CROSS-BORDER SAFEGUARDS FOR CHILDREN IN CONTACT WITH THE LAW IN THE ASEAN REGION – BRUNEI

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Content of Presentation

• Overview on Brunei
• Legislative framework for children in conflict with the law
• Institutional framework
• Cross border issues involving children
• Cross border cooperation in ASEAN
• Challenges and Recommendations
BRUNEI -Overview

The smallest ASEAN Country in term of population
Population including foreign national: 400,000
Size: 10 times bigger than Singapore
Legal framework : Common Law System-based on the British-similarity with Singapore and Malaysia
Legislative framework for children in conflict with the law

Child Specific legislation
Other legislations with provisions for juvenile
Legislation applies to all- national or foreign.
No special provision for children of non-national
Legislation on children-CYPA

Guiding principle:

Best interest of the children-at the same time children who are in conflict of the law are not exempted from the responsibility of being accountable for their misdeed.
Maximising diversion from the court process
Legislations affecting children

Other legislations:
1. Penal Code
2. Criminal Procedure Code
3. Muslim Family Law Act
4. Syariah Penal Code Act
5. Marriage Act
6. Labour Act
Institutional framework

Welfare home - 2 wings
- Facility for juvenile offenders
- Children under protection – victims of violence, beyond parental control, etc.

Reasons for mixed facility: Economic- small numbers involved
Disadvantage: Different approach-physical, programmes, personnel, etc.
Institutional framework

• Policing and investigation: Women and children investigation Unit
• Juvenile Courts-jurisdiction of offenders between 7-18
Cross border issues – children in conflict and children affected

Not much experience – Potential is there
- big foreign workers community: Indonesian, Filipino, Bangladeshi and East Malaysian

Border – share with East Malaysia only
Illegal entry involving adults and children for work-
Malaysian, Indonesian and Filipino
Are there non-national children under measures and sanctions in Brunei?

**Protection:**

- 2014 – 10 Filipinos & 2 Malaysian
- 2015 – 2 Malaysian & 2 Filipino and 1 Cameeron
- 2016 – Malaysian 1
Are there non-national children under measures and sanctions in Brunei?

Rehabilitation:
• 2014 – 1 Malaysian and 1 Vietnamese (illegal entry)
• 2015 – 2 Vietnamese (illegal entry) and 6 Filipino suspected trafficking
• 2016 – 1 Thai (suspected trafficking)
Cross border issues – children in conflict and children affected

Case 1
African Filipino child
Parents on trial and detained for trafficking
Child placed in Welfare facility
Working with embassy to trace family in the Philippine – taking a long time
Cross border issues – children in conflict and children affected

Case 2
Vietnamese 16 years old working as a cook in fishing boat
Arrested with the adults operators in the fishing boat
Boy not charged and placed with the Embassy
Embassy sought support of local Community for homestay until he was sent back
Cross border cooperation with ASEAN Countries

1. Mutual Legal Assistance Treaty 2004- ASEAN Country

2. Bilateral arrangement with Malaysia and Singapore – endorsement of each other warrant and summon without mutual recognition of judgment—possible because of similar legal framework
Challenges

1. Small country with small population-economic consideration might affect decision making
2. Lack of resources- trained counselors and social workers
3. Trans border – like other ASEAN countries is political and security issue
4. Introduction of the Syariah Penal Code-harmonisation with the CYPA and CRC
Recommendation

1. To enact provision for non-national children in conflict with the law

2. Possibility of having arrangement for mutual acceptance of warrant and summonses among ASEAN countries – recognising that harmonisation of ASEAN Law will be a huge challenge

3. Cross border issues affecting children brought into ASEAN agenda (promoting trans national cooperation on children) – AICHR, ACWC, SOMTC, SOMSWD, ASLOM, etc.

4. Cooperation of all justice system in ASEAN to address children protection issue where they conflict/affected by criminal justice process
Thank you for listening