

AMNESTY INTERNATIONAL PUBLIC STATEMENT

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Indonesia: Release 15-year-old rape survivor jailed for abortion

Amnesty International Indonesia and the Institute for Criminal Justice Reform (ICJR) call on Indonesian authorities to unconditionally and immediately release a 15-year-old girl who was convicted for obtaining an abortion after having been raped by her brother. Our organizations also call on Indonesian authorities to decriminalise abortion in all circumstances so that no woman or girl is subject to penalties of any kind for seeking or obtaining an abortion, and to ensure access to safe and legal abortion at a minimum in cases of rape, sexual assault or incest, when pregnancy poses a risk to the life or health of the pregnant woman or girl, and in cases of severe or fatal fetal impairment, as per Indonesia's international human rights obligations.

On 19 July, the 15-year-old girl, who was raped by her brother, was sentenced to six months behind bars by the Muara Bulian District Court in Batanghari District, Jambi Province on abortion-related charges or for obtaining an abortion. Indonesia has a legal obligation under international human rights law to ensure that victims of rape or incest can have timely access to safe and legal abortion. Moreover, denial of abortion services to women or girls who have become pregnant as a result of rape, sexual assault or incest is a violation of the right to be free from torture or cruel, inhumane or degrading treatment.

In June, the police investigated a report from local residents who found a foetus in a palm oil plantation in Muara Tembesi Sub-district, Batanghari. Subsequently, the police arrested a 15-year-old girl and her brother. The victim's brother, aged 18, admitted that he had raped his sister and threatened to harm her if she resisted. The Muara Bulian District Court sentenced him to two years imprisonment for sexual abuse under Article 76D of the Child Protection Law No. 35/2014. The Court also convicted the girl for procuring abortion under Article 346 of Indonesia's Criminal Code (KUHP) and Article 45A of Indonesia's Child Protection Law (No. 35/2014 which was amended to Law No. 17/2016). The Court also required that both the victim and her brother participate in three months training at the Juvenile Rehabilitation Institute (*Lembaga Pembinaan Khusus Anak*), a state-sponsored education institution for underage convicts. The mother of the 15-year-old girl was also arrested for allegedly assisting the abortion.

Under the Criminal Code, a woman or girl who seeks to terminate her pregnancy in circumstances where it is not legal may face up to four years' imprisonment (Article 346) and individuals, including health workers, who perform or facilitate an illegal abortion may be jailed for up to 10 years (Article 349). Article 45A of the Child Protection Law stipulates that "everyone is prohibited from undertaking abortion of a child who is still in the womb, unless with other reason and justified in accordance with other laws". Furthermore, Article 194 of the 2009 Health Law and Article 77A (1) of the Child Protection Law (No. 35/2014 which was amended to Law No. 17/2016) provide that any person who performs an abortion may be sentenced to 10 years' imprisonment or a fine of up to one billion Rupiah (USD 69,170).

Abortion is generally prohibited and penalised in Indonesian National Law. However, under Article 75(2) of the Health Law No. 36/2009, abortion could be allowed if there is “indication of medical emergencies that could harm the live of the mother/the baby” or “pregnancy caused by rape that would incur psychological trauma to the victim”. However, Article 76 of the same Law regulates that the abortion could only be conducted in the first six weeks of the pregnancy with the consent from the pregnant woman by a certified medical institution appointed by the state.

Awareness among women and girls from poor and marginalized communities of the provisions pertaining to access to abortion in cases of rape in the 2009 Health Law, and of legal exceptions to the criminalisation of abortion is very low. Lack of awareness and knowledge about the law among women and girls as well as abortion-related stigma and other barriers they face in accessing legal services means that women and girls are more likely to seek clandestine, unsafe abortions, or else terminate the pregnancy on their own through unsafe means, even though they may be legally entitled to an abortion. This happened to the convicted 15-year-old girl in Muara Tembesi, Jambi.