

WOMEN, INCARCERATION AND DRUG POLICIES IN SOUTH EAST ASIA: PROMOTING HUMANE AND EFFECTIVE RESPONSES

A Policy Guide for Indonesia

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INTRODUCTION

In 2009, the United Nations Office of Drug and Crime (UNODC) produced a report assessing one hundred years of drug control since the 1909 Shanghai Opium Commission. The report identified and recognized the negative ‘unintended consequences’ of drug control policies: the creation of a criminal black market; the shift of policy focus from public health to law enforcement; enforcement in one geographical area resulted to diversion of illicit drug production to other areas; pressure on one type of drug led to the promotion of the use of other alternative drugs; and, the marginalization of and stigmatization against persons who use drugs.¹

Almost a decade after this UNODC report, these negative consequences of drug control continue to be suffered by a growing number of women incarcerated for drug-related offenses worldwide, and particularly in South East Asia. This policy guide aims to provide civil society organisations and stakeholders in Indonesia with information and policy recommendations on the situation of women incarcerated for drug-related offences.

METHODOLOGY

In 2018, the International Drug Policy Consortium, in partnership with Ozone Foundation in Thailand, LBH Masyarakat in Indonesia and NoBox Transitions in the Philippines, embarked on a project called ‘Women, Incarceration and Drug Policies in South East Asia: Promoting Humane and Effective Responses’.

The project aims to encourage reforms towards reducing the levels of incarceration of women for drug offenses. The project also seeks to increase civil society engagement; gather support for proportionate sentencing and reduction of death penalty sentences especially for low-level, non-violent offenses; increase understanding of the extent and profile of women incarcerated for drug offenses and its wider socio-economic consequences; and to promote alternatives to incarceration.

To these ends, the project partners in three countries in South East Asia conducted research studies on women incarcerated for drug related offenses. They also provided workshops and meetings for civil

¹ United Nations Office on Drug and Crime, A Century of International Drug Control, United Nations Vienna, 2009.

society organisations involved in women’s rights, drug policy reform and prison reform. National stakeholder’s consultations were held for relevant public institutions, organisations and communities to come together and discuss the research outputs while sharing their best practices, experiences and challenges as well as provide recommendations for national policy reforms. This policy guide is a consolidation of the outcomes of these project activities in Indonesia.

GLOBAL TRENDS ON WOMEN INCARCERATED FOR DRUG OFFENCES

In its 2015 Global Prison Trends report, Penal Reform International found that while women comprised 6.5 percent of the world’s prisoners – over 660,000 women as of 2013 – they constitute the fastest growing prison population with particularly high rates of imprisonment for drug offences. The proportion of women incarcerated for drug offences is significantly higher than that of men, with the highest levels of incarceration of women to be found in South East Asia. ²

This number has significantly increased between 2015 and 2017. The Fourth Edition of the World Female Imprisonment List states that more than 714,000 women and girls are held in penal institutions throughout the world as of September 2017. These include pre-trial detainees or remand prisoners and those that have been convicted or sentenced. ³

While women make up only about 2 to 9 percent of countries’ total prison population, subject to some exceptions, the number of women in prison is increasing at a faster rate than the number of men incarcerated. According to the World Female Imprisonment List, between 2000 and 2017, the global female prison population increased by 53.3% compared to 19.6% for male prisoners.

| | Country | Number of Women and Girls Incarcerated as of September, 2017 |
|----|--------------------|---|
| 1 | United States | about 211,870 |
| 2 | China | 107,131 (plus an unknown number in pre-trial and other forms of detention) |
| 3 | Russian Federation | 48,478 |
| 4 | Brazil | About 44,700 |
| 5 | Thailand | 41,119 |
| 6 | India | 17,834 |
| 7 | Philippines | 12,658 |
| 8 | Vietnam | 11,644 |
| 9 | Indonesia | 11,465 |
| 10 | Mexico | 10,832 |

² Penal Reform International (2015), Global Prison Trends 2015, <http://www.penalreform.org/resource/global-prison-trends-2015/>

³ Walmsley, Roy, World Female Imprisonment List 4th Edition (2017), Institute for Criminal Policy Research, Birkbeck University of London.

| | | |
|----|---------|-------|
| 11 | Myanmar | 9,807 |
| 12 | Turkey | 9,708 |

Table 1: Highest Incarceration Rates of Women Worldwide

The female prison population levels in Brazil, Indonesia, the Philippines and Turkey have risen particularly sharply between 2015 and 2017. Indonesia is one of twelve countries with the highest rates of incarceration for women worldwide (see Table 1).

Some concerns faced by women in incarceration include mental health problems with histories of abuse and trauma, vulnerability to sexual abuse by correctional personnel and other prisoners, reproductive health care needs, being primary caretakers of young children and having to leave them, and lesser face to face contact with their families because of the location of women’s prisons. It is more also difficult for women with a history of incarceration to find work, housing and financial support when they return to their communities.⁴

However, despite the rising numbers worldwide and in South East Asia, since women and girls represent less than ten percent of the prison population on average, their characteristics and gender-specific needs have largely been unrecognized and ignored.

DRUG POLICIES IN INDONESIA

Indonesia has been enforcing punitive drug laws since 1976 (Law No. 9)⁵ which was subsequently amended in 2009 as Law No. 35.⁶

Law No. 35 categorizes narcotics into three groups and provides criminal penalties of imprisonment, fines, and in some cases death, for different acts including the use, possession, sale, distribution, export, import, delivery, planting, and manufacture of these narcotics.

The drug laws also require the parents of minor drug users, the families of adult drug users and the drug users themselves to report their drug use to the authorities. Failure to report is also punishable by imprisonment and payment of fines. In addition, any person who “purposely” did not report any of the violations in relation to narcotics may also be criminally charged and punished with imprisonment and the payment of fines.

⁴ Wendy Sawyer, “The Gender Divide: Tracking Women’s State Prison Growth,” Prison Policy Initiative, January 9, 2018, https://www.prisonpolicy.org/reports/women_overtime.html

⁵ https://www.unodc.org/res/cld/document/idn/narcotic-law-no-9_html/indonesia-law9-76.pdf

⁶ http://www.flevin.com/id/lgso/translations/JICA%20Mirror/english/4868_UU_35_2009_e.html

The 2009 law also includes provisions that may divert persons who use drugs from the criminal justice system and towards rehabilitation. In cases of drug use, judges are given the discretion to order drug treatment instead of imprisonment.⁷

Sadly, Indonesia is also notorious for the imposition of the death penalty on drug offenders, most recently in the case of 14 prisoners who were executed by firing squad in 2015.⁸

Rights advocates are vigilant for possibly worrisome developments coming from the proposed amendments to Indonesia's criminal code in 2018. The criminal code referred to as KUHP is similar to the 1918 penal code issued by the Dutch that was retained after Indonesia's independence in 1945. The draft bill of the revamped criminal code, which is in the final stages of deliberation in Indonesian Parliament, contains 22 articles on the use, possession, couriering, and smuggling of narcotics. These acts under the proposed new criminal code will still be punishable by imprisonment and in severe cases, death by firing squad. The draft criminal code reproduced the punitive provisions under the 2009 narcotics law but excluded provisions on health. The draft criminal code also contains a blanket prohibition which does not distinguish between those who use drug recreationally with those who traffic drugs.⁹

Consequently, the Ministry of Law and Human Rights reports that Indonesia's prisons are over capacity. As of February 2018, 84 percent of all prisoners in Indonesia (82,467 men and women) were incarcerated for drug related offences.¹⁰

LBH MASYARAKAT'S STUDY ON WOMEN IN INCARCERATION AND DRUG POLICY IN INDONESIA¹¹

During the last quarter of 2017, as part of the IDPC regional project on women incarcerated for drug offences in South East Asia, LBH Masyarakat's Gender team conducted a study on the situation in Indonesia.

The study combined quantitative and qualitative data gathering methods. The research team traveled to gather data from over 300 women incarcerated for drug offences in four (4) prisons in Indonesia, spread across three (3) provinces and islands.

Three of the four prisons were facilities for both men and women while one (Semarang) was exclusive for women. Table 2 shows the prison population in each of the four prisons as well as the number of women prisoners incarcerated for drug offences.

⁷ <https://www.aljazeera.com/indepth/opinion/indonesia-criminal-code-overhaul-step-drug-policy-180329112407968.html>

⁸ <http://america.aljazeera.com/opinions/2016/2/no-one-should-be-executed-for-drug-offenses.html>

⁹ <https://www.aljazeera.com/indepth/opinion/indonesia-criminal-code-overhaul-step-drug-policy-180329112407968.html>

¹⁰ Ibid.

¹¹ LBH Masyarakat, Women, Incarceration and Drug Policies in Indonesia, 2018.

| Name of Prison/Detention Center | Data Collection Time | Women Drug Prisoners | Total Drug Prisoners | Men Prisoners | Women Prisoners | Total population (including detainee) | Capacity of Prison/Detention Center | Presentation of Overcrowding |
|---------------------------------|----------------------|----------------------|----------------------|---------------|-----------------|---------------------------------------|-------------------------------------|------------------------------|
| Humbang Hasundutan | 10-11 Oct 2017 | 55 | 266 | 287 | 74 | 390 | 150 | 160% |
| Rantau Prapat | 12 Oct 2017 | 25 | 998 | 839 | 25 | 1514 | 375 | 304% |
| Gorontalo | 11 Oct 2017 | 7 | 81 | 404 | 41 | 601 | 330 | 82% |
| Semarang | 30 Oct-2 Nov 2017 | 260 | 260 | - | 340 | 387 | 174 | 122% |

Table 2. Prison populations in the research sites

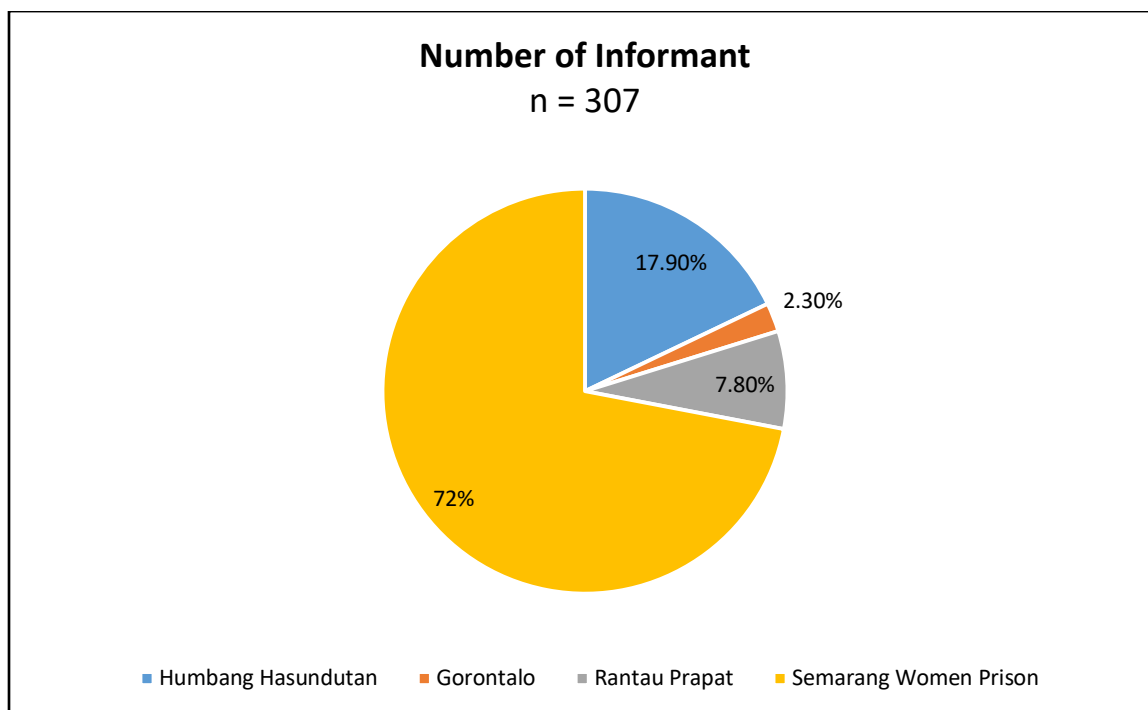


Table 3. Number of informant and which prison they came from

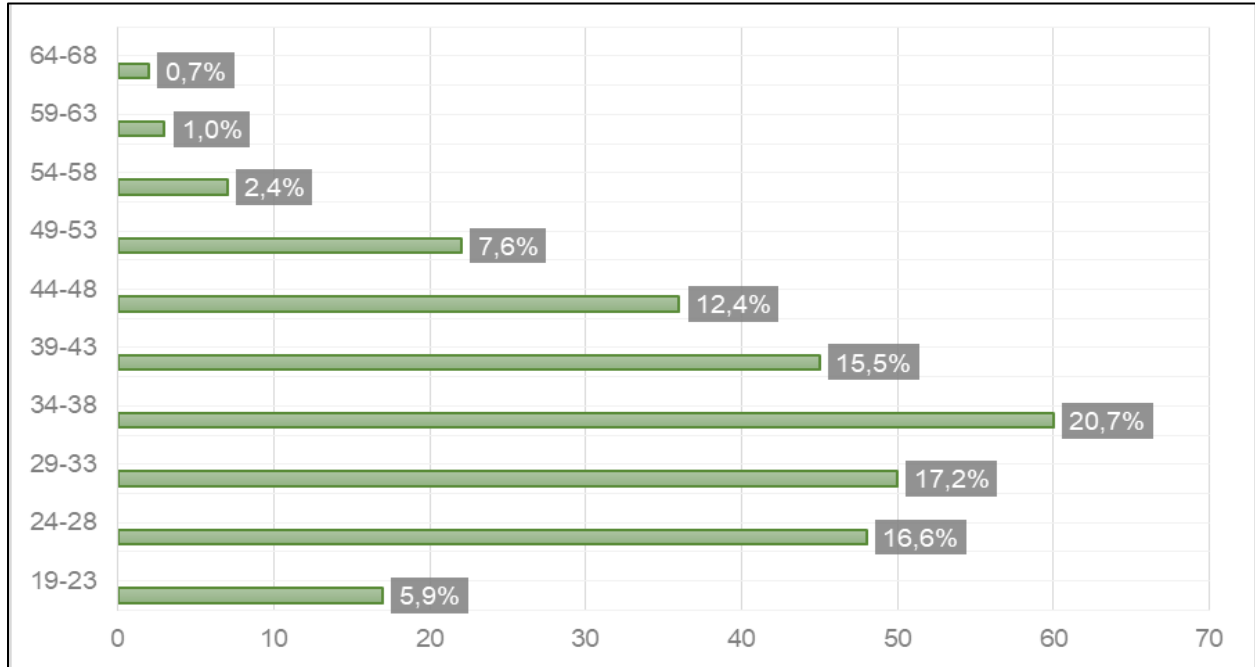


Table 4. Research Informants' Age

Table 4 above shows the age of the research informants. The women prisoners who participated in the study ranged from 19 years old to 68 years old with the most number of respondents in their mid to late thirties.

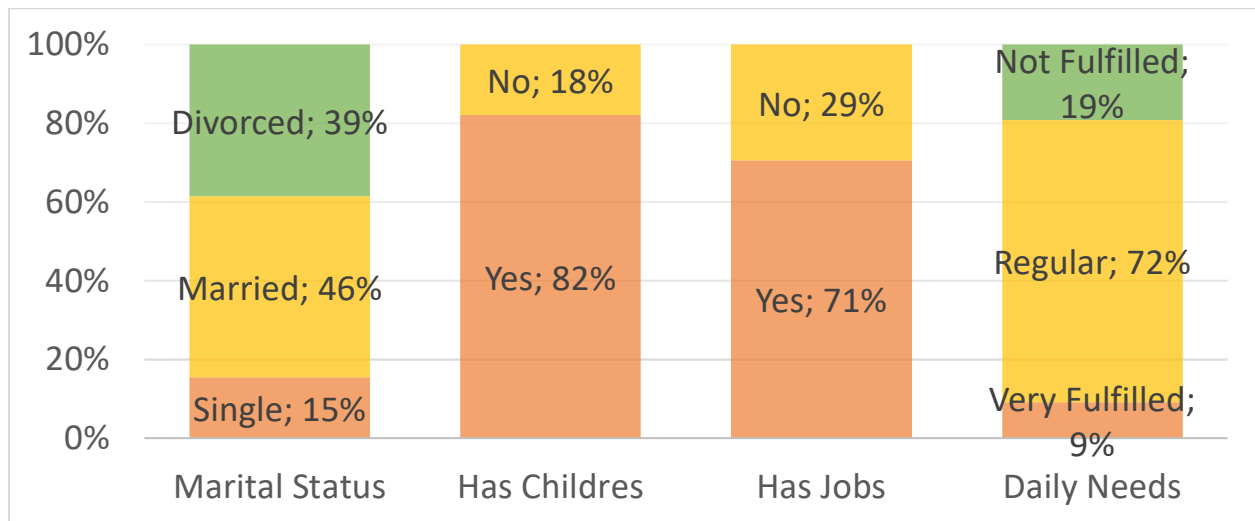


Table 5. Marital Status, Children, Jobs, Daily Needs

Table 5 shows the marital status and if the research respondents have children, have jobs and were fulfilled in their daily needs.

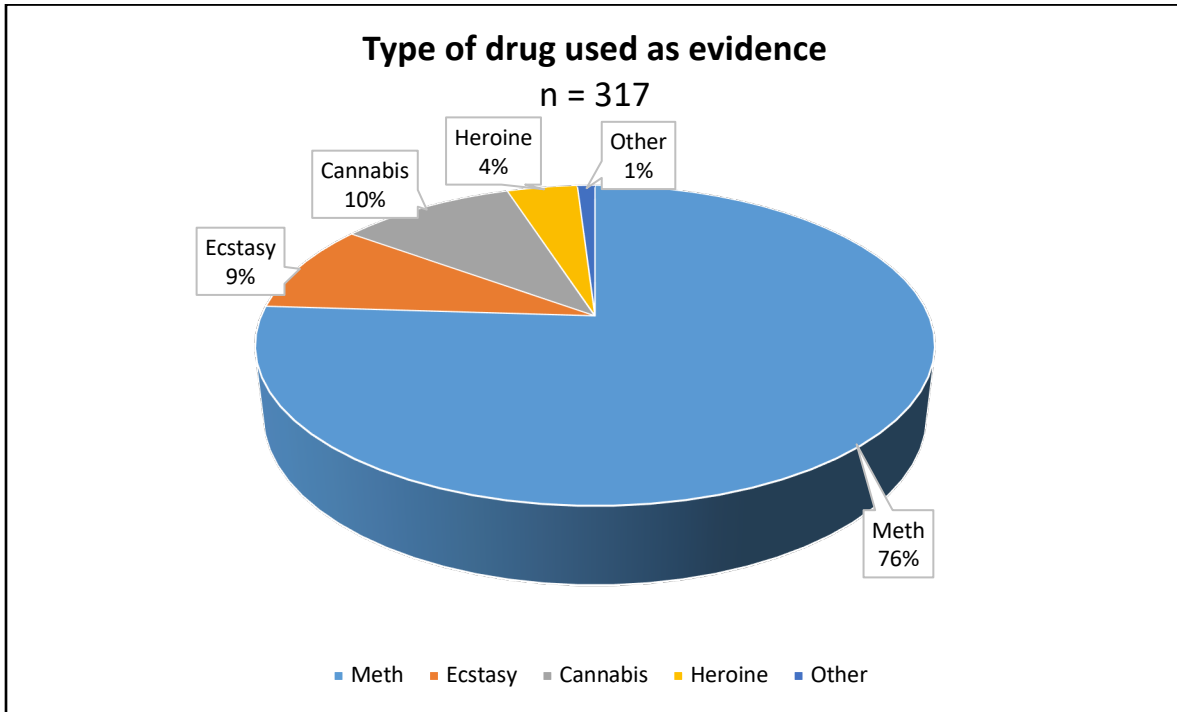


Table 6. Type of drug used as evidence

Table 6 shows the type of drug used as evidence against them. The most common type is Methamphetamine (sabu) 76%, followed by marijuana 10%, ecstasy 9%, heroin 4%, others 1%.

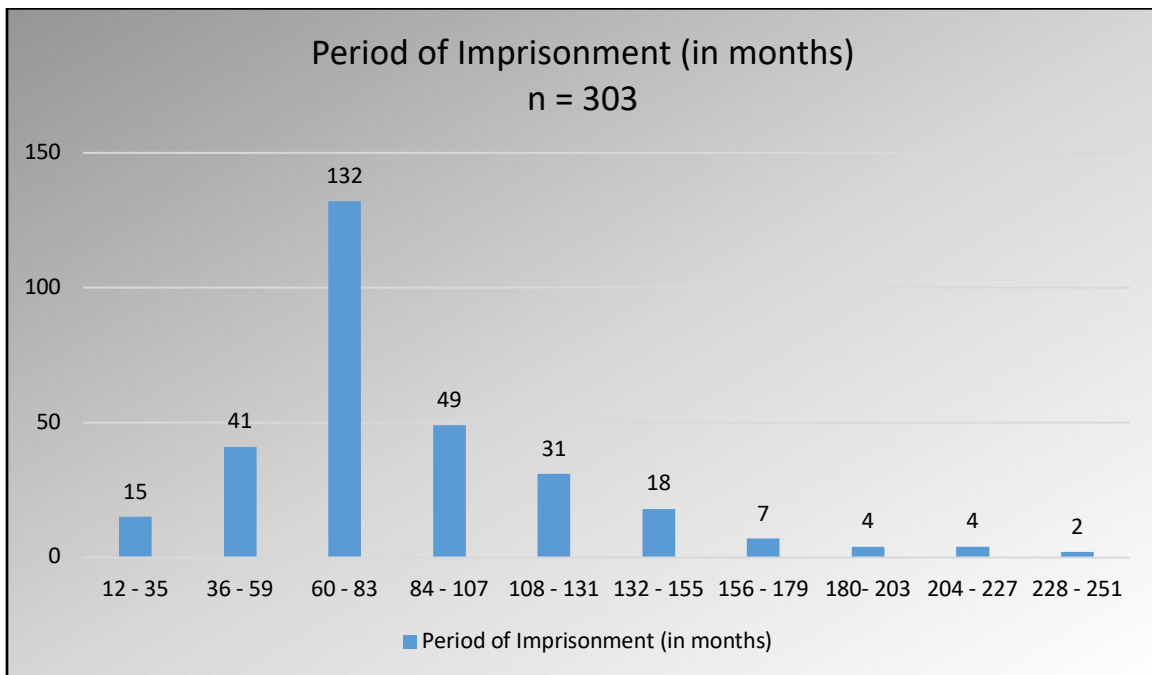


Table 7. Period of Imprisonment

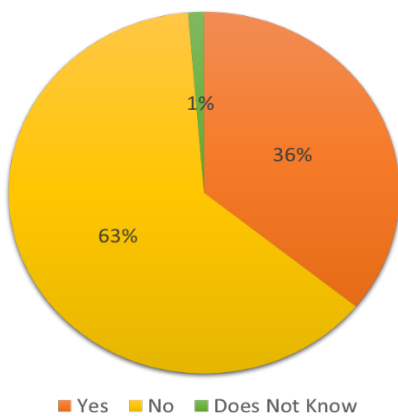
Table 7 shows the period of imprisonment of the research informants in number of months. The average period of women’s sentences is 83.70 months or 6.9 years with the shortest period of imprisonment at 12 months. Two respondents received life sentences. One respondent received rehabilitation and prison sentences. The periods of imprisonment are quite diverse and do not have any pattern. There is a case where the punishment is more than 100 months with drugs less than 0.4 gram.

EXPERIENCES WITH THE CRIMINAL JUSTICE SYSTEM

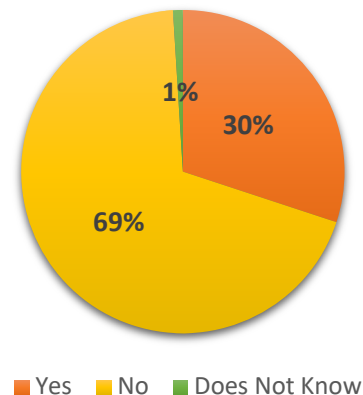
Access to Legal Assistance

Most of the research respondents did not have a lawyer during the investigation and prosecution stages of their cases. Over half of them had legal assistance only during the trial stage of their cases but 42 percent of the women who participated in the study said they were not assisted by a lawyer in all stages of the proceedings against them. The research findings also show that the LEA plays an important role in providing legal assistance during trials. However, all of the research respondents were disappointed with the quality of the legal assistance they received.

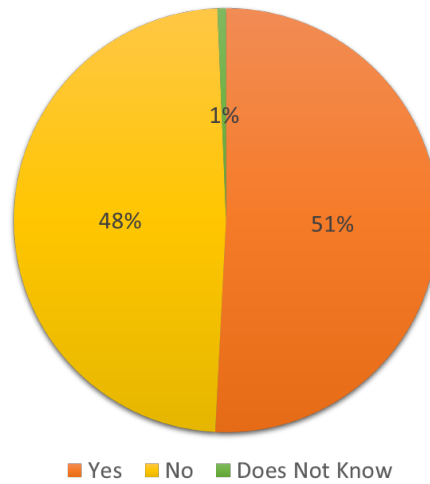
Has Lawyer at Prosecution Stage



Has Lawyer at Investigation Stage



Has Lawyer at The Trial



How to Get Legal Assistance

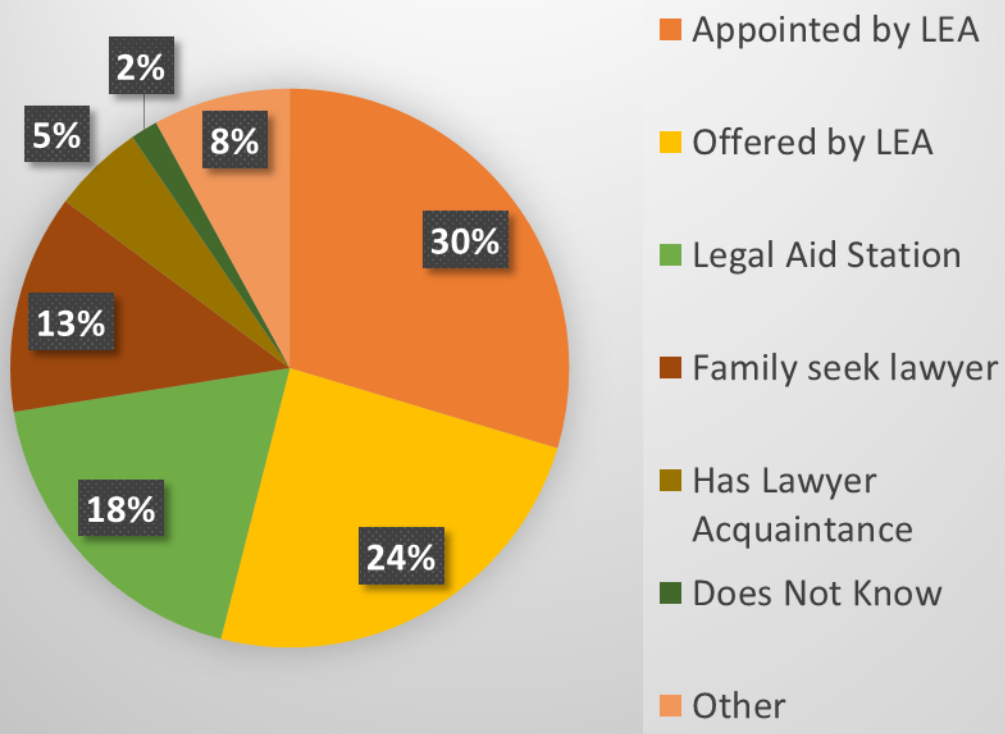


Table 8. How informants get legal assistance

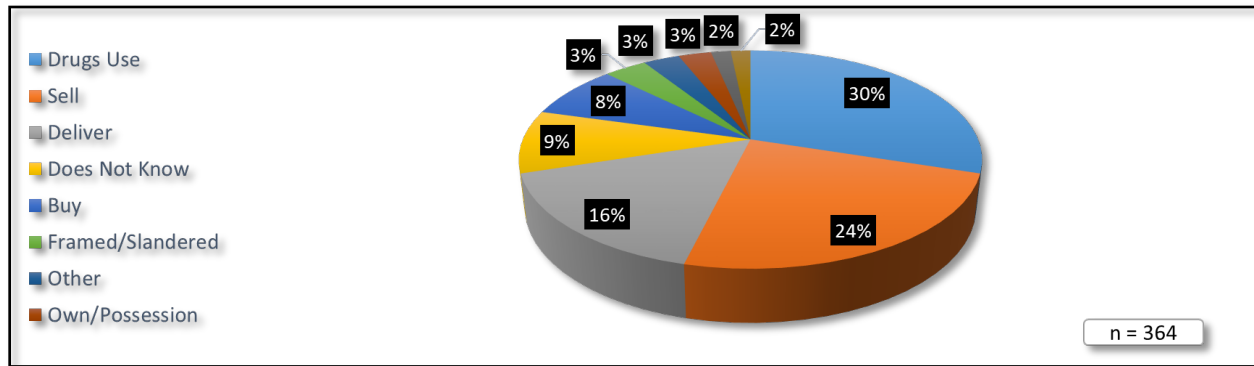


Table 9. Involvement of women in drug offences

The research respondents were charged for drug use, selling, delivering and other offences. There were at least 6 women who were imprisoned for knowing but not reporting drug use. There were two informants who did not at all understand what charges were brought upon them and what the punishment was. Those who used drugs were sentenced to imprisonment and not rehabilitation. Over half of the women (53 percent) said that men were involved in their case and 27 percent of the respondents said that their intimate partners influenced their involvement in the drug offence. There were also respondents who said they were not involved in drugs at all but were still convicted by the judge.

Experiences of Torture

Out of the 307 respondents, 78 or over 25 percent of the women said that they have experienced torture. Some of them experienced more than one type of torture. 57 respondents experienced physical torture, 35 said they went through psychological torture and 3 said they were tortured sexually. Seven women also said they experienced sexual violence.

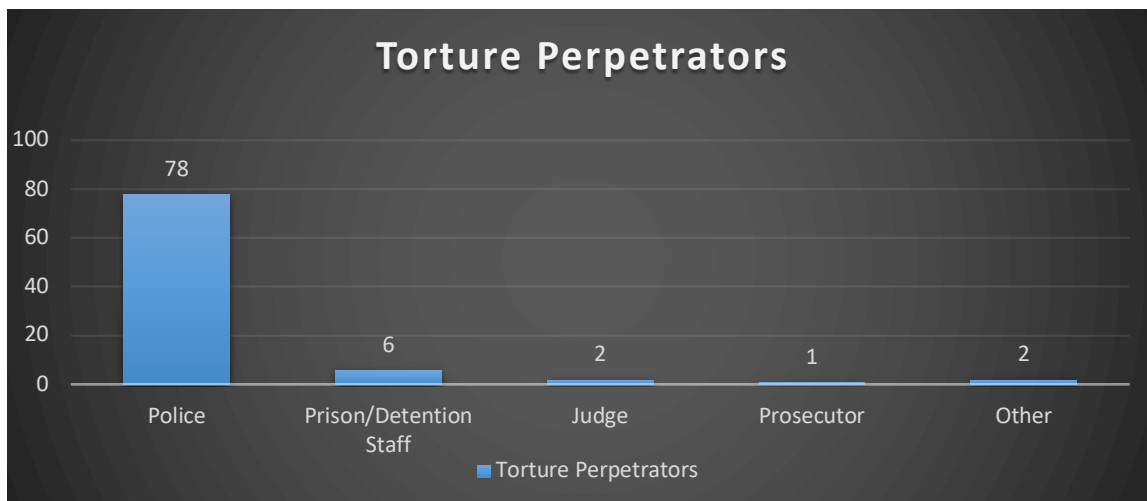


Table 10. Perpetrators of Torture

Table 10 above shows the perpetrators of torture experienced by the research informants, most of them reportedly experienced torture at the hands of the police.

Conditions in Prison

Three of the four prisons visited in the research study were mixed facilities with both men and women prisoners. This made it difficult for the women to access the common areas.

Many of the women are placed in prisons that are far away from their families. The reason why they are imprisoned there is unknown. The distance makes it difficult for their families to visit them. Sixty-six (66) have reported never having been visited by their families. One informant applied to be transferred to a prison closer to her family but the process was difficult and long.

There are reproductive health care services available in Semarang Women's Prison but not in the other prisons. HIV testing is mandatory and the women could not refuse. About 30 percent of the research respondents said that mental health services are also available but only 9 percent said they have accessed it. However, sanitary pads for menstruation are not free and the women have to buy it in the prisons at 2-3 times higher cost than outside.

The women also need to buy their own soap, shampoo, detergent and other basic needs. The quality of the food provided is reportedly very poor so they often have to buy food from the prison canteen which is also expensive. They also have to pay for telephone calls. The research respondents reported that the cost of their basic needs while in prison is could go up to 3 million Rupiah. The women prisoners try to meet these costs by requesting money from their families, working as personal assistants to rich prisoners and making crafts like bags and batik.

There are no healthcare services whether physical or psychosocial and no rehabilitation treatment services for women who use drugs while they are incarcerated. Sixty-nine (69) percent of the respondents said that they have used drugs, mostly amphetamine. There were four informants who said that they were drug dependent and had to endure withdrawal symptoms without any health care intervention.

Impact of imprisonment

Some of the research informants lied to their families about their imprisonment. Some of them prohibited their families to visit while some had families who cut off communication with them. Most of them (82 percent) have children.

POLICY CONCERN AND RECOMMENDATIONS

The research results as well as the consultation conducted with national stakeholders in Jakarta this July 2018 point out some important policy concerns for the protection of the rights of women incarcerated for drug offences in Indonesia.

In 2016, the UN Commission on Narcotic Drugs adopted a resolution, Mainstreaming a Gender Perspective in Drug-Related Policies and Programmes. The resolution called for member-states to *consider the specific needs of women and girls in implementing drug policies* in line with the international drug control conventions, and “to take into consideration *the specific needs and circumstances of women subject to arrest, detention, prosecution, trial or the implementation of a sentence for drug-related offences when developing gender-specific measures as an integral part of their policies on crime prevention and criminal justice*, including appropriate measures to bring to justice perpetrators of abuse of women in custody or in prison settings for drug-related offences.”¹²

The same resolution also instructs member-states to draw from the provisions of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)¹³, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)¹⁴ and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)¹⁵.

The 2016 United Nations Special General Assembly (UNGASS) on drugs also produced an Outcome Document that sought to address human rights abuses in the name of drug control including gender-specific issues faced by women incarcerated for drug-related offences, enjoining member-states to:

“4.g Mainstream a gender perspective into and ensure the involvement of women in all stages of the development, implementation, monitoring and evaluation of drug policies and programmes, develop and disseminate gender-sensitive and age-appropriate measures that take into account the specific needs and circumstances faced by women and girls with regard to the world drug problem and, as States parties, implement the Convention on the Elimination of All Forms of Discrimination against Women;

4.n Encourage the taking into account of the specific needs and possible multiple vulnerabilities of women drug offenders when imprisoned, in line with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); ”¹⁶

¹² Commission on Narcotic Drugs, Resolution 59/5: Mainstreaming A Gender Perspective on Drug Related Policies and Programmes, 2016. https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_59/Resolution_59_5.pdf

¹³ https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

¹⁴ <https://www.un.org/ruleoflaw/blog/document/united-nations-standard-minimum-rules-for-non-custodial-measures-the-tokyo-rules/>

¹⁵ https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

¹⁶ <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

A. Access to legal assistance

The research findings and the national stakeholders consultation identified the need for legal assistance for women that is gender sensitive, competent and with integrity. The lack of understanding about the law among prisoners was also pointed out.

In an Information Note for Criminal Justice Practitioners on Non-Custodial Measures for Women, the UNODC called on judges, prosecutors and the police to ensure that those who appear before them who cannot afford a lawyer and/or are vulnerable are provided with access to legal aid.¹⁷ This is one way for criminal justice practitioners to contribute in ensuring that the specific needs of women in the criminal justice system are met.

Guideline No. 9 of the United Nations Principles and Guidelines on Legal Aid outlines the specific steps that states need to take to ensure access to legal aid for women:

“Guideline 9. Implementation of the right of women to access legal aid:

States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:

- (a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;
- (b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;
- (c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required.”¹⁸

¹⁷ UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015

¹⁸ Guideline 9, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2013.

The UNGASS Outcome Document exhorts member-states to:

“4.o Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and ensure timely access to legal aid and the right to a fair trial;”

(<https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>)

The right to have legal representation and to have access to free legal assistance is guaranteed in the International Covenant on Civil and Political Rights (<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>) and reinforced in the Revised Standard Minimum Rules for the Treatment of Prisoners or the Mandela Rules (https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf), which provides:

“If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.” (Rule 119 No. 2, Revised Standard Minimum Rules for the Treatment of Prisoners)

Specifically, the participants of the national consultation in Indonesia made the following recommendations:

To address the lack of understanding of the law among prisoners, and to improve the quality of legal representation, the Ministry of Justice and Human Rights, legal aid and government institutions and civil society organisations need to engage in:

1. Legal counseling in communities and prisons to improve knowledge about the laws
2. Involve women’s organisations in awareness raising activities
3. Include academic institutions in teaching legal knowledge to communities
4. Conduct special trainings for advocates who handle drugs case
5. Ensure that terminology and training materials are gender sensitive

B. Overcrowded prisons and alternative to incarceration

Overcrowded prisons were seen as a result of a lack of alternatives to detention and imprisonment as well as women going back to communities that encourage re-offending due to stigma and discrimination.

The UNODC Information Note on Non-Custodial Measures for Women emphasize the need for pre-trial alternatives to be implemented for women offenders whenever appropriate and possible. The Note calls on prosecutors and judges to ensure that bail amounts are fair and the economic situation of women are given due consideration. Alternatives to monetary bail should also be given some thought.¹⁹

The Note also outlines opportunities for non-custodial measures in the trial and sentencing stage stating further that non-custodial alternatives to punishment are especially appropriate for minor drug-related offences. Sentencing alternatives should be applied whenever possible in such a way as not to separate women offenders from their families and communities. Courts are enjoined to take note of the women's specific characteristics, including mitigating factors like the absence of a previous criminal record and the non-severity of the supposed criminal conduct in light of women's caretaking responsibilities and background.²⁰

The specific recommendations given at the national consultation to address the issue are the following:

1. Provision of diversion mechanisms outside the criminal justice system
2. Revision of government regulations on parole
3. Provision of comprehensive social reintegration programmes
4. Ensuring rehabilitation services that address physical, psychological and social needs.

The UNGASS Outcome Document on alternatives to incarceration:

4.j Encourage the development, adoption and implementation, with due regard to national, constitutional, legal and administrative systems, of alternative or additional measures with regard to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions and taking into account, as appropriate, relevant United Nations standards and rules, such as the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules);

(<https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>)

¹⁹ UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015

https://www.unodc.org/documents/justice-and-prison-reform/Information_note_BKK_Rules.pdf

²⁰ Ibid.

C. Torture and other cruel treatment including extortion and illegal fees

The UNGASS Outcome Document exhorts state parties to:

4.o Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ***ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment*** or punishment and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and ensure timely access to legal aid and the right to a fair trial.

Both the Bangkok Rules and the Mandela Rules anchor the minimum standards for the treatment of prisoners on human dignity. Rule 1 of the Mandela Rules calls for the treatment of all prisoners with respect due to their inherent value and dignity as human beings.²¹

The participants of the national consultation provided the following recommendations to address concerns on torture and extortion:

1. Provision of frontline complaint mechanisms and witness protection mechanisms by the National Police Commission and the Department of Corrections
2. Hiring of more female police officers particularly in narcotics departments by the National Police
3. Special examination rooms for women to accommodate gender specific needs and provision of CCTV cameras
4. Separate detention facilities for women and children

D. Access to health services and treatment for incarcerated women who use drugs

The Bangkok Rules contain provisions on access to personal hygiene and medical services including gender specific health care, as well protection for the safety and security of women prisoners.²²

Specific recommendations from national stakeholders include the following:

1. Provision of training for police and prison staff about health interventions for people who use drugs; and

²¹ https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

²² https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

2. Advocating for the signing of a memorandum of understanding between the Ministry of Law and Human Rights and the prisons to ensure protection of rights of incarcerated women.

The UNGASS Outcome Document provides:

4.b Ensure non-discriminatory access to health, care and social services in prevention, primary care and treatment programmes, including those offered to persons in prison or pretrial detention, which are to be on a level equal to those available in the community, and ensure that women, including detained women, have access to adequate health services and counselling, including those particularly needed during pregnancy;

E. Addressing stigma and discrimination

Women incarcerated for drug-related offences frequently experience different layers of stigma and discrimination.

In the 2018 UNODC World Drug Report, the UNODC notes that there has been a disproportionate increase in the rates of women being imprisoned in many countries including for low-level drug-related offenses. The 2018 World Drug Report further recognizes that:

“While there is little evidence to determine whether there is discrimination against women (in comparison with men) at the sentencing level, some studies suggest that judges and other criminal justice officials do not consider gender inequalities. This is based, in part, on the misconception that the principle of equality before the law does not allow accounting for the distinctive needs of women in order to accomplish substantial gender equality.”²³

Unfortunately the stigma and discrimination against women incarcerated for drug-related offences also extends to their own families and communities and many of them risk rejection and being ostracized even after their period of incarceration is over, making it much more difficult for women to be reintegrated back in society after imprisonment, thus leading the report to conclude that,

*“What is clear is that women’s contact with the criminal justice system has more negative consequences on them than it does on men, exacerbating both their economic vulnerability and their social exclusion.”*²⁴

Different institutions in the criminal justice system can help mitigate the stigma and discrimination experienced by women incarcerated for drug-related offences.

Judges, prosecutors, and lawyers can make interventions before women are sent to trial or to prison by facilitating access to legal aid, diverting women offenders from prosecution, helping prevent

²³ UNODC 2018 World Drug Report: Women and Drugs Drug use drug supply and their consequences, United Nations, June 2018.

²⁴ Ibid.

excessive pre-trial detention and ensuring that gender-specific needs are taken into consideration during trial and sentencing.

Prison officials could adopt gender sensitive practices to address the specific needs of women prisoners. Legislators and policy-makers may remove mandatory sentencing and provide the judiciary with discretion to take into account the circumstances of the offense, and the vulnerability and caring responsibilities of women offenders. Legislators and policy makers may also introduce reforms to remove criminal penalties and decriminalize certain acts.²⁵

²⁵ UNODC Information note for criminal justice practitioners on non-custodial measures for women offenders, 2015.

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