child Protection Legislation

### National Legislation

- Age of Child - **Under 18 years of age**

[Laws of the Republic of Indonesia, Number 23 or 2002 About Child Protection](#)

#### Art. 1

In this law, what is meant by:

A child is someone who is not yet 18 years old, including children who are still in the womb.

- Age of Criminal Responsibility - **8 years of age**

[Law No. 3 of 1997](#)

#### Art. 1

In this Law the meaning of:

1. The child is a person who in the case of Naughty Children has reached a general 8 years but has not reached the age of 18 years and has never married.
2. Naughty Child is:
  - a. a child committing a crime; or
  - b. a child committing an act prohibited by a child, either by law or by any other law of life and belief in the society concerned.

[Indonesian Penal Code](#)

#### Art. 45

In a criminal prosecution of a minor by reason of an act committed before he has reached the age of sixteen years, the judge may:

- either give the order that the person found guilty be returned to his parents, his guardian or his fosterer without applying a punishment
- or, if the act falls under the provision of a crime or one of the misdemeanors described in the Articles 489, 490, 492, 496, 497, 503-505, 514, 517-519, 526, 531, 532, 536 and 540 and is committed before two years have elapsed since an earlier conviction of the same person of one of these ten misdemeanors or a crime has become final, give the order that the person found guilty be placed at the disposal of the Government, without applying a punishment;
- or sentence the offender to a punishment.

There was discussion for the age to be raised to 12 years old, however the bill was never passed despite being discussed in the courts.<sup>1</sup>

- Age of Consent - **15 years of age**

[Indonesian Penal Code](#)

#### Art. 287

- (1) Any person who outside of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years.
- (2) A prosecution shall be instituted only by complaint, unless the woman has not yet reached

<sup>1</sup> Minimum ages of criminal responsibility in Asia, CRIN, at <https://archive.crin.org/en/home/ages/asia.html> (last visited Mar. 10, 2020).

the age of twelve years or one of the cases of Articles 291 and 294 is present.

- Age of Marriage - **19 years of age for males, 16 years of age for females with parental permission; 21 years of age without permission**

[Law No. 1 of 1974 \(Marriage\)](#)

**Art. 6**

- (1) The marriage shall be based on the consent of the two prospective parties.
- (2) In order to marry a person who has not reached the age of 21 years must obtain permission from both parents.

...

**Art. 7**

- (1) Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years.

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▪ **Extraterritoriality**

*Indonesia has an extensive extradition law. For the full version, click below.*

[Law No. 1 of 1979 \(Extradition\)](#)

**Art. 2**

- (1) Extraditions are based on treaties.
- (2) In the event that no treaty as mentioned in para (1) above has been drawn, extradition may be initiated based on good relations and if the interests of the Rep. of Indonesia requires it.

**Art. 3**

- (1) Persons that may be extradited are those whom are requested by authorized officials from the requesting foreign country due to allegations of having conducted criminal acts or to undergo legal prosecution or orders to arrest.
- (2) Extradition may also be applied to persons suspected of conducting or convicted of having assisted, attempted and agreed to initiate criminal acts as mentioned in para (1), as long as the assistance, attempt and criminal consent may be prosecuted by Law of the Rep. of Indonesia and by law of the country requesting the extradition.

**Art. 4**

- (1) Extradition is initiated for criminal acts as described in the criminal list which is attached as an inseparable document of this Decree.
- (2) Extradition may also be initiated upon the discretion of the requested country for criminal acts not listed in the attached list of extraditing crimes.
- (3) With Government Regulation, additions to the list of criminal acts as mentioned in para (1) may be added for other acts determined as criminal acts by prevailing Law.

**Art. 7**

- (1) Requests to extradite citizens of the Rep. of Indonesia are denied.
- (2) Exceptions to provisions contained in para (1) above may be initiated if due to certain circumstances are considered to be more appropriately prosecuted at the scene of crime.

**Art. 13**

Requests for extradition is denied for crimes being extradited is penalized by death under law of the requesting country, while according to Indonesian law, such crime is not penalized by death or the death sentence is not always applicable unless the requesting country provides convincing guarantees that the death penalty will not be applied.

- **Dual Criminality**

[Law No. 1 of 1979 \(Extradition\)](#)

**Art. 1**

Within this decree, Extradition is defined as the handover by one country to another country requesting the handover of a person suspected or charged for conducting a criminal act outside the jurisdiction of the country handing over and within the jurisdiction of the country requesting the handover, having the right to prosecute and convicting the incumbent.

- **Mandatory Reporting Requirements**

Specific reporting obligations in relation to sexual offences against children could not be found under domestic law, however;

[Law No. 44 of 2008 Concerning Pornography](#)

**Art. 15**

Everyone has the obligation to protect children from the influence of pornography and prevent children's access to pornographic information.

- **Statute of Limitations**

[Indonesian Penal Code](#)

**Art. 77**

The right to prosecute shall lapse by the death of the accused.

**Art. 78**

(1) The right to prosecute shall lapse by lapse of time;

1st, in one year for all misdemeanors and for the crimes committed by means of the press;

2nd-ly, in six years for the crimes upon which fine, custody or imprisonment of not more than three years is imposed;

3rd-ly, in twelve years for all crimes upon which temporary imprisonment for more than three years is imposed;

4th-ly, in eighteen years for all crimes upon which capital punishment or life imprisonment is imposed.

(2) In respect of a person who before the commission of the act has not yet reached the age of eighteen years, each of the terms of lapse of time mentioned above shall be mitigated by one third.

- **Criminal Procedure Code**

[https://www.unodc.org/res/cld/document/idn/law\\_number\\_8\\_year\\_1981\\_concerning\\_the\\_criminal\\_procedure\\_html/1.2\\_Criminal\\_Procedure.pdf](https://www.unodc.org/res/cld/document/idn/law_number_8_year_1981_concerning_the_criminal_procedure_html/1.2_Criminal_Procedure.pdf)

- **Obligations of Educational Institutions**

Aside from the right to education for children, no legislation specific to educational institutions and their obligations in regard to child sexual abuse was found, however;

#### Indonesian Penal Code

##### **Art. 294**

- (1) Any person who commits any obscene act with his under age child, stepchild or foster-child, his pupil, a minor entrusted to his care, education or vigilance or his under age servant or subordinate, shall be punished by a maximum imprisonment of seven years.
- (2) By the same punishment shall be punished:
  - (a) the official who commits any obscene act with a person who is officially subordinate to him or has been entrusted or recommended to his vigilance;
  - (b) the executive, physician, teacher, official, overseer or attendant at a prison, labor institution of the country, educational institution, orphanage, hospital, lunatic asylum or charity institution, who commits any obscene act with a person admitted thereto.

#### ▪ **Prohibition to hold certain positions**

##### Indonesian Penal Code

##### **Art. 35**

- (1) The rights of which the offender in cases determined by this code or by another general regulation may be deprived by judicial verdict, are:
  - (i) to hold offices or specific offices;
  - (ii) to serve with the armed forces;
  - (iii) to vote and be voted for in elections held by virtue of general regulations;
  - (iv) to be a counselor or a legal manager and to be a guardian, co-guardian, curator or co-curator over other children than his own;
  - (v) the paternal authority, the guardianship and the curatorship over one's own children;
  - (vi) to exercise specific professions.
- (2) The competence of the judge to deprive an official of a specific office shall not exist if by regulation another power is exclusively designated for said deprivation.

Regulations pertaining to exclusion from teaching profession were not found.

#### ▪ **Employment Law**

##### Employment Law Indonesia

##### **Art. 160**

- (1) In case the worker/ laborer is detained by the authorities because he or she is alleged to have committed a crime and this happens not because of the complaint filed by the entrepreneur, the entrepreneur is not obliged to pay the worker/ laborer' s wages but is obliged to provide [financial] assistance to the members of his or her family who are his or her dependents according to the following provisions:
  - (a) If the worker/ laborer has 1 dependent, the entrepreneur is obliged to pay 25% of the worker/ laborer' s wages.
  - (b) If the worker/ laborer has 2 dependents, the entrepreneur is obliged to pay 35% of the worker/ laborer' s wages.
  - (c) If the worker/ laborer has 3 dependents, the entrepreneur is obliged to pay 45% of the worker/ laborer' s wages.
  - (d) If the worker/ laborer has 4 dependents or more, the entrepreneur is obliged to pay 50% of the worker/ laborer' s wages.

- (2) The assistance as referred to under subsection (1) shall be provided for no longer than 6 months of the calendar year starting from the first day the worker/ laborer is detained by the authorities.
- (3) The entrepreneur may terminate the employment of the worker/ laborer who after the passing of 6 months are unable to perform his or her work as he or she should because of the legal process associated with the legal proceedings taking against him or her for the crime he or she is alleged to have committed as referred to under subsection (1).
- (4) . . .

- **Criminal Law - Defamation**

- [Indonesian Penal Code](#)

- **Art. 310**

- (1) The person who intentionally harms someone's honor or reputation by charging him with a certain fact, with the obvious intent to give publicity thereof, shall, being guilty of slander, be punished by a maximum imprisonment of nine months or a maximum fine of three hundred rupiahs.
- (2) If this takes place by means of writings or portraits disseminated, openly demonstrated or put up, the principal shall, being guilty of libel, be punished with a maximum imprisonment of one year and four months or a maximum fine of three hundred rupiahs.
- (3) Neither slander nor libel shall exist as far as the principal obviously has acted in the general interest or for a necessary defense.

- **Art. 311**

- (1) Any person who commits the slander or libel in ease proof of the truth of the charged fact is permitted, shall, if he does not produce said proof and the charge has been made against his better judgment, being guilty of calumny, be punished by a maximum imprisonment of four years.
- (2) Deprivation of rights mentioned in Article 35 first to thirdly may be pronounced.

- **Private Fostering**

No legislation on private fostering was found.

## **Sexual Offenses Against Children**

### [Indonesian Penal Code](#)

#### **Art. 287**

- (1) Any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years.
- (2) A prosecution shall be instituted only by complaint, unless the woman has not yet reached the age of twelve years or one of the cases of Articles 291 and 294 is present.

### [Laws No. 23 or 2002 About Child Protection](#)

#### **Art. 1**

In this law, what is meant by:

- (1) A child is someone who is not yet 18 years old, including children who are still in the womb.

#### **Art. 64**

- (1) . . .
- (2) Special protection for child victims of crime. As referred to in paragraph (1) shall be implemented through:
  - (a) rehabilitation efforts, both within the institution and outside the institution;
  - (b) protection from identity coverage through the media mass and to avoid labeling;
  - (c) the provision of safety assurance for victim witnesses and expert witnesses, whether physical, mental, or social;
  - (d) Provision of accessibility to obtain information case development.

**Art. 81**

- (1) Any person who intentionally abuse or threats of violence to force children into sexual intercourse with them or with another person, shall be punished with imprisonment a maximum of 15 years and 3 years and a fine of not more three hundred million rupiah and at least sixty million rupiahs.
- (2) The criminal provisions referred to in paragraph (1) applies. Each person who intentionally practice deceit, deception, a series of lies, or persuading children to do intercourse with her or with other people.

**Art. 82**

Any person who knowingly commit violence or threats violence, force, deceit, a series of lies, or persuade a child to do or let do obscene acts, shall be punished with imprisonment of 15 years and 3 years and a fine of three hundred million rupiah and least sixty million rupiahs.

[Second Amendment to Law Number 23 of 2002 \(1/2016\)](#)

The provisions of Article 81 are amended to read as follows:

**Art. 81**

- (1) Everyone who violates the provisions as referred to in Article 76D sentenced to the minimum imprisonment of 5 years and a maximum of 15 years and a maximum fine of five billion rupiah.
- (2) Criminal provisions referred to in paragraph (1) also applies to anyone who intentionally guile, a series of lies, or persuading the son have intercourse with her or with other people.
- (3) In the case of a criminal offense as referred to in paragraph (1) is carried out by parents, guardians, people who have a relationship family, babysitter, educator, energy worker, education, apparatus that handle child protection, or done by more than one person together, the criminal plus one third of criminal threats as referred to in paragraph (1).
- (4) In addition to the actors referred to in paragraph (3), the addition of one third of criminal threats also apply to the perpetrators who has been convicted of an act criminal offenses as referred to in Article 76D.
- (5) In the case of a criminal offense as referred to in Article 76D has caused more than 1 person, resulting in serious injuries, mental disorders, infectious diseases, disturbed or loss of reproductive function, and / or victim died, the perpetrators were sentenced to death, for life, or a minimum prison sentence of 10 years and a maximum of 20 years.
- (6) In addition to being subjected to criminal acts as intended in paragraph (1), paragraph (3), paragraph (4), and paragraph (5), the offender may be subjected to additional crimes in the form of announcement of the identity of the perpetrator.
- (7) Against the perpetrator referred to in paragraph (4) and paragraph (5) may be subject to action in the form of chemical castration and tool installation electronic detector.
- (8) The actions referred to in paragraph (7) it was decided together with the principal crime by loading the implementation period action.
- (9) Additional crimes and actions are excluded child offenders.

15. Special protection shall be the protection afforded to children in emergency situations, children in conflict with the law, children or minorities and isolated, exploited children, economically and / or sexually, child trafficked, children who are victims of abuse of narcotics, alcohol, psychotropic substances, and other addictive substances (drugs), child victims of kidnapping, sales, trafficking, child victims of good violence physical and / or mental, children with disabilities, and children victims of mistreatment and neglect.

#### [Indonesian Penal Code](#)

##### **Art. 286**

Any person who out of marriage has carnal knowledge of a woman of whom he knows that she is unconscious or helpless, shall be punished by a maximum imprisonment of nine years.

##### **Art. 287**

- (1) Any person who out of marriage has carnal knowledge of a woman whom he knows or reasonably should presume that she has not yet reached the age of fifteen years or, if it is not obvious from her age, that she is not yet marriageable, shall be punished by a maximum imprisonment of nine years.
- (2) A prosecution shall be instituted only by complaint, unless the woman has not yet reached the age of twelve years or one of the cases of Articles 291 and 294 is present.

##### **Art. 289**

Any person who by using force or threat of force forces someone to commit or tolerate obscene acts, shall, being guilty of factual assault of the chastity, be punished by a maximum imprisonment of nine years.

##### **Art. 290**

By a maximum imprisonment of seven years shall be punished:

1st, . . .

2nd-ly, any person who commits obscene acts with someone who he knows or reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from her age, not yet marriageable;

3rd-ly, any person who seduces someone whom he knows or reasonably should presume that he has not yet reached the age of fifteen years or, if it is not obvious from the age, is not yet marriageable, to commit or tolerate obscene acts or to have carnal knowledge, out of marriage, of a third party.

##### **Art. 336**

- (1) Threat with open violence with united forces against persons or property, with a crime whereby the general security of persons or property is endangered, with rape, with actual assault of the chastity, with a crime against life, with grievous ill treatment or with arson, shall be punished by a maximum imprisonment of two years.
- (2) If the threat is executed in writing and under a certain condition, it shall be punished by a maximum imprisonment of five years.

##### **Art. 293**

- (1) Any person who by gifts or promises of money or goods, abuse of dominance resulting from factual relationship or deceit, intentionally moves a minor of irreproachable conduct, whose minority he knows or reasonably should presume, to commit any obscene act with him or to tolerate such act, shall be punished by a maximum imprisonment of five years.
- (2) A prosecution shall be instituted only upon complaint of the person against whom the crime has been committed.
- (3) . . .

**Art. 294**

- (3) Any person who commits any obscene act with his under age child, stepchild or foster-child, his pupil, a minor entrusted to his care, education or vigilance or his under age servant or subordinate, shall be punished by a maximum imprisonment of seven years.
- (4) By the same punishment shall be punished:
- (a) the official who commits any obscene act with a person who is officially subordinate to him or has been entrusted or recommended to his vigilance;
  - (b) the executive, physician, teacher, official, overseer or attendant at a prison, labor institution of the country, educational institution, orphanage, hospital, lunatic asylum or charity institution, who commits any obscene act with a person admitted thereto.

**Art. 296**

Any person who makes an occupation or a habit of intentionally causing or facilitating any obscene act by others with third parties, shall be punished by a maximum imprisonment of one year and four months or a maximum fine of one thousand rupiahs.

[Law No. 44 of 2008 Concerning Pornography](#)

**Art. 4**

- (1) Everyone is prohibited from producing, making, multiplying, duplicating, distributing, broadcasting, importing, exporting, offering, trading, renting, or providing pornography that explicitly contains:
- (a) sexual relations, including relations are deviate
  - (b) sexual assault
  - (c) . . .
  - (f) child pornography

**Art. 11**

Everyone is prohibited from involving children in activities and / or objects as referred to in Article 4, Article 5, Article 6, Article 8, Article 9, or Article 10.

**Art. 15**

Everyone has the obligation to protect children from the influence of pornography and prevent children's access to pornographic information.

[Law No. 21 of 2007 \(Trafficking Act\)](#)

In this Law the meaning of:

1. . . .
2. Exploitation is an action with or without consent. Victims who include but are not limited to prostitution, work or servitude. Slavery or similar practice, slavery, oppression, extortion, physical use, sexual reproduction organs or unlawfully move or transplant organs and / or body tissue or take advantage of power or ability. Someone by the other side to make a profit. Both material and immaterial.

**Sec. 2, Art. 1 - The Criminal Trade of People**

- (1) Anyone who recruits, transports, harbors, sends, transfers, or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, for the purpose of exploiting the person within the territory of the Republic of Indonesia shall be punishable by a prison sentence of a minimum period of 3 years and a maximum of 15 years and a fine amounting to a minimum of one hundred and twenty million rupiah and a maximum of six hundred million rupiah.



(2) If the act as described in paragraph (1) results in a person being exploited, the offender is subject to the same punishment as provided under paragraph (1).

### **Art. 3**

Anyone who brings another person into the territory of the Republic of Indonesia with the intention to exploit such person within the said territory or in another country shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 years and a fine amounting to a minimum of one hundred and twenty million rupiah and a maximum of six hundred million rupiah.

### **Art. 4**

Anyone who takes an Indonesian citizen outside the territory of the Republic of Indonesia with the intention to exploit such person outside the said territory shall be punishable by a prison sentence of a minimum period of 3 years and a maximum of 15 years and a fine amounting to a minimum of one hundred and twenty million rupiah and a maximum of six hundred million rupiah.

### **Art. 5**

Anyone who adopts a child by promising or giving something with the intention of exploiting [such child] shall be punishable by a prison sentence of a minimum period of 3 years and a maximum of 15 years and a fine amounting to a minimum of one hundred and twenty million rupiah and a maximum of six hundred million rupiah.

### **Art. 6**

Anyone who sends a child within the country or to another country using any means, thus causing such child to be exploited, shall be punishable by a prison sentence of a minimum period of 3 years and a maximum of 15 years and a fine amounting to a minimum of one hundred and twenty million rupiah and a maximum of six hundred million rupiah.

- **Female Genital Mutilation (FGM)/ Female Genital Circumcision**

The authorities banned the practice in 2006 but backpedaled in 2010 following pressure from some of the country's powerful religious organizations. The Indonesian Ulema Council (MU) is an influential quasi-government body of Muslim scholars that met with the health ministry. They explained that banning female circumcision was against human rights and sharia law. While it is not mandatory according to Islamic law, some interpretations strongly recommend it.<sup>2</sup>

- **Child/Early/Forced Marriage**

[Law No. 1 of 1974 \(Marriage\)](#)

#### **Art. 6**

- (1) The marriage shall be based on the consent of the two prospective parties.
- (2) In order to marry a person who has not reached the age of 21 years the permission of both parents must be obtained.
- (3) . . . .

#### **Art. 7**

- (1) Marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years.

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<sup>2</sup> Maria Dhumieres, *The custom of female circumcision remains good business in Indonesia*, PRI, at <https://www.pri.org/stories/custom-female-circumcision-remains-good-business-indonesia> (last visited Mar. 13, 2020).