THE BIPOLAR LAW: PROTECTING OR INCARCERATING?

Series of Monitoring and Documentation on Human Rights Violations in Indonesia
INTRODUCTION

Problems of health do not only concern issues that are physical, but also psychological. In 2013, a research on basic health estimated that about 1.7 per mille of Indonesian households have a family member with severe mental disorder.\(^1\) Without early and effective treatment the disorder is potentially harmful for an individual’s quality of life and his/her social relationship. Such treatment constitutes not only providing quality health service, but also legal protection.

Individuals with mental disorder are often unable to access public health services due to the stigma and discrimination against them. People tend to think of them as dangerous, irrational, irresponsible for domestic issues, and unable to work. As a result, they tend to consider the presence of persons with mental disorder as a disturbance, and that they should be put in detention institutions, such as rehabilitation centers, mental hospitals (RSJ), and prisons.

\textit{LBH Masyarakat} pays special attention to persons with mental disorder (ODGJ) who are dealing with the law, especially those who are alleged to have committed a criminal offense. Our attention is based on the tender age of the legal instrument that governs issues of ODGJ in the criminal justice system.\(^1\) With no legal protection provided during the stage of the arrest there is a huge possibility for ODGJ to get punishment that will only worsen their disorder.

The criminal justice system is not the only cause of the estrangement of ODGJ since in reality ODGJ gets estranged through practices that are common in the society. Confining ODGJ in stocks, for instance, is one of the forms of violence commonly committed by families and communities in Indonesia.\(^\text{ii}\) In addition to the experience of being confined in stocks, ODGJ are also vulnerable of experiencing other forms of violence.

Based on such consideration, we decided to document cases that are allegedly committed by ODGJ, and practices of violence against ODGJ throughout 2016. One of the reasons for the documentation attempt is a previous experience of loss of a friend and client. In 2015, \textit{LBH Masyarakat} had a client who was also a

\(^1\) Law on Mental Health was passed in 2014, and Law on People with Disorder in 2016.
friend: Rodrigo Gularte, a Brazilian national who was diagnosed with serious mental and psychological disorders. He was later killed in the name of law through the execution of a death sentence. We were witnesses of how a man who had never been provided with either decent health services or access to fair legal services since the beginning of the judicial process until the bullets went through his body. Therefore, although the name Rodrigo Gularte had disappeared from the news in 2016, this report is dedicated to him and to the other ODGJ who are still kept behind bars, both in official correctional facilities and confined in stocks behind homes.
In presenting this report we apply the method of monitoring and recording online news articles. In monitoring news articles related to mental and psychological health we conducted searches on two types of news: (1) news concerning crimes that are allegedly perpetrated by ODGJ and (2) news concerning violence perpetrated against ODGJ.

The news articles that have been gathered are then summarized in a special form containing several categories. Therefore, the method we use is similar to content analysis method, namely a method of recording elements of a text (words, sentences) and categorizing them into data and variables. The categorization includes the offender, victim, chronology, type of mental disorder, follow-up, etcetera.

Monitoring is carried out by entering several certain key words into news.google.com search engine. The key words are combinations of a subject and verb keywords. The subject keyword used ‘orang dengan gangguan jiwa/mental’ (people with mental/psychological disorder), ‘orang dengan masalah kejiwaan’ (people with mental problems), ‘ODGJ’, ‘gangguan jiwa’ (psychological disorder), ‘gangguan mental’ (mental disorder). The verb key word is matched with the type of action to be documented, such as ‘ditangkap’ (arrested), ‘melakukan tindak pidana’ (commit a crime), ‘dipenjara’ (imprisoned), ‘dipasung’ (confined in stocks), ‘mengalami kekerasan’ (experience violence), and so on. We realize that news reporting in relation to mental or psychological health sometimes badly labels the ODGJ, and by that reason we also enter some other keywords such as “orang gila” (crazy people) or ‘ngamuk’ (run amok).

All of the news articles used as data are those published throughout 2016 concerning actual events occurring all over Indonesia. In the form that we created, the earliest news article was published on 5 January 2016, whereas the latest was published on 12 December 2016. The total number of news articles that we collected was 170 news articles. However, not all were used. The following table presents all of the news sources that we used:
<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Media</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Antaranews</td>
<td>3</td>
</tr>
<tr>
<td>2.</td>
<td>Balikpapan Pos</td>
<td>2</td>
</tr>
<tr>
<td>3.</td>
<td>Balikpapan Today</td>
<td>1</td>
</tr>
<tr>
<td>4.</td>
<td>Banten Hits</td>
<td>1</td>
</tr>
<tr>
<td>5.</td>
<td>Batampos</td>
<td>1</td>
</tr>
<tr>
<td>6.</td>
<td>Bengkuluekspress.com</td>
<td>4</td>
</tr>
<tr>
<td>7.</td>
<td>Berita Metro</td>
<td>1</td>
</tr>
<tr>
<td>8.</td>
<td>Berita Satu</td>
<td>2</td>
</tr>
<tr>
<td>9.</td>
<td>Beritaapi.com</td>
<td>1</td>
</tr>
<tr>
<td>10.</td>
<td>Beritagar</td>
<td>1</td>
</tr>
<tr>
<td>11.</td>
<td>Beritajatim.com</td>
<td>5</td>
</tr>
<tr>
<td>12.</td>
<td>Beritametro.com.id</td>
<td>1</td>
</tr>
<tr>
<td>13.</td>
<td>Bonepos.com</td>
<td>1</td>
</tr>
<tr>
<td>14.</td>
<td>Borneonews</td>
<td>1</td>
</tr>
<tr>
<td>15.</td>
<td>CNN Indonesia</td>
<td>1</td>
</tr>
<tr>
<td>16.</td>
<td>Detik</td>
<td>5</td>
</tr>
<tr>
<td>17.</td>
<td>Goaceh.co</td>
<td>1</td>
</tr>
<tr>
<td>18.</td>
<td>Gosumbar.com</td>
<td>1</td>
</tr>
<tr>
<td>19.</td>
<td>Halloriau.com</td>
<td>1</td>
</tr>
<tr>
<td>20.</td>
<td>Harapan Rakyat</td>
<td>2</td>
</tr>
<tr>
<td>21.</td>
<td>Harian Jogja</td>
<td>2</td>
</tr>
<tr>
<td>22.</td>
<td>Indopos</td>
<td>4</td>
</tr>
<tr>
<td>23.</td>
<td>Inilah.com</td>
<td>1</td>
</tr>
<tr>
<td>24.</td>
<td>Metropolitan.id</td>
<td>2</td>
</tr>
<tr>
<td>25.</td>
<td>MetroTV News</td>
<td>1</td>
</tr>
<tr>
<td>26.</td>
<td>Netralnews.com</td>
<td>1</td>
</tr>
<tr>
<td>27.</td>
<td>News Madura</td>
<td>1</td>
</tr>
<tr>
<td>28.</td>
<td>Newslampungunkini.com</td>
<td>2</td>
</tr>
<tr>
<td>29.</td>
<td>Okezone</td>
<td>10</td>
</tr>
<tr>
<td>30.</td>
<td>Pikiran Merdeka</td>
<td>1</td>
</tr>
<tr>
<td>31.</td>
<td>Pikiran Rakyat</td>
<td>1</td>
</tr>
<tr>
<td>32.</td>
<td>Pojoksatu.id</td>
<td>2</td>
</tr>
<tr>
<td>33.</td>
<td>Pontianak Post</td>
<td>1</td>
</tr>
<tr>
<td>34.</td>
<td>Poskotanews.com</td>
<td>2</td>
</tr>
<tr>
<td>35.</td>
<td>Prokal.co</td>
<td>5</td>
</tr>
<tr>
<td>36.</td>
<td>Radar Cirebon</td>
<td>1</td>
</tr>
<tr>
<td>37.</td>
<td>Radar Jogja</td>
<td>1</td>
</tr>
<tr>
<td>38.</td>
<td>Republika</td>
<td>4</td>
</tr>
<tr>
<td>39.</td>
<td>Riau One</td>
<td>1</td>
</tr>
<tr>
<td>40.</td>
<td>Riauterkini.com</td>
<td>2</td>
</tr>
<tr>
<td>41.</td>
<td>Rimanews</td>
<td>3</td>
</tr>
<tr>
<td>42.</td>
<td>Serambi Indonesia</td>
<td>1</td>
</tr>
<tr>
<td>43.</td>
<td>Sindonews</td>
<td>1</td>
</tr>
<tr>
<td>44.</td>
<td>Solopos</td>
<td>1</td>
</tr>
<tr>
<td>45.</td>
<td>Sumatera Ekspres</td>
<td>1</td>
</tr>
<tr>
<td>46.</td>
<td>Sumatera</td>
<td>1</td>
</tr>
</tbody>
</table>
Obviously our documentation would not be able to capture all of the crimes allegedly committed by ODGJ or all of the violence they experienced. Other types of media, such as the print media, radio, and television may have published or broadcast stories that are different from those reported by online media.

In this news analysis we use the content of a news article without conducting further verification due to resource constraints, which creates a risk of lack of accuracy in terms of the data. Some of the news articles, particularly those related with crimes allegedly committed by ODGJ, do not explain the cases in detail, so some of the data is missing. Moreover, in conducting the monitoring we did not find in the framing of the news by the media any aspect that might
influence their perception of ODGJ. In spite of the shortcomings, we do hope that this report will still be able to present a glimpse of reality in regard to the conditions of ODGJ in Indonesia.
DATA RESULT AND ANALYSIS 1: ODGJ AS TARGET OF VIOLENCE

Unlike the other LBH Masyarakat’s monitoring reports, this monitoring documentation report will have two chapters of data result. The first one is data result from the monitoring of violence against ODGJ, and the second one is data result from monitoring crimes committed by ODGJ.

The following table shows the types of violence taking place in 2016 that have been monitored. The violence presented in the diagram below is calculated based on the number of news articles and the number of victims.

<table>
<thead>
<tr>
<th>No</th>
<th>Category of violence</th>
<th>Number of news article</th>
<th>Number of victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Confinement in stocks</td>
<td>46</td>
<td>3131</td>
</tr>
<tr>
<td>2.</td>
<td>Murder</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>3.</td>
<td>Persecution</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>4.</td>
<td>Negligence</td>
<td>3</td>
<td>52</td>
</tr>
<tr>
<td>5.</td>
<td>Forced Custody</td>
<td>2</td>
<td>245</td>
</tr>
<tr>
<td>6.</td>
<td>Hit and run</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>7.</td>
<td>Death during Rehabilitation</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>67</strong></td>
<td><strong>3445</strong></td>
</tr>
</tbody>
</table>

Table 2. Number of Violence by Number of News Articles and number of victims

The highest number of acts of violence reported is that in the form of confinement in stocks (46 news articles), followed by murder and persecution, both of which amount to 7 news articles. The other forms of violence rather varied, such as negligence, forced custody, hit and run, obstruction of right to education, and rehabilitation that causes death.

However, when we look at the number of victims, the rank of the number of occurrence of violence under each of the category changes. Confinement in stocks still ranks the highest in terms of the number of victims at 3291 ODGJ. The second highest number of victims, however, is under the category of forced custody, which is 245 ODGJ, followed by negligence at 51 ODGJ.
The rather great difference between the number of news reports and the number of victims under one category of violence is due to the content of news reports collected. News reports on confinement in stocks, negligence, and forced custody normally include a recapitulation of the number of victims of confinement in stocks/negligence/forced custody in a region. Usually the recapitulation data is provided by a state official, such as an official from the Ministry of Social Affairs office or Health. Whereas news on the murder, persecution, hit and run, obstruction of educational right, and rehabilitation that causes death usually concerns one or two ODGJ. Therefore, the number is smaller despite the higher frequency of news reporting.

Each of the form of violence is explained in the following:

**Confinement in stocks**

Confinement in stocks remains the main incarceration in the life of ODGJ in Indonesia. The following are regions where violence of confinement in stocks has been reported in the news:

<table>
<thead>
<tr>
<th>No.</th>
<th>Province</th>
<th>Number of Victims</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Bali</td>
<td>351</td>
</tr>
<tr>
<td>2.</td>
<td>Banten</td>
<td>2</td>
</tr>
<tr>
<td>3.</td>
<td>Bengkulu</td>
<td>42</td>
</tr>
<tr>
<td>4.</td>
<td>Special Region of Aceh</td>
<td>3</td>
</tr>
<tr>
<td>5.</td>
<td>Special Region of Yogyakarta</td>
<td>74</td>
</tr>
<tr>
<td>6.</td>
<td>West Java</td>
<td>9</td>
</tr>
<tr>
<td>7.</td>
<td>Central Java</td>
<td>24</td>
</tr>
<tr>
<td>8.</td>
<td>East Java</td>
<td>775</td>
</tr>
<tr>
<td>9.</td>
<td>South Kalimantan</td>
<td>50</td>
</tr>
<tr>
<td>10.</td>
<td>North Kalimantan</td>
<td>50</td>
</tr>
<tr>
<td>11.</td>
<td>Lampung</td>
<td>2</td>
</tr>
<tr>
<td>12.</td>
<td>West Nusa Tenggara</td>
<td>1409</td>
</tr>
<tr>
<td>13.</td>
<td>Riau</td>
<td>325</td>
</tr>
<tr>
<td>14.</td>
<td>West Sulawesi</td>
<td>1</td>
</tr>
<tr>
<td>15.</td>
<td>South Sumatera</td>
<td>61</td>
</tr>
<tr>
<td>16.</td>
<td>North Sumatera</td>
<td>46</td>
</tr>
<tr>
<td></td>
<td>Total Number</td>
<td>3131</td>
</tr>
</tbody>
</table>
Table 3. Number of Victims of Confinement in stocks by Province

The following is the mechanism for calculating the number of ODGJ who experience confinement in stocks:

1. In the event that two or more news articles on a recap from the same province are found we will select the news article that reports the larger number of victims and broader area coverage. For example, in East Java the Lamongan Ministry of Health office stated that 42 ODGJ were confined in stocks in the region\textsuperscript{iv}. However, some other news reported that according to the Social Affairs Ministry’s regional office 745 ODGJ had been confined stocks in East Java\textsuperscript{v}. Since the number of victims in the second case is higher and the coverage is broader, covering the whole Province of East Java, we only put in the data of victims from the second news piece.

2. In the event that there is some news that is based on direct reporting instead of a result of the government’s data recap, we will include the data from the news report into the calculation of the number of victims regardless of whether or not a recap has been reported.

We group the events of confinement in stocks by province in Indonesia. The data shows that the province with the highest number of victims is West Nusa Tenggara (NTB), with 1409 people experiencing confinement in stocks in 2016. Next to NTB the province with the second highest number of victims is East Java with the total of 775 victims.

The data presented above does not necessary suggest that there were no occurrences of confinement in stocks in the other provinces in 2016. The reluctance by some local governments to reveal data on the distribution of confinement in stocks occurring in their provinces may be one of the reasons for the absence of news on confinement in stocks in the other regions. In addition, the small number of victims by no means proves that event of confinement in stocks is really rare in one particular region. It is most likely that news reporting from the area did not include data from the recap of the total number of victims there. Two victims of confinement in stocks in the province of Banten, for instance, were taken from a news report on the confinement in stocks of two men, named Fadli\textsuperscript{vi} and Angga Supriyatna\textsuperscript{vii}, and there is no recap data whatsoever on the total number of victims from Banten province.
All cases show that the offenders of the violence of confinement in stocks against ODGJ are their own family members. Sometimes the community where they live also sanctioned it. The family as the main custodian of the ODGJ chooses confinement in stocks option by reasons of fear that their family member may create disturbance, or run away, their inability to access treatment for their family member with mental disorder, and inability to take care of the ODGJ.

From the news that we have gathered, we also tried to find out about the follow-up of each of the confinement in stocks event. The following is the result:

![Condition of Confined Victim](image)

The numbers concerning the condition of the confinement in stocks victims only show the follow up at the time the news was reported. It could also mean that the facts about the victims had changed when the news was reported. Although the follow up data might change at any time, the data reflects the difficulties in liberating ODGJ from practices of confining them in stocks.

Normally a method of liberating ODGJ from confinement in stocks is done through combining curative and rehabilitative approaches, such as one that was carried out in Muara Enim, East Java, and Indragiri Hilir. In applying a curative approach, the ODGJ who is being confined in stocks will be examined
by a doctor and the doctor will decide whether the ODGJ will be treated as inpatient at a Mental Hospital or at the Liponsos (*Lingkungan Pondok Social - Social Shelter Environment*)\(^2\), or whether it is adequate to treat the ODGJ at home. In Muara Enim and Indragiri Hilir, the government through the village midwife and a medical specialist will conduct a home visit to see the ODGJ who is treated at home to make sure that treatment is administered and that the ODGJ is not put back in stocks. After curative treatment is administered, the government will fight to prevent the relapse of the mental disorder by providing skills training and personality consultancy.\(^{xi}\)

Unfortunately data on confinement in stocks often remains as data without any certainty about the fate of the people suffering from it. For example, when 39 ODGJ were confined in stocks in Bengkulu, the provincial office of the Health Ministry stated that they were not able to reduce the number due to lack of transportation budget to remove the victims.\(^{xii}\)

It is the duty of the State to protect its citizens from arbitrary and unlawful restrictions of freedom against persons with disabilities\(^{xiii}\) such as confinement in stocks. The fact that the regional government has had data on victims of confinement in stocks in its region but has failed to liberate them from the confinement reflects the lack of capacity of the State in protecting the human rights of the vulnerable group like ODGJ. The commitment of the State of Indonesia in its *Indonesia Bebas Pasung* (Indonesia Free from Confinement in Stocks) program becomes questionable considering the large number of regional governments that have not been logistically equipped to free the victims of confinement in stocks.

Even for the 96 people that have been referred to hospitals the government will still have to monitor the treatment administered to them. The possibility that their family will put those who have been freed back in stocks remains. Confining them back in stocks might always happen by reason of the high cost of continuing their treatment.\(^{xiv}\) Therefore, the monitoring provided by the State should also include a guarantee of affordability of access to treatment for those who have been liberated from confinement in stocks.

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\(^2\) *Lingkungan Pondok Sosial* is a shelter provided by the Ministry of Social Affairs for People with Problems of Social Welfare; ODGJ and the homeless are included under this category.
Our monitoring result also found that 15 of the people confined in stocks died. This shows that confinement in stocks is not only a matter of mental health, but it also involves physical health. Victims who experience confinement in stocks may become paralyzed and suffer other complication of diseases due to their inability to move. Confinement in stocks has also led to obstruction to clean sanitation that might heighten risks of problems of indigestion for the victims.

The implementation of a comprehensive program to release ODGJ from confinement in stocks cannot be delayed. However, what is also very important is that the State must guarantee sustainable access to treatment for ODGJ as part of the fulfillment of their right to health.

**Forced Custody**

According to media reports about 245 people became victims of forced custody in 2016. A first news article dated 19 January 2016 reported a story of how Kio Pranoto, a person who was allegedly ODGJ, was caught by the police and some local people using tear gas. Kio Pranoto was secured in the precinct before being transferred to a Mental Hospital.\(^{xv}\) The second article told a story about a raid of 244 ODGJ who were hanging around various parks in the City of Makassar in which after being raided they were picked up by the City of Makassar Social Ministry Office and referred to a Mental Hospital.\(^{xvi}\)

Both news articles mentioned that the reason for the forced custody was because the presence of the ODGJ was disturbing public order. In the first case, the community complained about Kio Pranoto’s habit of throwing dirt and chasing people with a sharp weapon. However, there was no detail explanation on whether the 244 people who were raided and brought to mental hospital were disturbing public order.

Through laws and regulations the government of Indonesia categorizes ODGJ under the group of people with problems of social welfare (PMKS), moreover if they are homeless and wander about the streets and public.\(^{xvii}\) For these people with problems of social welfare, the government can provide social rehabilitation so that they can normally perform their social functions.\(^{xviii}\) Based on Government Regulation No 39/2012, social rehabilitation can be carried out coercively in the event the person with social welfare problems refuses to
go through rehabilitation. One of the ways to force rehabilitation is by maintaining order, such as what was showed in the two news articles above.\textsuperscript{xix} The regulation specifies that attempts of rehabilitation shall put human rights into consideration. Unfortunately, the use of coercive efforts has not been accompanied with a procedure on how to apply it in order not to violate or be in conflict with the principles of fulfillment of human rights. The next paragraph will further explain some issues that are arising.

The main issue that demands attention is the patient’s informed consent to go through rehabilitation. Consent to undergo rehabilitation is a right of every patient. In the event that a doctor/a person with the proper expertise states that the ODGJ is not competent to make a decision, the approval for the ODGJ to undergo rehabilitation may be given by the husband/wife, family, guardian/trustee, or the authorized official.\textsuperscript{xx} Regrettably, the practice of assessing the competence of ODGJ has never been implemented. The news article on the sweeping up of the 244 people did not provide any information concerning an assessment of competence or a process of requesting a consent to undergo rehabilitation to the family or guardian of the ODGJ who were taken into custody.

In addition, the government must also ensure that there is a mechanism that limits the rehabilitation period. This is important in order to undertake a post-rehabilitation reassessment of the ODGJ’s competence. Consequently, the ODGJ will be able to give his or her consent for the continuation of the rehabilitation.

The other thing that needs to be put into consideration is how to counsel ODGJ to enroll in a rehabilitation center; there must be a clear reason to use tear gas or other violent measure in making an arrest. The government must ensure that there is an implementation guideline to do that to prevent a violation of the human rights of ODGJ who is about to be taken into custody.

Lastly, the reason that the ODGJ is ‘disturbing public order’ also needs to be clarified. Although the law and regulation allows a raid for such reason, the use of that reason also holds the potential to create a stigma against ODGJ. Such reason seems to generalize that all ODGJ are persons who disturb public order, often cause trouble, and are incapable of controlling themselves.
In Manado, fifty ODGJ who have been declared ‘calm’ by the hospital was rejected by their family. Their family refused to accommodate the people that have been treated. The hospital thinks there are several reasons for the family to refuse their return, namely (1) the family is worried that the ODGJ’s disorder may recur, (2) the environment where the ODGJ lives stigmatizes ODGJ, (3) the family of patients who were previously homeless is unclear.

On the contrary, there was also a news article that reported negligence by the hospital because the provision only allows inpatients to stay at a hospital no later than 180 days. The family felt that one of the patients released by West Kalimantan Mental Hospital named Selamat, was not healed yet, so the hospital’s policy of releasing him after 180 days was considered negligence of its patient. Negligence committed by a government institution also occurred in the Province of Riau Islands. The Civil Service Police Unit (Satpol PP) was accused of banishing a homeless ODGJ. Initially the plan was to bring the ODGJ home, however, the ODGJ requested to be dropped off near the woods, so the member of Satpol PP submitted to the request. The Tanjung Pinang Social Affairs Office thought that Satpol PP had committed negligence by ‘banishing’ the ODGJ in the woods instead of bringing the ODGJ to a better institution, such as a liponsos or a hospital, for instance.

The abovementioned news articles show how problems of mental health have not been holistically taken care of by the agents that are responsible in the field of mental health, such as the family, hospital, regional offices of the Social Ministry, and Satpol PP. Taking care of ODGJ tends to be considered burdensome. Besides, the person who takes care of ODGJ is also vulnerable to be stigmatized and discriminated. The burden and consequence of taking care of ODGJ often become the reason for neglecting ODGJ, both by their family and by the local communities.

Also, a common understanding in regard to the responsibility to taking care of the ODGJ’s health has yet to be developed. It is impossible to place an ODGJ in a hospital forever. Therefore, a hospital does not only need to rehabilitate ODGJ, but it also have to prepare the family so that the latter is able to independently treat ODGJ. Without establishing a common understanding between the two parties they will both continue to deny responsibility to take care of ODGJ and hand it over to the other party and vice versa.
In the meantime, a better coordination between Satpol PP and the Social Affairs Office in dealing with problems of ODGJ who are homeless must also be established. According to the existing bylaw, Satpol PP has the authority to conduct non-judicial action against citizens who breach the bylaw and take action against those who disturb public order.\textsuperscript{xxiv} After Satpol PP took the action, it is the responsibility of the Social Affairs Office to assign a Professional Social Woker to assist with the ODGJ’s rehabilitation program.\textsuperscript{xxv} Conflict between the two institutions reported in the news article shows that both Satpol PP officials and the Professional Social Workers still need to improve their understanding about mental health and human rights.

Finally what must also be put into consideration in the holistic effort is the ODGJ themselves. They do not only have the right to get adequate health services but also to get protection from any form of negligence.\textsuperscript{xxvi} As a consequence, in dealing with issues of ODGJ, the government has to make sure that all attempts are aimed at providing the best services and putting the benefit of the ODGJ into consideration.

**Other types of Violence**

Another type of violence that took up a considerable portion of the news in 2016 is the persecution of ODGJ. Three of the persecution cases were motivated by actions that the ODGJ committed, namely maltreatment or theft.

In one of the cases, the victim was accused of stealing a motorcycle, although it was not certain that the victim was the real offender. It was probably the victim’s suspicious behavior that was due to his mental disorder, which has caused the people to accuse him as the real thief.\textsuperscript{xxvii} The case shows that a negative stigma towards ODGJ is still rampant among the society. The negative stigma has often turned ODGJ into a scapegoat when a crime is committed. What might be an implication of the mental disorder is considered unnatural and suspected as a behavior that shows an expression of guilt of someone who has committed a crime.

If in the previous case the ODGJ was protected so that the persecution did not lead to death, the victims of the other two cases that also took place in 2016 were not as fortunate. One ODGJ in Bali died, allegedly caused by beatings by the mob after he previously hit a resident of a housing complex.\textsuperscript{xxviii} Another ODGJ also died because of mob beatings after he slashed a resident.\textsuperscript{xxix}
two cases demonstrated that an intervention by law enforcement agents who really understand about issues of mental health is highly necessary to prevent loss of lives and to fulfill the right of the people to justice.

However, some people who are supposed or considered to be aware of the ODGJ’s health condition could also be the offenders of murder of the ODGJ. One example was Suwanto, the ODGJ who was murdered by his own traditional healer (tabib) when the victim was undergoing treatment of his mental disorder. Similarly, the family that is supposed to understand the condition of mental disorder suffered by a family member who is ODGJ could also do the same. A father Mojokerto, for instance, murdered his own son because he felt annoyed with the victim when the latter was running amok.

The government also needs to provide more protection for ODGJ, especially the female ones. Mental disorder suffered by women often becomes a risk factor for them to experience sexual violence. Not only are they vulnerable, but also their claim of being a victim of sexual violence is often ignored by law enforcement officers. In 2016 one case of sexual assault against a woman with mental disorder was recorded.

Based on our monitoring result, we also documented a hit and run case perpetrated against two ODGJ. ODGJ who run away from home are vulnerable of becoming victims of traffic accidents. Therefore, the regional government must seriously enforce the bylaw that attempts to provide protection for ODGJ who have been neglected, homeless, and are threatening their own safety and others.

In 2016 we also found a case where efforts of rehabilitation of ODGJ had led to death. Prior to his death, the victim was undergoing a larungan ritual where the victim’s head was dipped twice into water in a bathing place. However, when he was lifted up, the victim was already unconscious and later died. It is such an irony that the institution that is supposed to heal the patient has instead killed him.

Indeed, rehabilitation to treat mental health in Indonesia is not only within the domain of the government, but also that of private institutions that are better known as the ‘alternative treatment’. However, the government should also supervise these private rehabilitation services providers. The government can impose administrative sanctions in the form of reprimands or even force their closure if the services provided do not comply with standards of health.
services.\textsuperscript{xxxv} Unfortunately, the supervision mechanism had not been provided in the above case.
Various researches have pointed out that people with mental disorder often get in trouble with the criminal justice system. There is no precise answer why ODGJ could commit unlawful acts. Some could probably have been affected by their own experiences as victims of acts of violence against them,\textsuperscript{xxxvi} or their mental disorder has impacted their interpersonal capability.\textsuperscript{xxxvii} Others argue that the disorder produces symptoms that pose a risk of violence.\textsuperscript{xxxviii} This report is not prepared to add to the wealth of discourses related to what have caused ODGJ to commit a crime; instead it aims to see if so far they have been provided with the best assistance in the criminal justice system.

**Criminal Responsibility**

In 2016, we collected data of 58 criminal cases allegedly committed by ODGJ. Of the 58 cases most of the offenders are men. However, that by means suggest that women with mental disorder tend to commit less crime than men. A gender analysis is needed to scrutinize the data further.
As can be seen below, the data on criminal acts can be differentiated by gender of the offenders as well as divided based on the type of crime:

The above diagram shows that the majority of the crimes allegedly perpetrated by ODGJ constitute crimes of violence, namely murder (36.2%), violences (24.1%), and threat of violence (10.3%). Some cases that have been grouped as combination of crimes can also be categorized as crimes of violence. For instance, there is a case where an individual committed sexual assault and murder. Another case involves an act of violence whose object of violence is not a person, but a building, house, forest, and house of worship. However, some of the crimes are not acts of violence, such as counterfeiting, theft, and blasphemy.

Based on Article 44 of the Criminal Code (KUHP), ODGJ may not be held liable if it can be proven that his/her mental state is in disorder. Although the chapter accommodates the specificity of the ODGJ, it also has the potential to deliver inappropriate and disadvantageous discourse, namely a discourse that ODGJ cannot be held liable in any case. However, as part of the people with disabilities ODGJ must be regarded as individuals that have the legal capacity equal with others in every aspect of life. The specific condition arising from the disorder should affect their mental capacity, but not their legal capacity. The two concepts have different meanings. While legal capacity is an
acknowledgement of an individual as a legal subject – hence, every individual must have such capacity without exception, whereas mental capacity is an individual’s capability to act or to make a decision.

When a person suspected of having a mental disorder commits a crime, to decide whether or not the person is liable must be based on the mental capacity. Mental disorder may cause a lack of capacity in making a decision to a person (reduction of one’s mental capacity), but that does not reduce the person’s position as a legal subject (reduction of one’s legal capacity). For example, ODGJ may suffer some disorder that causes them to be depressed, anxious, and fearful of their life. Consequently, due to the reduced mental capacity there is ample reason if he consumes narcotics, however it is unreasonable that he, for instance, commits a crime of counterfeiting.

Therefore, there are two things that have to be put into consideration, namely the level of mental disorder, and the type of crime. The type of mental disorder must be established in order to determine which mental capacity that has been disturbed. After that, an analysis of the mental capacity is matched against the characteristics of the crime committed.

Unfortunately, the majority of the news articles do not explain further about the types of mental disorder suffered by the offenders. Only 44 of the 58 cases explain in detail the types of mental disorder suffered by the defendant that (may) have led them to commit the crimes.

There are three cases of which the offender is clearly mentioned as a Person with Schizophrenia (ODS). The three people with schizophrenia were charged with murder, consumption of narcotics, and blasphemy. One of the cases is the case of Ahmad Fauzi, who was reported by the Semarang Islamic Congregation Forum (Forum Umat Islam Semarang, or FUIS) for writing three books believed to be blasphemous against Islam. Taking Ahmad Fauzi’s case as an example, the decision of whether or not he was liable for his action should have been made by comparing the impact of schizophrenia and his action that was claimed as blasphemous. Schizophrenia that may cause hallucination, delusion, and suspicion, in some cases, is closely related
because it is capable of creating new discourses that most people find difficult to accept.³

In addition to the case of which the offender is clearly accused of being schizophrenic there is also another case which offender was reported to have suffered from depression that caused him to stab his own mother. Unfortunately, the news article does not explain in detail about the type of depression suffered by the offender.

Some of the other news articles also mentioned the category of mental disorder that may have been suffered by a person, such as: ‘mild mental disorder’, ‘severe mental disorder’, and ‘acute psychosis’. Some others only describe symptoms that may be related to mental disorder, such as hallucination, stress, and unstable emotional state. The symptoms, however, cannot clearly determine the type of mental disorder suffered by the offender, nor could they determine that people with such symptoms really do suffer from mental disorder.

Worse still, there are still many news articles that use negative stigmas against the news subject. For example, instead of presenting the diagnosis, the media would easily mention that they are ‘crazy’. The media should have played the role of educating the public about mental health. An explanation concerning the types of disorder and their symptoms will be more educative rather than simplifying the complexity of a person’s mental condition by labeling them with one cliché: ‘mental disturbance’ or ‘crazy’.

The same simplification should not have been used in court proceedings. The criminal justice system must have the capacity to look at the diversity and complexity of mental disorder in addition to their relevance to the criminal charges. In the event that mental disorder is proven to have triggered the defendant to commit the crime the mental disorder is the base for pardon.

Despite the fact that the mental disorder suffered by the offender is irrelevant to his criminal act, the punishment should also consider his health condition. A prison sentence is not an appropriate punishment for people with disabilities, especially ODGJ. While they are kept in an institution that is

³LBH Masyarakat has not actively monitored Ahmad Fauzi’s case, so, no comment can be made on whether or not he is guilty according to the law. Basically LBH Masyarakat’s opinion is that a person’s freedom to express an opinion must be protected, and not criminalized.
separated from the community like prisons, ODGJ often experience humiliation, negligence, repression, and isolation.\(^{xli}\) Even those who become mentally disabled after being imprisoned should be immediately transferred from the prison to an adequate hospital.\(^{xlii}\) Or, at least they are placed in a special facility supervised by mental health experts.\(^{xliii}\) In such case a prison is not violating the right for fair trial, but instead it is violating the convict’s right to health.

**Identification of Mental Disorder in Criminal Justice System**

Criminal responsibility is not the only precondition for a defendant/accused to get the right for fair trial. During the trial, the specificity of ODGJ conditions should be considered so that, regardless of the disorder, they can still defend themselves fully.

An important component in ensuring the right to a fair trial is the identification of mental disorders. This identification must be done as soon as possible in the criminal justice system. Law enforcement officers, starting with the police, should seek consideration from an expert who understands the disorder conditions of the offender, i.e. doctors, psychiatrists, psychologists, and social workers.\(^{xliv}\) However, the party that holds the right to conduct medical examinations for the benefit of the law is a separate team that should be chaired by a mental health specialist\(^{xlv}\)

Meanwhile, media monitoring data showed that not all psychiatric identification came from mental health experts, as shown in the diagram below:
When referred to the rules and regulations, some identification of mental illness has not been obtained through appropriate means because they are only based on family information (10.3%), statements from the community (10.3%), and allegations (20.7%). We categorize allegation in the case that the law enforcer makes an assumption of an offender’s health condition only by observing the offender’s behavior, which is why the validity of this determination has yet to be proven. The same invalidity also applies to the information provided by the family and community. Although the family and community are the parties that are most affected by mental disorders that arise in one person, information that comes from them may not necessarily be academic by nature and cannot be used to assist in court proceedings. There are also four cases where there is no explanation as to how assumptions about mental disorder may arise.
In addition there are also ways of examination that can be deemed trustworthy, namely through the mechanism of medical examination (24.1%) and through the history of treatment that the offenders have undergone (12%). Both show that an expert who understands mental disorders has identified their illness. However, if the psychiatric information is obtained from a history of care, it should be revisited to find out whether a previous psychiatric diagnosis also occurred at the locus delicti, the time when the suspect committed a criminal offense.

We also grouped four cases which identification of mental disorders was provided by the police. The news articles did not explain whether the had consulted with a psychiatrist before they prepared the official information. If not, then the four cases grouped under ‘police information’ can be put into the ‘allegation’ group.

**Identification of appropriate and measurable mental disorders is indispensable in the criminal justice system. Not only to determine whether or not a person is guilty, but also to know the help he or she needs during the examination process.**

In the criminal justice process, the specificity of ODGJ conditions should be adequately accommodated, namely through modification and adjustment to allow the ODGJ to enjoy and exercise their human rights, including their rights as a suspect/defendant. For example, an ODGJ can be assisted by a communications assistant who can translate well the legal terms proposed by law enforcement officers to him/her. In addition, an identification of mental disorders is also useful for establishing detention for the offender.

The presence of a person who understands issues of mental disorder suffered by a suspect who is allegedly ODGJ is very important because people with mental disorders are vulnerable to ill treatment and torture during interrogation by law enforcement officers. Ensuring the right to get a lawyer and translator as soon as possible after entering into the criminal justice system is a way to avoid this possibility of ill treatment.

Their right to an accommodating criminal justice system becomes doubtful when medical information about their disorder can only be ensured after the arrest and the interrogation process. After it is known that the suspect is ODGJ, will the interrogation be repeated, and the previous interrogation is deemed irrelevant because at the time they were considered incompetent to provide
adequate defense? Unfortunately, Indonesian judicial system does not recognize the kind of legal protection.

**To Stop or to Continue the Legal Process?**

After a discussion of the identification of mental disorders, the next data will discuss the process that they went through when the news was reported. Due to the criminal justice process for ODGJ, it must be conducted in order to fulfill both the right to fair trial and the right to health. The following is the data:

Most of the events were covered shortly after the crime was committed or at the time of the arrest by the police, therefore most of the offenders were still in police detention, namely 41 cases (70.7%). Thus there is a possibility that 41 persons who were previously detained may have been referred to another institution or released in the next process.

In addition to detention, ODGJ entering into the justice system may get other follow-up. There are four cases where the police discontinued the investigation, either by issuing an order for dismissal of investigation (SP3), or through other police discretion mechanisms.

There is no similarity between the four criminal cases of which the offenders were released. The offenders were accused of criminal acts of persecution,
forest burning, manslaughter, and blasphemy. The only similarity between the four cases is the reason for the police to release them, namely the consideration that ODGJ should not undergo a legal process.

According to the Indonesian Criminal Code, ODGJ cannot be held criminally responsible. However, consideration concerning the responsibility shall only be given by a judge of a Court of First Instance, Appeal Court, and the Supreme Court.

The police did have the discretion to stop the investigation by law. This reason can be used in the event there are reasons to remove the right to prosecute or remove the right to serve a sentence, partly because the suspect is found to suffer from psychiatric problems that make him not fit for trial. Therefore, the above-mentioned release of the four ODGJ is lawful.

The problem is, what kind of procedure should be used to release them? In this case, Indonesia does not have a guideline concerning the type of case where ODGJ can be released. The Law on Mental Health has actually stated how: ODGJ who commits a criminal offense must be examined for his or her mental health so that it can be determined whether or not he is legally competent to undergo the judicial process (fit for trial). Supposedly, the police will use the result of this fit for trial examination to be a guideline to release the ODGJ or to continue the legal process.

As discussed in the previous sections, excluding a person solely because he or she suffers from a mental disorder has the potential to stigmatize him or her as someone who is not a legal subject; the possible negative consequences are the exclusion of ODGJ when they become a legal subject in other cases (as plaintiff, defendant, or victim of a crime).

Generalizing that all criminal offenses perpetrated by ODGJ should be stopped can also ignite public suspicion of cases where mental health issues arise. The public may assume that mental disorder is just a lie that a suspect uses to avoid legal process, although the person may truly have mental disorders and the mental disorders are related to the alleged criminal acts.

The Attorney General, H. M. Prasetyo, has raised such suspicions in regard to Rodrigo Gularte’s case. Despite the presence of an examination result stating that the convicted person suffers from schizophrenia, H. M. Prasetyo states that Rodrigo is ‘pretending to be crazy’ to avoid execution. A comprehensive
guideline to outline the follow up of ODGJ case in the criminal justice process is highly necessary to avoid such suspicions.

The criminal justice system should be a system that can restore to the original state, both of the condition of the offender and the victim. That is why it is very important to examine the data of the suspect who has been brought to the hospital or to the Social Affairs Office. There was one case of which a woman accused of neglecting a baby was taken to the Social Affairs Office. The condition of the mother who suffered mental disorders led her to be named as a person with problems of social welfare (PMKS); on that basis the police did not continue the legal process in order for the offender to get treatment at the Liponsos.\textsuperscript{4v}

In other cases we recorded ten people who were referred to the hospital after being arrested. The reason to refer them to the hospital was not clear. From the point of view of the cases, they were all of various different types of criminal offense. Some of the cases that were referred to the hospital had been stopped, but some others were detained in hospital due to health reasons, so the cases were continued.

Detention in hospital is indeed a ‘custody’ condition that is quite adequate for ODGJ. They do not need to experience the congestion and the horrible condition of being prisoners behind bars. In addition, they also have a better access to health services.

Two cases were collected which indicated the presence of ODGJ in a court proceeding. It cannot be ascertained in these two cases where they were held. These two stories are important to explain because ODGJ are also entitled to get legal protection in accordance with their needs at the time of trial in order to put up their defense to the maximum.

In the two cases, the defendant had obtained a lawyer’s assistance. Their lawyers were trying to prove that the defendants suffered from mental disorders. The information was used to prove that the defendants were not guilty.

The explanations above suggest that a lack of procedural law and regulation potentially violates the right to a fair trial for ODGJ. Not only are the law enforcers unequipped with the operational standards to identify mental disorders, but also standards of legal protection that should be provided for each mental disorder. Even if the suspect’s status has been abolished, there is
no explanation of what the next process should be; should they be placed in the mental hospital/ *Lioness*, and if so, for how long. The principles of the criminal justice system to restore the damaged state of a criminal offense become questionable in the ODGJ judicial process.
CLOSING REMARK

Despite the fact that the data found through this monitoring and documentation attempts cannot delve into detail the legal restrictions applicable to ODGJ, there are at least some interesting points that can be drawn:

- Throughout 2016, the type of violence committed to ODGJ that caused the highest number of victims are confinement to stocks at 3131 people, followed by forced custody that was experienced by 245 people, and negligence, which happened to 52 people.
- Lack of State protection and legal mechanism have still led to great difficulties in eradicating confinement in stocks, which is reflected in the fact that only 96 of the 3131 people who were confined in stocks were immediately released.
- For the total of 245 people that had been forcefully taken into custody, it could not be established for certain whether the procedures in securing them and the rehabilitation measures provided have respected the principles human rights, bearing in mind the absence of a guideline for medical assessment that is important in ensuring legal protection and fulfillment of ODGJ’s human rights.
- Throughout 2016, 52 ODGJ became victims of negligence. One of the factors causing the negligence is the fact that attempts of rehabilitation has not been holistically established to involve a variety of related parties, namely the hospital, family, social ministry office, and Satpol PP.
- Throughout 2016, ODGJ also became victims of persecution, murder, hit and run, and rehabilitation attempts that lead to death.
- The majority of the ODGJ who have been arrested by the police were alleged to have committed crimes of violence, namely murder, persecution, creating threats of violence against other individuals, and damaging the property of others.
- The accuracy of the identification of the type of mental disorder made of 44 out of the 58 offenders was unclear, while such identification is highly important to determine whether the person is criminally responsible.
Only 10 out of the 58 people who were transferred to hospital upon their arrest. Four were released, but it was not clear what kind of treatment that they received afterwards.

The data collected in this report shows that the State is still unable to provide human rights protection for ODGJ. This inability is demonstrated by the absence of a legal instrument and guideline on how to treat ODGJ who are suspected of committing a criminal offense. Even if the rules of conduct are in place, such as the regulation that gives government the authority to forcefully close rehabilitation institutions that do not apply health services standards, its implementation has not been effectively supervised.

The criminal justice system should be a system that protects ODGJ. Law enforcement officers can conduct an intervention against violent acts committed against ODGJ. Conversely, if the ODGJ is the offender of an act of violence and criminal act, they should also intervene in order for the offender to get the necessary efforts of rehabilitation, and justice is served for the victim. Obviously, this can only be done if the criminal justice system itself already has a comprehensive mechanism to ensure that the right to a fair trial for ODGJ can be fully implemented through existing accommodations.

END NOTES


Ibrahim Puteh, M. Marthoenis, & Harry Minas, 2011, “Aceh Free Pasung: Releasing the mentally ill from physical restraint”, International Journal of Mental Health Systems 5 , 10-14


Indonesia, Undang-Undang No. 11 Tahun 2009 Tentang Kesejahteraan Sosial, Article 7 paragraph (1).

Indonesia, Peraturan Pemerintah Nomor 39 Tahun 2012 Tentang Penyelenggaraan Kesejahteraan Sosial, Article 5 paragraph (4).

Indonesia, Undang-Undang No. 18 Tahun 2014 Tentang Kesehatan Jiwa, Article 21.


xxiv Indonesia, Undang-Undang No 23 Tahun 2014 Tentang Pemerintahan Daerah, Article 255 paragraph (2) dan commentary.
xxv Indonesia, Peraturan Pemerintah Nomor 39 Tahun 2012 Tentang Penyelenggaraan Kesejahteraan Sosial, Article 8.
xxvi Indonesia, Undang-Undang No. 18 Tahun 2014 Tentang Kesehatan Jiwa, Article 70 paragraph (1).
xxxiii Indonesia, Undang-Undang No. 18 Tahun 2014 Tentang Kesehatan Jiwa, Ps. 80.
xxxv Indonesia, Undang-Undang No. 18 Tahun 2014 Tentang Kesehatan Jiwa, Article 31.
xxxix Indonesia, Kitab Undang-Undang Hukum Pidana, Article 44.


Ibid., Article 109 paragraph 2.

Indonesia, Undang-Undang No. 8 Tahun 2016 Tentang Penyandang Disabilitas, Article 30 paragraph 1.

Indonesia, Undang-Undang No. 18 Tahun 2014 Tentang Kesehatan Jiwa, Article 73 paragraph 2.

Indonesia, Undang-Undang No. 8 Tahun 2016 Tentang Penyandang Disabilitas, Article 1 paragraph 8.


Ibid. pg. 81 & 84.

Indonesia, Kitab Undang-Undang Hukum Pidana, Article 44.

Ibid., Article 45.

Indonesia, Kitab Undang-Undang Hukum Acara Pidana, Article 109 paragraph 2.

Indonesia, Undang-Undang No. 18 Tahun 2014 Tentang Kesehatan Jiwa, Article 71 paragraph 2(b).
