**Submission to the OHCHR’s Report on Human Rights Challenges in Addressing and Countering All Aspects of the World Drug Problem**

INDONESIA

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**Submitting Organisation:**

**Lembaga Bantuan Hukum Masyarakat (LBHM)** is a not-for-profit nongovernmental organisation that provides free legal services for the poor and victims of human rights abuses in Indonesia. We advocate for the promotion of the rule of law and human rights protection through strategic litigation, research and analysis, campaign and public education, and community legal empowerment. We focus on the abolition of the death penalty, drug policy reform, HIV and human rights, mental health, and the protection of LGBT rights.

**Introduction:**

LBHM welcomes the opportunity to provide information on human rights challenges in addressing and countering all aspects of the world drug problem, specifically in Indonesia, to the Office of the High Commissioner for Human Rights (OHCHR). This submission will focus on prison overcrowding situation as a result of the punitive approach to drug policy.

1. **Punitive Approach as the Main Cause of Drug Offenses Number in Prison**

According to the Directorate General of Correction’s, as of August 2021, 116.930 prisoners who were convicted by “trafficking charges” of Indonesia Narcotics Law.[[1]](#footnote-1) While for the users alone, 28.483 people. In April 2022, 135.758 of 273.822 prisoners were people who committed narcotics crimes. The number of people who use drugs increased to 120.042. Meanwhile, the prison capacity in Indonesia is only 132.107 people, which means 107% overcapacity.[[2]](#footnote-2)

This data attest the failure of punitive approach. Various means have been taken by the government to reduce the number and prevent people who use drugs from being sentenced, are: 1) The Integrated Assessment Team (Tim Asesmen Terpadu-TAT) Perpetuates Human Rights Violations; 2) Conflict of interest in providing restorative justice as a resolution measure; 3) Temporary policy of early release through home assimilation did not reduce the number of prisoners**.**

1. **The Integrated Assessment Team (Tim Asesmen Terpadu-TAT) Perpetuates Human Rights Violations**

In 2019, out of 514 districts/cities in Indonesia, TAT services attached to the National Narcotics Agency (BNN) are in 41.43% of the areas. Of the total people arrested for Narcotics cases nationally as many as 42,649 people, TAT reached 1,575 people or the equivalent of 3.7%. TAT intervention that has not been exacerbated evenly when each stage of TAT is determined at the discretion of the investigator. The large investigator's authority does not provide space for oversight which opens up his authority in the form of extortion.

On the other hand, TAT treatment is mandatory at the same time without accommodating the specific needs of each Narcotics user. The application of this approach model is academically doubtful and its success challenges because it may not suit the complex needs of each Narcotics user. Moreover, not all Narcotics users need treatment with the TAT approach model. Instead of increasing the degree of physical and mental health of Narcotics users as mandated by the Health Law, TAT treatment actually undermines the right to health and at the same time denies health standards in the Health Law. In conditions like these, TAT treatment which is claimed to divert Narcotics users from the legal process actually turns into arbitrary detention. The adoption of the TAT mechanism in Narcotics policy, systemically only perpetuates the chain of human rights violations.

1. **Conflict of interest in providing restorative justice as a resolution measure**

Indonesia encourages the settlement of narcotics cases with restorative justice to obtain rehabilitation. In 2021, the Indonesian government through the Attorney General's Office and the National Police issued restorative justice regulations in resolving narcotics cases. Conceptually, narcotics users are victims of narcotics use itself (victimless crime). In practice, this rule will have no effect because there is no victim as a party to restorative justice settlements. Even though this does not make sense, restorative justice settlements are often not carried out and fail because the police or prosecutors as institutions have an interest in continuing the next stage of the legal process.

The intersection of conflicts of interest between the police and prosecutors in the settlement of restorative justice negates the concept of ultimum remedium in criminal law. At the same time, they deny the 2020-2024 National Medium-Term Development Plan (Rencana Pembangunan Jangka Menengah Nasional-RPJMN) which prioritizes restorative justice in criminal cases including narcotics. The motive for the interests of the police and prosecutors is implicitly triggered to pursue social and financial benefits by accompanying the disclosure and resolution of narcotics cases. In fact, sociologically, the dominant public almost supports the steps of the police and prosecutors because the provocation of narcotics users is inherently negative.

1. **Temporary policy of early release through home assimilation did not reduce the number of prisoners**

With the aim of preventing the spread of Covid-19, the government has released 115.798 prisoners through the assimilation program (as of April 2021). However the regulation is not applicable to drug offenses that were sentenced more than five years imprisonment. As the data shows that the prisons are dominated by people convicted of drug-related offences, this policy does not address directly and permanently the problem of overcapacity in Indonesia's prisons.

Although the Indonesian government has amended the exclusionary provisions in the new Corrections Law, this downstream policy will not address the core issues in drug war policy. The state must take concrete steps by prioritising health interventions, alternatives to imprisonment, and decriminalising the people who use drugs.

1. **Law Proceeding in Drug Offenses: Prone to Extortion, Torture, Sexual Harassment, and Lack of Legal Assistance**

In 2022, the results of a study by LBHM at 3 prisons in Jakarta showed that during the investigation, 41 out of 253 people admitted to having experienced torture, 14 people had experienced extortion, as many as 241 had no access to legal aid.

This illegal practice is linked to entrapment techniques such as covert purchases or handovers under surveillance that are used by the police to catch people involved in narcotics in several modes that often surface:

* Using informants who are in the circle of illicit narcotics traffic. However, this mode is often considered irrelevant but who and how the informant works is the key to knowing the real perpetrators;
* Seduced to buy narcotics when the transaction was arrested. The initiative in this mode does not actually come from the doer, because he receives orders from other people;
* Buying and selling articles with lures will be released on condition of paying, even though the release is illegal and can again become a target for arrest.

Some of the above modes are supported by weak transparency and accountability. For example, the legal conditions for arrest and detention in the Criminal Procedure Code (KUHAP) can be accessed by the public, while the legal conditions for trapping and surrender under supervision are not open to the public. Thus, when an unlawful covert purchase occurs, the victim cannot test it because he also does not know how the technique should be legal before the law.

1. **The Impact of Punitive Approach to Women**

The LBHM study found women's vulnerability factors in narcotics cases. The factor of poverty, victims of sexual violence from unequal power partners and the use of women's bodies as a means of hiding narcotics is the dominant factor. Among these factors, women often experience more than one factor. In the Merry Jane Veloso case, the woman on death row in the Narcotics case was driven by poverty and being a victim of sexual violence. Also Merri Utami, a woman on death row, experiences an unequal power relationship due to poverty.

However, the current Narcotics policy fails to pay attention to the vulnerability of these women, even the judge's decision fails to explore it even though since 2017, the Supreme Court issued regulations regarding guidelines for trying cases of women who are in conflict with the law. In fact, it is not uncommon for death penalty decisions to target women who involve narcotics with multiple factors of vulnerability. At least from 2021 to 2022, it was found that 3 women were sentenced to death in narcotics cases and around 11 female death row convicts were awaiting execution.

The absence of a protective mechanism during the judicial process for women and people threatened with death penalty, including women, has contributed to the increasing population of women in prison and the trend of death penalty sentences. Even though structurally protection against women's vulnerabilities is still not materialized in various existing regulation

1. **Conclusion**

A punitive narcotics policy accompanied by justification for public support indirectly encourages the police to apply any means, regardless of the methods used against the law. Although this practice is prohibited, legal and human rights instruments are obsolete in preventing and repairing the conditions that arise. Alternatives to punishment with the TAT mechanism or rehabilitation are only shields in perpetuating human rights violations as well as space for abuse of apparatus authority.

The problem of the criminal justice system, which has almost minimal supervision of the police with comprehensive authority, is the trigger for violations in narcotics cases that still occur frequently. Strengthening external oversight more effectively, limiting the already excessive powers of the police, are several ways that can be taken.

But that's not enough. Breaking the chain of violations in narcotics cases requires more fundamental policy changes, namely the decriminalization of narcotics use and possession of narcotics for personal gain.

1. Law Number 35 of 2009 concerning Narcotics. Trafficking charges include buying, selling, possessing – even for personal use (because the Law doesn’t differentiate the purpose of such activity). [↑](#footnote-ref-1)
2. Look at <https://dataindonesia.id/ragam/detail/mayoritas-penghuni-lapas-indonesia-dari-kasus-narkoba>*.* [↑](#footnote-ref-2)