

CAVEAT

INDONESIA'S MONTHLY HUMAN RIGHTS ANALYSIS

VOLUME 01/I, JUNE 2009

MAIN REPORT |

Wrong diagnosis: The case of Prita Mulyasari and the threat to free speech

The arrest of Prita Mulyasari, an ordinary 32-year-old mother of two, for allegedly defaming a hospital via an online complaint, triggered unprecedented public protest and thrust Indonesia's treatment of basic human rights back into the spotlight.

ADDITIONAL FEATURE |

Rolling the Dice on Children's Rights

On May 29, 2009, ten children were arrested at Soekarno-Hatta International Airport for allegedly gambling within the airport facility. They were subsequently charged with violating Article 303 of the Indonesian Criminal Code regarding gambling and were detained at Tangerang Children's Prison, where they remained until released on June 26 to await trial.

OPINION |

Indonesia's Torture of Addicts Must Stop

It is time for international human rights standards to be incorporated at the heart of international drug policies. The torture of any human being is unacceptable, and this includes drug users. Failure to implement humane policies will merely prolong the drawn-out sufferings of drug users as well as the mistaken attitudes of society.

www.lbh masyarakat.org

CAVEAT:

Let her or him be aware

CONTENT

THE EDITOR'S CUT | 2

MAIN REPORT | 3

Wrong diagnosis: The case of Prita Mulyasari and the threat to free speech

ADDITIONAL FEATURE | 8

Rolling the Dice on Children's Rights

OPINION | 12

Indonesia's Torture of Addicts Must Stop

CAVEAT is published by the Community Legal Aid Institute (LBH Masyarakat), Jakarta, Indonesia. All rights reserved. Neither this publication nor any part of it may be reproduced without prior permission of the LBH Masyarakat.

CAVEAT invites feedback and contributions. If you are interested in contributing a guest editorial piece or article, please first contact us: contact@lbhmasyarakat.org

Editorial Board:

Ricky Gunawan, Dhoho Ali Sastro, Andri G. Wibisana, Ajeng Larasati, Answer C. Styannes, Christine Tambunan, Pebri Rosmalina, Andy Wiyanto, Antonius Badar, Nur Annissa Rizki Santoso, Yura Pratama

Special Adviser:

Nick Perry

Finance and Circulation:

Zaki Wildan

Address:

Tebet Timur Dalam III D, No. 2, Jakarta 12820, INDONESIA

Phone:

+62 21 830 54 50

Fax:

+62 21 829 15 06

E-mail:

contact@lbhmasyarakat.org

Website:

www.lbhmasyarakat.org

THE EDITOR'S CUT

In Latin, caveat literally means let her or him be aware. Legally, it refers to a notice directed at a court or public officer to suspend a proceeding until the notifier is awarded a hearing. It was the poignant literal meaning of the word that led us to the name for our first English report. Caveat aims to present monthly analysis of the human rights situation in Indonesia. We chose to publish CAVEAT in English to cater to our non-Indonesian audience who are particularly interested in the development of human rights, legal reform and democracy in Indonesia. We are aware that other Indonesian NGOs have been largely contributing to the human rights discourse in Indonesia by publishing their regular publications in Bahasa, so we decided to go down a different path and diversify in the hope of encouraging dialogue.

In this first edition, we present you one main report, an additional feature and one opinion piece. Our first main report discusses the dangerous precedent set by the judiciary and law enforcement in a recent case pertaining to freedom of speech. In June 2009, Prita Mulyasari – an ordinary 32-year-old mother of two – was brought before the court for allegedly defaming a hospital via an online complaint. The case drew massive public support along with the attention of public figures and even the presidential candidates. Rights activists and legal experts, fearing Prita would be jailed, argued that Indonesia's freedom of speech was at stake. Civil movements sprung up in her defence, arguing that freedom of speech was enshrined in the Indonesian Constitution, Human Rights Law and the International Covenant on Civil and Political Rights. Finally, after significant pressure from the House of Representatives and the public, Prita was cleared of all charges and released. However, the long struggle to

erase criminal defamation laws is far from over in Indonesia.

Our additional feature presents you with a snapshot of one of the several cases we are currently advocating. In May, ten shoe-shine boys were arrested at Soekarno-Hatta International Airport by the airport police for allegedly gambling. The case has now been delivered to the Banten Provincial Prosecutor's Office and the boys are awaiting trial and a possible jail sentence. This report explores the Indonesian juvenile justice system, the special considerations of laws protecting children and the improper action taken by police when dealing with this case. It also looks into the interpretation of laws, the alleged charge of 'gambling' and chronic ongoing problems of Indonesia's juvenile detention facilities.

The final article in this month's edition of CAVEAT is an opinion piece titled "Indonesia's torture of addicts must stop." This article was written by our research volunteer, Edwina Kharisma, and debates the use of torture conducted against drug users in Indonesia. This article was published in commemoration of the International Day in Support of Victims of Torture as well as the International Day against Drugs Abuse and Illicit Trafficking of Drugs, which both fell on June 26.

We sincerely hope these three articles in the first edition of CAVEAT will promote a better understanding and awareness among readers of the latest human rights situation in Indonesia. We also acknowledge that our publication will not be one hundred percent perfect the first time around, and welcome and appreciate any constructive criticism.

Thank you for your ongoing support.

- **The Editor**

MAIN REPORT

Wrong diagnosis: The case of Prita Mulyasari and the threat to free speech

“So long as defamation articles are still regulated in the Criminal Code, our freedom of speech and expression will be trampled.”

- Ricky Gunawan, Programme Director of the Community Legal Aid Institute.

“On the one hand, we have this information law [ITE], but on the other we have the Constitution, Human Rights Law and press laws that guarantee freedom of expression. The ITE Law must be applied comprehensively in relation to other laws to prevent possible misinterpretations like this.”

- Bachtiar Aly, expert on communications at the University of Indonesia.

GENERAL BACKGROUND

The arrest of Prita Mulyasari, an ordinary 32-year-old mother of two, for allegedly defaming a hospital via an online complaint, triggered unprecedented public protest and thrust Indonesia’s treatment of basic human rights back into the spotlight.¹

The controversy surrounding her detainment led to the House of Representatives’ demanding the hospital withdraw its accusations and saw the three current presidential candidates weighing in on the debate and eventually led to Prita being acquitted of all charges and her prosecutors facing investigation.

While significant pressure eventually led to Prita being released, the important aspect of her arrest is the questions it raises in relation to freedom of speech and the right of the consumer to complain about medical services. Furthermore, concerns have been raised about the prosecutors’ lack of sensitivity, fairness and proportional punishment when dealing with suspects, and their unsubstantiated interpretation of certain laws (particularly Law Number 11

year 2008 regarding Electronic Information and Transaction, hereinafter referred to as the ITE Law).

After receiving poor treatment at Omni International Hospital, Prita wrote an email in September 2008 detailing her experience to friends, which was soon rapidly distributed across forums via online mailing lists.

Once the email became public knowledge, Omni International Hospital responded by filing a criminal complaint and a civil lawsuit against Prita. She was then arrested on May 13, 2009, by the Banten Provincial Prosecutor’s Office. She was charged under Articles 310 and 311 of the Criminal Code regarding defamation and Article 27 of the ITE Law. Prita faced a maximum six years imprisonment and fines of up to IDR 1 billion as a result of a sending this straightforward email of complaint.

While significant pressure eventually led to Prita being released, the important aspect of her arrest is the questions it raises in relation to freedom of speech and the right of the consumer to complain about medical services

Once the case generated massive public attention, the Tangerang district court trying Prita began to feel the pressure. Rallies were held across the country by those who empathised with this normal,

¹ For the detailed letter (in Bahasa) please see: <http://suarapembaca.detik.com/read/2008/08/30/111736/997265/283/rs-omni-dapatkan-pasien-dari-hasil-lab-fiktif>

everyday mother suddenly behind bars away from her children.

Civil movements, demanding reforms of the ITE Law and calling for the protection of consumers and freedom of expression, gathered speed and soon academics, politicians, international and local rights' activists, internet advocates and the public were joining the fray.

Prita was released from detention on June 3 and ordered to remain under city arrest due to "humanitarian reasons" before facing court on June 25 for her criminal defamation trial. There, before the prosecutors or defendants had even presented their witnesses, the judges threw the case out in a preliminary ruling, claiming prosecutors could not apply the ITE law.

The judges thought that the law was not yet effective since the Government Regulation has not yet been enacted. Even before this final trial session, the Attorney General Office (AGO) had begun investigating the Banten Provincial Prosecutor's Office for malpractice and potential corruption throughout the case.

THE DEFAMATION LAW AND THE ITE LAW

Defamation is literally defined as an/some act(s) damaging one's good reputation and dignity. The early development of defamation regulations stem back to 500 BC, as seen in the "Twelve Tables" legislation that was the basis for ancient Roman law. Even early on, defamation regulations were used as a tool by governments to strengthen their authority and repress free speech and equality. During the Augustan Age (63BC- 14AD) the number of defamation trials significantly increased. Through generations, it was bequeathed to several legal systems in other countries, such as England with the Common Law systems and France as one of the key countries of the European Continental system (Civil Law system).

In Indonesia, the vast majority of articles within the Criminal Code have not changed since the Dutch made the laws of *Wetboek van Strafrecht* effective in September 1886. The proposed reform of the Criminal Code has been submitted to the House of Representatives but is still being deliberated by legislators.

The Indonesian Criminal Code acknowledges at least twelve articles under the chapter of defamation (Article 310 – Article 321).

There are three elements required for an act to be considered defamatory: *first*, a good reputation must be attacked. *Secondly*, the act must have been deliberate and *finally*, the act must have taken place before the public. According to the doctrine and jurisprudences, the extent to which the act caused harm depends on the view of the public. The act must result in harm according to the community in which it was carried out.

An individual can defend themselves against an accusation of slander if they prove it was conducted in self-defence or in the general interest of the public. Furthermore, if they can prove the statements made are true then there is no basis for a defamation charge.

In Indonesia's legal system, defamation is not clearly defined. As the Criminal Code is essentially a document from the era of colonial rule, most of the articles in place on defamation have not been updated and essentially act as a way for the ruling government to limit freedom of expression and speech. This is especially problematic for modern-day media. The laws are not clear enough in most circumstances, and allow the ruling bodies to restrict the community's access to information.

Articles 27 and Article 45 of the ITE Law, which was passed in March 2008, stipulate that anybody who deliberately or otherwise distributes defamatory electronic documents can face up to six years in jail. The law was formulated by the House of Representatives commission overseeing

information and foreign affairs and was to be accommodating to internet users and protect the public from various misuses of the internet.

KEY ISSUES REGARDING THE ARREST

The most alarming realisation to emerge from the ordeal surrounding Prita Mulyasari's arrest is that the legal system, particularly laws regarding defamation, is still being wielded to serve those in power at the expense of ordinary individuals.

For human rights activists, legal experts, a selection of judges and politicians and eventually the public, the concern was that the charges violated the right to freedom of expression, which is guaranteed nationally under Indonesia's 1945 Constitution and a raft of other laws.

Freedom of opinion and expression is the cornerstone of any democratic society. In Indonesia, Article 28 (f) of the 1945 Constitution states that every citizen has the right to own, express and spread opinions in speech or in writing through print or electronic media. The state, under the Constitution, is fully responsible for ensuring the rights of its citizens and protecting them against mechanisms designed to repress their freedom of individual expression. This basic right is also protected under Article 25 of Law No. 39 year 1999 regarding Human Rights.

Prita's denial of expression in this case is closely linked in with her role as both a consumer and an ordinary citizen. If anything, this case highlights the shaky position of service users in Indonesia and the willingness of the judiciary to renege on its obligations to protect citizens.

A democracy should ensure the rights of consumers by allowing them to demand the services they are entitled to. In Indonesia, Law No. 8 year 1999 regarding Consumer Protection states consumers have the right to be heard when it comes to their opinion and complaints about the goods or service they have used. Further, they are

guaranteed compensation if the goods or services they receive are not in the same manner as what was agreed.

This includes the right to file a complaint, a right that Prita almost went to jail for exercising. While she was released eventually and the charges dropped, perhaps in other case (read below for examples) the defendant will not be so lucky. The fact that Prita, an ordinary mother, found herself defending her individual rights against not only an exclusive hospital run by a tycoon but also the judiciary is unforgivable. These laws are in place to protect those weaker individuals at risk from attacks from large, powerful corporations, and the judiciary should have backed those with less bargaining power.

The course of action taken by law enforcers, prosecution and the judiciary has set a dangerous precedent for those wishing to defend their right to legitimately complain. What is there stopping any local government from throwing criminal defamation suits at anybody expressing a complaint about public health or facility services?

On 9 June, 2009, legislators responding to this case pledged to pass the public service bill before the end of their tenure in October, which could in the future prevent discrimination and inequality from occurring as it did against Prita. The bill will punish officials who provide poor services and will handle complaints from unsatisfied users at an official complaints desk. According to Article 37 of the bill, service providers will be obliged to follow up every complaint within a set period of time, and customers can file suit against the provider if the case is not handled satisfactorily.

Freedom of opinion and expression is the cornerstone of any democratic society. In Indonesia, Article 28 (f) of the 1945 Constitution states that every citizen has the right to own, express and spread opinions in speech or in writing through print or electronic media.

One ongoing disparity with the defamation law is that it can only properly be harnessed by the wealthy. While Omni International Hospital was able to demand billions in

reparations from Prita through the use of top legal teams, Prita has so far been unable to launch a countersuit. Why has Omni International gone unpunished for providing such poor services in the first place? Furthermore, their actions will be considered illegal when this bill goes through (although arguably they are illegal even now) and they have caused Prita considerable harm, both mentally through the trial and detention and physically through poor service.

Another concern raised in this case is that the government has clearly failed to adequately educate the public about the ITE Law. This relatively new law, while being known perhaps to internet providers and web companies, was passed without an effective awareness campaign to inform the very people it was originally designed to protect of its existence. As Adrianus Meliala, a prominent criminologist from the University of Indonesia said, it was ironic the public only became aware of the law after it was used in a case outside its main purpose, which is to protect consumers from cyber crime.

Law enforcers also were unfamiliar with the terms and clauses of this relatively new regulation. As the case exploded in publicity and the specifics of the ITE Law became public, National Police Spokesman Inspector General Abubakar Nataprawira said:

“The police acted on prosecutors’ directions. They asked us to check if it was possible to use the ITE Law against Prita by asking an expert witness, and according to that expert, Prita could be charged under the law.” (The Jakarta Post, 5 June 2009).

It has been fairly firmly established charging Prita with a violation of the ITE Law was a baseless and unsubstantiated charge stemming from the police and prosecutors’ misinterpretation of the law. First and foremost, the law should not have been used in isolation when trying a defamation case, as has since been argued by Supreme Court judges and legal experts.

As we have examined, there are laws that allowed Prita to make her opinions heard, and those laws should have been taken into consideration when prosecutors decided to use the ITE Law. The Human Rights Law guarantees people the right to voice and spread their opinions through speech or in writing through print or electronic media. National Human Rights Commission (Komnas HAM) has argued that the libel clauses in Article 27 are not in line with the Indonesian Constitution, Law No. 39 year 1999 regarding Human Rights and Law No. 12 year 2005 on the Ratification of the International Covenant on Civil and Political Rights.

While a charge of defamation can be brought forward if the accused actively defamed with malicious intent, that can hardly be said for Prita’s case. The fact the statements she made criticising Omni International Hospital were put in an email and addressed to friends immediately suggests that ‘deliberate’ slander of the hospital were not her original motive. Also, she was not in a position to gain anything from malicious slander so it can hardly be argued that was her intent.

Another problematic aspect that arises from the email itself is that there is no regulation in the ITE Law that separates public or private spaces. While Prita’s email wound up in chat rooms and on blogs and forums, she played no part in actively spreading the message. The content of the email was essentially private, thus making a claim that the defamatory remarks were made public hard to prove and baseless in this case.

OTHER CASES AND ISSUES

Prita’s case, while generating huge amounts of public protest, was not particularly unique or new to Indonesia. There have been several other instances where members of the public have been slapped with defamation suits for complaining about services or treatment at the hands of large corporations.

In 2006 three kiosk owners at the International Trade Center (ITC) Mangga Dua - Khoe Seng Seng, Pan Esther, and Kwee Meng Luan a.k.a Winny - discovered their properties in the ITC building were built on land owned by the city administration and not building developer PT Duta Pertiwi. The land had only been lent by the administration to the company for management reasons, but if it decided to take it back, the tenants would have lost their properties and ownership titles. While the company claimed innocence, in another case involving the developer the court ruled that it had concealed information about land ownership.

Infuriated by what they believed was a manipulative deal, the vendors sent protest letters to several national newspapers between September and November accusing Duta Pertiwi Ltd of misleading them into buying the land. In December 2007, over a year later, Duta Pertiwi Ltd filed defamation lawsuits against the owners of the shops and apartments in the complex.

The owners and the company have been suing and countersuing each other ever since, with the North Jakarta District Court passing eight verdicts so far. In seven civil cases, the court turned down the civil lawsuits (act which breaks the law - or tort as known in the common law system), but in the last it ruled in favour of the plaintiff. Khoe Seng Seng was finally found guilty on June 4, 2009, of 'defaming' the developer and ordered to pay IDR 1 billion in compensation, down from the IDR 11 - 17 billion being demanded by the company's legal team. Pan Esther was also ordered to pay the same amount. Winny was cleared of all charges.

Fifi Tanang was the owner of a property at the same Mangga Dua Apartement complex. After she discovered the same discrepancy with ownership involving the land she had just purchased, she wrote a letter of complaint and sent it to the Jakarta Post, Kompas, Suara Pembaruan, Bisnis Indonesia, Media Indonesia and Warta Kota. Later, the Investor Daily re-published the

letter on December 2 and 3, 2006. This time Duta Pertiwi alleged she had defamed the company and sued her, where she faced 6 months in prison.

In Fifi's case, the complaint in question did not constitute malicious intent to defame, nor was it acting outside the public interest. International human rights standards on freedom of expression have concluded that imprisonment should not be imposed except in the most extreme circumstances where there is clear, identifiable intent to commit lawless, and malicious slander.

A major concern emerging from these cases is that the mechanisms of the media are being stifled and silenced by a pervasive fear of criminal reprisals and defamation suits. The threat these large corporations pose via defamation suits to media publications and blogs ultimately cripple freedom of the press. The judiciary and politicians enacting these various laws need to seriously consider the wider implications their rulings have on freedom and democracy in Indonesia.

--

ADDITIONAL FEATURE

ROLLING THE DICE ON CHILDREN'S RIGHTS

"We were playing a 'guess the coin' game. All we were doing was guessing whether a number or picture would appear. We have promised that we will be good boys and not be naughty anymore. Now it has been almost 30 days. We really miss our homes."

- Takim bin Asan, 11 years old, one of the detained children.

"The arrest, detention or imprisonment of a child shall conform with the law and be used only as a measure of last resort."

- Article 16 paragraph (3) Law No. 23 year 2003 regarding Child Protection.

"We often catch [shoeshine boys and other informal sector workers], and they keep loitering in the airport area. So we're now rounding them up as a form of shock therapy to deter other workers at the airport."

- Airport security head Taufik Hidayat, responding to why 10 children were arrested for 'gambling' and are now in prison awaiting trial (The Jakarta Post, June 19, 2009).

GENERAL BACKGROUND

On May 29, 2009, ten children were arrested at Soekarno-Hatta International Airport for allegedly gambling within the airport facility. Aged between 11 and 19 years, they were subsequently charged with violating Article 303 of the Indonesian Criminal Code regarding gambling and were detained at Tangerang Children's Prison, where they remained until released on June 26 to await trial.

The children - Rohsidik bin Gani and Sarifudin bin Basar, aged 11, Rosadi Takim bin Asan and Abdul Dofar bin Subroto, aged 12, Abdul Rohim bin Ali, Bahrudin bin Basar, Musa bin Asan and Irfan Ardiayansyah bin Imran, aged 14, Dalih bin Salim (known as Rojali), 17 and Abdul Rohman bin Ali, 19 - come from impoverished families and work illegally as shoe-shiners at the airport to earn a living.

The children, having been routinely chased from the main airport area by security, began playing a guessing game with other local children involving a coin and bets of around IDR 1,000 to IDR 7,000. When airport security tracked them down, they were taken to the nearest police station for

questioning and were charged with violating the Criminal Code.

The next day they were transferred to children's prison, where they remained until they saw the District Prosecutor on June 25. While the District Prosecutor initially ruled the children would remain in custody until their trial, pressure from the Community Legal Aid Institute (LBH Masyarakat), who is representing the children, saw them released from detention on the morning of June 26. They are expected to face a trial in early July where they either receive a suspended sentence or a maximum five years in prison.

INDONESIAN JUVENILE JUSTICE SYSTEM

In Indonesia, the juvenile justice system encompasses all elements of criminal justice related to the handling of child delinquency cases and is regulated under Article 4 of Law No 3 year 1997 regarding the Juvenile Court. Under both this law and Article 1 of Law No 23 year 2002 on the Protection of Children, an individual is classified as a child if they are between 8 and 17 years of age.

Laws in place for the protection of delinquent children call for special consideration and treatment to be

employed when dealing with crimes involving minors, though this rarely happens in practice. While the juvenile court can rule that a child face less punitive action, the reality is criminal sanctions are more often employed.

For juvenile delinquents facing criminal sanctions and the legal system for the first time, the police play a significant role in the initial stages. Police officers essentially determine whether the juvenile should be released without charge or face the next stage of prosecution.

If the arrest is deemed necessary, the public prosecutor then decide once more whether the offender should be released, or face the juvenile court.

Judges have four options under the Law for dealing with a defendant facing criminal sanctions:

1. Imprisonment or suspended sentence – For the latter, a sentence is given but the juvenile does not have to go to prison. They must not commit another crime within a set period, or the jail sentence will be enacted.
2. Confinement (*kurungan*) – similar to imprisonment, though in different facility usually for sentences of less than one year;
3. Fines – monetary punishments;
4. Monitoring – probation style punishment.

If the judge decides not to impart criminal sanctions on a child, they can instead take another course of action under the Law:

1. The child may be sent back to their parents or family;
2. The child may be sent to a government institution to learn vocational skills;
3. The child may be handed over to a social organization or social department involved specifically with education programs.

In terms of criminal sanctions, the option for a suspended sentence acts as a compromise between prosecutors demanding punishment, defendants pleading for release and judges weighing up

the case. Juveniles given a suspended sentence receive a jail term but are not sent to prison. Instead, they must not commit another crime within a set period of time or will face prison. This way, the child is able to attend school, stay with their family and avoid the already overcrowded and poorly funded prison system where disease, abuse and potential for further crime is imminent and a very real threat.



Figure 1: Ten shoe-sine boys in the Children's Prison, Tangerang.
Christine Tambunan/LBH Masyarakat. 2009

Despite there being clauses within the juvenile justice system allowing police and public prosecutors to release child offenders without sending them to prison, such as through a suspended sentence, law enforcers still tend to adopt a punitive and harsh approach toward juvenile crimes. Consequently, a significant number of children are sent to prison and detention centres for petty crimes every year.

According to the 2008 Amnesty International Briefing to the UN Committee against Torture regarding Indonesia, there are more than 3,000 children aged 8-17 currently in detention across Indonesia. This figure does not include children detained in holding cells at police stations. With only 16 special juvenile detention centres in the country, the majority of juvenile delinquents are detained in adult prisons during the investigation period before trial.

KEY ISSUES REGARDING THE ARREST

From these statistics and the testimonies of victims who have spoken with LBH Masyarakat, it is clear that punishment and ultimately imprisonment is often the first and only resort called upon for dealing with children involved in crime in Indonesia. The UN Convention on the Rights of the Child and Indonesia's own 2002 Child Protection Law stipulate that detention should only be used as a last resort for children who have committed crimes.

Magdalena Sitorus, from the Indonesian Child Protection Commission (KPAI), recently said: "Article 16 says the arrest of a minor may only be carried out as a last resort." LBH Masyarakat, legal aid representatives speaking with the children at Tangerang Children's Prison also claim this was the children's first arrest and therefore the action by police was clearly not a last resort, but was instead "harsh and unnecessary" (Dhoho Sastro, LBH Masyarakat, *The Jakarta Post*, June 19, 2009).

Article 5 of Law No 3 year 1997 regarding the Juvenile Court stipulates that investigators should release juveniles back into the care of their parents where possible instead of imprisonment. The District Prosecutor initially ruled that the children should remain in prison until their trial, stating there was no reason why legally they should be released. It was only after significant pressure from LBH Masyarakat, and with the help from media, that this decision was then overturned, and the children were released into the care of their parents. It seems this law is generally being overlooked by the judiciary.

Furthermore, the case itself should have been overseen by a specialised investigator, appointed directly by the Head of the Indonesian Police, as ruled under Article 41 of the same law. This law also failed to be implemented in this case.

The interpretation of 'gambling' in this charge also needs to be drawn into consideration. Considering the age of the children and the nature of the game they were playing, can such an interpretation be substantiated in this case? While the children were playing a 'game of chance', they were not undertaking it as a 'trade' or committing this crime through their 'profession', outlined as crimes in the Indonesian Criminal Code.

Also, under Article 2 of Law No. year 2002 on the Protection of Children, it is stated that child protection is based on a principal of non-discrimination, acting in the best interest of the child, right to life and self development and appreciation to the child's opinion. Considering all the children have confessed, both in interrogation and through letters written to the deputy head of the airport's crime unit, that they did understand they were committing a crime, and based on the nature of the game and amounts being exchanged, police are hardly acting in the best interests of the children by pursuing this case so fervently.

LBH Masyarakat, legal aid representatives speaking with the children at Tangerang Children's Prison also claim this was the children's first arrest and therefore the action by police was clearly not a last resort, but was instead "harsh and unnecessary"

Airport security claims they have ongoing difficulties policing informal sector workers, like shoeshine workers, at the airport. By his own admission, Taufik Hidayat, the head of the airport police's crime unit, suggested the reason the children were arrested was due to being more of a public nuisance than for the more serious charge of gambling:

"We often catch [shoeshine boys and other informal sector workers], and they keep loitering in the airport area. So we're now rounding them up as a form of shock therapy to deter other workers at the airport."

Such a statement tends to suggest that the charge of gambling against these children is unsubstantiated, and there was an ulterior motive behind the arrests. Indonesian law is supposed to protect children from discrimination and guarantees them the

opportunity to grow and develop, both rights blatantly ignored in this situation.

Furthermore, the children come from impoverished families and were not offered legal counsel in the initial stages of the investigation, a violation of the provisions of the Juvenile Court Law which states children should have access to legal assistance throughout any legal process. Eventually, LBH Masyarakat came to the legal aid of the children and has been working with the children ever since.

IMPLICATIONS OF THE ARREST AND CONCLUSIONS

The children arrested in this case were prevented from taking their final examinations when their detention was extended from June 18 until June 26. Article 45 of the Juvenile Court Law states that detention should only be enforced after truly considering the best interests of the child and the community, though in this case, this article seems to have been generally ignored. By arresting these children, law enforcement has potentially prevented them from completing their schooling, depriving them of future employment prospects.

Sentencing children to prison is an internationally condemned practice that under no circumstances is acting in the best interests of a minor. Considering the conditions in Indonesia's penitentiaries, detention is a particularly serious threat to a child's wellbeing. According to an Amnesty International briefing to the United Nations Committee against Torture in 2009, many children are forced to remain in adult prisons while they await trial and a verdict, which can sometimes take months. Children's prisons, like adult facilities, are overcrowded and poorly equipped at best, but in adult prisons, children are vulnerable to many levels of abuse, including physical, sexual and mental abuse. They are also exposed to rampant levels of HIV/AIDS and illegal drugs.

Imprisonment can be also a traumatic experience that leads to stigmatisation and

negative consequences for the remainder of an individual's life. Besides exposure to drugs and abuse, prisons can promote further criminal behaviour in the future and reduce the opportunity for reform.

Detention is a form of liberty deprivation and therefore should only be enacted as a last resort when all other measures have been exhausted. Furthermore, the punishment should be proportional to the alleged crime and entirely justified. When the case involves children, detention is particularly contentious and therefore exemptions and special considerations need to be adopted.

In this case, it can be seen that many of the laws and regulations in place to protect children from detention were ignored throughout the criminal and legal processes by law enforcement and the judiciary. In their upcoming trial early July, it can only be hoped that the judiciary do not again ignore their pleas and hand down a suspended sentence.

--

Children's prisons, like adult facilities, are overcrowded and poorly equipped at best, but in adult prisons, children are vulnerable to many levels of abuse, including physical, sexual and mental abuse. They are also exposed to rampant levels of HIV/AIDS and illegal drugs.

OPINION

Indonesia's torture of addicts must stop

By: Edwina Kharisma*

Jakarta, Indonesia — Moral theorists tend to agree that nearly all instances of torture are unjustifiable, irrespective of the motive. Although universally condemned, local values continue to allow the practice of torture. This is because certain individuals and communities tend to view torture as “acceptable” if it is conducted on particular people, such as prison inmates or convicted criminals.

In Indonesia this attitude prevails toward people charged with or convicted of drug abuse. It is standard, although unofficial, practice for police to torture detainees and inmates charged with this crime. What is worse, the individuals themselves often feel they deserve to be treated in such a manner. They believe they have committed a terrible crime, which makes them unworthy of being treated with dignity. The concept that they deserve to be tortured makes it extremely difficult to eradicate this practice.

In Indonesia, almost all drug-related arrests are accompanied by the practice of torture. In this context, the act of torture – cruel, inhumane and degrading treatment – is conducted in a non-discriminatory manner.

The method of torture administered by police depends on the victim’s gender. For women, the customary method is sexual abuse: the victim is ordered to strip and perform various sexual acts. For men it is likely to include regular beatings, sleep deprivation and electric shocks to the genitals. These practices are regarded as common and acceptable, not only by police officers, detainees and inmates but also by society.

Indonesians who use drugs are considered lowly human beings. They are often seen as

people who engage freely in sexual activities, come from bad family environments and are of evil personal characteristics. In addition, they are susceptible to HIV/AIDS.

Drug use is considered inconsistent with local values, customs and religious teachings, therefore users and addicts tend to be disowned by their families and ostracized by society. This contributes to the hardship that often drives drug users to commit more serious crimes like theft, rape and murder. The moralistic approach to their problem has been most damaging to this vulnerable group.

Scholars of both culture and law have attempted to explain this phenomenon. One theory postulates that law is a reflection of cultural values within a particular society. The cultural values of a society can be observed in the people’s attitudes, which are heavily affected by both external factors and intrinsic moral values.

In the case of drug users, both social attitudes and moral values in Indonesia lead people to think that torture is justifiable, both in detention and after conviction. Social acceptance makes it hard to label torture a crime, although the law perceives it otherwise.

These circumstances are depressing, as they are erroneous. Application of the law must be strengthened so police officers understand they have an absolute duty to refrain from torture. The misperception that the torture of drug addicts is acceptable must be corrected.

Whether by coincidence or intent, the U.N. International Day in Support of Victims of

Torture, established in 1997, falls on the same day as the International Day against Drug Abuse and Illicit Trafficking of Drugs, created a decade earlier. Both are on June 26.

It is a day to voice concern for both those who have endured the evil practice of torture as well as for drug users that are marginalized by society.

The fight against drugs should be conducted with the aim of protecting and rehabilitating drug addicts, as opposed to torturing them. Recognizing the human rights of drug users is essential, not least because it helps prevent the spread of HIV/AIDS and mitigate the impact of drug use on public health.

Criminalizing and targeting drug users will never solve the root problems of global illicit drug trafficking. Severe punishments such as the death penalty – which is the ultimate denial of the right to life and a form of cruel, inhuman, and degrading punishment – have failed to lower drug trafficking levels.

It is time for international human rights standards to be incorporated at the heart of international drug policies. The torture of any human being is unacceptable, and this includes drug users. Failure to implement humane policies will merely prolong the drawn-out sufferings of drug users as well as the mistaken attitudes of society.

Manfred Nowak, the U.N. special rapporteur on torture, said, “It is high time to rethink the punitive approach to drug policies and to replace it with a human rights-based approach, which ensures inter alia the protection of the most vulnerable groups.”

We should not ignore this terribly mistreated group any longer just to defend a pointless war on drugs, which is carried out through systematic daily torture.

--

(Edwina Kharisma is a research volunteer at the Community Legal Aid Institute, LBH Masyarakat,

based in Jakarta, Indonesia. She is currently studying law at the University of Indonesia. Her interests include issues of torture, indigenous people, business and human rights. LBH Masyarakat provides pro bono legal aid and human rights education for disadvantaged and marginalized people.)

--

This article was originally published on 17 June 2009 at

http://upiasia.com/Human_Rights/2009/06/17/indonesias_torture_of_addicts_must_stop/9716/
/

About LBH Masyarakat

Born from the idea that all members of society have the potential to actively participate in forging a just and democratic nation, a group of human rights lawyers, scholars and democrats established a non-profit civil society organization named the Community Legal Aid Institute (LBH Masyarakat)

By providing a wide range of opportunities, LBH Masyarakat is able to join forces with those concerned about upholding justice and human rights to collectively participate and contribute to the overall improvement of human rights in Indonesia.

LBH Masyarakat is an open-membership organisation seeking to recruit those wanting to play a key role in contributing to the empowerment of society. The members of LBH Masyarakat believe in the values of democracy and ethical human rights principals that strive against discrimination, corruption and violence against women, among others.

LBH Masyarakat aims for a future where everyone in society has access to legal assistance through participating in and defending *probono* legal aid, upholding justice and fulfilling human rights. Additionally, LBH Masyarakat strives to empower people to independently run a legal aid movement as well as build social awareness about the rights of an individual within, from and for their society.

LBH Masyarakat runs a number of programs, the main three of which are as follows: (1) Community legal empowerment through legal counselling, legal education, legal clinics, human rights education, awareness building in regard to basic rights, and providing legal information and legal aid for social programs; (2) Public case and public policy advocacy; (3) Conducting research concerning public predicaments, international human rights campaigns and advocacy.

These programs are conducted entirely in cooperation with society itself. LBH Masyarakat strongly believes that by enhancing legal and human rights awareness among social groups, an independent advocacy approach can be adopted by individuals within their local areas.

Lembaga Bantuan Hukum Masyarakat
Tebet Timur Dalam III D, No. 2
Jakarta 12820
INDONESIA
P. +62 21 830 54 50
F. +62 21 829 15 06
E. contact@lbhmasyarakat.org
W. <http://www.lbhmasyarakat.org>