

Briefing Paper

To Mr. Juan E. Mendez,
UN Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
On the Occasion of the Expert Consultation
Torture and Ill-treatment in Health Care Settings
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1. Torture and Ill-treatment in the Context of Drug Law/Policies

a. Violence against People Who Use Drugs

Indonesia enacted Law on Narcotics in 2009, replacing previous 1997 Law on Narcotics and 1997 Law on Psychotropic Substances. Indonesian government has reiterated several times that the new law will protect human rights of the people who use drugs better. However, the reality speaks differently.

In 2008, JANGKAR, the Indonesian Harm Reduction Network, conducted a study surveying 1,106 injecting drug users in 13 cities in Indonesia about their experiences of police abuse.¹ Of those interviewed, 61.91% reported that they had been subjected to physical abuses by the police, while 51.12% of them had been subjected to psychological violence.² The methods of physical and psychological violence were varied. In 2009, the Indonesian Coalition for Drugs Policy Reform (ICDPR)³ conducted a research in nine major cities in Indonesia and found that the dominant methods of torture or ill-treatment that were experienced by drug users in criminal proceedings are beatings, electrocution, stripped, provided with wasted foods, and shots into their legs.⁴

In 2009, a group of harm reduction/drug user organizations documented human rights abuses experienced by people who use drugs in five provinces in Indonesia.⁵ The report reveals that 71 of 139 drug users interviewed during the research project said that they had experience torture, while 106 of them had physical violence by the police which may amount to ill-treatment.

Women who use drugs who face criminal proceedings not only often experience physical and psychological abuse, but also often subjected to sexual violence. It is common knowledge that if a woman who uses drugs is arrested by the police and she wants to be

¹ Jangkar, *Pelanggaran HAM pada Komunitas Penasun: Pengumpulan Data 12 Kota di Indonesia*, Jakarta: Mei, 2008.

² See Sara LM Davis, Agus Triwahyuono, and Risa Alexander, 'Survey of abuses against injecting drugs users in Indonesia,' *Harm Reduction Journal* 6 (28), 2009, available at: <http://www.harmreductionjournal.com/content/pdf/1477-7517-6-28.pdf>

³ A civil society coalition comprised of Faculty of Law Atmajaya Catholic University, STIGMA Foundation, LBH Masyarakat, and the Atmajaya HIV/AIDS Research Institute, working to advocate for the drug policy reform in Indonesia.

⁴ Despite Indonesia has ratified the Convention against Torture in 1998, torture has not been criminalized under the Indonesian criminal law to date. Torture is included in the recent draft of the Indonesian Criminal Code. However, the government and the parliament have not taken any serious actions to enact the bill.

⁵ The Monitoring Network on Human Rights Violations against People who Use Drugs, *Stop Imprisonment, Time for Rehabilitation*, Jakarta: 2012. The Monitoring Network is comprised of four grass root harm reduction/drug user organizations in Indonesia: Forkon, Panazaba, Performa and EJA.

released, the police will insinuate her to engage in sexual activity with the police. In their daily language, this is referred to as *tukar* body (exchange body).⁶

b. Violence in Drug Law Enforcement

According to Manfred Nowak, former UN Special Rapporteur on Torture, on his mission to Indonesia in 2007, 'torture and ill-treatment is used routinely to extract confessions or in the context of drug charges.'⁷ According to the Indonesian Criminal Procedure Law, confession of the accused is not a legal means of proof (evidence), but rather information provided by the accused is. Therefore, the police should have understood that they are not required to obtain confessions from drug suspects. It may be possible that the intention of the police to torture drug suspects is more into to playing fun of it or ridicule the suspects.

In 2011/2012, LBH Masyarakat conducted a study interviewing 388 respondents in Jakarta, all of whom were drug offender⁸ who were detained at the investigation stage at that time.⁹ The report reveals that 86.6% of the respondents said that they were tortured or ill-treated during the investigation.¹⁰ 79% of drug suspects interviewed had physical and psychological abuses when they were arrested.

It is strongly suspected that the Indonesian government's strong desire to win their misguided belief of war on drugs have resulted in the high rate of violence against people who use drugs in criminal proceedings and drug offenders¹¹. Law apparatus seems to arrest, prosecute and convict as many drug offenders as they can, because it may lead to recognition of their 'positive performance'. This has eventually caused another serious problem: the overcapacity of detention centers and correctional facilities. A large majority of detainees and prisoners are drug offenders. According to the Directorate General of Correctional Facility, as of October 2012, there were 26,218 people convicted for drug trafficking and 26,613 people convicted for drug use in all correctional facilities in Indonesia.¹² The overall total of prisoners is at least 100,000 people.¹³ Given the large number of drug convicts, it indicates that Indonesia's punitive drug policy does not seem to work effectively. In overcapacity prisons where facilities fall short of international human rights standard and drug use is still prevalent, it is susceptible even more for HIV/AIDS widespread in prisons.

⁶ See for example Martin Lundqvist and Ricky Gunawan, 'War on Drugs in RI: Demonizing the Most Vulnerable,' *The Jakarta Post*, 12 December 2008, available at:

<http://www.thejakartapost.com/news/2008/12/12/war-drugs-ri-demonizing-most-vulnerable.html>

⁷ Manfred Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment – Mission to Indonesia*, A/HRC/7/3/Add.7, 10 March 2008, para. 64.

⁸ Drug offenders interviewed by LBH Masyarakat were those who are considered coming from low economic status or socially marginalized people.

⁹ LBH Masyarakat, *Reality Behind Bars: A Report on Documentation of Human Rights Violations of Drug Suspects at the Investigation Stage in Jakarta*, Jakarta: July, 2012.

¹⁰ See also Ajeng Larasati, 'Indonesia's Failed Drug Policy Undermines Drug Users' Human Rights', *CAVEAT*, July-August 2012 (Jakarta: LBH Masyarakat, 2012), pp. 10-17.

¹¹ Drug offenders are not necessarily drug users.

¹² It is unclear the criteria of 'drug use', whether people who are punished for drug use only or drug users who are punished for any kinds of drug offences (this may include drug possession, buying/selling, and so on).

¹³ According to the database of the Directorate General of Correctional Facility, total prisoners in Indonesia, as of October 2012 are 101,073 people. However, according to the Director General of Correctional Facility, in his speech on the occasion of the Independence Day in August 2012, there were 102,971 prisoners in Indonesia. To access the database please go to the following link:

<http://smslap.ditjenpas.go.id/public/krl/current/monthly/year/2012/month/10> (in Bahasa Indonesia).

c. Compulsory Rehabilitation for People Who Use Drugs

According to Article 5 of the Law number 35 of 2009 regarding Narcotics, one of the objectives of the Law on Narcotics is to guarantee the regulation of rehabilitation for ‘drug abusers’ and ‘drug addicts’. Despite the terminologies that are misleading, the presence of this objective is important from a perspective of the right to health. However, the provisions contained in the Law on Narcotics do not clearly articulate the ideal objective it would like to achieve. According to Article 127 of the Law on Narcotics, a ‘drug abuser’ can be sentenced up to four years. In that case, judges may consider delivering a rehabilitation verdict to a ‘drug abuser’. ‘Drug abusers’ who are ‘victims of drug abuse’ are obligated to undergo medical and social rehabilitation. Meanwhile, according to Article 54 of the Law on Narcotics, ‘drug addicts’ are obligated to undergo medical and social rehabilitation. Adult ‘drug addicts’ are also obligated to report themselves to community health centers, hospitals, or any other rehabilitation centers assigned by the government. If the objective of the law is to provide drug treatment for people who use drugs, ‘drug abuser’ should not be sentenced to imprisonment. However, providing drug treatment opportunity through court’s decision may violate drug user’s right to health as s/he may not want to go to rehabilitation. The same situation applies to ‘drug addicts’ where they are forced to report themselves to receive rehabilitation. This provision is a violation of the voluntary principle.

2. Criminalization of Drug Use

Indonesian Law number 35 of 2009 regarding Narcotics criminalizes people who use drugs – despite its aim to provide treatment for people who use drugs. The Law does not differentiate the medical status of people who use drugs and drug dealers. All the criminal provisions contained in the Law do not include circumstances on the purpose of activity involving drugs. Drug users who are red-handed possessing drugs will be charged for drug possession, and not for drug use. Thus, it will be difficult for them to ask for rehabilitation verdict if they wish to go through rehabilitation. Unless, they can prove that they are in addiction and want to undergo drug treatment. This loophole has been utilized by people like drug dealers. If they are charged for drug dealing, they can avoid imprisonment by bribing medical practitioners to help them showing that they are in addiction. If the judges believe that evidence, the drug dealers will be sentenced to rehabilitation instead of imprisonment.

Even if a drug user is sentenced for rehabilitation, if the verdict also includes imprisonment, the Prosecutor Office will implement the court’s decision by transferring the drug user to prison first. After s/he finishes her/his imprisonment term, the Prosecutor Office will transfer the drug user to the rehabilitation centre. LBH Masyarakat has assisted two drug users where they had to be imprisoned first and then went to the drug treatment hospitals. This is in contrary to the ideal aim that the Law wishes to achieve.