



REALITY BEHIND BARS

A Brief Report on Documentation of
Human Rights Violations of Drug Suspects
at the Investigation Stage in Jakarta
July, 2012

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Contents

A. Background	01
B. Enforcement Measures	03
1. Arrests	04
a. Legal Background	04
b. Authorized Institution to Conduct Arrests	04
c. Period of Arrests	04
d. Requirements to Conduct an Arrest	05
2. Detention	06
3. Legal Background	05
a. Authorized Institution to Conduct Detention	06
b. Period of Detention	06
c. Type of Detention	07
d. Subject of Detention	07
e. Requirement to Detain an Accused	07
f. Pre Trial Mechanism	08
4. Search	08
a. Legal Background	08
b. House Search	08
c. Body Search	09
5. Seizure (Confiscation)	10
a. Goods that Can Be Seized	10
b. Requirement to Conduct Seizure	11
c. Post Seizure Responsibility on Drug Offense	11
C. Torture and Other Ill-treatment	15
D. Covert Purchase	17
E. Rights of The Accused	21
1. The Right to Be Informed Clearly About the Alleged Crime	22
2. The Right to Legal Assistance	22
3. The Right to Health	23

F. Research Finding	25
1. Findings on the Enforcement Measures	26
2. Findings on Torture and Other Ill-treatment	29
3. Findings on the Fulfilment of Rights of the Accused	30
a. The Right to Be Informed Clearly About the Alleged Crime	30
b. The Right to Legal Assistance	31
c. The Right to Health	32
(Endnotes)	33
About LBH Masyarakat	35



A

Background

Law enforcement measures inevitably involve a contradiction: on the one hand they aim to create order by imposing certain restrictions on freedoms and liberties, while on the other hand they must honor liberties and freedoms of every individual that they limit. Humans inherently are endowed with rights, and when these rights are derogated from them, their humanity is undermined. A question then arises, in the event of a crime that poses a threat to public order what are we supposed to do with the perpetrators of the crime? Doing nothing will disrupt public order and will lead to a chaos that in turn will deny the human rights of other individuals. Law enforcement essentially involves some restrictions to the human rights of the perpetrators, but at the same time, the perpetrators of the

crime are also humans endowed with rights that must be protected. This is exactly the critical point of the tension between these two opposite situations.

To address this complication, a set of rules and regulations are needed as guidelines in the effort to ensure public order on the one hand, and human rights protection for the accused on the other hand.¹ Law enforcement can never be done by violating the laws. As such, when the need to limit and derogate from someone's human rights in enforcing the law arises, the limits and means of law enforcement must be clearly governed by law. If these guidelines are followed and implemented effectively, law enforcement can still be carried out within the corridor of respect for one's human dignity.

In Indonesia the set of rules that serve as the basis for law enforcement is enshrined in Law Number 8 of 1981 regarding Criminal Procedure Code, hereinafter referred to as by its Indonesian acronym, *KUHAP*. Certain types of crimes, such as narcotics-related crimes, have *lex specialis* laws regulating them.



B

Enforcement Measures

In the criminal justice administration, law enforcement powers are afforded to law enforcement officials to limit the liberty of persons. These measures include arrests, detention, seizure, searches and document investigation. This section will analyze how these measures, excluding document investigation, are governed under the Indonesian laws, specifically under Law No. 8 Year 1981 regarding Criminal Justice System (to be hereon referred as KUHAp) and Law No. 35 Year 2009 regarding Narcotics (to be hereon referred as Narcotic Law).

1. Arrests

Legal Background

Arrest is an act of temporary deprivation of personal liberty conducted by law enforcement officials for the purposes of administrative of justice. In Indonesia, the requirements and procedures for arrest are stipulated in Articles 16-19 of KUHAP. An arrest shall only be carried out on persons against whom there are solid grounds for suspicion of having committed a crime, which such suspicion must be based on sufficient preliminary evidences. Arrest can be made not only for the purpose of criminal investigation, but also for the purpose of merely investigation.

Authorized Institution to Conduct Arrests

According to KUHAP, an arrest can be exercised by the police, either s/he is criminal investigator, assistant criminal investigator, or general police officer. Both criminal investigator and assistant criminal investigator will be hereon referred as investigator.

For drug offense, there are 3 (three) types of criminal investigator: (1) Police Investigator, (2) National Narcotic Body (BNN) Investigator², and (3) Civil Servant Criminal Investigator (PPNS)³. In terms of caught redhanded, any person can conduct an arrest against the suspect with a condition that the arresting person must immediately turn over the perpetrator and any evidence to the nearest office of the criminal investigator or assistant criminal investigator.

Period of Arrests

Under the Criminal Procedure Code, arrest can only be done

for a period of 1 (one) day. However, according to the Narcotic Law, an arrest against drug offenders can be undertaken up to 3 x 24 hours, and if needed, can be extended for another up to 3 x 24 hours. Therefore, investigators are allowed to arrest drug offenders for, up to, 6 (six) days.

Requirements to Conduct an Arrest

There are some requirements that need to be fulfilled by investigators in conducting an arrest. Violation of the requirements leads to an arbitrary arrest. The requirements are:

- a. An arrest can only be made on valid and reasonable grounds that the person arrested committing violation of law, and proved by sufficient preliminary evidences⁴,
- b. The investigators must have an assignment letter to conduct an arrest against specific persons,
- c. The investigators must give an arrest warrant to the person arrested,
- d. The investigators must give a copy of the arrest warrant to the family of the person arrested, and
- e. Be conducted only for the period of time according to the law.

In terms of caught red-handed, an arrest can be made without giving an arrest warrant. However, the arrest warrant must be handed immediately after the arrest is made.

2. Detention

Legal Background

Detention is briefly defined as placement of the accused in a certain place by an authorized body.⁵ At the time of detention has occurred, the ongoing legal process has entered a stage of criminal investigation, in which the detained person is determined as the accused of the crime.

Authorized Institution to Conduct Detention

There are 5 (five) institutions have the authorities to conduct detention against the accused. Those are: (1) Criminal Investigator, (2) Prosecutor, (3) First Instance Court, (4) Appellate Court, (5) Cassation Court. The authorized institution to conduct detention is based on the legal process undergone by the accused.

Period of Detention

Below is the table of time period of detention.

Stage	Detention Period		Extension Of Detention		Total
	Authorized Body	Period (up to)	Permission From	Period (up to)	
Investigation Level	Investigator	20 days	Prosecutor	40 days	60 days
Prosecution Level	Prosecutor	20 days	Head of District Court	30 days	50 days
First Instance Level	The Appointed Judges	30 days	Head of District Court	60 days	90 days
Appellate Level	The Appointed Judges	30 days	Head of High Court	60 days	90 days
Cassation Level	The Appointed Judges	50 days	Head of Supreme Court	60 days	110 days

The above period can still be added to another up to 2 x 30 days should it be necessary.⁶ If the period of detention

has passed and the accused is still detained, s/he has to be released.

Type of Detention

Although the authorized institutions have the authorities to detain the accused, they have choices of what type of detention shall be undertaken, as follows:

- a. Detain in the detention centers
- b. House arrest, and
- c. City arrest

Subject of Detention

Basically, not all the accused is obliged to be detained. There is a limitation on who can be detained and for what reasons. Detention can only be made against:

- a. The accused in case there are circumstances which give rise to concern that the accused will escape, damage, or destroy physical evidences, and/or repeat the offense,
- b. The accused who is strongly presumed to have committed an offense based on sufficient evidences, where:
 - Such offense is punishable for 5 years, or more, of imprisonment,
 - Such offense that are stated in Article 21 paragraph (4) (a) of KUHAP

Requirement to Detain an Accused

An accused that is subjected to detention shall be given a detention warrant, which consists of: 1) her/his identity information, 2) the reasons of her/his detention, 3) place of detention, and 4) brief explanation of the accusation against her/him.

Pre Trial Mechanism

In case an accused experienced arbitrary arrest and/or detention, s/he, their family or their lawyers can file a pre-trial review to a district court. Pre-trial review can also be filed by victims of a crime where the investigation or prosecution of the crime is terminated.

3. Search

Legal Background

According to Article 32 of KUHAP, an investigator may perform a house search or a search of a person, for purposes of investigation. There are 2 (two) types of search, house search and body search, which includes the search of clothes and search of person.

House Search

House search must be conducted with the present of warrant from the Head of Local District Court. In an urgent condition, an investigator can only search in limited area, as follows:

- a. In the yard of a house where the suspect resides, is staying, or is present, and of those things which may lie thereupon,
- b. In every other place where the suspect resides, stays, or is present,
- c. A place where the offense was committed or where traces are found,
- d. In lodging and other public place.

The investigator can still perform a house search, whether the resident of a house that being searched permits or

refuses the search. Each instance of entry of a house shall be witnessed by 2 (two) witnesses. In case of the resident refuses, the search has to be witnessed by the village head and 2 (two) other witnesses. A copy of minutes of search must be given to the resident, no later than 2 (two) days after the search.⁷

Except someone is caught red-handed, the investigator is not allowed to enter:

- a. A room where the meeting of the People's Consultative Assembly, the People's Representative Council, or the Provincial People's Representative Council is in session,
- b. A place where a religious service and/or ceremony is taking place,
- c. A room where a trial is being held.

Body Search

Search can only be done if there is a strong presumption based on sufficient reasons that the suspect has goods on her/him that may be seized. There are 2 (two) different searches that fall under body search terminology, as follows:

1. Search of clothes, including goods carried with the suspect.
2. Search of body

Both of the search of clothes and search of body can only be performed by an investigator, who is at least holds Second Brigadier designation. Police officer with lower designation than Second Brigadier can only perform search of clothes.

One can conclude that both body and house searches are

forcible in nature. It is evident from the fact that searches can still be conducted despite the objections of the resident of the house or the person in body searches. The person subjected to the search cannot refuse if the police is set on conducting the search.

4. Seizure (Confiscation)

Legal Background

Seizure is an act of taking away or depriving a person of his property or other items suspected of being linked to crimes approved by law. Seizure may only be carried out by criminal investigators. The purpose of the seizure itself is to find evidences, because without it a case cannot proceed to the court.

Goods that Can Be Seized

The type of goods that can be seized is limited. Those goods are:

- a. Items or bills of the accused/defendant that are entirely or partly suspected to be obtained from criminal acts or as a result of the criminal act,
- b. Items that have been used directly to commit or plan a crime,
- c. Items that have been used to obstruct a crime investigation,
- d. Items specifically devised and used for the purpose of committing a crime,
- e. Other items directly connected to the crime.

Requirement to Conduct Seizure

Goods that being seized may come from 2 (two) ways, first, such goods are being seized by the investigators, and second, such goods are being surrendered by a person who owns or possesses it.

In order to seize goods, the investigators have to provide a warrant from the Head of Local District Court. However, on urgent condition where warrant cannot be possibly obtained at the first place, investigators are allowed to seize only movable goods. Immediately after the seizure, investigators have to report to the Head of Local District Court to obtain permission. If the goods are being surrendered by the owner or person who possesses it, investigator has to provide a receipt of it.

Post Seizure Responsibility on Drug Offense

There are specific provisions regulating seizure in narcotics and narcotic precursors as set under articles 87 to 96 of the Narcotic Law. There are number of steps that law enforcement agents must take after seizing: first, to seal and prepare a report; second, to establish the status by the District Attorney; third, to destroy evidence; fourth, to utilize evidences.

All actions that must be done by the criminal investigators after seizure are obligatory. The criminal investigation, prosecution, and examination in court do not delay or prevent the surrender of seized items pursuant to temporal limitations prescribed by law. Violation to this obligation is a

crime with various sanctions. Below is a table which consists of the obligation and its sanction.

Obligation		Criminal Sanction	
Action	Legal Basis	Sanction	Legal Basis
BNN and Police Criminal Investigators sealing and preparing dossier	Article 87 para (1)	A minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp. 100.000.000 (one hundred million) and a maximum of Rp. 1.000.000.000 (one billion rupiah)	Article 140
BNN and Police Criminal Investigators reporting to the District Attorney and furnishing copies to Minister of Health and the Head of Drug and Food Supervisory Agency	Article 87 para (2)		
Civil Servant Criminal Investigator turning over seized evidence to BNN Investigator and Police Criminal Investigator and furnishing copies to the District Attorney, Head of District Court, Minister of Health, and Head of Food and Drug Supervisory Agency.	Article 88 para (1)		
Criminal Investigator responsible for the safekeeping of seized items under his control.	Article 89 para (1)		

District Attorney establishes the status of evidence.	Article 91 para (1)	A minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp. 100.000.000 (one hundred million) and a maximum of Rp. 1.000.000.000 (one billion rupiah)	Article 141
Criminal Investigator conducts destruction of evidence	Article 91 para (2) - para (5)	A minimum imprisonment of 1 (one) year and a maximum of 10 (ten) years and a minimum fine of Rp. 100.000.000 (one hundred million) and a maximum of Rp. 1.000.000.000 (one billion rupiah)	Article 140
Criminal Investigator destroys plant narcotics within 2 x 24 hours after discovery.	Article 92		



C

Torture and Other Ill-treatment

Torture is categorized as *jus cogens* or the highest norm in international law, which has been recognized in several cases and decisions in the International Criminal Tribunal for former Yugoslavia (ICTY). This demonstrates that the prohibition of torture has been placed at the highest degree in international law, where every country is required to abide by it and the exclusion to this norm can only be done by other norms of similar degree of importance.

The Government of Indonesia has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 23 October 1985. However, it took 13 years for Indonesia to ratify this convention. Indonesia has not yet ratified the Optional Protocol of the Convention against Torture (CAT).

By ratifying this convention, Indonesia is actually bound to a number of obligations. The Convention states, among others, that:

- Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,
- Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture,
- Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Unfortunately, to date, Indonesia's obligation to declare torture as a crime has not been fully realized. There is yet to be a specific regulation that puts torture as a crime along with its proper punishment.⁸ Still, the act of torture by state agents is unjustifiable. It is no longer tolerable to beat and kick a person who is arrested by state agents. Violence cannot be justified during interrogation. Similarly, during detention, inhuman and degrading treatment are no longer be justified. This adoption provided a formal and normative recognition that torture is not something that can be tolerated.

There are 2 (two) avenues that can be undertaken to file complaint on torture or other ill-treatment. The first one is to file the case to the Police Internal Affairs Division. Under this avenue, the torture or other ill-treatment conducted by police officers will be considered as violations of the Police Code of Ethics. If the torturers are found guilty, then they will get sanctions for their unprofessional behavior, which can be varying from suspension to dishonorable discharge. The second avenue is to file it to the police office for the act of maltreatment, through its Criminal Investigation Division. However, none of these avenues reflect the grave nature of torture or other ill-treatment.



D

Covert Purchase

In the spirit of eradicating narcotics, the Narcotic Law provides a great authority to investigators. One such authority is to conduct covert purchase techniques and controlled handover. Both of these techniques can be used by investigators under written orders from their superiors. The authority to conduct covert purchases has become the bane of drug user community.

Covert purchases can be equated with entrapment ‘approved’ by the law. However, one needs to keep in mind that in addition to the obligation to have orders from superiors, covert purchases must also target the drug traffickers. Certainly, the priority is the large-scale traffickers. As such, assuming that documentation of covert purchases can be used as evidence of transaction, an accused netted in such

operations should be charged under article 114 of the Narcotics Law.

Unfortunately, although there have been many cases of entrapment by the police, rarely can these cases be proven as covert purchases. This is because such operations are not transparent. It is true that while the operation is ongoing, it should only be known to a few authorized individuals. However, then the target of covert operations are arrested, the fact that an accused was targets of covert operations need to be revealed to the public. Logically speaking, the buyer, in this case the undercover police, should also be arrested if the police is unable to show that the transaction was part of an undercover operation.

A common feature in such cases is that individuals who instigated the transaction are never arrested, and even the police let them go. The second common feature of entrapments is that the narcotic evidences seem to come out of the blue. This can be qualified as planting evidences. Often times, the police would covertly place narcotics in spots under the control of the target. These can be bags carried by the target, pockets, under vehicle seats, or other places and goods. Such evidences clearly do not belong to the targeted person.

In planting of narcotic evidences, the crime charged is often really perpetrated by the target, but the evidence used may not always be the evidences involved in the crime. It could also be possible that the crime has not or did not occur, but somehow the police would find the evidences under the control of the target.

In 2011, the Head of BNN issued a number of directives regarding covert purchases: (1) Head of BNN Regulation Number 3 of 2011 regarding the Investigative Technique of Controlled Transactions; (2) Head of BNN Regulation Number 4 of 2011 regarding the Investigative Technique of Covert Purchase; (3) Head of BNN Regulation Number 5

of 2011 regarding Technical Guidelines for Investigation of Narcotics and Narcotics Precursor Crimes. Such regulation indeed does not take the form of a control mechanism for the implementation of covert purchases. But this regulations can serve as references as to the rules of engagement in conducting covert purchases.



E

Rights of The Accused

In the Indonesian criminal justice system, investigation is fully placed under the authority of the criminal investigators, and the police is the institution with the full discretion over the investigative process. With such authorities, questions arise about what protections an accused has during the investigative process. This writing highlights three rights of an accused that LBH Masyarakat sees as most important and fundamental in this context, namely (1) the right to be informed of the crimes charged, (2) the right to a legal counsel/legal assistance, and (3) the right to health.

1. The Right to Be Informed Clearly About the Alleged Crime

In the process of preparing the investigation and preparation of the dossier, an accused should be clearly informed in a language s/he can understand about the charges and indictments s/he is subjected to during investigation. Article 51 of KUHAP has clearly stated the purpose for affording this right, which is, to provide an opportunity for the accused/ the defendant to prepare her or his defense. In practice, often time such right is merely 'translated' as the notification of the article being charged.

Although the purpose of this article is to provide the opportunity and guarantee that an accused can prepare his defense, in practice this often only goes so far as informing about the articles being charged to the accused and providing translation for foreign nationals who cannot speak Indonesian. The investigators and law enforcement officers would disregard whether an accused really understood the charges/indictments subjected to them. Law enforcement officers also do not consider whether an accused is ready to provide her or his defense or not, whereas this is exactly the purpose for which this right is guaranteed under KUHAP.

2. The Right to Legal Assistance

In Article 56 of KUHAP, the investigators, prosecutors, or judges are obliged to ensure that legal assistance are provided to:

- a. The poor accused who are punishable to imprisonment of five years or more, and;

- b. The accused who are punishable to death penalty or to imprisonment of fifteen years or more.

The fact that there are numbers of respondents who did not get any access to legal assistance indicates that the potential for violations is even higher. Most narcotics cases are punishable by five years of imprisonment or higher. This means that for an accused in drug offense who cannot afford legal defense and risks a minimum of five years in prison, KUHAP has mandated that they shall be provided with lawyers.

3. The Right to Health

Under the national legal framework, the right of an accused to health access is stipulated under Article 58 of the Criminal Procedures Code (KUHAP) and the rights of prisoners to adequate health services are also stipulated under Article 14 letter (d) of Law number 12 of 1995 regarding Correctional Facilities.⁹ However, the provisions in these two laws are not fully consistent with international human rights standards. The Law on Correctional Facilities only provides that prisoners have the right to obtain proper health services without specifying in greater detail about how such right shall be fulfilled.

Drug users in detention or prison can be classified as a group requiring specific medical treatment. The mere fact that they have addiction indicates that they have health problems. This is compounded with the fact that they also endure withdrawal symptoms. As such, for drug users who

are detained or imprisoned, the availability of treatments to address their dependency on drugs becomes crucial.¹⁰ The failure of the state to provide specific care for drug users in detention or prison is a violation of the right to free from inhuman or degrading treatment.

The elaboration to Article 21 letter (b) of KUHAP also specifies that ‘an accused who are drug addicts to the greatest extent possible shall be detained in a special facility that shall also serve as treatment facility.’¹¹ However, this provision alone does not automatically render the fulfillment of the right to specific health treatment for drug addicts in detention free from problems. Detention facilities that provide methadone treatment are mostly found in bigger cities. Methadone treatment itself is only a substitute to heroin, so non-heroin addicts will still run into problems. In addition, methadone therapy is often occurred during investigation stage, as these withdrawal symptoms usually occur one to three days after the drug consumption is stopped. So, problems related with non-heroin user and availability of methadone treatment during the investigation stage are still arised.



F

Research Finding

LBH Masyarakat conducted a research to document the violation of the rights of the accused on drug offense in Cipinang Detention Center, Jakarta. The research was conducted for twelve months, from December 2010 to November 2011. There were 388 respondents being interviewed under this documentation. All of them are male, given that Cipinang Detention Center is only designated for male detainees, with age ranging from 18 to 58 years old.

It is found that the most applied articles for drug offense are Article 111 and 112, which both of them are related to narcotics possession. Article 113 and 114 principally are aimed towards people who are involved in the attempt of narcotics transactions. Article 132

is an experiment on criminal act that is regulated in Article 111 – 129 of the Narcotic Law. Meanwhile, Article 144 is an article where any repeated cases of narcotics are executed within three years.

Amount	Articles Charged							Total
	111	112	114	127	132	144	No Answer	
0-1 gram	24	77	32	4	-	-	2	139
1-3 gram	42	11	13	2	-	-	2	70
3-5 gram	20	5	10	3	-	-	1	39
>5 gram	35	4	28	-	-	1	1	69
No Answer	27	11	21	3	3	1	5	71
Total	148	108	104	12	3	2	11	388

Table 1 Distribution of the Article Charged and Amount of the Drugs

In principal, the Narcotic Law does not differentiate the crime based on its subjects. Both “newcomers” or addicts, or even drug dealers have the possibilities to be alleged by the same articles. If the accused is proved to be in possession of narcotics, they are subject to Article 111 or 112. Conversely, if they are caught in the middle of transactions (be it selling, buying, or just distributing), they are subject to Article 113 or 114.

There is one article in the Law that is directed specifically towards drug use, which is Article 127. They are subject to rehabilitation, not only prison sentences. However, in practice, not every drug user is qualified to be categorized under this article, as they are charges based on the formal activities that breach the law.

1. Findings on the Enforcement Measures

Only 82 respondents, or as much as 21%, did not experience

any form of abuses during the arrests. Observation notes that among those 82 respondents, 47 of them received arrest warrants. From those 47 people, one respondent acknowledged of no copy of arrest warrant sent to the family. Hence, there are only 46 respondents (11.8%) who did not experience abuses during the arrests, received their arrest warrants and also a copy of it sent to their family members. This shows that from this observation, only 11.8% of the arrest process can be categorized as legitimate arrest. Meanwhile, the rest has potential to be qualified as illegitimate arrests.

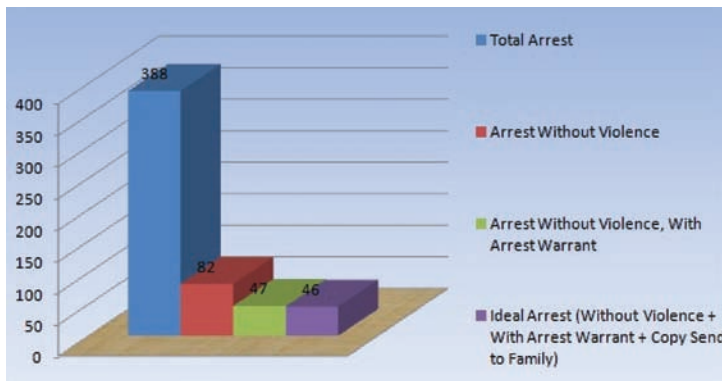


Diagram 1 Composition of Arrest Requirement Fulfillments

On the detention data, detention without abuses was experienced by 261 respondents, or as much as 67.3%. From that number, only 210 respondents received detention warrants, which 137 of them whose families received copies of detention warrants. Thereby it can be concluded that only 35.3% of the detainees are qualified as having experienced ideal detention, fulfilling administrative procedures and experienced no abuses. This number is three times higher than the number of respondents who are qualified as having experienced ideal arrests.

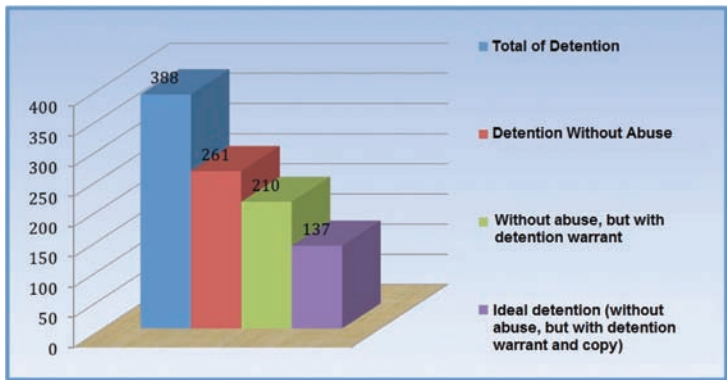


Diagram 2 Composition of Detention Requirement Fulfillment

With regard to the fulfilment of the accused’s rights during the search, it is revealed that 238 respondents, or as much as 61.3%, experienced only body searches, 23 respondents, or as much as 5.9%, experienced house searches, and 107 respondents experienced both searches. From the number of respondents who experienced house search, only 9 of them admitted that they received search warrants. Meanwhile, the finding shows that 196 of the respondents experienced abuses during the search.

Composition of Searches Experienced by Respondents

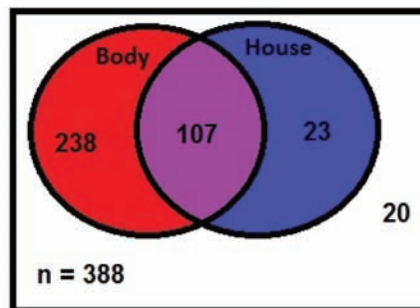


Diagram 3 Composition of Searches Experienced by Respondent

According to the respondents, many of their goods were being seized by the police, which some of those goods were not related with the offenses. Oftenly, more than one goods were seized from an accused. From 388 respondents, only 39 of them, or as much as 10% said that they received seizure warrants. Meanwhile, there were 106 respondenst said that they experienced abuses during seizure.

Seized Items	Amount
ATM cards/Wallets/Money	458
Narcotics	316
Mobile phones	300
Motorcycles	114
Clothing/Watches/Footwear/Jackets/Bags	52
ID Cards/Driver's Licenses	28
Others	8
Jewelry	7
Cars	7
Syringes/Bongs/Rolling Papers	6
Digital Equipment (Laptop, Flash Disk)	5
Total	1301

Table 2 Seized Goods

2. Findings on Torture and Other Ill-treatment

From the observation results, it is found that not all respondents experienced torture and other ill-treatment. There are respondents who experienced good conditions during the legal process. They were not tortured, did not experience physical abuses, also did not experience other ill-treatment. There were 336 respondents, or as much as 86.6%, experienced torture and ill-treatment. The proportions of respondents who experienced torture, ill-treatment, or none at all, can be seen in the following diagram.

Respondents Who Experienced Torture and Other Mistreatment

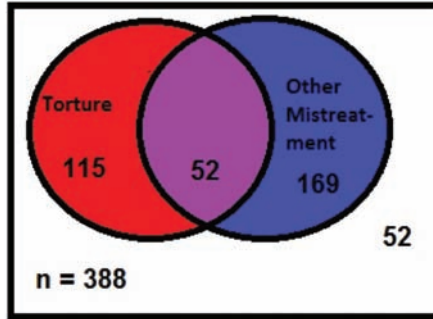


Diagram 4 Respondents Who Experienced Torture dan Other Ill-treatment

3. Findings on the Fulfilment of Rights of the Accused

The Right to Be Informed Clearly About the Alleged Crime

This observation notes that from 388 respondents, 278 respondents, or as much as 72% felt that their right to be informed of the charges has been fulfilled. However, when we asked about the article being charged to them, 98% of respondents were able to convey such information. This shows that those who did not admit that they were informed about the article being charged did not get the information clearly. In providing information to an accused, it is not limited to merely charges against them, which would not be sufficient. An accused may not completely understand them, and in the end an accused do not have sufficient preparation to defend themselves.

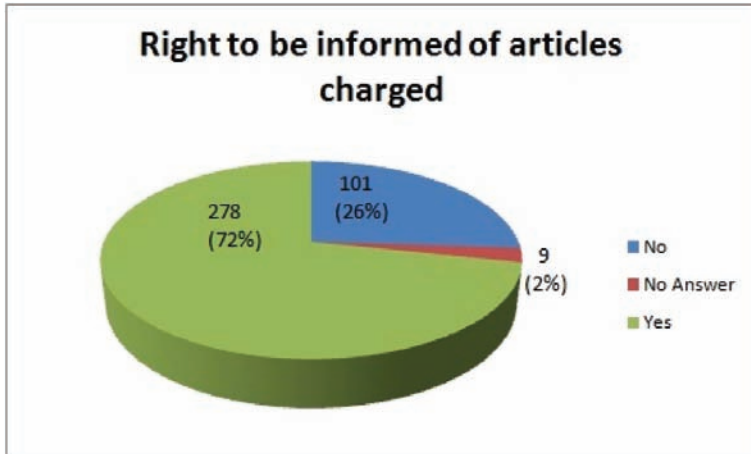


Diagram 5 Distribution of Respondent Informed of Articles Charged

The Right to Legal Assistance

Respondents charged under Article 111 (1) and 112 (1) are punishable by maximum 12 years of imprisonment. Whereas respondents under Article 111 (2) and 112 (2) are punishable by maximum 15 years of imprisonment. Respondents who are sure to risk above 15 years of imprisonment are charged under article 114 and 144. Considering the provision, at least 48 respondents, or as much as 12.4%, have experienced rights violations. In regard to them, the presence of a lawyer is obligatory because the punishment is more than 15 years.

Article	Assited by Lawyer	Not Assisted	No Answer	Total
111	63	84	1	148
112	48	59	4	111
114	53	47	4	104
127	6	6		12
132		3		3
144	1	1		2
No Answer	3	4	1	8
Total	174	204	10	388

Table 3 Distribution of Respondents Having Lawyers based on Articles Charged

The Right to Health

As the graph below indicates, from the 388 respondents, only 227 respondents stated that they have received access to health while in detention and/or prison. 109 respondents stated that they did not get health access, while the remaining 52 did not respond.

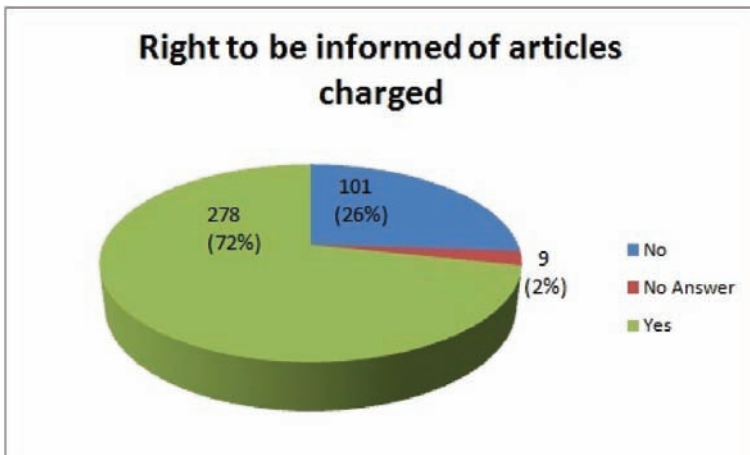


Diagram 6 Distribution of Respondent Having Access to Health During Detention

END NOTES

(Endnotes)

1. Compare with Article 9 of the *International Covenant on Civil and Political Right* (ICCPR), "... No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."
2. BNN is a special body established by the Indonesian President to address drug-relates issues. Article 75 of the Law No. 35 Year 2009 regarding Narcotic (the Narcotic Law) regulates that BNN has the authority to conduct interdiction on narcotics, and the precursor, trafficking.
3. PPNS investigators are certain civil servant staffs who are granted special authority by law, which in the matter of drug offense is granted based on Article 82 (2) of the Narcotic Law. PPNS investigators are, for example, the civil servant staffs who work at the Immigration Office.
4. Preliminary evidences are, for example, testimony from witnesses or victims, police reports, and investigation stage. Sufficient preliminary evidence shall comprise at a minimum 2 (two) of preliminary evidences.
5. Article 1 Point 21 of KUHAP.
6. Article 29 of KUHAP.
7. Article 33 (5) of KUHAP.
8. Under international law, torture has a status of *jus cogens*, that is, the highest norm in international law. Other crimes with qualifying as *jus cogens* include slavery and genocide. Under *jus cogens*, torture (and other *jus cogens* crimes) is treated as an enemy of humanity. The entire humanity places great concern about the crime and universal jurisdiction shall theoretically apply.
9. Article 14 letter d of the Law No. 12 of 1995 regarding Correctional Facilities.
10. Human Rights Watch, *Barred from Treatment: Punishment of Drug Users in New York State Prisons*, hal. 16-17.
11. Explanation to Article 21 letter b of KUHAP.

About LBH Masyarakat:

LBH Masyarakat is a non-governmental organisation not for profit works to provide pro-bono legal assistance for underprivileged and marginalized people; to undertake community legal empowerment through providing legal education and raising human rights awareness; and to promote legal reform and human rights protection through policy advocacy and public campaigns.

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